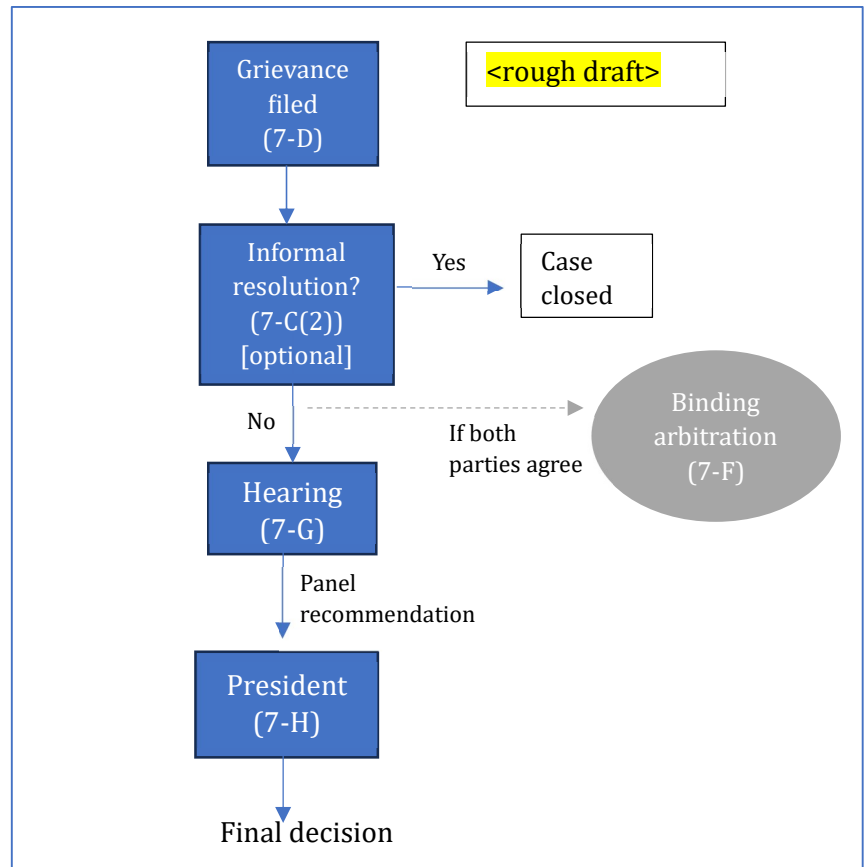


## Chapter 7. FACULTY GRIEVANCES

### 7-A OVERVIEW

The grievance process is a means by which faculty members who believe their rights have been violated by an administrator may seek redress. The process offers both an opportunity for informal resolution, and if that is unsuccessful, a hearing before a panel of a faculty members drawn from the Committee on Tenure and Privileges Appeals (T&P) at which the complaining faculty member and the respondent administrator present their arguments, witnesses, and evidence. After the hearing, the panel makes a recommendation to the President of the University who then makes the final decision.



### 7-B BASES FOR GRIEVANCE

The grievance process is designed to address claims of violations of established faculty rights. It is not designed to address disagreements on the merits of faculty or administrative decisions. It is also not appropriate for claims related to discrimination, harassment, and retaliation based on protected categories, which are handled through a different process (See 6-B(2)). Appropriate grounds and inappropriate grounds for grievances are discussed more fully below. The grievance process is open to all members of the faculty, of every track, full- or part-time.

#### 7-B (1) Appropriate Bases for Grievances

Grievances may be filed on the following bases:

- **Basis 1.** Violation by the university of any right provided to the faculty member by law.

- **Basis 2.** Violation by the university of any right of the faculty member established in the Faculty Handbook or other University policies;
- **Basis 3.** Violation by the University of any right under the faculty member's contract.
- **Basis 4.** Unfair evaluation for reappointment, promotion, tenure, or merit review, because of procedural defects that materially inhibited the review process, or because of considerations that violate academic freedom.
- **Basis 5.** Revocation of tenure without sufficient cause (not applicable if there has been a hearing and cause for termination was determined).

