



GEORGIA COLLEGE

CONDUCTING FACULTY AND STAFF GRIEVANCES

Disclaimer: The Grievance Committee Manual was developed by the Office of Legal Affairs and the Office of Human Resources and Employee Relations. The Manual is intended to be a convenient reference tool for faculty and staff grievance committee members, wherein most topics of particular interest to grievances are contained. The Official policy governing staff and faculty grievances can be found in the GCSU Policy Manual in Human Resources. This manual is adapted from the North Carolina State University Grievance Manual.

Grievance Committee Manual
Conducting Faculty and Staff Grievance Hearings
A Guide for Grievance Committees and Grievance Committee Chair

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I. Introduction

The purpose of this manual is to provide faculty and staff grievance Committees and Chairs with basic information on how to conduct grievance hearings that are efficient, effective and fair to all parties and to help Committees hear and decide grievances in a manner that increases the likelihood that their decisions will be upheld.

This manual covers specific procedures contained in the USG BOR and University's faculty and staff grievance policy and procedure. Topics include the roles of the respective participants in the grievance (including the roles of grievance Committee members, grievance Committee Chair, grievant, respondent and attorneys/observers), the purpose of the pre-hearing conference (if the Chair determines one is needed), the conduct of the grievance hearing, Committee deliberations and reaching a decision, drafting a well written decision and recommendation, and compilation and transmittal of the official grievance record. Checklists are provided for each step of the process and issues that commonly come up in grievance hearings are addressed.

Before proceeding with any grievance, Committee members and Chairs should be thoroughly familiar with the University's Grievance Procedure for Faculty and Staff Employees. See Appendix II.

II. The Grievance Structure

A typical grievance involves a grievant (the person who files the complaint and initiates the administrative grievance process) and a respondent (the individual responsible for the action that has resulted in the grievance). Under the GCSU informal grievance procedures, the grievant will attempt to resolve the matter informally with a direct supervisor or the supervisor's direct superior, without formal processes or a hearing. If, at anytime, the grievant wishes to pursue a formal grievance, reference will be made to the GCSU formal grievance process as set out herein. A hearing Committee will be established from a select number of employees and it will hear the grievance and makes a recommendation and the appropriate Vice President. The Vice President's decision may be appealed to the President. The President's decision may be appealed to the Board of Regents.

The grievant and respondent ('the parties') are normally in an adversarial posture and while the grievance procedure calls for certain exchanges of information between these parties, the grievant and respondent interact primarily with the grievance hearing Committee and Chair. While the grievant and respondent may each have a third party observer during the process (who may or may not be an attorney), such individuals have no active role in the grievance process.

The grievance procedure provides for a three (3) member hearing Committee of either faculty (for faculty grievances) or staff (for staff grievances) that hears and decides the grievance. If the grievance involves both faculty and staff, a six-person hearing committee will be selected made up of three (3) faculty and three (3) staff members. A non-voting Chair presides over the process. The Chair votes only to break any ties. The Chair makes all procedural decisions and, with assistance of the Director of Human Resources, corresponds with the Committee and the parties, deals with hearing logistics, and compiles and transmits the record of the hearing along with the Committee's decision to the appropriate Vice President for decision.

The grievance hearing consists of the following phases: 1) initial meeting with the grievant and respondent to select the Hearing Committee, 2) the pre-hearing conference with the parties (if the Chair determines such a conference is needed), 3) the hearing of the grievance, 4) deliberations by the Committee and 5) writing the decision. Prior to the initial meeting with the parties, the Chair will decide if the grievance can go forward.

If it is determined the grievance may go forward, the Chair should call an initial meeting of the Hearing Committee to provide an opportunity for the Chair to acquaint Committee members with the grievance

process and answer any questions about the process before the pre-hearing conference with the parties. The initial meeting may be followed by a pre-hearing conference then by the grievance hearing, deliberations and writing of the Committee decision. Committee decisions are forwarded to the Vice President or President in the form of a recommendation.

In certain cases, the Vice President's decision may be appealed to President and then to the Board of Regents. In addition, an aggrieved individual may seek judicial review of the final institutional decision. It is therefore important to ensure that the process that is followed is fundamentally fair to all parties and complies with university procedures.

III. Roles of the Participants

A. The Grievant

The grievance process is initiated by a faculty or staff member (hereinafter 'grievant') who must file a timely written grievance petition with the Director of Human Resources on the Grievance Request Form supplied by Human Resources. The petition must set forth the exact nature of the grievance, the identity of all parties against whom the grievance is filed, the redress sought, and permission for the grievance Committee to examine grievant's personnel file for the purpose of resolving the grievance.

The grievant must follow certain preliminary steps as a jurisdictional prerequisite to the formation of the grievance Committee. No grievance may be entertained unless the grievance is filed within thirty (30) calendar days of the event forming the basis for the grievance.

The matter must also be within the scope of the grievance procedure.

The grievant bears the burden of establishing the jurisdictional grounds for the grievance and the burden of proving by a preponderance of the evidence grounds for the grievance. A preponderance of evidence is defined as that evidence which when fairly considered produces the stronger impression and is more convincing as to the truth when weighed against other opposing evidence. Preponderance of evidence is not determined by the number of witnesses or the quantity of documentation but rather by the greater weight of all the evidence when considering the opportunity for knowledge, the information possessed and the manner of testifying.

If the grievant does not follow the pre-requisites set forth in the grievance procedure or otherwise meet the requisite burden of proof, the Chair may dismiss the grievance

B. The Respondent

A grievance may be brought only against an administrator (the "respondent") who has rendered a decision adversely affecting an individual's professional or academic capacity. Adverse effect means a decision that has harmed the grievant. Once the grievance Committee and Chair have been selected to hear the grievance, the respondent is provided the opportunity to respond in writing to the grievance. The response joins the issue and together with the grievance statement outlines the respective issues in dispute between the two parties.

C. Observers

The grievance procedure permits each party to have one (1) third party observer who may attend the pre-hearing (if any) and hearing. An observer has no active role in the process but may advise a party so long as the grievance process is not interrupted. An observer may be a member of the campus community, a friend or relative, or an attorney. The grievance procedure has no limitations on who may be an observer.

