

40-12 Grievance and Dispute Resolution

- 40-12-1 Purpose • 40-12-2 Policy • 40-12-3 Definitions • 40-12-4 Administration •
 40-12-5 Dispute Resolution Committees • 40-12-6 Assisting the Grievant •
 40-12-7 Phases of the Grievance Process • 40-12-8 Rights of Parties Involved in the Grievance Process •
 40-12-9 Presidential Action • 40-12-10 Rights and Responsibilities •

1. **Purpose.** The purpose of these policies and procedures is to ensure compliance, in part, *with* AGP&P, 15-1, "Bill of Rights and Responsibilities for all Members of the University." The procedures are designed to promote prompt, efficient and equitable means of resolving grievances and disputes.
2. **Policy.** The policies established in furtherance of that purpose are as follows:
 - A. Grievances should be resolved equitably at the lowest level of management possible. Every effort should be made by all parties to expedite resolution of a grievance or dispute.
 - B. Grievance and dispute resolutions should protect the rights of University employees and the University's authority to manage its members.
 - C. This grievance procedure is not to be confused or commingled with disciplinary procedures, which are initiated on behalf of the University pursuant to its rights to manage, discipline and discharge its members. *Employees cannot grieve a termination.*
 - D. Neither the University nor any University employee shall retaliate in any way against any member of the University who uses these grievance and dispute resolutions procedures in good faith. Persons retaliating shall be subject to appropriate disciplinary action.
 - E. All parties involved in dispute or grievance matters shall have equal rights in the grievance procedure.
 - F. Insofar as is possible, the University shall respect the privacy of those involved in the grievance process, and all information gathered shall remain confidential and shared only on a "need to know" basis.

The foregoing purpose and policies are implemented by the following.

Procedures

3. Definitions.

- A. A "grievance" is any of the following:
 - (1) An allegation by a member of the University community that there has been a violation, *misinterpretation* or improper application of the terms and conditions of any University handbook or other regulation, policy or procedure applicable to the member.
 - (2) An allegation by a member of the University community regarding improper, arbitrary or discriminatory application of University policies and practices relating to terms and conditions of the grievant's employment.
 - (3) An allegation of improper conduct or unfair treatment involving University faculty or staff and in violation of a state or federal statute or regulation.

- (4) An allegation of a dispute between or among University faculty and/or staff that relates to their employment, the resolution of which would benefit the University and further the University's mission. This is not intended to include petty personality conflicts.
- B. A person making any of the above allegations shall be called a "grievant" for purposes of this procedure.
- C. Any other person named in the grievance shall be called a "respondent."
- D. The collective reference to all those involved in the grievance shall be the "parties." The University shall always be considered one (1) of the parties.
- E. The term "working days" as used in these procedures shall mean those days when the University is open for business (Monday through Friday) exclusive of legal holidays. During recesses exceeding two (2) consecutive days, the processing of grievances shall be held in abeyance until the recess is over unless all parties agree to proceed.
- F. "Shall" is used in the imperative sense.
- G. "May" is used in the permissive sense.
- H. *A complaint, in contrast to a grievance, is a charge of improper or unfair treatment by another member of the University community. University employees or students wishing to file a complaint may do so at the Office of Human Resources.*
- I. *The University shall identify one person to act as the University's grievance facilitator to assist the grievant.*
4. **Administration.** This policy and its procedures shall be administered by the director of the Office of Human Resources.
5. **Grievance Committees.** The support employee, professional employee and faculty constituency groups each shall *elect a grievance committee* to which any grievance or dispute from one of their members may be submitted as set forth in section 7 below. Student grievances are addressed in section 7, below.
6. **Assisting the Grievant.** The grievant may seek assistance from *the designated University grievance facilitator* for any grievance, including allegations of sexual harassment or discrimination prohibited under Title VII or Title IX. The grievant may also select a University employee to assist with the grievance procedures. Because the grievance and dispute resolution policy and procedures are not considered to be legal or judicial processes, no lawyer or other person not a member of the University community shall be allowed to participate in the process.
7. **Phases of the Grievance Process.** There are *several* phases of the grievance process. These processes differ slightly for each employee group and for students.
- A. **Grievance Process—Support (Non-Exempt) employees.**
- (1) Phase 1--Informal Stage
- a. The grievant shall present the grievance orally to the immediate supervisor. If the grievance is with the immediate supervisor, the grievant presents the grievance to the next level administrator.
- b. If the grievance remains unresolved, the grievant consults with the next level supervisor (the supervisor's supervisor). If the grievance is still unresolved, then

the second level supervisor records the date of the meeting and a brief narrative of the discussion with the employee. *The employee has a maximum of thirty (30) days to file a written grievance with the University grievance facilitator.*

