

Missouri Western State University
Grievance Procedure for Faculty
Appendices
Approved: 06/20/2019

(Approved by the Board of Governors June 13, 1991)

PURPOSE: These procedures are intended to provide faculty members with a formal means of dispute resolution of those matters which directly and importantly impact a faculty member's professional or employment rights and interests, including employment status and rank. It is not the purpose of this procedure to address every matter of concern to individual faculty. Many concerns are best left to informal channels of dispute resolution.

Further, these procedures are established to provide faculty members aggrieved by substantial decisions affecting employment status and rank with a prompt hearing of their grievances and to afford all parties involved with due process. This formal means of dispute resolution is conducted by faculty peers, and it can lead to a Hearing Board decision that is an advisory opinion reported to the University President. Any appeals to the Board of Governors of the President's decision must first go through the faculty grievance process.

I. DEFINITIONS

- A. Grievance: A grievance is a claim regarding matters involving abridgment of substantial employment or professional interests or rights. Normally, grievances concern early warning status, nonrenewal of employment contracts, promotion and tenure but may include other matters. Specifically excluded from this definition are termination of employment other than nonrenewal of employment contract (i.e., cases of removal during the contract; such cases are governed by Mo. Rev. Stat. 174.150 and applicable procedures of the Board of Governors). Claims of employment discrimination are governed by the Grievance Procedure for Discrimination Complaints (see Policy Guide).
- B. Grievance Committee: A committee appointed by the Faculty Senate to handle faculty grievances under these procedures. The duties of this committee are identified under Section II.C.
- C. Grievant: A faculty member who, at the time of the act complained of, was employed on at least half-time teaching contract and who submits a timely written grievance to the Grievance Committee raising a matter determined to be grievance.
- D. Hearing Board: A three-member board selected from the Grievance Committee to hear evidence on a grievance not resolved by informal methods and to render findings and conclusions and a recommendation to the President of the University on those matters raised by the grievant.
- E. Respondent: The one person designated by the grievance who must respond to claims. In grievances involving performance review, tenure and promotion decisions, the Respondent should be the Provost and Vice President of Academic Affairs as the chief academic officer involved in these processes. Others may be identified in the grievance as parties implicated in actions leading to the filing of the grievance. The parties may be involved in a hearing board procedure but the Provost and Vice President of Academic Affairs remains the Respondent.
- F. Working Day: Weekdays, exclusive of holidays which are recognized by the university. Counting for any time period begins the working day after an action is taken or a document is received. The chair of the Grievance Committee shall have the authority to, at his/her discretion, count only days on which classes meet as working days.

II. THE GRIEVANCE COMMITTEE

This committee provides faculty members with a formal means of dispute resolution of those matters that directly and importantly impact a faculty member's professional or employment rights and interests, including employment status and rank. This formal means of dispute resolution is conducted by faculty peers, and it can lead to a hearing board decision that is an advisory opinion to the University president.

Composition

This committee is composed of nine faculty members, four from the College of Liberal Arts and Sciences, one from the School of Fine Arts, three from the College of Professional Studies, and one from the Craig School of Business. If possible, all members should be full professors or senior faculty no longer seeking promotion. A chair, a vice-chair and a secretary shall be selected by the committee and act on the committee's behalf in all administrative and procedural matters involving the handling of grievances. Chairpersons of academic departments shall be excluded from serving on the Grievance Committee.

Grievance Committee members serve staggered three-year terms. Replacements for appointees unable to complete their term of service shall be appointed as necessary in the way prescribed for all Faculty Senate committee replacements (see Faculty Senate Bylaw III, B, 6). Replacements should normally complete the terms of those they replace. A term of service on the Grievance Committee begins on August 1 and ends on July 31.

