

Grievance and Appeals

Original Implementation: Unpublished

Last Revision: April 30, 2019

Purpose

It is the policy of the university to seek fair and equitable solutions to grievances arising from the employment relationship. This policy applies to all non-academic staff employees.

Definitions

Category I grievances consist of disciplinary actions resulting in involuntary terminations, demotions, decreases in salary, or suspensions without pay, and allegations of a violation of, or retaliation for the exercise of, constitutional rights.

Category II grievances consist of issues pertaining to wages, hours, working conditions, performance evaluations, merit raises, job assignments, interpretation of the official personnel or administrative policies of the university as applied to the grievant, oral or written reprimands, or similar matters involving management decisions concerning the grievant.

General

Grievances have been divided into two categories. A five-step grievance procedure for Category I grievances has been established for prompt and thorough consideration of employee grievances and to ensure due process of law. A shorter two-step procedure is provided for Category II grievances.

Each employee may, without prejudice or fear of retaliation, express his/her grievance through the channels outlined in this procedure for timely and thorough consideration. The university will not retaliate against an employee for the filing of a grievance under this policy.

A probationary employee may not file a grievance under Category I unless: (a) the action involves allegations of a health or safety hazard; or (b) the action involves allegations of a violation of, or retaliation for the exercise of, constitutional rights. A probationary employee may not file a Category II grievance for a disciplinary action.

Category I Grievances

Each grievance must be submitted in writing using the grievance form, which can be obtained from Human Resources. A written grievance must contain a clear and concise statement of the grievance which refers to the applicable policy alleged to have been violated, the date the

incident took place, the issue involved, and the specific relief sought by the grievant. The grievance should include any additional information to be considered in its support. Once a grievance has been submitted in writing, it may not be changed or amended after the expiration of the ten (10) day period set out in Step One of the grievance procedure. All matters pertaining to a grievance will be treated as part of the official personnel file of the grievant.

When a grievance involves an alleged violation of constitutional rights or retaliation for the exercise of constitutional rights, the burden of proof is upon the grievant to establish by a preponderance of the evidence that the decision or action placed in question by the grievance was a violation of grievant's constitutional rights or was intended as retaliation for the lawful exercise of constitutional rights by the grievant. Otherwise, the burden of proof is on the university to show good cause as to why the grieved action was taken

The grievant may present his/her grievance individually, through legal counsel, or through a representative of an organization that does not claim the right to strike. Fees or charges (if any) to the grievant for such representation must be paid by the grievant since university monies are not authorized for such use. The director of human resources has the obligation to assist the grievant, upon request, by explaining this grievance procedure in detail.

Procedure for Category I Grievances

1. *Step One (First-Line Supervisor)*. The grievant will use the grievance form to present the grievance in writing to the first-line supervisor within ten (10) working days from the date of the alleged action or condition giving rise to the grievance. A copy of the grievance will be sent to the director of human resources by the first-line supervisor. Within five (5) working days, the supervisor will inform the grievant of the decision in writing. A copy of the decision will be sent to the director of human resources.
2. *Step Two (Department Head or Administrative Equivalent)*. Grievances not satisfactorily resolved in Step One may be appealed by the employee in writing to the employee's department chair or administrative equivalent. The appeal must be made within five (5) working days following the date of the first-line supervisor's decision in Step One. Within five (5) working days, the department head will inform the grievant of the decision in writing. Copies of the decision will be sent to: (1) the first-line supervisor; and (2) the director of human resources.
3. *Step Three (Dean or Director)*. Grievances not satisfactorily resolved in Step Two may be appealed in writing to the appropriate dean or director. The appeal must be made within five (5) working days following the date of the Step Two decision. Within five (5) working days, the dean or director will inform the grievant of the decision in writing. Copies of the decision will be sent to: (1) the department chair or administrative equivalent; and (2) the director of human resources.
4. *Step Four (Vice President)*. Grievances not satisfactorily resolved in Step Three may be

appealed in writing to the appropriate vice president of the university. The appeal must be made within five (5) working days of the date of the Step Three decision by the dean or director. The vice president will have the option to handle the grievance or to appoint a Grievance Review Board to consider the grievance. When the subject of the grievance is the termination of the grievant, a hearing must be held if requested by the grievant. The vice president will either commence the review or request the appointment of the Grievance Review Board within ten (10) working days following the date of the receipt of the appeal. If the vice president does not request a Grievance Review Board, a written decision will be given to the grievant within fifteen (15) working days following the date of receipt of the appeal. If a Grievance Review Board is requested, a written decision by the vice president will be given to the grievant within ten (10) working days following the receipt of the Grievance Review Board's report and recommendations. Copies of the decision will be sent to: (1) the dean or director; and (2) the director of human resources.

