

**RESOLUTION TO APPROVE REVISION TO GRIEVANCE POLICY AND
PROCEDURES
FOR ADMINISTRATIVE AND PROFESSIONAL FACULTY**

WHEREAS, the Commission on Administrative and Professional Faculty Affairs (CAPFA) is responsible for oversight of administrative and professional (A/P) faculty grievances and advising the provost or associate vice president for human resources prior to action; and

WHEREAS, CAPFA has learned from responding to grievances over the past couple of years that revising the grievance policy and procedure could better serve the needs of the grievant and the university; and

WHEREAS, Faculty Handbook Section 7.7.2, *The Formal Grievance Procedure*, and Section 7.7.6, *Overview of the Formal Grievance Process for Administrative and Professional Faculty*, have allowed the grievability of an issue (defined as a determination of the validity of an issue for grievance by section 7.7.4, *Valid Issues for Grievance*) to be called into question at any point in the formal grievance process by any party; and

WHEREAS, Faculty Handbook Section 7.7.4, *Valid Issues for Grievance*, has been interpreted in a variety of ways by grievants; and

WHEREAS, allowing grievances to progress into formal grievance steps without a grievability ruling has led to matters not valid for grievance progressing far into the formal grievance process; and

WHEREAS, allowing grievances regarding issues not valid for grievance to progress through the grievance process without a grievability ruling has the potential to create unrealistic expectations and unnecessary stress for the grievant; and

WHEREAS, utilizing the grievance policy and procedures for A/P faculty only in cases where the issue in question is indeed a valid issue for grievance improves effectiveness and efficiency of the process, saving time and resources that would have been spent considering and responding to issues not valid for grievance; and

WHEREAS, the policy outlines steps by which an impartial review may be conducted to determine whether an issue is valid for grievance; and

WHEREAS, if an issue was deemed not grievable per Faculty Handbook Section 7.7.4, *Valid Issues for Grievance*, informing the grievant early in the grievance process would be beneficial and allow the grievant to pursue other options that might be available either through the jurisdiction of other university policies and procedures or through reconciliation and mediation services; and

WHEREAS, issues submitted to the grievance process and deemed valid issues for grievance would progress through the steps of the grievance process as outlined in the faculty handbook, and with the established time requirements;

NOW, THEREFORE BE IT RESOLVED, that all administrative and professional faculty grievances shall receive a grievability ruling at the first step, prior to consideration by and response from the appropriate administrator(s); and

BE IT FURTHER RESOLVED, that Section 7.7.4, *Valid Issues for Grievance*, be revised specifically for greater clarity; and

BE IT FURTHER RESOLVED, that Section 7.7 of the Faculty Handbook be revised overall as indicated in the attached text.

RECOMMENDATION:

That the resolution to approve revision to grievance policy and procedures for administrative and professional faculty be approved.

March 30, 2015

Faculty Handbook – **PROPOSED**

Produced by the Office of the Senior Vice President and Provost
To be approved by University Council and the VT Board of Visitors
 2014-15

7.7 Grievance Policy and Procedures for Administrative and Professional Faculty

- 7.7.1 Faculty Reconciliation and Mediation Services
- 7.7.2 The Formal Grievance Procedure
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- 7.7.4 Valid Issues for Grievance
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- 7.7.6 Overview of the Formal Grievance Process for Administrative and Professional Faculty

7.7 Grievance Policy and Procedures for Administrative and Professional Faculty

The following procedure is provided as the means for resolution of grievances against a supervisor or member(s) of the university administration brought by members of the administrative and professional faculty. The steps in the grievance process will, in part, be guided by the reporting relationships of the employees involved in the grievance. Step one and two administrators involved in responding to a grievance should consult with the associate vice president for human resources and/or the vice provost for faculty affairs who may involve additional parties as appropriate. Grievants, and those involved in responding to grievances, may consult with employee relations in Human Resources for additional information.

7.7.1 Faculty Reconciliation and Mediation Services

Informal Dialogue: It should be possible to resolve most concerns or complaints through informal communication among colleagues working together in the academic enterprise. Accordingly, **an A/P** faculty member who feels he or she has a grievance is encouraged to take it to his or her immediate supervisor in the normal collegial spirit of problem solving rather than as a confrontation between adversaries.

