

## Section V

### Faculty Grievance Procedure

The grievance procedure is designed to resolve grievances at the department, college, or university level whenever possible, or failing that, through a committee which will be empowered to hear the complaint. Grievants are encouraged to discuss and resolve the grievance at the level closest to the faculty member, regardless of the nature of the grievance. If the grievance remains unresolved after initial discussions, the faculty member may file a formal grievance pursuant to the procedures below. Grievances are typically filed by individual faculty members. In the event that similarly situated grievances challenge the same conditions of employment and the grievants request a collective hearing, the grievances shall be heard in a single hearing in which all grievants will participate, using the procedures identified in the following materials, if the issue to be grieved is consistent with Section V.a.

Information and procedures regarding grievances concerning sexual harassment may be found in Section II. Information regarding student grievances may be found in the *Student Handbook*.

Arkansas State University will not discriminate against, and is prohibited from discriminating against, any person who has filed a grievance.

#### V.a. Grievable Issues

The grievance procedures for tenured faculty are outlined below. Grievances may include issues that relate to conditions of employment such as promotion, retention, termination, salary, job assignment, etc. Grievances may also involve a perceived violation of a university policy or other employment or academic matters. The faculty grievance procedure applies only to alleged institutional error which affects the terms or conditions of that faculty member's employment. Institutional error occurs when, within the bounds of policy set forth in this Handbook, no legitimate reason exists for the action taken. Decisions which require the exercise of judgment or discretion cannot constitute institutional error unless the exercise of judgment or discretion is grossly abused, abused in violation of university policies, exercised in an arbitrary or capricious manner or based upon an improper standard under university policies. The faculty grievance procedure applies only to alleged institutional error which affects the terms or conditions of that faculty member's employment. Institutional error occurs when no legitimate reason exists for the action taken. ~~Decisions which require the exercise of judgment or discretion cannot constitute institutional error.~~

Dissatisfaction with or recommended changes to University policy are not grievable issues and must be pursued through the Shared University Governance procedures set out in Section I of this Faculty Handbook. ~~The Chief Human~~

~~Resources officer will be available to review any proposed grievance to determine whether a grievable issue is stated.~~

All grievances will be investigated within the stated time period to ensure prompt, yet thorough, action. The Associate Vice Chancellor for Administration will grant time adjustments in the event of circumstances that prevent the grievance from being heard within the time period outlined in this Faculty Handbook. In such circumstances all parties will be notified in writing by the Associate Vice Chancellor for Administration of the length of extension granted.

Employee ~~files of~~ files of a faculty grievant and of other similarly situated faculty members, for purposes of comparison, will be available to faculty grievance committees to the extent that such committees deem such records relevant and necessary to the fair disposition of the grievance before them.

PRT files of other similarly situated faculty members, whether current or on retention in the Office of the Provost/Academic Affairs and Research, will be available to the Academic Hearing Committee to the extent that the Academic Hearing Committee deems such records relevant and necessary to the fair disposition of the grievance before them. ~~PRT files may be reviewed by the committee in the Office of the Provost/Academic Affairs and Research.~~

#### V.b. Steps in the Grievance Procedure

Any grievance not related to promotion, retention, or tenure must be filed in writing within 90 days from the time the events leading to the complaint occurred.

Any faculty member with a complaint based on discrimination because of race, color, religion, age, disability, gender, or national origin should at this point also contact the Coordinator of Affirmative Action. All discrimination complaints will be monitored by the Coordinator of Affirmative Action and the Associate Vice Chancellor for Administration.

Grievance committee discussions, votes and recommendations are confidential at all levels: members will not share any individual information outside the committee. Voting at all levels will be by secret ballot and tallied by the committee chair.

