

## 9-18-08 - Proposed Alternative to Current Pilot Grievance Process

### **I) Preamble:**

- A. The primary goal of the grievance procedure is to present prompt and clear evaluations about the merits of grievances and provide solutions that are equitable and effective. This process is not designed to replicate a judicial proceeding.
- B. The Board of Curators, the faculty, and the administration of the University of Missouri recognize the importance of providing a prompt and efficient procedure for fair and equitable resolutions of grievances with the University without fear of prejudice or reprisal for initiating a grievance or participating in its settlement. To the extent possible, all grievances should be settled through informal discussions at the lowest administrative level, and disputed matters should be processed as formal grievances only when either party feels that a fair and equitable solution has not been reached in the informal discussions. Accordingly, the members of the faculty as defined in the rules and regulations, [Section 310.020 A](#), including faculty who hold an administrative title or function, are encouraged to use this procedure for grievances relating to their status or activities as faculty members. This grievance procedure should not to be used in connection with a matter relating to any administrative title or function which the faculty member currently holds or may also have had.
- C. The success of this procedure is contingent upon the good faith effort of all participants. It is the responsibility of the MU Faculty Council, the MU Chancellor, and the University President to encourage and sustain such efforts, and to ensure that the procedure is followed in its entirety in its spirit as well as letter. The Chancellor will also be responsible for ensuring that the determination reached in a grievance is implemented.

### **II) Definition:**

- A. A grievance is defined as an allegation that one or more of the following has occurred:
  - 1) There has been a violation, a misinterpretation, an arbitrary or discriminatory application of University policy, regulation, or procedure which applies personally to the faculty member, notwithstanding that it may apply to others within or without the grievant's unit, relating to the privileges, responsibilities, or terms and conditions of employment as a member of the faculty.
  - 2) The faculty member has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability, status as a Vietnam era veteran, or sexual orientation.
  - 3) There has been an infringement on the academic freedom of the faculty member.
- B. This policy shall not be interpreted in such a manner as to violate the legal rights of religious

organizations or military organizations associated with the Armed Forces of the United States of America.

### III) **Termination and Non-Renewal of Regular Faculty**

- A. The termination of regular faculty on continuous appointments, on whatever grounds, is governed exclusively by the Academic Tenure Regulations (Section 310.020) and the Procedures in Cases of Dismissal for Cause (310.060) rather than this Grievance Procedure. Any matter related to the termination of regular faculty on continuous appointment cannot be grieved under Section 370.015.
- B. The non-renewal of regular faculty on regular term appointments, on whatever grounds, is governed by the Academic Tenure Regulations (Section 310.020) rather than this Grievance Procedure. For the Columbia Campus only, the reference to 370.010 in section 310.020F shall be taken instead to reference 370.015. As laid out in 310.020F.3., if a tenure-track faculty member's non-renewal has been unsuccessfully appealed to the Chancellor, the faculty member may use this grievance process only to allege that the decision resulted from inadequate consideration, or that the decision was based significantly on consideration violative of academic freedom, or that the decision was based significantly on considerations violative of governing policies on equal employment opportunity.

### IV) **Grievance Process:**

#### A. *Grievance Resolution Panel (GRP):*

- 1) Grievances shall be addressed by a standing three person *GRP* consisting of a senior administrator (e.g., Deputy Provost) and two tenured faculty members:
  - (a) The faculty members will be chosen by the Faculty Council (FC) after consultation with the Chancellor via an application process designed by the FC.
  - (b) Faculty members will be granted release time to compensate for the effort devoted to the *GRP*. The amount of release time will be negotiated between the Chancellor and the faculty member's dean/department chair.
  - (c) The senior administrator member of the *GRP* will be appointed by the Chancellor after consultation with the FC.
- 2) *GRP* members will serve up to three-year renewable terms pending FC and Chancellor approval.
  - (a) In case of a conflict of interest, the FC will appoint alternate faculty members of the *GRP*. Release time, if any, for faculty alternates will be negotiated between the Chancellor and the alternate's dean/department chair, as needed.
  - (b) In the case of a conflict of interest, the Chancellor will appoint an alternate senior administrator after consultation with the *FC*.

