



Grievance and Mediation Policy – Staff (Non-Represented)

Policy Statement

The University of Vermont is committed to the fair and equitable treatment of all employees. It is the policy of the University to foster and encourage open communication and harmonious working relationships. The University is committed to establishing and maintaining a workplace atmosphere where all employees are encouraged to seek solutions to workplace concerns through open communication with appropriate levels of management. Disagreements are normal and sometimes even healthy for an organization. People should feel free to respectfully express differences of opinion and constructively address and resolve them. All employees are encouraged to participate in informal problem solving in the workplace by demonstrating an ability and willingness to listen, to be flexible with problem-solving and to raise matters for discussion with the appropriate decision-makers. The Mediation Process provides a forum in which parties can freely talk while addressing mutual concerns and the Grievance Process provides a means to address allegations that actions taken by management are impermissible under University policies.

Reason for the Policy

This policy and associated procedures are designed to enhance working conditions for all employees and to provide a mechanism for effective and efficient resolution of workplace disputes.

Strategic Direction

This policy supports the following goal in the University's Strategic Plan
http://www.uvm.edu/president/?Page=strategicplan2009_2013.html:

- *Institutional Efficacy*: As an institution, model the highest standard of ethical conduct, accountability and best practice, public service, and strong commitment to lifelong learning.

Applicability of the Policy

This policy applies to all non-represented staff (“employees”) at the University of Vermont who have completed their probationary period.¹ Temporary wage employees and Officers of Administration (as defined in the *University Manual*) are not covered by this policy.

Policy Elaboration

The good faith filing of or participation in the Mediation Process or the Grievance Process will not result in any negative reflection on the individual filing a grievance or any individual participating in the process nor will it affect future employment, compensation or work assignments at the University. Any staff member who brings forward a dispute or is called as a witness in the dispute will not experience loss of pay for the time spent in any hearing held during the member's regular work schedule. Staff members participating in the Mediation Process or the Grievance Process must advise their supervisors of any scheduled hearing or meeting in a timely manner. An implied understanding inherent in the policy is that all parties agree to comply with the outcome of the process. Employees have the right to use and participate in these procedures free from threats or acts of retaliation, interference, coercion, restraint, discrimination, or reprisal. Retaliation against a person who in good faith files a grievance, or who cooperates or otherwise participates in an investigation of a grievance or participates in a dispute resolution process, is a violation of this policy and is strictly prohibited and will be subject to appropriate and prompt administrative action by the University.

Definitions

Business Day: Is a day in which normal business is conducted in Waterman Building.

Deadline: Means 4:30 p.m. on the date on which a specific timeline as set forth in this policy is reached.

Grievance: A grievance is a formal complaint that has not been resolved to a satisfactory result through informal attempts (which may include mediation) against a supervisor, administrator or other official of the University by an employee alleging that a decision or action has adversely affected the employee's conditions of employment constituting a grievable matter under the terms of this policy and for which the employee is seeking one or more specifically identified outcomes.

Grievance Review Panel: A subset of the membership of the Staff Grievance Review Committee (see section 4.d below) selected by the Chair for the purpose of hearing matters brought before the Committee. The Grievance Review Panel Lead is an individual designated by the Chair to lead a Panel appointed to hear evidence and rule on a specific grievance. The Chair and the Panel Lead may be the same person.

¹ A probationary staff member may grieve termination if the staff member has completed probation in a prior position if there has been no interruption in service.

Grievant: Any employee who files a grievance or has requested mediation under the provisions of this policy.

Mediation: The voluntary process of intervention of a mutually acceptable, impartial, and neutral Mediator (see below) in assisting two or more individuals in a grievable dispute or conflict.

Mediator: A volunteer, non-represented University staff member who has been trained and approved by the Associate Vice President for Human Resource Services to serve in the Mediation Process. All Mediators sign an attestation of confidentiality.

Peer Advisor: A volunteer, non-represented University staff member who has been trained by the Office of Human Resource Services, who may not be a spouse, partner in civil union or other relative to the parties involved and may not be an attorney. A Peer Advisor helps the Grievant analyze the situation, suggests strategies for addressing disputes, helps identify gaps in information and resources for finding information, and assists in case preparation. A Peer Advisor may be utilized at any point, including during the Mediation or Grievance Process at the Grievant's discretion. A Peer Advisor may offer advice and may attend mediation meetings and hearings (without voice). If a Peer Advisor is involved in supporting a staff member through the Grievance Process, including mediation, the Respondent may not refuse the Peer Advisor's presence. A Peer Advisor may attend non-grievance related meetings at the discretion of the Grievant and the Respondent. The Staff Council is responsible for the process of recruiting and selecting the Peer Advisors.