### **7-B(2) Inappropriate Bases for Grievances**

Grievances are not permitted for the following:

- Complaints about practices or policies that do not involve violations of established rights. (Such complaints, as well as any suggestions for improved practices or policies, can be made to the Academic Senate or to the Vice Provost of Academic and Faculty Affairs.)
- Disagreements over the merits of administrative decisions, for example, on salary. (Administrative decisions can be appealed to the administrator's supervisors, up to the Vice Provost for Academic and Faculty Affairs.)
- Disagreements over the merits of decisions by faculty bodies, e.g., concerning the requirements of the academic unit or an individual's professional qualifications.
- Matters referred to in Chapter 6 on Faculty Misconduct, Complaints, Investigations, and Sanctions. (These are handled under separate procedures described in Chapter 6).
- Allegations of scientific misconduct. (These are handled under the process set out in the University Policy on Scientific Misconduct).
- Complaints related to reappointment, promotion, or tenure other than those listed in Basis 4 and Basis 5.
- Complaints about a matter that arose when the person was not a member of the faculty, or that are not filed within nine months of the alleged violation.
- Complaints concerning discrimination, harassment, or retaliation related to a protected category. (Such complaints should be made to the Office of Equity, Equal Opportunity, and Title IX (EEO-TIX). See 6-B (2).)

### **7-C BEFORE FILING A GRIEVANCE**

## 7-C(1) Advice on the Grievance Process

Before filing a grievance, it's helpful for faculty members to seek advice from one or more persons with knowledge about the process. Faculty members are welcome to approach any or all of the following persons or bodies for advice.

- *Ombuds*. The Ombuds is a confidential, impartial, informal, and independent problem-solving resource. Discussions with the Ombuds are confidential and do not constitute a report to the University, but the Ombuds can explain how to make a report, if that is appropriate. The Ombuds may, on request, attempt to assist in settling disputes informally prior to the grievance being heard. See <https://ombuds.usc.edu/>.
- *Committee on Faculty Rights and Responsibilities*. This committee of the Academic Senate advises faculty members on grievance and other work-related disputes. The President of the Academic Senate is also available for consultation. See <https://academicsenate.usc.edu/committees/faculty-rights/>.
- *Vice Provost*. The Vice Provost for Academic and Faculty Affairs, on behalf of the Provost, is also available for discussion and consultation, and in some cases may be able to arrange an immediate remedy.

In addition, a number of offices are available for advice on specific topics; see "Who do I call if" on the Faculty Portal (<http://faculty.usc.edu/>) in the *Resources* box.

## 7-C(2) Informal Resolution

In many cases, faculty members may be able to resolve disagreements or disputes informally, without filing a formal grievance. To do so requires discussion with the administrator who made the decision in question (chair, dean, etc.). If that discussion doesn't resolve the issue, faculty may discuss it with the administrator's supervisor (such as talking with the dean or vice dean about a disagreement with a chair). The faculty member may also appeal to the Vice Provost for Academic and Faculty Affairs. Faculty members may initiate such a discussion themselves, may request informal assistance from one of the parties listed in 7-1C(1) or 7-C(2), or may request mediation or other informal assistance with the help of the Ombuds.

Mediation is a more structured approach to finding a resolution between the involved parties. Mediation is voluntary and goes forward only with the agreement of both sides. It involves a

mediator who helps to find a solution that is agreeable to both sides; the mediator does not impose a resolution. Mediation normally begins with the lowest level administrator with the authority to solve the problem, and if appropriate, can progress to higher level administrators. Typically, one of the Ombuds would serve as the mediator (see <https://ombuds.usc.edu/what-we-do/>); but the Senate Committee on Faculty Rights and Responsibilities may be able to suggest another mediator if either party prefers. As a special case, if faculty members are represented by counsel, mediation or settlement must be discussed by their attorney with the Office of General Counsel. If mediation does not result in a settlement, the faculty member may file a grievance, as described in 7-D.

## 7-D INITIATING A GRIEVANCE

### 7-D(1) In General

A faculty member formally initiates the grievance process by filing a grievance statement using the grievance form obtainable from the Senate office or online. [LINK]. Grievances must be formally initiated within nine calendar months of the discovery of the action on which the grievance is based. In order for the grievance process to effectively address the claim, the grievance statement should, as clearly as possible, identify the rights implicated and describe the key facts. Specifically, the grievance statement must state clearly:

- the specific right or rights (from among the general categories described in Bases 1-5 in 7-B(1)) that allegedly have been infringed
- the facts showing how and when the right or rights have been infringed;
- the outcome or action being sought as a remedy (see the third paragraph of 7-G(6).)
- the lowest level administrator able to resolve the problem (typically, the person who made the decision, such as a chair or dean).

