

**A 5.06    Sec 6**

**Appeal Procedures for LSA Instructional Staff** (Revised: FM, December 1983, pp. 9,041-45, pp. 9,056-68; January 1984, p. 9,072-73; March 1999, p. 11,466, pp. 11,459-62; February 2004, p. 11,843-57, p. 11,869; April 2011, p. 12,256-80)

**LSA FACULTY GRIEVANCE PROCEDURE**

*Preamble.* The University establishes the following peer-based procedure to ensure the prompt, effective, and fair resolution of faculty members' grievances.

**Coverage**

Sec. 1.01. This grievance procedure provides for redress when a decision or action concerning a faculty member's conditions of employment at the Ann Arbor campus violates University policy or is otherwise manifestly unfair.

Sec. 1.02. The procedure applies only to those instructional faculty who are tenured, tenure-track, or clinical faculty; research faculty, including those in the research scientists track and those in the research professors track; librarians; curators; and archivists. The procedure does not apply to supplemental faculty such as adjunct faculty or visiting faculty, nor to those covered by a collective bargaining agreement. Faculty members otherwise entitled to use this procedure may file a timely grievance to contest the action that removed their title or brought their appointment to an end.

Sec. 1.03. The procedure applies only to decisions made by academic units (schools, colleges, centers, institutes, programs, museums, divisions, and departments) acting through Deans, Directors, department chairs, and other authorized persons. The Provost has discretion to allow use of this procedure for resolving grievances about decisions made by administrative units regarding faculty covered by Section 1.02. The procedure does not apply to issues between faculty members or groups of faculty members.<sup>1</sup>

Sec. 1.04. The procedure applies only to a decision or action concerning a specific individual or specific individuals, including those adversely affected by application of a policy or standard operating procedure, written or unwritten. Challenges to general academic unit or University policy are to be handled through normal governance or administrative processes.

Sec. 1.05. The procedure does not apply to decisions regarding employment, including tenure or promotion decisions, merit pay determinations, and decisions regarding clinical competence/patient safety, that are based solely and exclusively on judgments about professional performance. But this grievance process does apply to claims that the procedure followed in making such decisions failed to follow University policies and procedures or was otherwise manifestly unfair, or that the decisions violated standards of nondiscrimination contained in Regental Bylaw 14.06 (revised September 2007).

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<sup>1</sup> The SACUA Faculty Hearing Committee was created by the Senate Assembly in 1987 to address issues between or among faculty members.

Sec. 1.06. The procedure does not serve as an additional step in a dispute that has been addressed in another formal hearing procedure of the University or a University academic unit. But a faculty member may use this grievance process to review new sanctions imposed by an academic unit acting on the basis of findings made in a different hearing procedure.

### **Filing Grievances; Parties and Responsibilities**

Sec. 2.01. A faculty member shall file a grievance within ninety (90) calendar days of the date the grievant first knew or could reasonably have been expected to know, on the basis of documentation or otherwise if there is no documentation, of the decision or action that gave rise to the grievance. Grievances shall be filed on a Faculty Grievance Form (FGF) and submitted to the Director of Academic Human Resources (DAHR) and the SACUA Faculty Grievance Monitor (FGM). The DAHR shall transmit a copy of the FGF to the named respondent(s), with copies to the Dean or Director. In extraordinary circumstances, a Grievance Hearing Board (GHB) may extend the deadline for filing a grievance. The grievant must assert such circumstances in the FGF and provide supporting evidence.

Sec. 2.02. The parties to a grievance are the faculty member who initiates the grievance and the decision-maker(s) responsible for the contested decision or action. In larger academic units the respondent(s) would normally be the decision-maker(s) at the departmental level. Higher authorities such as Deans in those academic units are to be named as respondents only if they were actively involved in the contested decision or action. When the grievance involves a decision made, or an action taken, by a group of persons, or a decision or action reviewed through multiple organizational levels, the presumption is that the individual with the current ultimate authority to make the decision or take the action (for example, the person whose signature authorizes the decision or action) will be named as the sole respondent.

Sec. 2.03. Both the grievant and the respondent shall abide by all the procedures set forth here, shall participate in good faith, and shall respect the confidentiality of the process. Communication concerning the proceedings shall be limited to parties, advisers, mediators, and any others for whom information is strictly necessary for the legitimate effectuation of the process.

