

**Amendment to the University of Maryland Policies and Procedures Governing Faculty Grievances (Senate Document #19-20-28)****TO Wallace D. Loh | President****FROM Pamela Lanford | Chair, University Senate**

I am pleased to forward the accompanying legislation for your consideration and approval. Daniel Lathrop, Chair of the Faculty Affairs Committee, presented the committee's proposal on Amendment to the University of Maryland Policies and Procedures Governing Faculty Grievances (Senate Document #19-20-28), which the University Senate approved at its meeting on February 5, 2020. Please inform the Senate of your decision and any administrative action related to your conclusion.

Approved:**Date:****02-07-2020**

Wallace D. Loh
President

Copies of this approval and the accompanying legislation will be forwarded to:

Mary Ann Rankin, Senior Vice President and Provost
Reka Montfort, Executive Secretary and Director, University Senate
Michael Poterala, Vice President and General Counsel
Cynthia Hale, Associate Vice President for Finance and Personnel
John Bertot, Associate Provost for Faculty Affairs
Elizabeth Beise, Associate Provost for Academic Planning & Programs
Sylvia B. Andrews, Academic Affairs
Ellin Scholnick, Faculty Ombuds Officer
Daniel Lathrop, Chair of the Faculty Affairs Committee



Amendment to the University Of Maryland Policies and Procedures Governing Faculty Grievances

PRESENTED BY Daniel Lathrop, Chair

REVIEW DATES SEC – January 27, 2020 | SENATE – February 5, 2020

VOTING METHOD In a single vote

RELEVANT POLICY/DOCUMENT [II-4.00\(A\) – University of Maryland Policies and Procedures Governing Faculty Grievances](#)

NECESSARY APPROVALS Senate, President

ISSUE

In November 2019, a proposal was submitted to the Senate Executive Committee suggesting a minor revision to the University of Maryland Policies and Procedures Governing Faculty Grievances (II-4.00[A]). The proposal asked that the limitations of the policy be clarified. On November 20, 2019, the SEC voted to charge the Faculty Affairs Committee with review of the proposal.

RECOMMENDATION(S)

The Faculty Affairs Committee recommends that the proposed revision to the University of Maryland Policies and Procedures Governing Faculty Grievances (II-4.00[A]) as shown immediately following this report be approved.

COMMITTEE WORK

The Faculty Affairs Committee began its review at its meeting on December 2, 2019. It discussed the issues with the proposers, the Associate Provost for Faculty Affairs and the Faculty Ombuds Officer. It also met with the Executive Secretary & Director of the Senate, who manages formal grievances that are submitted to the Senate for review. The committee also consulted with the Office of General Counsel during its review.

The committee discussed the various types of review processes on campus, and noted that the policies and guidelines establishing those processes typically include appeal procedures. The committee raised concerns with the ability of the grievance process to appropriately review complaints related to sensitive matters like those that arise during investigations, where subject-matter expertise may be required and where confidentiality is critical. The committee agreed that processes governed by existing policies and processes that have their own appeal mechanisms should not be able to be grieved further through the Faculty Grievance Policy. The committee developed language to clarify the role of the policy.

After due consideration, the Faculty Affairs Committee voted to approve proposed revisions to the Faculty Grievance Policy at its meeting on December 2, 2019. The policy language was

subsequently revised after consultation with the Office of General Counsel, and the committee was notified of the revisions.

ALTERNATIVES

The Senate could choose not to approve the recommended revisions to the University of Maryland Policies and Procedures Governing Faculty Grievances. However, it would lose an opportunity to clarify the limitations of the policy.

RISKS

There are no risks to the University in adopting this recommendation.

FINANCIAL IMPLICATIONS

There are no known financial implications in adopting this recommendation.



AMENDMENT TO THE UNIVERSITY OF MARYLAND POLICIES AND PROCEDURES GOVERNING FACULTY GRIEVANCES

2019-2020 Committee Members

Daniel Lathrop (Chair)
John Bertot (Ex-Officio Provost's Rep)
Michele Eastman (Ex-Officio President's Rep)
Marc Pound (Ex-Officio CUSF Rep)
Jacqueline Richmond (Ex-Officio Director of Human Resources Rep)
Ellin Scholnick (Ex-Officio Ombuds Officer)
Caryn Bell (Faculty Senator)
Caroline Boules (Faculty Senator)
Agislaos Iliadis (Faculty Senator)
Nicole LaRonde (Faculty Senator)
Mark Fuge (Faculty)
Shevaun Lewis (Faculty)

Jessica O'Hara (Faculty)
Janice Reutt-Robey (Faculty)
Kevin Roy (Faculty)
Don Webster (Faculty)
Lexxie Monahan (Staff)
Deanna Barath (Graduate Student)
Ashley Hixson (Graduate Student)
Benjamin Lin (Undergraduate Student)

Date of Submission

January 2020

BACKGROUND

In November 2019, a proposal was submitted to the Senate Executive Committee suggesting a minor revision to the University of Maryland Policies and Procedures Governing Faculty Grievances (II-4.00[A]). The proposal noted that while the policy is intended to address issues that arise in the workplace such as inter-personal problems or employment-related disagreements, the policy is not intended to allow for a second review of issues that have been considered and resolved through another process at the University. The proposal asked that the limitations of the policy be clarified. On November 20, 2019, the SEC voted to charge the Faculty Affairs Committee with review of the proposal (Appendix 1).

COMMITTEE WORK

The Faculty Affairs Committee began its review at its meeting on December 2, 2019. It discussed the issues with the proposers, the Associate Provost for Faculty Affairs and the Faculty Ombuds Officer. It also met with the Executive Secretary & Director of the Senate, who manages formal grievances that are submitted to the Senate for review. The committee also consulted with the Office of General Counsel during its review.