##### V.b.1. Department level:

###### Initial Discussions

Initially, a faculty member seeking to file a grievance should discuss the grievance with the department chair. It is the chair's responsibility to give an impartial, informal hearing, to make a complete investigation, and, if possible, to seek an answer or resolution agreeable to all parties. The

department chair is expected to reply orally to the faculty member within 10 business days. If a mutually agreeable resolution is not reached within 10 business days after the presentation of the grievance to the chair, the faculty member may submit a written complaint to the Department Grievance Committee. Complaint forms can be obtained in the Department of Human Resources and, upon request, a staff member there will assist in the preparation of a complaint and explain the steps involved in the grievance procedure. The Department of Human Resources will maintain secure files on all grievances and will monitor their outcome once they have reached this level.

*Department Grievance Committee*

*Composition:*

Each department shall establish a Department Grievance Committee, including at least five **tenured** members to represent all tenured and non-tenured faculty members in the department. This committee is a standing body elected by the full-time faculty in the department. Faculty selected will reflect the racial, ethnic, and gender diversity of the department.

Members serve two-year terms with a portion being replaced annually as determined by the department. The committee elects a chair each year. No faculty member may sit on a committee to hear a grievance against himself or herself, a grievance he/she has filed, or a grievance which he/she may later review or act upon. The Associate Vice Chancellor for Administration or his/her designee will serve as an ex-officio, nonvoting member of the committee for the purpose of providing advice and assistance on university procedural and policy matters. The Associate Vice Chancellor for Administration will be present for the initial presentation of the grievance to the committee and during any formal hearing. The Associate Vice Chancellor will not be present during committee discussions and deliberations unless asked to attend; however, he/she will review the committee's report of findings and their recommendations for technical and/or legal issues prior to submission. In cases of alleged discrimination, the role of an affirmative action coordinator is limited as described above for the Associate Vice Chancellor.

*Proceedings:*

The Department Grievance Committee has 10 business days after a complaint is received to make a recommendation in writing to the

department chair, the grievant, and any other party in the grievance with a copy to the Vice Chancellor for Administration. All proceedings of this committee shall be in closed session and will not include the grievant or the party complained against unless the committee requests their oral testimony. If oral testimony is requested by the committee, both parties may be present. Each party may have up to two advisers or colleagues present during the testimony, whose role shall be limited to personal consultation. The committee will be notified at least one business day and not fewer than 24 hours in advance of the identity of any advisers to be present. The chair of the committee may examine official files relevant to the case. These data may be submitted in summary form by the committee as part of the record, giving due regard to confidential information. If a mutually agreeable resolution is not reached by the Department Grievance Committee, a written complaint should be submitted by the grievant to the dean within 10 business days after the Department Grievance Committee's response is received.

Recommendations:

In resolving a case the Department Grievance Committee has two alternatives:

- It may recommend after hearing the evidence that the grievance should be denied on the grounds that no institutional error was found.
- If the Department Grievance Committee decides that an institutional error has been made, it will recommend a remedy. Recommendations for redress of the grievance will be based upon the committee's perceived need for an appropriate change in a term or condition of employment. The committee may support the grievance in part or as a whole. In either circumstance the department grievance committee may recommend to the appropriate administrative office any corrections or procedures it considers necessary to redress the grievance or remedy the situation before them. The elements of any single grievance or case may be separated with each portion treated as a grievance in itself. The resulting two or more grievances may be heard simultaneously or in turn, at the discretion of the committee. The findings of these separate hearings will be reported separately in the manner as outlined above.

Findings:

In all instances the committee will prepare a written record of its findings of fact, a statement of its conclusion, including the reasons or policy

criteria used in reaching their conclusions and recommendations for the resolution of the grievance. This response will be filed with the Department of Human Resources as the committee's official findings and will be retained for a period of not less than five years. Copies of the Departmental Grievance Committee report will also be sent to the grievant, the party complained against, the department chair, the dean of college, and in cases of alleged discrimination to the affirmative action coordinator. If the complaint remains unresolved after the Department Grievance Committee action, the grievance may be sent to the dean of the college by any of the parties within 10 business days of the receipt of the findings of the Department Grievance Committee.

