

FACULTY GRIEVANCES

A. Purpose

This policy provides individuals appointed and acting as faculty members with a mechanism to seek fair, timely, efficient, and equitable resolutions of disputes concerning grievable actions or decisions with the administration of The University of Texas Rio Grande Valley (UTRGV) without prejudice, discrimination, or malice toward the person initiating the action, while meeting the applicable requirements of state and federal law.

B. Persons Affected

All faculty members appointed at UTRGV.

C. Policy

1. It is the policy of The University of Texas System and UTRGV to encourage fair, timely, efficient, and equitable solutions for problems arising out of the employment relationship and to meet the applicable requirements of State and federal law.
2. State law expressly grants faculty members the right to present grievances. UTRGV administrators are expected to promptly review and address faculty grievances in a timely, non-retaliatory manner where resolutions are sought through diligent and honorable conduct by all involved. No faculty member shall be penalized, disciplined or prejudiced for, in good faith, exercising the right to make a grievance or for aiding another employee in the presentation of a grievance.
3. Faculty members should timely seek to resolve grievable actions or decisions whenever possible through direct conversations with the individual who took or made the action or decision who is the subject of the complaint. For a grievance to be timely, faculty members must invoke the informal grievance process under this policy within ten (10) business days of the grievable action or decision. It is the responsibility of all parties to use reasonable efforts to resolve disputes or grievances as timely and efficiently as possible.
4. To the extent possible, all individuals involved in reviewing the grievance are expected to maintain the confidentiality of the material under review, the substance of review committee discussions, and the final recommendation. Records related to the grievance process will be kept confidential to the extent permitted by law. Any person who knowingly and intentionally makes an unauthorized disclosure of confidential information is subject to disciplinary action.

5. Upon separation of a faculty member from UTRGV, dispute resolution and grievance processes end.

D. Procedures

1. Informal Grievance Process:

To resolve workplace concerns promptly, UTRGV encourages frank and open discussions between faculty members and administrators based upon good faith and mutual respect. Therefore, a concern or dissatisfaction initially must be voiced by means of the informal grievance process and must first be addressed to the administrator or supervisor whose action or decision is in question (the respondent).

- a. To invoke the informal grievance process, a grievant must request in writing to meet with the respondent within ten (10) business days of the grievable action or decision. The respondent is responsible for scheduling and meeting with the grievant at a mutually agreeable time, but no later than twenty (20) business days after receipt of the meeting request. See Section D.4 for more details on the timeline.
- b. During the scheduled meeting, the grievant and respondent should make a “good faith” effort to reach a mutually agreeable resolution of the grievant’s concerns about the grievable action or decision.
- c. If a resolution is reached during the meeting, the respondent is then responsible for preparing a written summary of the meeting and of the resolution reached, and providing that written summary to the grievant no later than five (5) business days after the date of the meeting. If no mutually agreed upon resolution is reached, the grievant may proceed with filing a formal grievance under the procedures outlined below.
- d. A faculty member may not formally grieve actions or decisions proposed during the informal meeting or the terms of the agreed upon resolution, if any is reached.
- e. Informal grievance meetings shall not be recorded using any type of recording device unless both the grievant and respondent expressly consent to the use of the recording device prior to the meeting.

2. Formal Grievance Procedure:

If a mutually agreed upon resolution is not reached through the informal grievance process, the grievant may pursue the formal grievance procedure outlined below.

- a. To initiate the formal grievance procedure, the grievant shall present a written grievance to the respondent within ten (10) business days of the informal grievance meeting. The grievant must submit any documents or other information pertinent to the grievance at

the same time as the written grievance. Once this formal grievance procedure has been invoked, the grievant may not change or amend the grievance. Upon receipt of the grievance, the respondent must forward a copy of the grievance to the next appropriate administrator (administrator).

