



Eastern Kentucky University Policy and Regulation Library

4.7.4

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Chapter 7, Faculty Rights and Responsibilities
Section 4, Faculty Grievances

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Responsible Executive: Provost

Responsible Office(s): Office of Academic Affairs,
Colleges, and Departments

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Faculty Grievances

Policy Statement

It is the intention of Eastern Kentucky University to treat all employees in a consistently fair manner, and it is the desire of the University that all employees treat each other likewise. However, in the normal course of colleagues working together, problems in the working relationship can be expected to arise. In most cases, these problems can be and should be resolved by the disputing parties or arbitrated at the first level of supervision. But in those instances when a mutually satisfactory resolution cannot be quickly found, the aggrieved party should be given an opportunity to have the grievance considered on the basis of its merit, in an orderly and expeditious manner, and without prejudice or fear of reprisal.

The procedure outlined herein is designed to provide a method of dealing with faculty grievances in a prompt and equitable manner without placing an unreasonable burden on the University's resources and personnel.

Grievances include but are not limited to the following:

1. An allegation that existing University policies, rules, regulations, practices, and/or procedures have been violated, misinterpreted, and/or improperly applied. When an existing policy contains an appeal procedure, the grievant must use the appeal procedure within that policy rather than the Grievance Policy.
2. An allegation that standards of academic freedom, behavior, and/or practices have been breached by any person(s) covered under this policy.
3. An allegation that actions involving him/her were unfair, inequitable, arbitrary, or capricious.

Rights of Grievant and Respondent

1. Both grievant and respondent have the right to be heard.

2. The respondent shall receive a written copy of the grievance, and the grievant shall receive a written copy of the respondent's reply.
3. The grievant shall not be penalized academically or professionally for filing a grievance in good faith under this policy. (See Policy 1.6.2, Non-Retaliation)

Limitations

1. Disputes which are being or have been processed in the courts are not included under this policy.
2. Disputes involving compliance with State or Federal statutes or regulations are not included under this policy.
3. Disputes which involve appeal(s) included in the other policies (e.g., appeals about promotion, tenure, etc.) are not included under this policy.
4. Disputes involving merit pay or salary increments are not included under this policy.
5. Affirmative action and non-discrimination issues which are delineated in other policies should be referred to the Equal Opportunity Office and are not covered by this policy.

Entities Affected

- Colleges
- Departments
- Faculty

Eligibility

This policy applies to all of the following personnel:

- A. The Faculty-at-Large as defined by the Faculty Handbook; and
- B. The Teaching and/or Research Faculty as defined by the Faculty Handbook.

Procedures

The Faculty Grievance Officer (FGO) shall be the Associate Provost; shall administer the grievance procedures as set forth in this document; and shall advise the parties about appropriate procedures to follow. The FGO shall not serve as advocate for any party to any grievance and may participate in a grievance proceeding only as FGO in a Grievance Hearing, and only as prescribed by this policy. The FGO shall maintain records of all grievances.

Informal Grievance Resolution

All reasonable efforts to seek an informal and timely resolution are encouraged before written grievances are filed. If desired, the parties may seek informal resolution through mediation from the Office of the Ombud. The informal resolution process shall be completed within 60 calendar days of a request for an informal resolution. Exceptions to this timeline must be approved by the Executive Vice President for Academic Affairs and Provost. If the grievant determines that the grievance cannot be informally resolved and the grievant wishes to pursue the grievance, the grievant must submit a written request for a formal hearing to the FGO.

Filing a Grievance

To file a grievance, an individual faculty member must submit a written, signed statement (the "grievance") to the FGO within thirty (30) calendar days of the request for a formal hearing. The grievance must contain the following information:

- the specific policy or established practice that has allegedly been violated;
- the date(s) of the alleged violation and the date on which the grievant became aware of the alleged violation, or the timeline if alleging a pattern of behavior;
- the facts relevant to the alleged violation;
- the person(s) against whom the grievance is filed (the "respondent"); and
- the redress sought.

The FGO will provide a copy of the grievance and any documents submitted with the grievance to the respondent within five (5) calendar days of receipt. The FGO shall notify the appropriate department chair(s), dean(s), and the Provost that a grievance has been filed.