**V.b.2. College level:**

Initial discussions with the Dean

After receiving a written grievance, the dean shall have 10 business days to prepare a written response. In that time the dean will consult with the department chair and chair of the Department Grievance Committee involved, study all the relevant facts, carefully examine any policies involved, discuss the issue with the faculty member and, if possible, resolve the issue raised within the framework of existing University policy to the satisfaction of all involved. If a mutually agreeable resolution is not reached within 10 business days after presentation of the grievance to the dean, the grievant may submit a written complaint to the College Grievance Committee. The Department of Human Resources will maintain secure files on all complaints and will monitor their outcome once they have reached this level. The grievant along with any other parties involved in the grievance, the department chair, and the Associate Vice Chancellor for Administration shall receive written notification of the dean's response to the grievance. A copy of this response should also be sent to the affirmative action coordinator if a complaint of discrimination is involved.

College Grievance Committee

Composition:

Each college shall establish a College Grievance Committee, consisting of at least five tenured faculty members representing all tenured and non-tenured faculty. The College Grievance Committee will include one representative from each Departmental Grievance Committee (normally the chair of that committee). This committee is a standing body representing all faculty members in the college. Faculty selected will reflect the racial, ethnic, and gender diversity of the college. Members serve two-year terms with a portion being replaced annually. The

committee elects a chair each year. No faculty member may sit on a committee to hear a grievance against himself or herself, a grievance he/she has filed, or a grievance which he/she may later review or act upon.

In discrimination complaints the College Grievance Committee shall have three additional members who shall be selected by the College Grievance Committee from a pool of nine tenured faculty members who are appointed by the Chancellor and who will have special training in issues involving discrimination. These nine members will also serve two-year terms on a rotating basis.

The Associate Vice Chancellor for Administration or his/her designee will serve as an ex-officio, nonvoting member of the committee for the purpose of providing advice and assistance on university procedural and policy matters. The Associate Vice Chancellor for Administration will be present for the initial presentation of the grievance to the committee and during any formal hearing. The Associate Vice Chancellor for Administration will not be present during committee discussions and deliberations unless asked to attend; however, he/she will review the committee's report of findings and their recommendations for technical and/or legal issues prior to submission to the dean. In cases of alleged discrimination, the role of an affirmative action coordinator is limited as described above for the Associate Vice Chancellor.

*Proceedings:*

The College Grievance Committee has 10 business days after a complaint is received to make a recommendation in writing to the dean, to the grievant, others party to the grievance and a copy to the Department of Human Resources. All proceedings shall be in closed session and will not include the grievant or the party complained against unless the committee requests their oral testimony. If oral testimony is requested by the committee, both parties may be present. Each party may have up to two advisers present during the testimony, whose role shall be limited to personal consultation. The committee will be notified at least one business day, and not fewer than 24 hours in advance of the identity of any advisor or colleague to be present.

*Recommendations:*

In resolving a case the College Grievance Committee has two alternatives:

- It may recommend after hearing the evidence that the grievance should be denied on the grounds that no institutional error was

found.

- If the Academic Hearing Committee decides that an institutional error has been made, it will recommend a remedy. Recommendations for redress of the grievance will be based upon the committee's perceived need for an appropriate change in a term or condition of employment. The committee may support the grievance in part or as a whole. In either circumstance the department grievance committee may recommend to the appropriate administrative office any corrections or procedures it considers necessary to redress the grievance or remedy the situation before them. The elements of any single grievance or case may be separated with each portion treated as a grievance in itself. The resulting two or more grievances may be heard simultaneously or in turn, at the discretion of the committee. The findings of these separate hearings will be reported separately in the manner as outlined above.

Findings:

In all instances the committee will prepare a written record of its findings of fact, a statement of its conclusion, including the reasons or policy criteria used in reaching their conclusions and recommendations for the resolution of the grievance. This response will be filed with the Department of Human Resources as the committee's official findings and will be retained for a period of not less than five years. Copies of the College Grievance Committee report will also be sent to the grievant, the party complained against, the department chair, the dean of the college, the Executive Vice Chancellor and Provost, and in cases of alleged discrimination to the affirmative action coordinator.