- b. The respondent has ten (10) business days to provide the grievant a written response to the grievance, setting forth the respondent's decision as well as the reason(s) and supporting facts for the decision (the grievance response). The next appropriate administrator must be copied on the response to the grievant. The respondent is responsible for maintaining a copy of the grievance and supporting materials, as well as the grievance response and any materials supporting the decision, in a separate grievance file. This grievance file should be forwarded to the next appropriate administrator's office with the copy of the respondent's grievance response.
- c. If the respondent does not satisfactorily resolve the grievance, the grievant may appeal the decision within five (5) business days of receipt of the respondent's decision to the next appropriate administrator. The written appeal must specifically state why the appealed decision is incorrect. Grievances concerning immediate supervisors should be directed to the next appropriate administrator; for example, grievances against a department chair should be directed to the dean.
- d. The administrator receiving the appeal shall review the appeal as well as the grievance file. The administrator may request the respondent to provide additional information in response to the appeal, and the respondent must promptly respond to the request. The administrator shall provide the grievant, respondent, and the next appropriate administrator a written decision regarding the appeal within ten (10) business days. The administrator's response must be included in the grievance file, and the file provided to the next higher administrator.
- e. If a grievant is not satisfied with the administrator's decision, within five (5) business days of receiving the written decision the grievant may submit to the next higher administrator a written appeal of the administrator's decision. The administrator receiving the appeal shall handle the appeal as described under Section D.2.d above. If the next higher administrator is the appropriate Executive Vice President (EVP), the grievant may request, but is not required to request, that the appropriate EVP refer the grievance for review to a university-level Faculty Grievance Committee as discussed in Section D.3. If the grievant does not expressly request review by a Faculty Grievance Committee, the appropriate EVP will review the appeal and grievance file, and should provide the grievant and respondent a written decision within thirty (30) calendar days of receipt of the appeal. The decision of the appropriate EVP will be final.
- f. If the appropriate EVP is the subject of the grievance or appeal, or determines he or she has a potential or actual conflict of interest in deciding the appeal, then the President (or designee) will make the decision whether to refer a grievance to a Faculty Grievance

Committee and will provide the final resolution.

- g. Multiple levels to the grievance process are not required when the organizational reporting structure does not provide multiple levels to consider the grievance.

3. *Faculty Grievance Committee:*

- a. A grievant may request that an advisory Faculty Grievance Committee (Committee) conduct a review of the grievance and make a recommendation to the appropriate EVP. Upon receipt of such request, the appropriate EVP shall review the documents filed by the grievant and determine whether the grievance qualifies for review by a Committee. To qualify for Committee review, the appropriate EVP must initially determine that the facts alleged in the grievance, if supported by credible evidence, may support a conclusion that the grievable action or decision:
 - i. was not made in substantial compliance with established UTRGV policies or procedures; or
 - ii. has no rational basis; or
 - iii. was based upon reasons that are unlawful under the state or federal constitution, laws or court decisions.

If the appropriate EVP or designee determines that one or more of these criteria has been met, a Committee shall be selected to review the grievance as described in this section. If the appropriate EVP determines no criteria have been met, he or she will review and render a decision regarding the grievance according to Section D.2.d.

- b. The appropriate EVP or designee – in consultation with other UTRGV officials, the grievant, and the respondent – will appoint a Committee of at least five (5) tenured faculty members within ten (10) business days of the request for Committee review.
 - i. The Committee will consist of five faculty members who do not have actual or seeming conflicts of interest in the case; who are unbiased; and who have the necessary expertise to evaluate the evidence and issues related to the grievance; interview the principals and key witnesses (if deemed necessary); and conduct the review of the grievance.
 - ii. The five faculty members shall be selected from a pool of the UTRGV's tenured faculty members recommended by the UTRGV Faculty Senate.
 - iii. No more than two faculty members selected to serve on a Committee shall be from the same college.
 - iv. No member of a Committee shall have administrative authority over another member.
 - v. Members selected to serve on a Committee who believe they cannot serve with fairness and objectivity shall recuse themselves from serving. Replacements will be selected in the same manner as the original members.

- vi. Each Committee shall select one of its members as Chair.
 - vii. A faculty member may not be required to serve on a Committee more than once every three (3) academic years.
- c. The appropriate EVP or designee, with the assistance of the Office of Legal Affairs, will convene the first meeting of the Committee to review this HOP policy and the prescribed procedures and standards for conducting the review, and to provide a written charge for the Committee that describes the scope of review of the grievance and any related issues identified by the appropriate EVP.
- d. The charge of the Committee is to recommend actions to be taken, based on its findings from evaluating the grievance file and the testimonies of the grievant, respondent, and key witnesses on whether a preponderance of the credible evidence supports the conclusion that the grievable action or decision (i) was not made in substantial compliance with established UTRGV policies or procedures; (ii) has no rational basis, or (iii) was based upon reasons that are unlawful under the state or federal constitution, laws or court decisions, as specifically identified in the charge.
- e. As part of its review, when possible, the Committee should interview the grievant, the respondent, and any other key individuals who might have information about the grievable action or decision.
- i. All interviews should be transcribed, recorded, or summarized, with transcriptions or summaries being provided to the interviewed party for comment and revision before inclusion in the Committee review file.
 - ii. If a grievant is being represented by an attorney or other representative, that attorney or representative may be present during any interview of the grievant and may be permitted to present statements or arguments on behalf of the grievant. However, the attorney or representative will not be allowed to answer interview questions on behalf of the grievant posed by the Committee, or otherwise participate in any interviews of respondent(s) or other witnesses.
- f. The Committee must complete its review and submit its report within thirty (30) calendar days of the charge meeting described in Section D.3.c above. If requested to take further action on its report by the appropriate EVP, the Committee will complete its work within the timeframe provided.
- g. Upon completion of the review, the Committee shall submit a report to the appropriate EVP providing a statement of findings for each allegation identified in the charge and its recommendation(s). The report must summarize the facts supporting the findings and consider the merits of any reasonable explanation or argument which does not support the findings. All materials and records concerning the Committee's review will be forwarded to the appropriate EVP with the report.
- h. Within ten (10) business days of receiving the report, the appropriate EVP will make the

final determination whether:

- i. to accept the report, its findings, and recommendations for action,
- ii. reach a different conclusion than the report, or
- iii. return the report to the Committee with a request for further fact-finding or analysis.
- iv. When a final determination has been reached, the appropriate EVP will notify the grievant and the respondent in writing. The decision of the appropriate EVP is final.

