TENURED AND TENURE-TRACK FACULTY GRIEVANCE PROCEDURE

From time to time within the University community, disputes may arise between a faculty member and a department chair (or equivalent), Dean, Provost, or other administrator in which there are allegations of inequitable treatment, violation of academic freedom, or violation of University policy or procedures in some action which affects the faculty member. Administrators should work carefully to avoid such situations and, should they occur, make every effort to resolve them before they become formal grievances. Similarly, faculty should understand that mediating a formal grievance will involve a major investment of their colleagues' time, and should use the procedure only to resolve important issues. When such a dispute arises, it is important that the parties work in good faith to resolve the situation informally, as quickly as possible. The aggrieved faculty member should attempt to meet with the person whose action is the focus of the dispute in order to discuss and resolve the situation. If resolution is not achieved, s/he should attempt to meet first with the Dean and, if the Dean is unable to resolve the dispute, then with the Provost (or Provost's representative) to make them aware of the situation and discuss paths to resolution. If, after making these attempts at informal resolution, the faculty member is not satisfied, s/he may proceed formally within the regular grievance procedure, including the option for early provostial review.

1. Definitions and Eligibility

   a. Definition of "Grievance"

   A grievance is defined as a complaint by a faculty member that he or she:

   1) has been subject to a violation, misinterpretation or inequitable application of the provisions of the Faculty Handbook or other published University or unit policies or procedures; or
   2) has otherwise been treated unfairly or inequitably.

   b. Eligibility and Applicability

   This procedure is available only to full-time probationary or tenured members of the Teaching Faculty as defined in the Faculty Handbook. Grievances relating to tenure, whether procedural or substantive, shall be governed by the Tenure provisions of this handbook. This grievance procedure does not apply with respect to tenure or early tenure decisions nor does it apply to a Dismissal Proceeding or any final action pursuant to it.

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1 Approved by vote of the Faculty Senate, November 2, 1992. Approved by the Board of Trustees, June 11, 1993. Amended by vote of the Faculty Senate, June 7, 1994; presidential approval authorized by Board of Trustees, June 10, 1994; approved by the President, July 7, 1994. The original Faculty Grievance Procedure on which this is based was adopted by the Board of Trustees in 1973. This procedure applies to Teaching Faculty (2.1-2.4) and, as modified in the footnotes that accompany the procedure, to Co-op Coordinators (2.9) only. A grievance procedure that applies to Clinical or Academic Specialists or Full Time or Benefits Eligible Lecturers (2.8F or B) follows this section.

2 See section 3 below for Early Provostial Review (formerly the "Accelerated Grievance Procedure").

3 Or Cooperative Education Coordinators (2.9).
If a grievant makes a claim of discriminatory acts prohibited by law or by University policy, the grievance shall first be pursued through the Office of Institutional Diversity and Equity and its procedures. When this has been completed, any aspects of the grievance which remain unresolved may then be brought to the grievance procedure.

2. Regular Grievance Procedure

a. Step One: Filing a Grievance

1) A grievance must be filed within three months after the faculty member became aware of the grievable event. During this period s/he must attempt to resolve the matter informally.
2) A formal grievance is filed in writing with the Senate Agenda Committee. The Senate’s grievance coordinator will send copies to the Department Chair (or equivalent), Dean, Provost, and (if not one of these) the person whose action occasioned the grievance.
3) In the formal grievance, the grievant will state the exact nature of the grievance, against whom it is filed, and the remedy sought. At this point s/he may request resolution through the Early Provostial Review Option.
4) In the event that informal steps to resolve the situation are ongoing, the grievant may request, in writing, that the Senate Agenda Committee automatically grant postponement of the Step Two for an additional two months. At any time that the grievant is dissatisfied with the progress of informal steps, s/he may, in writing, rescind this request and resume the normal grievance process.

