

AUSTIN PEAY STATE UNIVERSITY
POLICIES AND PROCEDURES MANUAL

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Date: August 1, 1986	Dated: November 10, 1976
Subject: Grievance Policy and Procedures for Academic Personnel	
Initiating Authority: Vice President for Academic Affairs	SBR Policy/Guideline Reference: 1:06:00:05
Approved: <i>Paul O. Lipp</i> President	

These grievance procedures are intended to provide an equitable means of correcting actions taken by Austin Peay State University which directly wrong academic employees. These are formal procedures which ought to be utilized only when efforts to settle alleged wrongs informally have failed.

All policies, rules, and procedures relative to grievance prescribed by the State Board of Regents are hereby referred to and made a part of these policies and procedures.

1.0 Executive Committee

Annually, the President and the Chair of the Committee on Committees of the Academic Senate shall jointly designate three members of the faculty to serve as an Executive Committee on Grievances. In the absence of agreement, each shall designate one person for the committee, and those two shall designate a third member. Any member of the Executive Committee may serve as chairperson of the committee. In all cases and questions in which action of the Executive Committee is required, such action shall be by majority vote.

The Executive Committee, in addition to other designated responsibilities, shall make an initial determination as to whether there may be sufficient substance and relevance to a grievant's claim to warrant a hearing by a Grievance Panel. If it is their determination that the grievance is not warranted, both parties shall be notified and the grievance is denied. If it is determined that there is reasonable doubt relative to the grievance and its consequences, the Executive Committee shall set in motion procedures for hearing by a Grievance Panel.

1.1 Responsibilities. Responsibilities of the Executive Committee shall include:

- 1.11 selecting the members for the Grievance Panel;
- 1.12 making space and facilities arrangements for hearings resulting from the filing of a grievance;
- 1.13 instructing and advising the Grievance Panel relative to its functions, responsibilities, and recommendations.

2.0 Grievance Panel

The population from which a Grievance Panel shall be drawn shall consist of all full-time academic employees other than the President, those reporting directly to the President, Deans, Director of the Library, Director of Continuing Education and Community Services, the grievant, members of the Executive Committee, members of the grievant's department, persons involved in the grievance, and others agreed upon by the two parties.

A Grievance Panel shall consist of three faculty members plus an alternate. Members of a panel shall be drawn for each grievance or for each group of grievances judged to constitute a Grievance in Common. The judgment that a number of grievances are sufficiently alike to be treated as a Grievance in Common shall be made by the Executive Committee.

2.1 Selection of panel members. Selection of panel members shall be by a random method from the pool of eligible faculty. Initially, three names shall be selected at random. If these three persons are without disabling bias, prejudice, or interest and are otherwise satisfactory to both the person filing the grievance and the alleged offending party the panel shall be declared official. If panelists are successfully challenged, additional names for the panel membership shall be drawn singly until the three member panel is complete. A name equally satisfactory to both parties shall be drawn to serve as an alternate member in the event of illness or other disability of a regular panel member.

2.2 Challenge of membership on a panel. Both parties to the grievance have a right to challenge for cause any person selected as a panelist. The efficacy of the cause for challenge shall be adjudicated by the Executive Committee. Age, color, race, religion, sex, marital status, national origin, handicap, or membership in any organization or group shall not constitute sufficient reason to support a challenge to panel membership. Bias, prejudice, personal interest, or other debilitating circumstances must be demonstrated in order to sustain a challenge for cause. In addition to challenges for

cause, each party to a grievance shall be entitled to a single preemptory challenge (challenge without stated reason) to membership on the panel, except in the event of a Grievance in Common pursuant to Sections 2.0; 4.15; 5.0; 9.0 wherein two persons may be challenged by the Grievance in Common and by the University representative.

2.3 Chair of the panel. The three members of the regularly selected panel shall choose their own chairperson. At any time prior to the President's decision on the panel report and upon the agreement of the grievant and the University representative the panel shall be discharged and a new panel selected to conduct the grievance hearing.

