HANDBOOK
FOR
GRIEVANCE COMMITTEE MEMBERS
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I. INTRODUCTION

In 1987, The Oregon State Board of Higher Education (the “Board”) adopted a temporary rule on grievance procedures. The Board’s action was partly in response to the page of SB 619 in 1987, which, if it had not been vetoed, would have required the Board to adopt a rule specifying certain guidelines for institutional grievance procedures. The rules represent “intensive efforts by the institutions, the central office, and the Board in addressing equity and fairness as they relate to faculty procedures and rules establishing fair and equitable grievance procedures.” Minutes of Board Meeting #544, May 15, 1987. Several persons and associations, including various faculty groups, gave suggestions that contributed to the ultimate form of the grievance rule. The temporary rule was made permanent on June 1, 1987. Subsequently, the Board adopted a number of changes to the rule. The most recent amendment, in April, 2001, eliminated the final step of appeal to the Board, except in limited circumstances, and added the option of a grievance officer.

Under the Board’s rules, a faculty member who believes he or she was wronged in connection with compensation, tenure, promotion and/or other conditions of employment, or that his or her rights as to reappointment were denied, may use the grievance procedure. “Other conditions of employment” is defined to include, but is not limited to, violations of academic freedom, laws, rules, policies and procedures under which the institution operates, and discriminatory employment practices.

The Board’s rule requires each institution to establish a grievance committee composed of members selected by an elected faculty organization.

The Grievance Committee is charged with hearing the grievance and making a recommendation to the institution president or grievance officer (depending on the option adopted in the institution’s grievance rule).

This handbook was created to enable Grievance Committee members (the “Committee”) to better understand their role in the grievance process.
II. BOARD RULES

The Oregon Administrative Rules contain OARs filed through January 13, 2010

OREGON STATE SYSTEM OF HIGHER EDUCATION
DIVISION 21
CONDITIONS OF SERVICE

580-021-0050

Grievance Procedures

(1) The institutions shall adopt, in consultation with faculty advisory committees including female and minority faculty and representatives of certified bargaining units, if any, appropriate grievance procedures, in accordance with the rulemaking procedures of the Administrative Procedure Act. The grievance procedures shall apply to all unclassified academic employees with faculty rank.

(2) For purposes of this rule and OAR 580-021-0055:

(a) "Grievance" means a complaint by an academic employee that the employee was wronged in connection with compensation, tenure, promotion or other conditions of employment or the employee's rights were denied as to reappointment;

(b) "Other conditions of employment" shall include, but not necessarily be limited to: violations of academic freedom; discriminatory employment practices; nondiscriminatory employment practices; and laws, rules, policies, and procedures under which the institution operates. However, challenges to disciplinary actions or procedures shall be raised under OAR 580-021-0320;

(c) "Days" mean calendar days unless expressly designated otherwise.

(3) The institutions' grievance procedures shall:

(a) Set out the details of a grievance procedure appropriate to the institution;

(b) Include both informal and formal steps. The formal steps shall include an appropriate administrator, a faculty committee (at the option of the grievant) and the institution president. The institution may (at its option) provide a grievance officer. However, a grievance may be resolved at any step. In a formal grievance, all complaints, responses and decisions must be in writing;

(c) Establish time limits within which a grievance must be filed and for each step that will permit timely resolution of issues. Informal grievances shall receive a response within 15 days. In no instance shall the length of time between the presentation of the written grievance and the final institutional decision be more than 180 days, unless
agreed to by the grievant. In the event a decision is not made at any level within the designated time limit, the grievant may submit the grievance to the next step;

(d) Provide for a hearing, at the option of the grievant, by a faculty committee selected by the faculty at the institution.

(e) Provide for the appointment by the president of an administrative officer, or officers, (grievance officer) to receive and act upon the recommendations of the faculty committee. The institution may, alternatively, opt to have the president receive and act upon the recommendations of the faculty committee.

(4) The institution may elect not to proceed with a grievance if the grievant also seeks resolution in another forum.

(5) The institution shall adopt rules of procedure for the faculty committee that allow for:

(a) A meaningful opportunity for the grievant to be heard;

(b) An opportunity for each party to present evidence, argument and rebuttal;

(c) The right to representation for each party at that party's expense;

(d) A hearing open to the public at the option of the grievant to the extent allowed by law;

(e) Written conclusions, based only upon evidence presented at the hearing; and

(f) Access by each party to a complete record of the hearing.

(6) The faculty committee shall make recommendations regarding the disposition of the grievance to the grievance officer or president (depending on the institution's election).