#### **Committee on Tenure and Privileges Appeals (T&P)**

The Committee on Tenure and Privileges Appeals is a standing committee that oversees grievance hearings. Its members are appointed by the President from among persons nominated as provided in 2-B (4)(a). The membership includes at least 40 tenured faculty, and at least nine research-track, teaching-track, practitioner-track, and clinical-track faculty of the rank of Associate Professor or higher who serve only where the Handbook requires a research-track, teaching-track, practitioner-track, and clinical-track faculty member. At least four tenured committee members shall have law degrees and at least six other tenured members shall have had prior service on a grievance panel. Members serve three-year terms, and until their successors are appointed. The President also appoints the Chair for a three-year term.

The grievance statement must be submitted to the President of the Academic Senate through the

Academic Senate office, either online or hard copy, within the nine-month period stated above. The Academic Senate office maintains grievance records in a confidential manner.

The grievance statement may be revised by the grievant at any time up to three weeks prior to a hearing, by submitting the revision to the respondent's representative, the Academic Senate President through the Senate office, and the T&P chair through the T&P office.

Retaliation or intimidation against anyone because of participation in the grievance process is prohibited under 6-B(6). This includes participation as a grievant, witness, or hearing panel member. Among other things, grievants are prohibited from retaliating against witnesses and administrators are prohibited from retaliating against faculty members who file a grievance. If a person believes that they have been subject to retaliation because of such participation, the concern should be raised through a central reporting channel such as <https://report.usc.edu> (see 6-C(4) for other options).

#### **7-D(2) Multiple Grievants**

Two or more persons with essentially the same grievance may file a single grievance, covering all of them. If an individual files a grievance, and it is later discovered that one or more others are similarly affected, the others may ask to join the original grievant at any stage of the grievance process. Such joining is allowed if all of the grievants agree and the President of the Academic Senate determines that the grievances can be combined without prejudice to the rights of the grievants or the University.

#### **7-E PROCEDURES PRIOR TO A HEARING**

Within seven calendar days after receiving the grievance statement, the President of the Academic Senate will deliver a copy of the grievance statement to the lowest-level administrator identified in the grievance statement as able to solve the problem, as well as to the Provost, the Chair of the Senate Committee on Faculty Rights and Responsibilities, and the Ombuds.

The chair of the Committee on Faculty Rights and Responsibilities will usually inquire if the grievant would like to consider mediation or other informal attempts to resolve the issue (as in 7-C(2)), if it has not already been attempted and has not already been declined by one of the parties.

If the grievant declines mediation or other informal approaches, formal proceedings will commence. If the respondent declines structured mediation, the grievant may nonetheless pursue other informal approaches seeking resolution (see 7-C(2).) If mediation or other informal approaches are attempted, formal proceedings will also commence if mediation or the informal

approach is unsuccessful or do not lead to a settlement within 45 calendar days of when the grievance was filed, or at any earlier time upon written request of the grievant. If both the Provost and grievant agree, the mediation period may be extended up to a total of 90 calendar days of when the grievance was filed.

Formal proceedings are initiated by the President of the Academic Senate sending a message to the Provost requesting a grievance hearing, as discussed below. The Provost will then send a request to the Chair of the Committee on Tenure and Privileges Appeals (T&P) requesting a hearing.

#### **7-F BINDING ARBITRATION IN LIEU OF A GRIEVANCE HEARING**

Binding arbitration (as discussed in this section, which is different from arbitration under an individual's arbitration agreement) can be an alternative to a grievance hearing. It is a process in which both parties submit their case to an outside arbitrator, who makes a decision. With binding arbitration, the faculty member foregoes the ability to sue in court over the matter and the University foregoes the ability of the President to overrule the arbitrator's decision. Binding arbitration requires the consent of both sides and occurs only if both the grievant and the President of the University agree, in writing, to submit the matter to this process and to abide by the decision of the arbitrator. Binding arbitration is not available for disputes concerning tenure, promotion, dismissal for cause, non-reappointment, matters under Chapter 6, or EEO-TIX matters.

