

Memorandum of Administrative Policy Faculty Grievance Policy

Area: Academic Affairs

Section: Faculty Dispute Resolution

Number: 08.A.02 AP

Purpose

The University of Houston-Clear Lake requires that all faculty members be treated fairly and consistently in all matters related to their employment. The university provides faculty with the right to express their grievances through informal and formal avenues. Retaliation in any form against any faculty member for presenting a grievance is prohibited and may be grieved.

Policy

The Faculty Grievance Policy is designed to provide due process for faculty members. This policy will apply anytime a grievance is filed by a UHCL faculty member against members of the faculty, staff, or administration where no other UHCL policy is appropriate. Faculty are encouraged to attempt all informal avenues of resolving disputes before pursuing a formal grievance.

Although grievances can concern any action affecting a faculty member, they might include promotion and tenure decisions, dismissal of untenured faculty, post-tenure review, work assignments, violations of academic freedom, merit raises, and committee assignments. Grievances may also be for violations of University policies, College By-laws or other policies as

appropriate. For guidance regarding grievances specifically relating to matters of promotion and tenure please see Section *Grievance in Matters of Promotion and Tenure* of this policy.

Definitions and Clarifications

1. Respondent - the individual against whom the grievance is filed.
2. Grievant - the person initiating the grievance.
3. Faculty - includes tenure track and tenured faculty and those appointed to non-tenure track academic positions. The positions are defined in the Faculty Handbook.
4. University Grievance Panel - a panel consisting of 10 tenured, full-time faculty members from each college who are eligible for election to the Faculty Senate. At least two of these members per college should hold the rank of (full) Professor. This panel serves as the basis for development of the Grievance Committee.
5. Grievance Committee - a committee of five people, consisting of three voting members (to be selected from the University Grievance Panel from members not from the college of the grievant or respondent) and two non-voting representatives. The two other members, known as representatives, must be full-time faculty who are eligible for election to the Faculty Senate.
6. Representative - Representatives are appointed; one named by the grievant, a second member named by the respondent. These two members will serve as representatives of the parties involved during the grievance process. Representatives must be full-time faculty members who are eligible for Faculty Senate.
7. Working day- a day in which classes are in session at UHCL and all offices are open.

8. If the provost is a respondent, the president of the university will assume the responsibilities assigned to the provost in this Grievance Policy. In such an instance, the university president shall not delegate responsibilities and role within the grievance process to an individual below the organizational level of the respondent.
9. If the Faculty Senate president is the grievant or respondent, then the Faculty Senate past president takes the place of the faculty senate president in the grievance process.

Selection of University Grievance Panel

1. The University Grievance Panel shall consist of 10 tenured faculty elected from each college. The members must be full-time faculty members who are eligible for election to the Faculty Senate. The ten members of the panel chosen from each college shall be elected by those full-time faculty members of the college who are eligible for election to the Faculty Senate. Each college will elect three representatives every spring semester to serve a two-year term starting September 1.
2. By April 15 of each year, the Faculty Senate president will issue a confidential ballot to all the full-time faculty of each college who are eligible to be elected to the Faculty Senate. The ballot language shall include a statement on the importance of diverse representation on the Grievance Panel. Faculty members receiving confidential ballots will vote for up to 6 faculty members of their college to serve on the University Grievance Panel. These ballots will be submitted to the Faculty Senate president for tabulation.
3. Faculty members receiving the highest number of votes will be asked by the Faculty Senate president to serve on the University Grievance Panel. If any of those elected is unable or unwilling to serve, the faculty member receiving the next highest number of

votes will be asked to serve.

4. Should a member become unable to serve during their term the faculty member receiving the next highest number of votes in the latest election shall be asked to serve.
5. Upon completion of the election, the president of the Faculty Senate will provide the provost with the names of the members selected to serve on the University Grievance Panel. The provost will in turn notify the deans of the colleges and the faculty members elected to the Grievance Panel.

Informal Resolution

An attempt to settle grievances informally should be made through discussions between the grievant and the respondent(s). This informal process may include discussions or mediation with appropriate persons who are not parties to the grievance.

