

NUMBER: 1707
TITLE: EVMS Faculty Grievance Policy
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I. Introduction and Policy

It is the policy of ODU that all EVMS Faculty be given an opportunity to grieve in accordance with this policy and the procedures outlined herein. Disputes are best resolved amicably and informally through effective communication, and it is required that any Grievant shall have attempted to resolve any dispute in good faith before invoking the grievance process set forth in this policy. Similarly, EVMS Faculty should understand that reviewing a formal grievance will involve a major investment of their colleagues' time and should use the grievance process only to resolve important issues and shall not file malicious or frivolous grievances or otherwise abuse the process. All references to "faculty" herein means EVMS Faculty as defined in this policy.

II. Definitions

For purposes of this policy, the following definitions apply:

Action – a decision, action, or inaction, whether written or otherwise, by an ODU administrative officer or body acting in an official capacity.

Chair – the Chair of the Grievance Committee who is the Member-at-large of the EVMS Faculty Assembly Executive Committee.

Committee – the Grievance Committee

EVMS Faculty - Full-Time Faculty, Part-Time Faculty, or Community Faculty (as defined in the Policies and Procedures Relating to Faculty Appointment, Promotion and Tenure of EVMS Faculty), who provide clinical, research, or administrative services, whether paid or unpaid, in the EVMS School Of Medicine ("SOM") and/or EVMS School of Health Professions ("SHP").

FAPD – The Faculty Affairs and Professional Development office.

Grievable Matters – matters that are grievable under this policy as outlined in Section III below.

Grievance – the formal, written complaint about a Grievable Matter that details the specifics giving rise to the matter and asks ODU to take a formal course of action.

Grievant – the EVMS Faculty member filing the Grievance.

Respondent – the administrative officer or body whose Action is the basis for the Grievance.

III. Grievable Matters and Exclusions

- A. Grievable Matters. A Grievable Matter is a matter that arises when an EVMS Faculty member has been directly and adversely professionally affected by an Action that deviated materially from the existing policies and procedures related to appointment, promotion, tenure and dismissal of EVMS Faculty, or those of ODU, the SOM or SHP, or was arbitrary, capricious, unreasonable, or contrary to the facts.
- B. Exclusions. Certain matters that are not EVMS Faculty or academic matters and/or where ODU has a legal duty to address an issue (e.g., matters of discrimination or sexual harassment) are not intended to be Grievable Matters. Specifically, the following are not Grievable Matters:
1. Discrimination, harassment, retaliation, hostile working environment, or workplace violence allegations;
 2. The amount or source of compensation including annual increases and co-terminus provisions;
 3. Allegations regarding students or student conduct;
 4. Any Grievance review or recommendation made by the Committee;
 5. Decisions by the ODU Institutional Review Board and the Institutional Animal Care and Use Committee;
 6. An act by ODU, pursuant to federal or state law, directive of the Board of Visitors, Board of Directors, or any governing body that regulates ODU, the SOM, or the SHP.
- C. Grievable Matter Determinations. Decisions about whether a matter is a Grievable Matter will be made by the Grievance Committee in accordance with Section VII below.

IV. Required Preliminary Steps by Grievant

- A. Exhaustion of Existing Procedures. A Grievant must first timely pursue and exhaust any existing administrative or academic procedures for review of the Action, including an appeal, prior to grieving a matter under this policy. For such matters that include an applicable appeal process, the Grievant must timely file an appeal and the date of the Action shall be considered the date of the final disposition of the appeal.

B. Informal Resolution.

1. With the exception of non-renewal of EVMS Faculty appointment, matters involving a decision by an ODU administrative body, or matters that have received a final determination through an appeals process, which may proceed with filing a Grievance under Section V, a Grievant who desires to grieve a matter under this policy shall first meet with the Respondent to attempt informal resolution within 60 days of the Action.
2. FAPD will appoint a neutral EVMS Faculty member or staff to attend the informal resolution meeting if requested by either the Grievant or the Respondent. Such person shall act in an advisory capacity only.
3. The Grievant shall provide all relevant documents to the Respondent prior to the informal resolution meeting.
4. If the matter is not resolved to the Grievant's satisfaction after the informal resolution meeting, or if the Respondent refuses to meet with the Grievant after two documented attempts by the Grievant, the Grievant may proceed with filing a Grievance as outlined in Section V.

V. Grievance

A. Statement of Grievance.

1. The written statement of Grievance shall not exceed 1000 words and must contain the following elements:
 - a. A statement as to the alleged Action, the date of the Action, and how the Grievant has been negatively affected.
 - b. A brief history or statement of facts that gave rise to the Grievance.
 - c. Identification of applicable policies and procedures on which the Grievance is based, if any.
 - d. The date and outcome of any required preliminary steps as outlined in Section IV, if applicable.
 - e. An explanation or reference to any attachments that will be included with the Statement of Grievance.
 - f. The remedy sought by the Grievant as more specifically described in Section X.
2. The Grievant shall attach all relevant documentation that will assist the Grievance Committee in reviewing the Grievance.
3. The Grievance, including the attachments, shall contain sufficient detail and be clear as to the chronology, events, and basis for the Grievance.