Under the grievance procedure, attorneys for the parties have no active role in the process. If a party is represented by an attorney, the attorney may attend the hearing but may do so only in the capacity of an observer. An observer/attorney may provide advice to a party, prepare correspondence and other documents for a party, and may be present during the proceedings so long as their presence does not disrupt the hearing process.

D. Committee Counsel

The Committee may have an attorney assigned to advise the Committee on procedural matters related to the grievance. If counsel is desired, the Chair of the Committee makes arrangements for the assignment thru the Office of Legal Affairs. Committee counsel may be present at all stages of the process, including Committee deliberations.

E. The Grievance Committee Chair

The grievance Committee Chair convenes and presides over all meetings of the Committee and at the grievance hearing. The Chair makes all procedural rulings regarding the grievance process and exercises complete control over all stages of the grievance hearing. The Chair provides information to the Committee and participants about the grievance and grievance process, corresponds with the parties on behalf of the Committee as appropriate, schedules all hearing dates and meetings, makes all procedural rulings regarding the grievance process (including the number of witnesses who may be called by a party, the length of each party's presentation, the admissibility of evidence, etc.) and otherwise exercises complete control over all stages of the hearing process. The Chair is responsible for ensuring that the Committee's work is completed in a timely manner. The Chair also is responsible for preparing a written report of the Committee's findings and recommendations and compiling the official record to the Vice President or President.

Pursuant to the University's grievance procedure, Committee Chairs have the following responsibilities:

- 1.) convene and Chair all meetings of the Committee and the grievance hearings;
- 2.) handle all logistics related to the grievance process (arrange for recording and/or transcriptions of the hearing, counsel for the Committee, conference rooms for the hearing, etc.);
- 3.) schedule Committee meetings and grievance hearings and notify parties, Committee members and Committee counsel of location and dates (the first date no later than four weeks after receipt of the respondent's response);
- 4.) draft all correspondence on behalf of the Committee;
- 5.) forward to the Office of Human Resources and the Office of Legal Affairs amended grievances and notices of all scheduled meetings;
- 6.) ensure the timely and orderly process of the grievance (attempting to complete the hearing within six weeks);
- 7.) instruct the Committee on jurisdictional and other related matters; make all procedural rulings (including what evidence is admissible, whether to permit a party to introduce evidence that has not been previously disclosed, etc.);
- 8.) keep a record of all meetings held and communications and correspondence with the parties and members of the Committee;

9.) prepare a written report of the Committee's findings and recommendations;

10.) compile the official record and transmit the record and Committee's decision as specified in the procedure;

11.) convene and Chair any meetings or hearings required by a remand of the grievance

F. The Grievance Committee

The Grievance Committee is a hearing body composed of three members with delegated authority to hear grievances. The Committee is responsible for making written findings of fact and recommendations with regard to the grievance. A Grievance Committee has no power to reverse an administrator's decision. Its authority is only to recommend a reassessment of the decision if it finds that the decision was reached improperly or unfairly.

The Grievance Committee acts as the agent of the Board of Regents to hear and determine grievances brought by a faculty or staff member. As a result of their delegated authority, members of the Committee must at all times maintain a neutral status vis-à-vis the parties to the grievance. Indeed, as a matter of due process, Committee members must be fair and impartial decision makers. While panel members are appointed from the grievant's constituency, this should not affect the Committee member's conduct or attitude in serving on the Grievance Committee. To be a fair and impartial decision maker, a Committee member should keep an open mind and not presume that either party to the grievance is right or wrong.

The Committee's role is to make a decision based on the evidence presented by each party. To maintain appropriate neutrality and accord due process to both grievant and respondent, ex parte communications on matters of substance related to the grievance must not take place between the Committee and a grievant and/or respondent. (Ex parte communications are those that involve only one party without the presence or knowledge of the other party.) Neither the Committee Chair nor Committee members may solicit or hear evidence outside of the presence of the parties and all communications to a party by the Chair or Committee members must take place in meetings (or phone calls) at which both parties have been provided the opportunity to be present or through written correspondence sent to each party.

Pursuant to the University's Grievance Procedure, Committee members have the following responsibilities:

- 1.) Attend the initial orientation meeting, pre-conference hearing and all scheduled hearing dates;
- 3.) Carefully listen and review all testimony and documentary evidence presented during the hearing;
- 4.) Weigh the credibility of the evidence, make specific findings of fact and determine whether the grievant has established the charges;
- 5.) Assist Chair in finalizing the written report of the Committee's decision, submitting a minority report if necessary;
- 6.) Consider any matter remanded to the Committee by the Vice President or President and assist the Chair in preparing a response to any adverse decision of the Vice President or President, if deemed desirable or necessary by the Committee.

IV. Steps in the Grievance Process

The grievance process consists of the following phases: A) initial meeting of the Grievance Committee, B) preliminary matters; C) the hearing of the grievance, D) deliberations by the Committee and E) writing the

decision. For the convenience of the Committee Chair, Appendix II contains various checklists of functions performed by the Chair for the various stages in the grievance process.

A. Initial Meeting of the Committee

The work of the Committee begins with an initial meeting of Committee members convened by the Chair of the Grievance Committee. The Chair should conduct a brief orientation to ensure that the members of the Committee have received the grievance, that they are familiar with the grievance procedures and that no member has any conflicts of interest that would prevent the member from serving on the Grievance Committee.

1. Review of Process and Role of Committee Members and Chair. At this initial meeting, the Chair of the Committee should briefly review the grievance process and the roles of the Committee and the Committee Chair. The following matters should be addressed:

1.1 Discussion of the Grievance Process. The Chair should inquire as to whether the Committee has received/reviewed a copy of the grievance procedures, the grievance petition, and a request for dismissal from the respondent (if any). The Chair should point out the steps in the grievance process and the responsibilities of the Committee. Questions about the process may be solicited and responses provided.

1.2 Role of Committee Members. The Chair should remind Committee members of their responsibility to render a fair and impartial decision based solely on the evidence before them. To ensure a fair and impartial decision no member of the Committee should have a conflict of interest, no ex parte communications should occur, and decisions must be based solely upon evidence introduced at the hearing. If any member of the Committee has a potential conflict of interest, it should be disclosed at this meeting. The matter may be resolved by recusal of the member or reserved for discussion with the parties by the Chair.

