



# TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER.

School of Medicine

*Operating Policy and Procedure*

**SOM OP:** 20.10, **Faculty Grievances**

**PURPOSE:** The purpose of this School of Medicine (SOM) Policy and Procedure is to define the circumstances and procedures by which a faculty member may grieve an issue.

**REVIEW:** This SOM Policy and Procedure shall be reviewed within each odd-numbered fiscal year by the Policy Review Subcommittee of the Faculty Council Executive Committee. Revisions will be forwarded to the Office of the Dean for approval and publication.

**POLICY/PROCEDURE:**

1. **Policy Overview.** In concert with the policy of Texas Tech University Health Sciences Center (TTUHSC), the School of Medicine establishes this policy to protect the rights of the university and faculty and encourage fair, efficient and equitable solutions for problems arising out of the employment relationship.
  - a. General Intent: It is the intent of this policy to create a model process whereby formal expressions of disagreement related to administrative decisions involving certain faculty employment actions can be resolved. It is expected that informal communication at the administrative level at which the problem arose will resolve most issues. However, each member of the School of Medicine faculty has a right to utilize a structured mediation process and/or to have a hearing and an appeal for redress of a grievance through a procedure, to include the steps described within this policy, when informal methods for resolution have failed. No person may file a grievance after he/she has received notification of dismissal for cause, has filed a lawsuit against the Institution or is no longer employed by the institution.
  - b. Limitations: This policy does not apply to issues related to tenure decisions, dismissal for cause or notice of non-reappointment. For such concerns, the faculty member is referred to [HSC OP 60.01, Tenure and Promotion Policy](#) or the [Medical Practice Income Plan Bylaws](#). The Faculty Grievance Policy does not apply to charges of discrimination covered under [HSC OP 51.01, Equal Employment Opportunity Policy and Affirmative Action Plan](#) and for which he/she may file a complaint through the Office of Equal Employment Opportunity in the Texas Tech University System. The Faculty Grievance Policy does not apply to the loss of administrative duties for which the faculty member is referred to [HSC OP 60.10, Faculty Grievance Procedure](#) which states that a faculty member holding an administrative position will have access to these grievance procedures with regard only to faculty duties, and will not have access to these procedures with regard to administrative duties. The Faculty Grievance Policy also does not apply to grievances between faculty members. Such grievances should be filed against the Chair for failure to resolve the problem. Grievances filed by housestaff will be handled through the Office of Graduate Medical Education as in [SOM OP 50.13, Grievance and Appeals Procedures](#).
  - c. Non-retaliation: No person shall be penalized, disciplined, or prejudiced for filing a grievance or aiding another faculty member in filing a grievance, but those involved will be expected to meet normal responsibilities while pursuing a grievance in accordance with this policy.

## 2. Faculty Grievance Committee.

- a. Committee Composition: A standing Faculty Grievance Committee composed of fourteen senior faculty (Associate Professor or Professor, preferably tenured), none of whom holds an administrative position appointed by the Dean, shall be appointed by September 1 of each year. The Dean appoints half of the representation and the Executive Committee appoints half. There will be representation from each Regional Campus, one appointed by the Dean and one appointed by the Faculty Council Executive Committee.
- b. Appointment: Appointments shall be for staggered, three-year, optionally renewable terms for the purpose of maintaining continuity and a core of members with experience in the process. The Executive Committee may make recommendations to the Dean for his/her selections based on their knowledge of qualifications. The Chair of the Faculty Executive Committee shall notify each new member of his/her appointment.
- c. Committee Chair: The Chair-Elect from the previous year shall assume the position of Chair on September 1 of each year, and, as soon as possible, shall call a meeting of the Committee to acquaint new members with the process and elect by majority vote a new Chair-Elect. The Chair-Elect will be available to conduct the business of the Committee when the Chair is unavailable.
- d. Nominations: The Grievance Committee shall be responsible for nominating members of mediation teams and shall serve as a pool of faculty from which Grievance Hearing Panels shall be selected.
- e. Legal Counsel: The Grievance Committee may, if it chooses, request appropriate pro bono legal counsel to advise the Committee. This will be arranged by the Grievance Committee or a Grievance Hearing Panel, but not by or from the Office of General Counsel.