B. Duties:

1. To accept written grievances in a format consistent with the form attached to the Policy Guide Appendix: Grievance Procedure for Faculty and to serve a copy of that grievance upon the respondent in the grievance.
2. To determine whether the grievance is timely and whether the grievance raises a claim governed by the faculty grievance procedures. Such determination shall be made according to a majority vote of the committee officers.
3. To appoint, through action of its officers, both a chair for the hearing and a Panel of four of its members from whom the two additional hearing board members shall be selected. The officers shall resolve objections concerning Committee members sitting on the hearing board.
4. When acting as a hearing board, to conduct a hearing according to the procedure specified in the Policy Guide Appendix: Grievance Procedure for Faculty and produce as advisory opinion that is delivered to the University President.

C. Training for Members of the Grievance Committee: Newly appointed Grievance Committee members, the incoming Faculty Senate President, and the Faculty Senate Liaison are required to participate in an orientation session conducted by the continuing members of the Grievance Committee. Continuing members of the Grievance Committee may invite other faculty with relevant experience to assist in the training workshop.

D. Inclusion of Immediate Past Chair of the Grievance Committee as Ex Officio Grievance Committee Member: When a chair of the Grievance Committee is scheduled to rotate off the committee immediately after his or her term, the chair will remain an Ex Officio Grievance Committee member for one additional year. As an Ex Officio member, the past chair is not to be involved in grievance cases but can be consulted about the grievance process by members of the Grievance Committee or potential grievants.

E. Duties

1. To accept written grievances in a form consistent with the form attached to these procedures as Attachment 1 and to serve a copy of that grievance upon the Respondents in the grievance.
2. To determine whether the grievance is timely or whether the grievance raises a claim governed by these faculty grievance procedures. Such determination shall be made according to a majority vote of the committee officers.
3. If the grievance is judged by the officers to be a claim governed by these Faculty Grievance procedures, the officers shall appoint one of its members as chair of the Hearing Board. In the event of a split vote of the officers determining that a claim is governed by these Faculty Grievance procedures, that person appointed as chair of the Hearing Board shall be a member of the majority. The officers shall also appoint a panel of four of the Grievance Committee members who are not officers as a panel from whom two additional members of the Hearing Board shall be selected. The officers shall resolve objections concerning Committee members sitting on the Hearing Board.

III. HEARING BOARD

A. Composition and Selection

1. A Hearing Board consists of three members: A chair who is a Grievance Committee officer and two additional members who will be selected from a panel of four submitted to the parties by the Grievance Committee. The Grievant and Respondent shall meet with the Chair of the Grievance Committee or its designee and each shall strike one name from the panel. The remaining two panel members and the appointed chairing Grievance Committee officer will constitute the Hearing Board for that grievance.

B. Duties

1. To conduct a pre-hearing conference with the parties to define the issues to be resolved at hearing.
2. To establish a date for hearing and advise the parties of the time and place of such hearing.
3. To rule upon the parties' written requests for discovery and extensions of time.

4. To conduct a hearing on the grievance and to accept and consider the evidence properly presented to the Hearing Board, and upon the conclusions of that evidence and the arguments of the parties, to issue written findings and conclusions and recommendations to the President of the University.

IV. PROCESSING OF THE GRIEVANCE

A. Initiation of a Grievance

1. Form: Grievances under these procedures shall be initiated by written grievance form presented in substantial conformity with Attachment 1.
2. Submission: Written grievance forms shall be presented to the Chair of the Grievance Committee.
3. Timeliness: A written grievance form must be submitted to the Chair of the Grievance Committee within 30 calendar days after the faculty member discovers the act or omission which is the subject of the grievance. (June 1997)