1.3 Conflicts of Interest. A conflict of interest is a relationship to a party or particular knowledge of the grievance that would prevent a person from deciding the case solely on the basis of the evidence presented at the hearing uninfluenced by matters of personal interest or other factors. Committee members and the Chair must be able to make decisions uninfluenced by personal interest or familiarity with the parties, witnesses, facts or situation related to the grievance.

A personal interest in the grievance, i.e., one in which a member stands to gain or lose personally by the Committee's decision, constitutes an automatic disqualification from service and the member should immediately withdraw from further service on the Committee. On the other hand, prior knowledge of some general facts or a personal collegial relationship to a party or potential witness does not automatically constitute a conflict of interest. If the knowledge relates to key testimony in the grievance or the relationship is more than collegial, it is more likely that a decision may be affected and the person should withdraw. The key question to be answered is whether the member is able to render a decision unaffected by whatever knowledge they possess or relationship they have with the party or parties.

Members should disclose any facts that might call their objectivity and impartiality into question. If any member believes they cannot render a fair and impartial decision, they should withdraw from the Committee (recusal). If there is any question of conflict of interest raised by any member but the member believes they can fairly decide the matter, the matter should be disclosed to the grievant and respondent so that any objections may be resolved before any substantive decisions are made regarding the grievance. This provides the parties the opportunity to either object to the continuance of a Committee member or to waive any objection. This process may eliminate any party's future challenge to the Committee's decision based on conflict of interest. If the matter remains unresolved, the Chair determines the matter of continued service.

1.4 No ex parte communications. The Committee's responsibility is to make findings of fact and resolve the grievance based solely upon the evidence presented to them at the hearing. Committee members may not

gather their own evidence or speak to a party or other persons regarding the grievance outside of the grievance hearings. All communication related to the grievance should be done at meetings at which both parties have been provided the opportunity to be present or through correspondence with all parties receiving copies. All correspondence between the Committee and any party is normally be done by the Chair with copies to all parties. If the Committee believes that there is a witness who can provide information pertinent to the grievance, the Chair may suggest to the parties that one or both call the witness to testify at the hearing in the presence of both parties or the Chair may make those arrangements.

B. Preliminary hearing matters

1. If deemed necessary by the Chair working in conjunction with Human Resources, the Chair may hold a pre-hearing conference between the Chair and the parties. NOTE: The Chair shall request the parties provide the following information through a written document submitted no later than five (5) working days prior to the formal hearing. The Chair may opt to receive the requested information in lieu of a pre-hearing conference. At the pre-hearing conference, the Chair does not hear evidence or arguments about the merits of the grievance but rather seeks to elicit from the parties the specific matters in dispute. The grievant should be asked to specify what specific decision is being challenged, to identify what university policies, procedures or practices are at issue, and what relief is requested, if this has not been previously set forth in the grievance statement.

An agreed upon statement of facts relevant to the issues raised in the grievance statement and response can be discussed. The Chair may also explore whether the parties can agree to a statement of facts. Identifying the issues in dispute and reaching an agreement on the facts can reduce the length of time required to hear the grievance as the testimony of witnesses or introduction of documentation at the hearing may not be necessary. Identifying the issues in dispute also permits the respondent to prepare a response directed to specific issues in dispute and enables the Chair to set time limits on testimony, determine how many witnesses will be heard and the length of time necessary to hear the grievance. If the parties agree to develop a statement of agreed upon facts, the facts should be introduced as a joint exhibit by the grievant and respondent at the beginning of the grievance hearing.

2. The Chair shall set out as many procedural issues as possible should be addressed at the pre-hearing conference or in writing by the Chair:

a.) length of hearing: The parties should be asked to estimate the time they will need to present their case. Estimates should cover both direct and cross-examination of witnesses. This will enable the Chair to determine the number of hearing dates needed to hear the grievance and to set the hearing dates. The Chair of the Committee may limit the number of witnesses, documentary evidence and the time for each party to present their respective cases based upon the discussion that occurs at this conference; each party however must be given an equivalent time to present their case. The Chair should advise the parties that repetitive or duplicative testimony will be prohibited; for example, testimony may not be necessary if the parties are able to submit an agreed upon statement of facts.

b.) order and presentation of evidence: The Chair may discuss with the parties any special scheduling needs, such as the need to accommodate potential witnesses whose availability to testify may be affected by the hearing schedule. To accommodate the parties, the Chair may agree to take witnesses out of the usual order specified in the grievance procedure to meet anticipated scheduling problems.

c.) Third party observers: The Chair should explain the role of the observer and ask the grievant to identify any third party observer who will attend the grievance hearing on grievant's behalf. Respondents may also be asked whether they will have a third party observer (if the grievant has elected to have a third party observer), however, respondents may elect to wait until immediately prior to the commencement of the hearing to respond and identify an observer.

d.) exchange of witness lists and documents: The Chair of the Committee may notify the parties of any time deadlines for the parties to exchange witness lists and documents that they intend to introduce at the grievance hearing. There should be no surprises at the hearing. The Chair may prohibit the introduction of testimony of witnesses that have not been identified or documents that have not been provided to each party in advance of the hearing unless the evidence is newly discovered and could not have previously been discovered with reasonable due diligence.

Documents should be numbered sequentially and marked as exhibits by each party introducing the document; e.g., Grievant's Exhibit 1, Respondent's Exhibit 1, Parties Joint Exhibit 1, Committee Exhibit 1. The exhibit number should be written on the first page of each exhibit. If the grievant and respondent label the exhibits at the time they are exchanged between the parties, it will facilitate and eliminate confusion when they are introduced into evidence at the hearing. When referring to portions of the exhibit, the party or witness should also refer to the page and paragraph or section of the document.

e.) set dates for the hearing: Available hearing dates should be discussed and set by the Chair.

C. The Grievance Hearing

The purpose of the grievance hearing is to provide the grievant and respondent the opportunity to present their respective cases to a Committee that will make findings of fact and recommendations regarding the grievance. The hearing is composed of four discrete segments: 1) opening statements of each party; 2) presentation of the grievant's case; 3) presentation of the respondent's case; and 4) closing arguments of each party. Each segment is briefly described below.

