

8. FACULTY GRIEVANCE AND APPEAL

The right to grieve and appeal by any member of the faculty is recognized by the administration and the Board. Presentation of grievances is made through the following procedures established by and for the faculty and approved by the administration and the Board of Trustees.

8.01 Faculty Grievance and Appeal Procedure

In any community of free people, even under the best of circumstances, complaints will be generated from time to time by individuals or groups who feel that a condition exists that is detrimental to their professional careers or personal well-being.

A community of academicians operates on the premise that a complaint brought by one or more of its members against another or against the institution itself is best resolved when the parties involved are encouraged to seek a just and equitable solution.

When individual efforts fail to produce a satisfactory resolution of a complaint, it behooves the greater academic community to intercede so that an equitable solution is obtained with dispatch.

Therefore, a grievance and appeal procedure is established to handle complaints that cannot be resolved in an informal way at the department or college level and which are not covered by other procedures.

Participation in a grievance procedure in any capacity, including as a grievor, within the scope of such grievance proceeding is considered by the University to be within the scope of duties of a faculty member. The faculty member shall be afforded the same protection for such participation as for any other faculty duties subject to the provisions of the liability insurance policies purchased to cover liability of faculty members.

The granting or the failure to grant tenured status to **clinical**, teaching, **or** research faculty, professional librarians, academic administrators and all other persons holding faculty appointments or nonrenewal of employment contracts at the end of the contract term shall not be subject for consideration by **sections 8.01 - 8.10** of this grievance procedure (Section 8-17-380, S.C. Code of Laws 1976). **Section 8.11 governs resolution of faculty appointment contract disputes.**

8.02 Initial Stage and Grievance Procedure

A complaint concerning any condition that is felt to be detrimental to the complainant's professional development or personal well-being shall first be directed as described below:

- (1) Complaints against a member of the complainant's department shall be explained to the departmental chair. When the complaint is against the chair, it is lodged with the dean of the college.

- (2) Complaints against a member or chairman in the complainant's college, but not a member of the complainant's department, shall be lodged with the dean of the college.
- (3) Complaints against a member of another college shall be lodged with the dean(s) of the college(s) involved.
- (4) Complaints against any administrator shall be lodged with the next higher level of administration.

The person with whom the complaint is lodged shall attempt to mediate an amicable solution through his/her good offices, or to suggest another person who might effectively mediate an amicable solution.

8.03 Grievance Procedure

- (1) In the event that the complaint is not resolved within a reasonable period of time, the complainant may submit a written request for a hearing. The proper avenue for such a request is through established channels of authority to the Vice President for Academic Affairs and Provost. Once initiated, a grievance or appeal must be afforded full due process regardless of changes in employment status.
- (2) The grievance or appeal shall be referred by the Vice President for Academic Affairs and Provost to a Hearing Committee consisting of three (3) faculty members recommended by the Faculty Senate, three (3) faculty members recommended by the Deans' Council, and one (1) faculty member selected by the Vice President for Academic Affairs and Provost. The Committee may elect a chair, or may request that the Vice President for Academic Affairs and Provost designate one of the seven individuals to be chair. Preferably, committee members will be selected from a pool of individuals representing each College and the Library System, who have received training in mediation. Faculty Senate and the Deans' Council may nominate individuals to receive mediation training and to serve in the pool of potential Hearing Committee Members. This pool (referred to as the Standing University Faculty Hearing Committee) will be composed of up to two members from each college and the Library System nominated by the Faculty Senate, and up to two members from each college and the Library System nominated by the Deans' Council. Standing University Faculty Hearing Committee members shall serve terms of up to three years, staggered such that there will be some continuity of membership from year to year.
- (3) The grievance or appeal shall be in writing and shall specify the condition(s) felt to be detrimental to the individual's professional development or personal well-being and the manner in which it/they may affect the complainant adversely. The statement shall specify the reason(s) why such a condition is/are felt to be the responsibility of a person or persons named in the grievance or appeal, and it shall suggest the changes in conditions that would satisfy the complainant.

- (4) Upon receipt of a grievance or appeal, and in no case longer than thirty (30) days after the receipt thereof, the Vice President for Academic Affairs and Provost will convene a seven member Hearing Committee at full strength from individuals selected from the Standing University Faculty Hearing Committee pool.

