

Introduction

The University Grievance Office assists in the resolution of employment disputes by implementing the Board of Regents Policy: *Grievance Process*. This Regents policy, together with the administrative procedures adopted pursuant to it, are referred to collectively as the Grievance Policy and can be found on the Grievance Office website, www1.umn.edu/ugo. In 2003-04, Carolyn Chalmers, Grievance Officer, and Jean Henrichsen, Case Administrator, staffed the Grievance Office. Mary Tate served as Deputy Grievance Officer.

The Grievance Policy sets forth an internal University process for the good faith review and resolution of employment grievances filed by non bargaining-unit employees, including faculty, academic professional and administrative (P&A) staff, civil service staff, and student workers. The policy does not cover employees in bargaining units represented by labor organizations or employees of University of Minnesota Physicians, Inc.

The Grievance Policy directs the grievance officer to prepare an annual report "...to include a summary of issues grieved and the decisions.... The report must include a summary (prepared to protect the identity of individual grievants) of those instances in which the executive vice president and provost has declined to accept the recommendations of a Phase III hearing panel." (Policy, Section IV, Subd.1 (6))

In addition to the normal work of the office, this year the Grievance Advisory Committee, together the Dispute Resolution Work Group, a coalition of University offices with a shared interest in dispute resolution, studied the operation of the grievance policy. Both groups issued reports on their work in the summer of 2004. They both have recommended a new conflict resolution policy to replace the Grievance Policy. The proposed new policy is attached as an appendix to this report. It enhances informal conflict resolution services, substitutes *conflict resolution* language for *grievance* language, and retains the formal fair hearing and arbitration processes in the current policy.

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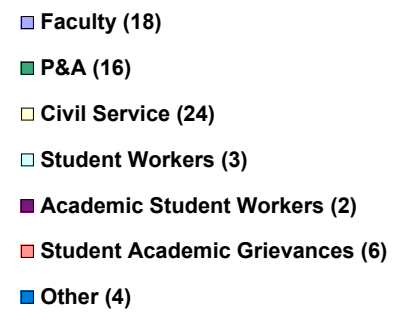
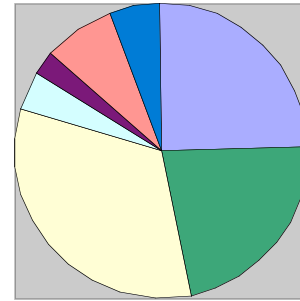
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I. Grievance Office Processing in 2003-04

A. Inquiries

As in past years, consultations with employees were a large part of the workload of the office. These are face-to-face meetings between an employee or supervisor and the grievance officer (or, for employees on coordinate campuses, in-depth telephone conferences) about workplace concerns or problems. Initial contacts with the Grievance Office, telephone consultations, and referral calls are not included.

In 2003-04, the grievance officer had inquiry meetings with 73 employees who were seeking assistance with an employment dispute. Some of these employees met with the grievance officer on several occasions over several months. Of these 73 employees, about 27% (20 employees) decided to file a grievance. The rest elected less adversarial strategies to address their employment concerns.

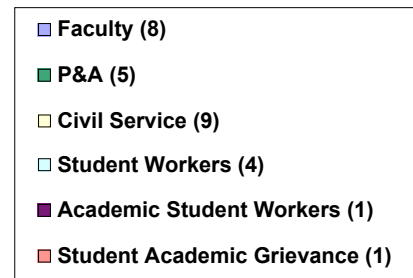
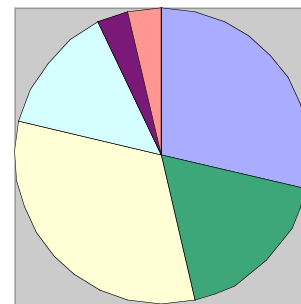


The accompanying pie chart shows the employment groups of the inquiring employees. Civil Service employees had the highest use of the Grievance Office inquiry process. Somewhat less use was made by faculty, P&A, and students—however all three groups made substantial use of the office.

B. Grievances

In 2003-04, 28 new grievances were filed, the same number filed in 2002-03. One of the newly filed student grievances was filed pursuant to the Board of Regents Policy: *Student Academic Grievance*¹.

In addition to the 28 new grievances, 13 grievances filed prior to academic year 2003-04 were continued for active processing in 2003-04. Over the course of the year, 34 grievance files were closed. This compares to 35 grievances closed in 2002-03.



¹The Grievance Office has responsibility for oversight of the Student Academic Grievance Policy. This policy is administered within collegiate units. The Grievance Office does not conduct Phase I or Phase II meetings in these grievances. Parties may request appeal to the University Academic Grievance Committee, and to the University Grievance Officer who serves as the University Academic Grievance Officer.

C. Informal Resolutions at Phases I and II

Once a grievance is filed, the Grievance Policy provides two structured opportunities for informal resolution of a grievance: a Phase I meeting between the parties, and a Phase II meeting with the grievant and a representative of University administration. The grievance officer facilitates the Phase I and Phase II meetings. At these meetings, advisors often accompany the parties. Both Phases I and II often are continued to permit further discussions and meetings.

In 2003-04, 24 of the 28 newly filed grievances were resolved through Phase I or II meetings or other informal processes. This reflects an 86% resolution rate in the informal process for grievances filed in 2003-2004. This compares to an 85% resolution rate in the preceding year. Two grievances were not resolved in informal processes and two were put on hold due to medical leave and will be processed in 2004-2005.

Of the 13 grievances filed prior to 2003-04 but actively processed in 2003-2004, five were resolved in informal processes during 2003-2004.