The committee discussed the various types of review processes on campus, and noted that the policies and guidelines establishing those processes typically include appeal procedures. Investigations such as those related to policies on scholarly misconduct, sexual misconduct, and non-discrimination, are expected to be the final investigation on the matter at hand. Likewise, appeals of promotion and tenure decisions are governed through the APT policy and the determinations made through that process are final. However, due to a lack of clarity in the limitations of the grievance process, the current Faculty Grievance Policy allows an additional opportunity to address issues that have already been considered in the context of a separate process.

The committee raised concerns with the ability of the grievance process to appropriately review complaints related to sensitive matters like those that arise during investigations. In the investigation process, the issue at hand is reviewed by those who have the knowledge and expertise necessary to understand the case; a Faculty Hearing Board formed by the Senate to hear a grievance on the same matter would likely lack the subject-matter expertise needed to understand the nuances of the case. It would be difficult for a Faculty Hearing Board to review a grievance without repeating many of the steps in the investigatory proceeding in order to fully understand the case before it. In addition, a grievance would require that confidential materials and matters be discussed with a wider group, limiting the University's ability to uphold its responsibility for maintaining confidentiality in those processes.

The committee agreed that processes governed by existing policies and processes that have their own appeal mechanisms should not be able to be grieved further through the Faculty Grievance Policy. The committee developed language to clarify the role of the policy. In developing the language, the committee focused on findings or decisions reached, as well as on disciplinary action enacted as a result of other existing processes on campus.

After due consideration, the Faculty Affairs Committee voted to approve proposed revisions to the Faculty Grievance Policy at its meeting on December 2, 2019. The policy language was subsequently revised after consultation with the Office of General Counsel, and the committee was notified of the revisions.

RECOMMENDATIONS

The Faculty Affairs Committee recommends that the proposed revision to the University of Maryland Policies and Procedures Governing Faculty Grievances (II-4.00[A]) as shown immediately following this report be approved.

APPENDICES

Appendix 1 — Charge from the Senate Executive Committee



II-4.00(A) UNIVERSITY OF MARYLAND POLICIES AND PROCEDURES GOVERNING FACULTY GRIEVANCES

(Passed by the Campus Senate, April 23, 1990 and approved by the President, December 13, 1990; Amended March 4, 2002, April 5, 2018. This procedure replaces all faculty grievance procedures previously in effect at all administrative levels of the University of Maryland College Park.)

I. INTRODUCTION

A. Purpose

Legitimate problems, differences of opinion, conflicts, or complaints sometimes arise in the relationship between the University, as an employer, and its faculty. Both the faculty member with a grievance and the University benefit when the University responds to grievances promptly and fairly. This grievance procedure attempts to handle grievances as informally as possible and at a level in the University structure that is accessible to faculty members. The procedure also attempts to handle grievances in a timely, consistent, and simple manner.

B. Who May File a Grievance?

All persons with faculty status irrespective of their administrative duties or assignments at the time of the action or inaction prompting the grievance may use this grievance procedure. The faculty members covered by the Grievance Procedures are all those whose titles are in the University of Maryland Policy on Appointment, Promotion and Tenure Policy II-1.00(A) or in the University System Policy II-1.00, whether that person is full-time or part-time, as long as the faculty appointment is the person's primary position at the University of Maryland.

Grievances by more than one faculty member may be put together in a single grievance if each faculty member signs the grievance and the material actions or inactions and issues are substantially the same for each.

C. What is a Grievance?

Faculty members may file a grievance under this procedure for issues including but not limited to academic freedom, salary, assignments, and the nature and conditions of a faculty member's work. **Specific limitations on grievance complaints can be found in section I.D of this Policy.** Grievances cannot be filed against written campus and System policies. Grounds for a grievance are limited to actions or inactions by an administrator or a faculty member that are believed to be:

1. Unfair, which shall mean arbitrary and capricious, lacking in justifiable cause or basis in official policy, inequitable with respect to treatment, or excessive in relation to what would be a reasonable and available alternative course of action;
2. Discriminatory, which shall mean that the action or inaction was made on the basis of a protected status (e.g., race, ethnicity, gender, age, religion, sexual orientation, etc.); or
3. Improperly reached, which shall mean the decision was reached either in violation of University policy or without the consultations or approvals required by departmental or college regulations prior to making such decisions.

D. Limitations

No complaint shall be reviewed under these faculty grievance procedures if:

1. The complaint pertains to a subject that is reviewable under, or is specifically excluded from review by any other System or institutional policy, **or pertains to a finding or decision reached through a process established in a University policy that includes an appeal mechanism**, such as policies on sexual misconduct, non-discrimination, **promotion and tenure**, and ~~research~~ **scholarly misconduct**;
2. **The complaint pertains to a disciplinary action, including termination or suspension, imposed following the outcome of an institutional investigatory or compliance process;**
- ~~23.~~ The complaint pertains to an official policy, regulation, or procedure of the System or the institution; a decision or action by the Board of Regents, the Chancellor, or the President; or any matter the remedy for which would contravene or interfere with ~~any such an~~ official policy, regulation, procedure, decision, ~~or~~ **action, or institutional legal obligation**;
- ~~34.~~ The complaint pertains to **a fiscal irregularity finding**, broad fiscal management, organization, or structure of the University System of Maryland or constituent institutions; or
- ~~45.~~ The complaint pertains to an issue or proposes a remedy that is not under the control of the institution and/or of the University System **of Maryland**.

A faculty member may not use any other University grievance procedure simultaneously or successively with respect to the same or substantially similar issue or complaint, or with issues or complaints arising out of or pertaining to the same set of facts. In addition, no other University grievance procedure may be used to challenge the actions, determinations, or recommendations of any person(s) or board(s) acting pursuant to these procedures. A faculty member who elects to use this procedure for the resolution of a

grievance agrees to abide by the final decision arrived thereunder, and shall not subject this decision to review under any other procedure within the University System of Maryland.

A grievant may choose to pursue resolution under this process and pursue resolution through civil or criminal means, at their own initiation and expense. Administrative processes are separate from and have different standards than legal processes. Legal processes and the University's internal administrative process will proceed separately and independently.

