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Staff Personnel Manual (SPP)

Effective: 7/1/1979	Revised: 3/1/2015
 SPP 901: Grievance Process	

Purpose

To provide procedures for handling grievances and to ensure fair and impartial hearings of grievances

Sources

- ASU Staff Grievance Hearing Procedure
- University policy

Applicability

Regular classified employees (nonprobationary). **Note: This policy does not apply to university staff.**

Policy

Arizona State University recognizes the importance of providing a prompt and efficient procedure for resolving grievances fairly and equitably, without fear of prejudice or retaliation for initiating a grievance or participating in its settlement on the part of the person involved. All grievants shall have clearly defined avenues of appeal and redress which may include a) mediation, b) informal grievance (taking the grievance through the chain of command), and/or c) a formal grievance hearing before an external hearing officer, who prepares a summary recommendation for the assistant or associate vice president, vice president, or president who makes the final decision. All actions at any stage of the grievance process shall be characterized by fairness, frankness, courtesy, and respect for the dignity of each individual involved.

Grievances should be resolved internally at the level closest to the grievant whenever possible. All grievants must pursue either mediation or informal grievance to completion before filing a formal grievance.

Exception

If suspension without pay, demotion, or involuntary termination has occurred and the proposed disciplinary action has been sustained, the employee may file a formal grievance directly. Termination of a classified employee during the probationary period is not subject to mediation, informal grievance, or formal grievance.

Procedures

Mediation Procedure

Introduction

Mediation may be requested by an employee who requires informal assistance in the resolution of a complaint. An ombudsperson from the ASU Ombudsperson Committee or another individual designated by the chair of the Ombudsperson Committee will mediate, conciliate, and coordinate communication among the grievant, respondent, and those related to the complaint. The purpose of this process is to air differences between the parties and to resolve the complaint to the satisfaction of both parties without resorting to formal hearings. Mediation is strongly recommended.

The names of members of the ASU Ombudsperson Committee are listed in the *ASU Directory* and the *ASU Roster of Boards, Committees, and Councils*.

Guidelines Regarding Mediation Procedures

1. The grievant must file a request for mediation services with an ombudsperson within 30 days of the occurrence of the actions forming the basis of the grievance, stating:
 - a. the names, addresses, and telephone numbers of the disputing parties
 - b. the date the dispute arose
 - c. the department, college, or unit involved
 - d. a statement of the issues in dispute

and

 - e. the remedy desired.
2. The ombudsperson shall forward copies of the complaint and the University Ombudsperson Committee Guidelines to the disputing parties within seven days after receiving the grievant's request.
3. The respondent shall have 15 days from receipt of grievance to submit a written response to the ombudsperson. Before responding, respondent(s) who are unfamiliar with the mediation process are encouraged to contact the referring ombudsperson for information about mediation within the 15-day time frame. If the respondent declines to participate, the grievant may then follow the informal grievance procedure if he or she wants to pursue the grievance.
4. The ombudsperson shall coordinate meetings and/or the exchange of correspondence between the grievant and the respondent. The ombudsperson shall establish the time, date, and place of each meeting, giving at least 48-hours' notice. The ombudsperson may also meet with each party individually. Whenever an ombudsperson determines that a resolution could be attained by arranging a meeting with the parties, he or she may do so. All mediation meetings shall be closed and are confidential. The ombudsperson may terminate mediation after meeting with each party at least once if it is apparent that the matter cannot be mediated. The grievant may then follow the informal grievance procedure if he or she wants to pursue the grievance.
5. During mediation, the grievant shall not be represented by an attorney. He or she may have a nonattorney adviser, chosen from the university community, who may attend meetings scheduled by the ombudsperson and review written documentation. The only meetings to be held during work time are those scheduled by the ombudsperson. Access shall not be given to information deemed confidential under federal or state laws or university policy, or if access would constitute an invasion of privacy. If the ombudsperson denies access, all parties shall be given a written explanation. If the grievant disagrees with the ombudsperson's determination, the grievant may terminate mediation and pursue an informal grievance.