- (2) Phase 2--Mediation. If there is no resolution at the informal level, the grievant proceeds to the second phase, *structured mediation with the designated University grievance facilitator.*
 - a. The Support employee grievant has thirty (30) calendar days to submit a written grievance to the *University grievance facilitator*, including form GR1. The grievant may be assisted in the preparation of this document and throughout this process by another employee and by the grievance facilitator.
 - b. Upon receipt of the written grievance, the grievance facilitator will notify all parties in writing within five (5) working days and initiate form GR2.
 - c. Upon notification, the respondents have a maximum of five (5) working days to respond to the grievance in writing.
 - d. Within five (5) working days after receipt of the written response, the grievance facilitator will meet with the grievant and respondent(s) to mediate a resolution. The grievant may request the presence of another employee to serve as an advisor. If a resolution that is satisfactory to the grievant is reached, the process is complete. If not, the grievant has five (5) working days to request a hearing by the grievant's constituency *grievance committee.*
- 3) Phase 3--Peer Review. Grievances not resolved during stages one and two can be submitted to the employee's grievance panel.
 - a. At the grievant's request, the grievance facilitator shall request a hearing from the grievant's constituent grievance committee.
 - b. The grievance is heard by a committee elected by the support employee constituency to hear grievances that are forwarded to them by the University *grievance facilitator. The committee shall consist of five (5) employees and two (2) alternates elected before June 30 to serve during the next fiscal year.*
 - c. Within five (5) working days, the chair of the grievance panel will acknowledge the hearing request, in writing, to the grievant, the grievant's supervisors, the grievance facilitator, and the executive administrator.
 - b. The grievance panel will convene within thirty (30) calendar days to review materials from stages one and two, solicit additional materials from University sources, hear testimony from both sides, and ultimately submit a recommendation to the grievant's executive administrator within five (5) working days after the panel completes its hearing. Approval from the executive administrator, using input from the grievance facilitator, constituent grievance panel, or other sources of information, is required to extend the panel's deliberation time.
 - c. The grievant's executive administrator, after reviewing all materials and considering the panel's recommendation, issues the final decision, which is subject to presidential review. There are no provisions to appeal this final decision.
- (4) The executive administrator shall notify the grievant, grievance panel, managers, and other involved employees as soon as possible of the decision. Disclosure of specifics

used to reach a decision is at the discretion of the executive administrator and within the bounds of administrative confidentiality.

B. Grievance Process—Professional (Exempt) Employees.

(1) Phase 1.

- a. The grievant shall present the grievance orally to the immediate supervisor for purposes of informal discussion. Written verification of date(s) and time(s) of initial meeting(s) must be signed by all parties. A maximum of three (3) working days is allowed for the supervisor's decision. If there is no resolution, the grievant may consult with the area executive administrator.
- b. The area executive administrator shall hear and attempt to resolve the grievance. Written verification of date(s) and time(s) of meeting(s) must be signed by all parties. A maximum of three (3) working days is allowed for the executive administrator's decision. If the grievance is not resolved, the grievant may proceed to Phase Two by presenting a written appeal to the chair of the constituency *grievance committee* within ten (10) days.

(2) Phase 2. Within ten (10) working days after the informal decision, the grievant shall submit a written appeal to the chairperson of the constituency grievance committee. The grievance must contain a statement of the grievance, the facts on which it is based, the ENMU policy allegedly violated, and the remedy being sought by the grievant.

- a. Within ten (10) working days after the receipt of the written grievance, the Grievance Committee chairperson shall convene a hearing for the grievant. The Grievance Committee, elected by the professional employee constituency, shall consist of five (5) professional employees and two (2) alternates and shall be elected before June 30 to serve during the next fiscal year. Members must be employed at ENMU for a minimum of one year as a professional employee to be eligible for service on this committee.
- b. The grievant may request either an open or closed hearing. Both parties must agree before a hearing will be an open hearing. The Grievance Committee may accept a spokesperson for either party, if physical conditions preclude the parties from speaking for themselves. The hearing shall be recorded and the documents presented shall be preserved a part of the record of the hearing.
- c. Following the hearing, the chairperson shall prepare the committee's written recommendation, based on the record presented at the hearing, within five (5) working days from the conclusion of the hearing. The chair will forward the recommend to the all parties involved and the University president.

