

1-13-1998

Faculty Hearing Committee on Grievances Bylaws and Operating Procedures

University of Dayton. Academic Senate

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Faculty Hearing Committee on Grievances Bylaws and Operating Procedures

As Adopted January 13, 1998
And Amended September 9, 1998
And Amended August, 2012

I. Area of competence

- A. The Faculty Hearing Committee on Grievances [hereinafter designated as “FHCG”] handles all grievances initiated by a University faculty member or instructional staff except those involving tenure, dismissal or academic freedom.
- B. The FHCG does not hear grievances concerning the termination, dismissal and/or failure to reappoint tenured or non-tenured (including part-time) faculty.
- C. Grievances concerning the termination, dismissal and/or failure to reappoint tenured or non-tenured faculty are heard by the Faculty Hearing Committee on Academic Freedom and Tenure.
- D. The FHCG hears grievances arising (a) from improprieties of conduct other than sexual harassment and (b) from matters such as salaries, assignment of space or other facilities, and assignment of teaching duties.
- E. If the issues in a case are such that it could be brought before both the Faculty Hearing Committee on Academic Freedom and Tenure and the Faculty Hearing Committee on Grievances, a case involving tenure must first be submitted to the FHC-AFT. At no time would the FHC-AFT and the FHC-G handle any complaints in the same case simultaneously.

II. Internal operating procedures

- A. The FHCG consists of 7 faculty members elected for staggered three-year terms and chosen from a list of full-time faculty; no more than two members shall be serving as departmental chair and no member shall hold an administrative position higher than departmental chair.
- B. The FHCG will meet during September of every academic year to:
 - 1. Elect a Chairperson and a Secretary; and
 - 2. Appoint a Procedural Advisor from outside the Committee
- C. The Associate Provost for Faculty and Administrative Affairs will call the first meeting of the FHCG at the beginning of the academic year. The Associate Provost will chair this meeting and will conduct the election for Chairperson of the FHCG. [Added: September 9, 1998.]

III. Definition of terms

- A. “Grievance” indicates a grievance that falls within the jurisdiction of the FHCG.
- B. “Grievant” denotes the faculty member initiating a grievance.
- C. “Respondent” denotes the department/member(s) of a department who are the object(s) of a grievance.
- D. “Faculty Mediator” denotes one of the mediators appointed and trained by the University.
- E. “Day” denotes a working day.
- F. “Preponderance of the evidence” means that, based on the evidence presented and the reasonable inferences from that evidence, a conclusion is more likely than not.
- G. “Executive session” denotes a meeting which is attended only by the members of the FHCG and their Procedural Advisor.
- H. “Faculty member” denotes one employed by the University of Dayton whose activities affect the educational function of the institution, who is affiliated with an academic department or the Library, and who has been granted faculty rank or is a member of the University’s instructional staff.
- I. “Faculty advisor” denotes a University of Dayton faculty member who serves as an advisor either to a grievant or to a respondent.
- J. “Rule” denotes a decision made by the FHCG based upon the vote of a simple majority of the members present and voting, if a quorum (i.e., at least four members) is present.

IV. **Initiating a grievance: step #1 (informal procedures)**

- A. The normal process for initiating a grievance is for the grievant to:
 - 1. Consult his/her chairperson;
 - 2. If the consultation with his/her chairperson does not resolve the matter, consult the dean of his/her division;
 - 3. If the consultation with his/her dean does not resolve the matter, consult with the Provost’s Office;
 - 4. If the consultation with the dean of his/her division and with the Associate Provost for Faculty and Administrative Affairs does not resolve the matter, the grievant will consult a Faculty Mediator. The grievant can obtain a list of Faculty Mediators from the Associate Provost for Faculty and Administrative Affairs.
 - 5. If the Faculty Mediator is unsuccessful in resolving the matter, the grievant may present a written petition to the FHCG, after which the grievance must proceed in accordance with the steps outlined in sections V and VI, below. Appendix A provides a form to be used in submitting a grievance to the FHCG.
- B. Grievances not initiated by following the entire process set out in section IV (A), above.¹

¹ See Option #2 in Appendix A.