Sec. 2.04.

- a. Before filing a formal grievance, a grievant shall seek to resolve the dispute by discussing it informally with the person(s) who made the disputed decision or took the disputed action, or actively participated in it, or who has the authority within the relevant academic unit(s) to provide redress.
- b. Before, during, and after the processing of any grievance, the parties are strongly encouraged to seek an informal resolution by personal discussions between or among themselves, by invoking the College or University Ombuds or mediation structure, or through the intervention of College or University officials with the authority to provide redress. At any step before rendering a final decision, the Grievance Hearing Board (GHB) may

remand the case to the parties with directions to seek an informal resolution. When remanding a case, the GHB shall set a timeframe for successful resolution. If it fails, the case will return to the GHB for further processing. Informal resolution, however, shall remain entirely voluntary.

Sec. 2.05. Prior to the first meeting of the GHB, the grievant, or the respondent may initiate in writing a one-time clarification of the issues to be considered. If the GHB requests the clarification, it shall be transmitted simultaneously to the grievant and the respondent, who will have 10 working days to provide a written response. If one of the parties submits a clarification, a copy shall be provided to the DAHR, the FGM, and the other party. The other party will have 10 working days to provide to the DAHR, the FGM, and the party who submitted the clarification any additional comments or information in response to the clarification. The DAHR will then forward both the clarification and the response to the GHB.

### **Grievance Hearing Board (GHB)**

Sec. 3.01. A Grievance Hearing Board (GHB) shall be established as provided in Sec. 5.03 to handle each grievance filed by a faculty member. Closely related grievances may be consolidated before a single GHB.

Sec. 3.02. The GHB shall meet within 15 working days after it is established. The Board shall first determine in executive session whether the complaint is within the authority or jurisdiction of the grievance process under Sections 1.01 through 1.06. In addition, the Board may dismiss the grievance without a hearing if it concludes, on the basis of the FGF and all other material before the GHB, and with all questions of fact assumed in the grievant's favor, that there are no grounds for deciding the case in the grievant's favor. The GHB may also dismiss the grievance without a hearing if the grievance is filed after the expiration of the time period set forth in Section 2.01.

Sec. 3.03. Within 10 working days of its first meeting, the GHB shall advise the grievant, the respondent, the DAHR, the FGM, and the Dean or Director in writing whether it will proceed with a hearing. If the Board decides the complaint is not grievable because it is not within the coverage of Sections 1.01 through 1.06, or the grievance is to be dismissed under Section 3.02, it shall state its reasons in writing. If the Board decides to proceed, it shall specify in a written notice to the parties, the DAHR, the FGM, and the Dean or Director when and where the hearing will be held and what issues are to be addressed by the parties. The hearing shall be scheduled within 30 working days or as soon thereafter as is practicable.

Sec. 3.04. If the GHB decides the complaint is not grievable, the grievant shall have 15 working days to appeal this decision to SACUA or a faculty body designated by SACUA. The appellate body shall have 20 working days to resolve the issue. Its decision shall be final. Appeals from a GHB decision to dismiss the grievance shall be handled as provided for final Board decisions in Sections 4.01 through 4.03.

Sec. 3.05. The GHB shall ensure fair procedures for the parties in any hearing.<sup>2</sup> Specifically, the grievant and the respondent shall have the following rights:

- a. To be accompanied before the GHB by advisers, who may be attorneys. The advisers may advise their clients but may not participate directly in the hearing.
- b. To appear and present their cases, and to cross-examine the witnesses and challenge the evidence presented by the other party; and
- c. To have access to all relevant evidence, testimonial and documentary, except confidential evaluations and evidence that would infringe upon the privacy interests of third persons. Upon a party's request, the chair of the GHB shall be allowed to examine relevant confidential files of an academic unit or department and to provide the Board with a summary of their contents as they relate to the grievance, giving due consideration to protecting the confidential aspects of the material.

Sec. 3.06.

- a. The GHB may call its own witnesses and obtain relevant documents, subject to the parties' right of access and the confidentiality restrictions of Sec. 3.05(c).
- b. Testimony before the GHB is voluntary. If any witness declines to testify about any issue, however, the GHB may draw appropriate inferences about what the testimony would have been based on the refusal to testify. Any such inference should be carefully supported and explained by the GHB.

