

UNIVERSITY OF MINNESOTA

GRIEVANCE POLICY



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UNIVERSITY OF MINNESOTA GRIEVANCE POLICY

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UNIVERSITY OF MINNESOTA GRIEVANCE POLICY

SECTION I. Purpose

The University of Minnesota Grievance Policy ("UGP") is an internal University process for the good faith review and resolution of employment grievances filed by employees of the University, including faculty, academic professional and administrative staff, civil service staff and student employees. This policy does not cover employees of the University of Minnesota Hospital and Clinic ("UMHC"), and employees in bargaining units represented by labor organizations.

The UGP does not, and is not intended to, create any legal rights for faculty members, students, staff, or other persons, and is not part of any contract between the University and its employees or any other individual. The substantive rights of employees, to the extent they exist and may be grieved, are established in other University rules, regulations, policies, and practices. However, the UGP may itself be the subject of a grievance. Nothing in the UGP is intended to limit the University's right to manage and direct its workforce and operations, including the University's right to adopt or alter any rule, regulation, policy or practice. An employee who chooses to proceed to Phase IV arbitration shall be required to sign a waiver which, at that point, shall create contractual obligations between the University and the employee. The Phase IV arbitration award is the only feature of this policy which is legally final and binding on both the University and the employee.

The intent of the UGP is to create an internal method for addressing grievances, and the policy is subject to change from time to time.

SECTION II. Scope of Grievance Policy

A. Parties. A grievance may be filed by one or more faculty, academic professional and administrative, civil service or non-academic or academic student employees, except employees represented by a labor organization and UMHC employees. The person(s) filing the grievance is the grievant.

The respondent is the University of Minnesota. The respondent's representative at each phase of the process is identified in this policy. A grievance may not be directed against another employee as an individual.

B. Subject Matter. A grievance must allege a violation of a specific University rule, regulation, policy or practice pertaining to the employment relationship between the grievant and the University. This includes the terms of the grievant's employment contract, alleged violations of this grievance policy, and discipline.

Discretionary actions, such as salary adjustments and performance evaluations, may not be grieved, except to determine (1) whether the discretionary action was made in accordance with relevant University rules, regulations, policies, practices, procedures, or criteria; and (2) whether the action constitutes a clear abuse of discretion.

Complaints involving promotion, denial of tenure, suspension or removal of a regular faculty member, or allegations of denial of academic freedom relating to teaching and research are not grievances under this policy. Such claims are governed by procedures contained in the "Regulations Concerning Faculty Tenure," including Section 15.1.

Student claims not relating to the employment relationship, including but not limited to admission decisions, academic standing, grades, and cheating, are not grievable under this policy. Such claims are governed by procedures provided by the appropriate college, campus or academic division.

Complaints alleging sexual harassment and academic misconduct are not grievances under this policy. Such claims shall be referred to the appropriate office for investigation and review. Discipline imposed on any employee, except employees represented by a labor organization or UMHC employees, including discipline imposed as a result of sexual harassment and academic misconduct proceedings, is a grievance under this policy.

Any complaint alleging discrimination in the employment relationship, other than sexual harassment, may be filed either under this policy or with the Office of Equal Opportunity and Affirmative Action ("Office"), but not both. If the complaint is filed with the Office, the complaining party will not be entitled to any review under this policy. Respondents who are disciplined as a result of employment related discrimination complaints initially filed with the Office may subsequently grieve the discipline under this policy.

The Director of the Office shall appoint a representative to serve as an ex-officio, non-voting advisor to a Phase III panel hearing any complaint alleging discrimination which has not been investigated and reviewed by the Office.

SECTION III. Administration

A. University Grievance Officer. The University Grievance Officer ("UGO"), and any necessary additional staff, shall be appointed by the President after consultation with the Grievance Advisory Committee. The UGO will:

1. Review each complaint to make an advisory determination whether the complaining party is covered by this policy, and whether the complaint is a grievance within the scope of the UGP. The UGO may provide counseling to complainants regarding appropriate procedures, and shall direct all complainants and complaints which are not "grievances" under this UGP to the correct forum.

2. Forward all disputes regarding the appropriate University representative to the Senior Vice President for Academic Affairs for a final disposition.

