

40-12 Complaints and Grievances

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1. **Purpose.** The purpose of this policy and procedures is to ensure compliance with AGP&P, 15-1, Bill of Rights and Responsibilities for all Members of the System. The procedures are designed to provide prompt, efficient and equitable means of resolving grievances and complaints.
2. **Policy.** This policy and procedures established in furtherance of that purpose is as follows:
 - A. Complaints and grievances should be resolved equitably at the lowest level of management possible. Every effort shall be made by all parties to expedite resolution of a grievance or complaint.
 - B. Complaints and grievances should protect the rights of members of the System community and the System's authority to manage its members.
 - C. The complaint and grievance procedures are not to be confused or commingled with disciplinary or termination procedures, which are initiated on behalf of the System pursuant to its rights to manage, discipline and discharge its members. If an employee subject to discipline or termination brings a charge of improper, unfair, or other grievable treatment as a result of the disciplinary process, Human Resources will conduct an investigation into the matter.
 - D. The complaint and grievance procedures are not to be confused or comingled with performance evaluation procedures (FEC, Annual, Probationary, etc.) as there are already appeal mechanisms in place. If an employee subject to an unfavorable review brings a charge of improper, unfair, or other grievable treatment as a result of the evaluation process, Human Resources will conduct an investigation into the matter.
 - E. Neither the System nor any System employee shall retaliate in any way against any member of the System who uses the complaint or grievance procedures in good faith. Persons retaliating shall be subject to appropriate disciplinary action.
 - F. All parties involved in complaints or grievances shall have equal rights in the procedures.
 - G. Insofar as is practical, the System shall respect the privacy of those involved in the complaint or grievance process. Persons involved in a complaint or grievance should disclose information pertaining to the complaint or grievance only on a "need to know" basis.

The foregoing purpose and policy is implemented by the following.

Procedures

3. Definitions.

- A. A "complaint" is a charge of improper or unfair treatment by another member of the System community. A complaint is a less formal process that does not involve a hearing. The process for filing a complaint by System faculty and staff is described in Section 5, below. Students wishing to file a complaint may seek assistance at the office of Student Affairs and do not fall under the scope of this policy. Students or student employees wishing to file a complaint about

a faculty or staff member may speak to Human Resources who will investigate the issue. Also see the Student Code of Conduct.

- B. A "grievance" is any of the following:
- (1) An allegation by a faculty or staff member that there has been a violation, misinterpretation or improper application of the terms and conditions of any System handbook or other regulation, policy or procedure applicable to the member.
 - (2) An allegation by a faculty or staff member regarding improper, arbitrary or discriminatory application of System, campus and/or department policies and practices relating to terms and conditions of the grievant's employment.
 - (3) An allegation that a member of the faculty or staff has engaged in improper conduct in violation of a state or federal statute or regulation.
 - (4) An allegation of a dispute between or among System faculty and/or staff that relates to their employment, the resolution of which would benefit the System and campus and further the Systems missions. This is not intended to include petty personality conflicts.
- C. A person making any of the above allegations shall be called a "grievant" for purposes of this procedure.
- D. Any other person named in the grievance shall be called a "respondent."
- E. The collective reference to all those involved in the grievance shall be the "parties."
- F. The term "working days" as used in these procedures shall mean those days when the campus is open for business (Monday through Friday) exclusive of System and/or campus recognized holidays or closures. During recesses exceeding two (2) consecutive days, the processing of grievances shall be held in abeyance until the recess is over unless all parties agree to proceed. If any party has extenuating circumstances which would not allow for meeting a deadline, all parties must be notified and the HR Director shall have the authority to set new timelines.
- G. Each System campus shall identify one person from the Office of Human Resources to act as the grievance facilitator, who in all instances serves in a neutral role and provides assistance to employees, supervisors, managers and faculty in resolving work-related issues or problems. The director of Human Resources can serve as a backup grievance facilitator or assign another HR staff member if the grievance facilitator is unavailable.

4. Administration.

- A. This policy and its procedures shall be administered by the ENMU System director of Human Resources (SDHR). This policy and procedures are designed to resolve grievances and complaints of faculty and staff.
- B. It is recognized that there is some overlap between problems that should be raised as "complaints" and those that should be raised as "grievances," It is also recognized that certain types of problems might properly be raised with as a "complaint" or as a "grievance." If a given problem meets the definition for both a complaint and a grievance, then the aggrieved party has the option to bring it as one or the other. However, an

aggrieved party may not seek redress of a particular problem both as a complaint and as a grievance and the aggrieved party will be bound by his or her initial election.