B. Screening Process

1. Upon receipt of a grievance, the Chair and other officers of the Grievance Committee shall review the grievance form to determine that the form is complete, that the grievance is timely and that it asserts a claim which is subject to these grievance procedures. Deficiencies noted by the Chair and other officers shall be communicated to the Grievant who may at that point elect to withdraw the grievance or to provide clarification as requested by the Chair and officers. A party who withdraws a grievance is not barred from seeking further redress within regular administrative channels. If the officers of the Grievance Committee determine that a grievance claim is deficient, it will be returned to the faculty member for revision or resubmission. The faculty member will have 30 calendar days or the remainder of the time allowed for submission of a grievance as specified in paragraph IV.A.3, whichever is greater. This time period may be extended by the Chairperson upon a showing of just cause by the grievant. (July 1992)
2. The chair of the Grievance Committee shall provide the claimant with a signed and dated verification acknowledging receipt of the Faculty Grievance Form; this date shall be the date used for calculating subsequent deadlines. The faculty member must use the Faculty Grievance Claim Form attached located at the end of these procedures. This claim should be a concise statement of the nature of the faculty member's claim. It should not be a detailed statement of evidence and arguments supporting the claim. Any documents or arguments appended to the claim form will be considered by the officers of the Grievance Committee solely for the purpose of determining the appropriateness and timeliness of the claim. (July 1992)
3. Within five (5) working days after receipt of the grievance (note definition concerning counting in Section I.F.), the Chair of the Grievance Committee shall cause copies of the grievance and any documents or other evidence offered in support of the grievance to be delivered to the Respondent named in the charge.
4. Within (5) working days after receipt of the grievance, the Respondent shall submit to the Chair any written objections to the timeliness or subject matter of the grievance. At this stage, respondent is not required to respond to the merits of the grievance and the officers of the Grievance Committee shall not rule on matters raised by the respondent that address the evidentiary merits of the claim and do not address issues of timeliness and appropriateness of the subject matter of the grievance. A copy of such objections shall be served upon the Grievant who will have three (3) working days thereafter to respond in writing to the objection. (July 1992)
5. Within five (5) working days after the receipt of any response to the objection by the Grievant, the Chair and other officers of the Grievance Committee shall by a majority vote determine whether the grievance is timely and proper and notify the parties. The decision of the committee on whether the grievance is timely and proper is final.
6. After the lapse of five (5) working days following the service of the grievance on the Respondent, and in the event the Respondent has not filed any written objections with the grievance committee to the timeliness or subject matter of the grievance, the grievance committee shall within five (5) working days thereafter, or within ten (10) working days following service of the grievance upon the Respondent, enter its ruling on the timeliness and propriety of the grievance and notify the parties. Having received no objections from the Respondent, the committee may assume that the Respondent concurs that the grievance is timely and concerns an issue which is properly the subject of this grievance procedure. Again, the decision of the committee on this issue is final.

C. Response to the Grievance

1. Within ten (10) working days after notice of the grievance committee's ruling on procedural issues of timeliness or appropriateness of the grievance or within ten (10) working days after the expiration of the period for raising objections, if no objection is raised, the Respondent named in the grievance shall designate the person or persons who will respond to the merits of the grievance by written designation filed with the Chair of the Grievance Committee with a copy served upon the Grievant.
2. Within this same period, the designated Respondent shall also respond in writing to the allegations contained in the grievance, admitting those matters over which no dispute exists, and denying those matters which are disputed. The Respondent is not required to submit any supporting evidence or arguments relating to the substance of the grievant's claim. Documents, witness statements or other evidence will be identified to the Hearing Board when it conducts a prehearing conference as specified in Section V.D.1. (July 1992)

D. Extension of Deadlines

The time periods provided in these rules may be extended upon a written request showing good cause for that extension. The motion must be submitted to and approved by the Grievance Committee or Hearing Board, depending on the stage of the proceeding. A first request for extension of time shall be liberally construed. Subsequent requests for extension of time by a party shall be more strictly construed.

V. HEARING PROCEDURES

A. Documentation of Review Process

All communications concerning the hearing process should be in writing. Any notice, objection to procedure, ruling on procedure or other communication of Hearing Board or the parties to this process become part of the written record.

