

UTMB Faculty Grievance Panel Hearing Procedures

Grievance Panel Pre-Hearing Procedures

1. After the grievance panel is assembled, the chair will consult the parties to the grievance and the members of the panel and schedule the grievance hearing at the earliest practical date. The chair will notify the parties to the grievance of the date, time, and place for the hearing at least ten (10) business days prior to the hearing date.
2. The date for the grievance hearing may be postponed only for good cause. Requests for postponement must be in writing addressed to the chair of the grievance panel and shall state the reasons for the requested postponement. If the panel determines that there is good cause for postponement, a new hearing date shall be selected and the parties to the grievance notified. Each party may only be granted one extension.
3. At least five (5) business days prior to the date for the hearing, the parties to the grievance shall each furnish the other the names of the witnesses that they intend to have testify; a summary of their expected testimony; and a copy of each document, record, or exhibit that they intend to offer as evidence at the hearing. Failure by either party to provide the above information by the stated deadline may result in waiver of that party's ability to present such evidence or testimony during the hearing. The panel has the discretion to admit evidence and testimony.
4. Employee Relations shall provide the grievance panel with copies of the documents filed by the faculty member.
5. The parties to the grievance shall be responsible for notifying any witnesses who will testify on their behalf of the date, time, and place for the hearing, and shall inform any witnesses that they should inform the Chair of the Grievance Panel whether he/she intends to testify before the panel.
6. Upon request, the University shall provide the faculty member with copies of his or her Human Resources Employee Relations file. Documents containing information made confidential by state or federal law, regulation or court order will not be provided to the faculty member.
7. University employees who are requested to be witnesses at a grievance hearing are encouraged by the University to testify regarding matters within their personal knowledge.

Grievance Panel Hearing Procedures

1. The chair of the grievance panel shall preside at the hearing and has final authority with respect to all proceedings before the panel, including the responsibility for ensuring that the grievance hearing is conducted in accordance with this procedure and that the parties to the grievance, their legal counsel or personal representative, and witnesses conduct themselves in an orderly manner. The chair should begin the hearing by briefly outlining the hearing procedures and informing the parties that all procedural questions and all objections regarding testimony and exhibits are to be directed and ruled upon by the chair.
2. General concepts of relevancy and materiality shall prevail at the hearing. Neither the Texas Rules of Civil Procedure nor the Texas Rules of Evidence will apply to the hearing. However, every reasonable effort shall be made to obtain the most reliable evidence available.
3. All proceedings before the grievance panel will be audio recorded with equipment provided by the University and operated by a University employee neutral to the proceedings and who is qualified to operate such equipment. This recording, the documents filed by the faculty member, and exhibits admitted into evidence during the hearing, shall be the official record of the grievance hearing. The parties to the grievance may have access to the official record and will be furnished a copy at cost.
4. The hearing shall be closed to everyone except the party to the grievance, his/her legal counsel or personal representative, the grievance panel, witnesses while giving testimony, and the person operating the recording equipment.
5. Witnesses should testify from personal knowledge and without regard to what other witnesses may say; therefore, the chair will require all potential witnesses except the parties to the grievance to leave the hearing room until such time as they are called to testify and to leave the room after they testify. Witnesses called by one party may be cross-examined by the other party. The chair and members of the grievance panel may ask questions of a witness after the parties have concluded their examination.
6. In cases, where the faculty member is grieving a disciplinary action, the burden of proof is on the administration to establish, by the greater weight of the credible evidence, that good cause was the basis for the discipline. In all other cases, the burden of proof is on the grievant to prove, by the greater weight of the credible evidence, that there was a substantial violation of the faculty member's academic freedom, constitutional, statutory, or contractual rights.
7. If the faculty member is appealing his or her salary calculation under the Faculty Compensation and Incentive Plan, he or she has the burden of proving that there was a mistake, miscalculation, or error in determining the salary or

incentives under the plan. The substance of the Faculty Compensation and Incentive Plan is not grievable.