Reconciliation: Reconciliation is useful if the individual feels the issue may be amenable to, but will require time for, negotiation or if the individual is unsure whether his or her concern is a legitimate issue for a grievance, or if personal relations between the parties involved in the matter have become strained. Information regarding **the faculty reconciliation process is** available on the website for the Senior Vice President and Provost **under “Useful Links.”**

The Faculty Senate Committee on Reconciliation, which typically includes participation by one or more administrative and professional faculty members as members of the reconciliation team, may conduct reconciliation between an A/P faculty member and his or her supervisor. Reconciliation may include fact-finding and engaging the appropriate

parties in negotiating a resolution. The designated reconciliation service is referred to hereafter as the “reconciliation team.” Engaging the reconciliation team is not required prior to filing a grievance.

For a potential grievance issue to qualify for consideration by the reconciliation team, the A/P faculty member must contact the chair of the reconciliation team within 30 calendar days of the date the grievant knew, or should have known, of the event or action that is the basis for the potential grievance.

Administrative and professional faculty members may also consult the reconciliation team about serious disagreements with immediate supervisors or other university administrators concerning issues that may not be eligible for consideration within the grievance process. If the chair of the reconciliation team is unable to resolve the matter within 30 calendar days, the chair sends a letter to the A/P faculty member stating such, providing the appropriate information about the formal grievance procedure if the A/P faculty member should choose to pursue the matter, and documenting that the matter was brought forward within the prescribed 30-day period. A copy of this letter is provided to the associate vice president for human resources with a copy to the vice provost for faculty affairs when appropriate. The A/P faculty member has five weekdays after receiving the letter from the chair of the Faculty Senate Committee on Reconciliation to initiate a formal grievance, if so choosing, by following the procedures below and providing a copy of the letter from the chair of the reconciliation team to the supervisor, validating the timeliness of the grievance.

Mediation: Mediation is a voluntary, confidential process through which trained neutral persons (mediators) assist people to express their concerns and develop solutions to the dispute in a safe and structured environment. Assistance with mediation is available through [Human Resources](#). Because mediation is voluntary, both parties must agree to participate in order for mediation to occur. A/P Faculty members and supervisors are encouraged to consider using mediation to resolve disputes between them, or to help address a conflict between an A/P faculty member and another member of the Virginia Tech community.

Role of Mediators: Mediators do not make judgments, determine facts, or decide the outcome; instead they facilitate discussion between the participants, who identify the solutions best suited to their situation. No agreement is made unless and until it is acceptable to the participants.

Requesting Mediation: Mediation is available at any time, without the filing of a grievance. Additionally, mediation may be requested by any party during the grievance process prior to step three. If, after the initiation of a formal grievance, both parties agree to participate in mediation, the grievance is placed on administrative hold until the mediation process is complete. If the parties come to a resolution of the dispute through mediation, the parties are responsible to each other for ensuring that the provisions of the agreement are followed. In the event that the parties are not able to reach a mutual

resolution to the dispute through mediation, the grievant may request that the grievance be reactivated and the process continues.

Mediation differs from faculty reconciliation in that mediators do not engage in fact-finding or in evaluation of decisions. Both mediation and reconciliation, however, are voluntary; no party is required to participate in either process.

To learn more about mediation and other forms of informal conflict resolution processes, contact the conflict resolution program manager in human resources.

7.7.2 The Formal Grievance Procedure

The grievant may pursue the issue as a formal grievance through the following procedure. Supervisors and administrators will cooperate with the grievant in the mechanics of processing the grievance, but the grievant alone is responsible for preparation of his or her case (See section 7.7.4: Valid issues for Grievance). The number of steps in the process is determined by the reporting line of the grievant. Thus, if three steps do not exist between the grievant and the president, then the available number of steps is used.

The grievance must be well described and the relief requested must be specified on the grievance form. For A/P faculty, grievance forms and the CAPFA grievance procedure are available on the Human Resources website under Equity and Access - Employee Relations.

