

PROCEDURES FOR HANDLING QUESTIONS OF PROFESSIONAL CONCERN
INVOLVING ONE OR MORE MEMBERS OF THE FACULTY¹

Preface

A university's affairs ideally are conducted with scrupulous care for free and full inquiry, open and participatory decision-making and just equitable judgment based upon known and accepted standards. Nevertheless, a large and complex institution, involving persons with varying duties and perspectives, cannot always achieve this ideal through its normal organizational processes. Thus instances arise where one or more members of a university are concerned that decisions have been made that are unjust or inequitable, or that have been reached in ways that fall short of existing procedural requirements. To the extent that such concerns remain unaddressed, a university as a whole suffers. It is, therefore, necessary that a means be readily available to address and vent concerns and where necessary, remedy the situation that gave rise to such concerns. To that end, the following procedures are established for the faculty of Central Michigan University.

I. Purpose

These procedures have the following general purpose: To ensure that faculty members, in matters involving reappointment, tenure, promotion, salary, or other matters of professional concern, are not adversely affected through decisions substantially resulting from or substantially influenced by one or more of the following: (a) failure to comply with Departmental, College, or University procedures; (b) errors of fact; (c) prejudice or arbitrary and capricious action; (d) factors violative of academic freedom.

II. Definitions

These definitions do not supersede or alter definitions contained in other University policies. They are in effect solely for the purpose and scope of these procedures, and their function and effect within these procedures is not limited by definitions contained in other University policies.

Claimant – a faculty member(s) who file(s) a complaint under this procedure.

Complaint – an allegation that one or more causes for a grievance exist. A complaint may be withdrawn by the claimant at any time by giving written notice to the Chairperson of the Academic Senate.

Counsel – a member of the legal profession or any person chosen by the claimant or respondent to represent that party in the formal hearing. If either party chooses to use a member of the legal profession as “counsel,” that party at the earliest opportunity shall in writing advise the other party and the Chairperson of the Academic Senate that a member of the legal profession will be serving as “counsel.”

Day – a 24-hour span of time during which undergraduate or graduate classes are in session on campus, during Fall or Spring Semester, and excluding University holidays, Saturdays, and Sundays.

Faculty – those persons, full time or part-time, tenured or non-tenured, regular or temporary, who have been appointed by Central Michigan University to faculty rank, and whose responsibilities include teaching or research. This definition includes coaches, counselors, and librarians who hold faculty rank.

¹This is the only internal grievance procedure available to temporary faculty. However, faculty in tenure track positions may have available for their use the grievance procedures contained in the current Agreement. Regular faculty may use only one internal grievance procedure for an issue and may not have the same issue considered in two different internal grievance procedures available to them. Faculty members should, therefore, carefully consider which internal grievance procedure they would like to follow before filing any grievance.

Grievance— a complaint which had been referred to a Formal Hearing Committee. A grievance may be withdrawn by the claimant at any time prior to the presentation of the Formal Hearing Committee’s decision, by giving written notice to the Chairperson of the Academic Senate.

Grounds for Grievance— allegations that the claimant, in matters involving reappointment, tenure, promotion, salary, or other matters of professional concern, has been adversely affected through decisions substantially resulting from or substantially influenced by one or more of the following: (a) failure to comply with Departmental, College, or University procedures; (b) errors of fact; (c) prejudice or arbitrary and capricious action; or (d) factors violative of academic freedom.

Procedures— (1) Duly developed and ratified written procedures contained in the Faculty Handbook or Agreement in force at the time of the alleged failure to comply, or such written procedures duly developed and ratified in compliance with the Agreement or the Handbook;

(2) The not necessarily written, but accepted and normally followed practice of decision-making bodies at the Department, College, or University level, in which case a claimant must show that a normally followed practice exists and was not followed, to his/her detriment.

Respondent— the person(s) against whom the complaint is lodged. While a complaint is being brought against specific individuals, Central Michigan University is the respondent because the complaint is an allegation that specific persons, acting on behalf of the University, committed acts or omissions leading to an adverse effect upon the claimant. For purposes of clarity, however, the word “respondent” is used in this document to speak of the specific individuals and not of Central Michigan University.

