

*** DRAFT 13.3 ***
10 July 2009

Note: We've underlined revisions made at our 22 June 2009 meeting, but we may have missed something. Please review the entire document. Once again, footnotes call your attention to more recent suggestions. Please let us know how you feel about these. The footnotes will be removed before we distribute our draft for broader review.

FACULTY GRIEVANCE POLICY AND PROCEDURES

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 administrators¹ or other faculty.

While cooperation is the norm within institutions (or they are doomed to short lives), conflicts stemming from a variety of sources including the clash of mutually uncongenial personalities, competition for positional goods, policy differences intensely experienced and expressed, or misunderstanding are an inevitable incident of group life. Successful institutions mitigate the incidence and intensity of conflicts and provide policies and procedures for early identification, conciliation where possible, and, where not, resolution through policies and procedures generally accepted as fair.

For cases that are not amenable to informal resolution, the University of Denver has in place procedures that have worked reasonably well in many instances. However, existing procedures and policies are not ideal to the extent they can be said to exist at all with respect to grievances that are peculiar to the professional activities and responsibilities of faculty members, that is to their teaching, their mentoring, their research and writing or other creative activity, and their participation in institutional governance.²

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 the APT document take precedence for any matters covered in that document.

C. The present policy and procedures are not intended to apply to grievances concerning salary. Otherwise, the policy and procedures in the present document take precedent over the policy and procedures for addressing employee grievances in both the DU Employee's Handbook and the Constitution of the Faculty Senate.

D. Examples of matters that might be grieved under the present policy and procedures are:

1. Conflicts between a faculty member and an administrator over workload assignment, resources allocation, participation in unit governance (e.g., on hiring, mid-tenure review, tenure committees), or academic freedom (e.g., course content and grading).

2. Conflict between faculty members apropos governance and academic freedom issues that seriously compromise the ability of at least one of them to effectively exercise his or her professional responsibilities and/or create a dysfunctional institutional environment.

3. Conflicts over alleged falsification and purloining of data, theft of original ideas prior to their incorporation into publishable work, and of plagiarism.³

The preceding list of examples is not intended to be exhaustive. Other types of alleged offenses may also pursued under the present policy and procedure.

II. Definitions

A. Grievance: a complaint concerning an alleged 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) whose behavior or alleged behavior 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.

E. Academic Unit: A division, school, or college ~~or center~~ to which faculty members and administrators are appointed.

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 to obtain a formal review of the merits of the grievance and recommendation for remedial measures. The written petition 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. The grievant must file the written petition within 180 days of learning of the action or decision that is being grieved. A pattern of actions or decisions reaching back in time farther than 180 days may be included in a grievance, but only if the most recent action or decision in the pattern being grieved became known within the past 180 days.

~~The written grievance is to be submitted to either one or the other, but not both, of the Faculty Review Committee (FRC) or the unit level grievance committee (ULGC) if such a committee has been established.~~ The written grievance is to be filed with the grievant's ULGC if (a) the primary appointment of both the grievant and respondent are in the same academic unit, and (b) that academic unit has established a ULGC as specified below. Otherwise, the grievance is to be filed with the FRC.

At its discretion, an academic unit may establish a unit-level grievance committee. To establish a unit-level grievance committee, the academic unit must set forth, in writing, the manner in which members of the ULGC are to be selected (and replaced should the need arise as specified below). The unit may specify other policies and procedures for the creation and performance of the ULGC, but these policies and procedures must not violate the ~~procedures in the following paragraph~~ present policy and procedures. The written policy and procedures for a ULGC must be submitted to, and approved by, the Provost.

The grievance committee (whether the ULGC or the FRC) shall abide by the following procedures. The grievance committee will afford the respondent an opportunity to respond in writing to the grievant's petition. Any members of the grievance committee who are a party to the grievance or could reasonably be expected to offer testimony about the specific grievance must be excused from the grievance committee for the review. Excused members of the FRC ~~committee~~ shall be replaced by appointment of the Executive Committee of the Faculty Senate. How excused members of the ULGC will be replaced shall be specified in the unit's policy and procedures for establishing a ULGC.

