

PART IV HUMAN RESOURCES
Chapter 04.08 - Dispute and Grievance Resolution

P04.08.010. General Statement.

It is the objective of the university to treat its employees in a fair and consistent manner. The university recognizes that a dispute and grievance resolution process is an important mechanism in identifying and resolving problems. In the event of an employee grievance, it is the objective of the university to accomplish the prompt, fair, and equitable resolution of the grievance at the earliest possible time. Procedures for dispute and grievance resolution will be established by university regulation.

(05-04-99)

P04.08.020. Effect of Failure to Seek Review.

- A. The failure of any party to exhaust administrative remedies by seeking review of a decision under the grievance procedure by the first or next higher level within the time limits established by the grievance procedure will be deemed to constitute acceptance of that decision by the party and will constitute a resolution of the grievance.
- B. It is the employees' responsibility to be familiar with the Dispute and Grievance Resolution time frames and deadlines included in R Policy and University Regulation. Failure to receive a response within the established time frame will not relieve an employee from proceeding within the time allowed to a subsequent step in the grievance process.

(05-04-99)

P04.08.030. Time Limits.

Time limits will be established in university regulation.

(05-04-99)

P04.08.040. Reprisal Prohibited.

- A. No grievant, respondent or witness will be subject to harassment, reprisal, or retaliation for good faith participation in the dispute and grievance resolution process.
- B. The dispute and grievance resolution process is intended to afford employees a

2. The following are governed by alternate processes and cannot be processed under this chapter:
 - a. complaints and disputes related to faculty promotion, renewal and/or tenure (see Regents' Policy and University Regulation 04.04.050);
 - b. complaints or disputes which may be grieved under a collective bargaining agreement;
 - c. complaints and disputes related to job classification (see Regents' Policy and University Regulation 04.05.030);
 - d. student allegations and complaints (see Regents' Policy and University Regulation 09.03.02);
 - e. complaints and disputes related to dismissal of at-will employees (see Regents' Policy and University Regulation 04.01.050 and 04.07.020);
 - f. complaints or disputes related to layoff (see Regents' Policy and University Regulation 04.07.110);
 - g. complaints or disputes related to sex and gender-based discrimination (see Regents' Policy and University Regulation 01.04.)

H. Grievant

A "grievant" is the employee or group of employees asserting a grievance.

I. Hearing Officer

The "hearing officer" is an individual, who has the experience necessary to adjudicate disputes, is appointed by the general counsel, conducts the grievance hearing and makes a recommendation to the chancellor or president.

J. Mediator

A "mediator" is any appropriate neutral individual voluntarily chosen jointly by the parties to assist them in reaching a mutually acceptable resolution of the dispute or grievance.

K. Party or Parties

The "parties" to the grievance are the grievant(s) and the respondent.

L. President

Wherever the word "president" appears, it means the president of the University of Alaska.

M. Respondent

The "respondent" in all grievances is the University of Alaska. A grievance may not be directed against another employee in their indeBT/3n9(i 12 Tft1 0 0 1 72.024 460.39 Tm0 0 1 rg0 C

A. Step 1: Informal Dispute Resolution

The grievant should notify the person responsible for the occurrence of the dispute and attempt resolution at the lowest administrative level having the authority to resolve the matter. The parties may use the assistance of a facilitator or mediator.

B. Mediation

Any party to the grievance may request that an appropriate individual mutually agreed to by the parties assist the parties to reach resolution of the grievance. No party is required to participate in mediation. Mediation should normally occur at an early stage of a grievance; however, requests for mediation will be considered at any step of the process.

Efforts at mediation will not preclude the processing of the grievance in the manner provided by this procedure. Nor will participation in mediation excuse compliance with grievance timelines absent agreement of both parties. The mediator will have no power to compel any action by any party.

Prior to mediation, the participants and the mediator are encouraged to reach a written agreement regarding confidentiality of the mediation process. The university will provide a sample confidentiality agreement on request and will abide by an agreement making the mediation confidential for purposes of the grievance process to the extent allowed by law.

