

PPP-27 Employee Grievance/Complaint Procedures

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I. Purpose

The purpose of these procedures is to provide a clear, orderly, and expedient method through which all employees of East Tennessee State University may process bona fide grievances or complaints.

II. Policy Statement

It is the intention of East Tennessee State University to provide an effective process for the resolution of problems arising from the employment relationship or environment. To this end, a formal grievance/complaint procedure has been established for the use and benefit of all employees. It is the responsibility of administrative, academic, and line supervisors to inform and make available to all employees information concerning these procedures. When an employee believes a condition of employment affecting him/her is unjust, inequitable or a hindrance to the effective performance of his/her employment responsibilities, he/she should seek resolution through this mechanism without fear of coercion, discrimination or reprisal. The objective of East Tennessee State University's Grievance/Complaint Procedures is to make every effort to resolve a grievance/complaint at the lowest possible step.

III. Scope

These procedures apply to all employees and cover all employment related issues with the exception of Sexual Harassment, Affirmative Action Matters, and Tenure or Promotion decisions. These procedures have no application to a termination procedure initiated against a tenured faculty member under TBR Policy No. 5:02:03:60 Section V (1). The university has a separate set of guidelines for the processing of Sexual Harassment complaints and matters involving Affirmative Action (i.e., unlawful discrimination on the grounds of race, religion, color, sex, age, disability, national origin, veteran status, or sexual orientation/gender identity). Sexual Harassment complaints should be filed with those individuals outlined in the Grievance Procedures for the Resolution of Sexual Harassment Charges at East Tennessee State University while Affirmative Action matters should be filed with the Affirmative Action Officer. A separate Committee on Promotion/Tenure appeals exists for the disposition of matters involving tenure/or promotion. These procedures are not to be used for support staff employees who are demoted, suspended without pay, or terminated. In accordance with Tenn. Code Ann. § 49-8-117, *Support Staff Grievance Procedure*, Acts 1993, ch. 301, § 1, support staff employees who are demoted, suspended without pay, or terminated must follow the grievance process contained in the university's PPP-61, *Support Staff Grievance Procedures* (TBR Guidelines P-111).

Moreover, an employee may choose to utilize these procedures for review by the grievance committee (established pursuant to the within guidelines) in the following situations:

1. actions relating to the suspension of employees for cause or termination in violation of an employment contract which fall under TBR Policy No. 1:06:00:05 (cases subject to TUAPA); or,
2. actions related to TBR Policy No. 5:02:03:60, Section V (1) (2) (suspension of tenured faculty); or,
3. actions involving hearings requested pursuant to TBR Guideline P -080, Section VI (D).

Furthermore, the University may choose to utilize these procedures for review by the grievance committee (established pursuant to the written guidelines) when resolving a matter initiated pursuant to TBR Policy No. 5:02:02:20 (faculty promotion).

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IV. Definitions

A. Matters Subject To the Grievance or Complaint Procedure

There are two (2) types of matters which may be addressed by these procedures: (1) grievances subject to committee review; and, (2) complaints which must be resolved without committee review.

1. Grievance - (committee review available)

An employee may only grieve those matters which result from any action the institution has taken against the employee which involves matters defined in a, b and c. If the grievance involves or is based on unlawful discrimination or unlawful harassment, the process set out in TBR Guideline P-080 and university policy PPP-30 must be utilized:

- a. violates school or TBR policy, or involves an inconsistent application of those policies; or,
- b. violates state or federal discrimination statutes not covered in TBR Guideline P-080 or ETSU PPP-30.
- c. violates any constitutional right such as the First, Fourth, or Fourteenth Amendments to the Federal Constitution when that action hampers free speech, freedom of religion, the right to association, provides for improper search and seizure, or denies constitutionally required notice or procedures.

2. Complaints - (committee review not available)

A complaint is an issue which an employee wants to discuss with supervisory personnel in an effort to resolve the matter. Personnel actions such as performance evaluations, rates of pay, position re-classification, or position termination due to reduction in force are not defined as complaints.

In effect, in order for a personnel action such as those described in the preceding paragraph to be formally challenged as a grievance by an employee or faculty member, the action must be the result of an alleged violation of school or TBR policy, an inconsistent application of those policies, a violation of any constitutional right, et. seq. (Note: bases for challenge are listed in Section III ["Scope"] and Section IV ["Definitions"]).

This section recognizes that the informal "give-and-take" traditionally associated with the employment process will not be altered and that an employee should feel free to express dissatisfaction with the working environment; however, there is an appropriate framework for expressing personal dissatisfaction, which this policy attempts to outline.

B. Employees

All references to the term "employee(s)" contained in these procedures only include administrators, faculty (full-time or temporary contracts), professionals, clerical, and support personnel. Probationary employees are also included in the definition; however, student workers, graduate assistants, adjunct faculty, and temporary workers are not included in the definition of employee as it pertains to the grievance procedure.