## 3. Grievance Process and Procedures.

- a. Decisions concerning appropriateness of a grievance: The Dean will examine all grievances submitted to him for appropriateness for handling under the Faculty Grievance Policy, for timeliness of process and for completeness of submission. If the immediate supervisor of the faculty member filing the grievance is the Dean, then the duties ascribed hereafter to the Dean shall be assumed by the President, except that a Chair in his/her administrative duties serves at the pleasure of the Dean and actions by the Dean related to the administrative appointment cannot be grieved. The Dean may refer questions related to these issues to the Chair of the Faculty Grievance Committee who, in turn, may refer them to a subcommittee or the Grievance Committee as a whole. Such questions would include, but not be limited to, whether or not any or all of the issues cited in the grievance fall under the purview of this Policy or outside of it such as those referred to above under Policy Overview. Decisions regarding jurisdiction, consistent with other institutional policies, are within the authority and responsibility of the Grievance Committee. Further, because no individual is entitled to an infinite regress or repetitive consideration of a grievance that has been considered previously and disposed of, the only basis for reconsidering a grievance would be:
  - 1) Any newly discovered evidence relating to the prior grievance which was previously unknown to the grievant in spite of due diligence; and/or
  - 2) Any evidence pertaining to relevant events that occurred since the previous mediations and/or hearing, thus possibly constituting a new grievance.

It is suggested that faculty consult with the Chair of the Faculty Grievance Committee or a member thereof prior to initiating a grievance. The grievance process is designed to

resolve disputes as soon as possible and within the Institution. Therefore, the grievance process will not be initiated if the potential grievant has already filed suit on any issues related to the grievance or will be terminated immediately if suit is filed while the grievance process is ongoing.

- b. Initial steps toward resolution: A formal grievance should be filed only after an attempt has been made to resolve the apparent dispute through oral communication. The faculty member should meet with his/her immediate supervisor and clearly present his/her concerns, the factual basis for the concerns and suggestions for resolution. The supervisor should approach this meeting with an open mind and make every effort to address the concerns raised. His/her response and the factual basis for that response should be clearly explained.
- c. Time frame for initiating the formal grievance: Should the faculty member believe that his/her concerns have not been addressed adequately as a result of this and any subsequent related meeting, he/she may elect to file a formal grievance. If the dispute is related to clearly defined matters such as a pay raise, timing of a filing for promotion, non-fulfillment of promised support, etc., the formal grievance should be filed within fifteen (15) business days of the meeting with the immediate supervisor or earlier if possible. For disputes involving a continuing series of less clearly defined matters, a formal grievance should be filed no later than six (6) months after the initial meeting with the supervisor. Any disputes related to the time of filing of a formal grievance shall be resolved by a three-person panel from the Grievance Committee appointed by the Chair of the Grievance Committee. Members of this panel may serve as mediators or members of a Grievance Hearing Panel if necessary, although this is discouraged. Once a formal grievance is initiated, this policy prescribes specific time frames for each step. These should be considered maximal allowable times. There is good reason to move the process forward as quickly as possible while ensuring due process. Requests for extensions beyond these time frames must be submitted in writing to the Dean with ample justification and must be formally approved.
- d. Initiating the formal grievance: The faculty member shall present the grievance in writing to his/her departmental chair or immediate supervisor. The written grievance must detail the specific issues being grieved, the previous efforts to resolve the dispute, the facts germane to the dispute and the specific relief sought by the faculty member. Once the grievance has been presented in writing, it cannot be changed except with the written approval of all parties. The chair or other immediate supervisor shall respond in writing to the faculty member within five (5) business days of receiving the written grievance. If not resolved, this process shall be repeated at each successive, appropriate departmental supervisory level, up to and including the Chair. At each successive level, the faculty member shall submit the original written grievance together with the written responses of supervisors to whom it was submitted previously and a written explanation of the factual basis for why those responses were unsatisfactory. Submission to the next level and the written response from the supervisor each shall occur within five (5) business days from receipt of the grievance response. If the faculty member is not satisfied with the decision of the department Chair, he/she may forward the original grievance and all written responses from the Chair and immediate supervisors to the Dean of the School of Medicine within five (5) business days of receiving the chair's written decision. If on a campus other than Lubbock, these materials will be sent to the Regional Dean who may attempt resolution. If the Regional Dean is unable to resolve the issue, he/she will forward the material with his/her comments to the Dean in Lubbock within five (5) business days of their receipt of the material.
- e. Processing the grievance by the Dean: The Dean, in consultation with the Chair of the Faculty Grievance Committee, shall consider the appropriateness of the grievance in according with paragraph 3.a. and then shall initiate mediation as the preferred route to

attempt to resolve differences between the parties or, if mediation is considered impractical due to unusual circumstances, to move directly to initiate a grievance hearing.