2.4 Mandatory nature of panel membership. Service as a member of an Executive Committee or a Grievance Panel, if selected, is a normal obligation of each full time member of the faculty during the periods of the year when required to furnish services.

2.5 Good faith efforts. A good faith effort to settle matters as to which an academic employee feels aggrieved shall be made before a grievance is filed. If such effort has not been made it shall be so directed by the Executive Committee. After initial filing, efforts shall be made to resolve the matter by informal arrangements with and recommendations from the Executive Committee.

2.6 Extra procedural settlement. A settlement reached after a grievance has been filed shall be in writing, shall be signed by the grievant and the second party, and filed with the Executive Committee Chairperson.

2.61 If a settlement cannot be reached informally or with the assistance of the Executive Committee, the Executive Committee, shall refer the case for hearing before a Grievance Panel.

2.62 If a settlement is not honored, a grievance may be filed on the subject of its not having been honored, rather than on the original grievance the settlement purported to resolve. Such filing shall be subject to the time limits specified under "time limits" in this document.

3.0 Eligibility for Filing a Grievance

3.1 A grievance may be filed only by a person:

3.01 who, at the time of filing, is an academic employee of the University or if a temporary employee, has served as an academic employee one

prior full quarter of the past four quarters, excluding summer quarter, or

3.02 who, at the time of filing, is not an academic employee of the University but who has been employed by the University as an academic employee within 20 campus working days; and

3.03 who is asserting a wrong arising from the taking of an action or from failure to take an action in a timely manner.

4.0 Exclusions from Grievance Procedures

4.01 A grievable cause cannot arise as a result of the proceedings of a grievance hearing or the recommendations by an Executive Committee or a Grievance Panel.

4.02 Actions relative to retention of probationary faculty, tenure, and promotion may not serve as the basis for a grievance. Appeals procedures are provided within the University's Personnel Policies for these personnel matters.

4.03 Grievance procedures may not be employed to grieve actions, individuals or groups not representing the University or for action unrelated to University functions unless nexus reasonably can be demonstrated to the Executive Committee.

4.1 Determinations. Questions as to eligibility for filing and jurisdictional questions are to be determined as follows:

4.11 The president shall make determinations regarding academic employee status.

4.12 The president shall make determinations regarding prior academic employee status.

4.13 The Executive Committee shall make determinations regarding alleged grievances arising from individuals or groups not representing the University and rule on matters of nexus.

4.14 The Executive Committee shall make determinations regarding compliance with time limits.

4.15 The Executive Committee shall make determinations regarding consolidation of grievances into a Grievance in Common.

5.0 Representation

Upon the filing of a notice of grievance, and thereafter, the grievant and the University representative may each be accompanied by a representative and an observer. The representative may advise or act for the party represented and may be an attorney. The representative may be accompanied by an advisor. The observer shall be a full time member of the academic faculty of Austin Peay State University and may take no active part in the hearings before the Grievance Panel.

The University representative will not be accompanied by an attorney if the grievant is not. In the event of consolidation of grievances to compose a Grievance in Common a single representative, who may have an advisor, and a single observer shall be authorized for the Grievance in Common and a single representative, who may have an advisor, and a single observer shall be authorized for the University.

6.0 Filing a Grievance

If a grievance results from a single action, a written notice of grievance shall be filed with the President within 20 academic working days after the grievant has discovered or reasonably could have discovered the action. A grievance may result from a series of actions over a period of time. In such case, a notice of grievance shall be filed within 20 academic working days after the grievant has discovered or reasonably could have discovered the most recent of these actions.

6.1 Later discovered actions. As respects later discovered actions, the alleged adverse consequences of action grieved against must still be in force and directly affecting the grievant at the time the notice is filed (Executive Committee decision). A notice shall not be honored, and shall have no effect if it is filed later than the 20 days specified. A notice shall not be honored, and shall have no effect, if it is filed more than one calendar year after the action being grieved, regardless of the date of discovery.