If informal discussion does not resolve the grievance, the grievant may petition for a formal hearing of the grievance by a University Grievance Committee. Informal resolution may still take place at any point in the grievance process.

Formal Resolution

If informal resolution of the grievance is not possible, the process for formal resolution of the grievance can be initiated as provided in section *Grievance Procedure*. In such cases, after a formal notification to the provost's office by the grievant, a Grievance Committee will be selected as stated in section *Grievance Committee* of this policy. The Grievance Committee will hold hearings if needed and make a recommendation to the provost. The provost's recommendation and the Grievance Committee's recommendation will be sent to the president of the university for final resolution of the grievance.

Grievance Committee

1. The University Grievance Panel will serve as a pool for the selection of three voting members of the Grievance Committee. The Grievance Committee hears the particular grievance and makes a recommendation to the provost. The Grievance Committee is a non-adversarial body designed to make a fair conclusion based on a thorough investigation of the evidence.
2. The Representatives
 - 2.1. One representative will be named by the grievant, a second member by the respondent. These two members will be designated as representatives of the parties involved in the grievance. The representatives are non-voting members of the Grievance Committee. Both of these representatives must be full-time faculty members who are eligible for election to the Faculty Senate. Neither representative is required to be a member of the University Grievance Panel.
 - 2.2. Where multiple grievants file a grievance or where multiple respondents named, the group of grievants or the group of respondents must select a single mutually acceptable representative. If the individuals cannot agree, the provost may decide to separate the grievance into multiple grievances.
 - 2.3. During the grievance process, the representative should act as the advocate of their designated party. The representative should be invited to all meetings and the hearing related to the grievance.
3. Selection of the Grievance Committee
 - 3.1. In accordance with the timeline, the provost or provost designee randomly selects

three names from the members from the University Grievance Panel who are not from the same college as the grievant or respondent(s) and not actively serving on another grievance to serve as the members of the Grievance Committee, in the presence of the two designated representatives. Once three names have been drawn, each representative may strike one name from the Grievance Committee list, if desired. If a name is struck, another name will be randomly selected to replace the stricken member(s). If for any reason one of the designated three Grievance Committee members decline to serve, the same process above will be used to randomly select a new member. If the provost and the faculty senate president both determine that a member of the grievance committee has a conflict of interest with the grievant or respondent(s), that member may be removed by the provost and replaced by the same process above to randomly select a new member. Representatives only have one allowed strike throughout the entire process.

3.2. Conflicts of interest should be determined and resolved by the faculty senate president and provost before the grievance committee first meets.

4. Failure of Representatives to Participate

4.1. If, for any reason or at any time, either representative cannot participate in the grievance procedure, or there is a need for the representative to be replaced, this representative will no longer be considered part of the grievance committee. The party without a representative shall choose a replacement representative within ten working days of notification of the representative's failure to participate.

4.2. If the representative departs mid-process the replacement will follow the selection procedures in section *Grievance Procedures* of this policy. The representative replacement may not be selected from the sitting Committee Members.

- 4.3. If, for any reason or at any time, one of the three selected committee members is unable to participate, the replacement will follow the selection procedures in section *Grievance Procedures* of this policy within the established timeline.

Grievance Committee General Procedures

The Grievance Committee shall determine its own general procedures, subject to the restrictions stated in this Section and Section *Grievance Committee Hearing and Recommendation to the Provost*.

1. The two representatives will call the initial meeting where the grievance committee will select the chair. The committee shall select its own chair, but neither the representative of the grievant nor the representative of the respondent(s) shall serve as chair.
2. The grievant and the respondent will be asked by the chair of the Grievance Committee to submit all documents or exhibits that are to be considered by the grievance committee. Through the chairperson, the committee can request additional documents as a fact-finding effort that it believes are pertinent to the grievance.
3. If the committee decides that it is warranted, the committee will select a date, time and location for a formal hearing concerning the grievance. The chair of the committee will notify the provost, the grievant, and the respondent(s) giving them at least ten working days' notice before the scheduled hearing.
4. Any formal hearing must take place within 60 working days of the committee being selected. If no formal hearing is conducted, the final recommendation is due within 90 working days of the committee being selected. If a delay is necessary, the committee must inform the grievant and the respondent, in writing, of the reason for the delay and set a new deadline for the report.