Jurisdictional and Procedural Decisions

- A. Within fourteen (14) days of the date that a grievance is filed, the FGO shall determine whether the following jurisdictional requirements have been met. The FGO may also seek information from appropriate University office(s) to assist in making these jurisdictional determinations:
 - a. Whether the grievant has standing under the Faculty Grievance Policy;
 - b. Whether the grievance has met the deadlines required in the policy;
 - c. Whether the grievance identifies an appropriate respondent(s);
 - d. Whether the grievance adequately identifies the existing policies and/or established practices alleged to have been violated; and
 - e. Whether any other jurisdictional issue(s) need to be decided in connection with the initiation of the grievance and, if so, an explanation of such issues.
- B. The FGO shall inform the parties in writing whether each jurisdictional requirement has been met, along with the names of any University offices consulted regarding the jurisdictional decisions. If any jurisdictional requirement has not been met, the FGO shall dismiss the grievance.
- C. Each party shall have the right to appeal the FGO's jurisdictional decisions by filing a written statement explaining the reason(s) for the appeal with the FGO within fourteen (14) calendar days of the issuance of such decision.
- D. If any party files an appeal of the FGO's jurisdictional decision(s), the FGO shall submit the written appeal, together with any written response to the appeal from the parties and a

written response by the FGO, to a three-person Jurisdictional Appeal Panel representing at least two colleges drawn randomly by the FGO from the Faculty Grievance Hearing Panel pool. Jurisdictional Appeal Panel members shall not serve on the Hearing Panel for the same grievance case.

- E. The Jurisdictional Appeal Panel shall deliberate and submit to the FGO a written decision (including the basis for its decision) on the appeal within seven (7) calendar days of its convening by the FGO.
- F. The FGO shall forward a copy of the jurisdictional appeal panel's decision to the parties within seven (7) calendar days of its receipt from the panel.

If the jurisdictional requirement has been met, the grievant and the respondent may submit any documents that are relevant to the written grievance within seven (7) calendar days of the jurisdictional decision.

Amendments

A grievant may amend his/her grievance until 28 days before the scheduled date for the formal hearing on the grievance, as long as the proposed amendment concerns the same subject matter as the grievance. The FGO shall decide whether to accept the proposed amendment, and any jurisdictional issues generated by the proposed amendment, at least 21 days before the scheduled date for the formal hearing. Either party may challenge the FGO's decision by filing a written appeal with the FGO within seven (7) days of the FGO's decision. Such appeals are processed in the same manner as other jurisdictional appeals. Any procedural issues (such as submission of new documents) generated by the amendment shall be decided by the Hearing Panel at the beginning of the hearing.

Consolidation of Grievances

If a grievant files two or more separate grievances against the same respondent(s) that raise related allegations or arise from a common set of facts, the FGO may consolidate such grievances into one grievance to be heard by a single panel. If a grievant files two or more separate grievances concerning different issues and the grievances are not consolidated, such grievances will normally be processed and heard sequentially in chronological order determined by the date on which the initial grievance was filed. Separate grievances filed by different grievants that involve related allegations or arise from a common set of facts may also be consolidated.

Grievance Hearing

Faculty Grievance Hearing Panel

- A. The academic colleges and the Libraries shall elect three members from the full-time faculty within the unit to comprise a pool of eligible members for the Hearing Panel. Members shall serve three-year terms, with one third to be elected each year. Elections shall be finalized no later than May 1 prior to the academic year in which service begins. All terms begin August 15 and run for 1 calendar year.
- B. In the event a grievance is filed, the Faculty Grievance Hearing Panel shall consist of five members from the Hearing Panel pool, drawn at random by the FGO,

excluding the member from the grievant's and respondent's unit(s). No college or the Libraries shall have more than one representative on a Hearing Panel. Persons selected for a jurisdictional appeal panel shall not serve on the Hearing Panel for the same grievance case. Panel members shall serve throughout an entire proceeding.