b. Step Two: Mediation by an ad hoc Faculty Committee

1) As soon as possible after the Senate Agenda Committee has received notice of a grievance or notice that Early Provostial Review has not resolved the grievance, the Agenda Committee shall appoint an ad hoc Mediation Committee composed of three faculty members. In appointing this Committee, the Agenda Committee will normally appoint faculty members not involved with the grievant or his or her department.
2) The ad hoc Mediation Committee shall be neutral and impartial as it attempts to mediate the dispute. During this phase of the procedure the committee may suggest ways to resolve the dispute, but shall make no formal findings with respect to the grievance other than to determine whether the grievance falls within the definition of a grievance, and/or whether it is insubstantial or frivolous. The ad hoc Mediation Committee shall conduct the meetings in steps two and three. However, the inability of one Committee member to attend such meetings shall in no way change any prescribed time limits.

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4 Approved by Faculty Senate, February 26, 1990; editorial revisions accepted by Senate Agenda Committee, June 15, 1990. Approved by Board of Trustees, October 12, 1990 with further editorial revisions accepted by the Senate agenda Committee, January 29, 1991. This procedure applies to Teaching Faculty (2.1-2.4), Clinical or Academic Specialists (2.7), and to Co-op Coordinators (2.9) only.

5 Where the grievant is a Cooperative Education Coordinator (2.9), one member of the ad hoc Mediation Committee shall be appointed from among the Cooperative Education Coordinators not involved in the Grievance.
3) As soon as reasonably possible after the establishment of the *ad hoc* Mediation Committee, its chair shall arrange for one or more meetings with the relevant parties in an effort to resolve the grievance. At any meeting where the grievant is present, the grievant may be accompanied by a member of the Northeastern University community.

a) After an initial meeting with the grievant, the *ad hoc* Mediation Committee may at any point, by majority vote, determine whether the grievance meets a threshold for mediation: that it is neither insubstantial nor frivolous and falls within the definition of a grievance.

i) If the Committee rules that the entire grievance does not meet this threshold, it shall so inform the grievant, the other relevant parties, the Provost and the Senate Agenda Committee.

ii) If the Committee rules that only some of the issues raised in the grievance do not meet this threshold, it shall so inform the grievant, the other relevant parties, the Provost and the Senate Agenda Committee, also stipulating the issues which remain to be mediated. In this circumstance, mediation will proceed with respect to the remaining issues. Neither mediation nor arbitration will remain available for the issues deemed nongrievable.

b) As the mediation process continues, if the Committee deems it advisable, it may require the attendance of the person whose action occasioned the grievance and any other persons who might be of aid in resolving the grievance, such as the Director of the Office of Institutional Diversity and Equity, or the Director of the Office of Disability Resources.

4) If mediation is unsuccessful without the participation of the Dean, the Committee shall require the attendance of the Dean for at least one meeting to attempt to reach a resolution.\(^6\)

5) If no resolution has been formalized within ten working days of the last Step Two meeting, or if the *ad hoc* Mediation Committee feels that no resolution is forthcoming, and if the grievant wishes to pursue the grievance, the Chair of the *ad hoc* Mediation Committee shall arrange a meeting with the Provost (or his or her designee), the grievant, and the *ad hoc* Mediation Committee for the purpose of resolving the grievance. If the *ad hoc* Mediation Committee considers it advisable, it may request the attendance of the party whose action occasioned the grievance and/or other involved individuals. The grievant may be accompanied by a member of the Northeastern University community.

6) If, after this meeting, no resolution has yet been reached, the *ad hoc* Mediation Committee may submit to the parties a proposed resolution to the grievance.

c. *Step Three: Request for Arbitration*

\(^6\) In the case where the Grievant is a faculty member (2.1-2.4 or 2.9) in Cooperative Education, this provision applies to the Dean of the Co-op Coordinator’s home college.
1) If the grievant is not satisfied with the disposition of the grievance at Step Two, or if no decision has been rendered within ten working days after the meeting with the Provost (Step Two) or within ten working days of receipt of a proposed resolution formally submitted by the ad hoc Mediation Committee to the parties, the grievant may request, in writing, to the Chair of the ad hoc Mediation Committee that the grievance be submitted to arbitration. If the grievant does not file a request for arbitration by the end of 30 working days after the Step Two disposition and/or meeting, or the transmittal of the Committee's proposed resolution, the grievance is closed.