5. *Step Five (President)*. The president of the university is the final level of appeal. Grievances not satisfactorily resolved in Step Four may be appealed in writing to the president. The appeal must be made within five (5) working days following the date of the Step Four decision by the vice president. The president may handle the review of the grievance or, if a Grievance Review Board was not requested at the Step Four level, the president will have the option to appoint a Grievance Review Board. Within a reasonable period of time not to exceed thirty (30) days following the receipt of the appeal or receipt of the Grievance Review Board's report and recommendations, whichever occurs last, the president will inform the grievant of the decision in writing. Copies of the decision will be sent to: (1) the appropriate vice president; and (2) the director of human resources.

The time limits set forth in the five steps of the grievance procedure must be observed by both the grievant and the appropriate supervisory and administrative personnel. The failure of the employee to process the grievance in a timely manner to the next level will constitute a withdrawal of the grievance. The failure of supervisory or administrative personnel to timely respond to a grievance will constitute authorization for the employee to process the grievance to the next step.

Grievance Review Board

All ranks of university non-academic employees are eligible to serve on the Grievance Review Board. Human Resources will maintain a roster of non-academic employees serving on the grievance panel. The members of the grievance panel will be representative of the university work force, taking into consideration that the panel also be representative as to sex, race, and supervisory or non-supervisory status. The members will be selected from nominations submitted by other non-academic employees. The president will make final approval of the

panel.

A Grievance Review Board, consisting of three (3) members, will be selected from the grievance panel of ten (10) employees previously approved by the president. The grievant will select one (1) name and the Step Three official will select one (1) name. The board will name its own chair from the remaining members of the panel. A representative of Human Resources and/or counsel from the Office of the General Counsel may be consulted in procedural matters and present at the hearing.

The Grievance Review Board will strive to hold the necessary hearing or hearings within ten (10) working days from the date Human Resources is notified in writing that a vice president or the president, as applicable, requests a hearing of the grievance, with the understanding that availability and other scheduling issues may require the hearing to occur at a later date. The president, vice president, Human Resources representative or the grievant will have the right to object to the person selected as chair of the Grievance Review Board based upon the grievance pending before the board or perceived unfair representation of a division of the university due to the nature of the grievance.

After the board is constituted and the hearing date is scheduled, the board will convene and hear the grievance. The hearing will be closed to the public. The grievant, institutional representative, and university all have the right to be advised by legal counsel or a representative of an employee organization (which does not have the right to strike), however such legal counsel or representative will not be allowed to conduct or participate in the hearing.

A court reporter or at least two (2) audio recording devices will be furnished by the university to record the hearing. The party requesting a typed transcript of the proceedings will be responsible for payment of same. The hearing will consist of opening statements by the grievant and the institutional representative, testimony by witnesses called by the institution and the grievant, with both parties having the right to cross examine witnesses, and any relevant exhibits which either party seeks to present to the board. At least five (5) business days prior to the scheduled hearing, the grievant and institutional representative will submit a list of its witnesses (including a short description of the testimony each witness is expected to provide) and four copies of its evidence to the director of human resources or their representative. The director of human resources or their representative will provide the list of witnesses and a copy of the evidence to each side and the members of the board. Formal rules of evidence do not apply to the hearing, and the board may exclude evidence it deems irrelevant or superfluous.

At the conclusion of the testimony, both parties will be permitted to make a closing argument. Following the hearing, the Grievance Review Board will retire to deliberate and, as soon as possible, will submit a written report of its findings and recommendations to the vice president or president, as applicable, who will make a decision on the grievance.

Category II Grievances

Category II grievances are matters of employee-management disagreement other than those specifically defined as Category I grievances. Category II grievances are not authorized to be processed through the formal Category I grievance procedure. Category II grievances include, but are not limited to, employee dissatisfaction relative to wages, hours, and working conditions as well as work related actions such as performance evaluations, oral or written reprimands, administration of the merit pay program, or job assignments or interpretations of the official personnel or administrative policies of the university as applied to the grievant.

Procedure for Category II Grievances

1. *Step One.* A Category II grievance may be informally presented to the first-line supervisor for discussion and consideration.
2. *Step Two.* If a Category II grievance is not satisfactorily resolved by the first-line supervisor, the employee should present the complaint in writing using the grievance form to the appropriate department head or director for final consideration and action. If the grievance is against the department head or director, it will be presented to the appropriate dean or supervisor of the director for final consideration. The written grievance and the written response of the department head or director will be treated as part of the official personnel file of the employee. Copies of the written grievance and written response will be sent to: (1) the first- line supervisor; and (2) the director of human resources.

Cross Reference: U.S. Const. amend. V; U.S. Const. amend. XIV; Tex. Const. art I, § XIX

Responsible for Implementation: President

Contact for Revision: Human Resources

Forms: Formal Grievance Forms are available in Human Resources

Board Committee Assignment: Academic and Student Affairs