5. After the hearing and due deliberation, the committee will make its recommendation on the grievance, and the reasons for it, in writing, to the provost or president as is most appropriate. This shall be done even if the recommendation of the committee is to take no action.

Grievance Committee Hearing and Recommendation to the Provost

The grievance hearing is not a formal legal proceeding. Either party may be assisted by other faculty members or legal counsel in preparing for the hearing. However, these other faculty members or legal counsel will not be allowed to be present at these proceedings unless they are requested to participate by the chair of the Grievance Committee.

The chair of the Grievance Committee will instruct the grievant and the respondent to submit all documents to be considered by the committee. The committee must receive these documents for consideration no later than five working days prior to the hearing.

The grievant and respondent will identify all witnesses that may be called upon by the committee to testify at the hearing and what relevant facts they may be able to contribute. The grievance committee may also call upon additional witnesses it feels will be pertinent to the grievance. The Chair of the Grievance Committee will be responsible for contacting these individuals to ascertain their willingness to participate in the hearing. No retaliatory action may be taken against any individual who chooses to appear or not to appear.

1. Evidence and Recording. The formal hearing will be recorded. The only persons who will have access to the recordings are the committee members, the grievant, the respondent(s), the provost, and the president of the university. The grievance file will be retained in the provost's office for three years following the completion of the grievance proceedings.

2. Executive Session. The Grievance Committee shall discuss and determine its recommendation in executive session. This executive session is for voting members of the committee only; the representatives may not be in attendance.
3. Informal Resolution. An informal resolution recommended by the Grievance Committee to the grievance remains possible until the Grievance Committee makes its final report. In part, the role of the representatives is to make possible continued mediation between the grievant and the respondent(s).
4. Grievance Committee Recommendation. The committee must make its recommendation to the provost, with copies to the grievant and the respondent by both campus and electronic mail, within 30 working days after the hearing is completed or 90 working days after representatives are chosen. The recommendation of the committee need not be unanimous, and members of both the majority and minority must issue a report of their recommendations.
5. If the committee cannot reach a unanimous decision, its division and the reasons for it must be expressed either in the report or in separate concurring or dissenting statements by individual members. All committee members should be aware of all concurring or dissenting statements before they are submitted. Once submitted with the main report to the provost, the grievant and respondent(s) receive copies of all concurring or dissenting statements. If a delay is necessary, the committee must inform the grievant and respondent, in writing, of the reason for the delay and set a new deadline for the report.

Provost Actions

1. The Grievance Committee's recommendation must be acknowledged in writing and dated by the provost. The provost must act on the grievance committee recommendation within fifteen working days of receipt of the Grievance Committee's recommendation.
2. The provost must provide a written response to the Grievance Committee's recommendation, either agreeing or disagreeing with it. If the provost disagrees with the Grievance Committee's recommendation, the provost must make a full explanation in writing, with reasons for the decision, and distribute it to the grievant, the respondent and the Grievance Committee. In either case, the provost's written response and the Grievance Committee's report will be distributed to the grievant, the respondent(s) and the Grievance Committee.
3. Within five to fifteen working days the provost will forward to the president of the university a copy of the Grievance Committee's recommendations along with the provost's written recommendation. The president must have the recommendation of both the provost and the Grievance Committee before making a decision. If the provost should fail to meet the deadline for forwarding the Grievance Committee's recommendations to the president, or fail to make a recommendation of their own, the Grievance Committee's report automatically goes to the president.

President and the University Actions

Receipt of the provost's recommendation and the Grievance Committee's recommendation shall be acknowledged in writing and dated by the president. Within fifteen working days of receipt of the recommendations, the president must act. Agreement or disagreement with either the provost's or the Grievance Committee's recommendation must be in writing. In

particular, if the Grievance Committee's recommendation is not followed, the president must provide a full explanation in writing. The president's decision, along with any necessary explanations, must be distributed to the grievant, the respondent, the Grievance Committee, and the provost.