2) The ad hoc Mediation Committee will, within ten working days after receipt of the request for arbitration, decide by a majority vote if the grievance shall be arbitrated. In doing so, the Committee will not determine whether or not the grievance shall be upheld, but only whether the grievance shall be arbitrated. The Committee shall determine if (a) the claim falls within the definition of a grievance, b) the remaining issues beyond any settlement currently offered by the Provost are neither clearly insubstantial nor frivolous and (c) the remedy sought is within the power of an arbitrator. If these conditions are met, the Committee shall decide in favor of arbitration.

3) If the ad hoc Mediation Committee decides that the grievance does not meet the criteria for arbitration, the grievance is closed.

4) If the ad hoc Mediation Committee believes that the grievance has revealed needed improvements in policies, practices, or procedures in the University, it shall recommend such changes to the Senate by forwarding such recommendations to the Senate Agenda Committee, or appropriate supervisory unit.

5) If the ad hoc Mediation Committee decides that the grievance shall be arbitrated, the Committee will instruct the Provost's Office to institute arbitration proceedings.

d. Step Four: Arbitration

1) If the grievance is to be arbitrated, the ad hoc Mediation Committee will so notify the Provost and the grievant.

2) Within fifteen calendar days after the notification of the Provost, the Provost (or his or her designee) shall meet with the grievant for the purpose of explaining the process of filing a demand for arbitration with the American Arbitration Association. At the request of the grievant or the Provost, the ad hoc Mediation Committee's Chair may also be present at this meeting. The University must file such demand within 15 calendar days after this meeting, as long as the escrow requirement of subsection 5(d) has been met, or within 5 days after University Counsel receives notice that the grievant has met the escrow requirement, whichever comes later. If the grievant has not met the escrow requirement within 90 calendar days of the demand for arbitration, the grievance will be deemed to have been withdrawn.

3) The arbitrator shall be chosen from a list of arbitrators maintained by the American Arbitration Association. The arbitrator must be qualified for academic arbitration by virtue of current or previous service as a faculty member or academic administrator
of a college or university. The conduct of the proceedings shall be governed by the rules of the American Arbitration Association.

4) The decision of the arbitrator, within the scope of his or her jurisdiction, shall be final and binding on the parties to the dispute and the University; however, the arbitrator shall be without power to

a) make a decision which requires the commission of an act prohibited by law,
b) substitute his or her judgment on the professional qualifications of a faculty member for the judgment of the relevant academic committee, or
c) add to, subtract from, or modify provisions of the Faculty Handbook or other relevant University policies and procedures.

5) The costs of the services of the American Arbitration Association and the Arbitrator shall be borne as follows:

a) If the arbitrator upholds the grievance (whether or not he or she grants the remedy sought by the grievant), these costs will be borne by the University.
b) If the arbitrator denies the grievance, the grievant will pay 1/3 of the fees of the American Arbitration Association and its arbitrator, and the University shall bear the remainder of such costs.
c) Each party will pay for its own expenses, services and fees other than the costs of the American Arbitration Association and the arbitrator.
d) To assure that the conditions of section (b) can be met, the grievant will place into a noninterest bearing escrow account in the Northeastern University Federal Credit Union, a sum equal to one-half of the American Arbitration Association processing fee plus one-half of one day’s arbitrator’s fee. Specific instructions for establishment of the escrow account are set by the Senate Agenda Committee and are available in the Faculty Senate office.

The escrow account will be controlled by the Chair of the Senate Agenda Committee. Upon completion of the arbitration, with the signature of the Agenda Committee Chair and a copy of the arbitrator’s decision, the deposited funds will be returned to the grievant if the grievance is upheld, or transferred to the University if the grievance is denied. If the arbitrator reaches a split decision on a multi-element grievance, the arbitrator will determine the proportional distribution of the AAA/Arbitrator costs and the distribution of the deposited funds.

e. Miscellaneous

1) Timeliness

a) The time limit for filing a grievance as specified in section 2.a may be extended beyond three months with written agreement of the Provost, the grievant and the Senate Agenda Committee grievance officer.