(7) Unless the grievance is resolved at a lower level, the president or grievance officer (depending on the institution's election), shall review the recommendations of the faculty committee, if any, and the president or grievance officer shall issue a decision.

(8) If the president or grievance officer (depending on the institution's election) rejects or modifies the recommendations of the faculty hearing committee, the reasons shall be stated in writing, and a copy provided to the grievant and to the hearing committee.

(9) Where the institution has opted to use a grievance officer, the grievant may appeal the decision of the grievance officer to the president pursuant to OAR 580-021-0055.
(10) Under either option as set forth above, and except as set forth herein, the decision of the president shall be final, and shall be an exhaustion of grievant’s administrative remedies with the institution and the State Board of Higher Education. If the grievance involves the president or where the president is the immediate supervisor of the grievant, then the appeal, set forth in section 9, shall be to the Chancellor of the Oregon University System (all other provisions of this rule shall otherwise apply).

(11) Nothing contained in this administrative rule shall be construed to limit the right of the State Board of Higher Education to make such inquiry and review into personnel actions as it may from time to time deem, in its sole discretion, appropriate.

(12) Where collective bargaining agreements or administrative rules exist at an institution in which grievance procedures are specified and such procedures exceed the standards in this rule, such agreements or administrative rules shall control, to the extent not inconsistent with the rule.

(13) After consultation with the appropriate faculty committees and approval of the Chancellor’s Office, each institution shall adopt its rules by October 1, 2001.

(14) Each institution shall report annually to the Board beginning July 2002, on the number, basis and outcome of all formal grievances filed under the rules herein required.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070

580-021-0055

Appeal of Grievance Decisions

(1) Where an institution has opted to utilize the process of decision by a grievance officer as set forth in OAR 580-021-0050(3)(e), a grievant may request review by the institution’s president of a decision described in OAR 580-021-0050(7). The president shall review the record of the grievance. The president shall decide, based on his/her own review, whether to support the grievance officer’s decision. The president’s decision must be reached within 90 days of the date on which the request is received in the President’s Office.

(2) A request for review by the president shall be in writing and must be received in the President's Office within 15 days of the grievant's receipt of the grievance officer's decision. The request shall briefly state the basis for the request for review and the
specific facts that would support action by the president consistent with section (4) of this rule. The request shall include a copy of the grievance officer's decision.

(3) Review by the president shall consist of an examination of the record of the grievance. The president may elect to receive additional written or oral presentations from the grievant and the grievance officer.

(4) The president shall not reverse a decision of a grievance officer unless:

(a) Procedural error was committed by the institution during the grievance procedure and the error resulted in prejudice to the grievant;

(b) The decision of the grievance officer is not supported by substantial evidence; or

(c) The decision is in conflict with applicable rules or law.

(d) The president's decision shall be in writing and shall be sent to the grievant and the grievance officer.

Stat. Auth.: ORS 351.070
Stats. Implemented:
Hist.: HEB 7-1988, f. & cert. ef. 7-5-88; HEB 1-1993, f. & cert. ef. 2-5-93; OSSHE 2-2001, f. & cert. ef. 4-27-01
III. ROLE OF GRIEVANCE COMMITTEE

Under ideal circumstances, a grievance is resolved informally between those involved. Therefore, before filing a grievance, all grievants are encouraged to discuss their problems fully with their supervisor. If the grievance is not resolved by informal discussion, the grievant may move either to the informal procedures outlined in the institution’s rules or directly to formal procedures.

If the grievant requests a formal grievance hearing, the institutional Grievance Committee will conduct the hearing.

Grievable and Non-grievable Issues

Under the Board’s rules, a Grievance Committee may hear various matters that implicate institution life. Decisions grieved to date have included denial of tenure, denial of permission for a faculty member to use printed business cards, challenges to annual performance evaluations and allegations of unequal access to work study student assistance. The scope of concerns subject to the grievance procedure is broad, given the Board’s rule which defines grievance as a "complaint by an academic employee that the employee was wronged in connection with compensation, tenure, promotion, or other conditions of employment or the employee’s rights were denied as to reappointment." OAR 580-021-0050. Nevertheless, not all complaints are afforded a hearing before a grievance committee.

An example of a decision which would not be appropriate for a Grievance Committee hearing would be a review of a matter previously grieved. Similarly, challenges to disciplinary procedures or disagreements with an institution’s decision not to reappoint an employee on a fixed-term appointment contract would not be eligible for a Grievance Committee hearing. Further, an institutional settlement with an employee over an employment issue where the employee released the institution from any further claims of damage or relief arising out of the dispute and settlement could not be the subject of a grievance proceeding. Only if the employee claimed that he or she was unfairly coerced in reaching the settlement or that the settlement was fraudulent would a Grievance Committee have any jurisdiction to hear such a complaint.