Rebuttals

The grievant or the respondent(s), upon receipt of recommendation and explanations from the Grievance Committee, is entitled to submit a rebuttal within five working days of receiving that recommendation. Such rebuttal shall be sent to the Provost office and shall be limited to errors of fact or procedure found in the recommendation.

Rebuttal letters from the grievant or respondent(s) shall be included in the file as it continues through the grievance process and should be considered at all subsequent levels of review.

Prohibition of Discrimination and Retaliation

Nothing in this policy shall be used as a basis for discrimination or retaliation against any individual or group. No retaliatory action may be taken against any individual who files or assists with a grievance because of his or her involvement with the grievant.

Adherence to Timelines

Any request for departure from the established timelines in this policy should be made in writing to the provost before the Grievance Committee is formed or to the chair of the Grievance Committee after the committee is formed. When the chair of the Grievance Committee receives such a request, the committee will determine the appropriate action to be taken. The accompanying table in this section of this policy describes the timeline for a formal grievance procedure.

Action and timeline for formal grievance procedures:

- **Filing of grievance with provost:** Within 120 calendar days from grieved event
- **Provost sends grievance to respondent:** Within ten working days of prior action
- **Respondent replies to provost in writing:** Within ten working days of prior action
- **Provost instructs parties to choose representatives:** Within ten working days of prior action
- **Grievant and respondent choose representatives and notify provost:** Within ten working days of prior action
- **Representatives choose three other members of the Grievance Committee:** Within ten working days of prior action
- **Committee notifies parties of the hearing:** At least ten working days before hearing
- **Hearing occurs if needed:** Within 60 working days
- **Grievant and respondent submit documents to Grievance Committee:** At least five working days before hearing
- **Grievance Committee recommendation to provost:** Within 30 working days after the hearing or 90 working days after representatives chosen
- **(Optional) Rebuttal filed to grievance committee recommendation:** Within 5 working days after recommendation to provost
- **Provost's recommendation to president of the university and response to the**

Grievance Committee: Within 5-15 working days of receipt of the Grievance Committee recommendation

- **President's decision to the grievant, the respondent, the Grievance Committee and the provost:** Within 15 working days of receipt of the Provost's recommendation

Grievance in Matters of Promotion and Tenure

1. When a negative recommendation on conferring tenure or promotion has been reached at the level immediately prior to the President's decision (e.g. the letter written by the Provost), the faculty member involved can file an appeal. Notice of intent to file an appeal must be provided to the Office of the Provost within 5 business days of the candidate notification from the Provost's Office of the recommendation of non-renewal of appointment, denial of tenure, or denial of promotion.
2. Decisions to recommend not to confer tenure, not to promote, or not to reappoint may be appealed based upon the following three conditions: A. An error in the described procedures materially affected the outcome; B. The decision was not based upon the applicable criteria included in the Promotion and Tenure File; or C. The outcome was arbitrary, discriminatory, or capricious.
3. Faculty members who wish to file an appeal against a negative promotion or tenure recommendation must outline in their appeal letter, clearly and succinctly, the reason for the appeal. The reason for appeal must be linked to one (or more) of the three the criteria above. The appeal must be filed with the Office of the Provost within 10 business days of the candidate notification of the recommendation of non-renewal of appointment, denial of tenure, or denial of promotion. Upon receipt of intent to file an appeal, an appeal committee will be formed at the behest of the Provost by the Faculty

Senate.

