

# The University Senate of Michigan Technological University

## Proposal 5-08

### (Voting Units: Academic)

## Amendment to Grievance Policy and Procedure for Tenured and Tenure-Track Faculty

### Background

This is a companion proposal to the proposal on “Due Process for Imposition of Severe Sanctions on Tenure-Track / Tenured Faculty” that was drafted by the *ad hoc* Tenured Faculty Committee on Sanctions (TFCS) established by the Senate in its meeting 443.

A memo of May 10<sup>th</sup>, 2006 of The Committee on Academic Tenure, Promotion, and Reappointment (CATPR) included the following:

A problem with the University grievance policy is that it is too sweeping in scope and does not distinguish between grievable issues and those that fall under the jurisdiction of other committees. For instance, the Faculty Handbook Appendix C grievance procedure defines a grievable issue as follows: *“the application of policy, salary levels or salary adjustments, teaching loads or workload, reprisals, academic freedom, facilities or space, and sanction.”* This is too broad a statement, and such breadth can be used to supersede the authority of any university committee including the CATPR. The list of grievable issues needs to be changed and defined more narrowly. Especially problematic are the phrases “the application of policy,” “sanctions,” and “academic freedom.”

This proposal defines the grievable issues more narrowly so as not to infringe on the responsibility that is delegated to the CATPR. The process of resolving grievances is as before. Severe sanctions are the jurisdiction of CATPR and minor sanctions are the jurisdiction of grievance committees. Severe sanctions are defined in the proposal “Due Process for Imposition of Severe Sanctions on Tenure-Track / Tenured Faculty.” Some complaints may fall in the grey area between minor and severe sanctions. Therefore, a grievance committee should have the authority to rule a sanction or part of it as a severe sanction and send it to CATPR, and the CATPR should have the authority to rule a sanction or part of it as a minor sanction subject to a grievance procedure. The ruling of CATPR prevails in case of a disagreement between CATPR and the grievance committees.

### 8.1 Grievance Policy

### Grievance Policy Statement

It is the policy of Michigan Technological University to have an effective procedure for reviewing and resolving faculty grievances. That procedure is described here.

### Grievable Issues

A grievance is a complaint alleging a misinterpretation, incorrect application, or violation of a policy, procedure, or practice of the University, not pursuable by the faculty member under other University procedures and/or policies. Some examples of "grievable issues" are the following: ~~the application of policy,~~ salary levels or salary adjustments, teaching loads or workload, ~~reprisals, academic freedom,~~ facilities or space, and minor sanctions. The following issues are non-grievable under this procedure:

1. determination of policy, which is the domain of the governance system;

2. promotion and tenure actions, which have their own appeal procedure;
3. items falling within the domain of other University procedures, such as discriminatory actions, scientific misconduct, conflict of interest, threatening or violent behavior, and Equal Employment Opportunity complaints.
4. academic freedom and tenure rights.
5. severe sanctions as defined in tenure policy section 2.2 of faculty handbook.

See [Appendix C](#), "Grievance Procedures" for more information.

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## **Appendix C. Grievance Procedures**

### Collegial Communications

Most faculty concerns or complaints can be resolved informally through normal collegial communications. Accordingly, faculty members are encouraged to take their complaints to their relevant supervisor in the normal spirit of faculty problem solving. The grievant is strongly urged to involve the Ombudsperson. If this does not lead to a mutually satisfactory outcome, the faculty member may pursue the issue through the procedural steps below.

Department or division heads or chairs, deans or directors, and other administrative faculty shall assist the faculty member in the processing of the grievance.

### Grievance Committees

1. Each department or school shall formulate a grievance process in its charter. Charters shall provide for filing grievances with the Department Chair or School Dean, for a departmental or school committee of peers to review grievances, and for appropriate forms to keep a written record. The department or school charter's process shall be consistent with the provisions for timeliness as set forth below.
2. The University Senate (Senate) shall establish a standing, University-wide Faculty Review Committee (FRC).
  - a. The FRC will consist of three members and one alternate member, no two from the same department, chosen through an election of the faculty at large which is to be run by the Senate. Members shall be elected to three-year terms. (The longest-serving member of the committee will serve as Chair.) The terms shall be staggered such that an election is held each year.
  - b. Any member of the FRC who has prior direct involvement in a grievance case, either as a principal or as a participant in the departmental review process or otherwise, shall be precluded from serving on the FRC for that case. For such cases only, the position on the committee shall be filled by the elected alternate (refer to 2.a above). Such temporary appointment shall terminate when the findings of the FRC are submitted, and shall not abridge the rights and duties of the regular incumbent insofar as other activities of the committee are concerned. In such a case as this, the thirty (30)

work day period would begin at the formation of the revised FRC (refer to Step One, below).

c. For implementing Steps Two through Five (see below), the FRC shall develop a set of uniform procedures and forms that are consistent with this policy; the forms must be approved by the Senate. The FRC shall submit to the Senate an annual report of the year's activities at the end of each academic year. The report should

include a summary of the number of grievances filed, resolved, appealed, etc., from the department level through the Appeal Panel. Human Resources will provide information to help tabulate these summaries. (This may include data on numbers of grievances filed at the department level.)