C. Grievance Committee

There are two grievance committees utilized by the university. The two types are the: (1) Faculty Concerns and Grievances Committee, and (2) Non-Faculty Grievance Committee.

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Faculty Concerns and Grievances Committee The Faculty Concerns and Grievances Committee shall only consider concerns and grievances of faculty members. The committee shall be selected in a manner consistent with the East Tennessee State University Faculty Senate's Policy on Employee Grievance/Complaint Procedures 1.4: Sections; 1.4.9.1. and 1.4.9.2.

Non-Faculty Grievance Committee The Non-Faculty Grievance Committee shall only consider grievances brought by non-faculty members. The Non-Faculty Grievance Committee shall also be selected from a Non-Faculty Grievance Pool and shall be activated for individual grievances only.

1. Non-Faculty Grievance Committee Pool

The President shall select a pool of potential committee members who will receive training by the Office of Human Resources regarding the university's Grievance procedure. Six (6) full-time permanent employees from each non-faculty EEO category will be selected by the President to serve as Pool Members. Their terms of service will be staggered such that two (2) members from each EEO category will serve a one (1) year term, two (2) members will serve a two (2) year term, and two (2) members will serve a three (3) year term. These individuals may serve subsequent terms but may not succeed themselves and the President shall replace all vacated positions. Furthermore, the percentage of females and minorities on the Non-Faculty Grievance Pool shall reflect as closely as possible their representation at the university at large. The following personnel, however, shall not be eligible to serve as members of the Non-Faculty Grievance Pool: personnel in the Office of the President; personnel employed in the Offices of the Vice Presidents; or employees of the Office of the Internal Auditor, Payroll Office, or Office of Human Resources.

2. Non-Faculty Grievance Committee Selection

The President shall select the Grievance Committee which shall consist of three (3) members selected from the Grievance Committee Pool. At least one member of the grievant's peer group must serve on the committee; however, relatives, employees who have supervisory responsibility over the aggrieved employee, or anyone working in the same department under the same manager or supervisor are ineligible to serve on the committee. The committee shall select a chairperson and conduct an impartial hearing on the grievance at which it will accept and review all pertinent information presented by the employee as well as any other information it deems appropriate. The committee's review shall be thorough and independent and its recommended action shall be based on a full and fair consideration of all the facts and circumstances.

D. Immediate Supervisor

That person who is directly responsible for the supervision of the employee's activities.

E. Next-higher-level Supervisor

That person who is directly responsible for the supervision of the immediate supervisor's activities.

F. Working Days

Days on which the business offices of the institution are officially open.

G. Date of the Decision

Date the decision is communicated to the employee if communicated in person; or, three (3) days after mailing of the decision, if communicated by mail.

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V. Responsibility for Implementation and Compliance

The President of the university has ultimate responsibility for the implementation of these procedures and is the final decision maker in the resolution of complaints. The final decision making authority in any action involving a grievance, pursuant to TBR Policy No. 1:02:11:00, resides with the Chancellor of the Tennessee Board of Regents.

VI. General Rules of Implementation

The primary responsibility for resolving grievable matters rests with the employee/faculty member and his or her immediate supervisor. Initial steps should always be taken to resolve disputes at this level before proceeding to the following rules of implementation.

- A. Employees using these procedures shall be entitled to do so without fear of retaliation, interference, coercion or discrimination.
- B. A grievance/complaint must be presented to the employee's immediate supervisor or the administrator instituting the employment action within fifteen (15) working days after discovery of the occurrence of an incident. Any claim not presented within the time frame provided shall be deemed to have been waived. For repetitive or ongoing incidents or circumstances, the grievance/complaint must be filed within fifteen (15) working days of the last occurrence of such incident or circumstance or of the discovery by the employee of the occurrence. This policy presumes that all employees or faculty members will use good faith and diligence in the discovery of grievable matters.
- C. The grievant/complainant is entitled to be accompanied by an advisor at each step of the procedure; however, the advisor may not act as an advocate on behalf of the individual.
- D. Employees shall be given the opportunity to pursue grievances/complaints during their assigned work time.
- E. The President may grant reasonable extensions of the applicable time limits at each stage of the procedure upon the timely showing of good cause. The request for an extension must be in writing. The approval or denial of the request shall also be in writing.
- F. Supervisors to whom a grievance is raised and the Grievance Committee may consult the Director of Human Resources for advice on resolving grievances (except for grievances involving an action taken against the grievant by the Director of Human Resources).
- G. Copies of all written and associated documentation will be filed in the Office of Human Resources.
- H. There shall be a one-semester time limit placed on all grievable matters. In essence, no grievance may be heard unless the grievable incident(s) occurred within the semester immediately preceding the current semester or within the current semester.
- I. A grievance/complaint may be withdrawn in writing by the employee at any stage of the process.

