

Appendix

Academic Grievance Procedures

The Academic Grievance Procedures for The Johnson School provide means whereby any member of its faculty or academic professional staff who believes him or herself to be aggrieved can obtain consideration of redress of the grievance.

These procedures have been developed to conform to the [Guidelines for College-Level Academic Grievance Procedures](http://web.cornell.edu/UniversityFaculty/) based on Board of Trustee legislation enacted March 13, 2002, available at <http://web.cornell.edu/UniversityFaculty/>.

I. Coverage

- A.** Academic Grievance Procedures are applicable to those persons holding appointments as Professor, Associate Professor, Assistant Professor, Acting Assistant Professor, Visiting Professor (all ranks), Adjunct Professor (all ranks), Instructor, Senior Lecturer, Lecturer, Senior Research Associate, Research Associate, Senior Scientist, Senior Scholar, Senior Extension Associate, or Extension Associate. Persons holding these appointments are hereinafter referred to as *Academic Staff*.
- B.** When there is coverage by more than one University grievance procedure, the academic may choose the particular procedure to protest a particular grievable action. No more than one grievance procedure may be used for the same grievance.

II. Fundamental Precepts Governing Grievance Proceedings

The individual(s) (griever) submitting a grievance, the individual(s) (the respondent) against whom the injustice or harm is alleged, witnesses, individuals giving depositions, members of the Grievance Committee, the Dean of the School and all other parties involved will be governed by the following precepts in the conduct of grievance proceedings:

- A.** The griever bears the burden of proof required to sustain the grievance.
- B.** Precepts of fairness shall govern all proceedings.
- C.** The griever and the respondent may be represented by persons (including legal counsel) of their own choice for the purpose of providing counsel and conducting cross-examination. The Grievance Committee shall have the right to limit representatives and counsel to a reasonable number. If the griever wishes to retain a representative or counsel, he or she shall bear the expense of such representation.

- D.** If either the grievor or the respondent elects to have legal counsel, the Grievance Committee should consult with University Counsel about the advisability of retaining legal counsel on behalf of the Grievance Committee.
- E.** Except on the basis of clear need-to-know, all proceedings of the Grievance Committee shall be held strictly confidential by all parties involved. Where questions arise covering confidentiality and need-to-know, the Grievance Committee is empowered to make binding rulings.
- F.** Privileged or confidential information that would not otherwise be made available cannot be divulged or made available by reason of a grievance proceeding. For example, a grievance involving salary does not entitle the individual asserting the grievance to confidential information about the individual salaries of others. In the event that dispute arises over whether information is or is not confidential and privileged, options for providing the information should be explored. The following options are deemed not to break the promise of confidentiality:

 - 1.** Under injunction of confidentiality, Grievance Committee members may be provided with confidential information;
 - 2.** Written information, modified to exclude names and identifying material, may be submitted in evidence; and
 - 3.** An individual who provided information on a confidential basis may authorize its release. Where a group of individuals – such as a committee – has provided information on a confidential basis, it may authorize its release only on a unanimous basis.

An individual or group possessing confidential information will be the final judge as to whether to release it (see Appendix, Section II, F, 3, above for clarification). That decision shall not, however, bind the decision of others who may possess the same confidential information.

- G.** At any time during a grievance proceeding, the grievor may withdraw the complaint. Notification of withdrawal must be made in writing to the respondent, members of the Grievance Committee and the Dean of the School. Once withdrawn, the same grievance cannot, under any circumstances, be reasserted. All parties will follow Appendix, Section XIII, Preservation of Records.

III. Grievable Action

- A. A grievance is defined as an injustice or harm arising from a specific situation involving an act or acts of alleged unfairness that the individual regards as just cause for protest on his or her own behalf. Such actions may grow out of a number of separate or related aspects of an individual's responsibilities, of which the following are illustrative but not limiting:
1. Salaries and other benefits;
 2. Academic freedom;
 3. Work conditions;
 4. Discrimination involving, but not limited to, race, color, creed, religion, national or ethnic origin, sex, sexual orientation, age, or disability;
 5. Task assignments; and
 6. Existence of, adequacy of and adherence to equitable grievance procedures.
- B. With the exception noted in Appendix, Section III, C below, this Academic Grievance Procedure can be applied to the substantive and/or procedural aspects of any grievance arising out of the academician's execution of his or her designated responsibilities.
- C. These Academic Grievance Procedures do not apply to matters of appointment, reappointment, promotion or tenure. Review of these matters is covered by separate procedures available on line at <http://theuniversityfaculty.cornell.edu/handbook/toc.html> with the exception of appealing a tenure decision at the College level where those Procedures are found in Chapter Three.

