

## II-4.00 UMCES Policy on Faculty Grievances

Original Grievance Policy guidelines from University of Maryland Policies and Procedures, III-2.05.1; revised by UMCES Administrative Council (August 1985) and adopted by Director I. Morris August 1985.

Grievance Policy reviewed and revised by UMCES Faculty Senate (11/5/90) and Administrative Council (12/13/90); adopted by President Donald F. Boesch effective 2 January 1991.

### I. Policy

Implementing USM Policy II-4.00 Policy on Faculty Grievances this policy sets forth a faculty member's right to grieve an alleged violation of institutional policy as the result of decisions or actions by a supervisor or member of the UMCES administration. The grievance procedure is hierarchical; every attempt is made to resolve a formal complaint at each step.

Certain administrative decisions may not be grieved because they involve actions which are subject to appeal according to other policies and procedures. Among these are decisions involving promotion and tenure, appointment termination as a result of a finding of academic misconduct, and assignment to an academic program. This list is not exhaustive, and faculty members are urged to review the appropriate policies under which an alleged grievable act has been committed.

### II. Grievance Definitions and Exclusions

A. A *grievance* is a signed complaint by a faculty member against the University System of Maryland that alleges a violation of institutional policy by an academic administrator in the performance of any official action or inaction which adversely affects the faculty member in his/her academic or professional capacity.

B. Even if a complaint otherwise meets the definition set forth above, it shall not be reviewed under the procedures established in this Section if it is filed by a faculty member who is the subject of the following:

1. Any decision or action involving faculty appointment (UMCES Policy II-1.00), promotion/tenure (UMCES Policy II-1.00), or merit review (UMCES Policy II-1.20)
2. Any decision or action involving termination of a faculty member's appointment as a result of a finding of academic misconduct, as defined in UMCES Policy III-1.00.
  - a. Any disciplinary action imposed as a result of a finding of academic misconduct, *other than* appointment termination, may be reviewed as a grievance, subject to conditions imposed in UMCES Policy III-1.00.

3. Consistent with policy of the University System of Maryland, the following also shall not be subject to review as grievances:

- a. Any matter pertaining to broad areas of the fiscal management, staffing, or structure of the University System of Maryland or UMCES that are based upon general market factors such as availability of faculty or demand for a particular academic discipline, excepting those fiscal matters that affect specific individuals.
- b. An official policy, regulation, procedure, decision, or act by the Board of Regents, the Chancellor of the University System of Maryland, or the President of UMCES, or any matter the remedy of which would contravene or interfere with any such official policy, regulation, procedure, decision, or act.
- c. Any matter, the resolution of which is not within the exclusive control of the University System of Maryland.

C. The faculty member shall bear the burden of proving the merits of his/her grievance.

- a. At a minimum, evidence must be presented that is more convincing than the opposing evidence that the alleged act did in fact occur, that it was performed or approved by the academic administrator involved, that the result adversely affects the individual, and that the remedy sought is reasonably necessary and proper to correct that injury.
- b. The advice of legal counsel may be sought on significant legal issues raised in a grievance.

D. If resolution of a grievance involves award of a remedy to a faculty member, before such remedy is awarded the faculty member shall execute a written waiver recognizing the remedy to be satisfactory and forever forswearing any claims or causes of action arising out of the action grieved.

### III. Grievance Review by Laboratory Director

A. Faculty grievance matters normally shall be addressed to the appropriate Laboratory Director for resolution or for transmittal to the Vice President for Administration.

1. In order to be reviewed under the provisions of this section, a complaint shall be submitted in writing and signed by the faculty member.

- a. An individual UMCES faculty member shall not make a grievance on behalf of another individual.

b. Grievances by more than one faculty member may be combined into a single complaint, provided that each faculty member signs the grievance and the material facts and issues are substantially the same.

2. A grievance shall be filed within one hundred twenty (120) calendar days from the date of the act giving rise to the complaint or the date that the faculty member reasonably should have had knowledge of the act, whichever is later.

a. The faculty member shall endeavor to resolve the matter informally during this time period, and description of such effort(s) shall be included in the grievance document.