C. Step 2: Review with Supervisor

If the dispute is not resolved in Step 1 and the grievant elects to proceed, the grievant should discuss the dispute informally with the immediate supervisor of the person responsible for the action. If the grievant's immediate supervisor is a chancellor or the president, the grievant should only discuss the dispute with the supervisor if the grievant consents to further participation by such decision-maker in the grievance process.

D. Step 3: Grievance

1. Filing

- a. If the dispute is not resolved in Steps 1 or 2, the matter involves a grievance as defined above, and the grievant elects to proceed, the grievant must file a written grievance within 45 days of the date on which the grievant learned, or should reasonably have learned, of such act or omission, whichever is earlier.
- b. The written grievance must be filed with the supervisor of the person responsible for the act or omission. If the grievance concerns an action or failure to act of a chancellor or the president, the grievance must be timely filed with the chancellor or president, respectively, who will be considered "supervisors" for the purposes of this section.

2. Contents of Grievance

At a minimum, the written grievance must include:

- a. The name, title, address and work phone number of the grievant;
- b. The name and title of the person responsible for the act or omission being grieved;
- c. A description of the act or omission being grieved, including a clear and concise statement of the facts giving rise to the grievance, the date of the occurrence and the date the grievant learned of the occurrence;
- d. A citation of the specific policy and/or regulation believed to have been violated, misinterpreted and/or improperly applied, and an explanation of how the policy or regulation has been violated, misinterpreted or improperly applied;
- e. A description of the relief sought; and
- f. The grievant's signature and the date.

3. Process

If the grievant has not complied with Steps 1 and 2, the Step 3 supervisor may notify the grievant in writing that processing will be delayed for up to 10 days to provide an opportunity for informal dispute resolution.

If the grievance is not resolved informally, the Step 3 supervisor will investigate the grievance as he/she deems appropriate and respond to the grievant in writing within 10 days from the date the grievance was presented, or the end of any informal dispute resolution period provided by this paragraph, whichever is later.

If the supervisor does not respond within such period, the grievance is deemed denied.

E. Step 4: Request for Hearing

1. Grievant Responsibilities

If the grievance is not resolved at Step 3, the grievant may proceed with the grievance only if the grievant requests a hearing as set forth in this paragraph within 10 days of the receipt by the grievant of the supervisor's decision at Step 3, or of the date the decision was due, whichever is earlier.

The grievant will present a written request for a hearing, including a copy of the written grievance and the supervisor's response, if any, to the following senior administrator:

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Base the determination as to whether a hearing will be granted on a review of the written request for a hearing, all other documentation and responses submitted by the grievant, and the written responses and documentation submitted by the person alleged to be responsible for the act or omission and/or that person's supervisor. Questions may be directed to the parties to assist in the determination.

- d. Provide a written explanation of the determination to the grievant, the person alleged to be responsible for the act or omission at issue, and the chancellor or president as applicable. Any delay in making and/or issuing this determination will not affect the outcome of the process, but a written explanation of the reason(s) for the delay will be provided.

If the Step 4 decision is to dismiss the matter, notification of the dismissal will state the basis of the decision and will be transmitted to the parties and the general counsel within 5 days of the decision.

The general counsel may overrule a determination dismissing a grievance without a hearing within 20 days of receipt of the determination, whether or not requested to do so by the grievant. If the general counsel overrules dismissal of a grievance without a hearing, a Step 5 hearing will be held.

Notification of a Step 4 decision to hold a hearing, along with a request to the general counsel to appoint a hearing officer, will be transmitted by the person making the determination to the parties and the general counsel within 5 days of the decision.

The general counsel may give the parties notice of an intent to overrule a Step 4 determination and dismiss a grievance without a hearing within 5 days of receipt of the Step 4 determination, whether or not requested to do so by a party.

If the general counsel gives the parties notice of intent to overrule a Step 4 determination and dismiss a grievance without a hearing, the parties may respond within 5 days. If no response is submitted within 5 days, the grievance will be considered finally dismissed by the university at that point. If a response is received, the general counsel will decide the matter within 5 days. If the general counsel consults with the president concerning whether a hearing should be held that will not disqualify the president as a decision-maker. A decision of the general counsel to dismiss a grievance without a hearing is the final decision of the university.

