



**Idaho State
University**

POLICIES AND PROCEDURES (ISUPP)

Grievance Procedures for Institutional Faculty

ISUPP 4041

POLICY INFORMATION

Policy Section: *Academic Affairs*

Policy Title: *Grievance Procedures for Institutional Faculty*

Responsible Executive: *Vice President for Academic Affairs and Provost*

Sponsoring Organization: *Office of Academic Affairs*

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I. INTRODUCTION

The purpose of this policy is to outline the procedure for filing and assessing faculty grievances and making recommendations to the University President in a timely and impartial fashion, consistent with applicable policy and due process of law. ISU encourages a culture of openness, where faculty can file a grievance without fear of retribution. The grievance process is intended to define clearly the matters that are at issue; to assure the faculty member that the faculty member's complaint or problem is presented to and considered by appropriate University officials; and to assure the University community that decisions involving faculty members in their relationship to the University are fully considered.

II. POLICY STATEMENT

Any faculty member as defined in Article II section 1 of the Faculty Constitution shall have recourse to the Faculty Grievance Committee (henceforth "Committee") for a recommended resolution to a Grievable Event as defined in Section V.A of this policy and may file a grievance on their own behalf in accordance with this policy.

III. DEFINITIONS

- A. **Grievable Event:** The definition of a Grievable Event is included in V.A.1 and V.A.2.
- B. **Grievant:** A faculty member who has filed a grievance seeking redress of a Grievable Event as defined in V.A.1 and V.A.2.
- C. **Respondent:** The party, typically an administrator, most directly responsible for the Grievable Event.

IV. AUTHORITY AND RESPONSIBILITIES

- A. The Office of Academic Affairs has the responsibility to review this policy and make recommendations for change to be considered via the policy process outline in ISUPP 1010.
- B. The Faculty Senate is responsible to annually inform all University faculty of their right to utilize these grievance procedures to appeal an administrative decision that is covered under this policy.
- C. The Chair of the Faculty Senate will administer the grievance process according to the procedures outlined in this policy.
- D. The Provost and the AVP for Human Resources may provide support and advice to the Chair of the Faculty Senate on the administration of the process. The Provost and the AVP for Human Resources shall not influence the outcome of a specific grievance, nor are they to be involved in any deliberations regarding the final recommendation to be made to the President.
 - 1. If the Provost is the Respondent in a grievance proceeding, the Provost shall be treated as the Respondent throughout the process, and all notifications normally directed to the Provost's Office would be diverted to the President's Office.
- E. The members of the Committee are jointly responsible for administering the hearing portion of these grievance policies and procedures and for making recommendations to the University administration concerning individual grievance processes.
- F. The Office of Human Resources is responsible for providing training, in accordance with ISUPP 4039 *Faculty Suspension or Dismissal for Adequate Cause*, at the beginning of each academic year in an open meeting to the standing appeals panel to ensure existing laws, as well as University policies, procedures, and practices are clearly understood and applied fairly and appropriately. The Provost and the AVP for Human Resources shall, at the request of the Chair of Faculty Senate or the Chair of the Grievance Committee, provide material support and resources during a specific grievance process. The Chair of the Faculty Senate and/or the Chair of the Grievance Committee have the right to seek advice, support, and/or clarification from the Provost or the AVP for Human

Resources regarding existing laws, as well as University policy, procedures, and practices at any point of the grievance process.

G. Records Retention

A single records repository detailing the grievance processes will be maintained by the Office for Academic Affairs and the Office for Human Resources, in accordance with federal and state record retention laws, Idaho State Board of Education policy (II.M.2.e), and ISUPP 1030 *University Records, Archives, and Publications* and further record compilation references as detailed in VI.L of this policy.

V. POLICY

A. The procedures provided in this policy are to be used by faculty members to appeal Grievable Events, which are defined as:

1. a violation, misapplication, or application based on factually incorrect information of existing University or unit policies, procedures, or practices that adversely affect a faculty member; or
2. Unfair or inequitable treatment of a faculty member in matters within the terms and conditions of their professional or academic capacity.