D. Advisory Determinations and Jurisdictional Challenges

The Grievance Policy provides, in part, that the grievance officer:

will review each complaint to make an advisory determination whether the complaining party is covered by the UGP [University Grievance Policy], and whether the complaint is a grievance within the scope of the UGP. (Policy, Section IV, Subd. (1))

When requested by a party—usually the University representative—the grievance officer makes an *advisory determination* on jurisdiction. It is subject to review by a Phase III panel if either party requests it.

In 2003-04, there were three jurisdictional advisory determinations by the grievance officer. None was reviewed by a Phase III panel. One concluded that the grievance was filed timely; the grievance subsequently was settled. Another concluded that Human Resources policy precludes grievance on the issue of civil service vacation donation and the grievance of this issue was dismissed. The third determined that non-renewal of a P&A employee was not grievable, but that notice of non-renewal did not commence until the employee received a letter containing corrected information about the appointment.

E. Phase III Panel Hearings and EVPP Decisions

Phase III of the grievance process is a fair hearing before a three-person panel of University employees. The panel is made up of a hearing officer selected from the Hearing Officers Panel Roster, a member of the University Grievance Board selected by the grievant, and a third member appointed by the responsible University senior administrator. After the hearing, the panel prepares a written decision that is distributed to the parties and to the Executive Vice President and Provost, who may accept, modify, or reject the panel's decision.

Pre-hearing Conferences. Prior to Phase III hearings on the merits, a pre-hearing conference is held with the parties and the Hearing Officer to prepare for the hearing. There were five pre-hearing conferences in 2003-04 compared to eleven pre-hearing conferences in 2002-2003.

Panel Hearings. In 2003-2004, two Phase III panel hearings were held, compared to eight hearings in 2002-03. One resulted in a panel decision favorable to the grievant; the other, favorable to the University.

The Grievance Policy provides that a panel decision that is favorable to the grievant may be rejected by the Executive Vice President and Provost. (Policy, Section VIII, Subd. 6) The EVPP partially rejected the 2003-04 merits panel decision that was favorable to the grievant. This case proceeded to arbitration in 2004-2005.

The following table is a summary of 2003-04 Phase III panel hearing activity. The designations “For Grievant,” “For University,” “Accepted,” and “Rejected” capture the primary emphasis of the panel decisions or administrative actions.

Phase III Hearings on the Merits

Employee Classification	Issue Before Panel	Panel Decision	EVPP Action
Civil Service	Termination	For Grievant	Partially rejected
Faculty	Termination	For University	

F. Phase IV Arbitration

If the grievant receives an unfavorable decision from either a Phase III panel or from the Executive Vice President and Provost, the grievant may petition the Minnesota Court of Appeals for review or may elect to proceed to binding arbitration under the Grievance Policy.

Phase IV of the grievance process provides an opportunity for final and binding arbitration by a three-person panel, chaired by an arbitrator from outside the University selected by the parties from a list provided by the Minnesota Bureau of Mediation Services. Under the Grievance Policy, grievants who choose to proceed to arbitration must sign an acknowledgment of their voluntary choice to proceed to binding arbitration, and must waive and release their right to pursue substantially the same claim in any other forum. The grievant and the University are each responsible for one-half of the arbitrator’s fees and expenses.

During 2003-2004, four grievances were arbitrated (compared to five arbitrations the previous year). Three arbitration hearings were on the merits and one was on jurisdiction.

Arbitrations on the Merits

Employee Classification	Issue	Arbitration Decision
Faculty	Indemnification	For Grievant
Faculty	Misclassification of job/non-renewal	Settled
Civil Service	Termination	Continued

Arbitration on Jurisdiction

Employee Classification	Issue	Arbitration Decision
Research Associate	Jurisdiction	For University

G. Coordinate Campuses

The Grievance Policy applies to the coordinate campuses. In 2003-04, there were inquiries and formal grievances that were processed on the Duluth and Crookston campuses. All but one of these grievances were settled in the informal process.

H. Issues and Policies Grieved

The Grievance Office maintains data regarding the issues presented in inquiries and grievances and the policies that are allegedly violated. However, it is difficult to provide an accurate general picture of the subject matter of grievances and inquiries because several issues often fuel an individual grievance. The chart that follows summarizes the most frequently raised issues presented in grievances and inquiry meetings in 2003-04 and the number of grievants or inquirers for whom each issue was significant.

Issues Raised in Grievances and Inquiries

Issue	Total	Grievants	Inquiry only
Disrespectful work environment	26	6	20
Termination of employment	25	12	13
Compensation	21	5	16
Assignment of work	8	4	4
Discrimination	8	1	7

Policies Cited in Grievances and Inquiries

Policy	Total	Grievants	Inquiry only
Civil Service Rules	25	8	17
Code of Conduct	20	4	16
P&A Manual	16	3	13
Compensation Policy	8	3	5
Tenure Code	7	4	3

Other issues raised in 2003-2004 regarded performance evaluations, benefits, unfair supervision, and job classification. Other policies cited included Equal Opportunity/Affirmative Action, student employment rules, employment contracts, and the Board of Regents Policy: *Student Academic Grievance*.

II. Grievance Advisory Committee Activities and Recommendations

The Grievance Policy provides for a Grievance Advisory Committee to be appointed by representative University groups. The Grievance Advisory Committee advises the President on the performance of the grievance officer and on the operation of the Grievance Policy.

In 2002-2003 the Grievance Advisory Committee, at the request of the Faculty Consultative Committee, addressed the question of whether ombuds services were needed at the University. The Committee's work and recommendations for further study were described in its Interim Report and Preliminary Recommendations on Ombuds Services for University Employees, dated April 10, 2003, which is available at www1.umn.edu/ugo.

