

DRAFT OF PROPOSED POLICY

Developed by Tenure, Promotion, and Grievance Committee of the TCU Faculty Senate
Proposed to the Senate, March 7, 2002

Texas Christian University

Faculty Grievance Policy

I. PURPOSE

The purpose of this policy is to afford the faculty of TCU with a prompt and fair method for resolving grievances or disputes related to terms and conditions of employment. Further, the policy is intended to encourage informal dispute resolution through discussion and mediation.

II. DEFINITIONS AND APPLICABILITY

A. As defined in the current Texas Christian University Handbook for Faculty, the faculty who are eligible to file a grievance or dispute on their own behalf are full-time faculty, probationary faculty, temporary faculty, and part-time faculty named in current budgets of academic units of the University. This policy does not apply either to graduate students with teaching/research assignments or to occasional faculty teaching on a course-by-course contract, or to applicants for faculty positions.

B. A grievance [delete “as defined herein”] is a claim that injustice related to terms and conditions of employment (including but not restricted to promotion, tenure, and salary) has resulted from actions of employees of Texas Christian University and/or from policies approved by members of its Board of Trustees. Injustices are defined as actions or conditions that inflict loss or hardship in relation to the grievant’s employment as a TCU faculty member. The basis for a grievance is the misapplication of employment guidelines or policy creating an injustice as defined above. A grievance regarding an employment/promotion decision must pertain to some part of the process of evaluation according to established University policy. A grievance may not be used as a forum for professional disagreements or to debate the appropriateness of employment decisions. (Examples of bases for grievances would include insufficient data considered for evaluation, time limits not followed, not being informed of status according to policy, receiving no or conflicting written evaluations, violation of University policy on academic freedom, etc.). The faculty Grievance Policy does not establish or override published University policies or procedures for making employment decisions.

C. All work related problems and disputes not covered by this policy can be filed under the TCU Staff Conflict Resolution Policy. Work related problems and disputes covered by this policy may not be filed under the TCU Staff Conflict Resolution policy.

D. A grievance is considered to involve only two parties: (1) the grievant, who claims an injustice exists, and (2) the defendant, against whom the claim is lodged. A party may comprise more than one person.

III. Principles and Procedures

A. Security of the Grievant: It is fundamental to the process that fact finding and adjustment of grievances be conducted without fear of prejudice or reprisal to the grievant.

B. Promptness: Promptness is itself an element in fair treatment for the grievant, for the University, and for others involved in the procedure. Every effort will be made to resolve issues as quickly as possible while assuring all parties of conscientious attention to detail. The grievant is responsible for initiating the administrative appeal process [change from appellate processes] within 15 academic days after becoming aware of the decision or event that the grievant perceives to be an [drop “alleged” since the term is functionally redundant with perceived] injustice.

C. Confidentiality: All persons concerned with a grievance are enjoined to respect the rights and privacy of all persons involved in the grievance. Confidentiality in all cases is required in informal as well as in formal proceedings.

D. Burden of Proof: In a formal hearing, the grievant must assume the burden of proof. The burden of proof is met by a preponderance of the evidence and does not require proof beyond a reasonable doubt. For the grievance to be rejected, it need not be clearly established that no injustice occurred, but only that the existence of an injustice has not been established by the information.

E. Order of Events and Time Limits:

1. Administrative Appellate Process: [drop “All administrative appellate...”] An administrative appeal must be initiated within 15 days after the grievant becomes aware of the issue which is the basis of the grievance. An administrative appeal involves, at a minimum, meeting with the relevant academic Dean, the Provost, or the Chancellor for decisions made at the department, college, or University level, respectively. Once commenced, the administrative appeals process must be completed within 10 academic days [omit “or as soon as reasonably possible”].