3. Administer the UGP process, including scheduling all meetings, receiving and forwarding all documents, and chairing the Phase I and II, as necessary, meeting(s).

4. Mediate as requested by the parties.

5. Prepare an annual report to include a summary of issues grieved and the decisions, which shall be published in the University Senate docket, and which shall be delivered to the President, Grievance Advisory Committee, Faculty Consultative Committee, Academic Staff Advisory Committee, Civil Service Committee, and Student Consultative Committee. The report must include a summary (prepared to protect the identity of individual grievants) of those instances in which the Senior Vice President for Academic Affairs has declined to accept the recommendations of a Phase III hearing panel.

B. Senior Vice President for Academic Affairs. The Senior Vice President for Academic Affairs shall have the final authority to determine the appropriate respondent's representative. The Senior Vice President for Academic Affairs will also designate the appropriate vice presidential areas and the responsible vice presidents (or equivalent officers, such as chancellors or vice-provosts). These decisions may not be contested in proceedings under the UGP.

C. University Grievance Board and Hearing Officers' Panel. The University Grievance Board is a board of peer representatives able to serve on Phase III hearing panels. It shall consist of at least five University employees from each of the following categories: faculty, academic professional and administrative staff, civil service staff, non-academic student employees, and academic student employees. Faculty representatives shall be appointed by the Senate Committee on Faculty Affairs, academic professional and administrative representatives by the Academic Staff Advisory Committee, civil service representatives by the Civil Service Committee, non-academic and academic student employee representatives by the Student Senate Committee on Committees. The appointees in each category should be from broadly varied backgrounds, and should receive staggered two year terms.

The Hearing Officers' Panel is a separate group of employees designated and trained to serve as hearing officers. The Hearing Officers' Panel shall consist of five (5) University employees from each of the following categories: faculty, academic professional and administrative staff, and civil service staff. The Senate Committee on Faculty Affairs, Academic Staff Advisory Committee and Civil Service Committee shall each prepare a list of ten (10) University employees from the respective categories. The President may ask for more names from the committee. The President shall appoint from each list five (5) employees to serve on the Hearing Officers' Panel for staggered three year terms. The UGO or an appropriate designee shall train all hearing officers for service as Phase III presiding officers.

D. Grievance Advisory Committee. The Grievance Advisory Committee will consist of one (1) member appointed by each of the following groups: The Senate Committee on Faculty Affairs, the Academic Staff Advisory Committee, the Civil Service Committee, the Student Senate Committee on Committees, a chair appointed by the Senate Consultative Committee, and two (2) administrative representatives appointed by the President. Appointments may be for terms of up to two (2) years.

The Grievance Advisory Committee will advise the President regarding the selection of the UGO, the UGO's performance, and the operation of the UGP. The Committee has no role in the disposition of individual grievances.

The Grievance Advisory Committee will undertake a thorough review of the functioning of this policy every five (5) years and report its findings and recommendations to the President and University Senate. The first review shall commence on September 16, 1998.

SECTION IV. Grievance Procedure

A. Initiating a Grievance. A grievance is initiated by filing a written statement of the grievance with the office of the UGO within thirty (30) work days after (a) the action being grieved occurred or commenced; or (b) the grievant received notice or had knowledge of the action being grieved, whichever is later. An

alleged grievance will not be acted upon unless filed within the specified time, unless there are compelling reasons for delay.

The written grievance must identify:

1. the person(s) grieving and his/her employment status;
2. the action being grieved;
3. the specific University rule, regulation, policy, or practice pertaining to employment, or provision of grievant's employment contract, alleged to have been violated;
4. the person(s) responsible for the action, if known, and the unit; and
5. a proposed remedy which is within the authority of the University to grant.

The UGO shall forward a copy of the grievance to the person(s) responsible for the action if identified, and if not, to the unit administrator, within five (5) work days after the grievance is filed.

B. Phase I - Informal Meeting. The purpose of the Phase I meeting is to facilitate grievance resolution through informal discussion and negotiation between the parties. The parties in this phase are the grievant and the administrator responsible for the action which is grieved.

The UGO shall set an informal meeting with the grievant, the respondent, and the UGO within ten (10) work days from the date the grievance was filed, unless there are compelling reasons for delay.