III. Procedural Stages and Deliberative Bodies

There are three stages in the process, each of which is designed to serve specific functions. These stages are: A. Initiation/ Informal Stage; B. Preliminary Review; and C. Formal Hearing. Each of the stages involves a distinctive group of individuals with a specific charge and set of procedures. These groups and their charges and procedures are as follows.

A. Initiation/ Informal Stage.

1. Persons Involved. The persons who may be involved in the Initiation/Informal Stage are: the claimant; the respondent; the Chairperson or other members of the Department in which any person, whether claimant or respondent, may be housed; the Dean of the College in which any person, whether claimant or respondent, may be housed; and the Provost/Vice President for Academic Affairs.

Department Chairpersons, Deans, and the Provost/Vice President for Academic Affairs may name designees, provided that the designees are able to serve throughout this stage and are able to settle the matter with the same degree of authority as that vested in the person in whose place they serve. However, when any of the above persons are directly involved in the complaint, they must participate in this stage and may not name designees; persons named above who are not directly involved in the complaint may be asked to participate by either the claimant or respondent.² If asked to participate, they or their designee must take part. Such requests shall be made in writing to the person or persons involved and the Chairperson of the Academic Senate.

²Individuals thus asked to participate may feel that they are being harassed. An individual who feels that he/she is being harassed may indicate that feeling in a letter to the President of the University. The President, after consulting with both parties, shall determine whether harassment is involved and, if he/she so determines, may relieve the individual of designated responsibilities under these procedures.

2. Charge. The purpose of this stage is to provide for direct consultation among the parties to the disagreement so that the conflict might be resolved through conciliation of differences. If this group reaches a resolution satisfactory to claimant and that respondent is authorized to grant, such resolution shall be binding on all of the parties involved.

3. Procedures. When a faculty member has a complaint concerning such matters as those stated in Section II above, he/she shall notify the Chairperson of the Academic Senate in writing, stating the following matters: (a) a summary of the nature of the complaint and the grounds on which it is based; (b) the party or parties against whom the complaint is brought; (c) any remedies which are requested. Such complaint must be filed not more than 60 days after the person bringing the complaint reasonably should have known of information giving rise to the complaint.

The Chairperson (or Acting Chairperson) of the Senate, upon receipt of such written notice, shall ascertain which persons named in Paragraph 1 above are to participate at this stage; and shall, within 15 days, convene a meeting of all persons involved at this stage. The Chairperson of the Senate shall not participate in the meeting or its conclusions, except to convene the meeting and certify that all persons are in attendance.

This meeting shall be conducted under the following procedures:

- (a) A single meeting shall be held, if possible, but in no event should it take more than ten (10) days to complete this stage unless the time limit is extended by mutual agreement by the claimant and responded.
- (b) If a resolution satisfactory to claimant and within the authority of respondent to grant is reached, a written statement containing a description of the complaint and its resolution shall be drawn up and signed by all persons participating at this stage. Once signed, this statement shall be binding on all parties and on the University, and shall be forwarded to the President of the University for implementation.
- (c) If the complaint is not resolved, a written statement to that effect shall be drawn up and signed by all persons participating, but shall not include a description of the complaint or the reason for non-resolution.
- (d) This statement shall be forwarded within five (5) days, by the claimant, to the Chairperson of the Academic Senate, who shall then refer the matter to the next stage.
- (e) If any of the persons required or requested to participate at this stage fail to do so, or the meetings are not held and concluded as called for above, the complaint shall automatically be forwarded by the Chairperson of the Academic Senate to the next stage. However, if the claimant fails to participate or to meet a time limit, the case shall be considered withdrawn.
- (f) It is understood that the claimant's personnel records are not to show the fact of his/her having brought a complaint, regardless of whether the complaint affects a personnel decision shown in those records.³

B. Preliminary Review.

1. Persons Involved. The University Grievance Review Committee, a standing committee of the Academic Senate, shall be composed of nine (9) faculty members elected at large by the Academic Senate from a double slate of nominees, to serve staggered three-year terms.

³Personnel files are defined as any records used in making personnel recommendations and decisions.