Respondent: A person against whom a grievance is filed or with whom mediation is requested under the terms of this policy.

Retaliation: Any threats or acts of interference, coercion, restraint, discrimination or reprisal for any form of participation in the Mediation and/or Grievance Process.

Staff Grievance Committee Chair: The Staff Grievance Committee Chair is the chairperson of the Staff Grievance Committee as appointed by the President of the University.

Staff Grievance Committee: A group of non-represented employees appointed by the President as members of the Staff Grievance Committee for the purpose of hearing grievances brought under this policy. (see section 4.a below for additional detail)

Staff Grievance Coordinator: The Staff Grievance Coordinator in the Office of Human Resource Services whose duties include the general administration of the Grievance Process, including the maintenance of all records, monitoring of deadlines, statistical reporting of results and execution of all responsibilities described in the Grievance Process.

Procedures

1. Grievable Matters:

- a. Matters expressly **included** in the definition of a grievance and subject to resolution either through the Mediation Process or the Grievance Process, and which, therefore, are grievable matters under this policy, include:
 - i. Disciplinary actions, including written warnings, suspensions and dismissal in which the Grievant alleges a violation of due process. This category includes cases in which appropriate procedures were not followed.
 - ii. Alleged violation of a specific University rule, policy or practice related to employment matters.
 - iii. A decision involving wages, hours or working conditions that had no rational basis or was the result of abuse of authority.
 - iv. Acts of retaliation or reprisal as a result of requesting mediation or filing a grievance under the Mediation and Grievance Policy – Staff (Non-Represented).
 - v. Acts of retaliation or reprisal as a result of being a witness or giving information during the Mediation and/or Grievance Process or other University proceeding.
 - vi. Violation of due process or applicable University policy, rule, or practice resulting in termination during any probationary period immediately preceded by continuous, non-temporary employment at the University for at least one year.
- b. Matters expressly **excluded** from the definition of a grievance and not subject to resolution either through the Mediation Process or the Grievance Process, and which therefore are not grievable matters under this policy, include:
 - i. Situations in which a person believes they have been subject to discrimination on the basis of race, color, religion, age, disability, national origin, sex, sexual orientation, gender identity and expression or other bases prohibited by law, including harassment based on any protected category. Such matters are addressed through the Office of Affirmative Action/ Equal Employment Opportunity.

- ii. Position classification and salary decisions. These matters are covered under separate appeal procedures administered through the Office of Human Resource Services (see below in related links).
- iii. The measurement and assessment of work activity, such as a performance evaluation, a memorandum of discussion or understanding that explains rules of conduct or sets forth work expectations, or a verbal warning.
- iv. Termination during a probationary period, unless as a result of an alleged violation of due process or applicable University policy, rule, or practice.
- v. The contents of University policies, procedures, and rules.
- vi. The methods, means, and personnel by which work activities are to be carried out, unless the employee proposes to show that his or her health or safety is endangered.
- vii. Termination, lay-off, demotion, reduction of FTE assigned to the position, or suspension from duties because of reorganization, a lack of work, reduction in the work force, job elimination, or release from the University as a result of the declaration by the University of financial exigency, as defined in the University Manual <http://www.uvm.edu/~facrsrscs/University%20Manual.pdf> or financial difficulty as defined in the Staff Handbook.
<http://www.uvm.edu/hrs/?Page=info/staffhandbook/staffhandbook.html>
- viii. Termination of a restricted-fund position due to cessation of funding. See Staff Handbook, Conditions of Employment.
<http://www.uvm.edu/hrs/?Page=info/staffhandbook/staffhandbook.html>

2. Mediation Process

Employees are encouraged to seek informal resolution of workplace disputes through the Mediation Process administered by the Office of Human Resource Services prior to seeking formal resolution of a grievance under this policy.

- a. For issues other than discharge for cause, an employee who requests the mediation process within thirty (30) business days of a specific action or decision that gives rise to a grievance is provided an extension of the normal grievance submission deadline. This extension enables the employee to file a grievance within ten (10) business days following completion of the Mediation Process or the normal grievance filing deadlines established in section 2 below, whichever shall be later. If the employee does not make use of the Mediation Process, the normal deadlines shall apply. Documentation from the Office of Human

Resource Services confirming the mediation and establishing the relevancy of the mediation to a grievance must be included with the grievance filing in order to utilize the extended deadline.

