

March 18, 2015

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

SUBJECT: Revision to Policy R831, Minimum Requirements for Non-Faculty Staff Employment Grievances

Issue

Regent Policy R831, *Minimum Requirements for Non-Faculty Staff Employment Grievances*, has recently been reviewed by the Office of the Commissioner, the Utah Attorney General's Office, and USHE institutional personnel. This review is part of the continuing review of all Regent Policies. Several of the revisions are technical or add clarification, but there are substantive changes related to the grievance procedure language.

Background

R831 has been revised in an effort to clarify and strengthen the policy and provide guidance and consistency for institutions. Significant revisions to the policy include:

- Clarifies the definition of "grievance" and indicates that institutional policy will establish additional detail related to the appointment of a Personal Relations Committee
- Section 4.2, deletes undefined "informal" process potentially available to at-will, temporary, and probationary employees, which could raise due process issues
- Section 4.4, clarifies that if an institution decides to extend grievance procedures to at-will, temporary, or probationary staff members, the procedures will be the same as other staff afforded those rights
- Section 4.8.1, adds requirement that testimony be taken under oath for grievance hearings of demotion or termination as required by changes in state law (2014 General Session HB 72, Higher Education Grievance Procedure Amendments)

Commissioner's Recommendation

The Commissioner recommends that the Regents approve revisions to policy R831, *Minimum Requirements for Non-Faculty Staff Employment Grievances*, effective immediately.

David L. Buhler
Commissioner of Higher Education

DLB/GLS/KVO/CRW
Attachment

R831, Minimum Requirements for Non-Faculty Staff ~~Employment~~ Employee Grievances Policy¹

R831-1. Purpose: To provide minimum requirements to the institutions for the development of effective policy and procedures to ensure fair treatment for certain non-faculty staff members who seek to resolve work-related grievances. Each institution shall adopt or amend policy and procedures as necessary to comply with these minimum requirements.

R831-2. References

- 2.1. Utah Code §53B-2-106 (Duties and Responsibilities of the President - Approval of the Board of Trustees)
- 2.2. [Utah Code §53B-3-103 \(Power of board to adopt rules and enact regulations\)](#)
- 2.3. [Policy R801, Equal Opportunity, Diversity, and Non-Discrimination](#)
- ~~2.2~~ 2.4. Policy and Procedure R841, Minimum Requirements for Disciplinary Sanctions of Staff Personnel Policy.
- ~~2.3.~~ ~~Policy and Procedure R843, Guidelines for Reduction in Force Policy.~~
- ~~2.4~~ ~~Policy and Procedure R845, Guidelines for Payment in Lieu of Notice Policy.~~

R831-3. Definitions

- 3.1. **Employment Employee Grievance Procedure:** the process followed in resolving an employee grievance complaint brought before the institution by a staff member who has the right to grievance procedures concerning interpretation or application of personnel policies or practices, working conditions, ~~employee-supervisor relationships~~, disciplinary sanctions, ~~or~~ termination, or non-retention. Certain employment issues need not be covered by institutional policies adopted pursuant to these minimum requirements, including position descriptions, classification of positions, and establishment of salaries commensurate with classification.
- 3.2. **Final and Binding Decision:** a final administrative decision. The complainant cannot take the matter any further administratively.
- 3.3. **Final and Binding Decision-Maker:** the president, the cognizant vice president, or other institutional administrator, as determined by institutional policy, empowered to render the final decision of the institution.
- 3.4. **Immediate or First-Level Supervisor or Supervision:** the lowest level of salaried supervision of the employee as defined in the Fair Labor Standards Act and Department of Labor regulations.
- 3.5. **Employee Grievance Hearing:** in grievances of demotion or dismissal termination from employment, a hearing before a panel of the Personnel Relations Committee; in grievances of lesser

¹ Adopted January 9, 1987; amended January 24, 1997 and September 16, 2005.

disciplinary sanctions and other [employee](#) matters, a hearing before either a panel of the Personnel Relations Committee or a designated administrator or officer, as provided by institutional policy.

3.6. Human Resource Office: that office or individual in the institution charged with the administration and record maintenance of personnel matters, or such other [office or](#) person as may be specially designated by the institution president to act as a neutral party to assist with the resolution of grievances at the institution. The human resource office should not be represented by membership on the Personnel Relations Committee.

3.7. Personnel Relations Committee: a committee established by institutional policy with membership from a cross section of the college or university community. Such members are to be selected for their objectivity and fairness in personnel matters. The committee should be selected in such a way as to encourage a diverse membership.

[3.7.1. Institutional policy shall establish who is responsible for appointing the members of the Personnel Relations Committee and how a particular panel of the committee will be chosen for a grievance hearing. Institutional policy shall also establish the number of members required on the committee and on a panel.](#)

[3.7.2.](#) Grievances brought by employees of healthcare provider units operated by an institution may be assigned to hearing panels consisting exclusively of committee members drawn from the institution's health care provider units. Similarly, grievances brought by main campus employees of an institution may be assigned to hearing panels consisting exclusively of committee members drawn from the institution's main campus units.

3.8. Staff Member: an exempt or non-exempt employee not covered by a similar faculty procedure who receives compensation for work or services from funds controlled by the institution, regardless of the source of the funds, the duties of the position, the amount of compensation paid, or the percent of time worked. There are two categories of ~~S~~staff ~~M~~members subject to this policy:

3.8.1. Regular Staff Member: a staff member whose employment is defined by the institution as being of a continuous nature, initially funded for a non-temporary period, who has successfully completed the probationary period. ~~This includes exempt and non-exempt employees not covered by similar faculty procedures, but~~ [An institution](#) may exclude [from this definition](#) certain executive and at will personnel as defined by the [institutional policy](#). Normally, a regular staff member is one assigned to work 75% or more (or such other percent as set by institutional policy) in a position expected to last more than 6 months (or such other period as set by institutional policy.)

