

FACULTY GRIEVANCE PROCEDURE
Southwestern Oklahoma State University

The University has in place procedures for discipline, nonrenewal and/or termination. In the event that a faculty member believes that any action taken toward him or her regarding discipline, nonrenewal or termination is improper, that faculty member may petition for a hearing prior to seeking satisfaction through legal options.

Any alleged improper action involving discrimination, sexual harassment, racial and ethnic harassment, or any other federal or state protected category must be reported to the University's Affirmative Action Officer and will be addressed as required by law. The *Faculty Grievance Procedure* will not be available for hearings regarding such allegations but will be addressed through the Human Resource Office.

The following procedure for a hearing for an alleged improper action or actions as described in the first paragraph above has been adopted as of the date signed below by the University President.

(a) Who May Use Procedure. This procedure shall be available to any regular, full-time faculty member at Southwestern Oklahoma State University as defined in the policies of the Board of Regents for the Regional University System of Oklahoma (RUSO).

(b) Informal Process. A faculty member requesting a hearing must first seek resolution beginning with the individual that serves as his or her department chair. Should a satisfactory resolution not be attained, the faculty member may appeal the decision to the associate dean, dean, and provost, in that order, as applicable. In the event one of the aforementioned individuals is the subject of the alleged improper action, the faculty member may, but need not, raise his or her concerns with that individual. In the event all of the aforementioned individuals are the subject of the alleged action, the faculty member need not attempt an informal resolution prior to requesting a hearing. Informal resolution to an alleged improper action may also be sought through mediation. Mediation will be provided by the Alternate Dispute Resolution System of the Supreme Court of Oklahoma or by a mutually agreed upon independent mediator approved by the President of the University. The University will bear reasonable costs, if any, for mediation. Mediation or attempted mediation does not preclude the request for a hearing.

(c) Formal Process. If satisfaction is not obtained through the informal process, the faculty member may request a formal hearing before the Faculty Grievance Committee (FGC). The faculty member is responsible for stating in writing:

- (1) a short concise statement of the facts describing the alleged improper actions,
- (2) the objections to the alleged improper action committed against him or her,
- (3) the remedial relief sought, and
- (4) all steps taken to date to resolve the alleged action and the results thereof.

The grounds for the hearing may not be changed after the filing of the initial request for hearing. The request for the hearing shall be made to the Faculty Senate President and the Faculty Senate President may assist the faculty member in identifying and clarifying grounds for a request for hearing. The Faculty Senate President is responsible for notifying the following of the hearing once the request for hearing is finalized:

- (1) the Provost,
- (2) the chair of the FGC, and
- (3) the individual who is alleged to have made the improper action.

This notification shall include a written copy of the request for hearing. The faculty member requesting the hearing must specify all the grounds for the hearing of which the faculty member should have reasonably known at the time of filing. Multiple grounds are heard by one hearing of the FGC.

(d) Timing. A request for hearing must be filed with the Faculty Senate President within 30 calendar days from the date on which the faculty member knew or reasonably should have known of the alleged improper action. Time periods may be extended by mutual agreement of the parties involved with the consent of the Provost.

(e) Withdrawal of Request for Hearing. The faculty member may withdraw the request for hearing at any point by notifying in writing the Faculty Senate President and the FGC Chair. Once withdrawn, the same request may not be resubmitted.

(f) Confidentiality of Proceedings and Records. Members of the FGC are charged individually to preserve confidentiality with respect to any matter heard. A breach of the duty to preserve confidentiality is considered a serious offense and will subject the offender to appropriate disciplinary action. Parties and witnesses to the hearing are also admonished to maintain confidentiality with regard to the proceedings.

All records will be maintained as confidential. Refer to Paragraph (l) below for disposition of records.

(g) Faculty Grievance Committee. The FGC shall be composed of nine full-time, tenured faculty members whose primary duties are non-administrative. For the initial appointments to the Committee, five of these members shall be selected by the Faculty Senate and four shall be appointed by the Provost. Of the four members appointed by the Provost, one shall be from the College of Associate and Applied Programs. Of the five selected by the Faculty Senate, two each shall be selected from the Colleges of Arts and Sciences and Professional and Graduate Studies and one from the College of Pharmacy. They shall be recommended for selection by their respective colleges in a manner determined by the faculty of the colleges. After the initial appointments, members will be selected by the Faculty Senate with concurrence of the Provost using the same criteria as described above. Each subsequently appointed member shall serve a minimum of a three-year term. At the first meeting of the Committee, the members of the Committee shall elect a Chair and a Vice-Chair. Also, at the first meeting of the Committee, two members each will be designated by the Chair of the Committee to serve four, five, and six year

terms. This will allow for a rotation of members and allow for continuity of members of the Committee.