1 Disciplinary actions are subject to review under Board Rules 580-021-0320, et al. While a decision to not renew a fixed-term appointment contract would not be grievable per se, in some cases a faculty member may allege that his or her rights (i.e., first amendment rights, or the right to be free from discrimination based on a protected status) have been violated in connection with the non-reappointment.
Grievance Committee's Unique Role

Assuming a Committee can be called upon to hear a particular grievance, its members need to appreciate the Committee's influential and unique role. A Grievance Committee is not authorized nor asked to remake the basic decision which other duly appointed institutional committees or administrators are held responsible to make. In other words, grievance procedures do not provide an alternative or substitute for the various processes and decision making functions already in place on campus. Rather, a Grievance Committee’s function is to review documents and hear testimony to determine the integrity of the institutional decision making process brought into question by the grievant. By doing so, the Committee serves as protection for the academic community and a grievant who believes and can show that he or she was “wronged.” The fact that a Grievance Committee might make a different decision if it were charged with making the decision in the first place is, in a sense, irrelevant under the Board’s rule. Instead the Grievance Committee’s task is to ascertain whether the grievant was wronged. If the Committee ultimately concludes that the grievant’s claim falls short of a wrong, then a grievance should be denied. By doing so, the Committee does not endorse, approve, laud, or condone what occurred. The Grievance Committee, merely found that the party against whom a grievance was filed acted within the discretion delegated to them.

The Grievance Committee hearing is neither a court trial nor a contested case hearing under the Oregon Administrative Procedures Act. An institution is free to decide, within the confines of the Board’s rule, how the hearing is to be conducted. However, procedures and processes need to be efficient enough so as to provide a grievant a final decision within 180 days of the filing of the grievance. A grievant can, however, waive the relatively tight grievance process time frame.
IV. COMMITTEE HEARING PROCEDURES

A. A Meaningful Opportunity for the Grievant to be Heard

The key for providing a fair hearing process is to establish grievance hearing procedures and to adhere to them. This may or may not include specific time allotments within which both parties need to present their case. Some structure is advisable but there is no need to excessive formality. Unless otherwise specified by the institution rule, a common design would require:

1. A brief opening statement by the grievant or the grievant’s representative, followed by a brief opening statement of the person whose decision is being grieved or a statement by that person’s representative.

2. Presentation of witnesses by grievant. An opportunity for questioning of those witnesses by the other party or that party’s representative (if authorized by the institution’s rule).

3. Presentation of witnesses by person against whom the grievance is filed. An opportunity for questioning of those witnesses by the grievant or the grievant’s representative (if provided by the institution’s rule).

4. A limited opportunity for the grievant to call back witnesses to rebut testimony provided by the other party’s witnesses.

5. Summation by both parties, often with the grievant going first.

In order to inform the parties about the structure of the grievance procedure as well as setting the tone for the hearing, the Chair of the Grievance Committee should send the grievant a notice prior to the hearing (See Appendix A for a sample).

All Committee members should be acquainted with the order of the hearing. All members should remember that they are to base their decision only upon evidence presented at the hearing.

A common hearing setting would include a large conference table and placing Committee members at its head. Each party may be situated along opposite sides of the table. Witnesses may be asked to occupy seating around the room but to come forward to a chair at the table when asked to testify. The Committee may wish to have coffee and water available.

B. Opening Statements

It is normally advantageous for both the grievant and the party whose decision is being grieved to make an opening statement. The grievant should give his or her statement first.

The opening statement lays the groundwork for the testimony of witnesses and should help the Committee to understand the relevance of oral and written
evidence planned to be submitted to the Committee later. An opening statement should identify the issues, indicate what is to be proved, and summarize the party's evidence planned to be submitted to prove its case.

C. An Opportunity for Each Party to Present Evidence, Argument and rebuttal.

Both parties should be informed what type of evidence may be presented at the hearing. Typically the Grievance Committee will consider live testimony, affidavits, signed declarations and similar sorts of documentary evidence. If a witness cannot be present at the hearing, he or she may testify by telephone. Obviously, if this is necessary, the Committee will need to procure a speaker phone.

Prior to the hearing, both parties should be requested to submit a list of witnesses whom they intend to call at the hearing to the Committee Chair and each other. If the institution's rule does not specify when or how documents are to be exchanged among the parties, a committee may establish its own rules in that regard. Experience has proven that, often a mandatory pre-hearing conference with the chair of the committee can resolve issues about the appropriate use and identification of documents, time needs and other concerns. (See Appendix B for OSU Committee rules.)