B. Selection of the Hearing Board

1. Objections to Grievance Committee members on the basis of bias or prejudice: Within five (5) working days after receipt of the designation and response of the respondent, any party objecting because of bias or prejudice to any member of the committee sitting on the Hearing Board shall submit those objections in writing to the Chair, with such objections stating the basis for the belief of bias or prejudice. Committee members may be excused from a panel. Objections as to bias or prejudice will be resolved by majority vote of the officers of the committee and this decision is final.
2. After any objections have been resolved, the Chair shall prepare and provide a written list of four Grievance Committee members to the parties as the Hearing Panel. The Grievant and Respondent shall then meet with the Chair of the Grievance Committee and each party will be permitted to strike one name from the list. The remaining two panel members and the appointed chairing Grievance Committee officer shall serve as the Hearing Board for the grievance. Once a Hearing Board is selected, members are expected to continue in service (even though a committee term may come to a conclusion) until the conclusion of the hearing. In the unusual event that a member of the Hearing Board cannot complete a hearing, the chairperson and officers of the Grievance Committee shall work out an arrangement satisfactory to all parties to appoint a new Hearing Board member and restart the hearing process. This process should be completed within five (5) working days after the designation and response of the respondent.
3. In consultation with the parties, and if possible, the Hearing Board, the Chair of the committee shall set the grievance for hearing on a date not less than ten (10) nor more than twenty (20) working days from date of the meeting at which the Hearing Board is selected.
4. Selection of Chair of Hearing Board: The three members of the Hearing Board shall immediately elect from their numbers a Chair who will be presiding officer of the Hearing Board.
5. Extension of Time for Hearing: Although the hearing shall conducted not less than ten (10) nor more than twenty (20) working days from the date the Chair of the Committee receives the designation of a respondent and the respondent's response, this period may be extended for a period not to exceed 30 working days upon motion to the Hearing Board and only upon good cause shown. Extensions greater than thirty (30) working days will be permitted only in the highly unusual circumstance such as disability of a party or critical witness.

C. Prehearing Procedures

1. At least five (5) working days before the date set for Hearing, the Hearing Board shall conduct a prehearing conference with the parties and their advisors, if any. At this conference the parties will:
 - a. exchange lists if witnesses expected to be called at the hearing.

- b. exchange lists of those documents expected to be offered at the hearing and exchange copies of such documents.
 - c. attempt to enter into stipulations of undisputed facts.
 - d. attempt to define the precise issues remaining to be addressed by the Hearing Board.
 - e. discuss prehearing resolution of the grievance.
- 2. Witnesses and exhibits not identified at the prehearing conference will not be permitted to testify or be admitted at the hearing, respectively, unless the Hearing Board so permits upon a showing of good cause.
- 3. By written request made to the Hearing Board, a party may seek to review and copy documents or other tangible items which are in the custody or control of their opponent. Such requests must be made prior to or at the prehearing conference, and the Hearing Board will make its ruling on these requests at the conference. The decisions of the Hearing Board on these issues are final.
- 4. The Chair of the Grievance Committee shall gather all official pre-hearing documentation concerning the parties to this grievance action and place it in a notebook to be given to the Hearing Board Chair prior to the prehearing. Any official prehearing documentation from either party addressing objections on the basis of bias or prejudice to specific Grievance Committee Members sitting on the Hearing Board shall not be included in the Hearing Board Chair's notebook; however, all such materials will be a part of the Grievance Record to be maintained in the Dispute Resolution Records Depository as provided in Article VII of the Faculty Grievance Procedure. (June 1997)

D. Advisors

- 1. Each party may be advised by a person chosen by the party in the grievance process. Each party has a right to consult an attorney or other advisor and that attorney or other advisor can assist them in preparing material and accompany them to a hearing. The advisor who will be present in the hearing (including legal counsel or another person) must be disclosed in writing to the Grievance Committee, Hearing Board and adverse party as soon as the advisor has been identified.
- 2. Delivery of all documents and notices as required in these procedures shall be made to both parties' advisors upon request made to the Grievance Committee Chairperson.

