

Faculty Grievances and Appeals

Policy Statement

As an institution of higher education, Marywood University brings together a faculty, administration, and governing board united in a common bond of academic purpose. Essential to the fulfillment of this purpose is a mutual recognition of institutional integrity, core values, professional values and standards of higher education, and individual human rights, along with an understanding of the respective roles of the several entities which constitute this educational organization.

Circumstances may arise at times, however, wherein a grievant —full-time, adjunct, or pro-rata—may question decisions which affect his/her professional role in the institution. To assist in the resolution of these matters, a series of guidelines for grievances is herein set forth.

Definitions

Ad Hoc Hearing Committee: A committee especially convened by the Faculty Grievance Committee should they call for additional review of a particular situation; their job is to investigate the matter thoroughly and then make a recommendation to all parties involved. Comprised of three tenured faculty members, the selection procedures are outlined below.

Faculty Grievance Committee: A group of tenured faculty members elected by the entire faculty body. Reviews complaints and determines one of several outcomes outlined below. Procedures for election follow below.

Grievance: Any disagreement between two parties resulting in the initiation of either informal or formal grievance procedures. A grievance identifies a complaint one party has against another party for some alleged wrongful action on the part of the second party.

Grievant: The party who initiates a grievance.

Types of Issues That Can Be Grieved

It is understood that *procedural* rather than *substantive* factors constitute appropriate areas of review, and the Faculty Grievance Committee will not attempt to substitute its judgment for that of the decision-maker(s) involved in the case.

Thus, the Faculty Grievance Committee will hear grievances concerning:

- 1) Allegations of violation of academic freedom resulting in: denial of tenure, promotion, or sabbatical leave; non-reappointment or disciplinary action.
- 2) Allegations of inadequate consideration resulting in: denial of tenure, promotion, or sabbatical leave, non-reappointment or dismissal, or termination of employment due to retrenchment.
- 3) Allegations of violations of *procedures* used in rendering decisions in: denial of tenure, promotion, or sabbatical leave or non-reappointment.

4) Disciplinary Action against the Faculty Member: a faculty member may elect to grieve oral and/or written warnings, or any other disciplinary measures taken. Note that the Committee's first decision is whether the complaint is appropriate and sufficiently serious to merit consideration.

In the event that a faculty member alleges impermissible discrimination resulting in denial of tenure, promotion, or sabbatical leave; non-reappointment; or disciplinary action, the Faculty Grievance Committee will refer the grievant to the Anti-Discrimination Policy to make certain that all procedures required by law are followed. Note, under that policy, tenured faculty members will be among those who review the case within the context of the investigation.

Should a grievant allege cause for grievance in any matter not identified in the above guidelines, the grievant may consult the Faculty Grievance Committee. In such circumstances, the Committee's first decision is whether the complaint is appropriate and sufficiently serious to merit consideration.

Persons Against Whom Grievances May be Directed

Fundamentally, a grievance may arise from an allegation of improper implementation of a procedure or process leading to a decision. The person(s) or body who perform(s) that procedure or process is (are) the subject(s) of the grievance. Thus, a grievant may direct a grievance against the person(s) or body responsible for the decision identified herein.

The decisions or actions of the Faculty Grievance Committee or an Ad Hoc Hearing Committee may not themselves be grieved.

Faculty Grievance Committee

Consisting of six tenured faculty members, the Faculty Grievance Committee is specifically charged with responsibility for resolving matters of grievance and appeal. Three members of the Faculty Grievance Committee will review each grievance: the Committee Chair and two other members of the Committee, to be determined by the Chair as outlined here. In choosing, consideration shall be given to the following issues:

- Any member of the Faculty Grievance Committee who has had any prior involvement in a case under consideration must notify the Chair and recuse him/herself.
- No members of the same department as the Grievant may review the complaint.
- If two members from one department are elected to the Faculty Grievance Committee, only one may review a Grievant's complaint.
- Given the above strictures, the Chair should strive to choose a review committee with representation from different colleges wherever possible.

Should the Faculty Grievance Committee Chair have prior involvement in a case, s/he should appoint a Chair pro-tem for that complaint only to oversee the complaint and appoint the other two members of the committee. The Chair may meet with the pro-tem Chair and his/her committee only to review or clarify committee rules/procedures and may not have any other input or involvement into the investigation/voting. Once the committee rules on a complaint, the

pro-tem Chair should provide the Faculty Grievance Committee Chair with the committee's decision and detailed rationale in writing. The Grievance Committee Chair will notify the Grievant and the decision-makers involved as per usual procedure.