Any member of the FGC who is a member of the same academic unit or related to the third degree of consanguinity or affinity to the parties of the hearing shall be disqualified from serving on the Committee for said hearing. A member may petition the Committee to be excused from a particular hearing. The remaining members of the Committee shall vote to determine if a member should be excused. A majority vote prevails. Should the Committee Chair be disqualified or excused, the remaining members of the Committee shall elect a temporary chair for said hearing.

The Committee shall consist of a minimum of five members including the Chair for any one hearing. If less than five Committee members are to be involved in a particular hearing, the Provost and Faculty Senate President shall select additional temporary members necessary to constitute a five-member Committee. The hearing Committee shall remain intact until the conclusion of the hearing.

Should a Committee member not be able to complete his/her term, a replacement shall be selected in the same manner the resigning member was selected to complete the term of the resigning member.

A faculty member selected to serve on the FGC has the right to refuse such assignment.

While performing their FGC duties, the members as individuals and as a committee, shall be performing as employees of SWOSU. To the extent that the members' actions are taken in good faith, in their official capacity and in the scope of their authority, they will be entitled to the benefits of the Oklahoma Governmental Tort Claims Act, 51 O. S., Paragraph 151 et seq., including but not limited to legal defense and indemnity. Scope of authority shall be delineated to the committee members during the orientation of the FGC as stated in (h) (2) a. below.

(h) Pre-Hearing Meeting.

(1) The FGC shall conduct a pre-hearing meeting prior to the formal hearing.

(2) Within 5 classroom days of notification by the Faculty Senate President of the request for hearing, the FGC Chair shall schedule a pre-hearing and notify the parties of the date, time, and location of the pre-hearing. The pre-hearing shall take place not less than 5 classroom days and not more than 10 classroom days after notification. A classroom day refers to the instructional days during the fall and spring semesters and does not include final exam weeks, university breaks, or summer sessions.

a. The FGC Chair will outline the duties and responsibilities to the FGC and preside over the pre-hearing. The FGC may request assistance from the Director of Human Resources or the University Attorney for assistance in delineating the duties, responsibilities and limitations of the FGC.

b. Each party will present its case to the FGC. No witnesses will be heard or evidence presented at this pre-hearing. Although an adviser, who must be an employee of SWOSU, may be present, he or she may not directly address the Committee. Practicing attorneys may not serve as an advisor.

c. If the Committee determines that the request for hearing lacks sufficient merit and no further action is warranted, the matter is ended, and the Committee shall proceed in accordance with Paragraph (k), Disposition of Charges, below.

d. If the Committee determines that the request for hearing has sufficient merit and a formal hearing is warranted, the matter shall proceed in accordance with Paragraph (i) below.

e. The FGC Chair shall make a written report to the appropriate parties within two classroom days after conclusion of the pre-hearing. This written report shall contain only the final decision of the Committee.

f. The FGC Vice-Chair shall serve as Chair in the absence of the Chair.

(i) Formal Hearing Process. In an effort to ensure fairness and academic due process, all matters brought to a formal hearing shall be handled according to the following procedures:

(1) Within 5 classroom days following receipt of the pre-hearing report, the faculty member requesting the hearing (grievant) shall present to the FGC Chair in writing:

a. Relevant Southwestern Oklahoma State University rules or policies involved.

b. A summary of the evidence upon which the request for hearing is based and an initial list of witnesses to be called.

(2) Upon receipt of the summary, the FGC Chair shall provide a copy of the information in Paragraphs (i) (1) (a) and (i) (1) (b) above to the individual alleged to have committed the improper action (respondent).

(3) The respondent shall review the materials (listed in Paragraphs (i) (1) (a) and (i) (1) (b) above) submitted by the faculty member and present a written reply within 10 classroom days of receipt to the FGC Chair. The reply shall summarize the evidence to be used to refute the charges and shall include an initial list of witnesses to be called.

(4) Within 5 classroom days after receipt of the respondent's summary of evidence and list of witnesses, the FGC Chair shall announce the date, time, and location of the formal hearing. That hearing shall be scheduled within 15 classroom days following receipt of the respondent's summary and list of witnesses.

(5) Any party, whether grievant or respondent, may bring an adviser (who must be an employee of SWOSU) to the hearing. Practicing attorneys may not serve as advisors.

(6) At this point, the grievant and the respondent, working with the FGC Chair, shall, as completely as possible, arrive at an agreement on procedures and the formulation of charges. Oral discussion shall be followed by an exchange of memoranda indicating the understanding that each party has of the conversation. During this meeting, the grievant and respondent shall also be oriented as to the scope of authority of the FGC.