- B. Informal Meeting with Chair. A Grievant may contact the Chair to schedule an informal meeting to obtain guidance on their grievance.
- C. Filing. The Grievance shall be filed electronically via email with the Chair within 90 days of the date of the Action and must be combined into one PDF document, including attachments. For such matters that have an applicable appeal process, the date of the Action shall be considered the date of the final disposition of a timely appeal. In cases where the Grievant is on approved leave or can demonstrate that the Grievant was unable to meet the Grievance deadline due to mitigating circumstances, the Chair may extend the Grievance filing period in their sole discretion.

VI. Grievance Committee

The President of the EVMS Faculty Assembly shall select four members from the Faculty Assembly to serve on the Grievance Committee in addition to the Chair. The President of the EVMS Faculty Assembly shall consider any conflicts of interest when appointing the Grievance Committee. At any time during the Grievance process, the Chair or Committee may consult with University Counsel's office to seek advice on legal and procedural matters.

VII. Initial Review by Grievance Committee

- A. Initial Review. Within 60 days of receipt of the Grievance, the Grievance Committee shall review the Grievance to determine whether:
 - 1. The subject of the Grievance is a Grievable Matter in accordance with Section III;
 - 2. The requested remedy is within ODU's power to grant, is reasonable and appropriate, and would not disregard any ODU, SOM or SHP policy or procedure if implemented in accordance with Section X;
 - 3. The Grievance has been timely filed in accordance with Section V(C);
 - 4. Required preliminary steps in accordance with Section IV have occurred; and
 - 5. The requirements for the Statement of Grievance, as outlined in Section V(A) have been met.
- B. Deficient Grievances.
 - 1. If the Committee determines that the Grievance is deficient because it does not meet a requirement set forth in Section VII (A) 1-4, the Grievance shall be rejected and the Chair shall provide such written notice.
 - 2. If the Committee determines that the Grievance is deficient because it does not meet the requirements for the Statement of Grievance, as outlined in Section V(A), the Chair shall notify the Grievant of the deficiencies and provide the Grievant with 30

days to correct all deficiencies and return to the Chair. The Committee shall have 60 days to review a revised Grievance. If the Grievance remains deficient, the Committee may reject the Grievance. At any time, the Chair may meet with the Grievant in order to provide or obtain clarification from the Grievant.

- C. Sufficient Grievances; Notice to Respondent. If all requirements outlined in Section VII(A) have been met, the Chair shall notify the Grievant that the Grievance is accepted and provide the Respondent with notice of the Grievance, including a copy of the Grievance and all supporting documentation. The Respondent shall provide a response to the Grievance within 30 days, which shall not exceed 1000 words, shall include an explanation or reference to any attachments that will be included, and shall attach all relevant documentation that will assist the Grievance Committee in reviewing the Grievance.

VIII. Mediation

Upon receipt of the response from Respondent, the Committee shall consider whether the matter may be suited to an informal mediation, which, if determined, shall be arranged and guided by the Chair with support and involvement by the Committee, and may include but is not limited to, informal fact gathering and individual or collective discussions with the Grievant and Respondent. The Chair may request assistance from the Office of Faculty Affairs and Professional Development. The informal mediation process shall be concluded within 90 days unless extended in accordance with Section XIII(B). If the Grievant accepts the outcome of the informal mediation, the Grievance shall be considered withdrawn. If the Grievant is not satisfied with the outcome of informal mediation, or if the Committee determined that the matter was not suited for informal mediation, the matter shall proceed to a review and hearing by the Grievance Committee.

IX. Review by Grievance Committee

- A. Hearing. The Chair, or the Chair's designee, shall schedule a hearing no later than 90 days after the later of receipt of Respondent's Grievance response or the conclusion of the informal mediation.
- B. Notice. The Chair will provide a written notice to the Grievant and Respondent of the date, time, and location of the hearing that, at a minimum, specifies that:
1. If any party does not appear, the hearing will be held in their absence;
 2. The Grievant and Respondent may each bring an advisor of their choosing (see Section C2 below); and
 3. The Grievant and Respondent must provide the Chair with the names of any witnesses.

C. Attendance.

1. Grievance Committee. A majority of the Grievance Committee shall attend the hearing. The President of the EVMS Faculty Assembly may appoint alternates to serve in the place of Committee members that are unable to attend.
2. Advisors. The Grievant and Respondent may each invite an individual EVMS Faculty or staff member to serve in an advisory capacity at the Grievance hearing. Advisors can be present throughout the entire hearing to provide support and advice to their advisee and/or to observe the proceedings. Although a Grievant and Respondent may seek legal guidance at any time during the grievance process, attorneys may not act as advisors or otherwise represent the Grievant or Respondent at Grievance hearings. Advisors may not also be witnesses and no advisor may provide testimony, make statements or speak on behalf of their advisee, or otherwise participate in the hearing.
3. Witnesses. Witnesses must be physically present and shall be permitted to attend only that portion of the hearing to provide testimony or as requested or approved by the Chair. If a witness is unable to attend, the Grievant or Respondent may submit a written statement prepared and signed by the witness with prior approval of the Chair. The Chair may require that the written statement be notarized.
4. Other Attendees. The hearing will be closed to other attendees except that the Chair may request or permit other attendees to assist the Committee as necessary and the Grievant may request that the hearing be open to EVMS Faculty and staff. If the Grievant requests an open hearing, the hearing will be open to only as many EVMS Faculty and staff that may be accommodated in the hearing room and will not be broadcast.