1. Step one: Within 30 calendar days of the date that he or she knew, or should have known, of the event or action that is the basis for the grievance, the grievant must submit a written statement of the grievance to the step one administrator (his or her director or department head/chair; for A/P faculty in extension, the district director) and to the chair of the Commission on Administrative and Professional Faculty Affairs (CAPFA). If appropriate, the step one administrator will provide a copy of the grievance to the supervisor of the grievant.

- **Grievability Panel:** The chair of CAPFA, within five weekdays of receiving a copy of the grievance form, will convene a grievability panel. The panel consists of the chair of CAPFA, two A/P faculty members from CAPFA (selected by the CAPFA chair in consultation with the associate vice president for human resources and the vice provost for faculty affairs), and either the chair of the reconciliation team or the chair of the ethics committee. The panel meets to deliberate and determine the admissibility of the matter to the grievance process, per section 7.7.4 of the Faculty Handbook. A written report summarizing the deliberation and documenting the ruling of the grievability panel will be provided to all parties. The decision of the grievability panel is final.

If the issue is deemed grievable by the panel, the step one administrator provides a written response to the grievant within five weekdays of receiving the CAPFA

grievability panel's written response. The step one administrator's written response should cite reasons for action taken or not taken. If the written response of the director or department head/chair is satisfactory to the grievant, that ends the matter.

If the grievability panel determines the issues presented by the grievant are not grievable, then the process is concluded.

2. Step two: If the resolution of the grievance proposed in the written response by the step one administrator is not acceptable, the grievant may advance the grievance to the step two administrator (usually a dean or vice president) by checking the appropriate place on the grievance form and sending it within five weekdays of receiving the written response. The step two administrator for extension A/P faculty (such as extension agents) is the dean of the College of Agriculture and Life Sciences.

Following receipt of the grievance form, the step two administrator or designated representative meets with the grievant within five weekdays. The grievant may request that a representative of his or her choice from among the university general faculty be present. Unless the grievant is represented by a member of the faculty who is also a lawyer, the step two administrator does not have legal counsel present.

If the grievance involves a programmatic issue for an extension A/P faculty member where responsibility for that program lies with a different dean, the designated step two administrator consults with the programmatic dean before rendering a decision.

The step two administrator gives the grievant a written decision within five weekdays after the meeting, citing reasons for his or her decision. If the step two administrator's written response to the grievance is satisfactory to the grievant, that ends the matter.

3. Step three: If the resolution of the grievance proposed in the written response by the step two administrator is not acceptable, the grievant may advance the grievance to the step three administrator. The step three administrator is the associate vice president for human resources. The grievant must advance his or her complaint to the step three administrator within five weekdays of receiving the written response from the step two administrator. If the grievant works in a college or academic Vice President's division, the step three administrator will provide a copy of the grievance to the senior vice president and provost. Advancement of a grievance to step three includes consideration by an impartial CAPFA hearing panel, unless the grievant petitions the step three administrator to bypass the hearing panel and rule on the grievance. If the step three administrator accepts the request to rule on the grievance, there is no subsequent opportunity for the grievance to be heard by a CAPFA hearing panel. If the step three administrator does not accept the petition, a CAPFA hearing panel is formed to review the grievance as outlined in these procedures.

Within five weekdays, the step three administrator, or appropriate designated representative, acknowledges receipt of the grievance and forwards a copy of the "Hearing Procedures of the Committee on Administrative and Professional Faculty Grievances" to parties in the grievance process. The step three administrator also forwards a copy of the grievance immediately to the chair of CAPFA.

Hearing Panel: A grievance hearing for A/P faculty is conducted by an *ad hoc* panel selected by the CAPFA chair from the A/P faculty at large. The chair of CAPFA solicits volunteers on a regular basis so that a pool of willing participants is available. A hearing panel consists of three members, an alternate, and a non-voting chair. Panel members are selected from the volunteers by the CAPFA chair and one or more of the *ex officio* members of CAPFA. The chair polls all appointees to ensure that they have no conflict of interest in the case. Either party may challenge one of the appointments, including the alternate. Other replacements are made only for cause. The alternate serves as a replacement panel member if the need arises.