Grievable Events may include, but are not limited to, decisions in such matters as denial of tenure, denial of promotion, changes in position description, performance evaluation, salary determination, violations of academic freedom, retaliation, and modification of personnel files. These procedures exclude nonrenewal of fixed-term appointments (SBOE policy II.G.5); faculty suspension or dismissal for adequate cause as defined and governed by ISUPP 4039 *Faculty Suspension or Dismissal for Adequate Cause*; Idaho State Board of Education initiated discipline rising to the level of suspension or dismissal, which shall be administered through ISUPP 4039 *Faculty Suspension or Dismissal for Adequate Cause* (SBOE policy II.L.4.c); and layoff resulting from a declaration of financial exigency or financial challenge (SBOE policy II.N) as all such matters are governed by such other policies. Denial of tenure can be grieved only on the grounds that it arose from the violation of ISUPP 4020 *Promotion and Tenure* or other applicable policies. The grievance process cannot be used to re-evaluate the merits of a tenure application. If tenure is denied, and no policies are found to have been violated, the affected party shall have the opportunity to meet with the University President. The affected person must request a meeting within ten (10) working days of the denial, and said meeting shall occur within sixty (60) working days of the request.

B. For the purposes of this policy, working days shall be defined as business days during the Fall and Spring semesters.

- C. ISUPP 1120 *Title IX Sexual Harassment and Gender Discrimination*, ISUPP 1110 *Protected Class Discrimination and Harassment*, and ISUPP 3080 *Equal Opportunity and Affirmative Action* provide processes for faculty who believe they may have been the victim of discrimination or harassment related to legally protected classes or status. Allegations of sexual harassment or discrimination based on race, color, creed, religion, national origin, gender, sexual orientation, age, gender identity, genetic information, disability, protected veteran status, or any other status protected by state or local law must be pursued through those policies. Complaints of other types of harassment or discrimination may be handled through the process described in this policy.

Administrative Note:

ISUPP 1120 and ISUPP 1110 are pending approval. Allegations regarding the previously listed violations shall be administered through ISUPP 3100 *Equal Opportunity, Harassment and Non-discrimination*. Upon the approval of the new policies, ISUPP 3100 shall be retired.

- D. For alleged Grievable Events governed by this policy, the Grievance Committee will weigh input from both parties as to whether policy violations or unfair treatment occurred, and will arrive at a recommendation that addresses what remedy, if any, is appropriate.
- E. A request for a hearing does not affect the effective date of the decision being appealed.
- F. Violations by any party of this policy or any rules or procedures adopted by the Committee may, with consent of the party not in violation, result in referral of the grievance to the President without recommendation by the Committee.
- G. In accordance with SBOE policy (II.M.2), a Grievant must exhaust their remedies under this policy prior to initiating legal action. Any Grievant who files a legal complaint regarding a Grievable Event thereby forfeits their right to any further hearing of that grievance under this policy.
- H. It is a violation of University policy for any employee to engage in conduct that intimidates, threatens, coerces, or retaliates against any individual for:
1. reporting a perceived wrongdoing, inequity, or violation of law or ISU policy;
 2. filing a complaint alleging illegal or prohibited wrongdoing, inequity, or violation of law or ISU policy;
 3. participating in a grievance or appeals procedure; or
 4. participating in a dispute resolution through Human Resources or the Office of the Ombuds.
- I. Any person who believes they have been subjected to retaliatory conduct as a result of their participation in a grievance hearing may file a written complaint with the AVP for Human Resources. The Office of Human Resources must respond within thirty (30) working days. If a participant files a written complaint, the Committee, at its discretion, may postpone a grievance hearing pending the resolution of this complaint. The Committee shall inform the President and both parties if a grievance is postponed due to a complaint. This does not prohibit the Committee

from conducting grievance hearings into allegations of retaliation of a non-protected class or status. This clause applies only to retaliation that occurs during the faculty grievance procedure to the degree that it may compromise the integrity of the process.

- J. Persons summoned by the Committee to appear in any grievance hearing have the obligation to respond as though summoned by the President. In the event that an individual fails to respond to a summons when given reasonable notice, the Committee may, in its discretion, consider a failure to appear as evidence.
- K. Both parties are entitled to be present during the entire grievance hearing. Both parties will have the opportunity to pose relevant questions to witnesses, including the Grievant, in real time in accordance with procedures established by the Committee, and in response to another party's version of events. If the Committee chooses to relay questions from any party through the Committee, there must be clear guidelines setting forth when questions will be rejected and the reason for refusing to pose any rejected question must be documented by the Committee.
- L. Either party may be assisted by counsel or an advisor of its choice, who may serve in an advisory capacity only, but may be present during the entire hearing. An advisor may not address the Committee, question witnesses or Committee members, or in any way interfere with the proceedings.
- M. In order to maintain the independence and transparency of the Committee in its hearing process and deliberations, any grievance-related communications outside of the formal hearing meetings between any member of the Committee and any party to the grievance, or between parties to the grievance, must be delivered in writing and copied contemporaneously to all parties and to all members of the committee. Committee members must not discuss the proceedings with each other outside the official meetings or correspondence of the Committee.
- N. Both parties to a grievance and the Committee must be informed of the existence and substance of all materials on which the party has relied in making the decision being appealed. There must be no means by which the substance of any charge, or other adverse information or allegation, can be kept secret from either party to a grievance.
- O. All hearings shall be confidential and closed to the public. The Committee determines which persons may attend the hearings. Both parties are entitled to be present during the entire hearing. Electronic recordings will be made of each hearing session, archived by the Office of Academic Affairs, and made freely available to all parties.
- P. The Committee may establish additional procedures in a particular case that are consistent with this policy. Both parties in a grievance hearing will be notified of these procedures.