1. Opening Statements. Opening Statements from grievant and respondent are invited after the Chair's introductory remarks. (See Appendix I for Chair's checklist of items to be addressed in the Chair's opening remarks.) Each party makes a brief summary of what their respective positions are regarding the grievance. The opening statements provide a framework or context for the evidence that each party will present. Opening statements are not substitutes for testimony or argument. Rather they are brief outlines of what each party expects to present through testimony and documentary evidence. Chairs should place a time limit on opening statements and then proceed to the evidentiary phase of the hearing, i.e., presentation of the grievant's case and presentation of the respondent's case.

2. Grievant's Case. The grievant presents his or her case first through the testimony of witnesses and the introduction of documentary evidence. After each witness, the respondent has the opportunity for cross-examination of the grievant's witness. Committee members may also ask the witness questions. At the conclusion of the grievant's case, the Committee must decide if the grievant has presented sufficient credible evidence to sustain the grievance. If the grievant has not done so, the Committee must dismiss the grievance after the grievant's case. If the evidence presented does sustain the grievance, then the respondent's must go forward with respondent's case.

3. Respondent's Case. The respondent's presentation proceeds in similar fashion with the grievant cross-examining respondent's witnesses. The Committee may also ask questions of respondent's witnesses. At the conclusion of the Respondent's case, closing statements from each party are then invited by the Chair.

NOTE: An affirmation shall be administered to all witnesses by a notary public

4. Closing Statements. Closing statements provide each party with the opportunity to summarize the evidence and to argue their respective positions based upon the evidence presented. Since the grievant and respondent have already testified and presented their documentary evidence, closing statements may not be used to introduce new evidence. After the closing statements, the hearing concludes and the Committee recesses to deliberate.

D. Deliberations

The Committee deliberations take place in closed session after the hearing has been recessed. The deliberative phase allows the Committee to discuss all the issues that have been raised during the hearing and the evidence presented by each party in support of their case or in rebuttal to the case presented by the other party. Conflicting evidence is evaluated and the Committee determines which facts have been proven. The facts are then applied to the issues and the Committee determines what recommendations it should make regarding the grievance.

After the hearing has concluded, the Committee may not talk to any of the parties or other persons, including previous witnesses who have testified. If additional material testimony is needed, the Chair may reconvene the hearing for such purposes. If the matter is straight forward and can be responded to in writing, the Chair may solicit such a response provided that all parties have the opportunity to comment on the respective responses and all responses are shared with each Committee member.

1. Role of the Committee Chair

Under the University's grievance procedure, the Chair does not vote but rather facilitates the discussion that occurs among the Committee members who actually make the decision. The Chair may organize the manner in which the deliberations proceed, introduce the issues, and summarize those items upon which consensus appear to have been reached. The Chair has responsibility to prepare a written report of the Committee's decision. The Chair may receive assistance from member(s) of the Committee and should involve all members in reviewing and approving the final report. Any member who disagrees with the Committee's decision may prepare a minority report.

2. Resolving Conflicting Testimony

In some cases, there may be conflicting evidence and the Committee will need to evaluate the credibility and weight of that evidence. Conflicting evidence may be the result of deliberate dishonesty; other times it may be the result of an accidental omission or a faulty memory. In either case, the Committee must evaluate the evidence and determine the truth of material evidence. A witnesses demeanor, his or her relationship to the party for whom the witness is testifying, the consistency of the witnesses testimony with prior communications, corroboration of the testimony by others, and similar factors enable the Committee to determine the credibility of the evidence.

3. Evidence

The panel will not be bound by strict rules of legal evidence. It may receive any evidence deemed by the Chair to be of value in determining the issues involved. Repetitive evidence (that evidence which merely restates what has already been presented) need not be heard by the Committee.

4. Proof by Preponderance of the Evidence

A preponderance of evidence is defined as that evidence which when fairly considered produces the stronger impression and is more convincing as to the truth when weighed against other opposing evidence. Preponderance of evidence is not determined by the number of witnesses or the quantity of documentation but rather by the greater weight of all the evidence when considering the opportunity for knowledge, the information possessed and the manner of testifying.

E. Writing the Decision

The Chair is responsible for submitting the final written report to the appropriate decision maker. The written report of the Committee's decision must set forth the Committee's findings and recommendations.

Specifically, '[t]he report should state a separate finding for each particular issue of the grievance, should make findings that resolve the material issues of fact that have been disputed, address any minority views and provide a recommendation for disposition of the grievance.' The Committee's report should contain sufficient information to permit the Vice President to understand the issues in the grievance, the facts as determined by the Committee based upon the credible evidence submitted by the parties during the grievance hearing, and the rationale for the Committee's decision and recommendation(s). The report should address the following matters:

1. The composition of the grievance Committee.
2. The process followed by the Committee. A description of the process should set forth the dates the Committee met and the length of time spent in hearing the case and in deliberating to reach a decision.
3. The identity of all parties to the grievance.
4. A description of the grievance (including what policies, regulations, rules or practices were alleged to be violated).
5. The findings of fact that are relevant to each issue in the grievance. The findings of fact basically set forth what happened. There may be conflicting evidence on various factual issues that the Committee will resolve in its deliberations and these factual conflicts should be discussed with the Committee's ultimate judgment of why the Committee accepted or rejected specific evidence. The parties, the Vice President or President and any subsequent reviewer needs to know that the Committee considered the relevant and material evidence and made factual findings that are supported by the evidence in the record. A recitation of conflicting evidence in the record does not suffice. The Committee must actually decide which evidence it finds as true.
6. Recommendation(s). Recommendation(s) addressing what action the Committee has decided should be taken. The recommendation must be supported by the facts and provide a justification. While the decision maker(s) have the authority to draw different conclusions, a carefully reasoned decision is more likely to be persuasive and upheld. As stated in the grievance procedure:

The Committee should be careful not to simply substitute its judgment for that of the respondent(s) (e.g., the Committee should not recommend that the grievant get the relief he or she seeks merely because a different decision would have been reached by a Committee member based on the same undisputed facts). Rather, the Committee should decide if the decision being grieved was reached for improper or unfair reasons (e.g., was it based on irrelevant factors or improper facts).