**V.b.3. University level:**

Academic Hearing Committee

If the complaint remains unresolved after the College Grievance Committee action, the grievance may be sent to the chair of the Academic Hearing Committee (AHC) by any of the parties involved within 10 business days of receipt of the findings of the College Grievance Committee.

Composition:

At the end of each spring semester the Executive Committee of the Faculty Senate will present to the Chancellor a list of the names of 21 ~~tenure-track~~/tenured full time faculty members (at least half of whom will have served during the previous academic year) who will serve two-year terms that are staggered to provide continuity to the committee. Terms will begin at the start of each academic year. The Executive Committee of the Faculty Senate will ensure that all colleges are represented when drawing up the list of names. Faculty selected will reflect the racial, ethnic, and gender diversity at Arkansas State University. Faculty members who have been selected to serve on a College Grievance Committee may not simultaneously sit on the Academic Hearing Committee.

At the first committee meeting the AHC (21 members) will elect a chair who has recently served on the AHC. The chair of the AHC must be a tenured faculty member. When a grievance reaches the level of the AHC, the chair of the AHC will notify the Chancellor. The Chancellor, in consultation with the chair of the AHC, will select from the committee of the whole (21 members), a subcommittee of seven to hear each grievance. The Chancellor will also select a dean, from among the pool of academic deans, and a department chair, from the pool of department chairs, to serve for each subcommittee empanelled. The AHC chair will serve as the nonvoting chair for all the nine member subcommittees empanelled. Each subcommittee will elect one of its members to prepare a record of the proceedings and deliberations and prepare a formal report of the committee findings. The Chancellor will select a replacement from the AHC for any member of a subcommittee who must recuse him/herself or who will not be available for the duration of the hearing.

In cases of alleged discrimination, three additional tenured professors, selected from the University Diversity and Affirmative Action Committee, will join the AHC. The parties on each side of such a case will each

choose one member from the UDAAC; the two individuals selected from the UDAAC will in turn select a third person from the UDAAC to sit on the AHC. The Department of Human Resources will assemble any necessary materials relevant to the grievance before the subcommittee, arrange facilities, and maintain an official written record of the hearing when completed.

The Associate Vice Chancellor for Administration or his/her designee will serve as an ex-officio, nonvoting member of the committee for the purpose of providing advice and assistance on University procedural and policy



matters. The Associate Vice Chancellor for Administration will be present for the initial presentation of the grievance to the subcommittee and during any formal hearing. The Associate Vice Chancellor for Administration will not be present during subcommittee discussions and deliberations unless asked to attend; however, he/she will review the subcommittee's report of findings and their recommendations for technical and/or legal issues prior to submission to the Chancellor by the chair of the AHC. In alleged discrimination cases, the role of an affirmative action coordinator is limited as described for the Associate Chancellor.

Proceedings:

The Academic Hearing Committee has 20 business days after a grievance is received to make a recommendation in writing to the Associate Vice Chancellor for Administration, the Chancellor, and any and all parties to the grievance. All proceedings of this committee shall be private and will not include the grievant or the party complained against unless the committee requests their oral testimony. If oral testimony is requested from either party, both parties may be present. Each party may have up to two advisers present during the testimony; however, the role of the advisor will be limited to personal consultation. The committee will be notified at least one business day and not fewer than 24 hours in advance of the identity of any advisers to be present. The committee will make their recommendations to the Chancellor, the Associate Vice Chancellor for Administration, and all individuals party to the grievance.

In all deliberations regarding a case before the AHC, only the empanelled committee members may be present and participate.