In 2003-04 the Committee continued this work. Pursuant to the Policy, the Grievance Advisory Committee reviews the Grievance Policy every five years and reports its findings to the President and to the University Senate. The Grievance Advisory Committee's second five-year review began in the fall of 2003.

In addition, in August 2003 the President charged the Grievance Advisory Committee and the Grievance Office with some particular responsibilities for promoting conflict resolution services at the University. These included convening a consortium of University offices with responsibilities for resolving disputes within the University. The Dispute Resolution Work Group was convened in October 2003 and met monthly through May 2004. Participating offices included Multicultural and Academic Affairs, Institutional Compliance, Office of the General Counsel, Disability Services, Equal Opportunity and Affirmative Action, Carlson School of Management, Employee Assistance Program, Student Dispute Resolution Center, Office of Vice President for Research, and Human Resources. The Dispute Resolution Work Group worked in tandem this year with the Grievance Advisory Committee on 1) evaluating and amending policies and practices to better integrate and coordinate dispute resolution services, 2) coordinating outreach efforts, and 3) evaluating the Grievance Policy to determine if it could be amended to produce a less adversarial conflict resolution process.

In August 2004, the Grievance Advisory Committee reported on its recommendations following its five-year review and the Dispute Resolution Work Group also reported its recommendations and accomplishments. Both reports are available at www1.umn.edu/ugo. The Grievance Advisory Committee recommended a new Conflict Resolution Policy to replace the Grievance Policy. The recommended new policy is an appendix to this Annual Report. The Dispute Resolution Work Group joined with the Grievance Advisory Committee in this recommendation. The substantive changes reflected in the new policy are summarized in the Grievance Advisory Committee Report. The new policy was designed to further the President's goal of making less-adversarial conflict resolution services available for University employees.

During the spring and early summer 2004, a prior draft of revised administrative procedures in the form of a "Dialogue Brochure" was presented and discussed with leadership in the offices of Human Resources, General Counsel, Equal Opportunity and Affirmative Action, Institutional Compliance, and the Student Dispute Resolution Center. The Dispute Resolution Work Group, with representatives from sixteen University groups and offices, reviewed and discussed this draft. Faculty were consulted through presentations at the Senate Committee on Faculty Affairs, a meeting with the Chair of the Senate Judicial Committee and a meeting with prior chairs of the

Grievance Advisory Committee, Professors Laura Cooper and Fred Morrison. The President's Executive Committee discussed the proposal at its April meeting and the Twin Cities Deans discussed it in July 2004. The Grievance Advisory Committee's Report on its Five-Year Review issued in August 2004 recommended a conflict resolution policy and administrative procedures that incorporated comments received during the consultation process. The revised policy was presented to the President, the Civil Service Committee, the Council of Academic Professionals and Administrators, and the Faculty Consultative Committee. With the endorsement of all of these constituencies, the proposed conflict resolution policy and administrative procedures were approved by the University Senate at its meeting on September 30, 2004.

III. Outreach Activities

In 2003-04, the grievance officer gave numerous presentations to campus groups regarding the work of the office, including the Civil Service Committee, new Human Resources staff orientation, Grievance Office advisors, and Phase III panelist training on the grievance process.

IV. Annual Survey

The Grievance Advisory Committee conducts an annual survey of all participants in grievances or inquiry meetings, including inquirers, grievants, University representatives, advisors, attorneys, panel members, and arbitrators. To protect anonymity, the surveys are returned directly to the Chair of the Grievance Advisory Committee. The Grievance Advisory Committee reports the results of the survey to the President. Survey responses in 2003-04 showed a high level of satisfaction with the performance of the grievance officer. In 2003-04, the Grievance Advisory Committee reported that the Grievance Office was fulfilling its obligations to provide a fair process for the resolution of employee grievances.

V. Appendix

**Proposed Conflict Resolution Process
8/24/04**

University of Minnesota
Conflict Resolution Process²

*A University of Minnesota
conflict resolution program for*

faculty
academic professionals and administrators
civil service staff
student workers

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² This University Conflict Resolution Process replaces the former Grievance Policy. It does not alter other University offices and programs providing conflict resolution services, such as the Office of Equal Opportunity and Affirmative Action, the Senate Judicial Committee for regular faculty, or the Student Dispute Resolution Center for students.

CONFLICT RESOLUTION PROCESS

I. PURPOSE: to support University employees—administrators, faculty, staff, and student workers—by providing services to:

A. Encourage dialogue. This program encourages University employees to express concerns when conflicts emerge in the workplace, seek skilled help when needed, and engage in constructive dialogue with people directly involved.

B. Identify interests. A key to conflict resolution is to reorient a dispute from focusing on the parties' "rights" or "positions" to their "interests." Interests are the parties' needs and desires that underlie their positions in the dispute.

C. Find options. When interests are made visible, participants in a conflict can often see new options to meet their needs. Options are then evaluated against how well they satisfy the interests of the participants. Identifying interests and evaluating options is usually accomplished in problem-solving sessions.

D. Build accords. Disagreements can be resolved through many techniques—domination, compromise, conciliation, or integration. Integration is the best foundation for long-term solutions. Accords respect the integrity of the difference, while finding ways to mesh the commonalities and move forward.

E. Conduct fair hearings. When the people involved are unable to reach agreement, formal processes for third parties to decide disputes can bring needed closure. This program administers peer panel hearings and arbitrations.

II. OVERVIEW

A. Informal conflict resolution processes. Employees involved in a conflict—whether managers or subordinates—often are most satisfied if they remain in charge of deciding whether a particular option will meet their needs. Informal conflict resolution processes add a neutral, independent, and skilled third person to the discussion. But this third person is not a decision maker. The parties decide about acceptable processes and outcomes.