In May, an organizational meeting of the committee will be scheduled by the Chairperson of the Academic Senate. The purpose of this meeting shall be to select a Chairperson and to set a regular meeting time for the following academic year (August through April). In addition, the newly-elected members shall be briefed by the Chairperson of the Academic Senate on the procedures according to which the committee shall operate.

When a member of the committee has participated in the decision giving rise to a complaint, that member shall be disqualified from participation on the committee for that case. Where there is dispute over a member's participation in a decision, or for other proper reasons, either party may request that the Executive Board of the Academic Senate, through a majority vote for removal, disqualify the member of the committee from a particular case.

2. Charge. The University Grievance Review Committee shall meet with claimant and respondent for the purpose of determining whether or not the complaint warrants referral to a Formal Hearing Committee. The Review Committee is specifically charged to determine whether the need for a formal hearing exists, (i.e., that the complaint is not frivolous), and not to make a judgement as to which party should prevail.
3. Procedures. Within five (5) days of the receipt of a referral, the Chairperson of the Academic Senate shall place the matter before the University Grievance Review Committee and shall notify the claimant of the need to submit a written statement citing the particulars of the problem as specified in III.A.3. above. Upon receipt of this notification, the claimant shall have five (5) days to submit this statement to the Academic Senate Chairperson and the respondent. Following receipt of the claimant's written statement, within five (5) days, the respondent shall submit to the Chairperson of the Academic Senate and to the claimant a written statement responding to the allegation(s) of the claimant. Copies of both statements shall be presented to the committee by the Academic Senate Chairperson.

The meeting(s) of the committee with the claimant and respondent shall be conducted in compliance with the following procedures:

- (a) The committee shall complete its deliberation and render its decision within twenty-five (25) days of receipt of the claimant's and respondent's written statements from the Chairperson of the Academic Senate;
- (b) All meetings of the University Grievance Review Committee shall be closed to the public;
- (c) All communications concerning the complaint shall be directed to the Chairperson of the committee;
- (d) The meetings shall be conducted informally;
- (e) The committee shall meet first with the claimant, then with the respondent;
- (f) In order to summarize more accurately the points at issue in a particular case, the claimant or respondent may, with the approval of the committee, rewrite their respective statements in the course of this stage, provided that no new issues are raised and no substantive change made in the complaint or response. If the committee judges that substantive changes have been made or new issues raised, the committee may refer the matter back for initiation at the informal stage, with time limits to be reckoned de novo;
- (g) When a claimant's or respondent's written statement is rewritten during this stage, the other party shall have adequate opportunity to examine and respond to such modification;

- (h) The committee shall have the right to question the contents of any of the written statements;
- (i) When necessary for carrying out its charge, the committee shall have the right to request consultation with any person who has direct knowledge of the issue. No action to involve students in a hearing shall be taken without committee authorization;
- (j) After hearing the claimant and respondent individually, BEFORE VOTING, the committee shall meet jointly with both to ascertain whether a mutually agreeable and binding resolution is possible;
- (k) In order to vote, a committee member must be present to hear all the evidence presented in a particular case, and BE PRESENT TO CAST A VOTE; the voting participation of at least six (6) members shall be required to render a decision;
- (l) In the event that fewer than six (6) members are eligible to participate in a vote, the case shall be reheard by the committee.

Upon conclusion of the meeting(s), the committee shall decide whether or not to refer the matter to a Formal Hearing Committee. This decision shall be primarily on the basis of the claimant's and respondent's final written statements. A referral shall be made unless the committee determines otherwise by (a) unanimous vote, where the complaint involves tenure, reappointment or promotion; or (b) two-thirds vote, where the complaint involves matters of professional concern other than tenure, reappointment or promotion.

The committee's decision shall be transmitted in writing to the claimant, the respondent, the Chairperson of the Academic Senate, the Office of the President of the University and other University personnel as deemed appropriate by the committee. The documents in the case shall be deposited with the Chairperson of the Academic Senate. If the committee decides to refer the matter to a Formal Hearing Committee, the Chairperson of the Academic Senate shall deposit all documents concerning the case with the Chairperson of the Formal Hearing Committee. Where the committee determines that no referral shall be made, and no appeal is made, the Chairperson of the Academic Senate shall return all documents to those who presented them.