6.2 The notice shall specify:

6.21 that it is a notice of grievance;

6.22 the wrong alleged, the action from which the alleged wrong arises, the date of discovery of that action;

6.23 the remedy sought;

6.24 specification as to whether the hearing is to be open or closed. Failure to specify shall constitute a choice by the grievant of a closed hearing. Grievant's decision on open versus closed

hearing shall become irrevocable upon filing of the supplemental notice.

6.3 Supplemental Notice. The grievant shall file a written supplemental notice giving a more detailed statement of grievance within ten academic working days of the date of filing notice. At the same time, the grievant shall advise whether he or she will be accompanied at the hearing by an attorney.

7.0 Pre-Hearing Arrangements

7.1 Materials. The grievant shall have the right to examine materials, including materials in the grievant's personnel file, except for confidential materials obtained at the time of initial employment, which were considered in the action which is the subject of grievance. This access to materials shall not be construed as granting the right of access to personnel files of others, or to the proceedings of personnel committees, except in regard to the grievant's own case, or to their evaluations and recommendations with respect to other persons.

7.2 Witnesses. The University representative and the grievant shall inform each other of the names of witnesses they intend to call for the hearing.

7.3 Agreement on facts and materials. Grievant and University representatives should attempt to agree as to the factual elements of the case and supporting materials which can be presented without challenge to the panel.

8.0 Attendance at Hearings

8.1 Open Hearing. Attendance at an open hearing shall be restricted as follows:

8.11 all witnesses except for the grievant and University representative shall be excluded except while giving evidence.

8.12 the panel may receive evidence at an open hearing from a witness who has attended the hearing only if the presenting party's need for that witness is based on surprise.

8.2 Closed Hearing. Attendance at a closed hearing shall be limited to:

8.21 the grievant, grievant's representative, representative's advisor, grievant's observer;

8.22 the University representative, University

representative's advisor, University observer;

8.23 members of the panel, including the alternate;

8.24 witnesses while giving evidence;

8.25 a tape recorder operator or stenographer.

9.0 Procedures for Grievance in Common

9.01 Grievance in Common can be requested by the University representative or by any grievant.

9.02 All parties shall be provided an opportunity to argue for or against consolidation before the Executive Committee which shall make the determination regarding consolidation.

9.03 The University representative will not be accompanied by an attorney unless one or more of the grievants will be accompanied by an attorney.

9.04 In the event of consolidation, the grievants shall designate a single representative for their grievance hearing, and the case will be heard by the same rules as those applying to a single grievance. The Grievance in Common then proceeds as if it were a single grievance.

9.05 A majority of the Grievance Panel hearing a Grievance in Common may petition the Executive Committee for severance of a grievance case from the consolidated hearing. The severance of one or more grievances from the Grievance in Common shall not be considered to affect those remaining in the Grievance in Common.

10.0 The Hearing

10.01 The Chairperson of the Grievance Panel shall commence the hearing within ten academic working days following selection of the panel. Note: Failure of grievant to attend duly called and appropriate meetings of the Executive Committee or the Grievance Panel, without adequate cause, shall constitute grounds for denial of the grievance.

10.02 All members of the Grievance Panel shall be present for the transaction of business.

10.03 The Chairperson may obtain advice concerning procedures from the Executive Committee or from the office of the Chancellor's legal counsel.

10.04 Members of the Grievance Panel shall not discuss the case with others.

10.05 Within the guidelines of these procedures, the Chairperson of the Grievance Panel may establish other necessary rules and decide issues presented subject to being overruled by a majority of the panel.

10.06 The hearing shall not be conducted according to technical rules relating to evidence and witnesses.

10.07 Any relevant evidence shall be admitted if it is of the nature of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Evidence that is irrelevant, repetitious, or merely cumulative may be excluded.