E. The Faculty Ombuds Officer

The University of Maryland shall have a Faculty Ombuds Officer, who serves as a neutral and impartial officer to provide confidential and informal assistance to faculty and administrators in resolving concerns related to their work. Operating outside ordinary administrative structure, the Faculty Ombuds Officer shall serve as a counselor, fact-finder, mediator, and negotiator, but not as an advocate for any party to a dispute.

The Faculty Ombuds Officer shall serve all faculty and academic administrators. They shall attempt to resolve disputes informally before they enter formal grievance channels, and shall advise those who seek information about what constitutes a grievance and what the grievance procedures are. The Officer shall have access to suitable legal counsel, and should prepare an annual report and offer recommendations for policy change to the University Senate and the President.

The Faculty Ombuds Officer shall to the extent possible respect the confidentiality and privacy of faculty pursuing resolution under this grievance procedure. However, the Faculty Ombuds Officer may communicate with others on a need to know basis, as is appropriate to facilitate the grievance process or to attempt to address a complaint.

The Faculty Ombuds Officer shall be appointed by the President following a search conducted by a committee jointly appointed by the Senate Executive Committee of the University Senate and the President. Removal shall be by mutual consent of the President and a majority of the elected faculty members of the Senate Executive Committee.

II. PROCEDURES

A. Definitions

A grievance allegation is a preliminary informal statement of a grievable issue presented to the Faculty Ombuds Officer. It is based on the same standards as a grievance complaint, but seeks a remedy through the process of private discussion and consultation rather than formal grievance.

A *grievance complaint* is a formal written statement of a grievable issue using a prescribed form available from the Faculty Ombuds Officer. The grievance complaint should clearly articulate the grounds and scope of the grievance as well as the desired remedy.

A *formal grievance* is the formal written statement that is submitted to begin the adjudication process, after the mediation phase has concluded.

A *grievant* is the faculty member or members initiating a grievance allegation or grievance complaint.

The *respondent* is the person or persons whose actions or inactions are the focus of the grievance allegation or grievance complaint.

A *mediation agreement* is a formal written statement agreed upon by both the grievant and respondent that serves to resolve a grievance complaint.

Bad faith means an allegation that is knowingly false and/or is made or done with a knowing or reckless disregard for information that would negate the allegation.

Retaliation means an adverse action taken against an individual who has submitted a grievance and/or participated in the grievance process in good faith, where there is a clear causal link between the grievance and an adverse action. In determining whether retaliation has occurred, the individual needs to provide documentation supporting a claim of retaliation; the other party needs to articulate a legitimate reason for the adverse action.

Days in the calendar of complaint procedures shall mean business days. The grievance procedure calendar excludes Saturdays, Sundays, days on which the University is officially closed, and the time period from the end of the spring semester to the start of the following fall semester.

B. Information about Procedures

The Faculty Ombuds Officer is responsible for providing information regarding the preliminary consultation, mediation, and adjudication procedures and their relation to other policies and procedures of the University. This officer shall explain, in response to inquiries by faculty members, the conditions for using the various steps of the grievance procedure.

The grievance process consists of three phases. The Preliminary Consultation phase will normally proceed over a period of fifty (50) days. Once it has been determined that the consultation cannot achieve a satisfactory result through informal discussion, the grievant will have fifteen (15) days to file a grievance complaint to enter mediation. The Mediation phase will normally last up to twenty-five (25) days, though it can be extended

with the consent of both parties. The Adjudication phase may proceed after mediation concludes, and will move forward as expeditiously as possible.

Faculty are expected to begin the grievance process within seventy-five (75) days of a grievable action or inaction, or within seventy-five (75) days of first learning of the action or inaction, whichever is later. Such action or inaction may be the latest in a long standing pattern or practice, in which case the pattern may be considered as part the grievance, if the grievance is submitted within seventy-five (75) days from the most recent example of a pattern of action or inaction.

Grievants will not be reprimanded or discriminated against in any way for initiating a legitimate allegation or complaint. University administrators and faculty shall not engage in or threaten retaliation. Complaints of retaliation should be referred to the appropriate administrator, who would normally be the supervisor of the individual alleged to be engaging in retaliation, for review and any appropriate disciplinary action. Grievants who bring forward allegations that are found to be in bad faith may be subject to appropriate disciplinary actions.

The process for addressing a grievance set forth in these procedures is confidential. The parties, witnesses, members of committees involved in the process, advocates, and administrators who are informed of the grievance on a need to know basis, are expected to preserve confidentiality at all stages of the process, including preliminary consultation, mediation, and adjudication.

1. **Preliminary Consultation.** The preliminary consultation stage should normally proceed over a period not to exceed fifty (50) days), and is initiated by a grievance allegation brought to the Faculty Ombuds Officer. During this stage, the Faculty Ombuds Officer reviews the allegation with the grievant and the respondent, provides information and resources to the grievant, clarifies with the grievant the nature of the complaint, and counsels the grievant on their options for resolving the grievance as well as the process for engaging in mediation and adjudication should their allegation rise to the level of a formal complaint. In some cases, the grievant may have attempted to resolve the dispute privately prior to consulting with the Faculty Ombuds Officer, but such private attempts are not required in order to engage the assistance of the Faculty Ombuds Officer.

If through preliminary consultation with the parties, the allegation is settled to the satisfaction of all parties, no formal record need be filed with the Faculty Ombuds Officer, but a written record of such agreement may be filed at the request of the grievant. If the grievance allegation is not settled through preliminary consultation and the grievant wishes to proceed to mediation, the grievant must file a grievance complaint with the Faculty Ombuds Officer before the timeframe for preliminary consultation ends in order to proceed to mediation.

It is the responsibility of the Faculty Ombuds Officer to determine the essential nature of the dispute so that it can be resolved; the essential nature of the dispute may in fact differ from that described in the allegation. Following counsel with

the Faculty Ombuds Officer, the grievant's allegation should be revised as appropriate during the development of the grievance complaint.

