

Senate Advisory Committee on University Affairs

Guidance on Grievability under the University of Michigan 2010 Model Grievance Procedures

(Approved, April 13, 2015)

Section 3.04 of the Model Faculty Grievance Procedure for Schools, Colleges, and Units (hereafter, Grievance Procedure)¹ establishes the Senate Assembly Committee on University Affairs (SACUA) as the exclusive appeal body for decisions of grievability.² To promote consistency and to avoid the likelihood of grievability appeals, SACUA provides the following guidance regarding grievability under the Grievance Procedures. These guidelines apply to grievances in all units that have adopted the Model Grievance Procedure or have incorporated in their grievance procedures Sections 1.01 to 1.06 (“Coverage”) and Section 3.04 of the Model Grievance Procedures.

I. GENERAL PRINCIPLES INFORMING GRIEVABILITY AND THE RIGHT TO A FAIR HEARING

The purpose of the Grievance Procedure is “to ensure the prompt, effective, and fair resolution of faculty members’ grievances.” The benefits of such a procedure include greater transparency and accountability in decision making and a decreased likelihood of lawsuits. The current Grievance Procedure is the product of two Task Forces created to study and promote these goals.³ Among other problems, the new Grievance Procedure seeks to address “inadequate, ambiguous, and conflicting definitions and standards regarding grievability” afflicting earlier procedures (Report of the Faculty Grievance Procedures Task Force, December 14, 2006, p. 2).

The designation of SACUA as the appellate body for grievability decisions in the current Model Grievance Procedure is a response to this defect in the earlier grievance process and is specifically intended to promote consistency both across grievances and with the policy objectives of the Grievance Procedures. Central to these policy objectives is affording grievants an opportunity for a fair hearing, elements of which include⁴

¹ Section references are to provisions in the Model Grievance Procedures. All statements in this document apply to the corresponding provisions of unit grievance procedures that use different numbering systems.

² Sec. 3.04:

If the GHB decides the complaint is not grievable, the grievant shall have 15 working days to appeal this decision to SACUA or a faculty body designated by SACUA. The appellate body shall have 20 working days to resolve the issue. Its decision shall be final. Appeals from a GHB decision to dismiss the grievance shall be handled as provided for final Board decisions in Sections 4.01 through 4.03.

³ The SACUA Grievance Procedures Task Force established in September, 2006, and the Provost’s Faculty Grievance Policy Task Force, established December, 2007.

⁴ Report of the Faculty Grievance Procedures Task Force, December 14, 2006, pp. 1-2.

- the opportunity for oral presentation so that grievant can mold arguments to issues the decision makers seem to regard as important, particularly where credibility and veracity are at issue;
- the opportunity to confront and cross-examine adverse witnesses.

Guided by the proposition that grievants should be given the widest possible latitude to present their cases, we therefore take the view that allegations should be ruled not grievable only where they clearly fall outside the scope of the Grievance Procedure.

II. CRITERIA FOR GRIEVABILITY UNDER THE MODEL GRIEVANCE PROCEDURE

Section 3.02 of the Grievance Procedure provides that a Grievance Hearing Board (GHB) may rule a complaint not grievable and dismiss the grievance without a hearing for three reasons:

- (i) the Board determines that the complaint is not “within the authority or jurisdiction of the grievance process under Sections 1.01 through 1.06.”
- (ii) the Board “concludes, on the basis of the FGF [Faculty Grievance Form] and all other material before the GHB, and with all questions of fact assumed in the grievant’s favor, that there are no grounds for deciding the case in the grievant’s favor.”
- (iii) “the grievance is filed after the expiration of the time period set forth in Section 2.01.”

II.A. Rejection under Sections 1.01–1.06. Sections 1.01 through 1.06 define the scope of the Grievance Procedure. Section 1.01 establishes the broad purpose and domain of the Procedures:

Sec. 1.01. This grievance procedure provides for redress when a decision or action concerning a faculty member’s conditions of employment at the Ann Arbor campus violate University policy or is otherwise manifestly unfair.