- e. Appointment of the Hearing Officer

If the final determination is to hold a Step 5 Hearing, the general counsel will appoint a hearing officer.

f. Disqualification of a Hearing Officer

Any party may seek the disqualification of any hearing officer assigned to

F. Step 5: Hearing Process

1. Hearing Officer Responsibilities

The hearing officer will conduct a formal hearing that may be preceded by pre-hearing proceeding(s). The process set forth with respect to Step 5 may be amended or supplemented by written agreement of the parties. The hearing officer may construe or reject any modifications of the process which are not clear and unambiguous.

Otherwise, the procedures for the hearing:

- a. will be determined by the hearing officer;
- b. will be made known to the parties;
- c. will afford all parties to the hearing a meaningful opportunity to present their cases; and
- d. may include an opportunity prior to an oral presentation of evidence to decide, in whole or in part, the merits of the case where the hearing officer determines there are no issues of material fact.

Within 5 days of the conclusion of the hearing or submission of any briefing ordered by the hearing officer, whichever is later, the hearing officer should submit his/her recommended findings of fact and conclusions of law for the resolution of the matter in writing, along with all materials considered by the hearing officer in reaching his/her recommendations, to the chancellor or president. A failure of the hearing officer to do so within 5 days will not affect the outcome of the process, but a written statement of reasons for the delay will be submitted by the hearing officer to the chancellor or president before or with the findings and recommendations.

The hearing officer will submit a copy of the explanation for any delay and the recommended findings and conclusions to the grievant, the person responsible for the act or omission complained of, the respondent's representative and the university general counsel.

The hearing officer's recommendations will include a statement of the grievance, the procedural history of the grievance, a statement of the issues considered by the hearing officer, the reason for the recommendation, the statement of remedy, and timelines for implementing the remedy.

2. Conduct of Hearings

a. Pre-Hearing Conference

Not less than 5 days before the hearing, the hearing officer may convene the parties for a pre-hearing conference if, in his/her judgment, such a pre-hearing conference would be beneficial to the parties or to the hearing officer. During the pre-hearing conference, the hearing officer may:

- (1) consider requests for disqualification of a hearing officer;
- (2) clarify and, where possible, simplify the issues to be heard;
- (3) frame the issues and allocate burden of proof;
- (4) establish the facts, to the extent possible;
- (5) provide for the exchange of documents and other information;
- (6) arrange for witnesses and representatives or advisors;
- (7) establish deadlines for providing appropriate materials;
- (8) determine whether the hearing will be open or closed in accordance with e. below;
- (9) review the procedures for conducting the hearing; and
- (10) conduct other appropriate business to ensure a fair, effective, and expeditious hearing.

b. Hearing

The hearing will be conducted in such a manner as to permit the parties a reasonable opportunity to present their perspectives on the issues in dispute and to provide sufficient information for the hearing officer to make a recommendation.

Parties to the grievance will be afforded a reasonable opportunity to call and examine witnesses, introduce exhibits, and ask questions of the opposing party and witnesses for the opposing party.

The technical rules of evidence will not apply to the hearing. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons

c. Representatives or Advisors

Any party may, but need not, be represented by any person including legal counsel. Parties using representation will be responsible for payment of all associated fees.

d. Record of Proceedings

Hearings will be recorded by the hearing officer; however, the hearing officer will not be responsible for technical problems, and such technical problems will not affect the outcome and will not form the basis for challenge as to the adequacy of the proceedings. Any party may request copies of the tape recordings at cost. Any party may tape record the proceedings at the party's expense, provided that such recording does not unduly disrupt the proceedings.

e. Public and Witness Access

The decision of the chancellor or president and a copy of the recommendations of the hearing officer will be furnished to the parties, the hearing officer and the university general counsel. In the case of a grievance filed against the president, these materials will also be provided to the chair of the Board of Regents. A decision by the president is the final decision of the university.

The written decision of the chancellor or president may:

1. grant relief requested by the grievant in whole or in part; or
- 2.

- a. the reason(s) for the planned action;
- b. a statement of the evidence supporting the reason(s) for the planned action; and
- c. notice of the employee's right to request a hearing in accordance with policy and regulation at the time the employee is notified of the university's intention to terminate the employee's employment.

2. Request for Hearing

Within 5 days following receipt of the notice, the employee may request a hearing to

