

ANR Administrative Handbook Section 350 APPEALS	Date: 10/01/99 Supersedes:
RESPONSIBLE DEPARTMENT: Human Resources – Academic Personnel	
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I. POLICY AND APPLICABILITY

- A. It is University policy to give academic appointees the opportunity to appeal matters concerned with their employment, except as limited by the provisions of Section I-B below. Appeals under this policy shall not be discouraged by any means, either direct or indirect, by any person employed by the University. The following policy and procedure statement implements the University Academic Non-Senate Appeals Policy in APM-140. It applies to all academic appointees of the Division except those who are members of the Academic Senate.
- B. An appeal is defined as:
1. A claim by a non-Senate academic appointee that a specific administrative act was arbitrary or capricious, and that it adversely affects the appointee's existing terms or conditions of employment, or
 2. A claim by a non-Senate academic appointee that a provision of applicable University rules, regulations, or academic personnel policies has been violated, and that this violation adversely affects the appointee's existing terms or conditions of employment.
- C. Appeals for policy changes shall not be handled under the provisions of this policy. Rather, they shall be submitted through appropriate administrative channels.

II. PROCEDURES

A. Informal Resolution

Every effort should be made to resolve the appointee's problems on an informal basis. This may be done through discussions between the appointee and his or her immediate supervisor or the next higher supervisor, with the assistance, if desired, of an EEO/PERS Counselor. Informal complaint procedures are discussed in Section 602 of the Administrative Handbook. If the appointee wishes to have a personal representative present at these informal discussions, he or she must notify the supervisor in advance. Attempts at informal resolution do not extend the time limits for filing a formal appeal unless a written exception is granted by the Human Resources Director, who serves as the Appeals Liaison during the appeal proceeding.

B. Formal Appeal

If the appointee's problem is not resolved satisfactorily through informal discussion, he or she may file a formal appeal in accordance with the following procedures:

1. The initial appeal shall be set forth in writing. The nature of the appeal shall be clearly stated. The initial appeal shall be filed with the Appeals Liaison.
2. A continuing appointee must file the initial appeal in writing within thirty calendar days of the date on which he or she has been informed by the University of the action to be taken that gives rise to the appeal; or within thirty calendar days of the date on which he or she acquired, or reasonably should have acquired, knowledge of the event or action that gives rise to the appeal. A terminated appointee must file the initial appeal within thirty calendar days of the date of separation.
3. The party who took the action that is being appealed shall respond in writing, giving the reasons why he or she took the action. This response shall be made within fifteen calendar days of the initial appeal. At this time, the appointee shall be advised of the options for further review and of the costs associated with each option.
4. It is important that the appeals process be conducted in a timely manner. Because the Division's offices are dispersed throughout

the state, a deadline is considered met if an item is postmarked by that deadline, and a deadline period commences with receipt of a document at either the individual's mailing address or at the appropriate administrative office. To verify that a deadline has been met, mail should be sent certified, with a return receipt requested.

5. Decisions on appeals shall be consistent with the established University policies, regulations, and procedures that were in effect at the time of the action that is being appealed.
6. An appeal that is not resolved through the response described in Section II-B-3 above, and is not subject to a hearing under the provisions of Section II-B-8 below, may be appealed to the Associate Vice President. The Associate Vice President, or his or her designee, will review the appeal and issue a written decision.

The appeal to the Associate Vice President must be made in writing and forwarded through the Appeals Liaison. The Appeals Liaison must receive it within ten calendar days of the date the response described in Section II-B-3 was issued, or was due, whichever comes first.

The Associate Vice President, or his or her designee, shall issue a written decision to the appointee within thirty calendar days of receiving the appeal.

7. An appeal that is not resolved through the response described in Section II-B-3 and that is subject to a hearing under Section II-B-8 may be appealed to a Hearing Officer or a Hearing Committee.

The appeal to a hearing must be received by the Appeals Liaison within ten calendar days of the date the response was issued, or was due, whichever comes first. The appeal shall be submitted in writing and must state the unresolved issues and the remedy requested.

8. Only allegations of violations of the academic personnel policies or terms or conditions of employment listed below may be appealed to a hearing:

- a. Nondiscrimination.

- b. Layoff and involuntary reduction in time.
- c. Personnel records/privacy.
- d. Holidays.
- e. Vacation.
- f. Sick leave.
- g. Corrective action (censure, suspension, demotion).
- h. Dismissal.
- i. Reprisal.
- j. Procedural irregularity in personnel review process.

In advance of the hearing, the parties shall attempt to stipulate in writing the issues to be submitted for review. If the parties cannot agree on the issues, the Hearing Officer or the Hearing Committee shall define them. Except by written mutual agreement of the parties, no issue may be introduced at the hearing that was not included in the original appeal.

C. Hearing Procedures

- 1. The hearing shall be conducted in accordance with the following procedures:
 - a. The appointee shall elect in writing whether to have the appeal heard by a University Hearing Officer, a University Hearing Committee, or a Non-University Hearing Officer. Such election shall be final.
 - b. If the individual chooses to have a University Hearing Officer or a University Hearing Committee, the Human Resources Director shall obtain a list of five or more University academic appointees from the Assembly Council Personnel Committee. The University Hearing Officer or University Hearing Committee shall be selected from this list utilizing a strike-off procedure. A

University Hearing Committee shall be comprised of three persons.