3. Every grievance committee or panel (at the department, school and University level) will have an ex officio (non-voting) member appointed from the Human Resources Office to act as a resource person for current personnel policy and other legal issues, and also to provide "training services" for committee or panel members.
4. Every grievance committee can rule a grievance in whole or in part as a severe sanction or potential infringement of academic freedom and/or tenure rights to be considered by the Committee on Academic Tenure, Promotion, and Reappointment (CATPR).
5. If the grievance is not resolved by Step Five (below), the Provost shall establish an Appeal Panel on a case by case basis. An Appeal Panel shall consist of three persons. The aggrieved faculty member and the original supervisor shall each select one faculty member from the University. These two persons shall choose a third University faculty member, who shall then serve the three-member panel as its Chair. None of these faculty panel members shall currently be serving as an administrator; none shall have had any prior involvement in the grievance.

#### The Grievance Procedure

Step One: If the grievance cannot be reconciled by collegial discussions with the relevant supervisor, the grievant shall file a grievance in writing with the Department Chair or School Dean. The grievance shall be filed within thirty (30) work days after discovery of the event, action, or omission that is the basis for the grievance. No grievance need be accepted for processing under this procedure unless a written grievance is provided to the Department Chair or School Dean within this thirty (30) day period.

The Department Chair or School Dean will pass the written materials on to the departmental grievance committee for action within five (5) work days. Within a time period of thirty (30) work days, that committee must notify in writing the grievant, the relevant supervisor, and the Department Chair or School Dean of its findings.

Step Two: If the departmental or school grievance committee finds the grievance lacks merit (i.e. is not supported by the evidence, does not fall within the list of grievable issues, does not have substantial impact) the grievant has two options.

- 1) The grievant may accept the departmental or school grievance committee's findings, at which point the grievance procedure stops.
- 2) The grievant may reject the departmental or school grievance committee's findings and may request an appeal. This request for appeal must be submitted directly to the Chair of the FRC in writing within five (5) work days after receipt of written notification of the departmental or school grievance committee's findings. The appeal petition will set forth in detail the nature of the grievance, state against whom the grievance is directed, and include any factual data which the grievant deems pertinent to the case. The Chair of the FRC shall immediately notify the supervisor and the Chair of the departmental or school grievance committee of the receipt of a request for appeal.

If the departmental or school grievance committee finds the grievance has merit, then one of two options exists.

- 1) The supervisor may now agree with the departmental or school grievance committee's findings; the supervisor addresses the grievance to the satisfaction of the grievant and the grievance procedure stops at this point.
- 2) The supervisor may disagree with the departmental or school grievance committee's findings and in this case, the Chair of the departmental or school grievance committee should notify the grievant in writing within five (5) work days; the grievant then has five (5) work days to appeal to the FRC if still not satisfied.

Adequate time shall be allowed for the faculty member to file an appeal with the FRC under circumstances where the faculty member's ability to file has been delayed by lateness or failure to supply documentation on the part of the supervisor, Department Chair or School Dean, or departmental committee. Discretion in this regard shall be exercised by the FRC.

Step Three: The FRC shall report their findings on all grievances submitted to it within thirty (30) work days from receipt from the departmental level in Step Two. Within this time limit, the FRC shall ask the relevant supervisor and the departmental or school grievance committee to come forward with evidence to support their findings. The grievant, the grievant's relevant supervisor, the Department Chair or School Dean, and the next higher level administrator shall be notified of the FRC's findings in writing.

It is the duty of the FRC to find whether the grievance shall be passed on to the higher administration level of Step Four below, or shall be stopped at this point. All such findings are final.

