

# Section 11 - Disciplinary Action and Grievances

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## 11.1 Behavioral Complaints Against Faculty Members

It is not intended that the complaint resolution procedures set forth below in this subsection be utilized to: (1) resolve grade appeals or similar complaints by students against faculty members, or (2) provide a duplicative remedy for a single complaint. In the former situation, the complaint shall be handled in accordance with the student appeal provisions set forth in the applicable *Bulletin* or student handbook. In the latter situation, the appropriate vice president shall make the final determination regarding the most appropriate complaint procedure or appeal mechanism to be utilized for the handling of the complaint.

### 11.1.1 Inappropriate Behavior

Upon receipt by the Mines administration of a complaint alleging inappropriate behavior on the part of a faculty member, which, in its judgment, does not appear to rise to the level of misconduct covered by paragraph 11.1.2 below, the administration shall first refer the complaint to the immediate supervisor of the faculty member at the department/division level for resolution. If resolution of the complaint at the department/division level is unsuccessful, the complaint will be handled by the appropriate vice president according to the applicable procedure set forth in the *Academic Affairs Procedures Manual*, which shall be adapted as necessary for use in departments outside of Academic Affairs.

### 11.1.2 Misconduct

#### A. Preliminary Complaint Investigation

Upon receipt by the Mines administration of a report or complaint alleging faculty misconduct that is deemed to be of a serious nature, the appropriate vice president shall notify all accused parties and conduct a preliminary investigation to determine whether the allegation has merit. If a vice president is an accused party, the President shall perform the duties assigned to the vice president in this subsection. If the President is an accused party, the Chairman of the Board of Trustees shall perform the duties assigned to the vice president in this subsection. The vice president may conduct the preliminary investigation personally, delegate this task to another qualified administrator, or engage an external investigator to conduct the investigation. In conducting the preliminary investigation, the investigator shall review relevant documents and discuss the matter with all individuals directly involved in the matter. Additionally, the investigator may consult with any individual possessing expertise in the subject matter of the complaint or any member of the Mines community whose assistance is deemed by the investigator to be helpful to an equitable resolution of the complaint. Under normal circumstances, it is expected that the preliminary investigation will be concluded within thirty days. If the preliminary investigation takes longer than thirty days to complete, the vice president shall update the affected parties about the progress of the investigation. At the conclusion of the preliminary investigation, the vice president shall decide whether or not the allegation has sufficient merit to proceed to a formal investigation. If a formal investigation is deemed unwarranted, the vice president shall send a letter to the affected parties announcing the decision not to undertake a formal

investigation and the reasons therefor. If a formal investigation is deemed warranted, the vice president shall send a letter to the affected parties announcing the decision to undertake a formal investigation and inviting the accusing parties and the accused parties to submit written position statements to the *ad hoc* investigatory committee, which shall be appointed as indicated below.

The formal investigation of the complaint shall then commence in accordance with subparagraph B below.

#### B. Formal Complaint Investigation and Resolution Procedure

The vice president, in consultation with the president of the faculty organization of which the accused is a member, shall appoint an *ad hoc* investigatory committee consisting of three faculty members having no professional involvement or personal interest in the matter to be reviewed by the committee. The committee shall be charged with investigating the complaint and delivering to the vice president a written recommendation with respect thereto, including proposed findings and a proposed resolution. In conducting the formal investigation, the committee shall review all relevant documents and discuss the matter with the individuals directly involved in the alleged misconduct. Additionally, the committee may consult with any individual possessing expertise in the subject matter of the complaint or any member of the Mines community whose assistance is deemed by the committee to be helpful to an equitable resolution of the complaint. The committee shall compile a file of its work and deliberations and deliver the file to the vice president with its formal recommendation. Under normal circumstances, it is expected that the formal investigation will be concluded within sixty days. If the formal investigation takes longer than sixty days to complete, the chairperson of the investigatory committee shall update the affected parties and the vice president about the progress of the investigation. At the conclusion of the investigation, the vice president shall review the investigatory file and recommendation and render a formal decision in the matter. After reviewing all information related to the accusation, the vice president shall prepare a written decision resolving the matter, including a statement of sanctions, if appropriate, and deliver copies of the formal decision to the affected parties. Under normal circumstances, it is expected that the vice president will announce a formal resolution of the complaint to the affected parties within fifteen days from his or her receipt of the investigatory committee recommendation.

#### C. Sanctions

The sanctions imposed for an offense may vary from a letter of reprimand to dismissal for cause, depending upon the nature of the offense and any aggravating or mitigating factors, including, but not limited to, the presence or absence of malicious intent.

#### D. Avenues of Appeal

If the accused party disagrees with the findings of the investigation or the sanctions imposed, he or she may file a grievance pursuant to the Exempt Employee Grievance Procedure set forth in subsection 11.3 below. If, as an outcome of the investigation, the accused faculty member is terminated for cause, he or she may appeal the termination pursuant to the Termination and Non-Renewal Appeal Procedure set forth in subsection 9.6 below.