7. Minority report(s) if any. The report shall include minority views of Committee members, if any, and shall note the intent of any Committee member to file a separate report if any member wishes to do so. Minority reports, if any, shall be appended to the Committee's report.

F. The Official Record

The Chair should also forward the official record along with the written report and recommendations. The official record of a grievance hearing consists of all correspondence pertaining to the grievance and every item, piece of information, document and exhibit that was either submitted to or given consideration by the Committee, along with the tape or court reporter's transcript of the hearing. All information relevant to the Committee's procedural rulings, factual findings, recommendations, and any other aspects of its final report should be included in the Official Record. The Chair should prepare a table of contents identifying the contents of the record so that every document and record can be easily identified and located.

Any evidence that the Chair excluded from consideration should be separately identified and a record the Chair's reasons for excluding the evidence must be included in the record.

G. Discharge of the Committee and/or Further Proceedings

Upon completion of the Committee's work, the Committee shall be discharged.

In cases where the Committee's report is forwarded to the Vice President or to the President for final decision, the Vice President or President may accept or reject any or all findings and recommendations of the grievance Committee, may remand the matter to the Committee for further consideration of the grievance or may seek clarifying information from the Committee. If the Vice President or President accepts the Committee's findings and recommendations, the Committee is so notified and discharged from further service.

If the Vice President or President rejects any of the findings or recommendations, the Committee is provided with the Vice President or President's decision and an opportunity for the Committee to respond in writing to the decision. Upon final action by the Vice President or President, the Committee is discharged from further service.

If the Committee's decision is unclear or additional proceedings are deemed necessary by the Vice President or President, the matter will be remanded with instructions to the Committee for further action. For example, the Committee may be asked to hear additional evidence and re-evaluate the decision, or to clarify portions of the Committee's decision. Once the remanded matters are addressed, the Committee is notified and discharged as set forth above.

APPENDIX I

Chair's Checklist – in conjunction with the Director of Human Resources

1. Chair's checklist of tasks for initial meeting with the Committee:

1.1 Before the meeting:

1.1.1 if Committee legal counsel is desired, contact the Office of Legal Affairs;

1.1.2 have HR contact the parties to set up a time to select the Hearing Committee; 1.1.3 notify Committee members and Committee counsel of initial meeting date and location.

1.2 At the meeting:

1.2.1 convene and Chair the meeting;

1.2.2 review the grievance process;

1.2.3 discuss role and responsibilities of the Committee;

1.2.4 address any potential conflicts of interest;

1.2.5 have Committee review the grievance statement;

1.2.6 determine available dates for the pre-hearing conference and set date and location.

1.3 After the initial meeting:

1.3.1 forward a copy of the grievance statement to the respondent and request a written response within two weeks;

1.3.2 upon receipt of respondent's response, provide copies to Committee members and grievant;

1.3.3 notify in writing the parties, Committee members and Committee counsel of pre-hearing date and location.

2. Chair's checklist of tasks for the Pre-hearing Conference if held:

2.1 Before the Pre-hearing Conference

2.1.1 upon receipt of the respondent's response to the grievance statement, forward copies to each Committee member and schedule the pre-hearing conference (within one week of receipt of respondent's response to the grievance); notify all parties and members of the Committee and Committee counsel of the pre-hearing date and ask them to bring their calendars to the pre-conference hearing for purposes of determining available hearing dates;

2.1.2 arrange for the pre-hearing to be taped or transcribed;

2.1.3 work with HR to schedule the pre-hearing and notify all parties and Committee counsel in writing.

2.2 At the Pre-hearing Conference (if held) or required by the Chair:

2.2.1 identify the grievance before the Committee and briefly state the purpose of the pre-conference meeting: to review the grievance to identify and focus the issues, to determine any procedural issues that need to be addressed including any potential conflicts of interest of Committee members or amendment of the grievance, to review the procedures that will be followed in the hearing, and to set hearing dates;

2.2.2 ask the parties to the grievance and Committee members to introduce themselves for the record. Any third party observers present should also be identified;

2.2.3 note that the hearing is being taped and that gestures or nods cannot be recorded by tape (or if the hearing is transcribed, can be misinterpreted by the court reporter); instruct the parties that in order to ensure that the record accurately reflects all of the testimony, all communications should be verbal and that testimony will be suspended to change the tape from time to time so that all testimony can be accurately recorded for the record;

2.2.4 ask the parties and Committee members whether they have received copies of the grievance procedure, the grievant's grievance statement and the respondent's response;

2.2.5 address and resolve any potential conflicts of interest on the part of Committee members (Committee members should disclose any personal interests or knowledge of the case or any witnesses that may be called to testify). Confirm that the parties are satisfied with the Committee as constituted;

2.2.6 review grievance statement and response with the parties to clarify and focus grievance issues and requested redress; handle any preliminary procedural issues that may not have been resolved at the orientation conference (e.g., amendment of the grievance or dismissal for failure to state a grievable matter) or that have been raised by either party prior to the pre-hearing conference;

2.2.7 review procedures that will be followed in the grievance hearing (order and presentation of witnesses, labeling and introduction of documents, sequestration of witnesses, etc.) and answer any questions from the parties;

2.2.8 request parties to identify whether they will have a third party observer, if not yet identified;

2.2.9 with HR, handle other hearing logistics (e.g., discuss and set hearing dates; set dates for the exchange of witness lists and documentary exhibits between the parties, review requirements for the labeling of exhibits, address any limitations on the number of witnesses, the length of each witnesses testimony, the time for each party to present their respective cases, etc.).

2.3 After the Pre-hearing Conference:

2.3.1 notify the parties in writing of the dates and location of the hearing, and any deadlines for exchange of witness lists, and any other pertinent matters agreed to at the pre-hearing conference;

2.3.2 notify Committee members and Committee counsel of the dates and location of the hearing;

2.3.3 work with HR to arrange for a tape recording of the hearing;

2.3.4 The hearing must begin within 4 weeks of the pre-hearing conference unless there are significant extenuating circumstances.

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3. Chair's checklist for the hearing:

3.1 Before the hearing: work with HR to notify all parties and Committee Counsel of the hearing dates; arrange for the hearing to be transcribed by a court reporter.