The grievance committee may conduct any inquiry and collect any evidence and testimony it deems warranted and appropriate. The grievance committee shall issue a written report ~~either dismissing the complaint or recommending~~ finding the grievance either baseless or not baseless and making recommendations for whatever remedies for inequities or injustices are deemed appropriate, with reasons therefore. Both the original petition from the grievant to the grievance committee and the respondent's written response, if there is one, shall be included as a part of the

grievance committee's report. Members of the grievance committee may, at their discretion, include minority reports as a part of the grievance committee's report. The report of the grievance committee (including the grievant's petition, respondent's response, and any minority reports) shall be copied to the grievant, respondent, and Provost. The report of the grievance committee must be submitted within 45 working days of the regular academic term from the date the written grievance was submitted, except as noted in Section V below.

The Diversity and Equal Opportunity Office (ODEO) must be notified of any grievance by a faculty member alleging discrimination based on any protected status. ODEO must also be notified of any claims of sexual harassment or retaliation. The ODEO will conduct a neutral investigation of any such grievance alleging discrimination. Faculty members should be aware of any specific time deadlines associated with filing a discrimination claim with the ODEO.

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 or ULGC. 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 or ULGC. The appeal shall state the reasons and justifications 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 or the ULGC): two faculty members appointed by the FRC, two administrators appointed by the Provost, and one member appointed jointly by the Provost and the President of the Faculty Senate. Any members of the ARC who are a party to the grievance or could reasonably be expected to offer testimony about the specific grievance must be excused 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, if there is one, will become a part of the report of the ARC. The ARC will decide whether or not to consider the appeal. If the ARC chooses to consider the appeal, the ARC may seek whatever additional information it deems relevant and appropriate. The ARC will issue a written report either explaining why the appeal was denied, agreeing with the recommendations of the FRC or ULGC, 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 or ULGC, and the Provost. The report of the ARC committee must be submitted within 45 working days of the regular academic term from the date the request for an appeal was filed with the Provost, except as noted in Section V below.

D. Decision by the Provost

The Provost shall render a final written recommendation based on the report of the FRC or ULGC (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, ULGC, 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 or ULGC, 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 or ULGC 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 ARC meets to consider its decision, with the consent of the committee.

V. Adherence to Timelines

A request for departure from the established timelines in this policy shall be made in writing to the Provost who will determine the appropriate action to take.

VI. 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 the FRC or ULGC or, on review, the Appellate Review Committee finds that a complaint is frivolous, baseless, or made in bad faith, ~~appropriate sanctions may~~ appropriately severe sanctions will 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). All administrators are responsible for enforcing this policy.

Footnotes:

1. It was suggested that the wording here be changed so that the policy applied only to “administrators who supervise faculty.” **Are we sure about this?** It is possible for a faculty member to have grievances with administrators who do not supervise faculty, just as faculty can have grievances against faculty (even though they do not supervise other faculty) because, for example, of conflicts that arise while serving on committees together. Or a grievance could arise if an administrator who does not supervise faculty accuses a faculty member of shirking his or her academic or service responsibilities. Would it not be reasonable to include such grievances under the present policy? (And would it not be reasonable to allow the reciprocal policy whereby administrators who do not supervise faculty could grieve faculty under the yet-to-be-written administrator grievance policy if, for example, faculty accuse them of unprofessional conduct?)
2. This paragraph also contained the following material: *Many conflicts or we might call them grievances, whether real or imagined, are resolved quickly and informally by the conciliatory intervention of senior administrators. Indeed the identification and attempted early conciliation of grievances is an important responsibility of all such administrators.* **We’re no longer sure this piece of the paragraph is needed for the following reason:** These two sentences imply that senior administrators should be called on to resolve conflicts but the policy that we have subsequently devised demands that the parties to the conflict attempt a resolution either with or without other administrators becoming involved, and that the conflict resolution process then moves on to the FRC or a ULGC. So these sentences focusing on the role of senior administrators appears to be (even though it isn’t necessarily) at odds with the policy that follows. We like these two sentences but worry that they may be more confusing than helpful when people read the document for guidance concerning the resolution of a conflict.
3. In the original version, this example began with the phrase “Conflicts related to faculty scholarship and other forms of creative activity.” We think this is appropriate, but worry that adding this phrase will raise needless but highly distracting concerns when this document is brought before the Faculty Senate. It might be better to avoid such distractions in what is, after all, no more than a non-exhaustive list of examples.