Neither the grievant nor the Committee has the power to require a witness to attend a hearing. Unless otherwise provided by institution rule, the grievant should be informed that he or she may question witnesses, and that representatives of the other party may likewise question witnesses.

If the parties choose not to call witnesses, the Committee may call witnesses on its own. The Committee may also choose to call witnesses in addition to those called by the parties. Committee experience has shown that in the absence of witnesses, conflicting testimony from the two parties is considerably more difficult to resolve.

The Committee should designate one person as its Chair if other institutional procedures have not already designated a chair. The Chair should be prepared to rule on admissibility of evidence, subject to Committee review.

Evidence should be received which is of a type normally relied upon by a reasonably prudent person in the conduct of his or her serious affairs. See e.g. ORS 183.450(1). Thus, formal rules of evidence such as that excluding hearsay testimony, are not controlling. Evidence which is repetitive, irrelevant or immaterial may be excluded. However, if there is a question on whether evidence should be considered by the Committee, the evidence can be allowed to be presented and a ruling on its admissibility reserved to be made later. If a party or the Committee wishes to review and use documentary evidence
connected with a witness who cannot be present, that evidence may be used, even though questions may be raised as to how much weight should be given such evidence by the Committee. If, however, a reasonably prudent person in the conduct of his or her serious affairs may rely on the document, the Committee may do the same.

A Committee should help provide a fair hearing which assures all parties an opportunity to present evidence and arguments. Committee members will further this objective by being courteous and even handed to all parties. It is very appropriate for Committee members to question the parties and their witnesses to obtain additional information, encourage agreements about essentially indisputable matters and restate the substance of the issues or arguments to promote a better understanding between the parties and the Committee.

If not already done at a pre-hearing conference, a Committee member or the Chair should mark and identify the documentary evidence presented at the hearing since such evidence will usually be referred to during the proceedings, during Committee deliberations and in the Committee’s recommendation. Additionally, these exhibits will become part of the permanent record of the hearing. An easy way to achieve identification is to mark the grievant’s exhibits as “Grievant’s Exhibit A, B,” etc. (abbreviated to G-A, B) and the other party’s documents by the name of the unit within the institution, followed by Arabic numbers, e.g., “Library’s Exhibit 1, 2,” etc.

At times, a Committee may be asked to make a ruling or other decision not covered by the rules. The Committee should use its own best judgment to make these decisions or may seek counsel from attorneys representing the institution to aid in the decision making process.

Prior to closing a hearing, the Chair should ascertain that all documents submitted into evidence have been marked and made available to the Committee and the parties; that all witnesses have been heard; and arrangements made for the Committee to meet to deliberate.

D. Representation and Role of Counsel

Typically, the notice (see Appendix A) states that the grievant is entitled to bring counsel as the Board rule provides. Alternatively, the grievant may bring a representative other than an attorney to assist him or her short of performing legal services. Typically, but not always, the party whose decision is being grieved will not be represented by counsel unless the grievant is represented. Counsel’s precise role at the hearing will, however, be determined by the institution rule and Committee rule. For example, if the institution rule authorizes questions by a party of the other party’s witnesses, then counsel should have that prerogative as well. If questioning is not allowed, counsel has no greater role than the party he or she represents.
E. A Hearing Open to the Public at the Option of the Grievant to the Extent Allowed by Law

The Chair of the Committee should ascertain long before the hearing, whether or not the grievant wishes to have the hearing open to the public.

F. Written Conclusions Based Only Upon the Evidence Presented at the Hearing

Committee members need to remember that they may base their decisions only upon testimony and other evidence presented at the hearing or submitted through the hearing process. They should not individually seek out information outside of the hearing process concerning the dispute. If others seek out Committee members, they should be told politely that it is not an appropriate topic of discussion. If a Committee member, for whatever reason, does not believe that he or she can be objective in reviewing the record and making an unbiased decision, that person needs to advise the Chair or another institution official as soon as possible so arrangements can be made to secure a Committee member replacement.

Under the Board's rule, if the institution president reviews the proceeding, the president may base his decision on matters outside of the record unless restricted by the institution rule.

G. The Record of the Hearing

Depending upon the requirements of the institution rule, the Committee should be prepared to make a record of the hearing. Typically, this involves the Committee tape recording the hearing and informing the grievant that he or she may have access to the tapes or have them transcribed at his or her own expense. The grievant should also be allowed to record the proceeding and perhaps even encouraged to do so as insurance against faulty equipment.