2. Mediation:

a. Once the administrative appeals process has been completed, the grievant must begin the grievance process by contacting the chair of the Mediators Committee within 5 academic days. To assure a fair and prompt response to an informal grievance (mediation) the grievant shall present to the Chair of the Mediators and the defendant a written, signed statement of the specific grievance indicating explicitly that the document constitutes a grievance. The Chair of the Mediators must confirm that the defendant(s) against whom the grievance is lodged has been notified of the nature of the grievance, the identity of the grievant, and the purpose and nature of the mediation

process. The mediators will work with the parties in an attempt to assist them in resolving the dispute. The first meeting of the mediators and the grievant initiates the time limit of 20 academic days for filing a formal grievance. [some language changed, no substantive changes]

b. Either party may request that the grievance be referred to a Hearing Committee at any time during the mediation process.

c. All conversations held and notes made during mediation will be kept confidential by all parties involved. Mediators are trained to destroy any notes which they make during such meetings. Written agreements between parties involved are considered contracts and are, therefore, subject to contractual law which may include disclosure on a need- to-know basis.

3. Hearing Committee:

a. If mediation fails to resolve the dispute, the matter may be referred to a Hearing Committee. Either party may request such a hearing, bearing in mind that the hearing must be requested prior to the lapse of the 20 academic days allotted for informal resolution of the grievance. A hearing is requested by notifying, in writing, the Chair of the Mediators Committee that a hearing is desired. The Chair of the Mediators will appoint 5 members of the Hearing Committee to hear the grievance. The grievant and/or the defendant may request to the Chair of the Mediators that a Hearing Committee member thus appointed be replaced by an alternate. If the Chair of the Mediators believes that a conflict of interest exists, an alternate will be appointed. Any Hearing Committee member that has a conflict of interest in the case shall recuse him/herself from the committee and be replaced by an alternate. The Chair of the Mediators will appoint a Chair of the Hearing Committee, once it has been constituted. No Chair shall have less than one year experience on the committee.

b. The Chair of the Mediators will appoint an academic advisor to consult with the grievant, and another to consult with the defendant, if desired. The advisors will normally be alternate members of the Hearing Committee not placed on the hearing panel (the panel is the group of five members who hear the case).

c. Once constituted, the Hearing Committee will set a date convenient for both parties for the hearing to begin, normally within 15 academic days, [omit within receipt of the report...] but allowing a reasonable period for both parties to prepare for the hearing. Written statements and documents that are to be introduced shall be made available to both parties to the dispute at least five academic days before the hearing day on which those materials are to be discussed. The grievant and the defendant are responsible for providing these documents to the Hearing Committee.

d. The Hearing Committee should complete the hearing and its deliberations as promptly as fairness permits and report its conclusions and recommendations as quickly as is reasonable, normally with 10 academic days after it meets with the parties involved.

4. Review by the Chancellor:

a. A written report by the Hearing Committee of the nature of the grievance and the Committee's conclusions and recommendations shall be filed with the Chancellor upon

completion of the Hearing Committee's work and copies of the report shall be delivered to both parties and to the Chair of the Faculty Senate. All materials, evidence and transcripts shall be placed in the Chancellor's office. At this time, the Hearing Committee is formally dissolved. However, it may still function as a Committee if necessary to respond to a rejection of its report by the Chancellor.

b. As soon as the Chancellor receives the report of the Hearing Committee, the Chancellor has the privilege and responsibility of accepting or rejecting the conclusions and recommendations of the report. If the Chancellor accepts the recommendations of the report, the recommendations should be implemented in a timely manner. If the Chancellor rejects the conclusions or declines to implement all recommendations of the report, a written statement giving reasons for the rejection shall be issued to both parties and the Hearing Committee. This rejection shall be delivered as soon as possible.

F. Prior to and during the hearings, the grievant shall not be suspended from usual duties unless immediate harm to the grievant or to the University is threatened by continuance of such duties. Such suspension shall not affect the grievant's claim to full pay and to all the privileges of faculty status during the period of interrupted service.

G. Once a grievance has been initially filed with the Chair of the Mediators Committee, any retaliation or adverse consequence constituting real injury to any party to the conflict resolution process will itself constitute a grievance.

IV. The Mediators Committee

A. Composition: The mediators shall consist of five tenured faculty members nominated by the Faculty Senate and appointed by the Chancellor. Mediators shall be trained in compliance with Title 7, Chapter 154, Texas Civil Practice and Remedies Code, and consistent with the Texas Mediation Trainer Roundtable Annotated Standards. The mediators must abide by the Code of Ethics established by the Texas Association of Mediators and the State Bar of Texas Alternative Dispute Resolution Section. Mediators appointed will serve for three years with no more than two terms expiring in the same year. The chair, appointed from the mediators by the Chancellor, shall maintain responsibility for assigning mediators to individual cases.

B. Purpose, Duties, and Responsibilities:

1. A mediator is a neutral third party who listens to both sides of a dispute and assists parties in reaching a settlement, thus rendering formal grievance proceedings unnecessary. Mediators do not make decisions and are pledged to act without prejudice.

Any member of the mediators who has a conflict of interest shall absent him/herself from any mediation activity with either party.

2. Normally, the Chair of the Mediators appoints two committee members to serve as mediators to the dispute.

3. As soon as practical, the appointed mediators will meet with the grievant and/or the defendant. Once such a meeting has taken place, parties have 20 academic days to resolve the dispute through mediation. If necessary and agreed to in writing by both disputants, mediators may request additional time to complete the mediation. While

mediation normally involves a confidential meeting between mediators and parties to the dispute, mediators may feel it advisable to conduct discussions in caucus, or individual meetings. If mediation resolves the dispute, the case will be closed, and the Chair of the Mediators Committee will be notified in writing by the mediators. The mediators shall seal the written agreement and forward it to the Office of the Provost where it will be kept on file. Failure to comply with the mediation agreement may be reported in writing by either party to the Chair of the Mediators and/or the Provost (or, the Chancellor in cases where the Provost is party to the agreement).

V. The Hearing Committee

A. Composition: The Hearing Committee shall consist of a pool of 10 tenured faculty members nominated by the Faculty Senate and approved by the Chancellor. The members shall be appointed to three-year terms with the terms being staggered to ensure continuity. The members shall be chosen based on their knowledge of grievable issues, their objectivity, and their skill in eliciting pertinent information. Five members of the Hearing Committee will be drawn to serve on a panel when hearings are required.

B. Purpose, Duties, and Responsibilities: the Hearing Committee's task is to decide by majority vote whether an injustice related to terms and conditions of employment has occurred, and if so, recommend equitable redress. In cases involving tenure and promotion decisions where violations are found to have occurred, the Committee may recommend that the decision be remanded to the original unit where the decision was made, stipulating changes in procedure, or advanced to the next administrative level, or that a final decision on the case be undertaken by the Chancellor. Other appropriate remedies may appear. When procedural violations are found, the Committee shall identify the most reasonable redress which (1) eliminates the previous violation, (2) assures fair treatment to the parties involved, and (3) preserves the integrity of the tenure and promotion policy where possible. The Hearing Committee shall be limited to the hearing of arguments related to application of policy and procedures as outlined in section II. B. of the grievance policy. Any individual called to present information may refuse to answer questions or provide information they feel would be damaging to themselves or a violation of confidentiality.

C. Procedures

1. During the proceedings, the grievant and the defendant shall be entitled to have an academic advisor present at the hearing. The academic advisor is a person outside of the grievance process but familiar with TCU policies and procedures. Should the grievant choose to engage legal counsel, the defendant may also engage legal counsel. If an advisor or legal counsel is to attend the grievant or the defendant, the party to be so accompanied shall notify the chair of the hearing committee at least 5 academic days prior to the hearing. The chair of the Hearing Committee must notify others involved in the hearing, including the Provost/Vice Chancellor for Academic Affairs. Each party shall bear the expense of its own counsel. Legal counsel is to provide counsel only and

may not participate directly in the hearing. The hearing is an administrative hearing and not a court proceeding. When one of the parties is engaged in the proceedings because of actions arising from administrative or advisory authority duly constituted by the University (including faculty advisory committees), the University will bear the expenses of the proceedings for that party whether or not the University is named as party to the grievance.

2. Both grievant and defendant, or their academic advisor(s), but not legal counsel, have the right to confront and question individuals during the hearing. Individuals may refuse to answer questions or provide information they judge would be damaging to themselves.