VI. PROCEDURES TO IMPLEMENT

- A. Before filing a grievance, the faculty member is encouraged to seek guidance regarding the grievance procedure and informal resolution options from the University Faculty Ombuds Office. The faculty member should seek resolution informally by discussing their complaint with the Respondent. If the issue is not resolved by this means, the faculty member should then go to the next administrative level for redress prior to filing a grievance under this policy.
- B. A faculty member who wishes to file a grievance may do so by submitting a written request for a formal grievance hearing. Such a request must be made within sixty (60) working days after exhausting attempts at informal resolution as outlined in section VI.A. The request must be addressed to the Chair of the Faculty Senate. The Faculty Senate Chair shall notify the Provost and the AVP for Human Resources, in a timely manner, that a grievance has been formally filed. The faculty member may request additional time to file a grievance in order to seek informal resolution. The Faculty Senate Chair, in consultation with the Executive Committee, may allow additional time to file a grievance if they determine that it is justified. The Faculty Senate Chair shall inform the Provost and the AVP for Human Resources of any time extensions.
- C. The request for a formal grievance hearing must include:
 - 1. A description of the Grievable Event and of the existing laws, policies, procedures, or practices under which the grievance arises;
 - 2. The name of Respondent;
 - 3. A description of any informal resolution sought or an explanation of why informal resolution has not been sought;
 - 4. A proposal for acceptable resolution; and
 - 5. Any other information that the individual believes to be relevant or helpful.

The Chair of the Faculty Senate shall, within three (3) working days of receiving the grievance, provide to the Respondent a copy of the filed grievance and a statement of the Respondent's rights within the grievance process.

- D. The Chair of the Faculty Senate shall establish the Faculty Grievance Committee by providing both parties with the names of five (5) proposed members and three (3) alternates pulled from the standing appeals panel, as outlined in ISUPP 4039 *Faculty Suspension or Dismissal for Adequate Cause*, section IV.C.8 and IV.C.9, within ten (10) working days of receiving the request for a formal grievance hearing. A faculty member may not be appointed to serve on the Committee if the person:
 - 1. Is a member of the Grievant's department or program;

2. Has any special relationship to either party whose decision is the subject of the grievance, in which the relationship might reasonably be said to raise a claim of conflict of interest or biases;
3. Has received notice of layoff or nonrenewal as a result of financial exigency or has received notice of termination or appointment nonrenewal for any other reason; and/or
4. Has any grievance, appeal, or litigation pending against any officer of the University.

Prospective Committee members will be given an opportunity to recuse themselves for reasons that may reasonably be considered to impact their ability to be fair and impartial. Upon receiving the Committee member's request for recusal, the Chair of the Faculty Senate will remove them prior to disclosing the proposed members to the parties. If a Committee member is recused, a previously designated alternate will be appointed.

E. Procedures for Challenging the Appeals Committee Membership

Within five (5) working days of the date the parties receive the Committee names from the Chair of the Faculty Senate, both parties may submit a one-time request that one member be removed from the Committee without showing cause for removal. Any additional requests for removal may be for cause only. All requests must be made in writing and must describe the specific reason why the party believes the individual should be removed for cause. The Chair of the Faculty Senate, who may consult with the Faculty Senate Executive Committee, will rule on all for-cause requests for removal and will respond in writing to both parties within ten (10) working days of receipt of any challenge for cause. The Chair of the Faculty Senate must state the reasons for the decision in the written correspondence and provide the names of any replacement Committee members to both parties if a challenge is upheld. The Chair of the Faculty Senate may, at their discretion, choose to consider further challenges to the impartiality of any replacement Committee members.