A Committee or other person needs to be appointed as record keeper. This person should secure a tape recorder and tapes to record the hearing. Some hearings have lasted several hours. The record keeper should make sure to have an ample supply of tapes. It is not unusual for a committee during its deliberations to want to rehear a particular witness. The record keeper should mark into the record when each witness testifies by making reference to the meter counter on the tape recording machine. Given the length of most hearings, it is difficult to find someone's testimony unless this type of record is maintained. Also, it is often difficult to identify speakers. Ideally, comments by Committee members should also be noted. The record keeper should also keep a list of documents submitted into evidence.
H. Decision Making Process and Committee Recommendation

The Committee's actual deliberation following the hearing is best accomplished in closed not recorded session. The Committee needs to limit its consideration to the evidence presented at the hearing. A methodical step-by-step reasoning process includes:

1. Analyze the evidence.
2. Determine the important facts found or believed.
   i. Select and deal with the pertinent facts only.
   ii. Not all facts are essential or even important.
3. Determine institutional or other rules, policies and practices which are applicable.
4. Apply the rules to the facts as found. (Based on these facts, were the rules followed?)
5. Complete each step of the reasoning process before moving on to the next steps.

The Committee must prepare a report for review by the institution president. It should recommend whether the grievant's demands be granted or denied based on evidence received at the hearing and recommend any appropriate resolution. The following are the goals for the Committee's final report:

1. Clarity in stating the factual findings.
2. Clarity in stating the reasons for Committee's decision.
3. Clarity in stating just what is the decision.
4. Affording satisfaction with the process.
5. Persuading the president and other readers that it is the right decision.

The Committee should draft its report as soon as possible after concluding deliberations. Notes will be less cryptic, not recorded by pertinent hearing observations will be fresh. Remember, the report is not just a file-closing memorandum of the Committee's recommendation. Its purpose is to communicate the Committee's findings and recommendations so that the president or other reviewers will understand the Committee's position.

Finally, Grievance Committee members throughout their deliberations and in drafting the Committee's decision must be ever mindful of the Committee's role under the Grievance rules. The Committee must determine whether the grievant was "wronged," given the applicable procedures that were to be used in making the decision at issue, not whether the decision grieved was wise or different from what the Committee would have done, were it entitled to have made the decision in the first place.
V. INSTITUTION RULE

The Oregon Administrative Rules contain OARs filed through January 13, 2010

DIVISION 50

FACULTY GRIEVANCE PROCEDURE

576-050-0010

Purpose

(1) The University encourages the resolution of grievances through informal means and discussion in keeping with the collegial atmosphere of a university. The University is also committed to a formal procedure for consideration of grievances that are not resolved through informal processes.

(2) The procedure set out in this rule is available to any unclassified employee with faculty rank as defined in this rule and in the rules of the State Board of Higher Education.

(3) This grievance procedure may be used to hear any complaint by a faculty member that he or she was wronged in connection with compensation, tenure, promotion or other conditions of employment, or that his or her rights were denied as to reappointment. "Other conditions of employment" shall include, but not be limited to, violations of academic freedom, nondiscriminatory employment practices and discriminatory employment practices including sexual harassment, and laws, rules, policies and procedures under which the institution of higher education employing the academic employee operates. Disciplinary sanctions are imposed in accordance with OAR 580-021-0320 and shall not be subject to this grievance procedure.

(4) The University may elect not to proceed with a grievance if the grievant also seeks resolution in another forum.

(5) If the grievance concerns a matter to which contested case procedures apply, the grievant may elect to use the procedures in OAR 576-002-0020 to 576-002-0055.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: OSU 1-1988, f. 5-16-88, cert. ef. 6-1-88

576-050-0015

Definitions and Mail Requirement

(1) "Days" as used in this rule shall mean calendar days.
(2) "Presentation of the Grievance" as used in OAR 580-021-0050 means receipt of the grievance by the dean, director or unit executive officer as specified in 576-050-0025.

(3) "Faculty Mediator" is an academic employee with faculty rank chosen by the Faculty Senate Executive Committee. Emeritus faculty shall be eligible to serve as the Faculty Mediator.

(4) "Faculty Grievance Committee" is a committee of five academic employees with faculty rank chosen by the Faculty Senate Executive Committee and charged with the responsibility for hearing faculty grievances in accordance with these procedures. Any person with faculty rank may submit nominations to the Executive Committee for consideration. The Executive Committee shall choose at least one female and one minority member. Three members shall constitute a quorum. The Executive Committee of the Senate shall select a Chair.