D. Hearing Procedure.

1. The Chair shall preside over the hearing and shall:
 - a. Maintain control over the hearing and direct the proceedings to ensure that sufficient time is allotted to each party.
 - b. Allow the Grievant and Respondent, and their respective witnesses, to present evidence and ensure that anyone providing evidence responds to questions by the Committee on their own behalf. The Chair may also limit the number of witnesses to prevent repetitive or cumulative testimony and may grant adjournments as deemed necessary. Formal rules of evidence do not apply and there will be no cross-examination.
 - c. Address any evidentiary concerns prior to and/or during the hearing including, but not limited to, excluding irrelevant, immaterial, or new allegations or evidence; or advising the Grievance Committee to disregard evidence lacking in credibility or that is improperly prejudicial (i.e. rumors).
 - d. Adjourn the hearing at its conclusion. The hearing shall not exceed one and a half hours in length.

2. The Grievant has the burden of proving that they have been directly and adversely professionally affected by the Action of the Respondent which deviated materially from the existing policies and procedures related to appointment, promotion, tenure or dismissal of EVMS Faculty, or policies and procedures of ODU, the SOM or SHP, or was arbitrary, capricious, unreasonable, or contrary to the facts and that such injury is remediable.
 3. The hearing will be audio recorded.
- E. Deliberations. After the conclusion of the hearing, the Grievance Committee shall meet to determine its findings, conclusions, and recommendation for dismissal or remedy of the Grievance.
- F. Information Requests. At any time before or after the hearing, the Chair or Committee may request additional information or clarification from the Grievant or Respondent and may request information or documentation from other areas with relevant information. The Committee may request assistance from the Office of Faculty Affairs and Professional Development.
- G. Post-Hearing Report. Within 30 days of the hearing, the Grievance Committee will prepare a written report to the Executive Vice President (the “EVP”) which shall contain the history of the Grievance, the findings of facts by the Grievance Committee, and the Committee’s recommendation for action, including remedies, with all documents received by the Committee attached. The Committee may request additional time to prepare the written report from the President when necessary.

X. Remedies

A Grievant may request, and the Grievance Committee may consider and recommend, any remedy appropriate for the Grievance that would reasonably resolve or correct the matter and that ODU or the SOM or SHP has the authority to provide, that is appropriate to the Grievance, and does not disregard existing policies and procedures related to appointment, promotion, tenure or dismissal of EVMS Faculty, or policies and procedures of ODU, the SOM or SHP. A remedy may include a proper reconsideration of the matter through the applicable procedures related to appointment, promotion, tenure or dismissal of EVMS Faculty, or procedures of ODU, the SOM or SHP. The Committee may decline to review a Grievance that requests a remedy that is not within ODU’s authority to provide, is clearly unreasonable or inappropriate, including enlisting resources outside of ODU, or that would disregard any ODU, SOM or SHP policy or procedure.

XI. Decision by the EVP

Upon receipt of the Committee's report and recommendations, the EVP, in their sole discretion, may decide to accept, alter, or reject the recommendation of the Committee. The recommendation of the Grievance Committee is not binding on the EVP. The EVP shall issue a written decision to the Grievant, with a copy to the Respondent, the Chair, and FAPD, within 30 days of receipt of the Grievance Committee’s recommendations.

Additional time may be provided at the discretion of the Grievance Committee. The decision of the EVP shall be final. The EVP shall cause the implementation of any remedy provided in their decision.

XII. Abuse of Process, Malicious Grievances, or Frivolous Grievances

A Grievant must proceed with a Grievance in good faith. If at any time the Grievance Committee determines that a Grievant has filed a malicious or frivolous grievances, has falsified information submitted in the Grievance, or is otherwise abusing the grievance process with repetitive and cumulative Grievances, the Grievance Committee may deny and reject the Grievance and the Grievant may be subject to disciplinary action.

XIII. Records and Time Extensions

- A. Records. For Grievances that are rejected by the Grievance Committee or which are concluded through mediation as set forth in Section VIII, the Chair shall forward all documentation received and a copy of the Committee's decision or resolution to the FAPD to be maintained. For Grievances that continue through a hearing, the Chair shall forward a copy of the Post-hearing report and the recording of the hearing to the FAPD to be maintained.
- B. Time Extensions. The Grievance Committee may grant reasonable time extensions upon requests made prior to the expiration of such deadlines or when it determines that an extension is reasonable and necessary.