VII. Grievance/Complaint Process

Steps for Filing a Grievance Only

Step 1: Discussion with Immediate Supervisor /Administrator Instituting Employment Action

A grievance must be brought to the attention of the employee's immediate supervisor or the administrator

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instituting the employment action within fifteen (15) working days after the employee becomes aware of the problem. The employee should state the basis for the grievance and the corrective action desired in temperate and reasonable terms. The employee and the supervisor/administrator shall discuss the grievance in an attempt to resolve the matter in a mutually satisfactory manner. The supervisor/administrator shall conduct any necessary or appropriate investigation and inform the employee of a decision based upon full and fair consideration of all the facts within five (5) working days of the initial discussion. The immediate supervisor/administrator will assure that the decision is clearly communicated to, and understood by, the employee. If the employee is satisfied with the decision, no additional action is required. If the employee is not satisfied, the employee may proceed to Step 2. If no decision is communicated to the employee within five (5) working days of the initial discussion, the employee may proceed directly to Step 2.

Step 2: Discussion with Higher-Level Supervisor

If the employee and the immediate supervisor/administrator are not able to reach a mutually satisfactory resolution to the grievance, the employee may proceed to discuss the matter with the next-higher-level supervisor within fifteen (15) working days of the date of the decision of the immediate supervisor. Failure to comply with Step 2 in a timely manner shall be deemed a waiver by the employee for this particular occurrence and the grievance may not be raised again. The next-higher-level supervisor and the employee shall then follow the procedures required in Step 1.

If the employee is satisfied with the decision reached by the next-higher-level supervisor, no additional action is required. If the employee is not satisfied, the employee may proceed to Step 3. If no decision is communicated to the employee within five (5) working days of the initial discussion between the employee and the next-higher-level supervisor, the employee may proceed directly to Step 3.

Step 3: Written Grievance Statement

If the employee and the next-higher level supervisor are not able to reach a mutually satisfactory resolution to the grievance the employee may file a written grievance with his/her Vice President on the designated form (See Attachment III). The grievance must be filed within fifteen (15) working days of the date of the decision of the higher-level supervisor. Failure to comply with Step 3 in a timely manner shall be deemed a waiver by the grievant for this particular occurrence and the grievance may not be raised again.

A copy of the grievance, along with any supporting documentation, shall be given to the immediate supervisor and the next-higher-level supervisor. The Vice President may request either or both supervisors to respond in writing to the grievance statement. If the employee is satisfied with the decision reached by the Vice President no additional action is required. If the employee is not satisfied the employee may proceed to Step 4. If no decision is communicated to the employee within fifteen (15) working days after filing the grievance with the Vice President, the employee may proceed directly to Step 4.

Step 4: Written Grievance Statement to be received by the President and Grievance Committee

If the employee and the Vice President are unable to reach a mutually satisfactory resolution the employee may file with the President of the institution. Any grievant, who may otherwise be entitled to a hearing before the grievance committee, may waive such a hearing and accept the President's findings. In such a case the waiver shall be in writing and signed by the grievant. The waiver should state the matter involved and should expressly state that the right of the grievant to a formal hearing by the Grievance Committee is

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knowingly and voluntarily waived.

If the grievant waives his/her rights to a hearing, the President shall within fifteen (15) days after receipt of the grievant's file, advise the grievant of the decision. The President's decision will be final and shall be directed to the employee. If no decision is communicated to the employee within fifteen (15) working days of filing the grievance the employee may file directly with the Chancellor of the Tennessee Board of Regents.

If the grievant does not waive the right to a hearing, the President shall, within five (5) days of receipt of the grievant's file, refer the grievance and all relevant documentation to the appropriate grievance committee. Within fifteen (15) days after receipt of the grievant's file the committee shall advise the President of its decision. The recommendation shall be based on a full and fair consideration of all the facts and circumstances. The report shall also contain a summary of the committee's investigation and findings. The President may then adopt the committee's recommendation, in whole or in part, or may make his/her decision independent of the committee's finding. The grievant shall be provided a copy of the committee's report along with the President's decision.

Step 5: Appeal of Grievance to the Chancellor, Tennessee Board of Regents

In any case where the President makes a decision which is adverse to the grievant, the President shall advise the grievant of his/her right to appeal the decision to the Chancellor. Grievances are appealable to the Chancellor only when the grievance falls within the parameters set out in TBR Policy 1:02:11:00. The employee's appeal to the Chancellor must be filed within fifteen (15) calendar days of the date of notification of the President's decision.

Steps for Filing a Complaint Only

The steps involved in the resolution of complaints follow the same procedures as those outlined for the resolution of grievances with the following exceptions:

- A. Complaints do not include a right to a hearing or adversarial proceeding before the grievance committee; and,
- B. The President is the final decision maker involving complaints; that is, the complainant does not have the right to appeal to the Chancellor of the Tennessee Board of Regents.

VIII. Maintenance of Records

Copies of all written grievances/complaints and accompanying responses and documentation will be maintained with the Office of Human Resources for at least three (3) years. If a finding adverse to the grievant/complainant is made, the finding shall be maintained in the grievant/complainant's personnel folder.

Source: Tennessee Board of Regents Personnel Guideline No. P-110, updated May 21, 2013