

HRC Memorandum N0. 2 s. 2017

April 20, 2017

To: Sylvia Henry,
President , Faculty and Staff Senate



From: Emmanuela P. Garcia,
Chair, Human Resources Committee

Subject: BP6021 proposed changes for review

The proposed changes in BP6021 was presented by HRD Rencelly Nelson to the HRC on March 2, 2017. She mentioned that the selection of the composition of the grievance committee was made more specific and the duration of the hearing proceedings limited to 30 days. These are to fast track hearings on grievances since there are cases in the college which have been going on for years. There was also a need to specify English as language during hearings in order to avoid confusion in translation especially in documentation.

HRC adopted the changes as proposed. Below is the policy for your reference.

Grievance Policy

Date Adopted: 1 April 1993

Date Revised: 24 May 2012

Date Reviewed: 30 April 2015

References: Section XVI, 13 May 2013 Personnel Policy and Procedure Manual

Grievance Policy

A grievance is any allegation or complaint by an employee or employee organization of violation, misinterpretation or inequitable application of policies of the board of regents, or existing laws, or administrative directives and procedures, or of the right to fair treatment. All employment contract disputes are to be treated as grievance.

1. COVERAGE

It is intended for the grievance procedure to be made available to all regular employees of COM-

FSM under the board's policy on "Equal Opportunity" and non-discrimination on the basis of race, color, religion, age, sex, national origin or other non-merit factors.

2. GRIEVANCE COMMITTEE

a. The grievance committee shall be composed of three members and shall be selected as follows. The aggrieved party may select as a member of the committee any employee who works in a different department from the aggrieved party. The college president or his designee may select one member who is an employee at the administrative or supervisory level from a different department from the aggrieved party. The two selected members will then select a third member who may be any employee who works in a different department from the aggrieved party. The group shall appoint a chairperson from among their members. (Proposed version)

b. If an appointed committee member is related to the aggrieved party per the Board Policy No. 6024 *Nepotism*, the committee member must inform the HR Director immediately and he/she will be excused from serving on the committee.

The grievance committee shall consist of one member from the employee's peer group selected by the aggrieved party, one member from the administrative or supervisory level from a different division or unit approved by the president, and a third member to be selected by the other two. The group shall appoint a chairperson from among their members. (Current version)

c. Limitation.

COM-FSM is a multicultural institution with many languages spoken at the various campuses. The hearings will be conducted in English with translation if necessary for the grievant or any witnesses. However, it is required that all grievance committee members be able to understand the proceedings in English and be able to draft the written findings of the grievance committee in English. Once an employee is selected for the grievance committee he must complete the Acknowledgement Form contained in the HR policy manual. This form will be provided with the notification of selection of the employee to the grievance committee, and must be filled out within 24 hours of notification and returned to HR. If the employee believes he cannot meet these requirements and fill out the Acknowledgement, he also must notify HR within 24 hours and a new employee shall then be selected to fill this position on the grievance committee.

3. INFORMAL PROCEDURE

Prior to involving the grievance procedure set forth hereunder, the aggrieved employee shall make every effort to informally resolve the grievance, except in cases of employment termination. The aggrieved employee shall meet with the administrator concerned to discuss the matter informally. Both are expected to make a maximum of effort to achieve informal settlement of the grievance. If the efforts to resolve the grievance through the informal procedure have failed, the aggrieved employee may proceed to the formal grievance procedure.

4. FORMAL GRIEVANCE PROCEDURE

a. Step 1: Filing with the President

The aggrieved employee may file a written statement of the grievance with the president within five days of the failure to informally resolve the grievance but in no event may it be presented more than 30 days from the act or acts forming the basis of the grievance. Failure to file a written grievance within this thirty day period, will act as a total bar to the grievance and the acts complained of. The statement shall include the following:

1. General description of the nature of the grievance;
2. Specific description of the act or acts upon which the grievance is based;
3. Time, date and place of such act or acts;
4. Name of all persons alleged to be involved in the act or acts giving rise to the grievance; and
5. Remedy sought by the aggrieved employee to resolve the grievance. Remedies are limited to back pay, reinstatement, or removal or reconsideration of adverse actions.

b. Receipt of the Statement

Upon receipt of the statement, the president shall serve a copy of the statement to all persons named therein. Thereafter, the president shall make a decision and communicate such decision, in writing, to the aggrieved employee within ten days. If no decision is communicated by the president within 10 days, the aggrieved employee may proceed to Step II.

The aggrieved employee must file a written statement with the president, within 10 days seeking a Step II hearing, either because of disagreement with the president's findings or because the president failed to make a finding. This time period starts from the latest of, either the receipt by the aggrieved employee of findings, or the president's failure to make findings within the ten day period. Failure to make such a request by the aggrieved employee in the time period required will act as a total bar to the grievance and the acts complained of.

c. Step II: Appeal to Grievance Committee

Upon receipt of such a request, the president shall promptly appoint a member to a grievance committee. Within three days after such an appointment the aggrieved employee shall appoint a member. Within three days after the employee's appointment to the committee, the two committee members shall appoint a third member. If the time period for appointment of the third member expires, the President shall forthwith appoint the third member.

1. The committee shall hold hearings within ten days of the appointment of the third member. Minutes of the hearing shall be recorded. The committee shall endeavor to advise the parties to the grievance in writing of its decision within five days of the close of the hearing.
2. The grievance shall be resolved by majority vote of the committee. The standard of review for the committee shall be whether the College has abused its discretion in implementing the discipline imposed or interpreting the policies or contract. If the committee finds the College has abused its discretion in implementing the discipline imposed, the committee is to determine the appropriate discipline, if any, that should be implemented, and to make the appropriate findings. If these policies or the contract has been interpreted incorrectly, the committee shall award appropriate relief under the policies or contract.

3. The hearing proceedings will not exceed a maximum of 30 days from the first day of the hearing on the matter, unless exceptional circumstances are shown to the grievance committee, who may extend the proceedings for an additional 30 days at their own discretion and based on a review of the circumstances. All parties must ensure due diligence is given to the procedures and its timelines.
4. The committee will follow the written guidelines provided by the Human Resources Director for the hearing process.

d. Step III: Appeal to the Board of Regents

Upon receipt of the committee's decision, either party may within 10 days, request the board of regents to review the decision. The request shall be served upon the president.

1. If the board chooses to review the decision, the standard of review for the board will be whether the decision of the grievance committee was an abuse of discretion.

e. Grievance by Executive Personnel

Grievance by the president or by a staff officer in the president's office, other than the president shall proceed in accordance with procedures set forth in this section. The board of regents shall resolve grievance by the president in a manner prescribed by the board. The decision of the board is final.

f. Miscellaneous Provisions

1. Failure of the aggrieved employee to appeal a decision within the specified time limit shall be deemed as acceptance of the decision, and the college may use such decision as its administrative remedy in any subsequent litigation.
2. All limits herein shall consist of working days.
3. All time limits may be extended by mutual written agreement stipulating the new extension or re-examination dates.
4. An employee retains the right to be accompanied, represented, and/or advised by a representative of his/her choice. Conversely, the employee has the right to present a grievance without representation.
5. An employee shall be free to use the grievance procedure without restraint, interference, coercion, discrimination or reprisal.
6. No record of the fact that a grievance has been initiated shall be entered into the employee's personnel file. However, if formal proceedings result in a final ruling that is adverse to the employee, a record may be entered in the personnel file of the employee if appropriate in the opinion of the president.
7. All hearings for grievances by the grievance committee will be held during working hours and all personnel required to attend the hearing shall do so without loss of pay.

See Administrative Procedure 6021