- f. Mediation: The Dean shall provide the Chair of the Faculty Grievance Committee (or Chair-Elect in the absence of the Chair) with the documentation submitted and request that he/she identify a team of two mediators and an alternate team. The Chair may consult with one or more members of the Committee, disclosing only those details of the grievance necessary to make appropriate selections and avoid possible conflicts of interest.
- 1) *Mediation Team*. Members of the mediation teams may be selected from the Committee or from outside of it but may not be members of the same department as the grievant and may not serve on a hearing panel for that grievance. One mediator should be from the same campus as the grievant. Gender and ethnicity representation should be considered in the selection. The Chair shall submit the names of the proposed mediators and alternates to each of the parties who may reject any of the proposed mediators but only for reasonable cause.
  - 2) *Timeframe*. The mediation team should be finalized as rapidly as possible but preferably no later than five (5) business days from the time that the Chair of the Grievance Committee was requested to begin the process. If this is not possible, the Chair may request written permission from the Dean to extend the process by a specified number of days or indicate to the Dean that mediation has failed due to the impossibility of identifying mediators acceptable to one or both parties.
  - 3) *Procedures*. The Chair will provide the two mediators with the documents submitted, noting that the documents together with all discussions held with the parties shall be considered confidential. The mediation team will review the documents and meet with the two parties as soon as possible, either separately or together as circumstances dictate, in an attempt to elicit compromise and forge a resolution of the issues satisfactory to both parties. The mediation process should be completed within ten (10) business days of the appointment of the mediators. The mediation team shall provide the Dean with a written report of the findings and results of the mediation process within three (3) business days of the completion of the mediation process. This should include their recommendations, including possibly a written agreement signed by both parties. The Dean shall have five (5) business days to render his decision to the two parties. Upon completion of the process, all written material shall be returned to the Office of the Dean whereas any notes taken during the process shall be destroyed. Mediators are prohibited from communicating with anyone including members of the Grievance Committee except the Dean about any aspect of the mediation process.
  - 4) *Records Retention*. Copies of any signed agreements together with the Dean's written decision shall be maintained in a confidential file for a period of five (5) years and, thereafter, destroyed, unless court action or other official administrative proceedings legally require access to such material.
- g. Grievance Hearing: If mediation is not successful or feasible, the Dean shall notify the Chair of the Committee and both parties that a Grievance Hearing Panel shall be convened.
- 1) *Grievance Hearing Panel*. The Panel shall consist of five (5) members from the Grievance Committee, two members selected by the faculty member, two by the person against whom the grievance was filed, and a fifth selected by these four members. The Chair of the Grievance Hearing Panel must be tenured and will be selected by those five members from among themselves. Persons from the same

department as the grievant, those who served on the mediation team and anyone whom the Panel considers to have a possible conflict of interest shall not be eligible to serve on the Grievance Panel.