4. *Time Limits:*

- a. Failure of a grievant to meet a deadline without obtaining prior approval of the appropriate EVP or designee (see section D.4.b) shall constitute withdrawal of the grievance. Failure of a respondent or administrator to respond in a timely manner to a grievance or appeal shall authorize the grievant to bring the grievance/appeal to the next level. Where time limits are indicated in this policy, "day one" will be the next business day.
- b. Extenuating circumstances may legitimately be expected to delay response time. A request for an extension of time may be made by the grievant, respondent, or administrator in writing to the appropriate EVP or designee. The appropriate EVP or designee shall attempt to obtain an agreement between a grievant and respondent/administrator to the extension. If an agreement is not reached, the appropriate EVP shall make a decision regarding whether to grant an extension. Any extension should be documented in writing and provided to both the grievant and the respondent/administrator.

5. *Miscellaneous Provisions:*

- a. The grievant and respondent have the right to representation at all levels of the grievance process (informal and formal).
- b. Upon completion of all processes and procedures described in this policy, all recordings, documents, and materials related to the formal grievance will be maintained by the administrator handling the grievant's final appeal.
- c. Any requests for documents by a grievant will be handled in accordance with the Texas Public Information Act.
- d. A grievant may not file more than one grievance on any single grievable action or decision.
- e. As per Regents' *Rules and Regulations*, Rule 30602 (Employee Grievance), the written complaint and all decisions or responses regarding such complaint shall be a part of the faculty member's personnel file (see ADM 06-102 Faculty Files).

E. Definitions

1. Business days – weekdays during which normal UTRGV business is conducted. This excludes weekends, holidays, and days on which UTRGV is closed except for essential services (skeleton days).
2. College – an academic unit organized within the university, which is usually comprised of many departments or provides programs in multiple academic specialties/professional instruction. This academic unit may be referred to as a college or school, and is led by a dean reporting to a designated executive vice president.
3. Department – an academic unit organized within a college, usually devoted to a particular academic discipline. This academic unit may be referred to as a department, school, or center, and the unit’s head (usually a chair or director) reports to the dean of the college.
4. Faculty member – any individual holding an academic title defined in UT System Board of Regents’ Rules and Regulations Rule 31001, except for assistant instructors or teaching assistants.
5. Grievable action or decision – an action or decision concerning workload, compensation, working conditions; infringement of academic freedom; the interpretation of a rule, regulation or policy; or complaints not covered under a separate UTRGV policy or UT System rule or policy. An action or decision (1) that results from procedures provided in The University of Texas System Board of Regents’ *Rules and Regulations* Rule 31008 (Termination of a Faculty Member) or 31003 (Abandonment of Academic positions or Programs); (2) for which an appeal is provided pursuant to *Regents’ Rules Series* 31008, or (3) for which an appeal is provided by the *Regents’ Rules*, the approved provisions of UTRGV Handbook of Operating Procedures, or other approved policies or procedures of The University of Texas System (e.g., research misconduct; complaints of discrimination, harassment – including sexual harassment or misconduct – or retaliation) is not a grievable action or decision under this policy .
6. Grievance – a complaint clearly identifying itself as a complaint or grievance, specifically stating the grievable action or decision, describing the facts of the complaint, and stating the remedy or resolution the faculty member seeks.
7. Grievant – a faculty member who disputes a grievable action or decision.
8. Respondent – the administrator or supervisor who made or took the grievable action or decision.

F. Related Statutes or Regulations, Rules, Policies, or Standards

Texas Education Code Section 51.960, Grievance Rights on Certain Personnel Issues

Texas Government Code Chapter 554, Protection for Reporting Violations of Law

Texas Government Code Section 617.005, Collective Bargaining and Strikes

University of Texas System Board of Regents' *Rules and Regulations* Rule 30602, Employee Grievance

University of Texas System Board of Regents' *Rules and Regulations* Rule 31001, Faculty Appointments and Titles

University of Texas System Board of *Regents' Rules and Regulations* Rule 10901, Statement of UT System Values and Expectations

G. Dates Reviewed or Amended

Amended August 13, 2019.