- c. If the appointee chooses to have a Non-University Hearing Officer, the Human Resources Director shall ask the local office of the American Arbitration Association to provide the names of five persons who are experienced in such matters. Upon receipt of these names, the parties shall select the Hearing Officer, utilizing the strike-off procedure of the Association.
- d. The Hearing Officer or Hearing Committee shall schedule the hearing as soon as possible, taking into consideration the calendars of the parties.
- e. The Hearing Officer or Hearing Committee shall submit their report within thirty calendar days following completion of the hearing.
- f. The Associate Vice President shall make the final decision within thirty calendar days after he or she receives the report from the Hearing Officer or Hearing Committee.
- g. The Associate Vice President may grant reasonable extensions of the time limits specified above. If the appointee fails to meet any of these time limits, or to receive an approved extension, this failure shall constitute an automatic withdrawal of the appeal. Any unreasonable delay on the part of the appointee, as determined by the Associate Vice President, may also constitute a withdrawal of the appeal.

2. The hearing proceedings shall be conducted as follows:

- a. The appointee whose appeal is being heard shall have the right to represent him-or herself, or to be represented by another.
- b. Unless both the administration and the appointee agree to an open hearing, the hearing shall be closed to the general public and deemed confidential. At the request of either party, the Hearing Officer or Hearing Committee shall temporarily exclude from the hearing place, during the testimony of a given witness, all potential witnesses

other than the appointee and the University official primarily involved in the action being appealed, and their respective representatives.

- c. The hearing shall be held at the headquarters location of the appointee, or at some other mutually agreed-upon location.
- d. The Hearing Officer or Hearing Committee shall have the same rights as the Academic Senate Committee on Privilege and Tenure to review the appointee's personnel file. These rights are set forth in APM-160-20-d(2).
- e. The hearing shall be tape recorded, unless it is stenographically reported. Reasonable arrangements shall be made for either party to listen to the tape recording. At its own expense, either party may procure a copy of the recording. In addition, at its own expense, either party may make provision for a stenographic report of the hearing. Alternatively, the parties may agree to share the expense of a stenographic report.
- f. If there is to be a closed hearing, all materials, reports, and other evidence introduced into the hearing and recorded by tape, stenographic, or other means shall be considered private and confidential and shall not be subsequently disclosed to parties other than those participating in the hearing.
- g. Upon receipt of the report and recommendation from the Hearing Officer or Hearing Committee, the Associate Vice President, in accordance with the provisions outlined in the preceding paragraph, shall become custodian of any tape, stenographic, or other recordings. Such recordings shall be retained for no less than three consecutive years and may then be destroyed, unless the appointee gives the University written permission to destroy them at an earlier time.
- h. The Hearing Officer or Hearing Committee shall consider only such charges as are set forth in the appeal. Any oral or documentary evidence may be presented, provided that it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The

Hearing Officer or Hearing Committee shall provide, as a matter of policy, for the exclusion of irrelevant or unduly repetitious evidence. All findings, conclusions, and recommendations of the Hearing Officer or Hearing Committee shall be supported by substantial evidence. Uncorroborated hearsay shall not constitute substantial evidence. No evidence other than that presented in the appeal and hearing shall be considered by the Hearing Officer or Hearing Committee or have weight in the proceedings, except that notice may be taken of any judicially noticeable fact. Parties present at the hearing shall be informed of facts thus noticed; and each party shall be given reasonable opportunity on request to refute such facts. Each party shall have the right to present his or her side of the case by oral or documentary evidence; to submit rebuttal evidence; and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

- i. After reviewing the evidence, the Hearing Officer or Hearing Committee shall determine whether or not the action appealed was arbitrary or capricious, or whether it violated a University rule, regulation, or policy. The Hearing Officer or Hearing Committee shall make findings of fact, which shall be based upon substantial evidence, together with a recommendation. A written report of the findings and the recommendation shall be submitted to the Associate Vice President. The recommendation shall be consistent with University policies.
- j. The Associate Vice President shall accept, reject, or modify the recommendation of the Hearing Officer or Hearing Committee within thirty calendar days of receiving it. If the recommendation is accepted, the appropriate administrative officer shall so inform the appointee who filed the appeal. He or she shall also provide the appointee with a copy of the findings and recommendation. In such case, if the appeal was heard by a Non-University Hearing Officer, the entire cost of the hearing, excluding the appointee's attorney fees and the cost of the stenographic report, shall be borne equally by the University and the appointee. The University shall absorb the cost of the initial tape recording, if any.

If the recommendation of the Hearing Officer or Hearing Committee is rejected or modified, the appropriate administrative officer shall so inform the appointee who filed the appeal, and shall state the reasons in writing. He or she shall also provide the appointee with a copy of the findings and recommendation. In such case, if the appeal was heard by a Non-University Hearing Officer, the entire cost of the hearing, excluding the appointee's attorney fees and the cost of the stenographic report, shall be borne by the University.

ADDITIONAL RESOURCES:

- [UC Academic Personnel Manual, Section 140, *General University Policy Regarding Academic Appointees*](#)