2. **Mediation.** Mediation begins when the grievant files the written grievance complaint with the Faculty Ombuds Officer. The complaint shall contain a clear and concise statement of the action(s) or inaction(s) giving rise to the grievance, including the date of the action(s) or inaction(s) and the name(s) of the respondent(s) responsible. Also, the complaint should specify the adverse effect that the action(s) or inaction(s) has had or may have on the faculty member, and the remedy sought. The complaint should include the grievant's contact information.

From the time that the grievance complaint is filed, the Faculty Ombuds Officer shall have twenty-five (25) days in which to conduct mediation. If needed and by mutual consent of the parties, the Faculty Ombuds Officer may take additional time for mediation. The Faculty Ombuds Officer shall mediate the dispute by working with the parties to seek a solution satisfactory to both. All parties are expected to make good faith efforts at mediation. If mediation fails to produce a satisfactory solution, mediation may end unless both parties agree to continue.

If mediation results in a resolution of the conflict, a confidential written report and mediation agreement shall be forwarded to all parties to the dispute. The original copy of the report shall be retained by the Faculty Ombuds Officer.

The grievant may withdraw from the grievance process at any point by giving the Faculty Ombuds Officer written notice. If the grievant withdraws from the grievance process prior to the end of mediation, the grievant may not proceed to adjudication.

If, at any time during the mediation period, the Faculty Ombuds Officer believes the parties cannot reach agreement, or if the mediation fails to produce a satisfactory solution after the initial mediation period of twenty-five (25) days and any additional time agreed to by both parties, the mediation effort shall cease and the grievant may submit the dispute to adjudication.

3. **Adjudication.** Upon receipt of notice to the grievant by the Faculty Ombuds Officer of failure of the mediation process, the grievant shall have fifteen (15) days to revise the grievance complaint and submit the formal grievance to the Executive Secretary and Director of the University Senate for adjudication. Within five days (5) of the receipt of the formal grievance, the Executive Secretary and Director shall inform the respondent(s), the Associate Provost for Faculty Affairs, and the Faculty Ombuds Officer of the grievant's action and request that the Faculty Ombuds Officer provide a summary statement of the mediation effort and an assessment of whether the allegations within the grievance are within the jurisdiction of the grievance policy. The Faculty

Ombuds Officer shall submit the assessment within ten (10) days of the Executive Secretary and Director's request.

a. Administration:

The Office of the Executive Secretary and Director of the Senate shall be assigned responsibility for keeping a record of the grievance, initial notification of persons involved, and monitoring compliance with procedures. The Executive Secretary and Director of the Senate shall serve as the coordinator of and advisor to the Faculty Hearing Board. A confidential complete record shall be kept by the Executive Secretary and Director of all hearings and documents referenced during the adjudication process for three (3) years following the end of the grievance process.

b. Forming The Faculty Grievance Hearing Board

All elected Faculty Senators are eligible to serve on the Faculty Grievance Hearing Board. Hearing Boards should include a diverse group of tenured and tenure-track (T/TT) and professional track (PTK) faculty, whenever possible and as appropriate to the case. The Senate Chair-Elect is responsible for facilitating the formation of the Hearing Board.

Within fifteen (15) days of submission of the formal grievance, the Executive Secretary and Director shall send the list of elected Faculty Senators to the parties for review. The parties will have five (5) days to notify the Executive Secretary and Director of any elected Faculty Senators who may have a conflict of interest and should be ineligible to serve on the Hearing Board. The Executive Secretary and Director will promptly communicate any conflicts to the Chair-Elect.

The Chair-Elect shall then appoint three voting members of the Hearing Board and two alternate members from the unchallenged potential members.

The five members of the Faculty Grievance Hearing Board (three voting and two alternates) shall elect, by majority vote, one voting member to chair the Hearing Board. If a voting member cannot serve to completion of the grievance hearing, an alternate shall then be appointed as a voting member by the Chair of the Hearing Board. If an alternate member cannot serve to completion of the grievance hearing, the Hearing Board may proceed with one alternate.

c. Faculty Grievance Hearing Board Procedures

The Faculty Grievance Hearing Board shall hear all arguments on substantive and procedural matters and shall make necessary written findings.

The grievant shall be responsible for demonstrating the merits of the grievance. They must demonstrate that the action or inaction occurred and that the action or inaction adversely affects them. The grievant shall have the right to review and use any legally available part of their personnel files.

The Executive Secretary and Director shall establish a schedule of hearings for the Hearing Board that will allow the body to complete its work as expeditiously as possible. The Hearing Board should first convene its members to review the formal grievance as well as the summary statement of mediation efforts and assessment of grievance grounds. The Hearing Board may decide to dismiss the case if all three voting members agree that the dispute is frivolous, without merit, submitted in bad faith, or insufficiently related to the concerns of the academic community. If the case is dismissed, the Executive Secretary and Director will notify the parties, the Faculty Ombuds Officer, and the Associate Provost for Faculty Affairs. If the case is not dismissed, the grievance will proceed.

Both parties may choose to be assisted during the adjudication process by an advocate of their choice, who may be peer counsel or an attorney, at their own initiation and expense. The advocate may provide advice and consultation to the party. If necessary, a party may request a recess during hearings in order to speak privately with an advocate. The advocate may not be an active participant; the advocate may not speak for the parties in person or in writing, serve as a witness, provide information or documentation in the case, cause delay, communicate with the Chair or Executive Secretary and Director on behalf of the party, or otherwise interfere with the process.

At any step of the grievance procedure, the Hearing Board may request advice of the Office of General Counsel on procedural concerns or significant legal issues raised in the grievance. A legal officer who has provided legal advice or service to the respondent may not provide legal advice or service to the Hearing Board.

At any point, the respondent may request that the Hearing Board dismiss the case based on issues related to the grievability of the action or inaction involved. The Hearing Board will review the request and can dismiss the case if all three voting members agree. If the case is dismissed, the Executive Secretary and Director will notify the parties, the Faculty Ombuds Officer, and the Associate Provost for Faculty Affairs. If the case is not dismissed, the grievance will proceed.