To ensure uniformity in practice, the chair of CAPFA serves as the non-voting chair of each hearing panel. In the event that the chair of CAPFA has a conflict of interest concerning a case, the chair appoints a replacement from among the administrative and professional faculty at large to serve as chair of the hearing panel.

Hearings: After the members of the hearing panel are appointed, the chair of CAPFA requests that each party to the grievance provide relevant documentation to be shared among the parties and the hearing panel. The panel holds its initial hearing with both principals present within 15 weekdays of receipt of the grievance by the chair of CAPFA. If the panel feels it needs to investigate the case further, or requires more information, or desires to hear witnesses, the hearing is adjourned until the panel completes the necessary work or scheduling can occur. The hearing is then reconvened as appropriate (and within the 45 day time frame required by this policy, unless agreed upon by both parties).

Each party to the grievance may have a representative present during the sessions of the hearing at which testimony is presented. The representative may speak if so requested. Representatives may be legal counsel, if both parties are so represented, but if the grievant does not wish to have legal counsel at a hearing, neither party to the grievance may have legal counsel present.

These impartial panel hearings are administrative functions, not adversarial or legal proceedings. Therefore, if legal counsels are present, they must understand that the proceedings do not follow courtroom or trial procedures and rules. Participation by legal counsel is at the invitation of the parties they represent and is subject to the rulings of the chair of the hearing panel.

Findings and Recommendations: The hearing panel concludes its work and makes its recommendations within 45 weekdays of receipt of the grievance by the

chair of CAPFA. The time limit for consideration may be extended by agreement of both parties.

The hearing panel formulates written findings and recommendations regarding disposition of the grievance and forwards copies to the step three administrator and parties to the grievance.

Action of the Step Three Administrator: The step three administrator meets with the grievant within 10 weekdays after receiving the findings and recommendations of the hearing panel to discuss the case and advise the grievant about the prospects for disposition of the case. Within 10 weekdays of that meeting the step three administrator sends to the grievant his or her decision in writing concerning the disposition of the grievance. If the step three administrator's decision is fully consonant with (or exceeds) the recommendations of the hearing panel, or if it is satisfactory to the grievant even if it differs from the recommendations of the hearing panel, that ends the matter.

4. Step four: If the step three administrator's decision is not acceptable to the grievant and not consonant with the recommendations of the hearing panel, the grievant may appeal in writing to the president within 20 calendar days. The president acts as he or she sees fit. The president's decision is final.

7.7.3 Timeliness of Grievance and Procedural Compliance

A grievance must be brought forward in a timely manner. It is the responsibility of the grievant to initiate the grievance process within 30 calendar days of the date when he or she knew, or should have known, of the event or action that is the basis for the grievance. The university administration is not required to accept a grievance for processing if the grievant does not meet the 30-day deadline, except in cases of demonstrated good cause.

Scheduled commitments made prior to the time of filing or advancement of a grievance that preclude action by either of the parties to the grievance automatically extend time limits for their duration unless this would be demonstrably harmful to the fair processing of the grievance. In such cases, on written request by the grievant to the appropriate office for that step, the grievance is advanced to the next step in the grievance process.

If the grievant does not follow the time limits specified in the grievance procedure it is assumed that he or she accepted the last proposed resolution as satisfactory. If the grievant desires to advance the grievance after the appropriate specified time limits have lapsed, the administrator who receives the late submission notifies the chair of CAPFA in writing, who determines if there was good cause for the delay. If so, the grievance proceeds. If not, the process ends with the most recently proposed resolution in force. The finding on the matter by the chair of CAPFA is communicated to both parties in writing.

If either party to a grievance charges the other with procedural violations other than time limit issues, the chair of CAPFA rules on the question, as in disputes about the validity of procedural issues qualifying for the grievance procedure. The CAPFA chair has the following options: The chair can either find no significant procedural violation occurred, in which case the grievance process continues unaffected, or that a significant procedural violation did occur. If the step one or step two administrator committed a significant procedural violation, the grievance automatically qualifies for advancement to the next step in the grievance process. If the grievant committed a significant procedural violation, the grievance process ends at that point for that grievance with the last proposed resolution established as the final disposition of the case.