There are four informal conflict resolution processes in the program—consultation, facilitated dialogue, ombuds services, and mediation. These do not have to be pursued in sequential order. In some cases, although not often, it will be useful to try more than one of these processes. Regardless of whether a third party functions in the role of confidential coach, ombudsperson, facilitator or mediator, the simple step of including an unbiased third person can be very effective. With this help individuals often find their own solutions to the great majority of workplace conflicts.

B. Formal conflict resolution processes. Not all disputes can be resolved by dialogue and problem-solving. Sometimes there is an irreconcilable clash of interests or positions. When this occurs, formal conflict resolution procedures are useful. A decision by a peer panel can accomplish, in certain cases, what interest-based problem-solving cannot. Formal

processes include a fair hearing by a panel of peers, a final University decision by the Senior Vice President and Provost, and the option of a binding decision in arbitration. The formal process begins with a petition. The employee submitting a petition is the petitioner. The employee designated to respond to the petition is the respondent.

C. No retaliation. There are many impediments to expressing concerns in the workplace. Retaliation should not be one of them. Retaliation against any person for using the University's Conflict Resolution Process is prohibited.

III. WHO, WHAT, WHEN

A. Who is eligible for services? Non-bargaining unit University employees, including administrators, faculty, academic professional and administrative, civil service, and student workers (including research and teaching assistants), on all campuses of the University of Minnesota are eligible for conflict resolution services. This program is available to former members of the faculty currently with emeritus status.³ Employees represented by a labor organization may not use this process, but instead should pursue their concerns through the process established by their union contract. This program is not available to persons who are not employed by the University, even if their work is physically located at the University, such as employees of University of Minnesota Physicians. Students with non-employment issues should contact the Student Dispute Resolution Center.

B. What issues are covered? Informal conflict resolution services are available for employment-related disputes of all kinds. For certain subject matters, referral to a different University office may be appropriate, such as referral of faculty tenure issues to the Senate Judicial Committee.

Formal conflict resolution services are not available for all workplace disputes. To access the formal process, a University employee must meet certain jurisdictional thresholds. A petitioner must be a non-bargaining unit employee or faculty emeritus and identify a specific University rule, regulation, policy, or practice pertaining to employment alleged to have been violated. In addition, the petitioner must comply with the time limit described below and be within the covered subject matter described in the Appendix, Part II, A.

C. What are the time limits? Informal conflict resolution services are available without a fixed time limit. Employees are nonetheless encouraged to bring issues forward promptly. The Conflict Resolution Office may decline to process issues that are too stale to permit current resolution, that have been processed appropriately within this or other offices, or that create unfair surprise or prejudice for others involved.

Formal conflict resolution processes are governed by time limits. A University employee must submit the issue to the Office within six weeks of the 1) occurrence of the action being challenged or 2) notice of the action being challenged, whichever is later. Once submitted, all disputes will initially be processed using informal conflict resolution processes. However, when these are unsuccessful, only those disputes that are initially submitted to the Office within the six-week time limit will be eligible to proceed to the formal conflict resolution processes. After

³ See Appendix, Part II, A.7, for formal process services for faculty emeriti.

a two-month period in the informal processes, the Office will ask eligible employees to complete a written petition if they intend to proceed to the formal process. The time limits in the formal conflict resolution process can be modified by the mutual consent of the people involved. In addition, they can be modified by the director of the Office when there are compelling reasons for delay. Compelling reasons for delay include absences due to sickness, disability, vacation, family leave, business travel, or University recess during holidays or the summer.

IV. INFORMAL PROCESSES: to help employees find their own solutions

A. Consultation. The purpose of a consultation may be to brainstorm, to get appropriate referrals to University resources, to get information about policies and practices or to get the perspective of a neutral person not connected to the dispute. Office staff are knowledgeable about University employment policy and University resources and are skilled in conflict resolution. Individual consultations with staff can help employees clarify their interests and identify and evaluate options.

Office staff are not advocates for faculty, staff, administrators, or student workers. They do not provide legal advice; they are not trained as therapists nor are they arbiters of policy disputes. Their role is to serve as third-party, skilled neutrals to help an employee express differences, evaluate interests, and reach resolution.

Many employees find that consultations are all the help they need or want. They appreciate the confidential nature of the consultation process and the fact that they decide what the next steps will be.

B. Ombuds Services. In an ombuds role, Office staff receives complaints and questions from employees concerning employment issues. Options are identified and evaluated and the employee decides what initiatives, if any, Office staff should take on the employee's behalf.

The ombuds usually contacts other involved employees to gather, and to convey, information. Through dialogue with involved individuals, the ombuds helps the parties understand each other's perspectives and identify workable resolution options.

Ombuds services are very flexible. They can be structured to meet the needs of an individual dispute.

C. Facilitated Dialogue. When an employee requests a facilitated dialogue, Office staff will contact the other involved employees to convey the request and to schedule a facilitated dialogue. University employees are strongly encouraged to participate in facilitated dialogue, when requested, as explained further in the Appendix, Part I, F.

A facilitated dialogue is a face-to-face discussion between the disputing parties with a third-party neutral facilitator. Usually the facilitator asks the employee raising the issue to explain the issue from his/her perspective. The other employee(s) are then invited to respond. Each participant has the opportunity to ask questions for information. The facilitator may ask questions. All participants are involved in discussions to identify their respective interests,

brainstorm possible options for resolutions, and then evaluate the options against the interests to reach accords.

D. Mediation. Mediation is a consensual process that parties can use to resolve disputes. When requested, the Conflict Resolution Office conducts mediations in accord with the Minnesota Civil Mediation Act. This protects the confidentiality of the mediation process and the enforceability of agreements that emerge from mediation.