- C. This policy shall not prohibit Human Resources from investigating allegations of unlawful conduct or from taking appropriate disciplinary measures at any time, including during the complaint or grievance process.
- 5. Complaints.** Complaints about perceived improper or unfair treatment by another member of the System community are handled informally.
- A. The complaint should be brought to the employee's supervisor, who will document the issue and the complainant's desired resolution and confirm this in writing to the complainant. If the complaint is about the immediate supervisor, the complaint may go to the next level administrator.
- B. If there is no resolution of the complaint on this initial level, the complainant may appeal to next level supervisor (or to the area executive administrator, if that is the next level), who will document the complaint and desired resolution and confirm this in writing to the complainant.
- C. The next level supervisor may ask the complainant and the respondent(s) again to attempt to resolve the dispute. The next level supervisor may meet with the parties together or separately to achieve a resolution. Any party to the complaint may seek assistance from the Office of Human Resources' grievance facilitator, who remains a neutral party in all proceedings.
- D. Once the next level supervisor has fully investigated the complaint, he or she will meet with the grievant with his or her final resolution.
- E. Upon receiving notice of this resolution, the complainant has the option of appealing to the chancellor or branch community college president within five (5) working days of receiving the notice. The decision of the chancellor or branch community college president is final.
- 6. Grievances.** Allegations of improper, arbitrary or unfair application of any handbook, regulation, policy or procedure are handled through the procedures and processes outlined below.
- A. Grievance Committees.** Each year by September 1, faculty and staff constituency groups shall each elect a grievance committee of five (5) members and two (2) alternates to which any grievance from one of their members may be submitted. To hear a grievance, a grievance committee shall consist of not fewer than three (3) nor more than five (5) members. A chair will be selected by the sitting committee for each grievance.
- B. Assisting the Grievant.** The grievant may seek assistance from the designated grievance facilitator to assist with the grievance procedures. The grievant may also select a campus employee to serve as an advisor. Because the complaint and grievance policy and procedures are not considered to be legal or judicial processes, members of the System community shall not have legal representation during this grievance process.
- C. Phases of the Grievance Process.** There are four phases of the grievance process. These phases are Initial, Formal, Peer Review (optional) and Appeal.
- (1) Phase 1—Initial

- a. The grievant shall present the grievance to the immediate supervisor. (If the grievance is with the immediate supervisor, the grievant may present the grievance to the next level supervisor or to the area executive administrator, if that is the next level).
 - b. The supervisor will document the presentation, consider the issue and provide the grievant with a written response within five (5) working days. Parties may be called to meet together in this process to come to a desired resolution if the supervisor deems it necessary to resolve the grievance. If the grievance is resolved, the process ends. If the grievance is still unresolved, and all parties and appropriate System officials have exhausted all attempts to resolve the grievance informally, the employee has a maximum of ten (10) working days after receipt of the written response to file a written grievance with the grievance facilitator.
- (2) Phase 2--Formal. If there is no resolution at the informal (phase one) level, the grievant proceeds to the second phase, formal grievance.
- a. The grievant shall file a written grievance with the grievance facilitator, including the "Statement of Grievance or Complaint" form (GR1). The grievant may seek assistance in the preparation of this document and throughout this process by the grievance facilitator.
 - b. Upon receipt of the written grievance, the grievance facilitator will notify all parties within five (5) working days and initiate the "Grievance Chronology" form (GR2). The grievance facilitator will then arrange a meeting with the grievant and respondent(s) and attempt to mediate a mutually acceptable resolution. The grievance facilitator may seek assistance from the HR Director for the mediation. The grievant may request the presence of another employee to serve as an advisor and must notify the grievance facilitator two working days before the mediation. If the grievant requests to have an advisor the respondent shall be given the same courtesy. If a resolution that is satisfactory to the grievant is reached, the grievance facilitator will consult with the area executive administrator about the proposed resolution. If the resolution is acceptable to all parties and the area executive administrator, then the formal grievance process is completed.
 - c. If the grievance is not resolved, the grievant has five (5) working days to request peer review by the grievance committee of his or her constituency or to proceed directly to the final phase (see Phase 4 below). If the grievant wishes a peer review, the grievance facilitator will forward the request for a hearing, with all information of the grievance, to the chair of the appropriate grievance committee and provide guidance for the committee's review process.
- (3) Phase 3--Peer Review by Constituency Grievance Committee (Optional).
- a. The grievance committee will convene for the peer review as soon as possible but within fifteen (15) working days of the request. Within three (3) working days of the scheduled peer review, parties to the grievance must each provide the grievance facilitator with the following:

- i. A list of witnesses (only those witnesses may speak at the peer review unless the committee gives permission for additional witnesses to speak),
- ii. The name of the advisor each party will bring to the peer review, and
- iii. Two identical copies of evidence. One for the other party to the grievance and one for the peer review grievance committee.