1. The FHCG will not hear grievances that have not gone through the normal process of administrative review set out in section IV (A), above, unless the grievance articulates reasons why he/she declined to proceed through the administrative chain of review.
 - a. If the members of the FHCG find that the grievant's articulated reasons for not proceeding through the administrative chain of review constitute "good cause" for failing to follow the process set out in section IV(A), above, the FHCG will hear the grievance.
 - b. If the members of the FHCG find that the grievant's articulated reasons for not proceeding through the administrative chain of review do not constitute "good cause" for failing to follow the process set out in section IV(A), above, the FHCG will not hear the grievance until the grievant does complete that process. If the grievant refuses to complete the process set out in section IV (A) above, the FHCG will not hear the grievance. No appeal lies from this decision by the FHCG.
2. The FHCG strongly recommends that grievants consult a Faculty Mediator, as well as proceeding through the process of administrative review set out in section IV (A), above.
 - a. If a grievant does not consult a Faculty Mediator, he/she must provide the members of the FHCG with specific reasons why he/she declined to do so.
 - b. Unless the members of the FHCG find that a grievant had "good cause" for not consulting a Faculty Mediator, they will not hear the grievance.
 - (1) If a grievant does not explain why he/she did not consult a Faculty Mediator, the members of the FHCG will not hear the grievance.
 - (2) If a grievant explains why he/she did not consult a Faculty Mediator but the members of the FHCG find that explanation does not constitute "good cause" for failing to do so, the FHCG will not hear the grievance until the person consults a faculty mediator.
 - (3) Among the circumstances that can constitute "good cause" for failing to consult a Faculty Mediator is the grievant's objective, demonstrable belief that all available Faculty Mediators suffered from a conflict of interest which caused the grievant to conclude that consulting them about the matter would be futile.

C. Privilege for communications with Faculty Mediator

1. A privilege of confidentiality encompasses:
 - a. All conversations about the merits of a grievance involving the grievant, the respondent and the Faculty Mediator.

- b. All communications to the Faculty Mediator concerning the grievance that are made by the grievant and/or the respondent.
 - c. All communications concerning the grievance that the Faculty Mediator makes to the grievant and/or the respondent.
2. This privilege of confidentiality means that:
- a. Neither the grievant, the respondent nor the Faculty Mediator can be required to disclose to the FHCG what occurred during their conversations about the grievance.
 - b. Communications between/among the Faculty Mediator, the grievant, and/or the respondent cannot be introduced into evidence at a Grievance Hearing.
 - c. The Faculty Mediator cannot be called as a witness by the grievant, by the respondent or by the FHCG at a Grievance Hearing.

V. Initiating a grievance: step #2 (formal procedure)

- A. *Petition:* After a grievant has (i) completed the informal procedure set out in section IV (A), above, without resolving his/her grievance, or (ii) shown good cause for failing to initiate and complete that procedure, he/she can initiate a formal grievance by filing a written petition in the form attached as Appendix A to this document.
- B. *Filing:* The original petition plus seven copies of the petition must be filed with the Chairperson of the FHCG. The grievant files the petition by having the original and seven copies thereof delivered to the Chairperson at his/her campus office; the petitions can be delivered in person or by using any acceptable carrier (e.g., campus mail, U.S. Mail, Federal Express, etc.)
- C. *Distribution:* It is the Chairperson's responsibility to see that the copies of the petition and of all subsequent filings (e.g., the respondents answer, any amendments to the petition, etc.) are distributed and delivered to the members of the FHCG.
- D. *Amendment:* A grievant can amend his/her petition, or any part thereof, as a matter of right at any time before the Grievance Hearing and thereafter at the discretion of the FHCG.
- E. *Scheduling:* In convening meetings, a pre-hearing conference and a hearing on a grievance, the Chairperson should make every effort, within reasonable time limits, to accommodate the schedules of the members of the FHCG in order to ensure insofar as possible, that all members can attend.
- F. *Initial investigation:* Upon receiving a petition, the FHCG shall investigate and determine whether the petition warrants holding a hearing.