10.08 In the event the legal applicability or validity of any statute, regulation, resolution of the Board of Regents or Chancellor's directive is questioned, arguments shall be in writing and addressed to the panel with a copy to the other party. The panel chairperson shall forward the arguments to the Office of the General Counsel. The panel shall complete the hearing, but shall not complete the drafting of its report before receipt of General Counsel's opinion. A copy of the opinion shall be provided by the panel to the grievant and the University representative.

10.1 Confidentiality. The content of proceeding in a grievance hearing closed to the public and the committee report resulting therefrom shall not be made public by any participant in the hearing, except as legally required. If confidentiality is violated and the content of proceedings do become public, such public statements as are appropriate then may be made. This policy on confidentiality shall not preclude discussion of the case with others as necessary to prepare for hearings nor shall it preclude subsequent appropriate action on the basis of evidence developed at the hearing.

10.2 Participation. Participation in the hearing shall be in accordance with the following:

10.21 The grievant, grievant's representative, and the University representative shall be present at the hearing whenever any evidence is presented.

10.22 Only the grievant, grievant's representative, representative's advisor(s), University representative and University representative's advisor(s), and the panel may take an active part in the hearing.

10.23 Only the grievant, the grievant's representative, the University representative, or panel members may ask questions of a witness, subject to recognition by the chairperson.

10.24 Members of the panel may ask questions related to procedure of the grievant or grievant's representative and the University representative.

10.3 Procedure. Subject to recognition by the chairperson each party to the grievance shall be permitted to:

10.31 make an opening statement, grievant doing so first;

10.32 present evidence available, grievant doing so first;

10.33 question witnesses, and examine all physical evidence presented to the panel;

10.34 present rebuttal evidence;

10.35 make a closing argument, grievant doing so first; and

10.36 file a written argument with the panel, simultaneously with the other party, subject to a time limit established by the committee. If either party does not choose to file a final argument, the other party may file one with the panel and leave with the Executive Committee, a copy to be made available to the declining party at the close of the time limit for filing a written argument with the panel.

11.0 Chairing the Hearing

11.1 Chairperson's responsibilities. The chairperson of the panel shall:

11.11 notify the principals and the panel members of the time and place for the meeting(s);

11.12 not permit cameras at the hearing;

11.13 call witnesses to present evidence only as requested by the grievant or the University representative;

11.14 maintain an orderly hearing; (Note: the chairperson may cause to be excluded or cause to be ejected from a hearing anyone not complying with requests to remain in proper order.)

11.15 permit no one to be subjected to abusive treatment;

11.16 request all participants to identify themselves for the tape recording at the beginning of the hearing, and when speaking during the hearing;

11.17 be responsible for the security and integrity of the tape recording.

12.0 Burden of Proof

The grievant must demonstrate by a preponderance of the evidence that he or she was directly wronged by the action giving rise to the grievance.

12.1 Insufficient evidence. Following the presentation of the grievant's evidence, the University representative may request the panel to rule against the grievant and terminate the hearing for reason of the grievance not being supported by the evidence presented. Grievant may argue against this request. If the request is denied the University representative shall present the opposing evidence. If the request is granted, the chairperson shall close the hearing and see that the panel prepares its report to the President as subsequently provided for in these procedures.

13.0 Grievance Panel Decisions

13.1 Executive session. Following conclusion of the hearing, the panel shall meet in executive session, with all other persons excluded. At this meeting the panel shall:

13.11 consider the evidence;

13.12 reach its decisions, and

13.13 prepare its report (section 13.5).

13.2 Materials considered. In the committee's deliberations and in reaching its decisions, the panel shall consider only:

- 13.21 the notice;
- 13.22 the supplemental notice;
- 13.23 evidence received at the hearing; and
- 13.24 oral and written arguments made in accordance with these procedures.