E. General Rules for Informal Processes. Rules that apply to the informal processes are found in the Appendix, Part I.

V. FORMAL PROCESSES: to bring closure through third-party decision makers

A. Peer Hearing

1. Purpose. A Peer Hearing is designed to be a fundamentally fair hearing. Its purpose is to have a three-person panel of peers listen to the facts and arguments presented by the petitioner and the respondent and decide the dispute. The decision of the peer panel is forwarded to the Senior Vice President and Provost for final University decision.

2. Parties. The parties are the petitioner and the senior administrator of the unit in which the petitioner is employed. The senior administrator may designate a representative to act as respondent.

3. Petition. The Peer Hearing process is initiated by a written petition that identifies:

- a) the petitioner and his/her employment status;
- b) the action being questioned;
- c) the efforts of the petitioner and respondent to resolve the issues through informal processes;
- d) the specific University rule, regulation, policy, or practice pertaining to employment, or provision of petitioner's employment contract, alleged to have been violated;
- e) the person(s) responsible for the action, if known, and the unit; and
- f) a proposed remedy that is within the authority of the University to grant.

Additional rules regarding appropriate subject matter for a petition and jurisdictional determinations are found in the Appendix, Part II, A.

4. Response. The Petition for Peer Hearing will be forwarded promptly to the senior administrator of the unit in which the petitioner is employed. The senior administrator will submit a written Response to the petition within two weeks following receipt of the Petition and will identify the person who will serve as the respondent for the petition. On receipt of the petition and the response, if the Office director determines that informal processes for resolution have not been exhausted, the parties will be referred to an appropriate informal process before proceeding to a peer hearing.

Participation in an informal process is required before proceeding to a peer hearing except in unusual circumstances, and then only with the mutual consent of the parties.

5. Panel. A peer panel consists of one member chosen by the petitioner from the Panelist roster, one designee of the senior administrator, and one hearing officer from the Hearing Officer roster.

A hearing officer is appointed by the Office director from the same employment category as the petitioner. If the petitioner is a student worker, the hearing officer will be from the faculty category. A party may reject a hearing officer selection without stating a reason if the rejection is submitted to the director within one week of receipt of notice of the selection. A party may do this only once. The Office will then select another hearing officer from the roster. The maintenance of the rosters is described at Part VII, D.

All panelists will serve as neutrals, not advocates, and none will have a direct interest in the dispute. All panelists will give the petitioner and the respondent's cases open-minded, fair consideration.

6. General Rules. The general rules for a panel proceeding are found in the Appendix, Part II.

7. Decision. The panel prepares a written decision, including a statement of the issues, contentions of the parties, findings of fact, opinion and award, if any. The decision will be sufficiently detailed to assist the Senior Vice President and Provost in reaching a final University decision. A majority of two panelists is required to reach a decision. A dissenting panelist may submit a written dissent. The panel's decision will be issued within one month of the conclusion of the hearing, and will be signed and promptly distributed by the Office to the parties and to the Senior Vice President and Provost.

B. University Decision

1. Record. The Senior Vice President and Provost will receive copies of the petition, response, written arguments, the panel decision, and exhibits submitted to the panel. In considering the University decision, the Senior Vice President and Provost may not discuss the petition with the parties to the petition. The Senior Vice President and Provost may discuss the decision with the hearing officer and the panelists to better understand the pertinent information and reasons for decision.

2. Final Decision. Within two weeks of the receipt of these materials, the Senior Vice President and Provost will submit the University's final decision, and if the panel's decision is modified or rejected, will state the reasons why. The Senior Vice President and Provost has full discretion to accept, modify, or reject the panel decision. The Conflict Resolution Office will distribute the Senior Vice President and Provost's decision to the parties.

C. Arbitration

1. Decision to Arbitrate and Waiver/Release. If the petitioner is dissatisfied with the decision of the peer panel or with the University decision, the petitioner may choose to proceed to arbitration by submitting a written notice to the Office within two weeks of receipt of the Senior Vice President and Provost's decision. Alternatively, the petitioner may appeal the decision to the Minnesota Court of Appeals by a "writ of certiorari." The statute that describes the right of certiorari review is Chapter 606 of Minnesota Statutes. The timelines for seeking certiorari review are set by that statute.

To proceed to arbitration, the petitioner shall voluntarily waive and release all rights to pursue substantially the same claim in any other forum. If a petitioner elects arbitration under this policy, the right to seek certiorari review at the Court of Appeals is waived.

2. Purpose and Parties. The purpose of arbitration is to provide an opportunity for the parties to engage voluntarily in binding arbitration of the dispute. The parties are the petitioner and the President or a delegate, who will be the respondent for arbitration.

3. Selection of Arbitrator and Panel. The Office will obtain a list of five arbitrators randomly selected by the Minnesota Bureau of Mediation Services from rosters maintained by the Bureau.

- a) In cases involving faculty or academic professional and administrative staff, the roster of arbitrators will have no fewer than fifteen non-Minnesota resident members of the National Academy of Arbitrators holding either tenured faculty rank or emeritus status in a university located in the United States, other than the state of Minnesota. Faculty or academic professional and administrative staff may choose, instead, to use the Bureau of Mediation Services roster described in b) below by notifying the Office in writing.
- b) In cases involving civil service or student employees, the roster will be arbitrators in Minnesota who meet the Bureau of Mediation Services' criteria, excluding staff of the University of Minnesota.

The petitioner and the respondent will alternate in striking names from the list until a single arbitrator's name remains. The party to strike first will be determined by the toss of a coin. In addition to the arbitrator, the arbitration panel will consist of a panel member selected by the petitioner from the panelist roster and a senior administrator selected by the President or a delegate.