Sec. 3.07. Hearings before the GHB shall be private and confidential, attended only by the principal parties and their advisers, if any; the Director of Academic Human Resources or designee; and the Faculty Grievance Monitor or designee. Unless otherwise directed by the

GHB for good reason, witnesses shall attend only while testifying. The GHB chair may invite appropriate observers or others having a substantial interest in the outcome of the case, if both the grievant and the respondent agree.

Sec. 3.08. Portions of the hearing at which testimony is taken and evidence presented shall be recorded verbatim, but the recording may be by voice recorder. Both the grievant and the respondent may also record the hearing.

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<sup>2</sup> The grievance procedure must comply with the demands of due process, most critically, fair notice and an opportunity to be heard. It is not intended to be a substitute for either a civil or a criminal trial and is not subject to all the requirements applicable in those settings.

Sec. 3.09. The GHB shall deliver only to the grievant and the respondent a written provisional decision within 20 working days after the completion of testimony and argument. The content of the provisional decision shall remain confidential and may not be shared at any time with any other persons except those entitled without special agreement to participate in the hearing or advise the parties under Sec. 3.07.

Sec. 3.10. The grievant and the respondent shall have 10 working days after receipt of the provisional decision to submit a written response to the GHB.

Sec. 3.11. The GHB shall consider any responses to the provisional decision and shall deliver its final decision within 10 working days after receipt of those responses. Both the provisional decision and the final decision shall include a summary of the testimony, factual findings, conclusions with reasons the grieved decision or action was or was not violative of University policy or otherwise manifestly unfair, and, if appropriate, a proposed remedy. Decisions of the GHB shall be by majority vote. The reasons for any dissent must be stated in a written minority opinion. The GHB shall present the final decision only to the grievant, the respondent, the Dean or Director, the DAHR, the FGM, and, if appropriate, the department chair.

Sec. 3.12. Although the GHB does not have executive authority, the parties are expected to respect and accept the findings, conclusions, recommendations, and any proposed remedy of the GHB as the considered judgment of a competent and disinterested peer group. The GHB may recommend actions that do not fall within the respondent's authority, and such recommendations will be considered by, and any final decisions will be made by, the appropriate party.

## **Appeals**

Sec. 4.01. The grievant or the respondent or both may submit a written appeal of a final decision by a GHB within 20 working days of the receipt of the decision. If the Dean or Director is not a respondent, the appeal shall be submitted to the Dean or Director. If the Dean or Director is a respondent, the appeal shall be submitted to the Provost.

Sec. 4.02. An appeal shall be decided on the record made before the GHB. When necessary in the judgment of the person deciding the appeal, the proceedings may be remanded to the GHB to receive new information. A remand for new information shall be granted on the request of the grievant or the respondent only on a showing that the information could not, in the exercise of reasonable diligence, have been presented when the record was made. A remand shall set the times for further GHB proceedings, including any revised final GHB decision.

Sec. 4.03. The findings, conclusions, recommendations, and proposed remedy, if any, of the GHB shall be presumed valid on appeal, and shall be rejected or modified only because of substantial errors of fact or interpretation of University regulations, because of serious procedural irregularities, or because the appeal

authority's considered judgment is that the GHB erred in deciding whether the initially grieved decision or action was or was not violative of University policy or otherwise manifestly unfair, or because any proposed remedy is clearly unreasonable or inappropriate.

Sec. 4.04. The Dean, Director, or Provost shall respond in writing within 30 working days of receiving the appeal, stating the action to be taken and the reasons for it. The response shall be transmitted to the grievant, the respondent, the members of the GHB, the DAHR, and the FGM.

### **Structure; Organization; Miscellaneous**

Sec. 5.01. This grievance procedure applies to all University faculty defined in Section 1.02 but the Provost may approve amendments by an individual academic unit to adapt the procedure to its specific conditions or circumstances.