IV. Right to Grievable Action

The individual academician has the right as a condition of his or her appointment to seek through these formal grievance procedures, involving the judgment of the individual's peers, a redress of decisions made and/or actions taken at the Program, School and/or University level, that the individual considers intolerable to the effective execution of his or her responsibilities. The right to initiate a formal grievance action does not extend to circumventing or impairing the normal decision-making processes. The desire to register unhappiness over a particular decision or action does not justify initiating a grievance procedure. Only when direct negotiations between parties to a

dispute have been exhausted and have not led to a resolution, may individuals resort to invoking the Academic Grievance Procedure of the School.

V. Grievance Expenses

Any necessary expense of the grievance hearing is the responsibility of the University, except for the expenses of an individual advisor or counselor engaged by the griever. If that advisor or counselor is an individual who works for the University, he or she will be allowed reasonable time to represent the complainant without loss of pay.

VI. Pre-Grievance Procedures

An individual(s) who believes an action or actions covered in Appendix, Section III, taken by the School, and/or the University, makes the effective execution of the individual's responsibilities intolerable, should discuss the action (or actions) with the Associate Dean for Academic Affairs. In negotiating, the parties involved should remember that the purpose of this Grievance Procedure is to resolve differences, where possible, on a basis mutually acceptable to all parties. If the disputed action is not satisfactorily resolved as a result of such discussion, the individual(s) should discuss the problem with the Dean of the School.

VII. Grievance Committee: General Policy

In case the individual(s) is dissatisfied after following the pre-grievance procedures outlined in Appendix, Section VI, a written grievance may be submitted. The School's response to the written grievance should satisfy the following:

- A.** Appoint a Committee to resolve individual grievances either by helping the parties reach a decision acceptable to both or by rendering a recommendation;
- B.** Provide adequate notice to all college academicians of such committee appointments and their accompanying provisions;
- C.** Inform Committees as to their responsibilities, mandate, discretion, limitations, etc.;
- D.** Maintain adequate representations on committees of the various components of those with academic appointments, including rank, and/or discipline, and/or unit and/or nature of appointment.

VIII. Grievance Proceedings and Procedures

If an individual chooses to submit a written grievance, it should state the basis for the grievance, summarize the attempts to resolve the dispute, and be presented to the Chairperson of the Johnson School's Faculty Policy Committee (or a Faculty Policy Committee member randomly selected by the Committee who is neither the grievor or respondent if the grievor or respondent is the Chairperson - in this case, all later references to Chairperson refer to this *randomly chosen other member*) within ten (10) days following the conference with the Dean. Subsequent procedures are as follows:

- A.** An Ad Hoc Grievance Committee to consider the grievance shall be constituted with the aid of the Chairperson of the Faculty Policy Committee and shall consist of three (3) members.
 - 1.** One (1) member from the Academic Staff of the School – chosen by the aggrieved; unless the respondent is the Dean of the School. In such cases, the member chosen is from the Academic Staff of the University; and
 - 2.** One (1) member from the Academic Staff of the School – chosen by the respondent; unless the respondent is the Dean of the School. In such cases, the member chosen is from the Academic Staff of the University; and
 - 3.** One (1) member from the Academic Staff of the University – chosen by the above two (2) designated committee members, irrespective of any existing reporting arrangement.

The third member chosen by this procedure shall be the Chairperson of the Ad Hoc Grievance Committee. If agreement on the third committee member cannot be reached in fifteen (15) days, the third member shall be chosen by the Faculty Policy Committee of the School, excluding any members who are grievor or respondent, within the next seven (7) days.

Notwithstanding the above method of selecting members of the Ad Hoc Grievance Committee,

- no individual can serve as a member who is also a directly affected party to the grievance at issue;
- neither party to the dispute may select as a member of the Grievance Committee someone who reports directly or indirectly to that party; and

- someone who acts in lieu of a party may not appoint, as a member of the Ad Hoc Grievance Committee, someone who reports directly or indirectly to that party.

In case of dispute, the Faculty Policy Committee, excluding any members who are grievor or respondent, shall determine who is a directly affected party.

IX. Pre-Hearing Review

- A.** Upon constitution, the Grievance Committee shall conduct a pre-hearing review of the alleged grievance to determine:
 - 1.** Whether or not direct negotiation remedies (described in Appendix, Section VI) have, in fact, been exhausted; and
 - 2.** Whether or not facts warrant consideration on the substantive and/or procedural aspects of the issue, a detailed investigation, hearings, recommendations and decisions.
- B.** In conducting the pre-hearing review, the Grievance Committee shall be provided with the written statement of the grievor. As it deems necessary in order to establish essential facts and unresolved issues, the Grievance Committee may request written statements from the respondent and from such other individuals as it considers appropriate in the circumstances.
- C.** If the Grievance Committee determines that negotiating remedies have not been exhausted, it may return the grievance for further negotiation. It should also take such actions as are feasible to foster further negotiations. If the grievance is not resolved by these procedures, the grievance will proceed in the manner set forth in Appendix, Section X.
- D.** The findings of the Grievance Committee's pre-hearing review shall be communicated in writing to the grievor, the respondent and to the Dean of the School within fifteen (15) days of the constitution of the Grievance Committee. As set forth above, possible findings include:
 - 1.** Remanding for further negotiation;
 - 2.** Dismissing for lack of merit; or
 - 3.** Proceeding to hearings.

X. Hearings

- A.** The Grievance Committee will set the time and place of all hearings. Written notice will be given to all parties at least forty-eight (48) hours in advance of all hearings.
- B.** During hearings, all members of the Grievance Committee will be present. Decisions on all matters coming before the three (3)-member Grievance Committee will be by majority vote.
- C.** In any situation where the rules and procedures described herein do not apply, **Robert's Rules of Order** will guide the Grievance Committee. By majority vote, the Grievance Committee shall be sole and final arbiter of all procedural questions that arise during hearings.
- D.** Hearings shall be conducted with relative informality and the normal rules of evidence applied in judicial proceedings may not necessarily be strictly observed.
- E.** The griever, the respondent and their respective representatives will be brought before the Committee simultaneously. They will be permitted to remain throughout the hearing until the Committee begins its deliberations. No other individuals are allowed to be present at the hearing. Witnesses may be called by either party or at the Committee's request, but will appear only when called to testify and will withdraw immediately after testifying.
- F.** Since he or she bears the burden of proof, the griever will have the opportunity to present his or her case first. The respondent will then have the opportunity to present his or her case.
- G.** Both griever and respondent will have the opportunity to make a reasonable cross-examination of witnesses presented by the opposing party. If the griever or respondent testifies on his or her own behalf, he or she shall be subject to reasonable cross-examination. All members of the Grievance Committee may question all witnesses who appear before the Committee.
- H.** The griever and respondent need not present themselves as witnesses if they choose not to do so. No unfavorable inferences shall be drawn from a decision not to appear as a witness.

- I.** In lieu of appearing as a witness, any individual may submit a written statement to the Grievance Committee. Written statements will not be subject to cross-examination and the weight given thereto by the Grievance Committee will be judged accordingly.
- J.** A representative of either grievor or respondent may give testimony as a witness and, after such testimony, be subject to cross-examination. As a general rule, a representative, having testified, may not thereafter, except in unusual circumstances, give additional testimony as a witness. Exceptions to this rule will be made at the absolute discretion of the Committee and only where the ends of justice require such a variance in procedure.
- K.** All testimony and questioning will be kept germane to the issues involved and will not be repetitive, argumentative or provocative. The Chairperson will rule on all questions of the propriety of any testimony or questions in accordance with precepts of fairness and due process. The decision of the Chairperson shall be final, subject only to appeal to the entire Committee.
- L.** On conclusion of the testimony, the grievor and representative and the respondent and representative shall, in that order, have the opportunity to give a brief recapitulation of their positions and the issues that they see in dispute.
- M.** The grievor and respondent shall be afforded the opportunity to file a written brief setting forth their positions. Notice of intent to file such a brief must be given to the Chairperson prior to the close of the hearing. Such briefs must be submitted to the Chairperson within five (5) days after close of the hearing.
- N.** All testimony at hearings shall be recorded. Such recordings shall be kept and used only by the Grievance Committee in its deliberations or, on appeal, by the Faculty Committee on Academic Freedom and Responsibilities (or such Committee's designate).
- O.** Upon conclusion of the hearing and receipt of such briefs as may be tendered, the Grievance Committee will conduct its deliberations in private.
- P.** The findings and recommendations of the Grievance Committee shall be communicated in writing to the grievor, the respondent and to the Dean of the School within fifteen (15) days of conclusion of hearings.

XI. Subsequent Action

- A.** The findings and recommendations resulting from the Grievance Procedure described herein are advisory to the Dean of the School and to the President and Trustees of the University. If the case involves accusations of harassment on legally protected grounds, such as sexual or racial harassment, confidential notification of the proceedings to the Office of Workforce Diversity, Equity and Life Quality is required. While a prior academic decision may be reviewed, modified or affected as a consequence of a grievance proceeding, the proceeding itself shall not effect that change.
- B.** On receipt of the report of the Ad Hoc Grievance Committee, the Dean of the School may or may not accept to act in accordance with its recommendations. In either case, the Dean shall, within ten (10) days, communicate in writing the decisions and proposed actions to the grievor, respondent, Provost and Dean of the University Faculty. If the Dean of the School rejects recommendations of the Grievance Committee, the reasons for doing so shall be set forth in his or her report.
- C.** Within five (5) days after the Dean reports on acceptance or rejection of Grievance Committee recommendations, the grievor, the respondent or the Dean may request that the Grievance Committee prepare a summary report on the nature of the grievance and its resolution for issuance to the Academic Staff of the School. At its discretion, the Grievance Committee may accept or reject such requests.

If no request is made or if such a request is denied, the nature of the case and its resolution shall remain confidential on a need-to-know basis.

XII. Review

Any of the principal parties to a grievance that have proceeded through to decision by the Dean may request a University-level review of the decision in accordance with the procedures of the Committee on Academic Freedom and Professional Status of the Faculty. Such requests must be submitted in writing to the Provost with copies to other principal parties, the Dean of the School and to the Dean of the University Faculty within ten (10) days after the Dean reports an acceptance or rejection of the Grievance Committee recommendations. In the event of such an appeal, that Committee's conclusion would go back to the Provost and Dean as a recommendation. The final determination lies with the Dean.

XIII. Preservation of Records

- A.** If a review is not requested, the recordings of hearings and all other material submitted in evidence and in the possession of the Grievance Committee will be erased or otherwise destroyed by the Grievance Committee, so as to preserve confidentiality.
- B.** If a review is requested, the Grievance Committee will make available to the Faculty Committee on Academic Freedom and Responsibility recordings of the hearings and all other material submitted in evidence and in the possession of the Committee.
- C.** With the exception of the Grievance Committee, all parties to a grievance proceeding may preserve the written records that are made available to them during the course of the grievance proceeding. Such retention does not relieve any party of the responsibility to maintain confidentiality on a need-to-know basis. Once a final decision is reached, the recordings of hearings and all other material submitted in evidence will be erased or otherwise destroyed.

XIV. Information on University Academic Grievance Appeals Procedures

Information on University Academic Grievance Appeals Procedures can be found at:

<http://theuniversityfaculty.cornell.edu/dean/the-rules/faculty-handbook-2/faculty-handbook/>.

- Procedures for Appealing a Decision Not to Renew a Non-Tenure Appointment
- Procedures for Appealing a Decision Not to Conduct a Tenure Review at the End of the Ordinary Tenure Probation Period on the Basis of Factors Other than the Candidate's Merits
- Procedures for Appealing a Negative Tenure Decision
- Procedures for Appealing a Negative Decision on Promotion to Full Professor