3.2 At the hearing:

3.2.1 convene and Chair the grievance hearing;

3.2.2 open the hearing by stating the grievance before the Committee; ask participants to introduce themselves and any observers accompanying them; ask Committee members to introduce themselves. Remind parties that the hearing is being tape recorded and to ensure that the record accurately reflects all of the testimony, all communications should be verbal. Gestures and nods are not always picked up by the tape recorder;

3.2.3 Hear testimony from grievant with cross-examination by respondent and Committee members; determine whether grievant's evidence is sufficient to state a grievable matter justifying remedial action. If not, grievance is dismissed; if grievable matter is established, hear respondent's case with cross-examination by grievant and Committee members;

3.2.4 make all procedural and evidentiary decisions relating to the conduct of the hearing including the order, number of witnesses, and length of their testimony; the order and procedure for questioning the parties and their witnesses; the admissibility of questions and evidence; and compliance with hearing procedures; questioning that is irrelevant, immaterial, unduly repetitious or abusive may be prohibited;

3.2.5 determine who may be present during the hearing of the grievance;

3.2.6 determine whether there is any additional information that the Committee might wish to hear and request that information;

3.2.7 permit each party to make closing statements (Grievant makes closing statement, followed by respondent, and a last statement by grievant,);

3.2.8 recess the hearing.

3.3 After the hearing:

3.3.1 hold deliberative session with the Committee for the Committee to discuss the evidence and reach a conclusion; ensure that discussion covers all issues, the material facts pertinent to each decision, and the rationale for the Committee's findings of fact and recommendations sufficient to enable the Chair to prepare the final report; Chair may request assistance from one or more Committee members in preparing the written report; set a date for the Committee to reconvene to review draft of Committee's decision and to finalize the Committee's report;

3.3.2 compile the official record of the grievance ensuring that all correspondence and documentary evidence is appropriately labeled and identified; prepare a record identifying any evidence that is excluded and the reasons for the exclusion;

3.3.3 forward the Committee's report and the official record to the parties and the Vice President or President as set forth in the grievance procedures;

3.3.4 convene and Chair any subsequent remand of the grievance to the Committee.

APPENDIX II

GCSU Grievance Policies

Policy Statement

The University System of Georgia is committed to providing a good working environment for its faculty and staff. Conflicts and disagreements between employees and their supervisors are inevitable. It is the policy of the University System of Georgia to resolve these disputes fairly, and at the lowest possible level. When these conflicts or disagreements occur, employees should first attempt to resolve them through discussion with their supervisor.

Reason for Policy

This policy reinforces the institution's commitment to provide a safe and amicable workplace for all employees.

Overview

The policy is intended to provide an avenue for resolution of conflicts at the lowest possible level. Attempted resolution may be addressed through the Grievance/Disciplinary Review Process, if applicable. A grievance or disciplinary review will be available to handle claims that a person has been harmed by any action that violates the policies of either the institution or the Board of Regents of the University System of Georgia ("the Board of Regents") or for requested disciplinary review pursuant to the University System policy, entitled Dismissal, Demotion or Suspension.

A grievance will not be available to dispute:

- promotion and tenure decisions,
- performance evaluations,
- hiring decisions,
- classification appeals,
- challenges to grades or assessments,
- challenges to salary decisions,
- challenges to transfers or reassignments,
- termination or layoff because of lack of work or elimination of position,
- investigations or decisions reached under the institution's Harassment Policy, and normal supervisory counseling.

In addition, these formal procedures will not be available to a student or employee who has chosen to seek relief through a department, school or unit's internal grievance procedure unless such procedure failed to provide a fair and impartial hearing and an adequate mechanism for appeal or review.

Process

Circumstances under which grievances may be filed. A classified employee may file a grievance only if:

- The employee has been suspended; or
- The employee has been discharged; or
- The employee has been demoted, or their salary has been reduced.

An employee may not file a grievance, even in the above circumstances, if:

- The discharge occurred during the six (6)-month provisional period;

- They have been adversely affected by a reorganization, program modification or financial exigency (such employees may apply to the Board of Regents for review);
- The issue underlying the grievance is a charge of discrimination on the basis of race, sex, age, disability or religion. Such charges should be directed to the Affirmative Action/EEO Officer.
- The issues being grieved have been previously heard by an administrative panel at the institution.

Definitions

For the purpose of applying and interpreting this Policy, certain terms shall have the meanings as indicated below:

“Alternative Dispute Resolution” refers to the use of mediation, facilitated discussion, conflict coaching, or other informal means of resolving a dispute.

“Conflict” means a state of disharmony between two or more parties.

“Complainant” means the party that makes a complaint against another party.

“Dispute” refers to any controversy or debate in the workplace that is serious enough in nature that some resolution is required in order to maintain efficiency and civility.

“Employee” means any GCSU full time or part time faculty or staff eligible to receive employment benefits through the University System of Georgia.

“Formal Grievance” means the written filing of a complaint which results in the use of a Grievance Panel to resolve the dispute.

“Grievant” means the eligible employee who initiates an informal or formal grievance process.

“Informal Grievance” shall be deemed to refer to a complaint being made by any means other than a formal grievance, indicating the desire of the complainant to resolve the dispute without the use of a Grievance Panel.

“Party” means a person involved in a dispute.

“Witness” means a person who can give a firsthand account of something.

Procedures

Conflicts sometime arise in the relationship between the University, as an employer, and its employees. Both the employee with a grievance and the University benefit when the University responds to grievances promptly and fairly.

Grievances of discrimination and harassment will be referred to the Office of Institutional Equity and will be investigated in accordance with university procedures. For more information you may visit www.gcsu.edu/equity .

