

*** THIRTEENTH DRAFT ***

FACULTY GRIEVANCE POLICY AND PROCEDURES

4 June 2009

[NOTE: Footnotes provide explanations for why certain features are either included or excluded. The footnotes will not be included in the document – they are for committee use only.]

The purpose of the present policy is to encourage the equitable resolution of workplace grievances that faculty have concerning actions or decisions made by either administrators or other faculty.¹

I. Scope and Purpose

A. Individuals who may pursue a grievance under this policy are all those who hold appointments in one of the Faculty Series as defined in the *Faculty Personnel Guidelines Relating to Appointment, Promotion, and Tenure*, hereafter called the APT document.

B. The present policy and procedures apply to workplace issues not covered by the APT document. The policies and procedures in APT document take precedence for any matter covered in that document.

C. The policy and procedures in the present document take precedent over the policy and procedures for addressing employee grievances in the DU Employee Handbook.²

II. Definitions

A. Grievance: a complaint concerning an action or decision by faculty or administrators that a faculty member believes directly and adversely affects him/her in his/her professional capacity.

B. Grievant(s): the person(s) initiating the grievance. Hereafter, grievant (in the singular) will be used to designate one or more grievants.

C. Respondent(s): the individual(s) who carried out the action or made the decision which is the subject of the grievance, and against whom the grievance is filed. Hereafter, respondent (in the singular) will be used to designate one or more respondents.

D. Faculty Review Committee (FRC): Elected, representative faculty committee defined in the Faculty Senate Constitution.

III. Procedures

A. Informal Conciliation and Mediation

Before a formal, written grievance may be filed, the grievant must attempt to discuss the grievance with the respondent and/or with a supervisor of the respondent (either in person or by correspondence) so as to reach a mutually acceptable conciliation. If it is acceptable to both parties of the discussion, one or more third parties (such as an ombudsperson, higher-level administrator, or faculty colleague) may be invited to witness and/or participate in the discussion to assist in achieving a conciliation.

If mutually acceptable, the grievant and respondent are free to choose other means of conciliation (such as mediation or arbitration by a third party) in lieu of the subsequent procedures in the present document.

B. Faculty Review

If the grievance is not resolved, in Step A above, to the satisfaction of the grievant, the grievant may file a written grievance with the standing Faculty Review Committee (FRC) to obtain a formal review of the merits of the grievance and recommendation for remedial measures. The written petition to the FRC shall set forth the nature of the grievance and state against whom the grievance is directed. The petition shall contain any factual or other data that the grievant deems pertinent to the case, and describe the remedy sought.³

Any members of the FRC named as a respondent must be excused from the FRC for the review. Excused members of the FRC shall be replaced by appointment of the Executive Committee of the Faculty Senate.

The FRC will afford the respondent an opportunity to respond in writing to the grievant's petition. The FRC may conduct any inquiry and collect any evidence and testimony it deems warranted and appropriate. The FRC shall issue a written report either dismissing the complaint or recommending remedies for inequities or injustices, with reasons therefore. Both the original petition from the grievant to the FRC and the respondent's written response, if there is one, shall be included as a part of the FRC's report. Members of the FRC may, at their discretion, include minority reports as a part of the FRC's report. The report of the FRC (including the grievant's petition, respondent's response, and any minority reports) shall be copied to the grievant, respondent, and Provost.

The Diversity and Equal Opportunity Office (DEOO) must be notified of any grievance by a faculty member alleging discrimination, including sexual harassment. The Equal Opportunity Officer, if so requested by the grievant, will investigate any grievance alleging discrimination and attempt to help the parties resolve the issue. Faculty members should be aware of any specific time deadlines associated with filing a discrimination claim with the DEOO.

C. Appellate Review

Either the grievant or respondent (or both) may appeal, to the Appellate Review Committee (ARC), the findings and recommendations of the FRC. A request for an appeal must be made in writing and submitted to the Provost (who shall forward it to the ARC) within 15 days following the receipt of the report of the FRC. The appeal shall state the reasons and justification for an appeal.

The ARC will be constituted at the beginning of the academic year. The ARC will consist of the following five members (none of whom may be members of the FRC): two faculty members appointed by the FRC, two administrators appointed by the Provost, and one member appointed by the President of the Faculty Senate.⁴ Any members of the ARC who are named as a respondent in the original grievance must excuse themselves from the ARC for consideration of the appeal. Such excused members will be replaced in the same fashion as they were initially appointed.

