

Faculty Rights & Responsibilities Committee
Meeting Minutes
Monday, March 8, 2021 at 3:30 pm
Zoom: <https://eku.zoom.us/j/94899055845>

Attendees: Dr. Cynthia Harter, Dr. Gerald Nachtway, Dr. Nancy McKenney, Dr. Molly McKinney (Chair), Dr. Carolin Walz

Absent: Dr. Anne Gossage

Guest: Dr. Beth Polin

Meeting called to Order at 3:30 pm by Chair McKinney.

- I. Approval of Meeting Minutes: Senator Nachtway moves to approve. Senator Walz seconds. Unanimously approved.
- II. Old Business
 - a. Revisions to the Faculty Grievance Policy (See below)
- III. New Business
 - a. Dr. Beth Polin, Faculty Advocate: Questions and Answer
 - There is a small monthly stipend attached to the position
 - No job description available- per Provost- Is there one now? Joan Beck, the former Ombudsperson, did not share with HR/University the number of cases. She saw herself as a confidential source so she did not believe that she had reporting requirements.
 - No statistics on grievances is part of the problem with the existing policy
 - Arbitration and mediation are the focus of the revised policy- These are not “bad” words.
 - Human Resources fundamental role is hiring and firing. People do have the option to go to HR, but they could go the less formal route of mediation.
 - Can’t be completely confidential due to potential litigation
 - Could have faculty v. faculty or faculty v. chair/dean/associate dean: The Faculty Advocate acts as a neutral third party. The title may be misleading.
 - New policy is designed to be faculty driven (instead of administration). Based on University of North Carolina- University Mediation Coordinator is the first step, then the information goes to the Faculty Grievance Committee, and finally to the Provost.

- Original Policy 4.7.4.
https://policies.eku.edu/sites/policies.eku.edu/files/policies/4.7.4_faculty_grievances.pdf
- The Faculty Mediator should act as an ex-officio member of the Rights and Responsibilities Committee.
- Are there any other conflict management folks on campus who could also be used as part of the mediation pool?
- Separate Staff Grievance Policy that goes through HR. The Committee believes that these policies should remain separate.
- We will wait for Dr. Polin's edits and then send out to Senate Chair Ciocca
- Tentative meeting on March 29th at 3:30 to discuss any revisions

IV. Adjourn: Senator Walz moved. Senator Nachtway Second. Meeting adjourned at 4:14 pm.

Tentative Meeting: March 29th at 3:30 pm Zoom: <https://eku.zoom.us/j/98840905823>

Next meeting: April 12th at 3:30 pm Zoom: <https://eku.zoom.us/j/97820401458>

Faculty Grievances

Policy Statement

It is the intention of Eastern Kentucky University to treat all employees in a consistently fair manner, and it is the desire of the University that all employees treat each other likewise. However, in the normal course of colleagues working together, problems in the working relationship can be expected to arise. In most cases, these problems can be and should be resolved by the disputing parties or arbitrated at the first level of supervision. But in those instances when a mutually satisfactory resolution cannot be quickly found, the aggrieved party should be given an opportunity to have the grievance considered on the basis of its merit, in an orderly and expeditious manner, and without prejudice or fear of reprisal. **Faculty may bring a grievance against other faculty, against staff, or against administrators (including University employees or contractors employed by the University) where it impacts teaching, service, or scholarship.**

The procedure outlined herein is designed to provide a method of dealing with faculty grievances in a prompt and equitable manner without placing an unreasonable burden on the University's resources and personnel.

Grievances include but are not limited to the following:

1. An allegation that existing University policies, rules, regulations, practices, and/or procedures have been violated, misinterpreted, and/or improperly applied. When an existing policy contains an appeal procedure, **the grievant may be directed by the University Mediation Coordinator to the appropriate policy.**

2. An allegation that standards of academic freedom, behavior, and/or practices have been breached by any person(s) covered under this policy.

3. An allegation that actions involving him/her were unfair, inequitable, arbitrary, or capricious.

Rights of Grievant and Respondent

1. Both grievant and respondent have the right to be heard.

2. The respondent shall receive a written copy of the grievance, and the grievant shall receive a written copy of the respondent's reply.

3. The grievant shall not be penalized academically or professionally for filing a grievance in good faith under this policy. (See Policy 1.6.2, Non-Retaliation)

Limitations

1. Disputes which are being or have been processed in the courts are not included under this policy.

2. Disputes involving compliance with State or Federal statutes or regulations are not included under this policy.

3. Disputes which involve appeal(s) included in the other policies (e.g., appeals about promotion, tenure, etc.) are not included under this policy.

4. Disputes involving merit pay or salary increments are not included under this policy.

5. Affirmative action and non-discrimination issues which are delineated in other policies should be referred to the Equal Opportunity Office and are not covered by this policy.