1. In conducting their initial investigation of a grievance, the FHCG shall meet and call in the grievant, who can be questioned by members of the FHCG. The grievant can be accompanied by his/her faculty advisor. If the members of the FHCG vote to do so, the FHCG can also call in and question the respondent(s).² If the FHCG desires to question the respondent(s), it shall first provide the respondent(s) with a brief oral summary of the allegations in the grievant's petition.
2. The purpose of this investigation is to determine whether the grievant's allegations present a *prima facie* case, i.e., are sufficiently grounded in fact and supported by applicable University policies and standards to warrant a hearing before the FHCG.
3. Once the FHCG has completed its initial investigation of a grievance, the members shall vote on whether to hold a hearing on the grievance. This vote can be taken at a meeting convened to conduct the initial investigation of a grievance or at a subsequent meeting convened for that purpose (in addition to or exclusive of other purposes).
 - a. If a majority of a quorum of the FHCG³ members vote to hold a hearing on the grievance, the matter proceeds as outlined below.
 - (1) The Chairperson will advise the grievant and the respondent(s), in writing, of the FHCG's decision.
 - (2) The Chairperson will also provide the respondent(s) with a copy of the grievant's petition, along with any supporting documents attached thereto, and advise the respondent(s) that they can file an answer to the petition in accordance with the procedures set out in section V (H) below.
 - b. If a majority of a quorum of the FHCG votes not to hold a hearing on the grievance, the matter is concluded.
 - (1) The Chairperson will advise the grievant and the respondent(s), in writing, of the FHCG's decision, briefly summarizing the reasons for that decision.
4. If the grievant discovers new evidence supporting the allegations that give rise to his/her grievance, the grievant can ask the FHCG to reconsider his/her request for a hearing. A grievant can do this only one time; the FHCG will not entertain additional requests to reconsider.
 - a. In addressing such a request, the FHCG proceeds as outlined above. That is, the grievance will be re-opened and a hearing granted if a majority of a quorum of the

² If the committee votes to call in and question the respondent(s), the grievant will not be present when the questioning is conducted. [Added: September 9, 1998]

³ This requires that at least three members out of at least four members attending the meeting vote to hold a hearing on the grievance.

FHCG⁴ members vote for that result; otherwise, the FHCG's earlier refusal to proceed stands as its final decision on the matter.

- b. In deciding whether to grant a grievant's request, the members of the FHCG will take into account the amount of time that elapsed between their denying the original request for a hearing and the grievant's seeking reconsideration of that denial.
 - c. The Chairperson will advise the grievant and the respondent(s), in writing, of the FHCG's decision, regardless of the outcome. If the FHCG voted to re-open the matter and grant a hearing, the Chairperson will also provide the respondent(s) with a copy of the grievant's petition, along with any supporting documents attached thereto, and advise the respondent(s) that they can file an answer in accordance with the procedures set out in section V (H) below.
- G. *Joining additional respondents:* At any time prior to the convening of a Hearing on the grievance, the FHCG can stipulate that additional persons be made respondents to a grievance. The FHCG will make such a stipulation only when it finds that the parties to be joined would be affected by a decision on the grievance and should, therefore, be allowed to participate in resolving it.
- H. *Respondent's Answer:* Upon receiving notice from the FHCG that a hearing will be held on a grievance, the respondent(s) may file a written answer to the grievance petition within ten days of receiving the notice and petition from the FHCG.
1. The original and seven copies of the answer must be filed at the office of the Chairperson of the FHCG. The grievant files the petition by having the original and seven copies thereof delivered to the Chairperson at his/her campus office; the petitions can be delivered in person or by using any acceptable carrier (e.g., Campus Mail, U.S. Mail, Federal Express, etc.)
 2. The answer shall admit or deny every allegation of the petition contested by the respondent. If the respondent is without information sufficient to form a belief as to the truth of any allegation contained in the petition, the answer shall so state. The answer should also contain a statement of any facts or circumstances that are alleged to constitute a defense to the allegations in the grievance petition.
 3. The respondent(s) can attach any supporting evidence on which they intend to rely to the answer.
 4. The answer or any part of it may be amended as a matter of right at any time before the first hearing and thereafter at the discretion of the FHCG.