3. Appeal. Where a claimant alleges that the Grievance Review Committee has violated the procedures established in 3. Above, to his/her detriment, he/she shall appeal in writing to the Chairperson of the Academic Senate within ten (10) days of receipt of the Grievance Review Committee's decision. The Executive Board of the Senate shall, at its next scheduled meeting, consider the matter and decide whether to forward the complaint to the next stage. If the complaint is sent to a Formal Hearing Committee, the holding of a formal hearing shall constitute the remedy for any error of procedure by the Grievance Review Committee.

C. Formal Proceedings.

1. Persons Involved. The Chairperson of the Academic Senate, having received a referral from the Grievance Review Committee, shall empanel a Formal Hearing Committee. This committee shall be composed of eight (8) members, selected from a panel of twelve (12) regular faculty members to be drawn by lot at an Executive Board meeting from the list of the regular faculty of the University, excluding members of the University Grievance Review Committee. Faculty members unwilling or unable to serve shall be excused and others substituted for them, to be chosen in the same manner. Claimant and respondent each shall have the right of two peremptory challenges, which, if exercised, would reduce the panel to the required eight members. If not exercised, the Executive Board shall select the committee of eight from the panel. In all cases, peremptory challenges shall be treated confidentially. If after the first meeting of a Formal Hearing Committee a member should become ill or for any reason be unable to continue, the committee shall continue without that person. In a case where this reduces the size of the committee to less than five (5) members, the committee shall be discharged and another committee selected in the same manner as the original.

In order to vote, a committee member must have been present to hear all the evidence presented in a particular case.

2. Charge. The Formal Hearing Committee shall conduct a hearing according to the following procedure and render a written decision. This decision shall include an appropriate remedy including but not limited to tenure, promotion, retention, or financial compensation.

Burden of Proof: The grievant shall have the burden of proof in all grievances except for those involving the following:

- (a) The dismissal of a tenured faculty member.
- (b) The dismissal of a non-tenured faculty member before the expiration of the individual's contract term.
- (c) A reprimand in writing, a reduction in compensation as a disciplinary action, or a reduction in rank of a tenured or tenure-track faculty member.
- (d) Appeals initiated by a respondent under this grievance procedure.

3. Procedures and Conditions. The Formal Hearing Committee's procedures and conditions shall be as follows:

- (a) The Chairperson of the Academic Senate shall convene the first meeting of the Formal Hearing Committee and explain the charge of the committee.
- (b) The Formal Hearing Committee shall name its own chairperson who shall have full voting rights along with the other members of the committee.
- (c) Following the initial meeting, the Chairperson of this committee shall send a written description of procedural rights to the claimant and respondent. These rights include:
 - (1) The right to assistance by counsel.
 - (2) The right to call witnesses to support his/her position.
 - (3) The right to inquire into all witnesses and oral testimony
 - (4) The right to know the identity of all witnesses and authors of all written testimony, and the opportunity to confront all such persons. Anonymous testimony of hearsay evidence is not admissible.
- (d) The claimant has the right to request that all meetings be closed to the public and that all testimony and evidence be kept confidential during the proceedings. Unless the claimant requests that the meetings be closed, the meetings will be open to the public.
- (e) The Formal Hearing Committee shall, in conference with the claimant and respondent, have the right to:
 - (1) Place reasonable time limitations on the testimony of the claimant and respondent.
 - (2) Place reasonable time limitations on summations of the claimant and respondent at the close of the hearings.
- (f) The Chairperson of the Formal Hearing Committee shall have the right to rule as to the relevance of testimony at any time during the hearing. A majority vote of the committee may overrule the Chairperson.

- (g) It is assumed that both claimant and respondent and their counsel will be present at all sessions of the hearing except when decisions are being made. Witnesses shall be present only when their testimony is being given, unless the committee determines, by majority vote, that the presence of any witness(es) during testimony other than their own is appropriate.
- (h) The entire hearing shall be tape-recorded.
- (i) Within ten (10) days after the close of the hearings, the Formal Hearing Committee shall present its decision to the claimant and respondent involved, to the Chairperson of the Academic Senate, and to the President of the University.
- (j) The Formal Hearing Committee may establish by majority vote any additional procedural rules.
- (k) All requests for acquisition of rooms, recording equipment and personnel shall be handled through the Academic Senate Office.
- (l) The Formal Hearing Committee shall reach its decision by majority vote of those eligible to vote. Should there be an even number of committee members, one committee member shall be excluded through a "short straw" procedure at voting time. Until the vote each member shall be considered a full committee member.

