



# Eastern Kentucky University

## Policy and Regulation Library

Academic Regulation: 4.7.4ACR

Responsible Office(s): Office of the Provost

Effective: March 25, 2024

## Academic Regulation: 4.7.4ACR

### Faculty Grievances

#### 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 and should be resolved by the disputing parties or 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 a 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.

#### 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 Regulation. (See Regulation 8.3.3, Employee Conduct)

#### Entities Affected

- Colleges
- Departments
- Faculty

## Eligibility

This Regulation applies to the Faculty-at-Large.

## Procedures

### I. Faculty Grievance Liaison

- A. The Faculty Grievance Liaison (FGL) shall be a tenured faculty member, who has been tenured for five (5) or more years, and who will receive the designated training for this role. Training shall be coordinated in collaboration with the Office of Human Resources, who will identify the relevant trainings necessary and facilitate said trainings with the selected faculty member. The FGL shall be appointed by the Faculty Senate Executive Committee, according to procedures approved by the Faculty Senate, and shall report to the Provost for administrative purposes. The FGL shall serve a three-year term, which shall be renewable. The FGL shall not act as an advocate or an advisor on behalf of any party involved in any grievance during their term(s). Rather, the FGL shall serve as an informational resource and administer the grievance procedures as set forth in this document.
- B. The FGL shall advise the parties about appropriate procedures to follow and respond to inquiries about the process as they arise. The FGL's role is not that of a mediator, and additionally, the FGL shall not serve as advocate for any party to any grievance but will participate in a grievance proceeding only as FGL in a Grievance Hearing, and only as prescribed by this Regulation. The FGL shall be responsible for maintaining all documents relating to the processing and hearing of all grievances and maintain accurate records of all grievance activity. These records may be combined and aggregate data from the previous three (3) years may be released to the Faculty Rights and Responsibilities Committee so long as there are a minimum of ten (10) cases. This data shall be provided to the Committee in summative form, so as to maintain the confidentiality of those involved in the grievance process, and Committee members shall respect the confidentiality of information and records provided to them, as well as the privacy of all parties whose interests are affected by a grievance. The FGL shall receive three (3) hours per semester of reassigned time for serving in this capacity.

### II. Informal Resolution

- A. 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 the assistance of academic administrators (including department chairs, deans, and the Provost), or Human Resources, as appropriate. These informal discussions should take place within thirty (30) calendar days of the matter's occurrence. If

the grievant determines that the grievance cannot be informally resolved and the grievant wishes to pursue the grievance, the grievant may proceed by following the grievance process detailed below.

### **III. Filing a Grievance**

- A. Grievances include, but are not limited to, the following:
- a. An allegation that existing University policies, rules, regulations, practices, and/or procedures have been violated, misinterpreted, and/or improperly applied. When an existing policy or regulation contains an appeal procedure, the grievant must use the appeal procedure within that policy rather than the Faculty Grievances Regulation;
  - b. An allegation that standards of academic freedom, behavior, and/or practices have been breached by any person(s) covered under this Regulation; or
  - c. An allegation that actions involving him/her were unfair, inequitable, arbitrary, or capricious.
- B. To file a grievance, an individual faculty member must complete and submit a written, signed Grievance Form (the “grievance”) to the FGL and Human Resources within thirty (30) calendar days of the matter’s occurrence or failed informal resolution. The grievance must contain the following information:
- a. The specific policy, regulation, or established practice that has allegedly been violated;
  - b. 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;
  - c. The facts relevant to the alleged violation;
  - d. The person(s) against whom the grievance is filed (the “respondent”); and
  - e. The redress sought.
- C. The FGL will ensure that the Office of Human Resources received a copy of the grievance. In order to promote equity and efficiency, the FGL shall be required to first and foremost consult with the Office of Human Resources and the Office of University Counsel for the specific purpose of ensuring that the grievance does not trigger another process under the law requiring review. The decision of the Office of Human Resources is final and cannot be appealed to the Jurisdiction Grievance Committee below. In the event that the Office of Human Resources determines that the grievance cannot go forward due to other processes prescribed by law, the Office of Human Resources shall reroute the grievance to the appropriate office or department, and shall inform the FGL and the

employee and his/her supervisor of the reasoning in writing. If the Office of Human Resources determines the grievance can proceed to the Jurisdictional Grievance Committee, the FGL will provide a copy of the grievance and any documents submitted with the grievance to the respondent within five (5) calendar days of notice from Human Resources and shall then notify the appropriate department chair(s), dean(s), the Human Resources director, and the Provost that a grievance has been filed.