All employees shall receive fair and equitable treatment at GCSU. In keeping with the spirit of collegiality, the goal is to resolve an employee complaint or grievance promptly and fairly and if possible through communication between the parties directly involved in the complaint. This is consistent with our philosophy of building an environment that is fair and equitable and supports and values open communication at all levels. The grievance procedures at Georgia College & State University consist of three parts:

- a) Informal Grievance/Complaint Resolution Procedures
- b) Alternative Dispute Resolution (Mediation or Facilitated Discussion)

c) Formal Grievance Procedures

a) Informal Grievance/Complaint Procedures

1. The employee will seek to resolve the grievance/complaint with the immediate supervisor or a first line manager consistent with our practice of resolving disputes at the lowest possible level in the organization. These discussions should be confidential. Verbal or written statements are an acceptable means of requesting a meeting during the informal grievance/complaint process.
2. If the grievance/complaint involves the immediate supervisor, the employee and/or the supervisor, shall have the option of having a confidential discussion, and/or shall be given an opportunity to have another employee, peer or human resources representative present as a neutral observer. If the grievance/complaint remains unresolved, the employee may then seek to resolve the grievance/complaint at each level of supervision.
3. If the grievance is not resolved or if circumstances of the grievance prevent the employee from using the above mentioned steps, the employee may present the grievance to the Human Resources Director at any time during the informal grievance/complaint process.
4. The Human Resources Director shall meet with the employee and the supervisor and others as appropriate, in an attempt to resolve the informal grievance/complaint.
5. If the complaint involves accusations or appearances of discrimination the Director of Human Resources will immediately contact the Director of Institutional Equity.
6. At any time during the informal grievance/complaint process an employee may choose to pursue mediation or a formal grievance, keeping in mind the alternatives to the formal process.

b) Mediation and/or Facilitated Discussion Procedures

If all reasonable informal efforts to resolve the complaint do not result in resolution, or at any time during the complaint process the employee or supervisor feels mediation might be an option, they are encouraged to consider mediation to resolve the conflict.

What is Mediation?

Mediation is an informal process that involves a trained facilitator who will assist in effecting a voluntary resolution of the dispute/complaint. The objective of a mediation or facilitated discussion process is to come to an agreement that is fair and meets the needs of the parties involved in the conflict. The process is confidential and is conducted in a confidential setting. GCSU and the University System of Georgia maintain a list of trained mediators.

Mediation does not waive the rights of any aggrieved party to seek resolution of his/her grievance through formal avenues. Mediation is a cost effective, voluntary, fast and efficient way to resolve grievances; it encourages reaching a mutually acceptable resolution.

Steps for Mediation

1. If one or both parties are interested in pursuing mediation or facilitated discussion as an option, they should contact the Director of Human Resources or any member of the GCSU Conflict Resolution Committee (CRC). A list of current CRC members can be found on the [**Conflict Resolution Webpage**](#).
2. Both parties involved in the complaint/dispute must agree to voluntarily request mediation.
3. If the parties agree and an internal GCSU trained mediator(s) can be utilized, the Director of Human Resources will arrange the time and location for the mediation or facilitated discussion.
4. Every attempt will be made to arrange for the mediation/facilitated discussion within ten (10) working days of the request. Requests for an external mediator will take additional time to coordinate.
5. The mediator will facilitate the discussion between the disputing parties to help find a mutually agreeable solution to the conflict. The mediator will not impose a solution.

6. At any time during the mediation process either with or without reaching an agreement the employee can file a formal grievance.

c) Formal Grievance Procedures

Faculty or staff employees may pursue resolution of their grievance/complaint through a formal grievance process. The following procedures will be in place to provide the framework and process to resolve formal grievances:

1. The Director of Human Resources will serve as the grievance coordinator and has the responsibility of managing the expeditious and fair resolution of grievance hearings. The main role of the Director of Human Resources is to assist the parties, the grievance chairperson, and grievance panel in administering procedures. If the complaint involves accusations or appearances of discrimination, including but not limited to sexual harassment, or involves Human Resources personnel, the Director of Human Resources will immediately contact the Director of Institutional Equity to determine the next steps.
2. The request for a grievance hearing must be filed with the Director of Human Resources, within thirty (30) working days of the event that has given rise to the complaint. GCSU encourages the use of our informal procedures as a means of resolving conflict therefore; if mediation is selected as a means to informally resolve the dispute, the Human Resources Director, in consultation with the complainant and the Office of Legal Affairs, will extend the time for the submission of the written grievance request up to thirty (30) working days following the completion of the mediation process.
3. To initiate a formal grievance hearing, the complainant is required to prepare and submit a Grievance Request Form to the Director of Human Resources to ensure the Grievance Panel will address the specific issues that concern the complainant. The Grievance Request Form can be obtained from the Director of Human Resources or it can be accessed from the Human Resources web page http://info.gcsu.edu/intranet/human_res/. The information listed below should be included to ensure that the complainant identifies all the issues and facts. The form must include:
 - The complainant's name, and job title;
 - The department/unit in which the complainant is employed;
 - The nature of the problem or complaint;
 - The communication that has taken place between the complainant and his or her academic department head, supervisor, and/or second level supervisor concerning the matter;
 - The supervisors and/or superiors responsible, if applicable;
 - The reason why the complainant disagrees with that response;
 - The complainant's suggestion for proper resolution of the matter or remedy sought;
 - Identification of any witnesses who may have relevant information regarding the complaint; and
 - Identification of any previous recommendations to resolve the issue.

Human Resources staff members are available to assist the complainant in completing the form upon request.

4. The Director of Human Resources shall, within ten (10) working days of receipt of the grievance, meet with the grievance panel Chairperson to present the grievance. The grievance panel Chairperson shall within ten (10) working days of receipt of the grievance from the Director of Human Resources determine and respond in writing to the complainant as to whether the grievance is eligible for review by the grievance panel. (See establishment of grievance panel below.)
5. If the grievance is accepted for review, the Chairperson will instruct the parties as to the procedures to be followed in selecting the members of the panel and in conducting the hearing.
6. If the grievance is not accepted for review, the Chairperson will inform the complainant in writing. The complainant may then request a review by the full grievance panel (faculty or staff, as

applicable) within five (5) working days following the Chairperson's decision. The full grievance panel will render a final decision within five (5) working days following receipt of the request for review. If the panel, by simple majority, upholds the original decision of the Chair, the complainant and other involved participants will be notified and reasons given. If the panel agrees to hear the grievance, the process continues in the same manner as if the Chairperson had accepted the grievance, and the Chair will have the grievance panel selected as described below within five (5) working days following the panel's decision.

7. At any time during the formal grievance process the employee may choose to resolve the complaint/conflict through mediation. In this event the grievance process will be suspended pending completion of the mediation process.