Sections 1.02, 1.03, and 1.04, which define who may file a grievance and the individuals whose decisions may be subject to a grievance, are straightforward and should rarely lead to appeals.

The provision most likely to require guidance is Section 1.05, reproduced here in full:

Sec. 1.05. The procedure does not apply to decisions regarding employment, including tenure or promotion decisions, merit pay determinations, and decisions regarding clinical competence/patient safety, that are based solely and exclusively on judgments about professional performance. But this grievance process does apply to claims that the procedure followed in making such decisions failed to follow University policies and procedures or was otherwise manifestly unfair, or that the decisions violated standards of nondiscrimination contained in Regental Bylaw 14.06 (revised September 2007). A faculty member’s salary history and similar data may be considered in determining the value placed on previous performance and whether the contested decision was based solely and exclusively on judgments about professional performance.

The first sentence of this provision—sometimes summarized as “you can grieve the procedure but not the decision”—has on occasion been interpreted to exclude from review any decision involving a judgment of professional performance. In fact, this provision excludes from consideration only decisions that both

(i) involve judgments about professional competence *and* (ii) are based *solely and exclusively* on such judgments. Thus, decisions that involve judgments about professional competence but are not based *exclusively* on such judgments are grievable under this provision. To this end, the last sentence of the provision states explicitly that a grievant is permitted to present, and the GHB to consider, evidence as to “whether a contested decision was based solely and exclusively on judgments about professional performance.” Finally, the notion of “judgment” implies a decision that is not arbitrary or capricious. Although conclusionary judgments about professional performance may not be overturned by a Grievance Board, decision makers must be able to articulate a coherent rationale for the decision in relation to the facts and circumstances.

II.B. Rejection under Section 3.02. Section 3.02 provides that the GHB “may dismiss the grievance without a hearing if it concludes, on the basis of the FGF [Faculty Grievance Form] and all other material before the GHB, and with all questions of fact assumed in the grievant’s favor, that there are no grounds for deciding the case in the grievant’s favor.” This provision intentionally establishes a very high threshold. Dismissing a grievance on the basis of this provision requires that a GHB is able (i) to discern fully, from a necessarily limited pre-hearing written submission, all potentially relevant facts and issues that a grievant might raise or elicit in testimony at a hearing and (ii) to deduce that no such evidence or arguments could lead to a decision in the grievant’s favor. Given the complexity of most disputes that fall within Sections 1.01 to 1.06, cases susceptible to dismissal on the basis of Section 3.02 will and should be rare.

III. STANDARDS, APPLICABLE POLICIES, AND FACULTY RIGHTS

An action or decision is grievable if it “violates University policy or is otherwise manifestly unfair” (Sec. 1.01). The term *manifestly unfair* has no precise definition. For purposes of assessing grievability, SACUA construes *manifestly*, consistent with its dictionary definition, to mean *clearly* or *obviously*.

A large number of University policies are potentially relevant to grievance disputes. Many such policies are published in the University’s [Standard Practice Guide](#), the [Faculty Handbook](#), and individual unit policies, among other places. Decisions and actions that are expressly or presumptively grievable in relation to Grievance Procedure Sections 1.03, 1.04, 1.05, and 1.06 include:

1. “[D]ecisions [that] violate[] standards of nondiscrimination contained in Regental Bylaw 14.06” (Grievance Procedure, Section 1.05);
2. Decisions and actions pursuant to Office of Institutional Equity determinations, reports, and memoranda;⁵
3. Decisions and actions in the application of SPG 201.96, Professional Standards for Faculty (<http://spg.umich.edu/policy/201.96>);
4. Decisions and actions in the application of SPG [#], Temporary Removal of Faculty for Lack of Fitness for Duty [**if implemented**].