The grievant has seven calendar days after filing the formal grievance in which to request the President to agree to arbitration. (The grievant will simultaneously send copies of the request to the Provost and the Office of General Counsel.) The President then has seven calendar days to notify the Chair of Committee on Tenure and Privileges Appeals whether the University agrees to arbitration. Arbitration under this section in lieu of a grievance hearing occurs only if both give notice that they have elected arbitration by the end of the 14-day period.

If both sides agree to submit the matter to binding arbitration, the Chair of T&P will arrange for the appointment of an arbitrator under the rank and strike procedures specified by *JAMS Mediation, Arbitration and ADR Services*, unless both parties have agreed among themselves on an arbitrator. Once an arbitrator is chosen, the arbitration will be conducted in accord with the rules of JAMS.

Within 20 calendar days after the completion of the arbitration, the arbitrator shall notify, in writing, the parties, the President of the University, and the Chair of the T&P of the arbitrator's ruling.

The University will be responsible for all of the costs of the arbitrator and in no event will the grievant be held responsible for these charges. The University is not responsible for costs and expenses incurred by the grievant in the process of arbitration, such as expert witness fees, costs, attorneys' fees, and other fees (except that the University will pay any portion of a filing fee that exceeds the then-current filing fee in the California Superior Court.)

Binding arbitration of this nature (in lieu of a grievance hearing) is distinct from arbitration provided under the terms of any arbitration agreement between the faculty member and the University.

## **7-G GRIEVANCE HEARING**

### **7-G(1) Introduction**

Grievance hearings are conducted by a grievance panel under the Committee on Tenure Privileges and Appeals (T&P), as described below. The administrator is represented by an "respondent's representative" designated by the Provost. During the hearing, each side presents its case before a three-person panel of faculty members. After the hearing, the panel makes a determination on whether rights were violated and makes a recommendation for a remedy, if appropriate, to the President.

If a grievance substantially overlaps an ongoing investigation (see 6), the hearing will not occur until the investigation is completed or the investigative office declines jurisdiction. The Chair of T&P determines if a relevant overlap exists.

If (i) a grievance is related to a separate dismissal hearing, or (i) the same party files two or more grievances that are related, all of the issues will be addressed in single hearing. Grievances that are unrelated will be addressed in separate hearings. The Chair of T&P decides if separate grievances are sufficiently related to be combined.

### **7-G(2) Scheduling**

The grievant will email the respondent's representative and they will communicate to seek agreement on a date for the hearing, to be held as soon as practical. Both parties are responsible for attempting to find a hearing date in an expeditious manner. Once a date is selected, both parties notify the Chair of T&P of the date. The Chair of T&P then commences selection of a hearing panel and selects a location for the hearing that takes into account the convenience of all involved.

If, at any time, the grievant feels unable to settle on a date with the University representative, the grievant may request the Chair of T&P to select a date. The Chair will attempt to find a time that is convenient for both parties, but in any case, both parties are expected to participate on the date chosen by the Chair. If the Chair determines that the respondent is not cooperating regarding scheduling, the Chair will report that fact to the Provost for corrective action. The hearing must be held, at the latest, within six months from the filing of the grievance. If six months pass from the date the grievance was filed and a hearing has not been held, the grievance is deemed dismissed, except in the special situation where the Chair or panel allows a brief extension to reschedule an already-scheduled hearing or to complete a hearing that has begun.

In the special case where a grievance substantially overlaps a pending but incomplete investigation, the Chair of T&P will, if necessary, delay the hearing beyond the six-month period until the investigation is complete.

### **7-G(3) Selection of Grievance Panel Members and Chair**

A grievance panel is comprised of three T&P members, one of whom serves as panel chair. Within seven calendar days after the hearing date established, the Chair of T&P will communicate with all T&P members to see who is available on the proposed hearing date. The Chair of T&P will then forward to the grievance parties a list of at least six T&P members available to serve on the hearing panel and a list of at least three T&P members available to serve as the panel chair. The panel chair will either be a person holding a law degree or a person with prior service on a grievance panel.