B. Faculty Council Oversight Committee (OC):

- 1) The OC will monitor the grievance process. (Additional details on OC committee are provided below in section IV. K.)

C. Filing a grievance:

- 1) A faculty member files a grievance by the completion of the Grievance Filing Form and submission of the form to the *GRP*.
  - (a) The Grievance Filing Form must be the form approved by the *GRP*.
  - (b) The form must include the following specific information:
    - (i) description and date of occurrence of the grieved act,
    - (ii) the rule that was violated,
    - (iii) the harm that resulted,
    - (iv) the remedy the grievant requests,
    - (v) attempts at informal resolution.
  - (c) The grievant may submit any relevant evidence/attachments that the grievant would like to be considered by the *GRP* as well as a list of additional sources of information, including persons with knowledge.
  - (d) The grievant may also request that the *GRP* gather any additional relevant evidence that the grievant believes exists and that is not in the grievant's possession or to which the grievant does not have access. Taking into account considerations of FERPA, HIPAA, attorney/client privilege and impact on any party or university entity, the *GRP* will make reasonable attempts to obtain information that it deems relevant and central to the grieved matter(s).
- 2) There are two requirements the grievant must meet when filing:
  - (a) The grievant must demonstrate that s/he attempted to informally resolve the complaint before filing the grievance.
  - (b) The grievant must file the grievance within one hundred and eighty (180) days after the grievant knew, or reasonably should have known, of the occurrence of the event or omission out of which the grievance has arisen. In situations where the grievance arises out of a series of events or omissions, the filing period shall be measured from the last event or omission in the series.
    - (i) A faculty member who does not initiate a grievance in accordance with the 180-day limit specified herein shall be deemed for purposes of these procedures to have accepted the last decision rendered by an appropriate administrative officer.

D. Processing a grievance:

- 1) The *GRP* will meet with the grievant to discuss the complaint, ask questions, and gain a greater understanding of the issue.
- 2) Early in the process, the *GRP* will hold one face-to-face meeting simultaneously with both the grievant and the person against whom the grievance is directed.
- 3) The *GRP* will also name a university respondent, in consultation with both the Chancellor or the Chancellor's designee and the Chair of Faculty Council or the Chair of Faculty Council's designee.
- 4) Both the grievant and the respondent have the right to consult with an attorney of their choice, but that attorney may not be present at any meetings with the *GRP*. Both the grievant and the respondent may have an advisor present at meetings with the *GRP* but the advisor must be a current university

employee and cannot act in the capacity of an attorney. The advisor may not make presentations or statements to the GRP, or any other parties present.