⁵ Unit decisions based on Office of Institutional Equity reports are “decisions made by academic units” (1.03), “concern[] a specific individual or specific individuals...adversely affected by application of policy or standard operating procedure” (1.04), and have not “been addressed in another formal hearing procedure”(1.06), and therefore satisfy the coverage requirements of Sections 1.03, 1.04, and 1.06.

Other potentially relevant policy statements include:

Academic freedom

Statement on Academic Freedom (adopted by the Senate Assembly on behalf of the Faculty Senate, January 25, 2010)

(<http://provost.umich.edu/appointments-tenure/faculty-handbook/fundamental-tenets/#senate>;
http://facultysenate.umich.edu/wp-content/uploads/sites/22/2015/03/01-25-10_Academic-Freedom.pdf)

Tenure

Regents Bylaws Section 5.08, Appointment, Tenure, Promotion, and Resignation of the Staff (revised February 2012) (<http://www.regents.umich.edu/bylaws/bylaws05a.html#8>)

Regents Bylaws Section 5.09, Procedures in Cases of Dismissal, Demotion, or Terminal Appointment (revised April 2011) (<http://www.regents.umich.edu/bylaws/bylaws05a.html#9>)

Rules Concerning Regents' Bylaw 5.09, Tenure, Tenure Review, and Joint or Partial Tenure Appointments, SPG 201.13 (<http://spg.umich.edu/policy/201.13>)

Guiding Principles for Tenure Review for Instructional Track Faculty at the University of Michigan, Office of the Provost and Executive Vice President for Academic Affairs, February 7, 2002 (<http://provost.umich.edu/appointments-tenure/faculty-handbook/tenure/>)

Toward a Definition of Tenure, Senate Advisory Committee on University Affairs Standing Subcommittee on Tenure, November 17, 1994 (https://facultysenate.umichsites.org/wp-content/uploads/sites/22/2015/03/11-17-94_Tenure-Definition.pdf)

Promotion

Memorandum from the Provost re: Promotion Casebooks for Instructional Tenured and Tenure-Track, Research Professor Track, and Clinical Instructional Track Faculty, July 31, 2014 (<http://provost.umich.edu/appointments-tenure/promotions-2/memorandum-from-the-provost/>)

2015 Outline of Procedures for Faculty Promotions (effective 2015-2016), Office of the Provost (<http://provost.umich.edu/appointments-tenure/promotions-2/>)

Office of the Provost Promotion Guidelines
(http://www.provost.umich.edu/faculty/promotion_guidelines/)

Research Scientist and Research Professor Tracks: Appointments and Promotions, Office of Research (<http://research.umich.edu/research-faculty/appointments-and-promotions/>)

Compensation

Compensation Policy Guidelines for Faculty and Primary Research Scientists (Report of the Committee on the Economic Status of the Faculty April 1998; endorsed by Senate Assembly on May 18, 1998

(<https://facultysenate.umichsites.org/wp-content/uploads/sites/22/2015/03/cesf1998.pdf>)

Faculty Compensation Guidelines Study (Report to the Provost of the Faculty Compensation Guidelines Study Committee, April 26, 2000)

(http://www.umich.edu/~websvcs/projects/provost/reports/faculty_compensation/index.html)

Harassment and bullying

Professional Standards for Faculty, SPG 201.96 (<http://spg.umich.edu/policy/201.96>)

Sexual Harassment, SPG 201.89 (<http://spg.umich.edu/policy/201.89-0>)

Access to personnel records

The University of Michigan Model Grievance Procedure, Section 3.05

The University of Michigan Faculty Handbook, Section 12.C Personnel Records

(<http://provost.umich.edu/appointments-tenure/faculty-handbook/university-records-privacy-access-to-information/>)

The Office of General Counsel Frequently Asked Questions: Personnel Records Law

(<http://www.ogc.umich.edu/frequently-asked-questions/faq-personal.html>)

Michigan Bullard-Plawecki Employee Right to Know Act

(<http://www.legislature.mi.gov/documents/mcl/pdf/mcl-act-397-of-1978.pdf>)