E. Closed Hearings

- 1. Hearings are closed and not open to the public and only the Hearing Board, the parties and their advisors, witnesses while testifying, other parties who are not the Respondent but who are named in a grievance and counsel to the Hearing Board, if one shall be employed for that purpose, shall be permitted to be in attendance during the hearing.

F. Order and Allocation of Proof

- 1. In any grievance arising from early warning status or nonrenewal of an employment contract, the burden of persuasion is upon the Respondent to demonstrate that the action taken was for good reason. In all other grievances, the burden of persuasion is upon the Grievant to demonstrate by a preponderance of the evidence that the action complained of was improper or unwarranted.
- 2. The Hearing Board is responsible for conducting hearings and this includes assuring that there is a balanced, focused and circumscribed discussion of germane issues. The Grievant, Respondent and any advisors, including attorneys, serve the Hearing Board inquiry. The Hearing Board chair and members will direct the inquiry and may ask questions. The Hearing Board chair will direct each party's opportunity to address issues and witnesses. The Hearing Board process is to be conducted in a manner that allows for a Grievant or a Respondent to consult his/her attorney or non-attorney advisor. Advisors, including attorneys, are present to provide advice but will not be called upon to speak for either the Grievant or the Respondent at the hearing. The order of hearing will be as follows:
 - a. The Hearing Board chair will direct each party to make a brief opening statement, with the party having the burden of persuasion going first.
 - b. The Hearing Board chair will direct the party having the burden of persuasion to present its evidence.

- c. The Hearing Board chair will direct the party not having the burden of persuasion to present its evidence.
 - d. The Hearing Board chair will direct the party having the burden of persuasion to present rebuttal evidence.
 - e. The Hearing Board chair will direct each side to make a brief closing statement, with the party having the burden going first.
3. During the hearing, the Hearing Board chair may allow a party (upon advice of an attorney or other advisor) to question testimony provided by a witness or other parties. Members of the Hearing Board may also question witnesses or other parties.
 4. Formal rules of evidence do not apply. The Hearing Board may accept all evidence which it deems relevant to the grievance and not tending to prove the same point that other evidence has already been offered to prove.
 5. To facilitate the hearing process, the chair may impose reasonable time and hearing conduct restrictions.
 6. A tape recorded record of the entire hearing is to be maintained and become a part of the official record of the Grievance. A copy of the tapes will be provided to both parties if requested in writing from the Hearing Board, with each party bearing the cost of reproduction of those tapes.

G. Decision of Hearing Board

1. Within 10 working days after the conclusion of the hearing, the Hearing Board shall issue a written decision based upon the evidence as a whole. This written decision shall be directed to the President of the University, with copies simultaneously provided to the parties, and shall contain the following items:
 - a. A summary of the nature of the claim and the evidence received.
 - b. The specific findings and conclusions of the Hearing Board which shall include a determination of whether the grievance has any merit.
 - c. If appropriate, a recommendation to the President.
 - d. The record of the grievance proceedings, including exhibits, objections, rulings and other written communications, shall be available for review by the president and the Board of Governors.
2. The Hearing Board's decision is limited to those issues presented by the grievance and those issues as they were further defined during the prehearing conference. (July 1992)

VI. ACTION BY PRESIDENT

- A. Within 15 working days after receipt of the decision of the Hearing Board, the President shall simultaneously advise the parties in writing of his or her decision on the grievance.

VII. APPEAL TO THE BOARD OF GOVERNORS

- A. A Grievant who desires to appeal the decision of the President shall do so to the President of the Board of Governors with 15 working days. The appeal shall be handled in the manner prescribed by the rules and regulations of the Board of Governors. The Board of Governors' decision shall be final and conclude the grievance proceedings if not terminated previously.