4. The P&T Appeal Committee will consist of 4 faculty members (one from each college). The four faculty will be drawn from the Faculty Grievance Panel. Every member of the committee shall be a full-time tenured faculty member at the rank at or above the rank of promotion requested by the candidate. If there are not enough members of the Faculty Grievance Panel of sufficient rank, the Council of Professors shall nominate a member to add to the Grievance Panel with the assent of the Faculty Senate Governance Committee. No current member of any committee evaluating the candidates (e.g. peer-review committee, university or college promotion and tenure committee) shall be eligible for membership on the P&T Appeal Committee. Faculty members of the P&T Appeal Committee will be selected by random draw as outlined in section *Selection of the Grievance Committee*. If possible, faculty members actively serving on an appeal should not be drawn for a second appeal, though this may be waived if there are insufficient eligible faculty of the required rank.
5. In the written appeal to the P&T Appeal Committee, the faculty member shall set forth in detail the nature of the appeal and shall submit material pertinent to the case. By filing, the faculty member consents to the P&T Appeal Committee having access to those materials and documents in the Promotion and Tenure File it deems relevant to the proceedings.
6. The P&T Appeal Committee shall then review the appeal and decide whether to reject the appeal or hold a formal hearing. The P&T Appeal Committee shall not substitute its judgment for that of the review bodies.
7. If the vote is in favor of rejecting the appeal, the appeal ends. This rejection will be sent to the Candidate, the Office of the Provost, and become part of the Promotion and

Tenure File as it is forwarded to the President for review.

8. If the vote is to hold a formal hearing, the P&T Appeals Committee shall notify the faculty member of its decision to hold a formal hearing within 10 business days of receipt of the appeal and documentation. The Committee can request additional information if needed. Any participation in the process is voluntary. Faculty and administration are expected to cooperate with the P&T Appeal Committee in providing reliable, relevant, and valid evidence for the committee to make an informed judgment.
9. The hearing shall begin within 10 business days of the decision to conduct it and shall proceed as expeditiously as possible. Decisions of the P&T Appeal Committee require a majority vote, but minority opinions must be represented in the final report if the minority so desires. All voting will be by secret ballot.
10. If the Committee is not able to reach a consensus, members of the Committee may write dissenting opinions, which shall be attached to the majority opinion.
11. A recommendation shall be sent in a written report to the Candidate and the Office of the Provost within five business days of the end of the hearing. The written report of the P&T Appeals Committee will also become part of the Promotion and Tenure File as it is forwarded to the President for review.
12. The President has the option to request the Provost provide a written opinion on the P&T Appeals Committee report. The Provost's written opinion shall be sent to the Candidate and the Office of the President within five business days of the President's request and will also become part of the Promotion and Tenure File.
13. Promotion and Tenure Appeal Timeline:

- **Candidate notifies Office of The Provost of intent to file a P&T Appeal:** Within 5 working days of receipt of the letter from the University P&T Committee (UPTC).
- **Office of Provost Alerts Faculty Senate President and Chair of Senate Governance Committee of need to form a P&T Appeals Committee:** Upon day of notification by the Candidate of intent to file an Appeal.
- **P&T Appeals Committee is formed:** Within 5 working days of receipt of notification by the Candidate of intent to file an Appeal.
- **Candidate files their Appeal with the Office of The Provost. Provost office immediately forwards the letter to the Appeals Committee Members:** Within 10 working days of receipt of the letter from the UPTC.
- **P&T Appeals Committee reviews the appeal and decide to reject or hold a hearing. Notification sent to Candidate and Office of the Provost and becomes part of the Promotion and Tenure File:** Within 10 working days of receipt of the Appeal.
- **P&T Appeals Committee holds a hearing (if decision is to hold a hearing):** Within 10 working days of the notification of parties re: decision to hold a hearing.
- **P&T Appeals Committee submits their report to the Candidate and Office of the Provost:** Within 5 days of the hearing.

Review and Responsibilities

Responsible Parties: Senior Vice President for Academic Affairs/Chair, Faculty Senate

Review: Every 5 years

Revision Log

Revision Number: 1

- Description of changes: Policy Origination

Revision Number: 2

- Approval Date: 11/11/2020
- Description of changes: The Faculty Grievance policy document was updated to reflect approved changes to the policy's governing principles, process and procedures for faculty grievance matters. Some paragraphs have also been modified for clarification of definitions and explanations.

Approval

Approved by:

/Dr. Steven Berberich/

Senior Vice President of Academic Affairs and Provost

/Dr. Ira Blake/

President

November 11, 2020

Date