The UGO shall chair this meeting and explain the grievance process including relevant time limitations. The UGO should facilitate communication of information between the parties, and may make settlement recommendations as appropriate. Such recommendations shall be made solely to assist the parties in reaching a speedy and fair resolution.

By express mutual consent of the parties, the Phase I meetings may be continued for a specified period of time to enable the parties to consider a proposed resolution. Absent express mutual consent, the Phase I meeting shall be deemed to conclude when the parties leave the meeting.

Within five (5) work days of the conclusion of the Phase I meeting, the Phase I University representative shall submit a written answer to the grievance to the UGO and the grievant. If the grievant chooses to proceed to Phase II, the grievant must submit a written notice of intent to proceed to the UGO and the respondent within five (5) work days after the date the grievant received the Phase I written answer, unless there are compelling reasons for delay.

C. Phase II - Meeting with Supervisor. The purpose of the Phase II meeting is to facilitate grievance resolution by informing and involving higher University administration. The parties are the grievant and the supervisor of the Phase I University representative or his/her designee.

The UGO shall set a meeting within ten (10) work days from the date of the UGO's receipt of the grievant's notice of intent to proceed, unless there are compelling reasons for delay.

The meeting shall be attended by the grievant and an appropriate supervisor(s) of the Phase I University representative. The Phase I University representative may appear at the request of the supervisor. The vice president for the unit in which the grievant is employed shall be notified by the UGO of the Phase II meeting, and has the authority to designate the appropriate supervisor(s) to attend this meeting.

The UGO shall chair the meeting and explain the grievance process including relevant time limitations. If all parties agree, the UGO may continue to serve as a mediator in a settlement facilitating role.

The Phase II meetings may be continued for a specified period of time to enable the parties to consider a proposed resolution by express mutual consent of the parties. Absent express mutual

consent, the Phase II meeting shall be deemed to conclude when the parties leave the meeting.

Within ten (10) work days after the Phase II meeting concludes, the Phase II University representative must submit a supplemental written response to the grievance to the UGO and the grievant. Any jurisdictional challenges must be included in the supplemental response, if not already raised in the initial response.

If the grievant is not satisfied with the supplemental response, the grievant must deliver a written notice of intent to proceed to Phase III to the UGO and the Phase II University representative within ten (10) work days after receipt of the Phase II supplemental response, unless there are compelling reasons for delay. The grievant may amend the grievance by delivering a written amendment with the notice of intent to proceed.

If the grievant amends the grievance, the Phase I or II representative may file a written response to any new issues within ten (10) days of receipt of the amended grievance.

D. Phase III - Panel Hearing. The purpose of Phase III is to provide an internal evidentiary hearing by a three person panel. The parties are the grievant and the vice president for the unit (or the President if the unit reports directly to the President). The vice president (or, if applicable, the President) may designate a representative to act on behalf of the University.

/// The UGO shall convene the Phase III hearing panel. The panel shall consist of one member of the University Grievance Board chosen by the grievant, one designee of the vice-president of the unit in which the grievant is employed (or by the President, if the unit reports directly to the President), and one hearing officer from the Hearing Officers' Panel. The UGO shall select a hearing officer of the same employee category (faculty, academic professional and administrative, or civil service) as the grievant. If the grievant is a student employee, the hearing officer shall be from the faculty, academic professional and administrative or civil service employee categories as determined by the student grievant. No panelist shall have a direct interest in the grievance.

The grievant and the vice-president's designee shall inform the UGO of their selections within five (5) work days after delivery of the intent to proceed to Phase III. The UGO shall promptly convey the names of the three panel members to all parties.

The grievant and the University representative each have the right to peremptorily challenge the person selected as hearing officer by the UGO within five (5) work days of receipt of notice of the selection. The UGO will then select another hearing officer from the Hearing Officers' Panel. There is no further right to peremptory challenges.

The UGO shall schedule the Phase III hearing within thirty (30) work days from the date of the UGO's receipt of the grievant's notice of intent to proceed, unless there are compelling reasons for delay.