VIII. GRIEVANCE RECORDS

- A. All documents and records, including the recording made at the hearing, shall be gathered by the Grievance Committee after the Hearing Board has rendered its decision on the Grievance, or at such other time as the grievance proceeding is terminated.
- B. All records generated during the course of the Grievance are to be submitted to the Faculty Senate President and Vice President for Academic Affairs to deposit and maintain in the Dispute Resolution Records Depository. The Dispute Records Depository (locking file cabinet) shall be maintained in the Vice President for Academic Affairs Office. The key for said depository shall be maintained by the President of the Faculty Senate. Records closed after the conclusion of the proceedings related to a grievance shall be kept in the depository for a period of six (6) years and no longer. Records shall be destroyed under the direction of the Chair of the Grievance Committee.

- C. Documents in the Dispute Resolution Records Depository shall be available only to the Hearing Board where prior claims are believed germane to the present action. If the Grievant or the Respondent wish to have access to a closed file, a request to that effect must be made in writing to the Hearing Board for decision. The decision of the Hearing Board will be final. Access to closed files must be provided to both parties to the present Grievance.
- D. Other than described in the preceding paragraph, these records are deemed to be closed records and unavailable except by process of law.

Time line: All references to time are to working days (according to section 1.F.). Counting begins on the day after an action has been taken or a document has been received.

5 days	from filing of grievance for committee to deliver copies to respondent.
5 days	from receipt of grievance by respondent to submit an written objections regarding timeliness or subject matter.
3 days	from filing of objections for the grievant to respond to objections.
5 days	from filing of greivant's response for officers of committee to rule on the issue of timeliness or subject matter.
10 days	from decision on procedural objections for respondent to respond to the substantive allegations in the grievance.
5 days	from response of respondent to substantive allegations to object to members of the Grievance committee on the basis of bias or prejudice.
5 days	from the Committee's ruling on objections to bias for the parties to meet with the chair of Grievance Committee and select hearing board from a panel of 5.
10 to 20 days	from the meeting of the Committee Chair and the parties to schedule a date for the hearing. Section V.B.5 provides for an extension of time of up to 30 days upon showing of good cause.
5 days minimum	prehearing conference must be conducted at least five (5) days before the scheduled hearing.
10 days maximum	from the conclusion of the hearing, the Hearing Board will render a written decision.
15 days maximum	from receipt of written decision by the President of the University, the President shall advise the parties in writing of his or her decision on the grievance.

Faculty Grievance Claim Form

Concisely identify the issues and events that give rise to this claim. A clear expression of your claim will help the Grievance Committee understand and fairly assess your claim. To the best of your ability, include all of the following:

- a. Names and positions of all of the people involved.
- b. Dates of all actions
- c. A chronological sequence of events.
- d. Identify all documents that you feel are relevant (you may wish to attach a list).
- e. If possible, identify the primary person or persons responsible for the action or the person or persons who would be expected to respond to the claim.

FACULTY GRIEVANCE CLAIM CHECKLIST

_____ Claim of: _____

_____ Date Grievance Committee received properly completed complaint (Faculty Grievance Claim Form)

Signature of Grievance Committee chairperson

_____ Date verification of receipt of Faculty Grievance Claim Form

_____ Date Grievance delivered to Respondent (within 5 working days of receipt of grievance)

_____ Date of receipt of Respondent(s) objections to the grievance

_____ Date of delivery of Respondent(s) objections to Grievant

_____ Date of receipt of Grievant's response to Respondent(s) objections.

_____ Date of ruling of Grievance Committee on issues of timeliness and propriety of Grievance (5 working days after notice to Respondent where an objection is made or 10 working days after notice to Respondent if no objection is made.)

_____ Designation by Respondent(s) of persons who will respond to merits of Grievance.

Name of Respondent's designee: _____

_____ Date Grievance Hearing Board selected.

Name of Hearing Board Chairperson: _____

_____ Date notice of hearing issued.

_____ Date of Hearing (no sooner than 10 working days after notice issued unless both parties agree in writing).

_____ Date of prehearing conference (at least 5 working days before hearing)

_____ Date of Hearing Board's written decision delivered to parties.

_____ Date of appeal to President of the University.

_____ Date file closed