The Faculty Senate conducts the election of this committee. To forestall conflicts of interest, faculty currently serving on the Rank and Tenure Committee or the Faculty Development Committee are not eligible for election to the Faculty Grievance Committee.

The term of each member extends for three years, with two people replaced each year. The Grievance Committee shall annually elect a chair-elect who will succeed the Chair. If a Chair cannot constitute a complaint review committee given the restrictions above, s/he is empowered to ask the Faculty Senate President to run an election for the purposes of finding sufficient people to review that complaint only.

Procedures

Unless noted below, no grievance may be filed without the initiation of this informal complaint procedure first.

Step One: Informal Procedures

- 1) A member of the faculty must discuss a complaint with the person or body responsible for the action to which the grievant takes exception in order to determine if a resolution is possible.
- 2) A complaint must be presented within ten (10) calendar days of the occurrence or discovery of the alleged violation.
- 3) If the grievance still exists after step one, the grievant initiates a consultation with the Vice President for Academic Affairs (VPAA) in order to try to resolve the matter.

Step Two: Formal Procedures

For all matters save those related to suspension or dismissal of a faculty member:

To pursue the matter beyond a meeting with the VPAA, the grievant must notify the Faculty Grievance Committee. (The grievant may consult the President of Faculty Senate for assistance in contacting the Faculty Grievance Committee Chair). The grievant shall provide the Faculty Grievance Committee Chair with a written statement setting forth in detail the nature of the grievance or appeal and identifying the person(s) or body against whom the grievance or appeal is directed. This document may also include a proposal for resolving the issue. A grievance must be filed within thirty (30) calendar days of the occurrence or discovery of the alleged violation.

In considering the grievance or appeal, the Faculty Grievance Committee will take the following steps:

- 1) The Committee Chair notifies the decision maker(s) that a grievance has been filed and requests a written statement describing the basis for the decision being appealed or grieved, as well as an account of any attempts made to settle the matter informally.

2) At any point, the Grievance Committee may request additional information in writing from the grievant and from the decision-maker(s). Note: all information gathered is solely for review by the Committee and is not to be shared with either party involved.

3) The Grievance Committee may consult with personnel they deem necessary to gather further relevant information, including the Office of Human Resources or the University attorneys.

4) Once all information is gathered, the Faculty Grievance Committee may take any of the following steps to resolve the issue:

A) They may communicate to the grievant and the decision maker(s) that the Committee finds against the grievant for any of the following reasons:

- 1) The grievance is improper or unsubstantial.
- 2) Insufficient time was allowed for its normal resolution.
- 3) There is no evidence of improper action on the part of the decision maker(s) which would constitute a legitimate grievance.

OR

B) They may find that they see merit in the grievant's complaint. In this case, the Committee will return the case to the decision maker(s) for reconsideration, together with a detailed rationale for their findings.

OR

C) The Committee may find it necessary to appoint a Mediator from the University to resolve the issue.

Note: the Mediator does not represent either party. Any party may object to the Mediator on the grounds of actual or apparent bias or conflict of interest and submit such objections to the Chair in writing. The Chair will review the objections and may replace the Mediator if that is deemed necessary.

- 1) The Mediator may consult the Offices of the Vice President for Academic Affairs or Human Resources on mediation procedure or other matters involved in the grievance.
- 2) The Mediator shall try to resolve the grievance within thirty (30) calendar days from his/her appointment. With the consent of both parties, the period of mediation may be extended for a short period of time. If a mutually accepted agreement is reached, or if the grievance is not resolved within the thirty (30) calendar days, the mediator will so advise the Faculty Grievance Committee Chair in writing.
- 3) If the Mediator is unsuccessful in effecting a resolution, the Faculty Grievance Chair will pass all evidence on to an Ad Hoc Hearing Committee.

OR

D) The Committee may find it appropriate to refer the grievance or appeal to an Ad Hoc Hearing Committee to investigate the matter further in a full formal hearing in cases of violation of academic freedom. Creation of the Ad Hoc Hearing Committee and its procedures are outlined below.

Procedures Regarding the Suspension or Dismissal of a Tenured Faculty Member

In the event that the President finds cause to suspend or dismiss a tenured faculty member (as outlined in the Progressive Discipline Policy), the Faculty Grievance Committee shall proceed as outlined below.