7.7.4 Valid Issues for Grievance

For this process, a grievance is defined as a complaint by **an A/P** faculty member alleging a violation, misinterpretation, or incorrect application of a policy or procedure of the university that directly affects the grievant. Some examples of valid issues for filing a grievance are:

- termination for cause,
- improperly or unfairly determined personnel decisions that result in an unsatisfactory annual performance evaluation,
- unreasonable merit adjustment or salary level,
- excessive teaching load/work assignments,
- reprisals,
- substantive error in the application of policy, and
- matters relating to academic freedom.

Issues not open to grievance: While **A/P** faculty disputes with the university administration may be dealt with using this grievance policy, the following issues may not be made the subject of a grievance:

- appropriate application of policy by the university administration or the university governance system,
- contents of university policies and procedures,
- the routine assignment of university resources (e.g., space, operating funds, parking, etc.),
- normal actions taken, or recommendations made, by administrators or committee members acting in an official capacity in the grievance process, and
- those items falling within the jurisdiction of other university policies and procedures:
 - Policy 1025 for complaints of unlawful discrimination or harassment.
 - Faculty Handbook Chapter 2.7.1.1 for complaints related to unprofessional or unethical conduct.
 - Faculty Handbook Chapter 2.11.3 for complaints related to non-reappointment or abolition of position.

The subject of a grievance is normally not considered by the Commission on Administrative and Professional Faculty Affairs while it is simultaneously under review by another committee or panel of the university.

Beyond the grievance process and the jurisdiction of other university policies and procedures available to handle complaints by A/P faculty members, additional sources of conflict resolution are available. A/P faculty are encouraged to seek reconciliation and mediation services for disputes. Faculty Reconciliation is offered through the Faculty Senate Committee on Reconciliation and mediation is offered through the conflict resolution program in Human Resources.

7.7.5 Particular Concerns and Definitions

Timelines stated in the policy indicate the number of days within which the other party should receive notification. Electronic submission from a departmental office within the specified time frame is acceptable. This is immediately followed by submission by mail of the original form and any related materials.

Time limits are subject to extension by written agreement of both parties. The grievant and the administrator involved at that particular step of the discussion make such an agreement. (An agreement form to extend the grievance response time is available on the human resources and provost's websites.)

The principals and the chair of CAPFA, if necessary, negotiate extensions of time limits at step three. In case of disagreement, the chair of CAPFA rules on time extension and procedural questions or recommendations designed to expedite the proceedings while providing peer review of the grievance.

If an A/P faculty member is away from his or her assigned work location at the time he or she discovers the event or action that is the basis for a grievance, the 30-day period during which the grievant must meet with his or her supervisor or step one administrator to initiate the grievance process begins when the A/P faculty member returns to his or her assigned work location. If the date of return causes a delay of such length that the grievance, or its resolution, is not timely, the grievant may submit the written grievance as prescribed in step one by mail or email attachment in his or her absence from the primary work location.

"Weekdays," as used in this procedure, include Monday through Friday only and only when the university is open and when those days are not national, state, or religious holidays relevant to the principals in the grievance.

To protect a grievant from undue pressure in the pursuit of a grievance, if a grievant becomes ill and takes sick leave, the grievance process stops until such time as the grievant is able to resume his or her duties. Exceptions to this provision are made at the request of the grievant, but only if the grievant obtains and produces medical

certification that proceeding with the grievance will not be harmful to the health of the grievant, or exacerbate the ailment that required taking sick leave.

All costs of legal counsel employed by a grievant are borne by the grievant.

If a grievant is employed away from Blacksburg, and he or she is required to travel away from their duty station in resolution of their grievance, the university pays all travel costs permitted under state regulations.

In the event that an A/P faculty member discovers he or she has a grievance about actions by an administrator above the level of his or her supervisor that directly involve the A/P faculty member, or with actions by an administrator not in his or her department/unit that directly involve the A/P faculty member, the grievant initiates the grievance process by seeking the intervention of his or her supervisor within 30 calendar days of the date when the grievant knew or should have known of the event or action that is the basis for the grievance. If that effort does not resolve the grievance satisfactorily, the grievant, after consulting his or her supervisor, may file the grievance form for A/P faculty at the appropriate level or with the appropriate administrative office to initiate response from the administrator perceived as the source of the action causing the grievance. The grievance process then proceeds from that level onward in normal fashion.