A committee consisting of those members who cast the majority vote shall draft a statement that responds to all charges in the grievance, which states the reasons for the decision, and which specifies an appropriate remedy. The statement shall be sent to all parties of the grievance, to the Chairperson of the Academic Senate and to the President of the University, and shall be signed by the entire committee.

- (m) If a public statement is to be made, it shall be made through the University's Public Relations.
 - (n) The final written statement referred to in (1) above shall be kept permanently on file in the Academic Senate. Upon conclusion of the hearings, other documents and tape recordings shall be placed in a sealed envelope in a locked file. Custody of this file shall be entrusted to the Chairperson of the Academic Senate. This file shall be located in the Office of the Academic Senate. The documents and tape recordings shall be destroyed after a period of seven (7) years, unless needed for the protection of the University's interest or unless required by law. Where documents and tape recordings are to be retained for longer than seven (7) years, the Office of the Academic Senate will be notified by the Administration.
 - (o) Where there is no appeal from the decision of the Formal Hearing Committee, the findings of the committee shall be put into effect by the appropriate University personnel.
 - (p) It is understood that the claimant's personnel records are not to show the fact of his/her having brought a grievance, regardless of whether the grievance affects a personnel decision shown in those records.⁴
4. Appeal. Either the claimant or the respondent shall have the right to appeal the decision of the Formal Hearing Committee to the President. Notice of decisions to appeal must be presented in writing by claimant or respondent within one (1) calendar month of receipt by that party of the decision by the Formal Hearing Committee. The grounds for an appeal shall be an allegation that the Formal Hearing Committee has violated the procedures or charge and

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conditions (including the appropriateness of remedy) established in 2. and 3. above, to the detriment of the claimant or respondent. The notice of appeal shall be sent to the President, to the Chairperson of the Academic Senate, and to the other party.

Where an appeal is made, the Chairperson of the Academic Senate shall transmit to the President for review the full transcript and report of the Hearing Committee.

The Chairperson of the Formal Hearing Committee and both claimant and respondent shall be present with the President when he/she formally considers the matter. The President shall affirm the decision, unless he/she finds that the Formal Hearing Committee has violated the procedures or charge and conditions (including appropriateness of remedy) established above to the detriment of claimant or respondent. In this latter situation, and when the appeal is by respondent, the President may remand the grievance for final rehearing. When the appeal is by claimant, and the President finds that a prejudicial error of procedure has occurred, the President shall remand the grievance for final rehearing. A decision to remand shall be rendered in writing to the Chairperson of the Academic Senate, the claimant, and the respondent, with an explicit statement of his/her reasons. Upon remand, the Chairperson of the Academic Senate shall empanel an entirely new Formal Hearing Committee.

In any appeal of the appropriateness of remedy, the rehearing shall be restricted to that issue.

The fact that appeals are resolved through faculty hearing committees represents a significant delegation of authority to the faculty and is an expression of confidence in the professional judgement of the faculty. Given these dimensions of this arrangement, the appeals mechanism will be reviewed by the Faculty-Trustees Liaison Committee every four years or following the full resolution of ten grievances using this procedure, whichever occurs first.

IV. Publicity and Costs

A. Publicity.

Public statements about a complaint/grievance shall be avoided by the claimant and respondent, by members of the Grievances Review Committee, by members of the Formal Hearing Committee, and by all participants in the procedures and hearings until the complaint / grievance has been finally resolved within this procedure (including any appeal or re-hearing process).

B. Costs.

The costs of necessary reproduction of material, space, necessary technical personnel, tape recording and/or stenotyping and preparation of typescript of testimony before the Formal Hearing Committee shall be borne by the University Administration. Arrangements for these matters shall be made by the Chairperson of the Formal Hearing Committee through the Chairperson of the Academic Senate.

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Approved by the Board of Trustees: 2/5/82, 10/5/84, 6/7/85, 4/11/86, 10/11/90.