8.04 Action by the Hearing Committee

- (1) When a grievance or appeal is referred to the Hearing Committee, the chair of the Committee shall distribute true copies of all pertinent materials to the parties involved who have not already received them and to the members of the Committee within one week of the referral.

The Committee shall refuse to hear a grievance or appeal if it determines that:

- (a) The parties have made inadequate effort to resolve the dispute by discussion and agreement or have not utilized other reasonably available avenues for relief within the division, department, college(s);
 - (b) The dispute is patently frivolous or plainly without merit;
 - (c) The relief sought is beyond the power of the University to grant;
 - (d) The grievance is insufficiently related to the concerns of the academic community;
 - (e) The dispute is within the jurisdiction of another committee or unit of the University.
- (2) Within twenty-one (21) days of the distribution of the materials pertinent to the grievance or appeal, the Committee shall meet and decide whether to hear the case. If the Committee decides to hear the case, it shall immediately notify the principals and shall commence hearings within another seven (7) days. As it deems appropriate, the Committee may call any witnesses and examine any documents in addition to those presented by the parties to the grievance or appeal. The Committee shall prepare and keep a transcript of its proceedings.
 - (3) After hearing the parties to the grievance or appeal and the witnesses, the Committee shall deliberate in secret. It shall then determine to: (a) recommend an appropriate action or (b) dismiss the grievance. The chair shall send, in writing, the Committee's recommendation(s) to the parties. It shall then declare the hearing concluded.
 - (4) The chair also shall send the Committee's recommendation(s) and rationale for it/them to the Vice President for Academic Affairs and Provost of the University for consideration and recommendation by that officer. This report shall be submitted within ten (10) days after the conclusion of the hearing.

- (5) In reaching the written recommendations to the Vice President for Academic Affairs and Provost, the Committee shall consider only the evidence presented at the hearing and such written and oral arguments as the Committee, in its discretion, may allow.
- (6) Under unusual and compelling circumstances, the Committee, with the concurrence of the Vice President for Academic Affairs and Provost, may extend any deadlines upon written notification to the parties to the grievance or appeal.

8.05 Action by the Administration of the University

Within thirty (30) days of the receipt of the Hearing Committee recommendations and rationale, the Vice President for Academic Affairs and Provost of the University, who is ordinarily appointed by the President to act on her/his behalf, shall review the record and notify the parties to the grievance or appeal and the chair of the Hearing Committee of his/her recommendation in the case. In the event that the Vice President for Academic Affairs and Provost has been a participant in the hearing of the aggrieved faculty member or for other valid reasons, the Vice President for Academic Affairs and Provost may disqualify herself/himself and request the President to appoint another designee for said review.

If the Vice President for Academic Affairs and Provost concurs in the recommendation of the Committee that is favorable to the faculty member, no further action in the matter may be taken. If the Vice President for Academic Affairs and Provost either declines to accept a Committee recommendation that is favorable to the faculty member, or concurs in a Committee recommendation that is unfavorable to the faculty member, the faculty member may appeal to the Board for review. The appeal shall be submitted in writing to the Secretary of the Board within ten (10) days following the decision of the Vice President for Academic Affairs and Provost who ordinarily acts as the designee of the President. It shall state the decision complained of and the redress desired.

8.06 Action by the Board

The appeal shall be placed on the next regular Agenda of the Board for the consideration of the Board.

The Board in its sole discretion may grant a review, but if granted the Board shall not be required to conduct an additional hearing or hear arguments of the faculty member or counsel but may review the record of the proceedings. The Board, at its discretion, may elect to hear arguments, oral or written, by both of the principals or their representatives and may consult with the hearing Committee.

Any action taken by the Board shall be final.

8.07 Definition of Rights and Challenges in a Grievance Procedure

- (1) Challenge of Committee Members:

(a) Upon the request of a party to a grievance, a member of the Committee may be removed from considering a case if deemed biased or in conflict of interest. If a member of the Committee refuses to remove herself/himself when challenged for such cause, the challenging party may appeal to the entire Committee which shall make a final determination of the challenge. A Committee member may disqualify herself/himself.

(b) If s/he so desires, each party shall have, in addition, a challenge without stated cause. A member so challenged shall not consider the case.