Establishment of the Grievance Panel

The Grievance panel shall provide a means to hear the complaints of university employees who have exhausted other channels but who have not received satisfaction. There will be a fourteen member faculty grievance panel appointed by the President and charged with hearing faculty grievances. At least seven of the members will be tenured faculty. There will also be a fourteen member staff grievance panel appointed by the President to hear staff grievances.

The President will also appoint two tenured faculty members to serve as Chair and Vice Chair for both faculty and staff grievances.

The grievance panel will be selected by the end of September of the fall term of odd calendar years. The newly elected members will meet within four weeks following the election. Training will be provided by the Director of Legal Affairs and/or Director of Human Resources to all grievance panel members once the election is complete.

Eligibility of Service of Grievance Panel

With the exception of the Human Resources Director, Director of Institutional Equity, Director of Legal Affairs, Vice Presidents and the President, all regular employees with at least 2 years of continuous service at GCSU are potential Grievance or Review Board Members. Employees' names shall be removed from the pool if:

- (1) Employment terminates
- (2) An employee is a grievant
- (3) An employee is named or otherwise directly involved in the grievance

Selection of Grievance Hearing Panel

Each Grievance Hearing Panel shall consist of the Chair, non-voting, and three (3) voting members chosen from a panel of fourteen faculty or staff members. The Chair shall set up a meeting with both parties. In the presence of the Chair each party will strike the names of one (1) person from the Grievance Panel list. The parties shall alternate in exercising their strikes, beginning with the grievant, until three (3) members remain. The three (3) members shall constitute the Grievance Hearing Panel who will hear the grievance. It is anticipated that this "striking" process will be completed within five (5) working days following the decision by the Chair to review the case.

In the event a grievance is filed that involves faculty and staff, the panel will consist of three (3) voting faculty members and three (3) voting staff members. The grievance chair will represent the deciding vote if the outcome of the vote results in a split decision.

Excusing Grievance Hearing Panel Members

Grievance Panel members who are drawn as possible grievance hearing panelists may be excused by the Grievance Chair upon request if:

1. There is a bona fide conflict of interest between the hearing panel member and either of the parties of the grievance;
2. The potential hearing panel member is ill.
3. Service on the hearing panel should be excused for good cause shown such as, but not limited to, conferences, job responsibilities, family illness, etc.

Removal of Grievance Hearing Panel Members for Cause

A party may present a request, in writing, at least three (3) working days in advance of any hearing, to the Chair, to remove any member of the grievance panel for reasonable cause. If the Chair grants the request, he or she shall fill the vacancy from the members of the initial pool. In addition, the Chair may, on his or her own motion, remove any member for reasonable cause and replace the member with an alternate member.

Notice to Parties and Grievance

After the grievance hearing panel (three members) has been selected, written notice of the time and date set for the hearing shall be hand delivered to the parties and to the members of the grievance hearing panel by the Chair no less than ten (10) working days before the scheduled date of the hearing. The Chair should coordinate meeting participation with the selected hearing panel members and parties prior to the delivery of the written meeting notice.

Duties of the Chair

The Chair of each grievance panel shall not vote (except in the case of a tie vote) but shall be responsible for the conduct of the hearing and implementation of the grievance procedures. The Chair's duties include the following:

- Assuring that all parties are familiar with the grievance procedures.
- Consulting with the Director of Human Resources and the Office of Legal Affairs to determine if the grievance should be heard by the grievance panel.
- Notifying the grievant and other parties in writing as needed regarding the status of the grievance.
- Assuring that the grievance/complaint has been submitted as outlined above.
- Following all time and communications responsibilities as outlined in the review or grievance process.

If it is determined that there is a conflict of interest for the Chair on a specific grievance hearing, the Chair will be removed from the process and the Vice Chair will facilitate the process.

Hearing Procedures

- The hearing before the grievance panel shall be conducted in a confidential setting. The parties have the right to select one (1) person to attend as an observer.
- The grievant may select an advisor to assist at the hearing, and the advisor may participate in the hearing in an advisory capacity only, this includes an attorney.
- The Director of Human Resources and the Director of Legal Affairs will assist the Hearing Chair.
- The hearing will be recorded.
- GCSU Human Resources will supply the tapes and recorders for the hearing. The tape recordings of the proceedings shall be kept within a secured area in the GCSU Human Resources Office and will be available to the parties at cost.
- The parties shall have the right to cross examine all witnesses. Should a witness be unable to appear because of illness or other cause acceptable to the Chair, a sworn statement or affidavit of the witness may be introduced into the record.
- An affirmation shall be administered to all witnesses by a notary public.

- The panel will not be bound by strict rules of legal evidence. It may receive any evidence deemed by the Chair to be of value in determining the issues involved.
- Within fifteen (15) working days following the conclusion of the hearing, the panel shall state its finding in writing based on the evidence introduced at the hearing.
- The Chair will report the findings in writing to the relevant Vice President acting as the designee of the President. In the event the complaint involves a Vice President the panel's findings will be reported to the President.
- Confidentiality of the hearing shall be preserved by the grievance hearing panel members.

Grievance Panel Recommendations to the Vice Presidents/President

Any findings and recommendations made by the hearing panel shall be provided to all parties and to the appropriate Vice President and are advisory only. The Vice President will render a final decision within ten (10) working days of receiving the panel's recommendation. The Vice President reserves the right to return the grievance to the grievance hearing panel for further consideration. If the Vice President is directly involved in the grievance/complaint or in cases where the Vice President's role is a conflict of interest, the grievance panel recommendation will be submitted to the President for final decision as outlined above.

The Vice President's final decision may be appealed to the President in writing within twenty (20) days following the decision of the Vice President. The President's decision will be rendered within ten (10) working days and can be appealed to the Board of Regents by requesting a hearing with the Board of Regents within twenty (20) days following the decision of the President. The request for a hearing is sent to the Board of Regents, Office of Legal Affairs in accordance with Article VIII of the BOR bylaws. The complainant should contact the GCSU Human Resources Office or the GCSU Office of Legal Affairs for further information on how to appeal to the **Board of Regents**.

Time Limits

The time limits as described in this formal grievance procedure are advisory and may be waived or extended by consent of both parties, or by authority of the President or his/her designee, to permit mediation or any other informal process or due to extenuating circumstances.

Date Last Updated: