

**AUSTIN PEAY STATE UNIVERSITY
POLICIES AND PROCEDURES MANUAL**

Policy Number: 5:027	Supersedes Policy Number: 5:027
Date: May 2, 2006	Dated: February 4, 2003
Subject: Grievance and Complaint Procedures for Employees	Mandatory Review Date: May 2, 2011
Initiating Authority: Vice President for Finance and Administration	TBR Policy/Guideline Reference: P-110
Approved: <div style="text-align:right">President: signature on file</div>	

I. PURPOSE

The purpose of this procedure is to provide a clear, orderly and expedient procedure through which all employees of the university may process bona fide complaints or grievances.

II. POLICY STATEMENT

It is the policy of the university to provide an effective procedure for resolution of problems arising from the employment relationship or environment. To this end, a formal grievance and complaint procedure has been established for the use and benefit of all employees. When an employee believes a condition of employment affecting him/her is unjust, inequitable or a hindrance to effective performance of his/her employment responsibilities, the employee may seek resolution through this procedure without fear of coercion, discrimination or reprisal. It is the intent of the university to resolve a grievance/complaint at the lowest possible step in the grievance/complaint procedure. Formal procedures outlined in this policy will be used only when informal efforts to settle alleged wrongs have failed.

III. SCOPE

This procedure is only available to employees as defined in Section V below.

IV. APPLICABILITY

There are two issues addressed in this policy. They are: 1) grievances which are subject to committee review, and 2) complaints which must be resolved without committee review.

- A. **GRIEVANCES - (Committee review available)** A grievance may result from any action the University has taken against the employee which:

1. Violates University or TBR policy, or involves an inconsistent application of these same policies;
2. Violates state or federal discrimination statutes in that the adverse action is based solely on race, gender, including claims under Title IX, national origin, age, disability, including claims under the ADA, the Rehabilitation Act, or Section 504, or veteran's status;
3. Violates any constitutional right. The most likely areas of concern are the First, Fourth or Fourteenth Amendment of the federal constitution when that action hampers free speech, freedom of religion, the right to association, provides for improper search and seizure, or denies constitutionally required notice or procedures.

This policy is not applicable to a grievance or complaint which is the subject of an action filed with an external body. The term "external body" includes a court, or federal or state administrative body such as the Equal Employment Opportunity Commission, Office of Civil Rights, or Tennessee Human Rights Commission. This policy is not applicable to a grievance or complaint which is the subject of a harassment complaint being pursued through procedures given in APSU Policy No. 5:003, Harassment – Sexual or Racial.

This policy is not applicable to a termination procedure initiated against a tenured faculty member under TBR Policy No. 5:02:03:10, Section III.

This policy is not to be used for non-exempt support staff employees who are demoted, suspended without pay, or terminated. Non-exempt support staff employees who are subject to these types of punitive actions must follow the grievance process in APSU Policy 5:059.

- B. COMPLAINTS - (Committee review not available) A complaint is a concern which an employee wants to discuss with supervisory personnel in an effort to resolve the matter.
- C. This policy does not apply to the following actions and, therefore, these actions will not be considered under either the grievance or complaint process:
 1. Termination of personnel. An exception is allowed for this item for non-exempt staff support personnel who are eligible to pursue a grievance under APSU Policy 5:059
 2. Performance reviews and normal supervisory counseling
 3. Position reclassification

4. Elimination of a position due to a reduction in force, lack of funds or reorganization
5. Formal performance evaluations
6. Rates of pay including decisions on pay increases
7. Group life insurance, group health benefits or retirement benefits
8. Decisions regarding faculty tenure or promotion

V. EMPLOYEES

All references to the term "employee(s)" contained in this policy include only those individuals defined in this paragraph. Employees shall include administrators, faculty (including full-time faculty on term or temporary contracts), professionals, clerical and support personnel. Probationary employees are also included in this definition. Student workers, graduate assistants, adjunct faculty, and temporary workers are not included in the definition of employees.

VI. RESPONSIBILITY FOR IMPLEMENTATION

- A. The President has ultimate responsibility for the implementation of the grievance/complaint procedures and provides the final decision at the university level, where a grievance referred to the grievance committee is involved.
- B. Supervisors should be knowledgeable in the grievance/ complaint process and be able to provide their employees with information concerning their right to file a grievance or complaint. Additionally, supervisors must also be aware that they are responsible for ensuring that an employee who files a grievance or complaint is free from fear of retaliation, coercion, and/or discrimination arising from the employee's filing of or intent to file a grievance or complaint. No employee shall retaliate or discriminate against another employee because of the latter employee's filing of a grievance or complaint. In addition, no employee shall coerce another employee or interfere with the action of another employee in the latter employee's attempt to file a grievance or complaint.