Recommendations:

In resolving a case the Academic Hearing Committee has two alternatives:

- It may recommend after hearing the evidence that the grievance should be denied on the grounds that no institutional error was found.
- If the Academic Hearing Committee decides that an institutional error has been made, it will recommend a remedy. Recommendations for redress of the grievance will be based upon the committee's perceived need for an appropriate change in a term or condition of employment. The committee may support the grievance in part or as a whole. In either circumstance the department grievance committee may recommend to the appropriate administrative office any corrections or procedures it considers necessary to redress the grievance or remedy the situation before them. The elements of any single grievance or

case may be separated with each portion treated as a grievance in itself. The resulting two or more grievances may be heard simultaneously or in turn, at the discretion of the committee. The findings of these separate hearings will be reported separately in the manner as outlined above.

In all instances the committee will make a written record of its finding of fact, a statement of its conclusion, including the reason or policy criteria used in reaching its conclusion, and any recommendation for resolution of the grievance. All recommendations by the AHC shall be forwarded to the Chancellor. Copies of the committee's recommendation shall also be sent to all parties concerned, the department chair, the dean, the SGOC ~~the~~, the Executive Vice Chancellor and Provost, the Associate Vice Chancellor for Administration, and in cases of alleged discrimination to the university affirmative action coordinator.

The Chancellor shall render a final decision on the grievance and communicate that decision in writing in the form of a letter to the grievant and to the chairperson of the AHC within 10 working days after receipt of the AHC's recommendation. In the event that the Chancellor does not follow the recommendation of the AHC he/she will include in the letter to all parties involved his/her basis for not accepting the Committee's recommendation. If the grievance is unresolved and the grievant alleges procedural errors, then the matter shall be referred to the SGOC for review. If the SGOC and the AHC concur that procedural error exists, the grievant shall have the right of appeal to the Board of Trustees. At any hearing before the BOT, the AHC chair shall certify all documents in the AHC file, including the decision and recommendations and the response of the chancellor, and transmit those documents to the members of the BOT for review. The grievant shall be permitted to appear before the BOT with an attorney or other representative to assist in the presentation of the grievance and the chancellor of the university may do likewise.

#### **V.c. Grievance on Promotion or Tenure**

A faculty member who has been denied promotion or tenure and believes there are grounds for a grievance relating to his/her case must begin the grievance process within 30 business days after receipt of the letter from the Executive Vice Chancellor and Provost notifying him/her that his/her application for promotion and/or tenure has been denied. The faculty member may discuss denial of promotion or tenure with the Executive Vice Chancellor and Provost and, if the faculty member remains unsatisfied, he/she may submit a grievance to the AHC. Since promotion and tenure recommendations come through a series of departmental, college, and university committees, grievances involving decisions

relating to promotion and tenure will be reviewed by the Academic Hearing Committee for institutional error only.

Pre-tenure and non-tenure track~~Non-tenure or probationary~~ faculty members who are not reappointed have the right to discuss this issue with the chair of their Department PRT Committee, the department chair, the dean, and the Executive Vice Chancellor and Provost. Pre-tenure and non-tenure track faculty members may use the faculty grievance procedures outlined below in cases of non-reappointment where it is alleged that impermissible discrimination or violations of academic freedom or freedom of speech have occurred or where it is believed that grounds other than those covered in Section V of this Faculty Handbook are involved in adverse decisions against them. ~~but may not grieve.~~

1. Committee or administrative recommendations that are arbitrary or capricious. A decision is arbitrary or capricious where it appears that there is no rational basis to support it.
2. Committee or administrative recommendations that were rendered after failure to comply with proper procedures as set forth in other sections of the Faculty Handbook. The grievant must show that the proper procedures were not followed and that such error was a contributing factor to the negative recommendation.

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**V.c.1. Document Collection and Disposition:**

When a grievance proceeding has been closed, all material relating to that case including official written records of the hearing, statements, other non-confidential evidence and documents, and a list of confidential materials examined shall be archived in the Department of Human Resources for a minimum of five years. Care will be taken to ensure that no incomplete or inaccurate information pertaining to the grievance is retained in the file.