

# Guide to the Georgetown University Faculty Grievance Code

The Georgetown University Grievance Code provides faculty members with a forum for airing and resolving complaints that they might have against administrators. The University's grievance process is run by faculty members, although final appeals are decided by the University President.

A faculty member must proceed under the Code before resorting to the civil courts.  
(Introduction)

## Grievance Code Committee Composition (¶ D)

The University Grievance Code Committee consists of seventeen tenured faculty members. Seven are from the main campus, five from the law center and five from health sciences. Nine are appointed by Faculty Senate and eight are designated by the University President.

Six alternates are also appointed to alleviate the workload in the event that a large number of grievances are pending. Two alternates are designated by the senators from each of the three campuses.

Committee members and alternates serve three year terms and can be reappointed. However, members may not serve more than two consecutive terms.

(The Committee Chair may appoint more alternates for one year terms if he determines that the volume of Committee work demands more members.)

## Initiation of a Grievance Under the Code (¶ F-1)

A faculty member who believes that she has been the subject of improper administrative action initiates action under the Grievance Code by filing a "Notice of Grievance" with the President of the Faculty Senate. The Faculty Senate provides copies of the format that this notice should follow. It identifies the faculty member and provides data about her; lists the administrator's name and action that has caused her to file a grievance; explains the facts that relate to the administrator's action and its effect on her; and also indicates the provisions of Part B of the Grievance Code (discussed below) that apply to her grievance.

The Notice should be filed no more than 30 working days after the faculty member receives notice of the administrative action that gave rise to the grievance. However, if the faculty member is attempting to resolve his dispute with the administrator or if deferral of the initiation of grievance procedures might otherwise facilitate the resolution of the dispute, the faculty member need not file a formal Notice. Instead he may file a letter with the Faculty

Senate and indicate an intent to file a formal grievance. The President or other officer of the Faculty Senate then determines if deferral is appropriate and notifies the faculty member. The faculty member then has 25 working days to resolve the dispute; at the end of that time, if the dispute has not been resolved, either a further extension will be granted by the President of the Faculty Senate or the faculty member will be instructed to file promptly a Notice of Grievance. (§ F-1.a & footnote 4)

The Notice of Grievance is reviewed by the President or other officer of the Faculty Senate. The President, with the consent of the Committee Chair, may dismiss the grievance if the person filing it is not covered by the Code in Part A (discussed below).

### Conciliation (§ F-2)

Shortly after receiving a Notice of Grievance, the President of the Faculty Senate appoints a conciliator. The conciliator is usually selected from a panel of conciliators. The task of the conciliator is to work with the Grievant and Administrator to resolve the matter informally.

If conciliation resolves the Grievant's complaint, the grievance is concluded. If it does not resolve the grievance, the President of the Faculty Senate sends the Notice of Grievance to the Chair of the Committee.

### Grievance Committee Panels

When the Committee Chair receives a Notice of Grievance, he appoints a three member panel. Two of the members are from the same campus as the Grievant and the other is from one of the other two campuses. One member is designated to serve as the panel's chair. A panel's first task is the initial review of the grievance.

### Initial Review (§ F-3)

The panel first must decide whether it has jurisdiction. This entails consideration of three factors: Is the Grievant covered by the Code? Is the administrative action complained of covered by the Code, or "grievable" (a "word" that might not really exist)? And does the matter merit investigation?

#### Is the Grievant Covered by the Code? (§ A)

The Grievance Code applies to "faculty members." The term includes full- and part-time persons who are appointed by the University as officers of instruction to teach and/or conduct scholarly research, and librarians of professional rank." They may be tenured, tenure eligible, or not-tenure eligible. Trainees, such as fellows, research associates, interns and residents, are not covered.

The Grievance Code's purpose is to establish a process for the resolution of faculty members complaints about administrative actions. Two points follow from this purpose: First, University-wide administrators and staff are not covered by the Code while acting in their administrative capacities (but any such person may invoke the Code if, in his or her capacity as an individual faculty member, he or she is subjected to any of the disciplinary actions covered by the Code). Second, the Code does not apply to conflicts between faculty members.

If a faculty member has filed grievances under both the Grievance Code and the Affirmative Action Plan, Code proceedings will normally be deferred until completion of the Plan's procedures.

### Is the Matter Grievable? (§ B)

The Code lists seven (7) administrative actions that might provoke a faculty member to complain. Six of these are explicit actions and involve serious deprivations such as suspension or reduction of salary. The seventh is general and covers any action that "materially harms the faculty member."

However, to be grievable, it is not enough that one of the seven listed actions affect a faculty member. Additionally, either the action must violate a right of the faculty member that is established by contract or University policy or the action must violate established University procedures. This includes violations of academic freedom and principles laid down in AAUP statements that the Board of Directors has adopted. MedStar employees who also hold University appointments are covered by the Code only with respect to University actions or decisions. MedStar actions and decisions are not covered.