3.8.2. Part-Time, Temporary, or Probationary Staff Member: a [part-time](#) staff member [is a staff member](#) assigned to work less than full-time; ~~or~~ [a temporary staff member is a staff member](#) in a position considered temporary or expected to be of short duration, as defined by the institution; ~~or~~ [and a probationary staff member is](#) a newly hired employee in a regular position but still in the probationary status. Normally, a part-time staff member is one assigned to work less than 75% (or such other percent as set by institutional policy) [and](#) a temporary position is one not expected to be available after 6 months (or such other period as set by institutional policy.)

R831-4. Minimum Requirements

4.1. Discrimination or Harassment Complaints: Problems or complaints involving a claim of discrimination or harassment on the basis of race, color, national origin, religion, sex, age, disability, or

veteran's status are processed as provided by institutional policy and procedure on equal opportunity and nondiscrimination in employment.

4.2. Part-Time, At Will, Temporary or Probationary Staff Members: Institutional policy shall determine whether or not to extend ~~any~~ employee grievance procedures to part-time, at will, temporary or probationary staff members. If so extended, such procedures may be limited to informal processes as determined by the institution and need not involve a hearing before the personnel relations committee. ~~Regular staff members shall be provided grievance procedures in conformance with these minimum requirements.~~

4.3. Informal Discussions with Supervisor: Regular staff members and those part-time, temporary or probationary staff members who have access to employee grievance procedures under institutional policy shall first attempt to resolve ~~employment~~ grievances through informal discussions with their immediate supervisors. The human resource office shall be available to assist both parties in the informal resolution of grievances. A staff member may not be subjected to intimidation or reprisal for assertion of ~~an employment~~ grievance.

4.4. Grievance ~~Review Process~~ Procedures: ~~An Employment g~~Grievance review process procedures, including appropriate time lines, shall be available to all regular staff members and those part-time, temporary, or probationary staff members who have access to employee grievance procedures under institutional policy who are not satisfied with the results of informal discussions. A staff member who has a right to the employee grievance procedures has the right to be accompanied by a person of his or her choice during a formal grievance proceeding.

4.5. Alternative ~~Process Adjustments~~ Procedures: If any steps provided for in an institution's policy are impractical for any reason, institutional policy may empower the human resource office, normally after consultation with the staff member, to prescribe ~~an~~ alternative process procedures, which, to the maximum practicable degree, assures to the aggrieved staff member the fair and adequate consideration of the problem or complaint; provided, however, that ~~a regular staff member's~~ the right to a hearing cannot be denied nor abridged when the staff member has a right to the employee grievance procedures.

4.6. Time Off With Pay: Reasonable time off with pay during scheduled working hours shall be provided to the staff member who has a right to the employee grievance procedures, the staff member's representative, or any witnesses called to testify, for time spent participating in proceedings leading to resolution of the complaint. Time spent by the ~~employee said staff member~~ or representative in such activities outside scheduled working hours is non-compensable. Neither time-off with pay nor compensation is provided for time or money spent in preparation for such proceedings. The ~~personnel relations committee~~ Personnel Relations Committee may use resources available to it to obtain the appearance of necessary witnesses.

4.7. Extensions: Reasonable time limits may be established by institutional policy for the conduct of the employee grievance procedures. Such limits may be extended by the human resource office or by another institutional office as provided by institutional policy.

4.8. ~~Personnel Relations Committee~~ Grievance Hearings: A ~~regular~~ staff member who has a right to the employee grievance procedures and who is not satisfied with solutions proposed, as a result of attempted informal resolution or any pre-hearing procedures established by institutional policy, shall be entitled to a grievance hearing. Each party to the complaint shall be notified, has the right to be accompanied at the hearings by a person of his or her choice, has the right to hear the presentations of the other parties, and has the right to be heard.

4.8.1. Testimony under Oath in Personnel Relations Committee Hearings: An institution shall ensure that all testimony given at a grievance hearing before a Personnel Relations Committee for grievances of demotion or termination is given under oath.

4.9. **Committee Member Recused:** A ~~personnel relations committee~~ Personnel Relations Committee member shall be excused from participation in any grievance deliberation where he or she may be influenced by personal relationships with the parties, by bias concerning the circumstances giving rise to the complaint, or by any other material influence which would appear to inhibit the member's ability to render an unbiased judgment.

4.10. **Final and Binding Decision:** ~~When~~ After a grievance hearing is held, the final and binding decision-maker shall review the written report, findings and recommendations of the hearing panel or officer. Based upon such review and without conducting further hearings, he or she, shall take one of the following actions:

4.10.1. Ratify the findings and adopt the recommendations.

4.10.2. Return the report to the hearing panel or officer for reconsideration or clarification.

4.10.3. Reject all or parts of the findings and recommendations ~~on one of the following grounds, among other possible reasons~~ and make a final decision as to the disposition of the grievance. Findings and recommendations may be rejected and a different disposition made for reasons that may include:

4.10.3.1. The recommendations are not supported by the record, or,

4.10.3.2. The recommendations are based on a misinterpretation of applicable law or policy.

4.11. **Notification of Final Decision:** Written notification of the final and binding decision shall be communicated by the final and binding decision-maker to all parties concerned.

4.12. **Grievance Limitations:** ~~An employee~~ staff member who has a right to the employee grievance procedures may not institute more than one grievance procedure based on the same facts, circumstances, or events.

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