- D. Complaints addressing the following shall not be processed as a grievance:
- a. Disputes which are being or have been processed in the courts are not included under this Regulation.
  - b. Disputes involving compliance with State or Federal statutes or regulations are not included under this Regulation.
  - c. Disputes involving merit pay or salary increments are not included under this Regulation.
  - d. Allegations of harassment and/or discrimination that implicate a person's membership or perceived membership in a protected class, as defined by law, regulation, and/or policy, are outside the purview of this process and shall be referred to the appropriate University office.
  - e. Disputes which involve appeal(s) included in the other policies or regulations are not included under this Regulation. These include, but are not limited to, the following:
    - i. Allegations of fiscal misconduct , which are governed by **Fiscal Misconduct, 1.6.3**
    - ii. Grievances by employees dissatisfied with a determination regarding their request for a Reasonable Accommodation, which are governed by **Reasonable Accommodations Policy and Appeals Procedure, 1.3.4)**
    - iii. Grievances by individuals alleging violations of their civil rights, discrimination, and/or harassment, which are covered by the policy on **Discrimination and Harassment, 1.4.1**
    - iv. Grievances involving tenure or other promotion decisions, which are governed by the **Tenure and Promotion, 4.6.4 and Post-Tenure Review, 4.4.7 Policies**
    - v. Grievances involving non-reappointment of non-tenured tenure-track faculty, including some Library Faculty, which are governed by **Evaluation of Non-Tenured**

**Tenure-Track Faculty, 4.6.5 and Evaluation of Library Faculty, 4.6.18**

- vi. Dismissal proceedings initiated by the University against a faculty member, which are governed by the **Dismissal of Faculty Policy, 4.6.16**
- vii. Terminations, which are not grievable pursuant to **Employee Conduct, 8.3.3**, outside of the context of those covered by the Dismissal of Faculty Policy
- viii. Disputes involving Intellectual Property, which are covered under **Intellectual Property, 4.4.2**
- ix. Disputes involving retaliation, which are covered under **Employee Conduct, 8.3.3**
- x. Investigations involving misconduct in scientific research, which are governed by **Misconduct in Science, 4.4.11**
- xi. Alleged violations related to the Campaigning Activity of Employees, which shall be handled on a case-by-case basis by the Office of University Counsel and the Office of the Provost, as stated in the regulation addressing **Campaigning Activity of Employees, 8.3.10**
- xii. Alleged non-compliance identified by the Office of Graduate Education and Research regarding cost-sharing, cost-transfers, direct charges, effort reporting, salary compensation, and proposal submission/award acceptance on externally sponsored projects, which shall be governed by **Cost Sharing on Externally Sponsored Projects, 4.4.3, Cost Transfers on Externally Sponsored Projects, 4.4.4, Direct Charges on Externally Sponsored Projects, 4.4.5, Effort Reporting on Externally Sponsored Projects, 4.4.6, Salary Compensation on Externally-Sponsored Projects, 4.4.8, and Externally-Sponsored Proposal Submission and Award Acceptance. 4.4.7**
- xiii. Aside from any legal action taken, violations of the regulation governing **Deadly Weapons and Dangerous Materials, 9.3.2**, which are subject to disciplinary and corrective actions under **Employee Conduct, 8.3.3**
- xiv. Job performance issues related to drug/alcohol consumption as well as situations in which it is reasonably believed an employee is under the influence while on the job, which are governed by **Drug Free Workplace, 8.3.7** and disciplined according to **Employee Conduct, 8.3.3.**

- xv. Alleged violations of the regulation covering **Facilities and Administrative (F&A) Cost Recovery, 4.4.10**, which are governed in accordance to that regulation
- xvi. Appeals related to Faculty self-authored textbook approvals, which are governed by **The Use of Self-Authored Textbooks and Educational Materials, 4.7.1**
- xvii. Appeals related to faculty qualification decisions, which must be appealed according to the **Faculty Qualifications, 4.6.1** regulation
- xviii. Discipline for non-compliance with Information Security and Information Technology procedures, which are governed by the **Information Security regulation, 11.2.4**, and **Information Technology and Data Governance, 11.3.2**
- xix. Alleged violations regarding laboratory safety policies, which are addressed pursuant to the regulation on **Laboratory Safety, 4.4.14**
- xx. Alleged violations of the **Nepotism and Amorous Relationships, 8.3.2** regulation, which shall be handled in accordance with **Employee Conduct, 8.3.3**
- xxi. Appeals regarding approval of Outside Activities, which are governed by **Outside Activities, 4.7.7**
- xxii. Appeals related to decisions of the Sick Leave Bank Committee, which are governed by **Sick Leave Bank, 8.2.9**
- xxiii. Concerns about an employee's social media usage pursuant to **Social Media Communications, 11.2.5**, which should be directed to the Office of Communications and Brand Management
- xxiv. Alleged non-compliance identified by the Office of Graduate Education and Research regarding subrecipients on sponsored programs, which is governed by **Subrecipient Monitoring, 4.4.9**