VII. GRIEVANCE/COMPLAINT PROCESS

A. GRIEVANCES

1. Grievances which cannot be resolved informally shall, upon request of the grievant, be referred to a grievance committee as set out in this policy. The grievant has the option of choosing committee review when he/she

has attempted to resolve the matter without success, or it is apparent that such attempt would be futile.

2. Once the President has made a final decision, a grievance is appealable to the Chancellor only when it falls within the parameters set out in TBR Policy No. 1:02:11:00. This generally includes all grievances defined in IV.A. above, except those where the complainant has filed a lawsuit or appeal with a state or federal administrative body.

B. COMPLAINTS

Resolution of complaints at a minimum requires the University to: 1) allow the employee to present facts and/or materials; 2) investigate the dispute; and 3) attempt to find a solution. The President shall be the final decision maker if agreement cannot be reached at a lower level. Complaints do not include a right to any type of hearing, adversarial proceeding, nor the right to appeal to the Chancellor.

VIII. GRIEVANCE COMMITTEE

The population from which the Grievance Committee shall be drawn consists of all full-time employees other than the President, those reporting directly to the President, and Deans.

From the group of eligible employees, the President will appoint a standing committee consisting of at least sixteen employees, half of whom must be faculty members. The term of each member of the committee will be three years. At the end of the three-year term, the President will review the committee membership and make new appointments or reappointments as necessary. Should it be determined that a member is biased or prejudiced in his/her actions, the President may replace that individual at any time during his/her term on the committee. The appointments will allow for peer representation to include administrators, professionals, clerical and support employees, and both tenured and non-tenured faculty. Women and minorities will be included in the standing committee. In the event a grievance is submitted to the President, three members of the committee and an alternate will be appointed as a Grievance Panel to hear the grievance. The alternate will be used only if one of the appointed members cannot be present for the hearing. The President will appoint the panel chairperson. Members of the grievant's department and persons involved in the grievance may not be appointed to the Grievance Panel.

IX. GENERAL RULES OF IMPLEMENTATION

- A. Employees using this procedure will be entitled to do so without fear of retaliation, interference, coercion or discrimination.

- B. A grievance/complaint must be presented to an employee's immediate supervisor (Step 1) within fifteen (15) working days after the occurrence of the incident claimed to have given rise to the grievance/complaint. Any claim not presented within the time frame provided shall be deemed to have been waived, except as described in this policy. (For repetitive or ongoing incidents or circumstances, the grievance/complaint must be filed within fifteen (15) working days of the last occurrence of such incident or circumstance.)
- C. The grievant is entitled to be accompanied by an advisor at each step of the grievance procedure; however, the advisor may not act as an advocate on behalf of the grievant. An advisor is not applicable for the complaint process.
- D. The grievant and the University may present any pertinent evidence to the Grievance Panel and may have the Panel call witnesses with testimony pertinent to the case. As the hearing will be non-confrontational, only the panel members will be allowed to question witnesses.
- E. Employees may be given the opportunity to pursue grievances/complaints during their assigned work time; however, efforts to pursue a grievance/complaint shall not interfere with the normal work flow of the office. Time off to pursue a grievance shall be coordinated with the employee's immediate supervisor unless the grievance/complaint is against that supervisor. In that situation, time off to pursue the action will be coordinated with the next higher level supervisor.
- F. The President may grant a reasonable extension of the applicable time limit at each stage of the procedure upon the timely showing of good cause. The request for an extension must be in writing. The approval or denial of the request must also be in writing.
- G. Supervisors to whom a grievance/complaint is raised and the Grievance Panel may consult the human resources department for advice on resolving grievances/complaints (except for grievances involving an action taken against the grievant by the human resources department, in which case the Director of Human Resources will serve as advisor).
- H. Grievances and complaints must be submitted in writing using the "APSU Grievance/Complaint Form." Copies of the form can be obtained from human resources or downloaded from the APSU human resources web page at <http://www.apsu.edu/hrhomepage/forms.htm>.
- I. An employee may withdraw a grievance/complaint at any stage in the process. The withdrawal of a grievance must be submitted in writing.

X. STEPS FOR FILING A GRIEVANCE

Step 1: Discussion with Immediate Supervisor

A grievance must be brought to the attention of the employee's immediate supervisor within fifteen (15) working days after the employee becomes aware of the problem. If the action or incident on which the grievance is based was initiated at a higher level than the immediate supervisor, the employee may choose to present the grievance at step one to the higher level supervisor rather than the immediate supervisor. The employee should state the basis for the grievance and the corrective action desired in temperate and reasonable terms. Within fifteen (15) days after the grievance is filed, the employee and the supervisor will have a face to face meeting to discuss the grievance in an attempt to resolve the matter in a mutually satisfactory manner. The supervisor will conduct any necessary or appropriate investigation, talk with any material witnesses, and inform the employee of a decision based upon full and fair consideration of all the facts within fifteen (15) working days of the initial discussion. The supervisor will assure that the decision is clearly communicated in writing to the employee. If the employee is satisfied with the decision, no additional action is required. If the employee is not satisfied, the employee may proceed to Step 2. (If no decision is communicated to the employee within fifteen (15) working days of the initial discussion, the employee may proceed directly to Step 2.)