(5) "Faculty Rank" means faculty ranks as defined in the rules of the State Board of Higher Education and includes faculty without rank but with professional title.

(6) All appeals, decisions, or recommendations referred to in this rule shall be sent by U.S. Mail or University campus mail.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: OSU 1-1988, f. 5-16-88, cert. ef. 6-1-88; OSU 1-1989(Temp), f. 2-9-89, cert. ef. 2-10-89; OSU 2-1989, f. & cert. ef. 5-30-89; OSU 5-1991, f. & cert. ef. 3-6-91; OSU 11-1996, f. & cert. ef. 8-23-96

576-050-0020

Informal Procedures

(1) Prior to filing a formal grievance a faculty member is encouraged to discuss the grievance with his or her supervisor (or dean, director, unit executive officer or Affirmative Action Director). The immediate supervisor shall respond to the grievant within fifteen (15) days.

(2) The Affirmative Action Office must be notified of any grievance alleging discrimination, including sexual harassment. The Affirmative Action Director, if so requested by the grievant, will investigate any grievance alleging discrimination and attempt to help the parties resolve the issue.

(3) The faculty member or the Chair of the Grievance Committee, with the faculty member's concurrence, may request the Faculty Mediator to review and attempt to resolve all other grievances, including those the Affirmative Action Director determines not to be valid claims of discrimination.
(4) The Mediator may meet with the grievant and take what action he or she considers appropriate in attempting to resolve the grievance, including interviewing or consulting other persons. The Mediator and all parties to the grievance shall keep the mediation process confidential to the extent possible under law. Statements made in mediation shall not be admissible in a grievance hearing.

(5) Nothing in this rule shall require a faculty member to use informal grievance procedures before filing a formal written grievance, provided that a faculty member must notify the Affirmative Action Office of all claims of unlawful discrimination, including sexual harassment, before filing a written complaint.

Initiation of Formal Procedures

(1) If a grievance is not resolved to the satisfaction of the grievant at the informal stage, or if the grievant chooses to bypass the informal stage, the grievant may file a formal written grievance. A grievance shall be filed with the dean, director, or executive officer in charge of the administrative unit, except:

(a) Where the grievant is a department chair in which case the grievance shall be filed with the Provost and Executive Vice President; or

(b) Where the grievant alleges sexual harassment against the person in charge of the administrative unit, in which case the grievance shall be filed with the next higher administrator.

(2) The grievant shall file a copy of the written grievance with the Legal Advisor in the Office of the President. The formal grievance must be filed within sixty (60) days of the time the faculty member knew or by reasonable diligence should have known of the acts which gave rise to the grievance. Therefore, discussion or mediation at the informal stage should be initiated as soon as possible. The University shall extend the sixty (60) day filing requirement if the grievant is pursuing the complaint at the informal level and it appears that additional time would be beneficial in resolving the grievance. Extension by the University shall be in writing by the Legal Advisor.

(3) The written grievance must contain the grievant's name and address, the date and nature of the act or omission which gave rise to the grievance, any rule, policy or procedure alleged to have been violated or misapplied, and the remedy requested by the grievant.
(4) The dean, director, unit executive officer, or the respective designee shall send a written decision to the grievant within twenty (20) days of receipt of the grievance.

(5) If the sole basis of the grievance is a claim of an unlawful discriminatory employment practice or practices, the grievant may waive in writing the right to file a formal grievance under this rule and may elect instead to file a formal complaint of discrimination with the Office of Affirmative Action and Equal Opportunity. If the grievant elects to file with the Office of Affirmative Action and Equal Opportunity, the grievant shall be entitled to that office's procedures and shall have no further rights to the procedures set forth in this Division 50.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: OSU 1-1988, f. 5-16-88, cert. ef. 6-1-88; OSU 11-1996, f. & cert. ef. 8-23-96; OSU 3-2005, f. & cert. ef. 12-16-05

576-050-0030

Appeal to the Faculty Grievance Committee

(1) If the decision of the dean, director, or unit executive officer is not satisfactory to the grievant, the grievant may file a written appeal with the Faculty Grievance Committee within ten (10) days of receipt of the written decision, stating why the response at the previous level is deficient. This step is optional with the grievant. The grievant may bypass the Committee and file the appeal directly with the President.