#### IV. Jurisdictional Grievance Committee

##### A. Committee Structure

- a. To assist in the formal resolution of grievances, the University shall establish a Jurisdictional Grievance Committee (JGC) which shall be responsible for determining whether the jurisdictional and procedural requirements for a formal grievance have been met. This Committee shall consist of three randomly selected faculty

members from the University Appeals Committee (UAC), as established by Administrative Regulation 5.1.3, Student Code of Conduct and Disciplinary Procedures. The FGL, department chairs, department heads, and senior administrative officers shall be precluded from serving on the Committee. All terms shall begin on August 15<sup>th</sup> and run for one (1) calendar year. The Committee shall be responsible for electing its chair each calendar year. A committee member who may have a conflict of interest in the filed grievance shall recuse themselves and be replaced by an alternate from the UAC.

**B. Jurisdictional Procedural Decisions**

- a. Within fourteen calendar (14) days of the date that a grievance is filed, the JGC shall determine whether the following jurisdictional requirements have been met. The JGC may also seek information from appropriate University office(s), including the FGL, to assist in making these jurisdictional determinations:
  - i. Whether the grievant has standing under the Faculty Grievances Regulation;
  - ii. Whether the grievance has met the deadlines required in the regulation;
  - iii. Whether the grievance identifies an appropriate respondent(s);
  - iv. Whether the grievance adequately identifies the existing policies and/or established practices alleged to have been violated; and
  - v. 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 JGC 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 JGC shall dismiss the grievance.
- c. Each party shall have the right to appeal the JGC's jurisdictional decisions by filing a written statement explaining the reason(s) for the appeal with the JGC within fourteen (14) calendar days of the issuance of such decision.
- d. If any party files an appeal of the JGC's jurisdictional decision(s), the JGC shall submit the written appeal, together with any written response to the appeal from the parties and a written response by the JGC, to a three-person Jurisdictional Appeal Panel representing at least two colleges drawn randomly by the JGC 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 JGC a written decision (including the basis for its decision) on the appeal within seven (7) calendar days of its convening by the JGC.

- f. The JGC 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.

#### C. Amendments

- a. A grievant may amend his/her grievance until 28 calendar 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 FGL shall decide whether to accept the proposed amendment, and any jurisdictional issues generated by the proposed amendment, at least 21 calendar days before the scheduled date for the formal hearing. Either party may challenge the FGL's decision by filing a written appeal with the FGL within seven calendar (7) days of the FGL'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.

#### D. Consolidation of Grievances

- a. 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 FGL 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.

### V. Grievance Hearing

#### A. Faculty Grievance Hearing Panel

- a. The academic colleges and the libraries shall elect three (3) members from the full-time faculty within each unit to comprise a pool of eligible members for the Hearing Panel. Members shall serve three-year terms, with one third (1/3) 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 one (1) calendar year.
- b. In the event a grievance is filed, the Faculty Grievance Hearing Panel shall consist of five (5) members from the Hearing Panel



pool, drawn at random by the FGL, excluding the member from the grievant's and respondent's unit(s). No college or the Libraries shall have more than one (1) representative.

- c. The FGL shall serve as a non-voting member of the Faculty Grievance Hearing Panel. The FGL shall apply the rules of procedure consistent with the stated procedures in this policy. The FGL shall not participate in the deliberations.
- d. The FGL 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 FGL shall determine whether there is cause to dismiss the challenged member of the panel and, if there is, randomly draw another member. The FGL shall notify the parties of any replacement members of the panel.
- e. If a grievance hearing panel loses two (2) or more of its members during the course of a hearing, the hearing shall be terminated, and a new panel selected.

B. 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 FGL 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. As Grievance Hearings are not judicial in nature, the advisor 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. Faculty or staff who are attorneys may take part in the Grievance process as advisors but may not act as an attorney for any of the parties. The party and his/her advisor may take breaks to consult during the proceedings. The name of an advisor must be provided to the FGL at least five (5) calendar days prior to the hearing date, at which time the FGL will notify the other party of their selection.
- 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 FGL at least twelve (12) calendar days prior to the hearing date.
- d. The FGL shall convene the Hearing Panel and shall be present

during all formal proceedings. The FGL shall provide written notice of the time and place of the hearing, the names of any witnesses, and copies of any documents submitted by the parties and deemed relevant by the FGL, to each party at least ten (10) calendar days before the hearing.