## 11.2 Disciplinary Action

If a department head or equivalent director and the appropriate vice president have determined that a faculty member has failed to behave in an ethical and professional manner, or is guilty of misfeasance or nonfeasance of duty, he or she may issue a formal letter of reprimand to the faculty member. Letters of reprimand, in combination with other factors, may constitute cause for termination of the employment of a

faculty member by Mines. If the faculty member disagrees with the disciplinary action imposed, he or she may file a grievance pursuant to the Exempt Employee Grievance Procedure set forth in subsection 11.3 below.

## 11.3 Grievance Procedure

### 11.3.1 Purpose and Scope

- A. This procedure is intended to provide a means for faculty to seek redress regarding employment-related concerns. This process can only be used for matters directly affecting the faculty member's working conditions or work assignments. Subject to the limitations set forth in 11.3.1 B, faculty members may file a grievance under this procedure for any action, inaction, or decision by a Mines employee that has a tangible adverse professional impact on the faculty member and that the faculty member has reasonable grounds to believe was unfair or arbitrary.
- B. This grievance process cannot be used to review:
  1. Matters involving performance evaluations, allegations of discrimination, sexual harassment, promotion and tenure, or other matters covered by Board of Trustees policies and procedures, including other Faculty Handbook or Academic Affairs procedures that contain specific avenues of appeal.
  2. A decision or action by the Board of Trustees.
  3. Any matter pertaining to broad areas of the fiscal management, staffing or structure of the university, Mines policies, procedures, and practices of a general nature. Examples of such items include the annual budget, operating procedures and protocols, organizational structure, etc.
  4. Any matter for which the resolution is not under the control of the university. Examples of these might include federal regulations governing recruitment, grant operations and reporting, state statutory or rule requirements, generally accepted accounting practices, approved fringe rates, etc.
- C. Grievances that are frivolous, vexatious, retaliatory, initiated in bad faith, are filed to harass or annoy the Respondent, or grievances that are on their face clearly unreasonable, are not to be filed and may result in sanctions or disciplinary actions against the individual(s) who filed the grievance. If the Respondent believes that the grievance meets the conditions described in this Paragraph C, he or she may ask the Grievance Hearing Panel to consider this in its findings and recommend sanctions against the Grievant. If such a request is made, the panel will include in its report to the Decision Maker a section regarding the Respondent's request (see 11.3.3. K below).

### 11.3.2 Terms

- A. "Respondent" refers to the individual whose decisions, actions, or inactions have given rise to the Grievant's concerns.
- B. "Decision Maker" refers to the Provost or Vice President who is charged with making the decision.
- C. "Panel" refers to the Grievance Hearing Panel selected using the process defined in Sections 11.3.4 F and G of this grievance procedure.

### 11.3.3 Informal Resolution

If a dispute or conflict arises, the Grievant is expected to make reasonable, good faith efforts to resolve the dispute or conflict directly and promptly with the Respondent prior to beginning the Grievance Procedure (11.3.4). A Grievant should first discuss his or her concerns

with the Respondent. If those efforts fail, the Grievant may utilize the Grievance Procedure below, except as noted in 11.3.7A when the President is the respondent of the grievance.

### 11.3.4 Grievance Procedure

- A. A grievance must be provided in writing to the Chief Human Resources Officer (CHRO)<sup>1</sup>. It must be filed no later than fifteen (15) days after the grieved action, inaction, or decision became known to the Grievant. If the Grievant fails to file the grievance by this deadline, the grievance is ended.
- B. The written grievance must contain, at a minimum, a statement that identifies the issue(s) in dispute and the Respondent, describes the factual basis for the grievance and the efforts to resolve the matter, and describes with specificity the desired outcome.
- C. The CHRO will promptly provide a copy of the grievance to the Chair of the University Grievance Committee. The Chair will determine whether it is a grievable matter (Handbook Section 11.3.1) that falls within the jurisdiction of the Grievance Committee and will determine whether the grievance is compliant with the submission requirements of Handbook Section 11.3.4 B.
- D. If the grievance is deficient, the Chair will advise the Grievant in writing and may allow the Grievant to revise and resubmit the grievance. The Chair must receive the revised grievance no later than seven (7) days after the Grievant's receipt of the Chair's notice of deficiency. Failure to resubmit within this deadline ends the grievance.
- E. The decision of the Chair as to whether it is appropriate for the Committee to hear the grievance is final and may not be grieved or otherwise appealed.
- F. For grievances that qualify to be heard, a Grievance Hearing Panel will be selected from Committee membership. The Chair and the CHRO will jointly and promptly conduct a random selection of the initial Panel.
- G. The panel will initially consist of five (5) members. From this number, the Grievant and the Respondent will each be required to disqualify one member. The disqualification must be made by the Grievant and the Respondent each no later than two (2) days after being notified of the initial Panel. The order of the disqualification selection will be determined by the flip of a coin. The remaining three (3) members will be the Panel that will hear the grievance.
- H. The Panel will select a Presiding Panel Member (PPM) within three (3) days of the Panel selection. Subject to Section 11.3.7 F., the PPM will schedule a pre-hearing conference of the panel including the Grievant and the Respondent. The purpose of the pre-hearing conference is to clarify issues, provide exchange of documents, set a date for the hearing, identify witnesses, and decide other preliminary matters. With consideration to participants' schedules, the pre-hearing conference will occur promptly, typically no later than ten (10) days after the selection of the PPM. If the pre-hearing conference becomes difficult to schedule, the PPM may conduct it on weekends and evenings.
- I. Following the pre-hearing conference, the PPM will schedule the grievance hearing. The schedule will be set with reasonable consideration given to the schedules of the Grievant, the Respondent, panel members, and possible witnesses. The hearing should normally occur no later than twenty-one (21) days after the pre-hearing conference.
- J. Only members of the Panel, the Grievant(s), the Respondent(s), and their respective counsels or representatives may attend the pre-