4. Roles of the Arbitrator and Panel. The arbitrator will direct the course of the hearing and of all preliminary hearings. In performing this role, the arbitrator will follow professional arbitration practice, the provisions of this policy, and the General Rules in Appendix, Part II.

All panelists will serve as neutrals, not advocates, and none will have a direct interest in the dispute. All panelists will give the petitioner and the respondent's cases open-minded, fair consideration.

5. Role of the Office. The Office will convene the arbitration panel, notify the panel members of their selection, and forward to the panel members the petition, response, peer panel decision, the final University decision, and the waiver and release. The parties are responsible for all other materials submitted to the panel. On request by the arbitrator, the Office will coordinate scheduling of the arbitration hearing and conferences.

6. General Rules. General rules for an arbitration proceeding are found in the Appendix, Part II.

7. Panel Decision. The arbitration panel will issue a decision within one month from the date of the close of the record. The decision will be by a majority of the panel. The decision will be in writing, will be signed, and will include a statement of the issues, contentions of the parties, findings of facts, and opinion and award, if any. A dissenting panel member may submit a written dissent. The decision will be sent to the Office, which will distribute it to the parties promptly. The decision is subject to the provisions of Minnesota's Uniform Arbitration Act found at Chapter 572 of Minnesota Statutes.

8. Expenses. The petitioner and the respondent will each be responsible for one-half of the arbitrator's fees and expenses. The arbitrator will be responsible for making fee arrangements, billing the parties and collecting payments. There will be no charge for participation by the other panelists. The parties will be responsible for their own expenses.

VI. ADMINISTRATION

A. Conflict Resolution Office. The Senior Vice President for System Administration, after consultation with the Conflict Advisory Committee, will appoint the director of the University Conflict Resolution Office. The director will report to the Senior Vice President for System Administration. The Senior Vice President for System Administration will supervise the Office in consultation with the Conflict Advisory Committee.

B. Duties of Director.

1. Informal Conflict Resolution Services. The director will provide informal conflict resolution services described in this policy. Providing informal conflict resolution services includes informing employees regarding University resources, options and procedures; referring employees to the appropriate University offices; and being available to assist University managers to problem-solve employment issues.

2. Fairness. The director will administer this policy so that the conflict resolution processes are fair to all participants. The director is not a decision maker in

the formal conflict resolution processes. The decision makers are the peer panel, the Senior Vice President and Provost and, in certain circumstances, an outside arbitrator.

Administering the formal conflict resolution processes may include reviewing each petition to make an advisory determination whether the petitioner has satisfied the jurisdictional requirements of the formal process; determining whether there are compelling reasons for delay; and informing the parties of the procedures to be followed.

3. Annual Report. The director will prepare an annual report on the work of the office, including a summary of issues raised in petitions, decisions rendered and the instances in which the Senior Vice President and Provost declined to accept the recommendations of a peer panel. The report will be distributed to the Senior Vice President for System Administration, Senior Vice President and Provost, President, Conflict Advisory Committee, Faculty Consultative Committee, Council of Academic Professionals and Administrators, Civil Service Committee, and Student Consultative Committee. It will be posted on the Office web page.

4. Coordinate Services. The director will convene a work group of University offices to coordinate University conflict resolution services.

C. Conflict Advisory Committee

1. Members. The Conflict Advisory Committee will consist of a chair appointed by the Senate Consultative Committee, two administrative representatives appointed by the President, and one member appointed by each of the following groups: Senate Committee on Committees, Council of Academic Professionals and Administrators, Civil Service Committee, and Student Senate Committee on Committees. Appointments may be for terms of up to three years.

2. Duties. The Conflict Advisory Committee will advise the Senior Vice President for System Administration regarding the selection of the Office staff, its performance, and the operation of this program. The committee has no role in the disposition of individual petitions.

3. Five-year Review. The committee will undertake a thorough review of the functioning of this program every five years and report its findings and recommendations to the Senior Vice President for System Administration, President, and University Senate.

D. Rosters. Office staff will train all members of these rosters for their roles. Appointments may be for terms of up to three years.

1. Hearing Officer Roster. A roster of hearing officers will be maintained by the Office. It will include nine individuals eligible to serve as hearing officers—three regular faculty members, three Professional and Administrative employees, and three Civil Service employees. The Faculty Senate Committee on Committees, Council of Academic Professionals and Administrators, and the Civil Service Committee will nominate two individuals for each opening on the hearing officer roster for each

respective employee group. The Senior Vice President for System Administration will select one of the two nominees for each opening or request additional names.

2. Panel Roster. A roster of panelists will be maintained by the Office. Petitioners will select panel members for peer panel hearings and arbitrations from this roster. It will include twelve individuals eligible to serve as panelists—four regular faculty members (two of whom may be administrators), four Professional and Administrative employees, and four Civil Service employees. The Faculty Senate Committee on Committees, Council of Academic Professionals and Administrators, and Civil Service Committee will appoint individuals for each opening on the roster for each respective employee group.

3. Advisor Roster. A roster will be maintained by the Office identifying University employees willing to serve as advisors to parties in conflict resolution proceedings.

APPENDIX

I. GENERAL RULES FOR INFORMAL PROCESSES

A. Confidentiality. Informal processes are confidential except as necessary to conduct the process or as permitted or required by law.

Information learned during any of the informal processes will not be conveyed outside of the Office unless required by law, e.g., a court order compelling disclosure. Informal files are not forwarded to the formal conflict resolution process.

B. Neutrality. Office staff are not advocates for petitioning employees or for responding employees. They are not advocates for subordinates or supervisors. They do not come to a conflict with preconceived ideas of who is more likely to be right or wrong. They are advocates for fair processes and for fair resolutions based on interests and options.