(2) (a) The Committee shall send to the grievant a written notice of the time and place of the hearing at least seven (7) days prior to the hearing;

(b) At the Committee hearing the faculty member shall present his or her case first, followed by the person or persons who are the object of the grievance. Thereafter the faculty member shall have an opportunity to respond;

(c) Each party shall have a right to call and examine witnesses, to introduce exhibits or other documents. The members of the Committee may question any witness and may call additional witnesses;

(d) If the grievant so chooses he or she may be accompanied by or represented at the hearing by any other person;

(e) Either party may provide for and obtain a sound recording of the hearing;

(f) The hearing shall be open to the public at the option of the grievant to the extent allowed by law. However, deliberations of the Grievance Committee shall not be open to the public or the parties.
Decision by the Committee and Appeal to the President

(1) The Committee's decision shall be made in the form of a written recommendation to the President. It shall be based only upon evidence presented at the hearing. The recommendation shall include a description of the complaint, the evidence the Committee collected, and its conclusions and recommendations for disposition of the case. The recommendations shall be sent to the grievant, to the President and to the dean, director or executive officer in charge of the unit out of which the grievance arose within sixty (60) days of receipt of the appeal to the Committee.

(2) The President or his or her designee shall review the decision of the Committee and the President shall deliver a written decision to the grievant, to the Grievance Committee and to the dean, director or executive officer in charge of the unit out of which the grievance arose within thirty (30) days of receipt of the Committee's recommendation. Prior to issuing a decision the President, or designee, may interview any person concerning the grievance to supplement the record whether or not the person testified at the hearing, provided that the decision shall list each person so interviewed. In addition the President or designee may review any documents provided that the decision shall identify any such documents that were not introduced at the Committee hearing. The grievant shall be informed of any additional information obtained by the President and given seven (7) days to respond. If the President rejects or modifies the recommendations of the Committee, the reasons shall be stated in the decision.

(3) If the grievant chooses to appeal the decision of the dean, director, or unit executive officer directly to the President, the President shall proceed to review the matter and reach a decision as set out in section (2) of this rule, provided that all persons interviewed and all documents reviewed must be identified in the decision. The President shall issue a decision within thirty (30) days of receipt of the grievant's appeal.

(4) The decision of the President shall be final except as provided in OAR 576-050-0035(5).

(5) If the grievance is directed at the President as the immediate supervisor of the grievant or at the President in his or her administrative capacity (as contrasted to appellate capacity), the grievant may appeal to the Chancellor of the Oregon University System as provided in OAR 580-021-0050(10).
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: OSU 1-1988, f. 5-16-88, cert. ef. 6-1-88; OSU 1-1989(Temp), f. 2-9-89, cert. ef. 2-10-89; OSU 2-1989, f. & cert. ef. 5-30-89; OSU 11-1996, f. & cert. ef. 8-23-96; OSU 8-2001(Temp), f. 9-27-01, cert. ef. 9-28-01 thur 3-27-02; OSU 4-2002, f. & cert. ef. 2-25-02

576-050-0045

Effect of Time Limits

If the University fails to respond within the time limits at any step in this grievance process, the grievant may appeal to the next step.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: OSU 1-1988, f. 5-16-88, cert. ef. 6-1-88

576-050-0050

Non Retaliation

An individual filing a grievance in good faith or otherwise participating in any of the actions authorized under these grievance rules shall not be subject to retaliatory action of any kind by any employee of the University, the Oregon University System, or the State Board of Higher Education.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: OSU 1-1988, f. 5-16-88, cert. ef. 6-1-88

576-050-0055

Two-Year Review

Not later than two years from the adoption of these rules, the Provost and Faculty Senate Executive Committee shall jointly appoint a faculty committee to review the effectiveness of this grievance procedure and to recommend any changes.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: OSU 1-1988, f. 5-16-88, cert. ef. 6-1-88
Appendix A

SAMPLE NOTICE OF GRIEVANCE COMMITTEE PROCEEDING

1. The Grievance Committee hearing which _____________________ requested on ____________, 20____, will be conducted on ______________________, 20____. The hearing will take place ________________. The hearing will commence at ________________, and should last _______ hours.

2. The Grievance Committee hearing will be conducted as provided in the institution rule, a copy of which is attached.

3. The Committee would prefer to hear directly from the parties and their witnesses rather than their representatives. However, you have a right to be represented by an attorney (or have another representative present to assist you). Ordinarily, unless the grievant has counsel at the hearing, the other party will not have counsel present.

4. Attending the hearing will be (a) the Grievance Committee, (insert the names of Committee members), and (b) each party (and his or her representative, if applicable.)

5. Both parties may call witnesses. A list of witnesses intended to be called should be submitted to the Grievance Committee seven days before the hearing and a copy sent to the opposing party.

6. ________________________, will preside at the hearing as Chair of the Grievance Committee. The Chair will have the authority to rule on all matters at the hearing, including admissibility of evidence and may set time limits for oral arguments.