- e. The hearing shall be conducted in good faith and must be completed within fourteen (14) calendar days of its commencement 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 FGL may grant permission for a party to appear via alternate communication methods for good cause.

#### C. Hearing Findings

- a. 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 JGC's initial jurisdictional findings made pursuant to this Regulation. The FGL shall distribute all documents submitted by the parties concerning procedural issues to the hearing panel and shall include such documents in the grievance record.
- b. Hearing panels shall report their findings and recommendations in writing within 21 calendar days of the completion of the hearing to the FGL, who shall forward them to the grievant, the respondent, a Dean selected from a pool of Deans to decide the grievance, and the administrator who is the respondent's immediate supervisor. The Dean will be selected at random by the FGL; however, a Dean from the grievant's or respondent's college will not be eligible to serve in this capacity. The hearing panel's report is advisory to the Dean and does not bind the Dean 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.
- c. The Dean shall decide the grievance, in writing, within fourteen (14) calendar days of receipt of the hearing panel's findings and recommendations. If the Dean does not concur with the recommendations of the hearing panel, the Dean 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 Dean's decision and of the right to appeal the decision.

## VI. Appeals

- A. Following notification of the Dean's decision, either party may appeal the decision only for the following grounds:
  - a. Decision is arbitrary or capricious;
  - b. Violation of procedural due process.
- B. The candidate will submit a written request for appeal to the Provost within ten (10) calendar days of notification of the Dean's decision. The request shall state the ground for an appeal and shall provide evidence in support of such grounds.
- C. The Provost shall notify the other party to the grievance and the FGL that an appeal has been filed. The other party may submit a response to the appeal within ten (10) calendar days.
- D. The FGL shall submit the written appeal, together with any written responses to the appeal to a three-person appeal panel drawn randomly by the FGL 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.
- E. The Appeal Panel shall evaluate the body of evidence as it relates to the grounds for appeal. The Appeal Panel may 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 Provost within fourteen (14) calendar days of receipt of the case, except in extenuating circumstances. The Provost shall make a judgment on the appeal within fourteen (14) calendar days of receiving the report from the Appeal Panel.
- F. The Provost 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.
- G. If an appeal is filed, the Dean's decision on the grievance shall not be implemented until the appeal process is completed.

## **VII. Confidentiality**

- A. The FGL, 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. 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.

## **VIII. Sanctions**

- A. 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).

B. 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. Action pursuant to Policy 8.3.3, Employee Conduct.
- 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 or her duty, or of immoral conduct.

#### **IX. Final Disposition**

A. 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.
- **Faculty-at-Large:** The Faculty-at-Large of Eastern Kentucky University shall include the President of the University and all full-time employees of the University who hold the rank of Professor, Associate Professor, Assistant Professor, Instructor, or Lecturer or who are members of the Library Faculty, Clinical Faculty, Visiting Faculty, Adjunct Faculty, or ASL Specialists.
- **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
- **Preponderance of the Evidence:** To prove that something is more likely true

than not

- **Respondent:** A person (or persons) against whom a grievance is filed

## Responsibilities

- Faculty Grievance Liaison
  - At a minimum, the Faculty Grievance Liaison is responsible for:
    - Administering the grievance procedures as established by this Regulation
    - Maintaining records of all grievances
    - Facilitating a Hearing Panel
- Jurisdictional Grievance Committee (JGC)
  - The JGC is responsible for determining whether the jurisdictional and procedural requirements for a formal grievance have been met
- Appeal Panel
  - The Appeal Panel is responsible for reviewing appeals of grievance decisions and making a recommendation to the Provost
- 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 by 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
- Deans
  - At a minimum, the Dean selected from a pool of Deans by the FGL is responsible for making decisions regarding a grievance after the Hearing Panel has made their recommendation
- Provost
  - The Provost is responsible for making a final judgment on appeal, and shall be the administrative office responsible for oversight of the FGL

## Regulation Adoption Review and Approval

### Regulation Revised

<u>DATE</u>	<u>ENTITY</u>	<u>ACTION</u>
October 21, 2024	University Counsel	Editorial Revision
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### Regulation Issued

<u>DATE</u>	<u>ENTITY</u>	<u>ACTION</u>
February 1, 1992	Board of Regents	Adopted
April 1, 1991	Faculty Senate	Approved