3. Any *formal* resolution of the grievance established by the Laboratory Director shall be addressed in writing to the grieving individual.

a. If the faculty member is not satisfied with the resolution, he/she may file a written appeal with the Laboratory Director within ten (10) calendar days of receipt of the written resolution.

b. If the faculty member does not file a written appeal of the resolution within the time period specified above, a copy of the original complaint and the written resolution shall be placed in the faculty member's personnel file.

#### IV. Grievance Review by Vice President for Administration

A. The Vice President for Administration shall act upon those grievances which cannot satisfactorily be resolved by the Laboratory Directors.

1. A grievance complaint shall be transmitted to the Vice President for Administration under the following circumstances:

a. The complaint involves an alleged act performed under the auspices of the Office of the President of UMCES or one of the Vice Presidents' Offices.

1) If the complaint involves an alleged act performed under the auspices of the Office of the Vice President for Administration, it shall be reviewed by the President of UMCES.

b. The appropriate Laboratory Director feels unable to address the complaint.

c. The faculty member has filed written appeal concerning the resolution of the grievance as established in writing by his/her Laboratory Director.

2. The Vice President for Administration shall be provided, at the minimum, the written complaint and all associated evidence, a written statement, if appropriate, from the Laboratory Director explaining why the grievance has been forwarded and, if appropriate, a record of all the attempted resolutions and the faculty member's letter of appeal.

3. The Vice President for Administration may consult with the grieving individual, the appropriate Laboratory Director, and any other individuals affected by the complaint, in an attempt to resolve the grievance.

4. The Vice President for Administration shall address in writing his/her resolution of the complaint to the grieving faculty member and the appropriate Laboratory Director.

a. If the faculty member is not satisfied with the resolution, he/she may file a written appeal with the Vice President for Administration within ten (10) calendar days of receipt of the written resolution.

b. If the faculty member does not file a written appeal of the resolution within the time period specified above, a copy of the original complaint and the *final* written resolution shall be placed in the faculty member's personnel file.

#### V. Grievance Review by President

A. The President of UMCES shall be the final arbiter of grievances made by UMCES faculty.

1. The President may review a grievance only under the following circumstances:

a. The grievance concerns an alleged act performed by the Vice President for Administration.

b. The faculty member has filed an appeal of a grievance resolution with the Vice President for Administration.

1) The President shall be provided a complete file of all information obtained by the Vice President for Administration, plus the written resolution proposed by the Vice President and the faculty member's written appeal of same.

c. The faculty member is appealing a disciplinary action imposed by the President as the result of a finding of academic misconduct as set forth in UMCES Policy III-1.10.

2. The President shall request the Chair of the UMCES Faculty Senate to convene that body as a Faculty Grievance Board for the purpose of hearing the grievance and formulating an advisory opinion.

a. In those cases where the grievance has originated from disciplinary action taken after a finding of academic misconduct, the resolution established by the Faculty Grievance Board shall be binding and final.

3. The President shall formulate a final resolution in writing, such resolution to be addressed to the grieving individual, to the Vice President for Administration, the appropriate Laboratory Director, and the Chair of the UMCES Faculty Senate.

a. The final resolution of a grievance promulgated by the Office of the President shall be final and all parties bound by it.

b. A copy of the complaint and the *final* resolution shall be placed in the personnel file of the grieving individual.

#### VI. Review by Faculty Senate as Faculty Grievance Board

A. The Chair of the UMCES Faculty Senate shall convene that body as a Faculty Grievance Board for the purpose of resolving a grievance referred from the Office of the President of UMCES.

1. The Senate shall convene as a Faculty Grievance Board within ten (10) calendar days of the date of receipt by its Chair of a grievance transmitted from the Office of the President.

a. The Chair of the Senate shall be the presiding officer of the Faculty Grievance Board, and the Secretary of the Senate shall be the executive secretary of the Board.

b. At its first meeting as Faculty Grievance Board on a particular case, the Senate shall review the grievance and the attempted resolution(s), if any, and establish whether or not to convene a full hearing.