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7 Approved by the Faculty Senate, January 23, 1984. Approved by the President, March 21, 1984. This provision is subject to periodic elaboration by agreements negotiated between the University and the American Arbitration Association.
b) It is important that grievances be processed as rapidly as possible. The number of days indicated at each step shall be considered a maximum, and every effort will be made to expedite the process. The time limits specified may, however, be extended by mutual agreement.

c) Because it is difficult to form an ad hoc Mediation Committee during the summer months, the clock for Steps Two and Three will normally be suspended during Summer terms. However, the filing of a grievance under Step One must still occur within three months after the grievant became aware of the grievable event(s).

d) A grievant shall have two weeks to respond after each step. If he or she fails to respond by the end of two weeks the grievance will be considered as waived. An involuntary delay such as illness or failure of the mails to deliver shall not be construed as waiving the grievance.

2) If in the course of processing the grievance there is a dispute over whether a grievance has been waived, the parties will continue to follow the procedure and, if the grievant proceeds to arbitration, the arbitrator will decide whether or not the grievance has been waived.

3) Unless the grievance has been resolved, withdrawn or otherwise terminated, the ad hoc Mediation Committee shall make no formal findings or report before the end of Step Two.

4) Copies of the arbitration decision shall be sent to the grievant, the Provost and the Chair of the Senate Agenda Committee.

5) No outside counsel (for the grievant or any other party to the grievance) may be present in any of the Step Two mediation meetings. However, all parties may be represented by counsel in arbitration proceedings.

6) Documents and Confidentiality
   The University shall make available to the grievant relevant materials pertaining to his or her case. However, documents developed in tenure and promotion proceedings with the understanding that they are confidential do not have to be made available to the grievant.⁸

7) The Agenda Committee of the Senate will, upon request, provide the grievant and/or the person whose action occasioned the grievance with the names of faculty members or others who may be of assistance in preparation and presentation of his or her case in the grievance procedure.

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⁸ In an arbitration decision dated November 11, 1974, the following guideline relating to confidentiality was established: “Documents developed in the tenure procedure involving ... the understanding and expectation that they were confidential do not have to be made available to [the grievant] by the University. Included in such documents are letters of recommendation, evaluation forms, and the minutes of the Promotion and Tenure Committee ...”
8) It is important that testimony and deliberations which take place under this procedure shall be kept confidential by the parties and by those involved in the resolution of the grievance.

9) If at any point the grievant determines to withdraw the grievance, s/he shall do so in writing to the Senate Agenda Committee.

10) If, during the course of a grievance, the grievant's University employment terminates for any reason, the grievance shall be discontinued, except that when the grievance involves non-renewal of contract the grievant may request, in writing to the Senate Agenda Committee, that the grievance be continued.

3. Early Provostial Review Option for Use in Case of Alleged Procedural Violations

a. At the time a grievance is filed as defined above, the grievant may request this option of early review by the Provost. In this event, the timeliness provisions for further steps of the Regular Grievance Procedure are suspended until the grievant receives written notice of the results of this optional procedure.

b. The grievant and a representative of the Senate Agenda Committee will confer with a representative of the Provost within ten workdays. If the Provost's representative recognizes merit in the grievance, he or she shall so notify the Provost. Otherwise, he or she shall inform the grievant, in writing, that the grievance is denied.

c. If the Provost recognizes merit in the grievance, he or she shall delegate his or her representative to work with the appropriate Dean or Chair toward correcting the defective procedures. This process, which may involve any steps up to and including a full reconsideration of the original decision upon which the grievance is based, utilizing corrected procedures, should be completed within two weeks. At that time the grievant will be informed of his or her status by the Dean or Chair.

d. Whatever the outcome of this provostial review procedure, the grievant shall still have access to the standard faculty grievance procedure.