Entities Affected

Colleges

Departments
Faculty

Eligibility

This policy applies to all of the following personnel:

- A. The faculty-at-large as defined by the Faculty Handbook; and
- B. The Teaching and/or Research Faculty as defined by the Faculty Handbook.

Procedures **[New Part begins here]**

Informal Grievance Resolution

The University recognizes the importance of resolving employment related problems and concerns. Although not required, the University encourages faculty members to seek informal resolution through discussion of any employment-related problems with the relevant administrator, and, if appropriate, with that administrator's supervisor, prior to initiation of mediation, which is the first step in the formal grievance process.

Filing a Grievance

To file a grievance, an individual faculty member must submit a written, signed statement containing the following information:

- The specific policy or established practice that has allegedly been violated;
- The date(s) of the alleged violation and the date on which the grievant became aware of the alleged violation, or the timeline if alleging a pattern of behavior;
- The facts relevant to the alleged violation;
- The person(s) against whom the grievance is filed (the "respondent"); and
- The redress sought.

After the grievance petition is prepared, the faculty member must file the petition with the University Mediation Coordinator and with the respondent administrator(s).

University Mediation Coordinator

The UMC is a senior faculty member with tenure who has appropriate knowledge of the University's mediation process. **The UMC shall be appointed by the Chair of the Faculty Senate** according to procedures approved by the Senate. [What should these procedures be?] The UMC shall serve a three-year term, which is renewable. The UMC shall not serve on any departmental or college reappointment, promotion, or tenure committee, or on the Faculty Grievance Committee concurrent with appointment as the UMC, and shall not be an active participant or advisor on behalf of any party in any grievance during his or her term(s) as UMC. **The UMC shall receive the equivalent of a one-course release for serving in this capacity.**

Responsibilities of the University Mediation Coordinator

It shall be the responsibility of the UMC to review each grievance petition and to determine that the facts described in the petition, if true, would be sufficient to establish that the faculty member experienced a remediable injury attributable to the alleged violation of a right or privilege based on federal or state law, University policies or regulations or commonly shared understandings within the academic community about the rights, privileges, and responsibilities attending University employment.

The UMC shall implement the mediation process for grievances subject to formal resolution. The UMC shall also provide assistance in training members of the Grievance Committee, obtain and preserve for the University record all documents relating to the processing and hearing of each filed grievance, and maintain an accurate statistical record of all grievance activity.

Mediation Process

Mediation is a procedure in which disputing parties enlist the assistance of a neutral party to help them in achieving a voluntary, bilateral agreement that finally and definitively resolves all or portions of their dispute, without resorting to the adversarial procedures inherent in a formal Grievance Committee hearing, administrative hearings, or litigation. While there can be no requirement that forces a party to reach a mediated agreement, Eastern Kentucky University requires that parties participate in a mediation process as the first step in formally resolving a grievance. No blame will attach to either party if mediation does not produce a mediated settlement agreement.

Selection of a Mediator

The UMC will either serve as the mediator, if this is agreeable to both parties, or provide a list of other approved mediators. The parties will attempt to agree on a mediator that is acceptable to both. If consensus is not reached, the UMC will write the names of approved mediators on slips of paper and draw one.

Initiation of the Mediation

The UMC will establish a date, time, and location for the mediation session(s). If the UMC is not the mediator, the UMC will send the mediator a copy of the filed grievance petition. Neither party will be accompanied by another person or represented by an attorney at the mediation session(s). Mediation will continue until such time as the mediator determines either that further efforts to resolve the grievance by mediation would be futile, or that the grievance has in whole or part been resolved to the satisfaction of the parties involved.

If the mediation successfully resolves all issues in the petition, the mediator will produce a written copy of the agreed upon resolution and will confirm that the terms are acceptable to the petitioner, to the respondent, and to the Provost. If the grievant, the respondent, and the Provost agree on those terms, the mediator shall immediately obtain the signatures of the petitioner, the respondent, and the Provost on that document and provide copies of the fully-executed document to all parties.

If the mediator determines that the mediation process has been unsuccessful, she or he shall inform the UMC that “in this matter, mediation was attempted, but the parties did not reach a settlement.” At that point the UMC will submit the mediator’s statement and the grievance petition to the Chair of the Grievance Committee.

Faculty Grievance Committee

The academic colleges and the libraries shall elect one committee member and one alternate from the full-time faculty within the unit. Committee members shall serve three-year terms, with one third to be elected each year. No department chair, department head, senior administrative officer or mediator currently eligible to mediate such grievances shall serve on the Grievance Committee. Elections shall be finalized no later than May 1 prior to the academic year in which service begins. All terms begin August 15 and run for 1 calendar year. The Grievance Committee shall elect its chair each year. If any Grievance Committee member is too close to the issue at hand to be completely objective and impartial, that member should recuse himself or herself and be replaced by an alternate.