8. After the hearing has been called to order by the Chair, the hearing shall proceed as follows:
 - a. The following order applies:
 - i. The party with the burden of proof will have the opportunity to open and close the presentation, argument or discussion.
 - ii. The opening statement by the grievant, his or her counsel or personal representative, should include the basis for the grievance and what he or she contends that the evidence will show.
 - iii. The administration or legal counsel may make a brief statement explaining the basis for the challenged decision or action and what he or she contends that the evidence will show.
 - iv. The party with the burden of proof has the right to call witnesses and offer evidence first. Each witness may be cross-examined by the opposing party.
 - v. After the party with the burden of proof has rested, the opposing party may call witnesses and offer evidence. Each witness may be cross-examined.
 - vi. After the presentation of evidence has been concluded by both parties, each party may make a brief statement that summarizes the evidence that was admitted and the conclusion(s) that the grievance panel is requested to reach on the basis of that evidence. The party with the burden of proof has the right to address the panel first and may also make a closing statement after the statement of the opposing party. The chair shall determine the appropriate time limit for the statement by each party and shall require that the time limit be observed.
 - vii. The hearing is limited to four (4) hours. Both parties shall examine witnesses and present evidence within the four (4) hour time limit. Any extensions in time shall be granted at the discretion of the hearing panel and chair.
 - b. The chair will adjourn the hearing and, upon the basis of the evidence admitted at the hearing, the grievance panel will make a written report of its findings and recommendations to the President within ten (10) business days after the hearing is adjourned. The findings and recommendations of the panel shall be limited to the issues contained in the documents filed by the faculty member. The grievance panel may submit majority and minority findings and recommendations as appropriate.

- c. Although the hearing panel is constrained to act within the rules contained in the faculty grievance policy, the panel is expected to report, by separate memorandum to the President and the Chair of the Faculty Senate that is separate from its written grievance panel report to the President, issues arising from grievances that are not adequately or appropriately addressed by the applicable University rules.
9. Each member of the grievance panel is required to be in attendance throughout the hearing. After the hearing begins, any member who is unable to continue in attendance because of illness or extenuating circumstances shall not participate further in the hearing or other proceedings under this procedure. Provided at least three panel members continue to serve, the proceedings under this procedure shall continue to completion.

Admissibility of Evidence

1. The chair must rule upon objections that are made to the admissibility of evidence offered by the parties.
 - a. In order to be admissible, the documents or testimony offered must be relevant to issues that are to be decided by the grievance panel. Generally, evidence is relevant if it tends to prove or disprove a fact that is at issue. There must be some logical connection between the offered evidence and a fact that is in dispute. Upon objection, evidence that is not relevant should be excluded.
 - b. The grievance panel is the sole judge of the credibility of a witness. A witness is credible when he or she is believable. In determining the credibility of a witness the grievance panel may consider the demeanor of the witness, the opportunity of the witness to observe events or to acquire personal knowledge that is the subject of the testimony, any interest that the witness may have in the determination of the issues, or any other factor that is relevant to whether the witness is believable.
 - c. Facts at issue may be proven by direct or indirect evidence. Direct evidence is testimony by a witness who saw the events occur or who heard words spoken that establish the fact in question. Indirect evidence includes testimony of a witness who saw events occur or who heard words spoken that establish a collateral fact or circumstance from which the fact at issue may be logically inferred from common knowledge or experience.
 - d. University records and correspondence of University administrators produced in the ordinary course of business shall be admissible, subject to objections as to relevancy.

- e. Evidence that is admissible but is merely cumulative of evidence already in the record should be excluded by the chair upon objection or upon determination by the chair that additional evidence of the same nature as that already admitted is merely repetitious. It is within the discretion of the chair to determine when further testimony on an issue becomes a waste of time.
- f. It is the responsibility of the grievance panel to make fair and impartial findings and recommendations to the President. When irrelevant evidence is offered without objection the grievance panel should recognize it as such and disregard it in its deliberations.