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⁴ This requires that at least three members out of at least four members attending the meeting vote to hold a hearing on the grievance.

5. The FHCG shall, within ten days after the date of the filing of an answer or amended answer, but in any case no fewer than three days before the date set for hearing, serve a copy of the answer or amended answer on the grievant.
 6. The FHCG may proceed, notwithstanding any failure of the respondent(s) to file an answer within the time provided, to hold a hearing, and issue a report on the grievance.
- I. *Pre-hearing conference*: The purpose of the pre-hearing conference is to simplify and clarify issues as much as possible, provide for an exchange of evidence between the parties, set a date for the Hearing and resolve any other necessary matters.
1. Prior to the pre-hearing conference, the FHCG's Procedural Advisor will meet separately with the grievant and the respondent(s) to review their options and obligations with regard to the pre-hearing conference and the Hearing.
 2. The pre-hearing conference will be attended by the members of the FHCG, the grievant, the grievant's faculty advisor (if any), the respondent(s), the respondent(s) faculty advisor(s) (if any), and the FHCG's Procedural Advisor.
 3. At the pre-hearing conference, the parties will (insofar as possible):
 - a. Agree to uncontested facts;
 - b. Clarify contested issues;
 - c. Exchange documentary or other evidence that was not appended to the grievant's petition and/or to the respondent's answer;
 - d. Exchange the names of witnesses each side intends to call at the Hearing-along with providing the name of each witness it intends to call, each side should provide the opposing side with a brief summary as to what that witness' testimony will be;
 - e. Set a date for the Hearing which shall be (i) agreeable to both sides; and (ii) no sooner than 10 days after the pre-hearing conference;⁵
 - f. Announce the names of any FHCG members who have disqualified themselves from hearing this grievance;⁶
 - g. Permit each party to challenge one member of the FHCG;⁷
 - h. Decide whether the Hearing will be open or closed to the public;

⁵ In appropriate cases, if it is not possible to complete a hearing by May 15, the hearing can be carried over to the next academic year.

⁶ If these disqualifications, alone or in conjunction with the challenges allowed by section (3)(g), cause the available voting membership of the FHCG to fall below 5 members, the Faculty Election Committee will be contacted to determine who is eligible to replace the disqualified (and challenged) members.

⁷ If these challenges, alone or in conjunction with the disqualifications allowed by section (3)(f), cause the available voting membership of the FHCG to fall below 5 members, the Faculty Election Committee will be contacted to determine who is eligible to replace the challenged (and disqualified) members.

- i. Determine whether any representatives of responsible educational associations will be allowed to attend the Hearing-any party and the FHCG can invite such associations to attend as observers;
 - j. To resolve any other matters concerning the conduct of the Hearing in an attempt to make the Hearing as fair and expeditious as possible.
- J. *Hearing*: The Hearing shall be public unless the grievant and/or the respondent(s) requested, at the pre-hearing conference, that it be closed and the FHCG granted that request.
 1. Recording: The Secretary of the FHCG will see that an audio taped record of the Hearing is made and preserved by the FHCG, the costs of the recording to be borne by the Provost's Office.
 2. Procedural decisions: Whenever a procedural issue must be decided, the Chairperson shall poll the members of the FHCG attending the hearing for their views on the matter. The view expressed by a majority of the members prevails.
 3. Rules of Evidence: In conducting the Hearing, the parties shall not be bound by formal rules of evidence.
 - a. The FHCG shall rule upon whether evidence (including documents and testimony of witnesses) is admissible.
 - b. In making this determination, the FHCG shall consider the extent to which the proffered evidence:
 - (1) Is relevant to the issues involved in deciding the grievance;
 - (2) Is inflammatory or unduly prejudicial to any party;
 - (3) Is credible and/or reliable.
 4. Burden of proof: The grievant bears the burden of proving all of the facts essential to establishing his/her grievance by a preponderance of the evidence. The respondent bears the burden of proving any facts essential to establishing an affirmative defense which would absolve the respondent from liability by a preponderance of the evidence.
 5. Chairperson's statement: The Chairperson shall open the hearing by stating the issue that is before the FHCG and reporting on any stipulations which the parties entered into at the pre-hearing conference.
 6. Opening statement: Each party shall be given an opportunity to make an opening statement. Either side can waive that opportunity.
 7. Grievant's case: The grievant presents his/her case first, commencing after the parties have made or waived their opening statements.