If the grievant files an appeal, the ARC will afford the respondent an opportunity to provide a written response. If the respondent files an appeal, the ARC will afford the grievant an opportunity to provide a written response. Both the written request for an appeal and the written response to that request will become a part of the report of the ARC. The ARC shall conduct investigations, hold hearings, and consider evidence and testimony as it deems relevant and appropriate. The ARC will issue a written report either agreeing with the recommendation of the FRC or specifying areas of disagreement, with reasons therefore. Members of the ARC may, at their discretion, include minority reports as a part of the ARC report. The report of the ARC (including the request for the appeal, the response to that request, and any minority reports) shall be copied to the grievant, respondent, the FRC, and the Provost.

D. Decision by the Provost

The Provost shall render a final written recommendation based on the report of the FRC (and the report of the ARC, if that committee was convened for an appeal). If the Provost disagrees with the recommendations of either the FRC or ARC, the Provost shall provide an explanation in writing, with reasons for disagreements. The Provost's report shall be copied to the grievant, respondent, FRC, and ARC (if it was convened for an appeal), and appropriate supervisors.

IV. Withdrawal of a Grievance or an Appeal

The grievant may withdraw the grievance at any point in the process prior to the time at which the FRC meets to consider its decision, with the consent of the committee. The grievant or respondent may withdraw his or her request for an appeal at any point prior to the time at which the Appellate Review Committee meets to consider its decision, with the consent of the Committee.

V. Non-Retaliation

The filing of frivolous and baseless complaints and complaints made in bad faith (for example to harass the target of the complaint or injure his or her reputation) are not to be tolerated. If either the FRC or, on review, the Appellate Review Committee finds that a complaint is frivolous, baseless or made in bad faith, appropriate sanctions may be imposed. Otherwise, a faculty member shall not be penalized, disciplined, disadvantaged, or in any way retaliated against for exercising his or her right to make a complaint or file a grievance. Likewise, a faculty member shall not be penalized, disciplined, disadvantaged, or in any way retaliated against for assisting another faculty member in the presentation of a complaint or for participating in grievance matters pursuant to the present procedures (e.g., as a witness in a grievance proceeding or as a member of a grievance committee; e.g., the FRC). All administrators are responsible for enforcing this policy. Individuals who violate this policy will be subject to the appropriate and applicable disciplinary process, up to and including termination or dismissal.^{5 6}

Footnotes

1. Grievances that administrators, students and parents might file against faculty are excluded from this document, which is proving to be sufficiently complex as is.

2. As you read further, you will see that the grievant and the respondent could, if they both agree, opt to follow the procedure in the DU Employee Handbook (or any other procedure they might like). But the procedure in the Employee Handbook simply doesn't well fit most faculty grievances (either against administrators or other faculty) and it is difficult to make it fit. In those relatively few cases where the procedure in the Employee Handbook would well fit, the grievant and respondent may choose, as noted above, to use it if they like. (Note that this stance avoids the difficult problem of defining what is and what is not a grievance that is unique to faculty.)

3. By including the FRC in the grievance process in this way, the procedure in the present document is consistent with the Constitution of the Faculty Senate.

4. The ARC needs to have an odd number of members. The proposed composition of ARC is likely to mean it will contain 3 faculty and 2 administrators. However, the final arbiter in this process is the Provost, who is an administrator. That biases things toward the side of the administration quite a bit more than having a majority of members of the ARC be faculty. Plus, any member of the ARC may submit a minority report which will be sent to the Provost. In this way, if the administrators on the ARC feel strongly that the majority view is wrong, they can easily make that view heard by the Provost.

5. Other than imposing sanctions against frivolous grievances, NO restrictions have been placed on the nature of grievances that may be filed by faculty. The AAUP explicitly imposes no restrictions. Given the sanctions against frivolous grievances and the multiple levels of review (i.e., both the FRC and the ARC), restrictions are neither necessary nor wise.

Note also that by allowing grievances about salary, the procedure being proposed herein is consistent with the Faculty Senate Constitution and even adds the potential appeal (by administrators) to the ARC which contains two administrators, which is a level of appeal that is not included in the Constitution, were grievances about salaries to be excluded from the present document. In other words, by allowing grievances by salaries, the present document makes it more difficult for a faculty member to "win" a dispute than if the present document excluded grievances about salaries.

6. The option of administrators initiating action to resolve a conflict between faculty has been excluded. If an administrator has a complaint about a faculty member, the administrator should raise that complaint with that faculty member. Otherwise an administrator should have nothing to do with conflicts between faculty, unless invited to get involved by those faculty. Also see footnote 1 above.