C. Independence. Although the Office is part of the University system, it is structured to maintain independence from University administration. Office staff are employees of the University and subject to its policies. However, the Office reports directly to the Senior Vice President for System Administration. It does not report within the Office of Human Resources or the Office of the General Counsel. In addition, the performance of the Office and its director is based on an annual survey of users that is evaluated by an independent Conflict Advisory Committee composed of representatives of employee groups. A complaint about the Office's handling of an individual matter is referred to the Chair of the Conflict Advisory Committee for investigation.

D. Request for Informal Assistance. If an employee wants other involved employees to participate in ombuds services, a facilitated dialogue, or mediation, the employee will complete a written Request for Informal Assistance. This is a simple form that identifies the subject matter to be discussed and the other employees who are being asked to participate. It is provided to the other involved employees who are being asked to participate and to their advisors.

E. Settlements. A settlement arrived at in an informal process may be contingent on final approvals pursuant to the Board of Regents Policy: *Legal Claims and Settlements*.

F. Participation. If a University employee requests a facilitated dialogue or mediation with a supervisor or manager, it is part of the supervisor or manager's job at the University to participate in the informal conflict resolution processes. If the employee identifies a dispute with a co-worker who is not a supervisor or manager, the co-worker is encouraged to participate in the informal process but is not required to do so as part of the job.

II. GENERAL RULES FOR FORMAL PROCESSES

A. Covered Subject Matter

1) **Employment Claims.** Certain employment claims (sometimes referred to as common law claims) against the University may be required to proceed through these formal processes prior to seeking review by a court. For these claims, if an employee does not proceed in the peer hearing process or fails to file a timely petition, the employee may forfeit the opportunity to have a court review the claim. For other employment claims where a statute provides a remedy, a petitioner may have the option of proceeding directly to the courts without proceeding through these internal formal processes. In a petition, a petitioner may include all subject matter that is covered by this policy. If a petitioner chooses not to include all subject matter, the opportunity for court review of the omitted subject matter may be forfeited.

2) **Faculty Complaints.** Complaints by a regular faculty member for which a Senate Judicial Committee hearing is provided under the Board of Regents Policy: *Faculty Tenure* will not be heard under this policy.

3) **Discrimination.** Issues of discrimination in the employment relationship, including sexual harassment, may be submitted to the Conflict Resolution Office or submitted to the University's Office of Equal Opportunity and Affirmative Action (EOAA), but not both. The director of EOAA will appoint a representative to serve as a non-voting advisor to a peer panel hearing a petition alleging discrimination under this policy. Discipline imposed at the conclusion of an EOAA investigation can be the subject of a petition.

4) **Academic Misconduct.** Issues of academic misconduct are not within the scope of this policy. Such claims will be referred to the appropriate office for investigation and review. Discipline imposed on an eligible employee including discipline imposed as a result of academic misconduct proceedings, may be grieved under this policy.

5) **Civil Service Employees.** Civil Service employees may use this policy for any alleged rules violations unless specifically denied in the Civil Service Rules. Under Civil Service Rule 7, involuntary termination of employment during the probationary year is not eligible for formal processes under this policy so long as applicable rules and policy are followed.

6) **Academic Professional and Administrative Employees.** P&A employees may use this policy for alleged violations of Human Resources policy governing P&A appointments, except for non-renewal of a fixed-term or annual appointment when the appointment term is completed and the required notice given.

7) **Faculty Emeriti.** An emeritus faculty member who currently is an employee of the University may submit a petition for a peer hearing with respect to that employment on the same basis as other employees of the University. An emeritus faculty member who is not currently an employee of the University may submit a petition

alleging a covered violation: 1) if such violation occurred prior to termination of employment; or 2) if a written contract signed by the appropriate University official during the employment period is violated after the employment terminates; provided, however, that the remedy in such a case will be limited to a financial remedy.

8) Retaliation. Retaliation against a person for raising issues or filing a petition under this policy may be the subject of a petition.

B. Jurisdictional Determinations. Good faith disputes may arise about whether a person is eligible to use the formal processes for a particular issue. When a party raises a jurisdictional challenge with the Office, the director will make a written determination whether the petition meets the jurisdictional requirements for a Peer Hearing. The term “jurisdictional limits” refers to formal process requirements of employment status, subject matter, and time limits.

Any party disagreeing with the director’s jurisdictional determination may seek review by notifying the director in writing within two weeks of the party’s receipt of the determination. Review will be done by a hearing officer. The hearing officer’s decision will be forwarded to the Provost who may accept, modify, or reject it in accord with the procedures at Part VI, B. The petitioner may request review of this decision through arbitration.

The University’s deferral of jurisdictional challenges is not a waiver of its rights to raise these challenges at any point.

C. Pre-Hearing Conference. The Office will schedule a pre-hearing conference for the parties and their advisors within two weeks following identification of the University representative and the panelists. The hearing officer conducts the pre-hearing conference. The purpose of the pre-hearing conference is to prepare the parties for the hearing, to clarify the issues and the relief requested, to reach agreements about exchanging appropriate information, to invite questions from the parties, and to schedule the hearing.

D. Conduct of a Peer Hearing and Arbitration. The hearing will be held within one month following the pre-hearing conference unless there are compelling reasons for delay. The hearing officer or arbitrator will direct the course of the hearing. The peer hearing and the arbitration are designed to be fundamentally fair hearings and are not intended to mirror trial procedures.

1) Responsibilities. The petitioner and the respondent are responsible for presenting their case to the panel. The Office does not prepare or present the cases. The parties are responsible for preparing documents for each panelist and when witnesses are required, for selecting their witnesses. Scheduling witnesses can be done in consultation with the Office. The Office assists with administration of the hearing.