The grievant and the respondent may each strike two names from the list of potential panel members and one name from the list of possible panel chairs. If either side waives its right to make peremptory challenges, the list need only be four potential panel member and two potential panel chairs. If there is a shortfall in the number of potential panel members, any names on the list of potential chairs which have neither been challenged nor selected as chair can be considered as potential panel members.

After the exercise of these peremptory challenges, if more names remain than needed, the members and panel chair will be chosen randomly. Persons not chosen will be designated as alternates, in a sequence designed randomly, to serve in the event that the initially chosen members become unavailable.

If there is more than one grievant (a case in which multiple grievances have been combined), the Chair of T&P will decide how the grievants' side exercises its peremptory challenges.



The Chair of T&P informs the parties of the chair and panel members once they are chosen.

#### **7-G(4) Motion to Dismiss**

The respondent may make a motion to dismiss a grievance because it fails to allege a violation of one of the Bases 1-5 in 7-B(1), or concerns one of the excluded claims listed in 7-B, or fails to meet the requirements of 7-D(1). Any motion to dismiss by the respondent must be made before the hearing and no later than 10 days after notification of the identity of the grievance panel. After the motion, the grievant has 10 calendar days to respond to the motion.

If the respondent's motion is made before the panel is identified, it will be ruled on by the Chair of T&P. If the motion is made after the panel is chosen, the panel decides. In deciding whether to grant a motion to dismiss, the Chair of T&P or grievance panel shall accept for purposes of the motion all of the grievant's allegations as true; at this stage the Chair of T&P or grievance panel shall not examine or evaluate the evidence as to the merits of the grievance. The T&P Chair or grievance panel will dismiss a grievance only for failing to allege one or more violations listed in 7-B(1), or for entirely involving bases that are excluded under 7-B(2), or for failing to meet the requirements of 7-D(1) including being filed within nine months. (If only part of a grievance involves a base excluded under 7-B(2), that part will be dismissed, leaving the part alleging a violation listed in 7-B(1).)

#### **7-G(5) Hearing Procedures**

- a) At the grievance hearing, either party may be represented by legal counsel (that is, by a person who holds a law degree). If either side intends to be represented by legal counsel, it shall notify the other party of this intention at least 10 calendar days prior to the hearing. Failure to notify will entitle the other party to a reasonable continuance to secure its own legal counsel.
- b) The grievant and the respondent, and their legal counsel if any, shall have the opportunity to be present during all argument and presentation of evidence. Each party shall have the opportunity to present its evidence, including witnesses, and to make an argument to the grievance panel. Each party shall have the right to confront and question the witnesses of the other. Both parties are to submit to the panel and the other party in advance of the hearing (by a deadline set by the T&P Chair) a written argument, documentary evidence, and (if the party wishes) witness statements. Each party shall have the right to inspect and respond to all written arguments and documentary evidence offered and may require the opportunity to question any witness whose written statement was submitted.

- c) Technical rules of evidence, voir dire proceedings, and pre-trial discovery proceedings are not applicable.
- d) The chair of the panel presides over the hearing and rules on all evidentiary questions. The chair sets the order of argument and of presentation of evidence and may exclude irrelevant or unduly repetitious evidence or argument.
- e) Subject to the provisions of the Faculty Handbook, University policies, and the law, the grievant may obtain necessary pertinent witnesses and documentary or other evidence and may ask the University to use its persuasive power and the grievance panel its good offices to help, but the University is not obligated to incur undue expense or burden for this purpose. If the grievant requests material which involves privacy rights of an individual or is confidential or legally privileged, the Chair of T&P or the panel will request the Provost to rule on whether and with what restrictions the material can be made available.
- f) Grievance panels will be instructed that their decisions must be in accord with all relevant federal, state, and local law, and established University policies including those contained in the Faculty Handbook, and the faculty member's contract. The grievance panel will be instructed to decide only the grievance before them, that is, the grievance panel should hear only evidence that is relevant to the grievance and shall decide only the issues presented, as to supposed infringements of the grievant's rights, and the panel's report will deal only with those issues.
- g) No member of the grievance panel shall disclose any of the evidence received during the grievance hearing nor any aspect of the deliberations, except as provided below.
- h) A full stenographic or electronic record of the hearing shall be maintained and made available upon request only to the parties, the grievance panel, the Academic Senate President, or the President of the University. Copies of the stenographic or electronic record shall be made for either party at its request, and if the grievant requests a copy of a court reporter's transcript, upon the payment of the charges of the court reporter. In addition, with a person appointed by the Academic Senate office present, either party may, at any time before a stenographic or electronic record is destroyed, read or listen to the original, at a time and place set by the Academic Senate office.
- i) A grievance process will not be terminated (unless the Provost agrees) if a faculty member files a lawsuit in court or seeks another remedy external to USC over the same matter that is the subject of the grievance, but in such circumstances the hearing may be postponed if both parties agree.