(3) Final Phase.

- a. The decision of the University president shall be based upon the recommendation of the Grievance Committee and the record presented at the hearing, unless the president receives relevant information subsequent to the hearing and the recommendation of the Committee. Such information may be taken into consideration if the affected parties have an opportunity to respond to the information submitted. The president will make the final decision within twenty-one (21) working days from receipt of the Grievance Committee recommendation. *There are no provisions to appeal this final decision.*
- b. *Exception.* Those professional employees who report directly to the president should seek to resolve the grievance with the president. If unresolved, they may appeal to the Board of Regents.

C. Grievance Process--Faculty

- (1) Informal Stage. Faculty members shall attempt to work out grievances before resorting to formal procedures. If it is not possible to resolve a grievance informally, a formal grievance may be filed.
- (2) Formal Grievance Procedures.
 - a. A faculty member shall prepare a written statement of the facts concerning the grievance, to include those provisions of the *Faculty Handbook* or other policies alleged to have been violated, the relief requested, and the informal procedures that have been utilized in previous attempts to resolve the grievance.
 - b. The written and signed grievance shall then be submitted to the Faculty Grievance Committee, which shall attempt to resolve the grievance through mediation and shall recommend action to this end.
 - c. In the event that mediation fails, the faculty member may file the statement of grievance with the dean of his/her college within 30 days after receipt of the faculty Grievance Committee's recommendation. The dean shall hold a grievance meeting within two (2) working days of the receipt of the statement of grievance. The meeting shall include the dean, all parties to the grievance and, if desired, a representative of each party chosen from the faculty or administration. A summary of this meeting shall be kept by the dean, to which the aggrieved may respond in writing.
 - d. The dean shall make a decision on the grievance within ten (10) working days after the meeting.
 - e. The aggrieved may appeal the dean's decision to the vice president for Academic Affairs. The appeal shall state in writing the reason(s) why the dean's decision does not resolve the grievance.
 - f. The vice president for Academic Affairs shall hold a grievance meeting within ten (10) working days after receipt of the appeal. The meeting shall include the vice president for Academic Affairs, all parties to the grievance and, if desired, a representative of each party chosen from the faculty or administration.
 - g. The vice president for Academic Affairs shall review all material pertaining to the grievance and shall issue a written decision to the aggrieved within ten (10) working days after the close of the meeting.
- (3) Final Phase.

If the aggrieved finds that the decision of the vice president for Academic Affairs does not resolve the grievance, the aggrieved may file an appeal with the president within ten (10) working days of receipt of the decision of the vice president for Academic Affairs. The president *may consult, as appropriate, with parties to the grievance* before reaching a decision. The decision of the president shall be final, subject to review by the Board of Regents.

- D. Student Grievances.** These policies and procedures are designed to resolve grievances and disputes of faculty and staff. Most student grievances, disputes or appeals are properly handled within the jurisdictions of the vice president for Student Affairs, See 70-2 Student Code of Conduct.

8. Rights of Parties Involved in the *Grievance* Procedure

- A. If the University employee grievant or any other party to the grievance proceeding chooses, he or she may select a representative from within the University community to help him or her with the grievance procedure. No lawyers or other persons not a member of the University community shall be allowed to participate in the process.
- B. Investigation and resolution of grievances or disputes necessarily involves an invasion of privacy to some degree; however, insofar as is possible, the University shall respect the privacy of those involved in the grievance process.

9. Presidential Action. Pursuant to the powers and responsibilities granted by the Board of Regents, the president of the University may take action affecting the final decision, including amending, remanding or overturning it for all situations save those of individuals under his direct supervision.

10. Rights and Responsibilities. Included in the rights and responsibilities of grievants and the University are the following:

- A. A grievance proceeding shall not become a part of the personnel record of any University faculty or staff employee.
- B. An employee shall be given a reasonable amount of time during work hours to attend a meeting to present a grievance; however, the employee must provide advance notice to his or her supervisor to allow the meeting to be scheduled so that the duties of the parties involved can be performed and operation of the University shall not be adversely affected.
- C. Any employee who fails to follow the grievance and dispute resolution procedures of the University shall lose any right to pursue the grievance.

Presented to University Council, February 22, 2010.