The Chair of the Faculty Grievance Hearing Board shall be responsible for overseeing and facilitating the hearings and may order the proceedings in such manner as they deem appropriate. Hearings shall be closed. The Chair shall make determinations on all questions concerning the course of the proceedings. The Chair has the discretion to set time limits for statements,

testimony, or other aspects of the hearings and exclude redundant or irrelevant evidence including witness testimony.

During the hearings, each party will have an opportunity to make an opening and closing statement. The grievant shall first make a brief opening statement outlining the grounds for the grievance as indicated in the formal grievance; the respondent will then make a brief opening statement in response. Each party will be given an opportunity to share information or documentation to support their case, and all documentation shall be shared with the other party.

Both parties have the right to call witnesses in pursuance of their cases. If the parties intend to call witnesses, they are expected to submit their names and relevance to the case in advance of the hearing. The Faculty Ombuds Officer cannot be called as a witness. The Hearing Board can neither compel witnesses to participate nor assure the presence of witnesses requested by either party.

Members of the Hearing Board may ask questions of the grievant, respondent, and their witnesses. The Board may call witnesses when relevant to the issues in the case.

d. Findings of the Grievance Hearing Board

Only information discussed during the hearings that is determined by the Board to be relevant to the case shall be considered in the determination of the case. After review of the relevant information, the Hearing Board shall make a determination on its findings by a majority vote. The Hearing Board's findings should include an assessment of whether the grievance has merit and whether the action or inaction that formed the basis of the grievance was justifiable.

The Board shall prepare a written report of its findings, including the reasons for the findings and any dissent. The report shall be forwarded to the President within ten (10) days after the conclusion of the hearing. Confidential copies of the report shall be sent to the grievant and to the respondent, as well as to the Associate Provost for Faculty Affairs and the Faculty Ombuds Officer. Adjudication of a faculty grievance is a confidential process. All parties are expected to maintain the confidentiality of the process, proceedings, and documentation except as otherwise compelled by law.

e. Resolution

Within thirty (30) days, the President shall make a final determination in writing on the decision in the matter, and what remedy, if any, will be implemented. The President will normally consult with academic

administrators in determining appropriate remedies. It is expected that the President will give great weight to the findings of the Hearing Board. However, if the findings of the Hearing Board are not accepted, in whole or in part, an explanation of this decision should be provided. Notification will be sent to both parties to the grievance, to the Chair of the Hearing Board, and to the Hearing Board, as well as to the Executive Secretary and Director, the Associate Provost for Faculty Affairs and the Faculty Ombuds Officer.

The decision of the President shall be final.

Should the President decide that the grievance is justified and a remedy should be implemented, the grievant shall, before receiving any such remedy, enter into a written agreement recognizing the remedy to be satisfactory and waiving any claims to causes of action arising out of the grievance.



Charged: November 22, 2019 | Deadline: January 17, 2020

Amendment to the University of Maryland Policies and Procedures Governing Faculty Grievances (Senate Document #19-20-28)

Faculty Affairs Committee | Chair: Daniel P. Lathrop

The Senate Executive Committee (SEC) and Senate Chair Lanford request that the Faculty Affairs Committee review the proposal entitled, *Amendment to the University of Maryland Policies and Procedures Governing Faculty Grievances*.

Specifically, it asks that you:

1. Review the University of Maryland Policies and Procedures Governing Faculty Grievances ([II-4.00\[A\]](#)).
2. Consult with the proposers, the Associate Provost for Faculty Affairs and the Faculty Ombudsperson.
3. Consult with the Executive Secretary & Director of the University Senate.
4. Consider whether section I.D Limitations in the Policy should preclude a grievance from being filed if it pertains to a finding reached in a separate process, disciplinary action resulting from a separate process (up to and including suspension and termination), or if the resolution sought by the faculty member would interfere with an institutional legal obligation.
5. Consult with a representative of the Office of General Counsel on any proposed changes to University policy.
6. If appropriate based on the committee's consideration of the above items, recommend whether the existing policy should be revised

We ask that you submit a report to the Senate Office no later than **January 17, 2020**. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, extension 5-5804.



Amendment to the University of Maryland Policies and Procedures Governing Faculty Grievances (II-4.00[A])

Table with 4 rows and 2-4 columns containing contact information for John Bertot and Ellin Scholnick, including name, email, phone, unit, and constituency.

DESCRIPTION OF ISSUE

The University of Maryland Policies and Procedures Governing Faculty Grievances (II-4.00[A]) is intended to provide an avenue for considering and resolving issues that arise between faculty and administrators in the course of their work.

Faculty members frequently turn to the grievance process to appeal any decision with which they disagree, but the process was not intended to allow for a second review of issues that have been investigated and resolved through a process established in another University policy.

DESCRIPTION OF CHANGE YOU WOULD LIKE TO SEE

The University of Maryland Policies and Procedures Governing Faculty Grievances (II-4.00[A]) should be revised to more clearly articulate the limitations of the Policy and how it relates to other processes that already exist for examining issues related to misconduct or employment actions.

SUGGESTION FOR HOW YOUR PROPOSAL WOULD BE PUT INTO PRACTICE

Section I.D of the University of Maryland Policies and Procedures Governing Faculty Grievances (II-4.00[A]) should be revised to more clearly articulate the limitations of the Policy in I.D. The limitations should preclude a grievance from being filed if it pertains to a finding reached in a separate process, disciplinary action resulting from a separate process (up to and including suspension and termination), or if the resolution sought by the faculty member would interfere with an institutional legal obligation.

ADDITIONAL INFORMATION

The University of Maryland Policies and Procedures Governing Faculty Grievances (II-4.00[A]) was recently revised in April 2018 ([Senate Document #17-18-13](#)). The focus of that review was on the structure of the grievance process, and did not anticipate these concerns related to the limitations of the Policy. Since a more comprehensive review was conducted in 2018, a broad review of the policy is not necessary.