The hearing officer will direct the course of the Phase III hearing. After the Phase III hearing, the panel shall prepare a decision consisting of a statement of the issues, contentions of the parties, findings of fact, opinion and award, if any. A majority of the panelists is required to reach a decision. The decision shall be issued within thirty (30) work days of the close of the record, and shall be signed by the panel members concurring in it. The decision shall be sent to the UGO, who shall promptly distribute it to the parties and to the Senior Vice President for Academic Affairs.

If the Phase III panel decision is favorable to the grievant, the University will implement it, unless the Senior Vice President for Academic Affairs delivers a written notice to the UGO and the grievant within ten (10) work days of the receipt of the Phase III panel's decision stating that the decision is not acceptable and the reasons why it is not acceptable. In this event, the grievant may request Phase IV arbitration.

If the decision of the Phase III panel is not favorable to the grievant, the grievant may choose to proceed to Phase IV arbitration. If the Phase III decision is not acceptable to the University, or if it is not favorable to the grievant, the grievant must deliver a written notice of intent to proceed to Phase IV to

the UGO and the Phase III University representative within ten (10) work days after the grievant received the Phase III hearing panel decision or the Senior Vice President's notice, whichever occurred last, unless there are compelling reasons for delay.

If the grievant chooses to proceed to arbitration, the grievant shall sign an acknowledgement of his/her voluntary choice to proceed to binding arbitration to resolve the grievance and/or discovery dispute, and shall waive and release all rights to pursue substantially the same claim in any other forum.

E. Phase IV - Arbitration. The purpose of Phase IV is to provide an opportunity for the parties to voluntarily engage in final and binding arbitration of a discovery dispute by a neutral arbitrator and of the grievance by a three person panel. The representative parties are the grievant and the President or his/her designee.

The UGO shall convene the arbitration panel. The panel shall be chaired by a neutral arbitrator who shall direct the course of the Phase IV hearing. The UGO shall obtain a list of five (5) arbitrators from the State of Minnesota Bureau of Mediation Services. In cases involving faculty or academic professional and administrative staff, the Bureau of Mediation Services shall randomly select the names from a roster of no fewer than twenty-five (25) non-Minnesota resident members of the National Academy of Arbitrators holding either tenured faculty rank or emeritus status in a university located in the United States, other than the state of Minnesota. In cases involving civil service or student employees, the Bureau shall randomly select the names from its own roster of grievance arbitrators. Within ten (10) work days of receiving the list, the grievant and University representative shall alternate in striking names from the list until a single arbitrator's name remains. The party to strike first shall be determined by the toss of a coin.

In addition to the arbitrator, the panel shall consist of a University Grievance Board member selected by the grievant, and a designee of the vice president of the unit in which the grievant is employed. These panelists may, but need not be, the same persons who served on the Phase III panel. The parties shall

inform the UGO of their panel member selections within five (5) work days of receipt of the list of arbitrators.

The UGO shall notify the panel members of their selection, and shall coordinate scheduling of the arbitration hearing.

The neutral arbitrator shall conduct all preliminary hearings required to reach final decisions in discovery disputes over access to documents and information.

The panel shall issue a decision within thirty (30) work days from the date of the close of the record. A decision shall be made by a majority of the panelists. The decision shall be in writing, and shall include a statement of the issues, contentions of the parties, findings of facts, and opinion and award, if any. The decision shall be sent to the UGO, who shall distribute it to the parties promptly. The decision is legally binding.

The grievant and the University shall each be responsible for one-half of the arbitrator's fees and expenses. There will be no charge for participation by the other representatives on the Phase IV panel. The parties shall be responsible for their own expenses.

SECTION V. General Rules

A. Time Limits. A work day is defined for purposes of this policy as a day the University is open, but does not include weekends and holidays. Compelling reasons for delay include days on which the employee was not on the payroll of the University, or was on authorized vacation or leave, except for determining the initial filing deadline.

When the grievant fails to file or process a grievance within the time limits set forth above, unless there are compelling reasons for the delay, the grievance shall be deemed to have been waived. At each phase in the grievance procedure the parties may agree to waive the time limits, or to skip any phase, by express mutual consent.

The University representative's failure to produce the requisite written responses following the close of Phase I, Phase II and

Phase III sessions shall not limit the grievant's rights to appeal to the next relevant phase of the process.