- 5) The university respondent will be provided with the original grievance filing form and any other information gathered that the GRP deems relevant, and will be required to write a rebuttal statement.
  - (a) The respondent may include any relevant evidence/attachments that the respondent would like to be considered by the *GRP*, as well as a list of additional sources of information, including persons with knowledge.
  - (b) The respondent may request that the *GRP* gather any additional relevant evidence that the respondent believes exists and that is not in the respondent's possession or to which the respondent does not have access. Taking into account considerations of FERPA, HIPPA, attorney/client privilege and impact on any party or university entity, the *GRP* will make reasonable attempts to obtain information that it deems relevant and central to the grieved matter(s).
  - (c) The respondent has 15 days from the date that s/he is provided with the original grievance filing form to write this rebuttal statement. The respondent may submit a written request to the *GRP* for a time extension to prepare the rebuttal. Such extensions will be granted at the sole discretion of the *GRP*.
- 6) The *GRP* will investigate, gather evidence, meet individually or jointly with either or both parties, as well as other relevant individuals. There shall be no formal hearing in this process.
- 7) Based on its own investigation, the *GRP* may collect evidence that it deems as having relevance and centrality to the grieved matters.
- 8) The *GRP* shall receive the cooperation of campus administrators, the collegiate dean, the department chair, the grieving faculty member, other faculty members, other University employees, and students enrolled at the university. It will be the duty of all such individuals to provide, in a timely fashion, all requested non-testimonial evidence relevant to the case.
- 9) The *GRP* will consult with University Legal Counsel concerning legal issues of evidence, including but not limited to FERPA regulations, attorney/client privilege, and HIPPA-protected materials.
- 10) All University employees must be truthful in providing testimony to the *GRP* and all non-testimonial evidence must be genuine and accurate. False testimony, fraudulent evidence, refusal to cooperate with the *GRP* and breaches of confidentiality (see section L) may be the basis for a personnel action against the uncooperative individual or result in the *GRP* filing charges of Faculty Irresponsibility under the Procedures Governing the Disposition of Charges of Faculty Irresponsibility (Section 300.010L).
- 11) The grievant(s) and respondent(s) shall be provided with a copy of all evidence collected by the *GRP*, or in the case of materials deemed confidential by the GRP, a summary of this evidence.
- 12) The *GRP* will have three months from the date of the filing of the grievance to conduct an investigation and render findings and recommendations, if any.
- 13) Prior to rendering its findings, the *GRP* will inform the parties in writing of their tentative findings and the basis for these findings, including documents collected and information received orally. The parties shall meet jointly with the *GRP* and each will have the opportunity to provide a 30 minute oral presentation to the *GRP* regarding their perspective on these tentative findings. Each party will be provided with the opportunity to make one ten minute rebuttal to the other party's presentation.

E. The *GRP* findings and recommendations:

- 1) The *GRP* has broad administrative latitude to address grievances.
- 2) At any point in the process, the *GRP* may provide for:
  - (a) A mediation of a settlement agreement between the grievant and the University of Missouri.
  - (b) A finding that the grievance has no merit.
- 3) At the conclusion of their investigation, the *GRP* findings may include, but are not limited to, the following:
  - (a) A finding in favor of the grievant and the recommendation of remedies, if any, to resolve the grievance.
  - (b) A finding that both the grievant and the respondent have legitimate complaints and the recommendation of remedies, if any, to resolve both sets of complaints.
  - (c) A finding against the grievant with no recommendations for remedies to address the grievant's complaint.
  - (d) A finding that the respondent was subject to some adversity in connection with the aggrieved act and the recommendation of remedies, if any, to alleviate this adversity.
  - (e) A finding of a systematic problem in the administration of the University of Missouri and the recommendation, if any, for remedies to prevent this problem in the future.
- 4) The *GRP* will render its findings and recommendations and provide them to the parties, the Chancellor, and the Oversight Committee Representative.

F. Appeal of the *GRP* findings:

- 1) Within 15 days, either the grievant or the respondent may appeal the *GRP* findings and recommendations, if any, to the Chancellor using the Grievance Appeal Form.
- 2) The Chancellor will have 30 days from the time it is received to act on the appeal. If the Chancellor needs more time, then the Chancellor shall provide reasons and a new estimated time via a letter to all parties (grievant, respondent, *GRP*, Oversight Committee representative). If the Chancellor does not act within 30 days and does not provide such a letter, the decision of the *GRP* becomes final.
- 3) If neither party appeals the *GRP* decision within 15 days, then the Chancellor will have an additional 30 days to accept or reject the findings of the *GRP* in whole or in part, and accept, reject or modify the recommendations of the *GRP*. If the Chancellor needs more time, then the Chancellor shall provide reasons and a new estimated time via a letter to all parties (grievant, respondent, *GRP*, Oversight Committee representative). If the Chancellor does not act within 30 days and does not provide such a letter, the decision of the *GRP* becomes final.