- C. The FGO shall serve as a non-voting member of the Faculty Grievance Hearing Panel. The FGO shall apply the rules of procedure consistent with the stated procedures in this policy. The FGO shall not participate in the deliberations.
- D. The FGO shall notify each party of the names of the members of the Hearing Panel. Within seven (7) calendar days of that notice, either party may submit a written challenge to any member of the panel for cause. The challenge must explain the cause for removing the panel member. The FGO shall determine whether there is cause to dismiss the challenged member of the panel and randomly draw another member. The FGO shall notify the parties of any replacement members of the panel.
- E. If a grievance hearing panel loses two or more of its members during the course of a hearing, the hearing shall be terminated, and a new panel selected.

Grievance Hearing Procedures

- A. Hearings shall be scheduled as expeditiously as possible and with due regard for the schedule of both parties. On the rare occasion when a party fails to respond to repeated attempts to schedule a hearing or unreasonably delays the scheduling of a hearing, the FGO will schedule the hearing for the first date available to all other parties. Grievances will normally not be held during summer unless all parties agree and a proper Hearing Panel can be convened. The FGO shall notify all parties and the Hearing Panel of the hearing date.
- B. All parties are entitled to an advisor of their choice from within the University community. The advisor cannot be an attorney and shall not act as an advocate or representative of the party during the hearing and shall not be permitted to question any party during the hearing. The party and his/her advisor may take breaks to consult during the proceedings. The name of an advisor must be provided to the FGO at least ten (10) calendar days prior to the hearing date.
- C. All parties may present their cases in person and may call witnesses on their behalf. The names of witnesses must be provided to the FGO at least ten (10) calendar days prior to the hearing date.
- D. The FGO shall convene the Hearing Panel and shall be present during all formal proceedings. The FGO shall provide written notice of the time and place of the hearing, the names of advisors, the names of any witnesses, and copies of any documents submitted by the parties and deemed relevant by the FGO, to each party at least seven (7) days before the hearing.
- E. The hearing shall be conducted in good faith and must be completed within 14 calendar days unless the FGO determines that an extension of time is necessary.

- F. A party may elect not to appear, in which event the hearing will be held in his or her absence. Absence of a party shall not be prejudicial to the case. The FGO may grant permission for a party to appear via alternate communication methods for good cause.

A hearing panel shall decide whether the preponderance of the evidence supports the allegations made by the grievant. Hearing panels shall resolve any procedural issues raised by the parties, after providing each party the opportunity to be heard on such matters. However, neither party may challenge the FGO's initial jurisdictional findings made pursuant to this Policy. The FGO shall distribute all documents submitted by the parties concerning procedural issues to the hearing panel, and shall include such documents in the grievance record.

Hearing panels shall report their findings and recommendations in writing within 21 days of the completion of the hearing to the FGO, who shall forward them to the grievant, the respondent, the Provost, and the administrator who is the respondent's immediate supervisor. The hearing panel's report is advisory to the Provost and does not bind the Provost to a particular decision. When a hearing panel sustains an allegation made in a grievance, it shall recommend appropriate redress consistent with existing policies, procedures, and practices.

The Provost shall decide the grievance, in writing, within 14 days of receipt of the hearing panel's findings and recommendations. If the Provost does not concur with the recommendations of the hearing panel, the Provost shall state in writing the reason(s) for the differing judgment. All parties shall be notified in writing, with a copy to the appropriate department chair(s), dean(s) and the Hearing Panel of the Provost's decision and of the right to appeal the decision.

Appeals

1. Following notification of the Provost's decision, either party may appeal the decision only for the following grounds:
 - a. decision is arbitrary, capricious, or not supported by factual data
 - b. violation of procedural due process
2. The candidate will submit a written request for appeal to the President within ten (10) calendar days of notification of the Provost's decision. The request shall state the grounds for an appeal and shall provide evidence in support of such grounds.
3. The President shall notify the other party to the grievance and the FGO that an appeal has been filed. The other party may submit a response to the appeal within (10) calendar days.
4. The FGO shall submit the written appeal, together with any written responses to the appeal to a three-person appeal panel drawn randomly by the FGO from the Faculty Grievance Hearing Panel pool. Appeal panel members shall not serve on the Hearing Panel or the jurisdictional appeal panel for the same grievance case.
5. The Appeal Panel shall evaluate the body of evidence as it relates to the grounds for appeal. The Appeal Panel meet with any participant in the grievance case as necessary in order to evaluate the grounds for appeal. The Appeal Panel shall report its findings and

recommendations to the President within fourteen (14) calendar days of receipt of the case, except in extenuating circumstances.