13.3 Conclusions. The panel shall determine whether it has been demonstrated by a preponderance of the evidence that the grievant was directly wronged by the action which gave rise to the grievance. A panel shall not conclude that the grievant was wronged by an action resulting from the exercise of reasonable judgment. If the panel determines that the evidence does not support the claim that grievant has been directly wronged the grievance shall be denied.

13.31 In order to find for the grievant, the panel must find that the grievant's rights were abridged by:

13.311 a procedural violation substantially harmful to the grievant; (Note: a procedural violation per se shall not be considered as substantially harmful.)

13.312 a failure to consider substantial evidence favorable to the grievant; (Note: evidence considered and evaluated adversely to the grievant does not constitute "failure to consider.")

13.313 action which was arbitrary, capricious, prejudiced, unreasonable, or not warranted by grievant's behavior;

13.314 action not consistent with reasonable standards;

13.315 other considerations or actions of serious consequence.

13.4 Recommendations. If the panel finds for the grievant, it shall recommend appropriate action to remedy the wrong. The panel's recommendations shall not be limited to the remedy sought by grievant. Recommendations may be for other than the sought remedy, more extensive than the sought remedy, or less than the sought remedy.

13.41 The panel shall not:

13.411 recommend reconsideration of the case by the existing panel or by a subsequently formulated panel;

13.412 recommend specific disciplinary sanctions;

13.413 recommend actions beyond those necessary to correct the wrong to the grievant, and

13.414 include a requirement that changes be made in rules and policies of the University or of the Board of Regents.

13.5 Filing Panel Report. The panel shall file its report in the Office of the President within ten working days from the date of the close of the hearing. Copies of the report shall be given to the grievant and the University representative on the same day the report is filed with the Office of the President. The time limits for filing the report may be extended by the time necessary for the panel to obtain opinions from the general counsel of the State University and Community College System of Tennessee as provided under Section 10.08 of this document.

13.51 The report to the President shall include a copy of the notice, supplemental notice, and the tape recording of the hearing or transcript of hearing.

13.52 Upon the filing of its report, the panel shall be discharged of its responsibilities.

14.0 Presidential Action

14.1 Panel recommendations. The President shall consider the panel recommendations and act thereon within a reasonable length of time (normally within ten working days of the date on which the report was filed).

14.2 Presidential determination. The President may determine that the panel's findings of fact or conclusion are:

14.21 acceptable;

14.22 not supported by a preponderance of evidence presented at the hearing or are contrary to law;

14.23 the panel's recommendations are not consistent with or supported by the findings;

14.24 these procedures have been violated or wrongly applied so as to have had a substantially prejudicial effect upon the panel's finding of facts, conclusions, or recommendations;

14.25 the panel has recommended remediation beyond the authority of the president or contrary to the laws of Tennessee or the United States, or all of these.

14.3 Bases for denial. If the President determines that any or all of Sections 14.22-14.25 is true and applicable the grievance shall be denied.

14.4 Disagreement with panel recommendations. If the President disagrees with a recommendation of the panel the reasons shall be stated in the President's decision.

14.5 Notification of decision. The President shall notify the grievant of the presidential decision with copies to the panel, the Executive Committee, and the University representative in writing normally within ten working days of the date of the filing of the report in the Office of the President. It is the responsibility of the grievant to inform the President where the decision may be delivered. If the President does not notify the grievant of the decision within 30 calendar days, the panel's recommendations shall be deemed accepted by the President, insofar as they are within the authority of the President and consonant with the laws of Tennessee and the United States.

14.6 Delivery of decision. The decision of the President shall be mailed by certified mail, return receipt requested, to the last known address of the grievant, or may be delivered to the grievant in person. If delivered to the grievant in person, the grievant shall acknowledge its receipt in writing. If acknowledgment of receipt is refused by grievant, the person delivering the notice shall file with the President an affirmation of having delivered the decision. This affirmation shall be regarded as equivalent to acknowledgment of receipt by the grievant.