Notification of Suspension or Dismissal

According to the Progressive Discipline Policy, before moving to suspend a faculty member, the President will send the faculty member a written explanation of her decision to suspend, in which she will offer to convene the Faculty Grievance Committee. If the faculty member accepts the offer, the President will notify the Faculty Grievance Committee Chair and provide a written rationale outlining the reasons for the decision to suspend. In the case of dismissal, the President will automatically convene the Faculty Grievance Committee to review the matter, and will so notify the faculty member in her written notice of dismissal. The faculty member may decline the review and accept the dismissal. Otherwise, matters will proceed as below. All matters are kept confidential. As with suspension, the President will provide the Committee with a written rationale outlining the reasons to dismiss.

Procedures for Both Types of Issue

The Faculty Grievance Chair will select the hearing committee as outlined above and notify the faculty member in writing of A) the makeup of the committee, B) the 4 (four) relevant deadlines outlined below, and C) a request for the faculty member's response in writing to the administration's rationale for dismissal. The Faculty Grievance Chair will also notify the President of the makeup of the committee that will hear the matter.

If either the faculty member or the President has some objection to the faculty members selected for the Committee, s/he may elect to request a substitution without stating cause (up to two times). In that event, the Faculty Grievance Chair will appoint a replacement; should s/he run out of alternates, s/he may request that Faculty Senate run a special election. Both shall have up to 5 (five) days to make a challenge (Deadline 1).

The faculty member shall have up to 7 (seven) days to respond initially in writing (Deadline 2). In that letter, the faculty member should outline his/her response to the decision-maker and notify the Committee of any witnesses or documentation that will be supplied.

The Committee may meet as many times as they deem necessary. The Committee may request to speak with the faculty member or the administration and to consult other personnel as they deem necessary to gather further relevant information, including the Office of Human Resources or the University attorneys, and to gather whatever documentation they deem necessary. The faculty member and administration will also each have the opportunity to speak to the committee if desired, and to provide witnesses, documentation, etc. as desired.

The faculty member must be given a date by which all evidence and witnesses must have been presented, a date that will allow the Committee to deliberate all the relevant material yet still make its decision in a timely fashion (Deadline 3). Normally, the Committee will make its recommendation within at least 20 (twenty) days of being first convened (Deadline 4). Recognizing the seriousness of the situation for all parties involved, the Committee will strive to do all in its power to consider the matter in a timely, yet thorough fashion.

At the request of either the President or the faculty member, a representative of a responsible educational association will be permitted to attend the meetings as an observer.

Findings

If the Committee's decision is that there is no merit to the complaint against the faculty member, they shall recommend discontinuing the proceedings for suspension or dismissal. If the Committee finds that reason exists to question the fitness of the faculty member, they shall recommend either to continue the suspension or dismissal proceedings.

If the President agrees with the Committee's findings, she will notify in writing the Board of Trustees and the faculty member of the findings and her decision to accept. If the President chooses to reject the Committee's findings, she will provide the Committee and the faculty member a detailed rationale in writing for her decision.

The Committee's recommendation should be taken very seriously by the President, especially in the case of a unanimous vote as well as clearly, logically written findings. In that case, the administration should consider very carefully the possible repercussions of rejecting the faculty Committee's findings. If the Committee were split in its vote, with both sides making compelling arguments, the President would be more justified in choosing to reject the recommendation.

Note: the Faculty Grievance Committee will only be convened twice (i.e., once for suspension and once for dismissal) in the event that progressive discipline procedures have been instituted and failed, and that a reasonable amount of time has taken place between suspension and dismissal. In this event, the membership of the Committee may be similar or different, a determination of which is made by the Faculty Grievance Committee Chair, after consultation with the Faculty Senate Executive Council. In the rarer event of a serious breach of professional discipline and/or illegal activity, if the President elects to proceed immediately with dismissal procedures (not suspension) after meeting with the faculty member, then the Faculty Grievance Committee will meet to consider the appeal of the dismissal.

Ad Hoc Hearing Committee

Should the Grievance Committee deem it necessary to appoint an Ad Hoc Hearing Committee to investigate a case alleging a violation of academic freedom, the Chair shall notify the Faculty Senate President, who shall conduct an election for ten tenured candidates for the Ad Hoc Committee. The Faculty Senate Executive Council shall select three of these candidates to investigate the Complaint fully.

Each party shall have two challenges without stated cause regarding membership of the Ad Hoc Hearing Committee. No member of the Ad Hoc Hearing Committee shall have had any prior involvement in the case.

If the three-person Ad Hoc Hearing Committee cannot be chosen from the ten members of the standing committee, the Executive Council of the Faculty Senate is empowered to conduct a special election to obtain additional members.

The Ad Hoc Hearing Committee must select a chairperson.