Depending on the outcome of the review of this proposal, future Senate action may be needed to revise existing University policies related to investigation processes if they direct faculty members to the grievance process as a means of appealing findings or disciplinary action.



II-4.00(A) UNIVERSITY OF MARYLAND POLICIES AND PROCEDURES GOVERNING FACULTY GRIEVANCES

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All persons with faculty status irrespective of their administrative duties or assignments at the time of the action or inaction prompting the grievance may use this grievance procedure. The faculty members covered by the Grievance Procedures are all those whose titles are in the University of Maryland Policy on Appointment, Promotion and Tenure Policy II-1.00(A) or in the University System Policy II-1.00, whether that person is full-time or part-time, as long as the faculty appointment is the person's primary position at the University of Maryland.

Grievances by more than one faculty member may be put together in a single grievance if each faculty member signs the grievance and the material actions or inactions and issues are substantially the same for each.

C. What is a Grievance?

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1. Unfair, which shall mean arbitrary and capricious, lacking in justifiable cause or basis in official policy, inequitable with respect to treatment, or excessive in relation to what would be a reasonable and available alternative course of action;
2. Discriminatory, which shall mean that the action or inaction was made on the basis of a protected status (e.g., race, ethnicity, gender, age, religion, sexual orientation, etc.); or
3. Improperly reached, which shall mean the decision was reached either in violation of University policy or without the consultations or approvals required by departmental or college regulations prior to making such decisions.

D. Limitations

No complaint shall be reviewed under these faculty grievance procedures if:

1. The complaint pertains to a subject that is reviewable under or is specifically excluded from review by any other System or institutional policy, **or pertains to a finding or decision reached through a process established in another policy**, such as policies on sexual misconduct, non-discrimination, **promotion and tenure**, and ~~research~~-**scholarly** misconduct;
2. **The complaint pertains to a disciplinary action, including termination or suspension, imposed following the outcome of an institutional investigatory process;**
3. The complaint pertains to an official policy, regulation, or procedure of the System or the institution; a decision or action by the Board of Regents, the Chancellor, or the President; or any matter the remedy for which would contravene or interfere with ~~any such~~ **an** official policy, regulation, procedure, decision, ~~or~~ **action, or institutional legal obligation;**
4. The complaint pertains to **a fiscal irregularity finding**, broad fiscal management, organization, or structure of the University System of Maryland or constituent institutions; or
5. The complaint pertains to an issue or proposes a remedy that is not under the control of the institution and/or of the University System **of Maryland.**

A faculty member may not use any other University grievance procedure simultaneously or successively with respect to the same or substantially similar issue or complaint, or with issues or complaints arising out of or pertaining to the same set of facts. In addition, no other University grievance procedure may be used to challenge the actions, determinations, or recommendations of any person(s) or board(s) acting pursuant to these procedures. A faculty member who elects to use this procedure for the resolution of a grievance agrees to abide by the final decision arrived thereunder, and shall not subject

this decision to review under any other procedure within the University System of Maryland.

A grievant may choose to pursue resolution under this process and pursue resolution through civil or criminal means, at their own initiation and expense. Administrative processes are separate from and have different standards than legal processes. Legal processes and the University's internal administrative process will proceed separately and independently.

E. The Faculty Ombuds Officer

The University of Maryland shall have a Faculty Ombuds Officer, who serves as a neutral and impartial officer to provide confidential and informal assistance to faculty and administrators in resolving concerns related to their work. Operating outside ordinary administrative structure, the Faculty Ombuds Officer shall serve as a counselor, fact-finder, mediator, and negotiator, but not as an advocate for any party to a dispute.

The Faculty Ombuds Officer shall serve all faculty and academic administrators. They shall attempt to resolve disputes informally before they enter formal grievance channels, and shall advise those who seek information about what constitutes a grievance and what the grievance procedures are. The Officer shall have access to suitable legal counsel, and should prepare an annual report and offer recommendations for policy change to the University Senate and the President.

The Faculty Ombuds Officer shall to the extent possible respect the confidentiality and privacy of faculty pursuing resolution under this grievance procedure. However, the Faculty Ombuds Officer may communicate with others on a need to know basis, as is appropriate to facilitate the grievance process or to attempt to address a complaint.

The Faculty Ombuds Officer shall be appointed by the President following a search conducted by a committee jointly appointed by the Senate Executive Committee of the University Senate and the President. Removal shall be by mutual consent of the President and a majority of the elected faculty members of the Senate Executive Committee.

II. PROCEDURES

A. Definitions

A *grievance allegation* is a preliminary informal statement of a grievable issue presented to the Faculty Ombuds Officer. It is based on the same standards as a grievance complaint, but seeks a remedy through the process of private discussion and consultation rather than formal grievance.

A *grievance complaint* is a formal written statement of a grievable issue using a prescribed form available from the Faculty Ombuds Officer. The grievance complaint

should clearly articulate the grounds and scope of the grievance as well as the desired remedy.

A *formal grievance* is the formal written statement that is submitted to begin the adjudication process, after the mediation phase has concluded.

A *grievant* is the faculty member or members initiating a grievance allegation or grievance complaint.

The *respondent* is the person or persons whose actions or inactions are the focus of the grievance allegation or grievance complaint.

A *mediation agreement* is a formal written statement agreed upon by both the grievant and respondent that serves to resolve a grievance complaint.

Bad faith means an allegation that is knowingly false and/or is made or done with a knowing or reckless disregard for information that would negate the allegation.

Retaliation means an adverse action taken against an individual who has submitted a grievance and/or participated in the grievance process in good faith, where there is a clear causal link between the grievance and an adverse action. In determining whether retaliation has occurred, the individual needs to provide documentation supporting a claim of retaliation; the other party needs to articulate a legitimate reason for the adverse action.

Days in the calendar of complaint procedures shall mean business days. The grievance procedure calendar excludes Saturdays, Sundays, days on which the University is officially closed, and the time period from the end of the spring semester to the start of the following fall semester.