F. Appeals Committee Proceedings

1. Initial Committee Meeting

- a. The Chair of the Faculty Senate will convene the Committee and hold an initial meeting of the Committee within ten (10) working days of the formation of the Committee to discuss the grievance procedure and provide the Committee members with the Grievant's written request for a formal hearing.
- b. In its initial meeting, the Committee will elect a Chair and determine if all proper channels for informal resolution have been pursued and if there is a grievable matter as defined by this policy. If the Committee determines proper channels for informal resolution have not been pursued or the complaint does not constitute a grievable matter, the Grievant will be notified immediately and the Grievant may within two (2) working days file an appeal in writing to the President, who shall decide whether the matter is grievable within ten (10)

working days. If the Committee determines that a grievance shall go forward, the Committee Chair will inform both parties that the grievance shall go forward and request copies of all relevant documents and a preliminary list of witnesses from both parties within ten (10) working days.

- c. In this notification, the Committee will request that both the Grievant and Respondent submit copies of all relevant documents and preliminary lists of witnesses within ten (10) working days. At this time either party may also request that the Committee collect specific University records necessary to demonstrate the facts of the grievance. The Committee will determine which requests are reasonable, and will forward these requests to the relevant administrators and to General Counsel. In the event that requested documents include legally restricted information, they may be withheld, redacted, and/or shared with the parties under restrictions set forth by the Committee and General Counsel.
- d. Upon receipt of all grievance documents, the Committee will provide both parties with all materials collected and the list of witnesses for the grievance hearing. Additional materials and witnesses may be introduced at the Committee's discretion as the hearing proceeds.

G. Pre-Hearing Procedures

1. The Committee will meet before the hearing to consider the nature of the parties' expected presentations, to make decisions about the procedures that will be followed in the hearing, and to set mutually acceptable dates for the hearing, including the time and duration of the presentations. As a general rule, the Committee admits rather than excludes presentations that either party desires to make. The Committee Chair communicates the Committee's decisions in writing to the parties and allows each of them five (5) working days in which to respond. The Committee negotiates any disputed matters.
2. The Committee summons the Grievant and the Respondent. The Committee also summons other witnesses to appear at the request of either party or the Committee itself. The summons must set a reasonable time and place to appear and must give due notice.

H. Hearing Procedures

The Chair of the Committee conducts the hearing. During the hearing, the Grievant's case will be presented first, in whatever manner they desire, including, but not limited to, the testimony of witnesses, submission of documents, or oral statements. Both parties may pose relevant questions to witnesses and respond to another party's version of events. The Chair of the Committee may rule against inclusion of evidence, questions, or presentations that are clearly irrelevant or repetitive. The Committee may also pose questions to any witness. The Committee may then question the Grievant. The Respondent then presents their case, followed by questions from the Committee. The Grievant is then given an opportunity to reply and summarize their case.

I. Committee Recommendation

The Committee will recommend a course of action simultaneously to the parties involved, the Faculty Senate Chair, and the Provost in a written report within ten (10) working days from the last day of the hearing. The Committee's report should include the rationale for the recommendation and may include dissenting opinions, but no Committee member shall submit any report independent of the Committee.

J. Failure to Follow Policy

If either party considers the Committee not to have followed this policy in conducting the grievance hearing, it will have five (5) working days following the receipt of the Committee's decision to submit a statement to the Faculty Senate Chair and the Provost to be included in the Committee's report to the President. On the sixth (6) working day after receiving the Committee report, the Faculty Senate Chair will forward the Committee report and any response to the President and both parties.

K. Presidential Decision

The President, following receipt of the Committee report, shall within fifteen (15) working days, submit to the Committee, both parties, the Faculty Senate Chair, and the Provost a written description of any intended actions, and the rationale for that decision. This concludes the grievance procedure.

L. Compiling and Maintaining an Official Record

1. Recordings will be made of each hearing session. Upon written request, a Grievant, Respondent, and/or the Provost may obtain copies with the cost to be borne by the requesting party. The recordings will be kept in the Office of Academic Affairs, and requests for copies should be addressed to this office.
2. The written grievance and subsequent information presented by the Grievant and Respondent will be made a part of the record.
3. Any votes taken during the Grievance Committee proceedings must be made by written anonymous ballot to be kept on file for the record.
4. The Chair of the Grievance Committee will have the responsibility for polling Committee members for their opinion, for drafting the report based upon the majority opinion, and for giving all members an opportunity to read and sign the report prior to submission to the Grievant and the President.
 - i. A minority report may accompany the report submitted by the Chair of the Grievance Committee.
 - ii. A copy of all Grievance Committee reports must be included with the summary notes and recordings at the end of the hearing.

VII. ATTACHMENTS

A. Grievance Process Flowchart