If mediation has been completed and the grievant disagrees with the ombudsperson's determination, the grievant may initiate the formal grievance procedure within 30 days of receipt of an ombudsperson's report, if the matter is grievable.
6. The ombudsperson shall have 30 days after receiving written statements from the grievant and respondent to try to resolve the conflict. With the grievant's permission, the ombudsperson may elect to involve the respective dean or director if it is believed that this will aid in reaching a final resolution.
7. The result of the mediation process is a report prepared by the ombudsperson and sent to the parties stating:
 - a. the names of the grievant and the respondent
 - b. the length of time mediation was attempted
 - c. that mediation was or was not successful

and

 - d. notice that grievant may initiate formal grievance procedures within 30 days of receipt of the ombudsperson's report if dissatisfied with the results of mediation, if the matter is grievable.
8. If a mutually satisfactory resolution results from mediation, the process ends.
9. Information received by the ombudsperson during the mediation process will be confidential. Records created or received during mediation will not be released by the ombudsperson. Neither ombudspersons nor the Office of Human Resources (OHR) or other Human Resources personnel shall testify or provide statements about cases in which they were involved to grievance or other committees or hearing boards.

Informal Grievance Procedure

1. If the employee does not wish to use the above mediation option, the employee must first discuss the grievance with his or her immediate supervisor within 30 days of the occurrence of the actions forming the basis of the grievance. The discussion should state the issues in dispute and the remedy desired. The supervisor should make good-faith attempts to resolve the grievance directly through a discussion with the employee. The discussion should occur as soon as possible, but not later than seven days after the request has been received.
2. If a mutually satisfactory agreement cannot be reached within seven days of receipt of the request, the employee may submit the grievance in writing to the next-level supervisor (the supervisor's supervisor). The employee has the right to present the case personally at each level within a seven-day time limit at each level. The next-level supervisor will investigate the matter and make good-faith attempts to resolve the dispute. The supervisor will both discuss the matter with the aggrieved employee and send a written reply to that employee within seven days of receipt of the written grievance.
3. If the grievance is not resolved, the aggrieved employee may then pursue the grievance in writing within seven days through each succeeding supervisor up through the responsible dean or director (or vice president if the grievance is against a dean or director). Each succeeding supervisor, including the dean or director (or vice president), should indicate in writing within seven days of receipt of the grievance his or her summary findings and recommendations and give a copy to the aggrieved employee.

Note: Attorneys or other representatives may not be present or appear on behalf of an employee, supervisor, dean or director during any of the informal grievance procedure steps 1–3 listed above. If the grievance cannot be resolved through the administrative process listed in informal grievance steps 1–3 and the matter is grievable, the employee may submit a formal written grievance to OHR within 30 days of receipt of a dean's or director's report indicating that the grievance has been unresolvable through normal administrative channels.

University Grievance Hearing Process (Formal Grievance)

An eligible employee may file a written grievance and request for hearing with the OHR. OHR will provide a Demand for Grievance form and the University Grievance Hearing Process upon request. If the grievance is grievable, OHR will forward the grievance to the external hearing officer designated by the university for completion of the hearing process at the university's expense. On receipt of the grievance, OHR will forward a copy of the grievance to the respondent with a request for a written response. OHR will provide copies of the hearing rules and procedures as well as a list of three hearing officers, including their names and biographies, who are available to conduct a hearing. The hearing officer will be selected by the parties through the use of strikes or through another process that is agreeable to the parties and OHR.

Filing Time Limits

A Demand for Grievance form must be completed and filed with the Office of Human Resources within 30 calendar days of involuntary termination for cause, demotion, or suspension without pay; or, within 30 calendar days of receipt of an ombudsperson's report following mediation efforts; or, within 30 calendar days of receipt of a dean's or director's report indicating that the grievance has been unresolvable through normal administrative channels.

Advisor/Counsel

Grievant, at his or her own expense, may be represented by counsel (an attorney) during the grievance process and counsel may present the case during the hearing. Respondent may be represented by counsel, who may be a university attorney or outside counsel, during the grievance process, including the hearing.

Grievance Hearing

The hearing shall be conducted in accordance with *Arizona Revised Statutes* § 41–1062.