The FRC shall be responsible for determining its findings in light of ~~five~~<sup>six</sup> questions:

- 1) Does the grievance fall into the list of grievable issues above?
- 2) Is any part of the grievance a severe sanction or a potential infringement on academic freedom and / or tenure rights that should be considered by the Committee on Academic Tenure Promotion and Reappointment.
- 3) Does the grieved issue have a substantial impact on the grievant? It shall be up to the FRC to decide what is a "substantial impact," but the Committee should consider how important the grieved issue is to the long-term roles of a faculty member in teaching, research, and service, ~~and to the rights and responsibilities embodied in academic freedom.~~ Salary increments shall be considered to be an issue of substantial impact if there is alleged to be a record of cumulative (historical) inequities.
- 4) Does the evidence presented to the FRC support the existence of a grievable cause of substantial impact?
- 5) Was the grievance handled according to the processes set up by the departmental or school charter and/or this grievance procedure?
- 6) Is there new evidence not reasonably available at prior steps?

An appeal should be passed on to Step Four if:

1. the issue is grievable, it has substantial impact, and there is supporting evidence; or,
2. the issue is grievable, there is supporting evidence, and the handling of the grievance deviated in a nontrivial manner from proper procedure.

The FRC may consider paths of conciliation and mediation, including ones utilizing the Ombudsperson when both the grievant and the supervisor are willing to undertake mediation or when the Committee decides that the criteria for continuing a formal appeal have not been met.

Step Four: The Step Four administrator shall be the next direct level of University administration, normally College Dean but in some cases the Provost, depending on the reporting structure in a given

unit. If the latter structure is the case, the procedure passes to Step Five below.

Following receipt of written notification, the Step Four administrator or acting administrator shall meet with the grievant within five (5) work days. The Step Four administrator may request the relevant supervisor to be present; the grievant may similarly request that a faculty representative of his or her choice be present. The Step Four administrator shall give the grievant a written response within five (5) work days after the meeting. The Step Four administrator may reach a written, mutually agreed resolution with the grievant, in which case the grievance process is closed.

Step Five: If the fourth step written response is not accepted by the grievant, the grievant shall send written notification to the Step Four administrator within five (5) work days indicating the desire to advance the grievance; the Step Four administrator will forward immediately one copy of the grievance to the Step Five administrator, the Provost. The Provost, or an appropriate designee, shall contact the grievant within seven (7) work days to acknowledge receipt of the Step Five grievance.

The Provost may reach a written, mutually agreed resolution with the grievant. If no written agreement is reached within five (5) work days after acknowledgment of receipt, the Provost shall form an Appeal Panel within ten (10) work days after acknowledgment of receipt.

The Appeal Panel will review the grievance, will interview the principals, and may conduct other such investigations or hearings as appropriate. Every reasonable effort will be made to assure that the Appeal Panel hearing will be held within thirty (30) work days of the receipt of the request by the Provost. The panel shall submit its findings in writing to the President and the grievant within thirty (30) work days after the close of the hearing.

Panel Findings: The Appeal Panel will make a recommendation to the President on its findings and the President's decision will be final. When the President reaches a decision, he/she shall notify the Appeal Panel and the FRC in writing of the decision.

#### Other Concerns and Definitions

1. In cases where off-campus faculty are involved in a grievance and telephone or e-mail resolution is unsuccessful, travel to Houghton or to other nonwork locations may be required in the resolution of the grievance. The faculty member whose grievance continues past Step Three shall have all related costs of travel paid by the University.
2. All costs of legal counsel employed by the grievant shall be borne by the grievant.
3. Legal counsel will not be present during any meetings, investigations, or hearings.
4. "Work days" as used in this procedure include the days Monday through Friday only, and only when those days are not University holidays. The goal is to resolve grievances within specified limits; however allowances must be made to address any difficulties in convening a committee during University breaks (including summer).
5. Time limits are subject to extension by written agreement of both parties; the grievant and the administrator or committee chair involved at that particular step of the discussion shall be makers of such agreement.
6. Failure of a supervisor, administrator, or committee to respond to a grievance in a timely fashion shall qualify the grievance to be advanced to the next step. The grievant shall bear the responsibility for filing at the next level. In addition, when formulating its final recommendation, the appeal panel may consider nontrivial failures by supervisors, administrators, or committees to conform to procedures.

7. Failure of the grievant to meet filing deadlines may be cause for refusal by the administration to consider any grievance.

8. Upon resolution of a faculty grievance, the written record will not be disseminated to third parties, except to the extent that such dissemination may be required by law; the written record will be maintained in Human Resources.

9. In all instances the count of days in this document shall begin the work day after the indicated event or action.

10. If a change occurs in the name of a department or school, or in the title of an administrative position, all equivalent names and/or titles shall apply.

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Amendments to Proposal 13-95

Adopted by Senate: April 25, 2001

Approved by President: May 2, 2001

**Proposal 5-08**

**Introduced to Senate: 14 November 2007**

**Proposal Expired: November 2008**