- j) In grievance cases, the burden of persuading the panel that the actions or inactions of the University were not proper rests upon the grievant, and shall be satisfied only by clear and convincing evidence (except in cases where government regulations require the standard of the preponderance of the evidence.)

### **7-G(6) Decision and Recommendation of Grievance Panel**

At the conclusion of the hearing, the grievance panel prepares a written report to the President recommending findings of fact, a determination whether the faculty member's rights were violated, and any proposed remedial action for a violation of rights. The report shall be based solely on the hearing record

In all cases, the following basic principle applies: The panel's report will deal only with the issues presented concerning alleged infringement of the grievant's rights. The report will not address matters outside that scope,

In grievances related specifically to reappointment, promotion, tenure, and merit review, additional principles and procedures apply: The panel shall not substitute its judgment on the substantive merits of the decision, including the requirements of the academic unit or of a candidate's professional qualifications. If the grievance panel concludes that a grievant's claim of a violation of rights is proven, the report will recommend reconsideration by the appropriate faculty body or bodies and administrators, indicating respects in which it believes the review process was inadequate. If the grievance panel concludes that there was an unfair evaluation because of considerations violative of academic freedom, it will recommend reconsideration by a new faculty body and by administrators, indicating the respects in which it considers unfair judgments to have taken place.

The panel will provide its written report within 14 calendar days after the completion of the grievance hearing. The written report will be provided to each party and to the Chair of T&P.

Each party has the option to append an additional statement to the report, by submitting the statement to the T&P Chair within 14 days of when the report was issued. The additional statement is the opportunity to express agreement or disagreement with any aspects of the panel recommendation or process that the party wishes to challenge or call to the attention of the President of the University.

After allowing the parties 14 calendar days to append additional statements, as described above,

the Chair of T&P forwards the panel's statement and the appended statements, if any, to the Provost, the President of the University, and both parties. The President also will receive any evidence presented and the stenographic or tape record of the proceedings.

#### **7-H DECISION OF THE PRESIDENT**

The President will consider the record and make a decision as promptly as possible, generally within 30 calendar days of receiving the grievance panel's report. The President retains ultimate decision-making authority on all grievances and may accept or reject grievance panel recommendations. (Binding arbitration is different, as explained in 7-F.)

If the President intends not to follow the panel's recommendation, the President will notify the panel of this in person or in writing, stating the reasons, and allowing the grievance panel an opportunity to respond before reaching the final decision. If the President finally decides not to follow the recommendations of the grievance panel, the President will explain in writing, as part of the President's final decision, the reasons for rejecting them and for rendering a different decision.

The report of the grievance panel and the President's final decision on the grievance will be communicated to the grievant, the respondent, the Provost, (for faculty in the health sciences schools, also the Senior Vice President, Health Affairs, the President of the Academic Senate, the Chair of T&P, and the members of the grievance panel. The President of the Academic Senate, upon receipt of written consent from the grievant, will forward to the Chair of the Academic Senate Committee on Faculty Rights and Responsibilities a copy of the decision and a copy of the report of the grievance panel. This Senate Committee has the right to refer these reports to the Academic Senate, provided that the names of persons mentioned therein are deleted. In appropriate circumstances, where the privacy of students or faculty members or administrators would be compromised by disclosure, the President of the University or the chair of the grievance panel may ask all parties to keep the report confidential.

## TRAILING ISSUES

Update Grievance Form and move it online