Within 60 days after the grievance is filed, a hearing will be scheduled on a date that is agreeable to the parties.

Within 30 days after the hearing ends, the hearing officer will provide a written advisory report summarizing the positions of the parties, the testimony of the witnesses, identification and analysis of documentation submitted, findings, conclusions and recommendations to the appropriate ASU vice president, provost, or dean, or the president if the vice president is the respondent. The hearing officer will not order an award or remedy to either party.

Within 30 days from receipt of the report, the vice president, provost, or dean (or president as applicable) will forward a written final decision to the parties and the vice president of OHR. If the vice president, provost, or dean (or president as applicable) cannot issue a decision within the 30-day period, he or she will notify the parties within the 30-day period of a delay in the issuing of the decision, the reasons for the delay, and the date on which the decision can be expected.

Request for Review or Rehearing

1. In compliance with *Arizona Revised Statutes* § 41–1062.B, the complainant/grievant who is dissatisfied with the decision may request a rehearing or review by filing a written request with the decision maker (president, provost, dean, or vice president as applicable) no later than 15 days following receipt of the written decision. The request shall be based on one or more of the following grounds:
 - a. irregularities in the proceedings, including but not limited to any abuse of discretion or misconduct by the hearing officer or hearing panel, which has deprived the complainant/grievant of a fair and impartial disciplinary process
 - b. newly discovered material evidence that could not have been presented during the fact-finding or hearing process
 - c. excessive severity of the sanction

or

 - d. that the decision is not justified by the evidence or is contrary to law.
2. Following receipt of the request for review, the decision maker shall make whatever review is deemed necessary to resolve the issues that have been raised.
3. The decision maker will respond in writing to the complainant/grievant's request for review or rehearing within ten (10) days of receipt of the request, and may uphold or modify the previous decision, or grant a rehearing on the issues raised by the request. The decision following review or rehearing is final.
4. To pursue the case outside the university, complainant/grievant must file a legal action in Maricopa County Superior Court within 35 days after receipt of decision following review or rehearing, in accordance with *Arizona Revised Statutes* §12–901 *et seq.*

Confidentiality

Hearings that involve personnel matters will be closed to those not appearing as participants. Witnesses will be present only while testifying. The hearing officer's reports and tapes, as well as the vice president's or president's decision, are confidential but will be made available to the parties on request. The requesting party must pay reasonable duplication costs.

Premature or Nongrievable Actions

Premature Claims

A grievance will not be accepted and the hearing will not be conducted until the employee has either attempted resolution through normal administrative channels (informal grievance) or through mediation. Within seven days after receipt of the grievance, OHR will return the claim to the employee with a written notice explaining why the claim is premature.

Nongrievable Claims

The following actions are not grievable:

1. discrimination complaints, which should be filed with the Office of Equity & Inclusion, Office of Human Resources, for investigation and processing
 2. grievances or complaints that are handled through other university committees or boards, including the Residency Appeals Board, the University Hearing Board (*Student Code of Conduct and Student Disciplinary Procedures*), the University Standards Committee, College Standards Committees, and Faculty Grievance Committees
 3. performance evaluations, which may be appealed to a next higher administrative level
 4. job classification and compensation, including salary adjustment (see [SPP 402](#), "Classification," [SPP 403](#), "Compensation," and [SPP 404](#), "Compensation for Additional Work")
 5. verbal or written results of a counseling session with the supervisor; receipt of first and second reprimands under progressive discipline (see [SPP 809](#), "Discipline")
 6. layoff through reduction in force, which may be appealed (see [SPP 213](#), "Reduction in Force")
 7. termination of probationary classified staff
 8. actions grieved after resignation or voluntary termination
 9. hiring decisions, including internal promotion decisions, not alleged to be based on discrimination
- and
10. assigned work schedules (see [SPP 306](#), "Work Schedules").

If OHR determines the grievance is not grievable, the grievance will be returned to the grievant with a written explanation on the reason(s) why the case is not grievable.

OHR is available for advisement on actions that are nongrievable.

Completion of these steps exhausts the university process for resolving grievances.