3. Verbatim records of the hearings shall be taken normally on tape, at University expense. Tapes shall not be reproduced for the grievant or the defendant but shall be accessible to either party upon request. These records shall be retained in the Office of the Chancellor (or the Chancellor's agent) for three years, after which they shall be destroyed. This also applies to the deliberations of the Committee when information is not being presented and neither party is present. In addition to verbatim records, the Hearing Committee shall keep written minutes of all meetings. All records shall be accessible to members of the Hearing Committee during the proceedings.

4. The proceedings of the hearings are confidential except for such announcements as may be required for assembling the parties. [omit "public statements & publicity..."]

Policy proposed to the Senate on March 7, 2002

Tenure, Promotion, & Grievance Committee

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Issues introduced by the Provost regarding the proposed conflict resolution policy

1. What's wrong with the current policy?

Remedy provided by the proposed policy changes

a. It fails to properly emphasize the role of mediation in providing an alternative to formal procedures.

Identify preference for informal dispute resolution in the purpose statement of the grievance policy. Better identify the procedures used by mediators, such as meeting with all parties together, recommending caucus sessions, assisting parties in developing written contracts to resolve disputes, etc. Finally, the proposed policy requires that mediators be trained to work as mediators in the state of Texas and be bound by guidelines of professional ethics.

b. The mediators committee (though not individual mediators) are asked to serve two incompatible roles: neutral liaisons who mediate the dispute and (2) advocates for the grievant.

The proposed policy isolates these roles. If mediators are to be successful, their impartiality must be unquestioned by all parties.

c. Faculty are denied access to any conflict resolution procedure for issues existing outside of the framework of the narrowly defined faculty grievance policy. This denial of procedures constitutes a potential violation of fair employment practices for the University.

We understand that there is resistance to developing a policy which mirrors the staff conflict resolution policy. There are significant advantages to having parallel policies, including better understanding and easier administration. However, tenure and promotion decisions are unique to faculty and distinctive in traditions and requirements. The proposed policy both (1) revises the current grievance policy and (2) indicates that faculty have access to the staff conflict resolution policy for disputes occurring outside the framework provided by the grievance policy. We suggest renaming the staff policy to include faculty.

d. The Executive Committee of the Senate has enough to keep it busy without the additional task of being a Grievance Committee. Currently, the grievants must be successful with pleadings before 2 distinct committees (Grievance Committee and Hearing Committee). The second, decision-making (Hearing) committee is limited to considering only those issues which make their way into the report of the first committee (at least denying the Hearing Committee a full overview of the context of the case). This constitutes a kind of double jeopardy for the grievant. The length and cumbersome nature of the process may reduce pressure on parties to resolve disputes informally through mediation.

We propose elimination of the Grievance Committee.

e. The Hearing Committee has rarely been used and has not been regularly constituted. We need to reduce the total number of committees and increase the responsibilities of existing committees, where possible.

We propose expanding the size of the Hearing Committee from 8 to 10 and the size of the panel which hears a grievance from 3 to 5. An advisory function is added to the committee (for

alternate members not sitting on a panel). Finally, details regarding priorities of the Hearing Committee and potential remedies (should violations of policy be found) are included.

f. While current policy indicates that two mediators are assigned to aid the grievant, similar assistance is not specifically provided to the defendant. While such assistance may not be needed or desired, such a policy creates the perception of imbalance.

Provide similar advisory functions for both parties.

g. Admonitions against reprisal for filing a grievance are not included in current policy.

Provided in III. F

h. Current policy requires that grievants first complete the “administrative appellate process” yet no information is given regarding what this process involves.

Proposed policy, III, E, 1.

2. The proposed policy does not attend to the rights and privileges of faculty. The CRF is not required to be a faculty member, the HR department administers the policy and staff members may be involved in mediations.

By restructuring the current grievance policy, we feel we have addressed all of the issues related to faculty polity. We have retained some of the previously proposed policy by assigning some of the duties of the CRF (last year’s proposed policy) to the Chair of the Mediators Committee (current proposal). We feel that we have addressed all of the Deans’ concerns.