Additionally, the *Faculty Handbook* contains an important explication of faculty members' rights. Paragraph VI-B under "Faculty Organization" identifies a variety of responsibilities and rights of faculty. The latter include the right "to be treated fairly by . . . all members of the University administration" and "to be preserved from arbitrary or capricious action" by the administration. Other rights are listed. And the list is not meant to be exclusive; presumably a faculty member might identify some other type of right that was violated by an administrative action.

Although one of the six explicit actions that are listed as being grievable is "denial or tenure or promotion or reappointment," the Code's application to these is, in fact, significantly circumscribed. The Code does not cover "the merits" of the decision but only requires that established procedures be fully complied with and fairly administered. In other words, and using tenure as the example, so long as the applicable tenure procedures have been followed and fairly applied, the grievance process is not available to second-guess the tenure process.

### Does the Matter Merit Investigation?

As the preceding discussion indicates, “grievable matters” under the Code relate to inappropriate administrative actions that affect faculty in serious ways. Because of this, the requirement that the panel determine that the matter merits further investigation will usually be met.

If a panel determines that there is no jurisdiction or that the matter does not merit further investigation, the grievance is dismissed (subject to the Grievant’s right to appeal, discussed below). If jurisdiction exists and the matter merits further investigation, the panel informs the Committee Chair and the parties. The panel then normally proceeds to hold a hearing. However, the Grievant and administrator may agree to forego a hearing and proceed rather on the basis of written submissions to the panel. And the panel can determine that, based upon the materials already submitted to it, it has enough information to decide the merits of the grievance. (§ F-5.)

#### Formal Hearings (§ F-5)

A Grievance Code hearing evaluates the merits of the faculty member’s grievance. As the Code concisely explains: *“A grievance hearing is not a formal judicial proceeding. Its ultimate purpose is to evaluate the fairness of the administrative action that gave rise to the grievance.”*

The panel chair schedules a hearing after consulting with the parties and panel members. Prior to the hearing, the panel will ordinarily ask the parties to provide written submissions that will help the panel focus the hearing on a few major points. For example, the administrator will often be asked to identify any statements in the Notice of Grievance which she believes to be false, misleading or incomplete; that is, the administrator will be asked to clarify the facts with which she agrees and those with which she disagrees. She may also supply additional, relevant information. The Grievant will then be asked to respond in a similar way to the administrator’s submission. In addition, both parties will be asked to support their positions with any available documentation. In this way the panel and parties will understand what matters are agreed upon and what matters must be explored at the hearing.

Both parties may call witnesses; if they do, they must inform the panel and other party who these will be prior to the hearing. Each party may ask questions of the other party and the other party’s witnesses. And each party may be accompanied by an advisor – friend, colleague, spouse, lawyer. However, with one exception, advisors may not directly participate in the hearing. They can advise a party in an “off-record consultation.” The one exception is that an advisor may make a closing summary or argument to the panel on a party’s behalf.

After the hearing and an opportunity for panel deliberations, the panel submits its decision on the merits to the Committee Chair who distributes it to the parties and various University and Senate officials. If the decision is for the Grievant, the panel recommends a remedy – some action or measure that is appropriate to redress the unfair administrative

action.

#### Appeals to the Committee (§§ F-4, F-6)

Either party may appeal unfavorable decisions by a panel to the Committee. They may appeal both after the initial review stage as well as after a hearing and decision on the merits. Although appeals at the two stages differ somewhat, they are fundamentally the same.

The party files an appeal with the Committee chair who then distributes to all members of the Committee the panel decision, the appeal, and any responsive statement from the other party. If six members of the Committee indicate to the chair that they believe the panel decision should be reviewed, the Committee will be convened to review that decision. An exception exists when a panel's final decision on the merits is by a divided (2-1) vote; the Committee reviews all such panel decisions if either party appeals.

If six members of the Committee do not vote in favor of reviewing the panel decision, the grievance is at an end unless the appealing party takes an appeal to the University President (below).

If the Committee does review a decision and concludes that the panel erred, the Committee will remand an appeal from an initial review. If error was found in an appeal from a final decision on the merits, the Committee is generally free to remand to the panel, reverse the panel's recommendations, or otherwise resolve the matter.

#### Appeals to the University President (F-7)

Either party may appeal to the University President a Committee decision or the Committee's failure to vote in favor of reviewing a panel's decision. The appeal is in writing and submitted to the Committee chair. The chair submits the appeal, responsive arguments by the opposing party, and appropriate parts of the record in the case to the President. If the President agrees with the decision that is being appealed, he will affirm; if he disagrees, he will explain his reasons and remand the matter to the Committee or panel for further deliberations consistent with his decision.

#### Confidentiality (§§ C, D, F-2, E-4)

Various provisions of the Code indicate that the grievance process must be confidential. The Committee's and panels' proceedings, the conciliation process, and all documents connected with grievances are to be confidential. This applies to the parties to the grievance and their advisors, panel and committee members, conciliators, members of the Faculty Senate, and staff members whose work makes them aware of grievance matters.

Maintaining confidentiality is necessary in grievance proceedings because allegations might be made that are not substantiated and statements might be taken out of context. More importantly, the grievance process requires the assurance of confidentiality

so that all participants feel comfortable in expressing themselves fully and freely about the issues raised in grievances.