hearing conference and the grievance hearing. Witnesses may be present only while giving testimony.

- K. At the hearing, both the Grievant and the Respondent will have the opportunity to present their cases. The Grievant bears the burden of proof.
- L. The Panel will issue its report and recommendations, including its findings, to the Grievant, the Respondent, and to the Decision Maker. The Panel will issue its report within a reasonable period of time after the hearing, generally within seven (7) days. Except in unusual circumstances, the panel's report and recommendations should be issued no later than twenty-one (21) days after the hearing.

<sup>1</sup> If the grievance is against the CHRO, it must be provided in writing to the Executive Vice President for Finance and Administration. In this event, all references that follow within this procedure to the CHRO will be replaced with the Executive Vice President for Finance and Administration.

### 11.3.5 Decision

- A. Within a reasonable period of time after receipt of the panel's report and recommendations, the Decision Maker will issue his or her decision. The Decision Maker will use the standard of preponderance of evidence in making his or her decision. The decision is normally expected to occur within ten (10) days after receipt of the panel's recommendation. If the Decision Maker needs to extend the time frame, he/she will notify the parties in writing of the extension.
- B. The decision of the Decision Maker is final and there is no further appeal. The decision will be provided to the Grievant and the Respondent in writing. Copies of the decision will be provided to the Faculty Grievance Committee Chair, the PPM, and to Human Resources for inclusion in the Grievant's and/or Respondent's personnel file as determined by the Decision Maker.

### 11.3.6 Representation

- A. The grievance process is an internal, procedure for resolving workplace disputes; it is not intended to be a formal legal proceeding. Counsel or a representative may advise either party and is permitted to attend the pre-hearing conference and the grievance hearing. While counsel or a representative may advise the Grievant and the Respondent, no counsel or representative may participate directly in the proceedings, testify, or question witnesses.
- B. Mines' General Counsel may advise the panel on procedural matters related to the grievance. If the General Counsel is already actively involved in advising a party with regard to the grievance, another attorney from Mines' Legal Services Office, an attorney from the State's Attorney General's Office, or external counsel may be assigned to advise the Panel. An ethical wall will be utilized to address and resolve any conflict of interest that arises from this representation.

### 11.3.7 General

- A. If the President is the Respondent to the grievance, the Grievant is encouraged, but not required, to first discuss his or her concerns with the President. If the Grievant does not wish to engage the President in a discussion of his or her concerns, the Grievant may submit his or her grievance to the Chair of the Board of Trustees. If the Grievant elects to discuss his or her concerns with the President, the President will issue his or her decision in writing to the faculty member. A decision issued by the President may not be submitted to

the Faculty Grievance Committee but may be appealed to the Chair of the Board of Trustees. Any decision by the Board of Trustees is the final decision of Mines with regard to grievances brought against the President.

- B. If a grievance is lodged against the Provost or a Vice President, the Panel report and recommendation will be provided to the President (or his or her designee) who will make the final decision.
- C. References in the singular include the plural where the intent of the sentence is obvious that the plural should be included and where the meaning of the sentence is not materially changed. For example, the terms "Grievant" and "Respondent" shall include "Grievants" and "Respondents" as appropriate.
- D. All references to days are made to calendar days.
- E. If any deadlines fall on a weekend or holiday, they will be extended to the next business day.
- F. If the pre-hearing conference or the grievance hearing fall within the period between the end of the spring semester and the beginning of the subsequent fall semester, at the discretion of the PPM, these may be postponed until the fall semester. If a postponement is necessary, the deadline for setting the pre-hearing conference shall be thirty (30) days after the start of the fall semester.