Sec. 5.02. A Faculty Grievance Hearing Panel (FGHP) is established from whose members each Grievance Hearing Board will have one selected randomly, subject to the exceptions contained in Sec. 5.03. Membership on the FGHP will be allotted as follows: the College of Literature, Science, and the Arts and the Medical School, four members each; the Ross School of Business, the College of Engineering, the School of Public Health and the School of Music, Theatre, and Dance, two each; and all other schools and colleges, one each. LSA FGHP members will be tenured faculty selected by the Executive Committee upon recommendation by the Dean. FGHP members will serve single staggered terms of three years, except that initially nine members will be chosen by lot to serve one year, nine by lot to serve two years, and the rest will serve three years. FGHP members may not serve consecutive terms. Vacancies will be filled in the same manner except that if the unexpired term is one year or less, the replacement member shall serve an additional three-year term.

Sec. 5.03.

- a. Within 10 working days of receiving the notice of a pending grievance, the DAHR and the FGM shall meet or communicate and choose by lot one person from the FGHP to serve on the GHB. This member shall not come from the college(s) of the grievant. The DAHR and the FGM may then agree on the member chosen from the FGHP as chair for the GHB, choose one of the two members identified by LSA for the GHB, or leave the choice to the Board itself.
- b. The second member of the GHB shall come from the LSA faculty and must be from a different division than that of the grievant. The third member of the GHB shall come from the LSA faculty and the same division as the grievant but not from any program/department in which the grievant has an appointment. The LSA Executive Committee annually shall formulate a list of tenured faculty based on the recommendations from the Dean from which the 2<sup>nd</sup> and 3<sup>rd</sup> GHB members may be selected. Within 10 working days of receiving the notice of a pending grievance from the DAHR, the grievant and the respondent shall each nominate four members from this list of potential Board members (two from the same

LSA division and two from a different LSA division). Both parties shall rank their preferences and transmit their choices to the DAHR and the FGM. Within 5 working days the DAHR and the FGM shall jointly determine the two nominees (one from the grievant's division and one not) most favored by both parties. If there is a tie among the choices, the DAHR and the FGM will jointly resolve the tie by lot.

- c. At any time prior to the first meeting of the GHB established as provided in subsections (a) and (b) above, the grievant and the respondent have the option of agreeing upon any three tenured University faculty members from any academic unit, whether or not members of the FGHP, to serve as the GHB. In this instance, the remaining provisions regarding GHBs will apply.

Sec. 5.04. A member of a GHB shall recuse herself or himself if she or he has significant personal or professional associations with either party, and any member shall be excused with the concurrence of both the DAHR and the FGM, if either the grievant or the respondent objects for sufficient cause to that person's serving. If the DAHR and the FGM disagree about excusing a GHB member, the issue shall be resolved by the Dean or Director, or, if the Dean or Director is a respondent, by the Provost. A recused or excused Board member shall be replaced by using the same procedure applicable to the selection of that member.

Sec. 5.05. The Faculty Grievance Monitor (FGM) is a tenured faculty member who is appointed annually by SACUA to monitor all grievances. In addition to the functions assigned elsewhere, the FGM and the DAHR shall have the following responsibilities:

- a. Jointly to provide or arrange for the training of FGHP members, and especially those designated as GHB chairs, in the conduct of a hearing and the preparation of a formal written decision;
- b. Jointly or separately to provide objective information to either the grievant or the respondent or both about the operation of the grievance procedure;
- c. Separately to monitor the processing of all grievances and to report to the Dean or Director, or to the Provost if the Dean or Director is a respondent, any delay or other failure to comply with specified procedures or GHB directives or decisions on appeal under Section 3.04 or Section 4.03;
- d. Separately to maintain confidential records of all grievance proceedings, including copies of all written documents that are submitted and of any written transcript of testimony that is prepared. If there is a single voice or electronic recording of the testimony, the DAHR shall maintain custody of it after the GHB renders a final decision, but shall allow access as needed by the parties, the FGM, and the University authority to whom any appeal is addressed; and

- e. Jointly to provide redacted reports or summaries of cases, with party names and all identifying details deleted, to University administrators and faculty members, scholars, and others with a legitimate interest in knowing about the proceedings.

Sec. 5.06. The Dean or Director, or the Provost if the Dean or Director is a respondent, shall take prompt action to remedy any undue delay in the processing of grievances or other failure by any party to comply with specified procedures of this policy.