1) If the majority of the members present vote against the convening of a full hearing, the Faculty Grievance Board may direct its Chair to record an opinion based on the nature of the available information.

c. The Chair shall transmit the majority decision of the Board, plus any opinion and dissenting report(s), if any, to the President of UMCES.

2. If the Faculty Grievance Board elects to convene a full hearing, its Chair shall so inform all parties in writing and shall schedule such hearing within reasonable elapsed time to permit the parties to make arrangements for attendance and to assemble necessary information, but under no circumstances shall the time between the initial meeting of the Senate as Faculty Grievance Board and the commencement of the hearing exceed thirty (30) calendar days.

a. Both parties to the grievance shall have the right to legal counsel.

b. The hearing shall be open unless one or both parties request that it be closed.

c. A complete record shall be kept of all proceedings and documents entered into evidence.

d. Each party shall have an opportunity to make an opening and closing statement, present written evidence, examine and cross-examine witnesses, offer personal testimony, file objections, exceptions, motions, and post-hearing briefs provided, however, that where a party is represented by counsel, the opening and closing statements, submission of written evidence, examination and cross-examination of witnesses, and filing objections, exceptions, motions, and post-hearing briefs on behalf of that party shall be done solely by such counsel.

e. The faculty member shall first present his/her case; then the academic administrator shall present his/her case.

f. The Chair of the Faculty Grievance Board shall make rulings on all questions concerning the course of the proceedings in such manner as he/she deems appropriate

1) The Chair may seek such legal advice as he/she deems necessary to render a decision on any such question.

2) The Chair, in his/her discretion, may set time limits for presentation of testimony and exclude redundant or irrelevant evidence.

3) The faculty member shall have the right to examine and use any part of his/her personnel files as are legally available in pursuing his/her defense.

g. Only evidence offered and made part of the record in the case and no other factual information or evidence shall be considered in the resolution of the complaint.

1) If the grievance is against disciplinary action imposed in a case of proven academic misconduct, evidence relating solely to the guilt or innocence of the faculty member shall not be admissible.

h. Both parties have the right to call witnesses, including members of the University staff, in pursuance of their cases.

1) The UMCES Faculty Senate sitting as Faculty Grievance Board cannot assure the presence of witnesses requested by either party.

2) However, either party may request in writing that the Chair contact a witness or witnesses to request their appearance at the hearing, and the Chair may contact such witnesses if, in his/her judgment and on the advice of the Board members, the request is reasonable and the testimony to be given by the witness or witnesses is demonstrably relevant to the issues raised by the grievance.

i. Upon the request of either party, all persons to be called as witnesses shall be sequestered.

j. The Faculty Grievance Board shall not grant continuances except for extraordinary circumstances

k. The entire hearing procedure shall be conducted in good faith by all persons involved.

3. The Faculty Grievance Board shall make its decision on the grievance, including its findings and recommended action, if any, based upon the vote of a majority of its voting members.

a. In making its decision, the Board shall consider only the evidence properly brought before it in the hearing.

b. After considering all the evidence properly brought before it, the Board shall decide whether the faculty member has proved his/her grievance.

c. Within ten (10) calendar days of the conclusion of the hearing, the Chair shall formulate a written report of the decision of the Faculty Grievance Board, including any significant dissents therefrom, and forward such report to the President as an advisory opinion in the matter, with copies to the faculty member bringing the grievance and to the UMCES administrator whose action forms the basis of the grievance.

1) The Chair shall also provide the President with any additional information, in the form of evidence, testimony, and official record of the hearing, as he/she may request in reviewing the advisory opinion.

2) In those cases where the resolution established by the Faculty Grievance Board is binding and final, the written report of the decision shall be transmitted by the Chair of the UMCES Faculty Senate directly to the grieving individual and to the President of UMCES.

d. The President shall inform all parties, and the Chair of The UMCES Faculty Senate, of his/her final decision regarding resolution of the grievance within thirty (30) calendar days of receipt of the report of the Faculty Grievance Board.