2) Determination of the Respondent. The Senior Vice President and Provost will have the final authority to determine the appropriate respondent for peer hearings and arbitrations. These decisions may not be contested.

3) Presentation. All parties have the right to be present throughout all proceedings, to submit evidence, and to examine witnesses. The rules of evidence used in courts of law do not apply. The petitioner, the respondent, and witnesses can tell their story to the panel in a format that is most comfortable for them, subject to the hearing officer's or arbitrator's direction. Information does not have to be presented by direct or cross-examination format. The panel members and the parties may ask questions.

4) Relationship to Informal Processes. Statements made and actions taken by either party in the informal processes under this policy are not submitted at a Peer Hearing.

5) Record. The Conflict Resolution Office will make an audio recording of the peer hearing and will maintain a record of peer hearing proceedings. The arbitrator will determine the record for an arbitration.

6) Witnesses. Members of the University community are strongly encouraged to cooperate if they are requested to provide information at a peer hearing or arbitration under this policy. At the request of either party to an arbitration, the arbitrator may issue subpoenas as provided by law.

7) Burden of Proof. In cases not involving the imposition of discipline, the petitioner has the burden of demonstrating, by a preponderance of the information presented, that there was a violation of a University rule, regulation, policy, or practice. In cases in which discipline has been imposed, the respondent has the burden of demonstrating, by a preponderance, that the employee violated a University rule, regulation, policy, or practice and that the discipline was appropriate.

In cases challenging discretionary actions, such as salary adjustments and performance evaluations, the petitioner has an additional burden of demonstrating that the challenged action constitutes a clear abuse of discretion.

8) Information Exchange. Parties will comply with all reasonable requests for information relevant to the petition, consistent with law. Hearing officers and arbitrators cannot require disclosure of information that is inconsistent with any law, particularly the Minnesota Government Data Practices Act and the Federal Family Educational Rights and Privacy Act. To comply with confidentiality obligations of the University, a party and panel members may be required by the University, at its sole discretion, to sign and abide by a confidentiality agreement before certain information may be released for the limited purpose of a hearing.

Disputes over access to documents or information at a peer hearing will be referred to the hearing officer for a preliminary hearing for the limited purpose of resolving the dispute. The hearing officer may confer with the director regarding guidelines for access to documents or information. The hearing officer will issue a written decision regarding information exchange. The hearing officer's decision will govern the peer hearing, but will be open to review and reversal by the Senior Vice President and Provost or by an arbitrator. At arbitration, disputed information issues are referred to the arbitrator for decision.

9) Unreasonable Delay. If the petitioner or the respondent fails to participate in the formal process in a timely way, the director will refer the case to a hearing officer to decide whether a party has unreasonably delayed in the process and, if so, what the result should be. The hearing officer's decision is final.

10) Remedies. The panel may recommend remedies that, to its knowledge, are not inconsistent with University policy. The panel may recommend reinstatement, back pay, and benefits actually lost. The panel may not recommend attorney's fees or monetary damages for pain and suffering, emotional distress, penalties, or punitive damages.

11) Advocates and Attorneys. The success of conflict resolution processes depends on recognizing that workplace conflict is predictable and healthy. Successfully processing workplace conflict is an ongoing task for management and all employees. These conflict resolution processes are designed for lay people and are not designed to require the participation of attorneys. The petitioner and the respondent are encouraged to have a non-attorney advisor assist them. Contact the Conflict Resolution Office for a roster of University employees interested in serving as advisors.

If a petitioner is an attorney (a person who has a J.D. law degree) or chooses to be represented by an attorney, the University respondent may be represented by an attorney from the Office of the General Counsel. It is the respondent's responsibility to contact the Office of the General Counsel for representation. If the petitioner is not an attorney and is not represented by an attorney, then the University representative may not be an attorney or accompanied by an attorney. This policy does not restrict either party from private consultations with an attorney.

12) Settlements. Settlements of petitions in the formal process are contingent on final approvals required by the Board of Regents Policy: Legal Claims and Settlements.

13) Confidentiality. The Office and hearing panels will not disclose individually identifiable documents or information concerning a petition, a peer hearing, or an arbitration, except as necessary to comply with procedures for conducting the hearing, or as permitted or required by law. All hearings will be closed to the public.

14) Implementation. The University will faithfully carry out its responsibilities under this policy and implement the terms of a decision under this policy.

III. PROPOSED BOARD OF REGENTS POLICY

University of Minnesota
BOARD OF REGENTS POLICY
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<p style="text-align: right;">Human Resources</p> <p>CONFLICT RESOLUTION PROCESS</p> <p>Adopted:</p> <p>Supersedes: (see end of policy)</p>

CONFLICT RESOLUTION PROCESS

SECTION I. PURPOSE.

The University of Minnesota shall have an internal process for the good faith review and resolution of employment-related conflicts.

SECTION II. DELEGATION OF AUTHORITY.

The Board of Regents delegates to the president the authority to administer this policy. The president, after consultation with the University Senate and the Conflict Advisory Committee, is authorized to adopt and amend administrative procedures to implement this policy.

SECTION III. SCOPE.

The conflict resolution process shall apply to the employment conflicts of faculty, academic professional and administrative staff, civil service staff, and student workers, including graduate student teaching and research assistants. The process also shall apply to complaints of faculty emeriti in accordance with the terms of the administrative procedures implementing the policy. This process shall not otherwise apply to non-employees or to employees represented by labor organizations.

SECTION IV. REVIEW.

The administrative procedures implementing this policy will be reviewed every five years pursuant to provisions established in those procedures.

SUPERSEDES: GRIEVANCE PROCEDURE DATED JULY 12, 2002