- 2) *Notification.* The Dean shall notify both parties in writing that they have five (5) business days from receipt of his/her notification to submit to the Chair of the Faculty Grievance Committee the names of two members of the Faculty Grievance Committee, together with two alternates in rank order, as their choice to serve as members of the Grievance Hearing Panel.
- 3) *Other Provisions.* Alternates will be used only in the event that both parties identified the same individual among their first two choices (therefore, requiring an additional choice), or the first two choices are not available to serve. In the event the Panel cannot be assembled in a timely manner, the Chair of the Grievance Committee may name other members of the Committee or appoint ad hoc members, if necessary, as panelists after ascertaining that they would be acceptable to both parties. Objections raised against any proposed member must be reasonable.
- 4) *Documentation and Other Materials.* The parties also must submit within the same time frame and under separate, sealed cover copies of any supporting documents along with a list of any witnesses they might call at the hearing to the Chair of the Grievance Committee, who will transmit copies to the other party. Each party will then have five (5) business days after receipt to submit to the Chair of the Grievance Committee additional documents and/or names of additional witnesses that may be introduced only in rebuttal to the original material submitted by the other party. The Chair of the Grievance Committee shall then submit all material to the Chair of the Grievance Hearing Panel. Decisions on admissibility of rebuttal material will be made at the discretion of the Grievance Hearing Panel. All material, written or oral, presented during the Grievance Hearing shall be held confidential, and, upon completion of the process, all written material together with any notes taken during the process shall be returned to the Office of the Dean and maintained in a confidential file for a period of two (2) years after the final decision and thereafter, destroyed, unless court action or other official administrative proceedings legally require access to such material.
- 5) *Grievance Hearing Procedure.* Upon receipt of all material, the Chair of the Grievance Hearing Panel shall arrange for the Grievance Hearing to be held preferably within the next ten (10) but no later than the next fifteen (15) business days. The Panel, if necessary, may extend this time upon proper written notice to and approval by the Dean. The procedure for the Grievance Hearing shall be established by the Grievance Hearing Panel and shall be investigative, not adversarial. Each party may have a representative present at the hearing but only in an advisory capacity and the representative may not present evidence, question witnesses or present argument at the hearing. Each party has the right to request a recess to confer with his/her representative. The Chair of the Panel should inform all witnesses of the confidential nature of their presentation, as well as of all proceedings. Evidence presented must be related to the grievance as originally filed. The Panel has the right to rule on admissibility and to limit presentations and/or cross-examination if unreasonably long, repetitive or not relevant. Each party involved will be expected to present an opening statement not to exceed five (5) minutes, with the grievant being the first presenter. Each party, beginning with the grievant, will then present his/her case and call witnesses who may be questioned by the other party and members of the Panel. The time allotted for presentations will be preset by the Panel and shall be equal for both parties. Allowances will be made for time taken by cross-examination.

- 6) *Proceedings and Reporting.* Because of the confidentiality of the process, all proceedings shall be closed. The hearing will be tape-recorded and copies of the recording will be made available to either party on request. The format for all hearings shall be established by the Grievance Committee and reviewed annually for possible modification. The Hearing, including testimony from a witness, may be conducted by interactive telecommunications with approval by the Panel. After all evidence has been presented, the Grievance Hearing Panel shall consider the matter, and the Chair of the Panel shall transmit a report in writing to the Dean within five (5) business days of the conclusion of deliberations. This report shall include a Description of the Grievance Hearing with a) date, time and location, b) identification of the parties involved, members of the Panel and others present, c) a list of documents presented and d) the format of the hearing followed by the Findings, any Special Considerations and finally the Recommendations, including any minority opinions. Copies of this report shall be provided simultaneously to both parties. All written recommendations shall become part of the official record of the grievance.
- h. Dean's Decision: The Dean shall make the final decision on the outcome after reviewing the grievance documents including any supporting material and the recommendations from the Grievance Hearing Panel. Notification of the decision shall be sent in writing to both parties, the Chair of the Grievance Hearing Panel and the Chair of the Faculty Grievance Committee no later than ten (10) business days of receipt of the documents and the Panel's recommendation.
- i. Right of Appeal: If upon receipt of the Dean's decision, the faculty member believes that a procedural violation has occurred, he/she may appeal to the President. The appeal must be made within ten (10) business days of receiving the decision, be in writing and describe clearly the procedural violation claimed. The appeal must clearly demonstrate that the decision rendered by the Dean might have been materially affected by the alleged procedural violation. This means that mere procedural violations or errors alone will not justify a new proceeding if the decision reached was not affected by the error. In considering the appeal, the President shall review only the procedural aspects of the process and notify both parties, the Dean and the Chair of the Hearing Panel and the Chair of the Faculty Grievance Committee of his/her decision, preferably within five (5) but no later than fifteen (15) business days of receiving the appeal. The decision of the President on the appeal is final.
- j. Enforcement of Grievance Settlements: The outcome of the grievance process shall be binding. In circumstances where either the Chair or the immediate supervisor fails to abide by the decision of the Dean, the faculty member may bring this to the attention of the Grievance Committee in writing with documentation without filing a formal grievance. It is then the responsibility of the Grievance Committee to bring the situation to the attention of the Dean and to ascertain that adequate steps are taken to ensure enforcement. It should be the duty of the Dean to resolve the issue, but in the event that the Dean does not, the Grievance Committee shall carry the complaint to the President.