Grievance Hearing Procedures

If mediation fails to produce a voluntary resolution, the Grievance Committee must decide whether a hearing should be held in response to the petition. The Grievance Committee shall determine if the facts alleged justify a hearing based on the Limitations given on page 1 of this policy. If the Grievance Committee determines that a hearing is justified and that the issues presented are within the purview of the Grievance Committee’s responsibility, it shall schedule an evidentiary hearing.

The hearing shall be conducted informally and in private with only the members of the Grievance Committee, the grievant and respondent, and such witnesses as may be called in attendance, except that each person directly involved in the grievance may be accompanied by one person of his or her choosing to serve as an advisor. The grievant may elect to bring an attorney to serve as such an advisor. If the grievant does elect to have an attorney as the advisor, the respondent administrator may elect to have an attorney provided by the University as his or her advisor. Such an advisor shall not present evidence or make argument. The party and his/her advisor may take breaks to consult during the proceedings. At the hearing the grievant is to present evidence in support of the grievant’s contentions, and the respondent is

to be given an opportunity to respond. All parties may present their cases in person and may call witnesses on their behalf.

The Grievance Committee shall decide whether the preponderance of the evidence supports the allegations made by the petitioner. The committee shall resolve any procedural issues raised by the parties, after providing each party the opportunity to be heard on such matters.

The committee shall report its findings and recommendations in writing within 21 days of the completion of the hearing to the grievant, the respondent, the Provost, and the administrator who is the respondent's immediate supervisor. The grievance committee's report is advisory to the Provost and does not bind the Provost to a particular decision. When the Grievance Committee sustains an allegation made in a grievance, it shall recommend appropriate redress consistent with existing policies, procedures, and practices.

The Provost shall decide the grievance, in writing, within 14 days of the receipt of the Grievance Committee's findings and recommendations. If the Provost does not concur with the recommendations of the Grievance Committee, the Provost shall state in writing the reason(s) for the differing judgment. All parties shall be notified in writing, with a copy to the appropriate department chair(s), dean(s) and the Grievance Committee of the Provost's decision and of the right to appeal the decision.

Appeals

1. Following notification of the Provost's decision, either party may appeal the decision only for the following grounds:
 - a. decision is arbitrary, capricious, or not supported by factual data
 - b. violation of procedural due process
2. The candidate will submit a written request for appeal to the President within ten calendar days of notification of the Provost's decision. The request shall state the grounds for an appeal and shall provide evidence in support of such grounds.
3. The President shall notify the other party to the grievance that an appeal has been filed. The other party may submit a response to the appeal within ten calendar days.
4. The President shall base his or her decision on written statements from the grievant and respondent, the record of the Grievance Committee hearing, the recommendation of the Grievance Committee, and the Provost's decision and written justifications. The President may, at his or her discretion, consult with the Grievance Committee prior to making a decision.
5. The President shall notify all parties in writing of the appeal decision, including the appropriate department chair(s), dean(s), and the Grievance Committee and shall include a

copy of the appeal report. All appeal decisions are final.

If an appeal is filed, the Provost's decision on the grievance shall not be implemented until the appeal process is completed.

Confidentiality

The parties to the grievance, their advisors, and other relevant administrators and faculty (including witnesses and committee members) shall respect the confidentiality of information and records and the privacy of all parties whose interests are affected by a grievance. While the University will make every effort to keep all records and information related to grievance proceedings under this Policy (both formal and informal) confidential, as a public institution the University is subject to Kentucky's open records laws. Therefore, much or all of the documentation generated in a Faculty Grievance process may be subject to disclosure by law.

Sanctions

Sanctions may not be imposed until all of the parties involved in the grievance have had the opportunity to complete the entire grievance procedure. Sanctions covered in KRS 164.230 are the province of the Board of Regents. Sanctions relating to changes in assignments and other disciplinary measures are the province of the proper administrator(s). Sanctions may include but are not limited to the following:

- A. A reprimand, with copies to the chair, dean, and Provost for inclusion in the personnel files of the individual against whom the sanctions are imposed.
- B. Change in assignment, subject to the condition that the new assignment shall involve duties consistent with the duties of other faculty members with the same academic rank. Such a change might involve removal from a supervisory role or the elimination of special privileges associated with the previous assignment.
- C. Proceedings under Policy 4.6.7, Post-Tenure Review.
- D. Proceedings under Policy 8.3.4, Progressive Disciplinary Action.
- E. Proceedings under KRS 164.230 and policy 4.6.16, Dismissal of Faculty, for dismissal for reasons of incompetency, neglect of or refusal to perform his duty, or of immoral conduct.

Final Disposition

After the grievance procedure has been completed, it shall be the responsibility of the Provost to implement the decision with the final disposition taking place at the appropriate