Step 2: Discussion with Higher-Level Supervisor

If the employee does not receive a satisfactory resolution to the grievance at step one, the employee may proceed to discuss the matter with the next-higher-level supervisor within fifteen (15) working days of the date of the decision of the step one supervisor. Failure to comply with Step 2 in a timely manner will be deemed a waiver by the employee and the grievance may not be raised again. The next-higher-level supervisor and the employee will then follow the same procedure as required in Step 1.

If the employee is satisfied with the decision reached by the next-higher-level supervisor, no additional action is required. If the employee is not satisfied, the employee may proceed to Step 2a or 3. (If no decision is communicated to the employee within fifteen [15] working days of the initial discussion between the employee and the next-higher-level supervisor, the employee may proceed directly to Step 2a or 3. In this case, the employee must present the grievance to the human resources Department within twenty [20] working days after submission to the next-higher-level supervisor in Step 2.)

Step 2a: Discussion with Division Head (president, vice presidents, director of athletics)

If the supervisor in Step 2 is below the level of division head, the employee will present the matter to the division head; otherwise, the employee may proceed to Step 3. The same procedures and deadlines established in Steps 1 and 2 above will be followed at this level. In the event the situation is not resolved by the division head, the employee may proceed directly to Step 3.

Step 3: Written Grievance Statement to be reviewed by the Grievance Panel

If the employee and the division head are not able to reach a mutually satisfactory resolution to the grievance, the employee may file a written grievance with the human resources department on the designated form. The grievance must be filed within fifteen (15) working days of the date of the decisions of the higher-level supervisor. Failure to comply with Step 3 in a timely manner will be deemed a waiver by the grievant and the grievance may not be raised again. (the human resources department may request the employee to restate the grievance for additional clarity if necessary, but such request will not prejudice the employee in regard to the applicable time limit.)

A copy of the grievance, along with any supporting documentation, will be given to the appropriate supervisors. The human Resources department may request the supervisors to respond in writing to the grievance statement. The human resources department will then forward the grievance, the supporting documentation and the responses of the supervisors to the President.

Upon receipt of the written grievance, the President shall appoint a panel consisting of three members and an alternate from the Standing Grievance Committee to hear the grievance. Within ten (10) working days after appointment, the Grievance Panel will conduct an impartial hearing on the grievance, at which it will accept and review all pertinent information presented by the employee and the human resources department as well as any other information it deems appropriate. The hearing will include a face to face meeting with the employee. The Grievance Panel will make a thorough and independent study. The Grievance Panel may call before it any personnel whom it feels may have information pertinent to the grievance. Within three (3) working days of the end of the hearing, the chairperson of the panel will prepare a written report of the panel's recommendation to the President. The recommendation will be based on full and fair consideration of all the facts and circumstances. The report will also contain a summary of the panel's investigation and findings.

Upon receipt of the recommendation, the President may accept the recommendation of the panel or select an appropriate alternate resolution. The President's decision along with a copy of the panel report will be directed to the employee, and copies will be provided to the chairperson of the panel, the human resources department, and all other parties involved.

XI. STEPS FOR FILING A COMPLAINT

Steps 1, 2, and 2a of the complaint procedure are identical to the grievance procedure.

Step 3: Written Complaint Statement to be reviewed by the President

If the employee and the higher-level supervisors/division head are not able to reach a mutually satisfactory resolution to the complaint, the employee may file a written complaint with the human resources department on the designated form. The complaint must be filed within fifteen (15) working days of the date of the decision of the division head. Failure to comply with Step 3 in a timely manner will be deemed a waiver by the employee and the complaint may not be raised again (the human resources department may request the employee to restate the complaint for additional clarity if necessary, but such request will not prejudice the employee in regard to the applicable time limit). A copy of the complaint, along with any supporting documentation, will be given to the immediate supervisor and the higher supervisors. The human resources department may request the supervisors to respond in writing to the complaint. The human resources department will then forward the complaint, the supporting documentation and the responses of the supervisors to the President.

Upon receipt of the complaint, the President will review the documentation and make an appropriate decision. The President's decision will be documented in a memorandum and given to the employee. Copies will be provided to all other parties involved.

XII. MAINTENANCE OF RECORDS

Copies of written grievances/complaints and accompanying responses and documentation shall be maintained in the Office of the Human Resources Department. Copies of grievances/complaints and accompanying responses shall be maintained for at least three years.