The grievance facilitator will distribute the information to all parties. Only this evidence may be used in the peer review unless the committee gives permission to the parties to introduce additional evidence. The parties and the peer review committee shall be given the copies one business day before the peer review. The peer review committee shall receive their copy one day before the review and can meet to discuss the evidence documents if they so choose.

- b. During the peer review, the committee will hear testimony from each party and review evidence relevant to the grievance in the following order:
 - i. The grievance committee chair presents the subject of the grievance.
 - ii. The grievant presents his or her case, evidence and witnesses.
 - iii. The respondent(s) presents his or her case, evidence and witnesses.
 - iv. At the discretion of the committee chair, follow-up responses or clarification may be allowed. During this phase, the committee chair will have an opportunity to ask questions on behalf of the committee to either party.
 - v. Final statements will be made by the grievant and respondent.

The hearing will be recorded and will be part of the permanent record kept by the grievance facilitator for five (5) years after all appeals have concluded.

- c. Following its deliberations, the committee will report its findings and recommendations within five (5) working days to the grievant, grievant's executive administrator and the respondent.
- d. After receiving the recommendation, reviewing the testimony and evidence and considering the committee's recommendation, the executive administrator will notify the grievant and respondent within five (5) working days of his or her final decision, which is subject to presidential review, if appealed by either party. The area executive administrator shall inform the committee chair which of the committee's recommendations were utilized in their final decision unless they are confidential personnel matters (ex: disciplinary action). Details of the committee's recommendations and deliberations are confidential personnel matters.

(4) Phase 4--Appeal.

- a. If either party to the grievance finds that the decision of the area executive administrator does not resolve the grievance, either party may appeal to the chancellor or branch community college president within ten (10) working days of receipt of the decision.

The party appealing the grievance will make an appeal by providing written notice to the grievance facilitator. The grievance facilitator will notify all parties of the appeal. The grievance facilitator will forward the record developed by the committee (including all documents submitted by the parties and the recording of the hearing) to the chancellor or branch community college president within five (5) working days after receiving of notice of the appeal. The chancellor or branch community college president in his or her discretion, may limit his or her review to the records developed by the grievance committee and the documents submitted by the parties, or the chancellor or branch community college president may elect to receive new evidence, testimony or argument. If the president elects to consider new materials, then the president may impose limitation on the scope of the additional evidence, testimony or argument to be considered.

The chancellor or branch community college president will consult, as appropriate, with parties to the grievance before reaching a decision and will render that decision within thirty (30) working days of the appeal.

- b. Pursuant to the powers and responsibilities granted by the Board of Regents, the chancellor or branch community college president may take action affecting the final decision, including amending, remanding (return for clarification) or overturning it. Unless the below exception applies, the decision of chancellor or branch community college president is final
- c. Exception. Those employees who report directly to the chancellor should seek to resolve the grievance with the chancellor. If unresolved, they may appeal to the Board of Regents. In such cases, the Board of Regents shall determine the procedures for the appeal and shall notify the grievant and the chancellor of those procedures.

7. Rights and Responsibilities. Included in the rights and responsibilities of the grievant and the System are the following:

- A. A complaint or grievance proceeding shall not become a part of the personnel record of any System faculty or staff employee.
- B. An employee shall be given a reasonable amount of time during work hours to attend meetings to present a complaint or grievance; however, the employee must provide advance notice to his or her supervisor so that the duties of the parties involved can be performed and operation of the System shall not be adversely affected.
- C. The grievant may use reasonable and equitable work time and equipment in preparing for any phase of the grievance process.
- D. Investigation of complaints and grievances may involve inquiries into sensitive matters. The System shall take reasonable steps to protect the privacy of individuals involved in the grievance process, but it cannot guarantee that complaint and grievance proceedings will not result in the disclosure of sensitive, personal information.
- E. Any employee who fails to follow the grievance procedures of the System shall lose any right to pursue the grievance or complaint.

- F. A faculty or staff member seeking to enforce any right arising under this or any System policy must follow and complete the grievance process outlined above prior to seeking redress in court. Completion of the grievance procedure is a mandatory precondition to the filing of a lawsuit. Failure to complete the grievance process prior to the filing of a court action constitutes a 'failure to exhaust administrative remedies' and is grounds for dismissal of the action.

Approved by the Board of Regents, September 28, 2012

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