A grievance filed by an A/P faculty member concerning an action of either the provost, vice provost for faculty affairs, or the associate vice president for human resources is handled by the chair of CAPFA and an impartial hearing panel, but the findings and recommendations of the hearing panel are sent to the president of the university for his or her ruling. A grievance filed by an A/P faculty member concerning an action of the president of the university is dealt with by a special panel appointed by the provost in consultation with the chair of the Commission on Administrative and Professional Faculty Affairs.

Any final resolution of a grievance must be consonant with the laws of the Commonwealth of Virginia and university policy.

Once a grievance is resolved, either to the satisfaction of the grievant, or if not to the satisfaction of the grievant, by the action of the senior administrator in consonance with the hearing panel recommendations, or by the ruling of the president, that specific grievance is closed and may not be made the subject of another grievance.

7.7.6 Overview of the Formal Grievance Process for Administrative and Professional Faculty

Below is an abbreviated overview of the grievance process and deadlines. Refer to section 7.7.2, "The Formal Grievance Procedure," for specific details and options available in each step of the grievance process.

Time limits are subject to extension by written agreement of both parties. The grievant and the administrator involved at that particular step of the discussion are the makers of such an agreement. (An agreement form to extend the grievance response time is available on the Human Resources and provost's websites.

Step one:

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| Within 30 days of event: | 1a. | Grievant submits written grievance to step one administrator (for extension A/P faculty, this is the district director) and chair of CAPFA. |
| Within 5 weekdays: | 1b. | CAPFA chair acknowledges in writing to grievant that copy of grievance has been received. |
| | 1c. | CAPFA chair convenes a grievability panel to determine the admissibility of the issue to the grievance process per section 7.7.4 of the Faculty Handbook. The grievability ruling will be documented and a written report on the deliberation sent to all parties concerned. |
| | 1d. | If the issue is not grievable, the grievance process concludes. |
| Within 5 weekdays: | 1e. | If the issue is grievable, the Step one administrator responds to grievance in writing on grievance form. |
| | 1f. | If step one administrator's response is satisfactory to grievant, that ends the matter. |
| | 1g. | If step one administrator's response is not satisfactory to grievant, move to step two within 5 weekdays. |

Step two:

- Within 5 weekdays: 2a. Grievant submits written grievance to the step two administrator, usually the dean or vice president; for extension A/P faculty, this is the dean of agriculture and life sciences.
- Within 5 weekdays: 2b. Step two administrator meets with the grievant.
- 2c. Step two administrator responds in writing on the grievance form.
- Within 5 weekdays: 2d. If step two administrator's response is satisfactory to grievant, that ends the matter.
- 2e. If step two administrator's response is not satisfactory to grievant, move to step three within 5 weekdays.

Step three:

- Within 5 weekdays: 3a. Grievant advances grievance form to the step three administrator who then, depending on reporting structure, shares a copy of the grievance with the senior vice president and provost.
- Within 5 weekdays: 3b. Step three administrator acknowledges receipt of grievance and forwards copy to chair of CAPFA.
- Within 5 weekdays: 3c. CAPFA chair acknowledges in writing to grievant that copy of grievance has been received from the step three administrator.
- Within 15 weekdays: 3d. CAPFA chair appoints hearing panel from among A/P faculty members; panel holds its initial meeting with both principals.
- Within 45 weekdays: 3e. Hearing panel concludes its work and makes recommendation to step three administrator and grievant.
- Within 10 weekdays: 3f. Step three administrator meets with grievant.
- Within 10 weekdays: 3g. Step three administrator notifies grievant in writing of his or her decision.
- 3h. If the step three administrator's decision is fully consonant with (or exceeds) the recommendations of the hearing panel, or if it is satisfactory to the grievant even if it differs from the recommendations of the hearing panel that ends the matter.
- 3i. If the step three administrator's decision is not acceptable to the grievant and not consonant with the recommendations of the hearing panel, the grievant may appeal in writing to the president within 20 calendar days.

Step four:

Within 20 calendar days:

- 4a. Grievant may appeal in writing to university president.
- 4b. University president's decision is final.