G. Chancellor's review of the *GRP* Decision:

- 1) In reviewing the *GRP* decision:
  - (a) The Chancellor, or the Chancellor's designee, may speak to the grievant and the respondent. If the Chancellor, or the Chancellor's designee, meets with one party, however, then the Chancellor or the Chancellor's designee must also meet with the other party as well, although not necessarily at the same time.
  - (b) The Chancellor will have access to all relevant documents.
  - (c) The Chancellor or the Chancellor's designee may seek additional information or input as needed. If the Chancellor or the Chancellor's designee seeks additional information, however, then the

Chancellor shall inform the *GRP* and the OC representative to the grievance under consideration what additional information or input the Chancellor or the Chancellor's designee has sought.

- 2) The Chancellor may accept or reject the findings of the *GRP* in whole or in part, and accept, reject or modify the recommendations of the *GRP*.
- 3) The Chancellor's decision is final.
- 4) Upon rendering of the final decision, the chancellor will notify the grievant, respondent, *GRP* and Oversight Committee representative regarding the final outcome and remedies, if any.

H. Grievant's acceptance of the final decision:

- 1) Once a decision is final, the grievant has 15 days to provide written acceptance of the decision and any recommended remedies.
- 2) The grievant uses the Grievance Acceptance Form to file a response to the final decision.

I. If the grievant fails to provide a written acceptance of the final decision or submits a Grievance Acceptance Form that rejects the final decision, then the grievant suffers the loss of all remedies favorable to the grievant.

J. Grievant's legal rights:

- 1) Upon acceptance of the final decision, the grievant waives the right to bring a lawsuit concerning any matters that were a subject of the grievance.
- 2) If a lawsuit related to the substantive content of the grievance is initiated at any time, then this grievance process will immediately end and the grievant is released from all confidentiality requirements imposed by Section L of this document.
- 3) Upon rejection of the final decision, the grievant is released from all confidentiality requirements imposed by Section L of this document.

K. Oversight:

- 1) There will be a Faculty Council (Senate) Oversight Committee (OC), whose purpose will be to monitor the Grievance process as neutral observers and provide feedback on the process to the Faculty Council, the faculty and the Provost's and Chancellor's Office.
  - (a) The OC will consist of 3-5 tenured faculty appointed by Faculty Council for up to three year staggered terms.
  - (b) Chair of the OC will be a member of Faculty Council Executive Committee.
- 2) OC monitoring of individual grievances:
  - (a) A member of the OC will be appointed to each grievance case following receipt of the Grievance Filing form by the *GRP*. OC members will rotate grievance case membership unless a conflict of interest is identified.
  - (b) The OC representative will sit in on all *GRP* deliberations and will be copied on all correspondence. If during deliberations, the OC member has process or procedural concerns, the member may raise the concerns with the *GRP*, without the grievant or respondent or any other parties present.
  - (c) The OC representative is an observer: The OC representative may not participate in the deliberations or rendering of findings and recommendations by the *GRP*.
  - (d) *GRP* requests for extension of the 3-month timeline shall be made to the OC. The OC committee shall rule on such requests within five days from the receipt of the request.

- (e) The OC representative shall not discuss the ongoing grievance with anyone, including other OC members, except any information necessary to the OC committee decision regarding time extension requests from the GRP.
  - (f) At the close of each grievance case, the OC representative shall present to the other OC members a summative and evaluative report of that particular case. These reports will not reveal any substantive information concerning grievances including but not limited to supporting materials, specific findings, and identifying information about any participant.
- 3) OC monitoring of the grievance process:
- (a) The OC will continually monitor the overall grievance process.
  - (b) On a yearly basis the OC shall present a summative and evaluative report to Faculty Council Executive Committee, the Provost and the Chancellor.
  - (c) The OC will monitor the implementation of remedies resulting from the final grievance decision by communication with relevant parties, and in cases in which remedies are not being implemented the Faculty Council Executive Committee will be notified.

L. Confidentiality:

- 1) All parties must agree to maintain strict confidentiality regarding any substantive information concerning grievances including but not limited to supporting materials, specific findings, and identifying information about any participant. The substance of the cases shall not be discussed at any time, before or after a final decision is made, except as provided in Section J2 and J3.