B. Information about Procedures

The Faculty Ombuds Officer is responsible for providing information regarding the preliminary consultation, mediation, and adjudication procedures and their relation to other policies and procedures of the University. This officer shall explain, in response to inquiries by faculty members, the conditions for using the various steps of the grievance procedure.

The grievance process consists of three phases. The Preliminary Consultation phase will normally proceed over a period of fifty (50) days. Once it has been determined that the consultation cannot achieve a satisfactory result through informal discussion, the grievant will have fifteen (15) days to file a grievance complaint to enter mediation. The Mediation phase will normally last up to twenty-five (25) days, though it can be extended with the consent of both parties. The Adjudication phase may proceed after mediation concludes, and will move forward as expeditiously as possible.

Faculty are expected to begin the grievance process within seventy-five (75) days of a grievable action or inaction, or within seventy-five (75) days of first learning of the action or inaction, whichever is later. Such action or inaction may be the latest in a long standing pattern or practice, in which case the pattern may be considered as part the grievance, if the grievance is submitted within seventy-five (75) days from the most recent example of a pattern of action or inaction.

Grievants will not be reprimanded or discriminated against in any way for initiating a legitimate allegation or complaint. University administrators and faculty shall not engage in or threaten retaliation. Complaints of retaliation should be referred to the appropriate administrator, who would normally be the supervisor of the individual alleged to be engaging in retaliation, for review and any appropriate disciplinary action. Grievants who bring forward allegations that are found to be in bad faith may be subject to appropriate disciplinary actions.

The process for addressing a grievance set forth in these procedures is confidential. The parties, witnesses, members of committees involved in the process, advocates, and administrators who are informed of the grievance on a need to know basis, are expected to preserve confidentiality at all stages of the process, including preliminary consultation, mediation, and adjudication.

1. **Preliminary Consultation.** The preliminary consultation stage should normally proceed over a period not to exceed fifty (50) days, and is initiated by a grievance allegation brought to the Faculty Ombuds Officer. During this stage, the Faculty Ombuds Officer reviews the allegation with the grievant and the respondent, provides information and resources to the grievant, clarifies with the grievant the nature of the complaint, and counsels the grievant on their options for resolving the grievance as well as the process for engaging in mediation and adjudication should their allegation rise to the level of a formal complaint. In some cases, the grievant may have attempted to resolve the dispute privately prior to consulting with the Faculty Ombuds Officer, but such private attempts are not required in order to engage the assistance of the Faculty Ombuds Officer.

If through preliminary consultation with the parties, the allegation is settled to the satisfaction of all parties, no formal record need be filed with the Faculty Ombuds Officer, but a written record of such agreement may be filed at the request of the grievant. If the grievance allegation is not settled through preliminary consultation and the grievant wishes to proceed to mediation, the grievant must file a grievance complaint with the Faculty Ombuds Officer before the timeframe for preliminary consultation ends in order to proceed to mediation.

It is the responsibility of the Faculty Ombuds Officer to determine the essential nature of the dispute so that it can be resolved; the essential nature of the dispute may in fact differ from that described in the allegation. Following counsel with the Faculty Ombuds Officer, the grievant's allegation should be revised as appropriate during the development of the grievance complaint.

2. **Mediation.** Mediation begins when the grievant files the written grievance complaint with the Faculty Ombuds Officer. The complaint shall contain a clear and concise statement of the action(s) or inaction(s) giving rise to the grievance, including the date of the action(s) or inaction(s) and the name(s) of the respondent(s) responsible. Also, the complaint should specify the adverse effect that the action(s) or inaction(s) has had or may have on the faculty member, and the remedy sought. The complaint should include the grievant's contact information.

From the time that the grievance complaint is filed, the Faculty Ombuds Officer shall have twenty-five (25) days in which to conduct mediation. If needed and by mutual consent of the parties, the Faculty Ombuds Officer may take additional time for mediation. The Faculty Ombuds Officer shall mediate the dispute by working with the parties to seek a solution satisfactory to both. All parties are expected to make good faith efforts at mediation. If mediation fails to produce a satisfactory solution, mediation may end unless both parties agree to continue.

If mediation results in a resolution of the conflict, a confidential written report and mediation agreement shall be forwarded to all parties to the dispute. The original copy of the report shall be retained by the Faculty Ombuds Officer.

The grievant may withdraw from the grievance process at any point by giving the Faculty Ombuds Officer written notice. If the grievant withdraws from the grievance process prior to the end of mediation, the grievant may not proceed to adjudication.

If, at any time during the mediation period, the Faculty Ombuds Officer believes the parties cannot reach agreement, or if the mediation fails to produce a satisfactory solution after the initial mediation period of twenty-five (25) days and any additional time agreed to by both parties, the mediation effort shall cease and the grievant may submit the dispute to adjudication.

3. **Adjudication.** Upon receipt of notice to the grievant by the Faculty Ombuds Officer of failure of the mediation process, the grievant shall have fifteen (15) days to revise the grievance complaint and submit the formal grievance to the Executive Secretary and Director of the University Senate for adjudication. Within five days (5) of the receipt of the formal grievance, the Executive Secretary and Director shall inform the respondent(s), the Associate Provost for Faculty Affairs, and the Faculty Ombuds Officer of the grievant's action and request that the Faculty Ombuds Officer provide a summary statement of the mediation effort and an assessment of whether the allegations within the grievance are within the jurisdiction of the grievance policy. The Faculty Ombuds Officer shall submit the assessment within ten (10) days of the Executive Secretary and Director's request.

- a. **Administration:**

The Office of the Executive Secretary and Director of the Senate shall be assigned responsibility for keeping a record of the grievance, initial notification of persons involved, and monitoring compliance with procedures. The Executive Secretary and Director of the Senate shall serve as the coordinator of and advisor to the Faculty Hearing Board. A confidential complete record shall be kept by the Executive Secretary and Director of all hearings and documents referenced during the adjudication process for three (3) years following the end of the grievance process.

b. Forming The Faculty Grievance Hearing Board

All elected Faculty Senators are eligible to serve on the Faculty Grievance Hearing Board. Hearing Boards should include a diverse group of tenured and tenure-track (T/TT) and professional track (PTK) faculty, whenever possible and as appropriate to the case. The Senate Chair-Elect is responsible for facilitating the formation of the Hearing Board.