- a. Either the grievant or the grievant's faculty advisor, if any, must take primary responsibility for presenting the grievant's case; the grievant and faculty advisor cannot jointly present the case.
 - b. In presenting his/her case, the grievant can introduce documents and other evidence and can call and question witnesses.
 - c. A witness must be examined either by the grievant or by his/her faculty advisor-both the grievant and his/her faculty advisor cannot examine the same witness.
 - d. After the grievant has finished questioning a witness, the respondent(s) may cross-examine the witness.
 - e. If the respondent(s) cross-examine a grievant's witness, the grievant or the grievant's faculty advisor who originally questioned the witness can, if he/she so desires, re-question the witness at the end of the cross-examination.
 - f. Any member of the FHCG can question a witness after the witness has been fully examined by both sides.
 - g. Any member of the FHCG can direct questions to the grievant and/or to the grievant's faculty advisor after the grievant has presented his/her case.
8. Respondent's case: When the grievant has concluded the presentation of his/her case, the respondent shall present his/her case following the same procedure set forth above for the presentation of the grievant's case. The grievant or the grievant's faculty advisor shall be entitled to cross-examine witnesses presented by the respondents.
 9. Rebuttal: After each side has concluded its presentation, either party can be allowed to present rebuttal evidence. A party desiring to do so must ask the FHCG for permission to introduce such evidence.
 10. Closing argument: After each side has finished presenting its case, including rebuttal evidence, if any, each party can make a closing argument, explaining why it should prevail on the merits.
 11. Adjournments: For good cause shown, the FHCG can grant an adjournment, with the Hearing to resume at a later date.
- K. *Deliberation*: After a Hearing has ended, the members of the FHCG who attended the Hearing will discuss the case in executive session.
1. The members of the FHCG will begin by discussing the grievance and the evidence presented at the Hearing.

2. If a majority of the members of the FHCG are dissatisfied with the evidence presented at the Hearing, the FHCG can end its executive session and reconvene the Hearing to call witnesses and/or collect evidence, as it deems necessary. If the FHCG reconvenes to hear testimony and/or receive evidence, both the grievant and the respondent must be notified in advance of the date and time on which the Hearing will reconvene, and both must be allowed to attend this session.
 3. The Chairperson will poll the members for their votes on the grievance. The position taken by a majority of the voting FHCG members prevails and becomes the decision of the FHCG. If the members of the FHCG cannot reach a decision at this time, they can delay the vote to a future meeting. If the members are deadlocked and cannot reach a majority decision, each side will draft a plurality opinion, as explained in paragraph 6, below.
 4. After voting on a grievance, the members of the FHCG will select one member to write a majority opinion for the FHCG which addresses the merits of the grievance.
 - a. The majority opinion should state the FHCG's finding of facts, based on the evidence presented, and the conclusions which the FHCG members have drawn from those facts.
 - b. The majority opinion should state the FHCG's ruling on the grievance and its recommendation, if any, for future action.
 - c. Any member of the FHCG can write a dissenting or concurring opinion.
 5. The Chairperson will circulate the majority opinion among the members of the FHCG for their comments. If necessary, the opinion will be revised to reflect comments offered by the members. When the majority opinion has been finalized, the Chairperson will advise all parties as to the FHCG's decision and will provide them with copies of the opinion.
 6. If the members of the FHCG are evenly divided and cannot reach a majority decision on a grievance, the two sides will each draft a plurality opinion. Each plurality will select one member to draft their plurality opinion. The Chairperson will circulate the opinions among the other members of the respective pluralities to obtain their comments. If necessary, the plurality opinions will be revised to reflect comments offered by the members. When the plurality opinions have been finalized, the Chairperson will advise all parties as to the FHCG's decision and will provide them with copies of the opinions.
 7. If the grievance does not involve faculty in the Office of the Provost, the Chairperson will send a copy of the opinion to the Provost; if the grievance does involve faculty in the Office of the Provost, the Chairperson will send a copy of the opinion to the President.
- L. *Post-Hearing procedure:* Within thirty days after receiving the opinion, the Provost (or the President) shall consult with appropriate administrators and issue a follow-up letter to the FHCG and the parties indicating what steps have been taken in response to the FHCG's findings and recommendations.