(2) To Present Witnesses and Supporting Materials:

Each party involved in a grievance or appeal may: (1) submit any written materials in support of his/her position; (2) present witnesses at hearings.

(3) To Have an Advisor During the Hearing:

(a) Each party to a grievance or appeal may be accompanied in the hearing by a nonparticipating advisor of his/her choice and may consult with the advisor throughout the hearing.

(b) If any party chooses to have participating legal counsel present, written notification must be presented to the chair of the Committee at least five (5) days before the hearing. The chair shall then promptly notify the other parties. **The Hearing Committee conducts an internal administrative review, rather than a legal proceeding. Legal counsel may advise, but may not participate in the hearing. The Committee chair, in consultation with University General Counsel, may remove any advisor from the hearing should said advisor persist in attempts to participate in the hearing [rather than to render advice to any participant(s)].**

(4) To Have an Observer Attend Hearings:

At the request of any party to a grievance or appeal, or at the request of the Committee hearing the case, a representative of a responsible professional or educational association shall be permitted to attend hearings as an observer. The chair will determine the qualifications and responsibility of the association.

8.08 Access to Records of Hearings:

(1) A written record shall be made of the proceedings during hearings.

(2) Each party to a grievance or appeal shall have access to all records of the hearing and, should s/he request it, shall be furnished, upon payment of reasonable charges for transcription or reproduction, a record of the proceedings. (A copy of the official record of the proceedings, in whatever form it is made, shall satisfy this requirement.)

8.09 To Receive Expeditious Consideration:

- (1) The parties to any grievance or appeal have the right to expeditious consideration at all stages of these procedures.
- (2) The Hearing Committee is expected to formulate its written recommendation(s) and to communicate it/them to the parties to the grievance or appeal within ten (10) days of the conclusion of the hearing.

8.10 Annual Report of the Chair of the Hearing Committee.

Each July the chair of the Hearing Committee shall make a summary of formal grievance and appeal activities and statistics on cases in progress and those settled during the preceding year. S/he shall send this report to the Chair of the Faculty Senate, to the Chair of the Deans' Council, and to the President of MUSC. In such a case that a Hearing Committee was not convened in the previous year, no written report will be necessary.

8.11 Faculty Appointment Contract Dispute Resolution

The Faculty Appointment Contract (FAC) clarifies an individual's activities and responsibilities for the upcoming academic year and links the listed activities to compensation. These contracts are offered in good faith between the faculty member and the chair. They serve as a platform for discussing and resolving issues that could be misinterpreted between a faculty member and the chair. However, some issues in a proposed FAC occasionally cannot be resolved at the department level.

When a faculty member has unresolved issue(s) with the draft contract, this policy employs a panel of faculty peers to review the issues and to render an opinion to the Vice President for Academic Affairs and Provost who makes the final MUSC decision regarding the FAC being offered.

Before the FACs are administered, each college Dean establishes a review panel of senior faculty, excluding department chairs or division chiefs. By mid-June, the Associate Provost for Integrated Planning and Assessment will send to each college a notice asking if there are any members of the full- or part-time faculty contesting their draft contracts. Any faculty member unwilling to sign his/her draft FAC will be contacted by the Associate Provost for Integrated Planning and Assessment to determine whether the faculty member wants a formal review and adjudication of the draft contract. If the faculty member requests a review, the current FAC will be extended with appointment rights continued until July 31. This should provide sufficient time for the review panel to gather facts and hear from those involved as needed to clarify issues in dispute. Both faculty member and the chair or division chief shall have opportunity to meet with the panel. The panel determines when to close fact-finding and hearing phases of the review and to begin deliberation. Following adequate deliberation on the issues, the panel shall submit a written recommendation to the Dean and the Vice President for Academic Affairs and Provost. Upon receipt of the Dean's comments on the Panel Report and prior to July 31st,

the Vice President for Academic Affairs and Provost will provide the final decision on the contested issue.

The general grievance policy in sections 8.01 -8.10 covers complaints that cannot be resolved in an informal way at the department or college level and which are not covered by other procedures. For FAC disputes, this policy recognizes: 1) the importance of timely resolution, 2) faculty desire for peer review at the college level, and, 3) advantages in having the review panel pre-selected. The flow chart in Appendix 8.11 outlines this policy.