7. A Grievance Committee hearing is not a court proceeding, and not an administrative law contested case hearing. However, the following guidelines will
be used to structure the proceeding unless the Chair or Committee directs otherwise:

a) Grievant’s opening statement of the case.
b) Other party’s opening statement of the case.
c) Grievant’s presentation of evidence and witnesses and an opportunity for Committee members to ask questions.
d) The other party’s presentation of evidence and opportunity for Committee to ask questions.
e) Grievant’s evidence in rebuttal to other party’s direct case.
f) Closing or summation statements by both parties.

8. Both parties should be prepared to submit evidence on their behalf. Evidence which may be admitted includes:

a) Testimony of witnesses. This includes your own testimony. If a witness cannot be present at the hearing, he or she may testify by telephone or put his or her testimony in writing.
b) Writings. This includes letters, documents, reviews, etc. that you wish the Committee to consider.

9. Copies of documents you wish to submit as evidence may be distributed in person, by campus mail or by U.S. mail, and should be submitted to the Committee and the other party at least seven days before the hearing. Fax or electronic mail should not be used for this distribution. Enough copies should be provided to the Committee for each Committee member. Each party will have an opportunity to review the evidence submitted by the other party and to object to specific documents. Those items either not objected to or objected to but ruled admissible by the Chair of the Grievance Committee will be included in the official record.

10. If either party wishes to submit supplemental documents/exhibits, he or she should notify the Chair of the Grievance Committee and the other party of intent to submit the supplemental material as soon as possible before the hearing, and provide each with a copy.

*The following may be added unless disallowed by institution rule: “Also, opportunity for the other party to ask questions.”
11. While this is not a contested case hearing under the Oregon Administrative Procedures Act, the general administrative law standard that evidence of a type normally relied upon by a reasonably prudent person in the conduct of his or her serious affairs will be allowed.

The Committee Chair and the other party may object to evidence presented on the following ground:

a) Irrelevant. The evidence has no tendency to prove or disprove any issue involved in the hearing.

b) Unduly repetitious. The evidence is merely repetitive of what has already been offered and admitted to the record.

12. The Committee will have a tape recording made of the hearing. It will be kept with a copy of the exhibits offered and admitted into evidence. The records will not be transcribed unless a party desires to pay for transcription. Either party may also have the proceeding recorded.

13. Any questions concerning the hearing process should be directed to the Chair at [address], [telephone number].
Appendix B

OSU COMMITTEE RULES

Procedures concerning submission of documentary evidence and exhibits by parties involved in a grievance.

1. Once the date of the grievance hearing has been set, the Chair of the Faculty Grievance Committee will set a meeting to determine the admissibility of documents and exhibits into the hearing record.

2. This preliminary hearing meeting will be held at least 10 days prior to the date of the hearing.

3. Attending the meeting will be (a) the Chair and one or more members of the FGC, (b) each party and/or his/her representative, who may be legal counsel, and (c) a legal advisor designated by the FGC.

4. Parties to the grievance shall bring to the meeting one copy of all documentary evidence and exhibits that they wish to be included in the record of the hearing. Each party will have an opportunity to review the proposed submissions of the other party and to object to specific documents and/or exhibits. Those items either not objected to or objected to but ruled as admissible by the Chair of the FGC will be included in the official record of the hearing, subject to reversal by the FGC.

5. Following this preliminary meeting, each party will prepare six copies of all accepted documents/exhibits that he/she wishes to include in the official record of the hearing. A copy of all accepted documents will be given to each member of the FGC and to the other party involved in the grievance.

6. Copies of the accepted documents/exhibits will be given to FGC members and the other party at least five (5) days prior to the grievance hearing. Copies may be distributed in person, by campus mail, or by U.S. mail. Fax or electronic mail should not be utilized for this distribution.

7. If either party wishes to submit supplemental documents/exhibits following the preliminary hearing meeting, he/she should notify the Chair of the FGC of intent to submit supplemental documents/exhibits, and bring six (6) copies of all proposed supplemental items to the grievance hearing.

8. At the beginning of the grievance hearing and after the other party has had an opportunity to review the supplemental materials, the FGC will rule on their admissibility.
9. It is not expected that submission of supplemental documents/exhibits following the preliminary meeting will be routine, nor that the number of documents so submitted will be large. The purpose of sections 7 and 8 above is to accommodate availability of relevant documents that were unknown or unavailable at the preliminary meeting.

10. Either party may submit documents at or immediately after the hearing to rebut testimony from the other party.

Adopted by Faculty
Grievance Committee
December, 1989