Ad Hoc Hearing Procedures

- 1) The Ad Hoc Hearing Committee is empowered to gather information and documents specific to the case of the Grievant, conduct interviews, hold a hearing and take actions as are necessary to investigate the grievance to the extent that the law and University policy permit. The Ad Hoc Hearing Committee will provide recommendations in writing forty (40) calendar days from the date of its official appointment.
- 2) All Hearings are closed to anyone other than the parties and their advisors, members of the Ad Hoc Hearing Committee, and any witnesses invited to testify by the Committee. The hearing may be audio or video recorded and a written record will be maintained. The hearing is not a legal proceeding. At the beginning of the hearing, all procedures will be made known to the parties, and all information will be kept confidential.
- 3) Each party to the grievance may have one advisor during the hearing. The advisor may not participate in the hearing.
- 4) Strict rules of legal evidence will not be binding upon the Ad Hoc Hearing Committee and evidence of probative value in defining issues may be admitted.
- 5) The hearing record will be used exclusively as the basis for findings of fact and for arriving at a decision.
- 6) Upon reaching a decision on the issue and a recommendation for action, the Ad Hoc Hearing Committee will provide a summary written report to the petitioner, the person(s) named in the grievance, and the appropriate administrative officer and the President.
- 7) After receiving the recommendation of the Ad Hoc Hearing Committee, the appropriate administrative officer will review the recommendation and notify the Ad Hoc Hearing Committee and petitioner whether the recommendation has been accepted. If the recommendation of the Ad Hoc Hearing Committee is not accepted by the appropriate administrative officer, the administrative officer will provide a detailed written rationale to the Ad Hoc Hearing Committee and the faculty member.

The Committee's recommendation should be taken very seriously, especially in the case of a unanimous vote and clearly, logically written findings. In that case, the administrative officer should consider very carefully the possible repercussions of rejecting the faculty Committee's findings. If the Committee were split in its vote, with both sides making compelling arguments, the officer would be more justified in choosing to reject the recommendation.

- 8) No details relevant to the privacy of the participants in the case will be included in the notice from the Hearing Committee. Public statements and publicity about the case by the participants will be avoided until the proceedings have been completed, including consideration by the President.

Action by the President of the University

Following the recommendation of the Ad Hoc Hearing Committee, should the petitioner desire further consideration of the issue beyond the immediate administrative channels of the University, the President may be requested, within twenty calendar days, to review the case.

This review will be based on the record from the committee hearing and may provide opportunity for argument, oral or written, or both, by the principals. Then the President will then make the final decision.

Miscellaneous

Publicity

Public statements by the faculty member or others about possible or actual grievances should be avoided. The Faculty Grievance Committee must maintain complete confidentiality regarding all matters before them.

Responsibility for Expenses Incurred in Grievance and Appeal

Expenses incurred by the grievant are the responsibility of the individual. These include, but are not limited to, the following:

- Cost of an advisor.
- Travel expenses for advisor, witnesses, or others engaged by petitioner.
- Cost of preparing any documents and copies thereof.

Reporting

The Grievance Committee will make a brief summary report of its activities at the end of each academic year to the Faculty Senate. No details relevant to the privacy of the participants in any cases will be included in this report.

Withdrawal of a Grievance

The grievance can be withdrawn at any point in the process.

Non-Retaliation

Grievants will not be adversely affected for exercising their right to file a grievance, regardless of outcome. Similarly, neither committee members nor witnesses will suffer adverse effects as a result of their participation in the process. Anyone who violates this mandate can be subject to disciplinary action, up to and including dismissal.

Related Policies

Faculty Senate
Evaluation of Faculty
Promotion of Faculty
Tenure
Non-reappointment of Faculty Member
Progressive Discipline

Retrenchment of Faculty
Academic Freedom
Sabbatical Leave
Complaint Procedures for Non-faculty Employees

History of Policy – Faculty Grievances and Appeals

10/02/92 – Proposal returned to committee of Faculty Senate by College Committee on Policy
11/13/92 – Proposed policy dated 3/13/92, as amended, recommended by College Committee on Policy to the President
04/26/93 – Presidential approval affirmed with publication of the President’s Memo
07/01/93 – Reaffirmed with publication of the Faculty Manual 2.16
07/01/95 – Reaffirmed with publication of the Faculty Manual 2.16
03/20/98 - Revision proposed by Faculty Senate approved by the President of the University as recommended by the Policy Committee of the University
04/29/11 – Revision approved by the President of the University as recommended by the Policy Committee of the University.
05/07/14 – Revision approved by the President of the University as recommended by the Policy Committee of the University.

MARYWOOD UNIVERSITY
POLICIES AND PROCEDURES MANUAL

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