6. The President shall make a judgment on the appeal within fourteen (14) calendar days of receiving the report from the Appeal Panel.
7. The President shall notify all parties in writing of the appeal decision, including the appropriate department chair(s), dean(s), and the Hearing Panel, and shall include a copy of the appeal report. All appeal decisions are final.

If an appeal is filed, the Provost's decision on the grievance shall not be implemented until the appeal process is completed.

Confidentiality

The FGO, parties to the grievance, their advisors, and other relevant administrators and faculty (including witnesses and panel members) shall respect the confidentiality of information and records and the privacy of all parties whose interests are affected by a grievance. While the University will make every effort to keep all records and information related to grievance proceedings under this Policy (both formal and informal) confidential, as a public institution the University is subject to Kentucky's open records laws. Therefore, much or all of the documentation generated in a Faculty Grievance process may be subject to disclosure by law

Sanctions

Sanctions may not be imposed until all of the parties involved in the grievance have had the opportunity to complete the entire grievance procedure. Sanctions covered in KRS 164.230 are the province of the Board of Regents. Sanctions relating to changes in assignments and other disciplinary measures are the province of the proper administrator(s).

Sanctions may include but are not limited to the following:

- A. A reprimand, with copies to the chair, dean, and Provost for inclusion in the personnel files of the individual against whom sanctions are imposed.
- B. Change in assignment, subject to the condition that the new assignment shall involve duties consistent with the duties of other faculty members with the same academic rank. Such a change might involve removal from a supervisory role or the elimination of special privileges associated with the previous assignment.
- C. Proceedings under Policy 4.6.7, Post-Tenure Review.
- D. Proceedings under Policy 8.3.4, Progressive Disciplinary Action.
- E. Proceedings under KRS 164.230 and policy 4.6.16, Dismissal of Faculty, for dismissal for reasons of incompetency, neglect of or refusal to perform his duty, or of immoral conduct.

Final Disposition

After the grievance procedure has been completed, it shall be the responsibility of the Provost to implement the decision with the final disposition taking place at the appropriate level.

Definitions

- **Calendar Day:** Throughout this document calendar day shall be interpreted to mean no later than the specified number of calendar days following the day of notification. If the final calendar day occurs on a weekend or holiday, the due date shall be on the first day on which University administrative offices are open. The time for response may be extended upon agreement by both parties.
- **Grievance:** A written allegation by any person (or persons) included in the eligibility section of this policy
- **Grievant:** A person (or persons) who files a grievance within the scope of this policy
- **Respondent:** A person (or persons) against whom a grievance is filed

Responsibilities

- Appeal Panel
 - The Appeal Panel is responsible for reviewing appeals of grievance decisions and making a recommendation to the Provost.
- Faculty Grievance Officer
 - At a minimum, the Faculty Grievance Officer is responsible for
 - administering the grievance procedures;
 - maintaining records of all grievances;
 - making jurisdictional decisions for filed grievances;
 - facilitating a Hearing Panel.
- Hearing Panel
 - The Hearing Panel is responsible for
 - conducting a hearing for any grievance that has been referred to it following the jurisdictional decision;
 - deciding whether the preponderance of evidence supports the allegations made that the grievant;
 - recommending appropriate redress if a grievance has been sustained.
- Jurisdictional Appeal Panel
 - The Jurisdictional Appeal Panel is responsible for deciding appeals of jurisdictional decisions for grievances that have been filed.
- Provost
 - At a minimum, the Provost is responsible for making decisions regarding a grievance and any resulting appeals of a grievance decision.

Interpreting Authority

Executive Vice President for Academic Affairs and Provost

Review and Approval

Policy Revised

<u>DATE</u>	<u>ENTITY</u>	<u>ACTION</u>
February 26, 2018	Board of Regents	Adopted
February 13, 2018	President	Approved
December 6, 2017	Provost Council	Approved
November 6, 2017	Faculty Senate	Approved
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Policy Issued

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