(7) If the respondent or grievant fails to cooperate with the FGC or the respondent defaults at the hearing stage but denies the charges or asserts that the charges do not support a finding of adequate cause, the FGC will evaluate all available evidence provided by the parties and base its recommendation upon the evidence in the record. The grievant must still meet his or her burden of proof.

(8) Should the hearing schedule extend over final exam periods, school breaks or the summer session, the FGC Chair shall coordinate a schedule that is acceptable to all parties involved and members of the Committee. Every attempt shall be made to complete the process as fairly and expeditiously as possible.

(9) If at any time that the grievant, respondent or any member of the FGC states that the scope of authority of any one or more of the parties involved has been exceeded, the FGC Chair will halt the proceedings and the hearing will not be reconvened until such time as a determination has been made whether a breach of scope has occurred and, if so, that the party or parties has or have agreed to abide by the procedures of the hearing.

(10) The procedures herein do not preclude the possibility of litigation and, therefore, it is imperative that these procedures be followed.

(j) Hearing Regulations. The grievance process is a lay process relying on peer review. The intent of this process is to avoid excessive legalism in deference to the common sense, sound judgment, good character, and sense of fairness of the FGC. The procedures should strive to diminish formality and rigidity and avoid emulation of a courtroom trial. The purpose for a system of internal review is to effect a just and fair disposition of a grievance.

The following regulations shall apply to the hearing:

(1) The grievant and respondent shall have the right to be present and be accompanied by a personal adviser (who must be an employee of SWOSU) throughout the hearing. The FGC may have legal counsel available throughout the entire grievance process for consultation.

(2) The hearing shall be closed unless all principals in the case request it be open.

(3) The FGC Chair shall preside over the hearing.

(4) The FGC shall proceed by considering the statement of grounds for grievances already formulated and the response written before the time of the hearing. If any facts are in dispute, the testimony of witnesses and other evidence concerning the matter shall be received.

(5) Both parties shall have the right to present, examine, and cross-examine witnesses. However, advisers may not examine or cross-examine witnesses.

(6) If called, no university employee, regardless of position, will be excluded from appearing before the Committee. No university employee shall be asked or forced to forego his or her rights under the Constitution of the United States.

(7) The principle of confrontation shall apply throughout the hearing, and the grievant shall bear the burden of proof, which shall be by a preponderance of the evidence.

(8) Only evidence and testimony relevant (subject and chronology) to the grievance shall be allowed.

(9) An audio recording of the hearing shall be made. The FGC Chair shall arrange for the recording. Upon completion of the work of the FGC, the audio recording shall be retained by the FGC Chair until such time as it is remitted to the University President along with other information as noted in (10) following. Upon request, the recording shall be made available to the principals in the case. The full cost of the audio recording shall be borne by the University; the cost of duplication may be charged to the requesting party. Transcription costs are the responsibilities of the requesting party.

(10) The full text of the findings and the conclusions of the FGC shall be remitted in identical form and at the same time to the University President's Office and the principals in the case.

(11) The FGC may proceed to its findings, conclusions, and recommendations without having the record of the hearings transcribed, or it may await the availability of a transcript of the hearings if it believes its decision would be aided thereby.

(k) Disposition of Charges. The FGC shall communicate its findings, conclusions, and recommendations in writing to the parties involved and the University President within 15 calendar days of the conclusion of the hearing. The University President shall render a decision regarding the recommendations of the FGC within 30 calendar days of receipt thereof. The decision will be provided in writing to the parties and the FGC within the time allotted above. The President's decision, which shall be final, may include following or rejecting the FGC's recommendations.

If the case under consideration involves alleged violation of academic freedom or academic due process and if the FGC believes that academic freedom or academic due process has been violated, it may recommend that any professional or personnel decision affected by the alleged violation be initiated anew from the point of alleged violation. The FGC also may recommend necessary remedies appropriate to the case.

(l) Disposition of Records. Upon conclusion of any hearing (or pre-hearing if the process does not result in a formal hearing), the FGC Chair shall forward all remaining, relevant documents and all other records related to the hearing to the Provost. Upon making the final decision

regarding the hearing, the University President will forward the audio recording and other documents related to the hearing to the Provost. Agreements on procedures and all other records shall be maintained in a file in the Office of the Provost and shall be available to the grievant, respondent, members of the FGC, and university representative (as designated by the University President) upon request. All documents and records of the hearing shall be stored in the Office of the Provost for five years or in accordance with the Oklahoma Records Management Act, 67 O.S. §201 et seq. whichever is longer.

Approved: June 6, 2008:

John M. Hays
President
SWOSU

Signature: ____ On file with original: (1) copy in president's office (1) copy in provost's office.