

PPSM POLICY 70 COMPLAINT RESOLUTION

LOCAL IMPLEMENTING PROCEDURES (APPENDIX B)

I. INTRODUCTION

PPSM 70 provides for administrative hearings to resolve certain employee complaints. Hearing officers are asked to conduct fair, impartial, and orderly hearings, to determine facts and policy violations (if any), and to submit a written report of their final and binding decisions.

II. HEARING OFFICER'S AUTHORITY

The hearing officer's authority arises out of, and is limited by, the provisions of University policy. The hearing officer is authorized to direct restoration of any University pay, University benefits, and/or rights provided under University policy lost as a result of management action.

Hearing officers do not have the authority to:

- Order that the hearing be recorded by stenography or order transcripts from the hearing,
- Issue subpoenas, or
- When rendering a decision, add to, delete from, modify, nullify or ignore in any way personnel or other University policies, plans, or benefit regulations, or local implementing procedures.

III. HEARING GUIDELINES

The following guidelines shall assist hearing officers conduct hearings and prepare written reports of their final and binding decisions.

- A. Identification of Issues and Applicable Policy(ies). The hearing officer must determine:
 1. The issues to be decided, the issues in the complaint accepted for processing by the University or the issues stipulated by the parties which are within the scope of the complaint; and
 2. The applicable University policies listed in the complaint, if any, which have been allegedly violated.

- B. Findings of Fact. The hearing officer is required to make findings of fact based on the evidence presented at the hearing. This means that, except with the consent of both parties, the hearing officer may not secure information concerning the complaint from sources outside the hearing, nor consult with persons other than in the regular course of the hearing.
- C. Relevant Material and Witness Lists. Prior to the start of the hearing, each party must provide the other party with all relevant material to be introduced at the hearing and the names of all witnesses who will testify at the hearing, with the exception of rebuttal materials and witnesses. Each party should provide this material at least seven (7) calendar days prior to the hearing, to the extent possible. If a party's delay in providing this information would prejudice the other side, the hearing officer can decide to delay the hearing or exclude the information. The party who caused the delay is responsible for any costs associated with this delay.
- D. Limitation on Submissions to Hearing Officer Before Hearing. Only applicable policies, the complaint, the response to the complaint, briefing per paragraph 6 below, and other material to which the parties have stipulated in writing may be submitted to the hearing officer in advance.
- E. Pre-hearing Briefs. Either or both parties may, at their discretion, submit pre-hearing briefing. The parties may mutually agree on when the brief(s) will be filed. If the parties cannot mutually agree on a filing date, the hearing officer will set the date.
- F. Closed Hearings. Unless both parties otherwise agree, hearings shall be closed to everyone other than the employee, the employee's representative, the department representative, the University's representative, a Human Resources Department representative, and the person designated to record the hearing (if other than a Human Resources representative). Unless both parties otherwise agree, witnesses are present only when they are testifying.
- G. Standard of Proof. The standard of proof will be the preponderance of the evidence. Preponderance of the evidence is a term which means that the evidence on one side outweighs the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect on the hearing officer. Where the evidence is evenly balanced, the party who has the burden of proof has failed to prove it. In cases of corrective action or termination by the University, the University will bear the burden of proof and will present its case first. In all other cases, the employee will bear the burden of proof and present his/her case first.
- H. Settlement Discussions or Offers. Offers of settlement are not admissible, nor are documents prepared for mediation or other informal resolution efforts.

IV. HEARING PROCEEDINGS

- A. Issues for Review. Except by mutual agreement of the parties, the only issues that were accepted for review by the University and still remain at the time of the hearing may be introduced at the hearing. The hearing officer should attempt to have the parties stipulate as to the issues in the case and prepare a joint statement of the issues. After going on the record, the hearing officer should:

1. Identify the individuals present;
 2. State what documents have been submitted in advance by the parties; and
 3. Define the issues to which the hearing will be limited.
- B. Examination of Witnesses. During the hearing, the parties shall each have the opportunity to present evidence, examine and cross-examine witnesses under oath or affirmation. Evidence may be oral or documentary. The hearing officer should ensure the record of the hearing is clear, that testimony and statements are identified, and that procedural rulings are understandable to the parties and their representatives. The hearing officer is free to ask questions of the witnesses or the parties and should do so if policy intent or significant facts remain unclear and are necessary to a resolution of conflicting views. The parties may be asked to submit additional evidence which is available to them and which the hearing officer considers relevant to the case.
- C. Hearing Order. The hearing officer shall conduct the hearing in the following order:
1. A brief opening statement by party bearing burden of proof followed by a similar opening statement by responding party;
 2. Presentation of evidence by party bearing burden of proof;
 3. Cross-examination by the responding party (Redirect and re-cross-examination as appropriate);
 4. Presentation of evidence by responding party;
 5. Cross-examination by party bearing burden of proof (Redirect and re-cross-examination as appropriate);
 6. Rebuttal evidence by each party; and
 7. Brief summation by each party, following the same order as in the opening statement.
- D. Evidence. The hearing shall not be conducted according to the technical rules of evidence used in judicial proceedings. Any oral or documentary evidence may be received if it is reliable. The hearing officer may exclude irrelevant or unduly repetitious evidence or testimony. Although hearing officers may receive hearsay evidence and give it the weight or consideration they believe it deserves under the circumstances, hearsay evidence alone is usually insufficient to support a finding of fact. No evidence other than that received during the hearing proceedings should be considered by the hearing officer. Evidence outside and unavailable to present in the hearing room (e.g. a work location) may be viewed by the hearing officer during the formal hearing proceedings with the presence and consent of both parties. Although the production of witnesses and documents is encouraged, University policy does not provide the hearing officer with subpoena power.
- E. Recording. Hearings may be recorded by a method determined by the University. If the University decides not to record the hearing by stenography, the employee may choose to do so. The party choosing to record the hearing by stenography (if any) will be responsible for the stenographer's appearance fee unless the employee and the University agree to an alternate arrangement in advance and in writing. Any party requesting a transcript will be responsible for the fee for that transcript.

V. HEARING REPORT

Hearing reports must be written and must provide, at a minimum, certain key information to support the conclusions and final determination. Reports must include:

- A. A clear identification of the issues properly before the hearing officer;
- B. A summary of the evidence and testimony received, including the positions of the parties;
- C. Findings of fact;
- D. A determination as to whether University policies have been violated or, in disciplinary cases, whether the corrective action or dismissal was reasonable under the circumstances; and
- E. A decision as to the resolution of each issue in the complaint accepted for review.