Within fifteen (15) days of submission of the formal grievance, the Executive Secretary and Director shall send the list of elected Faculty Senators to the parties for review. The parties will have five (5) days to notify the Executive Secretary and Director of any elected Faculty Senators who may have a conflict of interest and should be ineligible to serve on the Hearing Board. The Executive Secretary and Director will promptly communicate any conflicts to the Chair-Elect.

The Chair-Elect shall then appoint three voting members of the Hearing Board and two alternate members from the unchallenged potential members.

The five members of the Faculty Grievance Hearing Board (three voting and two alternates) shall elect, by majority vote, one voting member to chair the Hearing Board. If a voting member cannot serve to completion of the grievance hearing, an alternate shall then be appointed as a voting member by the Chair of the Hearing Board. If an alternate member cannot serve to completion of the grievance hearing, the Hearing Board may proceed with one alternate.

c. Faculty Grievance Hearing Board Procedures

The Faculty Grievance Hearing Board shall hear all arguments on substantive and procedural matters and shall make necessary written findings.

The grievant shall be responsible for demonstrating the merits of the grievance. They must demonstrate that the action or inaction occurred and that the action or inaction adversely affects them. The grievant shall have the right to review and use any legally available part of their personnel files.

The Executive Secretary and Director shall establish a schedule of hearings for the Hearing Board that will allow the body to complete its work as expeditiously as possible. The Hearing Board should first convene its members to review the formal grievance as well as the summary statement of mediation efforts and assessment of grievance grounds. The Hearing Board may decide to dismiss the case if all three voting members agree that the dispute is frivolous, without merit, submitted in bad faith, or insufficiently related to the concerns of the academic community. If the case is dismissed, the Executive Secretary and Director will notify the parties, the Faculty Ombuds Officer, and the Associate Provost for Faculty Affairs. If the case is not dismissed, the grievance will proceed.

Both parties may choose to be assisted during the adjudication process by an advocate of their choice, who may be peer counsel or an attorney, at their own initiation and expense. The advocate may provide advice and consultation to the party. If necessary, a party may request a recess during hearings in order to speak privately with an advocate. The advocate may not be an active participant; the advocate may not speak for the parties in person or in writing, serve as a witness, provide information or documentation in the case, cause delay, communicate with the Chair or Executive Secretary and Director on behalf of the party, or otherwise interfere with the process.

At any step of the grievance procedure, the Hearing Board may request advice of the Office of General Counsel on procedural concerns or significant legal issues raised in the grievance. A legal officer who has provided legal advice or service to the respondent may not provide legal advice or service to the Hearing Board.

At any point, the respondent may request that the Hearing Board dismiss the case based on issues related to the grievability of the action or inaction involved. The Hearing Board will review the request and can dismiss the case if all three voting members agree. If the case is dismissed, the Executive Secretary and Director will notify the parties, the Faculty Ombuds Officer, and the Associate Provost for Faculty Affairs. If the case is not dismissed, the grievance will proceed.

The Chair of the Faculty Grievance Hearing Board shall be responsible for overseeing and facilitating the hearings and may order the proceedings in such manner as they deem appropriate. Hearings shall be closed. The Chair shall make determinations on all questions concerning the course of the proceedings. The Chair has the discretion to set time limits for statements, testimony, or other aspects of the hearings and exclude redundant or irrelevant evidence including witness testimony.

During the hearings, each party will have an opportunity to make an opening and closing statement. The grievant shall first make a brief opening statement outlining the grounds for the grievance as indicated in the formal grievance; the respondent will then make a brief opening statement in response. Each party will be given an opportunity to share information or documentation to support their case, and all documentation shall be shared with the other party.

Both parties have the right to call witnesses in pursuance of their cases. If the parties intend to call witnesses, they are expected to submit their names and relevance to the case in advance of the hearing. The Faculty Ombuds Officer cannot be called as a witness. The Hearing Board can neither compel witnesses to participate nor assure the presence of witnesses requested by either party.

Members of the Hearing Board may ask questions of the grievant, respondent, and their witnesses. The Board may call witnesses when relevant to the issues in the case.

d. Findings of the Grievance Hearing Board

Only information discussed during the hearings that is determined by the Board to be relevant to the case shall be considered in the determination of the case. After review of the relevant information, the Hearing Board shall make a determination on its findings by a majority vote. The Hearing Board's findings should include an assessment of whether the grievance has merit and whether the action or inaction that formed the basis of the grievance was justifiable.

The Board shall prepare a written report of its findings, including the reasons for the findings and any dissent. The report shall be forwarded to the President within ten (10) days after the conclusion of the hearing. Confidential copies of the report shall be sent to the grievant and to the respondent, as well as to the Associate Provost for Faculty Affairs and the Faculty Ombuds Officer. Adjudication of a faculty grievance is a confidential process. All parties are expected to maintain the confidentiality of the process, proceedings, and documentation except as otherwise compelled by law.

e. Resolution

Within thirty (30) days, the President shall make a final determination in writing on the decision in the matter, and what remedy, if any, will be implemented. The President will normally consult with academic administrators in determining appropriate remedies. It is expected that the President will give great weight to the findings of the Hearing Board. However, if the findings of the Hearing Board are not accepted, in whole or in

part, an explanation of this decision should be provided. Notification will be sent to both parties to the grievance, to the Chair of the Hearing Board, and to the Hearing Board, as well as to the Executive Secretary and Director, the Associate Provost for Faculty Affairs and the Faculty Ombuds Officer.

The decision of the President shall be final.

Should the President decide that the grievance is justified and a remedy should be implemented, the grievant shall, before receiving any such remedy, enter into a written agreement recognizing the remedy to be satisfactory and waiving any claims to causes of action arising out of the grievance.