VI. Reports and Recommendations

- A. The FHCG may make recommendations to appropriate administrators and/or groups on campus (e.g., the Academic Senate) regarding policies and procedures that it believes the University should change or adopt.
- B. The Chairperson of the FHCG shall report annually to the full faculty and shall preserve the record of the hearing(s).
 - 1. The record shall be preserved in the Provost's Office for three years.
 - 2. After having been preserved in the Provost's Office for three years, the record shall be transferred to the University Archives.

VII. Amending Process

- A. The by-laws and internal operating procedures will be distributed to the members of the FHCG each year when the Associate Provost for Faculty and Administrative Affairs calls the first meeting of the FHCG. Each member should review the by-laws and internal operating procedures prior to the first meeting of the FHCG.
- B. Any member of the FHCG can propose an amendment to the FHCG's by-laws and internal operating procedures at any time.
- C. A proposed amendment must be ratified by a vote of a simple majority of the entire FHCG to be approved and go into effect.
- D. Amendments which have been approved by the FHCG only apply prospectively, i.e., to grievances initiated after they have been approved. Such amendments do not apply to grievances that were pending before the FHCG when they were ratified.
- E. When amendments are made to the by-laws and internal operating procedures, a copy of these amendments should be forwarded to the Executive Committee of the Academic Senate as a point of information. A copy of any amendments should also be sent to the Associate Provost for Faculty and Administrative Affairs to ensure that the Provost's Office can give potential grievants a current copy of the FHCG's by-laws and internal operating procedures.

Appendix A

GRIEVANCE PETITION

NAME OF GRIEVANT:

.....

COLLEGE OR UNIT:

DEPARTMENT:

CAMPUS ADDRESS:

CAMPUS PHONE NUMBER:

OFF-CAMPUS PHONE NUMBER:

OTHER ADDRESS TO WHICH MAILINGS PERTINENT TO THIS GRIEVANCE SHOULD BE SENT (IF APPLICABLE):

PREVIOUS STEPS TAKEN IN AN EFFORT TO RESOLVE THIS MATTER:

OPTION #1: DESCRIBE CONSULTATIONS WITH CHAIR, DEAN, PROVOST AND FACULTY MEDIATOR, GIVING DATES AND TIMES OF EACH CONSULTATION:

OPTION #2: EXPLAIN THE REASONS WHICH CONSTITUTE "GOOD CAUSE" FOR FAILING TO CONSULT WITH CHAIR, DEAN, PROVOST AND FACULTY MEDIATOR:

Section 1 – Nature and particulars of grievance

1. University Rule(s) or Regulation(s) Violated: _____

2. Statement of Grievance (include specific date(s) of act(s) or omission(s)) complained of (you may attach an additional sheet if necessary): _____

Attach to this petition copies of all documentary evidence (letters, memos, etc.) that, in your opinion, supports your grievance.

Section 2 – Remedy sought

State with specificity the remedy you seek, including any alternative remedies you would find acceptable: _____

Section 3 – Representation

I will be represented in this grievance by: (check one)

- I will represent myself.
 I will be represented by a University colleague.

Name of colleague: _____

Colleague's campus address: _____

Colleague's campus telephone number: _____

Section 4 – Filing and service

File the original plus seven copies of this grievance, including supporting evidence, with the Chairperson of the Faculty Hearing Committee on Grievances

Signature of Grievant

Date