B. Due Process. All parties have the right to be present throughout all Phase III and Phase IV proceedings, to submit evidence, and to cross-examine adverse witnesses. The rules of evidence used in courts of law shall not apply. In cases not involving the imposition of discipline, the grievant has the burden of demonstrating the violation of University rule, regulation, policy or practice. In cases in which discipline has been imposed, the respondent has the burden of demonstrating the violation of University rule, regulation, policy or practice and the appropriateness of the sanction.

C. Discovery.

1. Duty to provide discovery. Parties shall comply with all reasonable requests for information relevant to the grievance, provided such disclosure is consistent with law. Hearing officers and neutral arbitrators have no authority to require disclosure of information which is inconsistent with any law, particularly the Minnesota Government Data Practices Act and the Federal Educational Rights and Privacy Act. In order to comply with confidentiality obligations of the University, a party and panel members may be required by the University, at its sole discretion, to sign and abide by a confidentiality agreement before certain information may be released for the limited purpose of a grievance hearing.

2. Discovery contests at Phase II. If the parties cannot resolve a dispute over access to documents or information, the UGO shall refer the matter to the hearing officer for a preliminary hearing for the limited purpose of resolving the discovery dispute. The hearing officer may confer with the UGO regarding guidelines for access to documents or information. The hearing officer shall issue a decision within five (5) work days after the close of the record, and deliver copies of the discovery decision to the UGO and to the parties.

a. If the hearing officer's discovery decision is not challenged within five (5) work days after its receipt, the UGO shall promptly schedule a Phase III hearing.

b. If either the University representative or the grievant objects to the hearing officer's discovery decision, the objecting party must deliver written notice to the UGO and to the opposite party within five (5) work days after receipt of the hearing officer's discovery decision. In either case, since arbitration is voluntary under this policy, within five (5) work days following the five (5) work days challenge period, the grievant shall unilaterally determine, through written notice delivered to the UGO and the University representative, the avenue to be followed to resolve the discovery dispute. The grievant's choices are as follows:

i. The discovery issue may be decided through legally binding arbitration as set forth in Phase IV of this policy except that the neutral arbitrator shall hear and decide discovery issues without a Phase IV panel. The neutral arbitrator shall issue a decision within ten (10) work days after the close of the record. Under this avenue, the UGO shall schedule the Phase III hearing within thirty (30) work days from the date of the UGO's receipt of the neutral arbitrator's discovery decision.

ii. The grievance issue may proceed to a Phase III panel hearing on its merits. However, the decision to proceed to a Phase III panel hearing shall not be construed as a waiver of the grievant's right to subsequently appeal to Phase IV the hearing officer's discovery decision and the Phase III panel's decision on the grievance. Under this avenue, the UGO shall promptly schedule a Phase III hearing.

3. Subpoenas. At the request of either party, the arbitrator may issue necessary subpoenas as provided by law.

D. Advocates. Grievants may be represented by employee advocates throughout the process. If the grievant wishes to be represented by an attorney, including an employee advocate who is an attorney, the grievant must promptly inform the UGO and the respondent. The University administrator(s) may be represented by an attorney provided by the Office of the General Counsel, only if an attorney represents the grievant (including an employee advocate who is an attorney), or if the grievant is an attorney,

E. Confidentiality. The UGO and hearing panels shall not disclose any documents or information concerning a grievance except as necessary to comply with procedures for conducting the hearing, or as permitted or required by law. All hearings will be closed to the public.

F. Witness Testimony. Every member of the University community is strongly encouraged to be cooperative if they are requested to provide testimony at a hearing under this policy.

G. Awards. No panel under the UGP shall have any authority to issue a financial award to any employee beyond back pay and benefits actually lost, together with reinstatement. No panel shall have authority to order compensation for fees and expenses of advocates, pain and suffering, emotional distress, penalties or punitive damages.

H. Enforcement. It is the responsibility of the University to faithfully carry out its responsibilities under this policy, and to enforce the terms of any binding decision under this policy. The University's deferral of jurisdictional challenges until Phase III and Phase IV is not a waiver of its right to raise these challenges at Phase III and Phase IV.

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