- b. An employee who wishes to begin the Mediation Process instead of filing a grievance must submit the completed Mediation Form within the time in which they would be eligible to file a grievance under this policy (see section 2 below) to the Staff Grievance Coordinator indicating the nature of the issue, the parties involved, and mediator preference. The Staff Grievance Coordinator will then provide the Respondent with the names of the Grievant's preferred Mediators, therefore allowing both parties the opportunity to mutually select the Mediator to conduct the mediation. Upon notification of the Grievant's Mediator preferences, it is the responsibility of the Respondent to notify the Staff Grievance Coordinator of their selection.
- c. The Mediator is responsible for scheduling the meeting times with the parties. The initial approved mediation period is twenty (20) business days from the filing of a Mediation Request Form, but this may be extended, normally in increments of ten (10) business days, if progress is being made, upon agreement of the parties and the Mediator. The Mediator is authorized to terminate the mediation process at any time if the Mediator believes the parties have reached an impasse.
- d. Once the parties have reached an agreement or an impasse, the Mediator must return the form and all related documents to the Staff Grievance Coordinator. In the case of a written resolution, the Mediator must attach a copy of the agreement to the form and return it to the Staff Grievance Coordinator.
- e. In the case of an impasse, upon receipt of the form, the Staff Grievance Coordinator will initiate a letter to the party who initiated the mediation indicating that if the employee wishes to file a grievance, then they must do so within the normal time limits. The employee's receipt of the letter will start the time for filing a grievance. The employee must timely and affirmatively file a grievance under this Policy; merely receiving the form or acknowledging impasse will not automatically start the Grievance Process.

3. Grievance Process

The University provides a formal multi-step process by which a grievance is considered once it is submitted to the Staff Grievance Coordinator within the deadlines established below or within 10 business days of declaration of impasse of the Mediation Process. Within thirty (30) business days of the Grievant's knowledge of the event or decision on which the grievance is based, the Grievant may file a written grievance with the Staff Grievance Coordinator using the Staff Grievance Information Form and must include a statement of the efforts made by the Grievant to resolve the matter through the informal procedures set forth above. The Grievant must also include a clear statement of the remedy sought.

All documents and additional information provided by the Grievant or the Respondent must be received by the Staff Grievance Coordinator a minimum of three (3) business days prior to any grievance meeting described in steps one through three above so that the material may be provided to the other party in advance of the meeting. No new documents or additional information may be provided at the time of the meeting. At the discretion of the Staff Grievance Coordinator, reasonable accommodations may be made to time limits related to submission of documents and additional information.

- a. **Step One - Next Level University Official:** Step One provides an opportunity for a Respondent's next-level University Official (Respondent's supervisor unless otherwise conflicted) to investigate and reply in writing to a grievance. Within three (3) business days of receipt of the Staff Grievance Information Form, the Staff Grievance Coordinator will forward the grievance to the Respondent's next-level University Official. Within fifteen (15) business days, the Step One University Official will conduct any necessary investigation and prepare a written response to the Grievance. In the event the dispute is not resolved at this step to the Grievant's satisfaction, the Grievant has the opportunity to pursue the grievance to Step Two within ten (10) business days of being provided the reply from the Step One University Official.
- b. **Step Two – Grievance Hearing:** Step Two provides an opportunity for the Grievant to have a hearing before a Grievance Committee Panel. Within three (3) business days of receipt of the Grievant's appeal from Step One, the Staff Grievance Coordinator will forward the grievance to the Chair of the Grievance Review Panel. Within fifteen (15) business days of the filing of the written grievance, the Grievance Review Panel will convene a hearing with Grievant and Respondent where Grievant and Respondent will have an opportunity to make a presentation of their position on the grievance, including presenting the Panel with all relevant documents and requesting the presence of all necessary witnesses. The Grievant has the option to have a Peer Advisor present. Within ten (10) business days of the conclusion of the hearing, the Grievance Review Panel will provide to the Grievant and to the Respondent a written decision, with a copy to the Associate Vice President for Human Resource Services. In the event the Panel makes a decision not satisfactory to the Grievant or otherwise does not find a basis for the grievance, the Grievant has the opportunity, if desired, to pursue an appeal to Step Three of the process within ten (10) business days of receiving the Panel's report.
- c. **Step Three – Review by the Provost and Senior Vice President:** Step Three provides an opportunity for the Provost and Senior Vice President (or designee) to review the matter(s) in dispute. Within three (3) business days of receipt of the Grievant's appeal from Step Two, the Staff Grievance Coordinator will forward the grievance to the Provost and Senior Vice President. All information already on record from Steps One and Two of the process is submitted for review on appeal. The written appeal, along with a copy of the Grievance Review Panel's

written decision and all other related documents, will be directed to the Provost and Senior Vice President. The written appeal must clearly set forth one of the following grounds for appeal:

- i. Failure to follow the Grievance Process and harm resulting to the Grievant, and/or
- ii. New evidence not reasonably available at the time of the meeting convened by the Grievance Review Panel and how that new evidence would impact the decision, and/or
- iii. Abuse of discretion by the Grievance Review Panel.

The Provost and Senior Vice President must issue, in writing, a final determination on the appeal within fifteen (15) business days of receipt thereof. A copy of the written decision will go to the Grievant, the Respondent, and the Associate Vice President for Human Resource Services. The decision of the Provost and Senior Vice President is the final internal appeal step. No further internal appeal process is available.²

- d. All timeliness requirements may be waived upon showing of good cause and reason why the step could not be accomplished within the time set out in these procedures. Requests for extension or waiver of timeliness at any step must be submitted to the Staff Grievance Coordinator for review and approval by the Associate Vice President for Human Resource Services. Failure to meet a time requirement will not be grounds to deny a grievance or to find either in favor of or against a Grievant unless it may be shown that failure to comply with the deadline was without good cause.
- e. At any point during the Grievance Process, if both the Grievant and the Respondent agree, they may request to suspend the Grievance Process to engage in mediation in an effort to resolve the grievance. Both the Grievant and the Respondent must notify the Staff Grievance Coordinator in writing of their request to suspend the Grievance Process in lieu of mediation. Upon receipt of written request, the Staff Grievance Coordinator, in consultation with the Associate Vice President for Human Resource Services, will determine if suspension of the process is appropriate. If it is determined that suspending the Grievance Process to engage in the Mediation Process is appropriate, the Staff Grievance Coordinator will notify the Grievant and the Respondent, as well as the appropriate step-level official, of the decision. All timelines and processes described above in Section 2 will apply.
- f. A University Official responsible for implementing the grievance outcome who believes that the outcome is contrary to law may delay implementation and seek review through the Vice President for Executive Operations.

² Vermont State Labor Statute – Grievances - The board shall hear and make final determination on the grievances of all employees who are eligible to appeal grievances to the board. The right to institute grievance proceedings extends to individual employees, groups of employees and collective bargaining units.

4. Grievance Review Committee and Conduct of Business

- a. **Composition:** The Committee is composed of ten (10) non-represented employees of the University covered under the terms of this Policy and appointed by the President of the University, drawn from a pool of nominees submitted by the Staff Council President and the Associate Vice President for Human Resource Services. The President will also designate two appointed members as the Chair and Vice Chair. The Vice Chair will carry out the duties of the Chair if the Chair is unavailable for any reason.
- b. **Terms of Appointment:** All members of the Committee, including the Chair and Vice Chair, will serve three (3) year staggered terms, and such individuals may be reappointed for additional terms by the President upon recommendation of either the Staff Council President or the Associate Vice President for Human Resource Services. The members designated as Chair and Vice Chair shall serve a two (2) year term in these capacities, in addition to regular committee membership, and may be reappointed to these positions by the President, as deemed appropriate, and upon recommendation of the Staff Council President and the Associate Vice President for Human Resource Services.
- c. **Replacement of Members:** Any member who is unable to complete their term will be replaced for the remainder of their term by a new member appointed by the President. The President may also remove a member of the Committee if, in the President's judgment, the member is unable to carry out their responsibilities in accordance with this Policy or if the member is no longer a non-represented employee.
- d. **Conduct of Business:** Any business of the Grievance Committee may be conducted by the Committee as a whole, or as a three (3) member Panel, at the discretion of the Chair. A majority of the members of the Committee or the full Panel, as applicable, must be in attendance in order for business to be conducted or evidence to be heard and considered. The Chair is responsible for the conduct of any Committee meetings. When a Panel is convened, a Panel member will be designated by the Committee Chair as the Panel Lead and will be responsible for the conduct of all Panel meetings. In the event a member of a convened Panel becomes unavailable for any reason, the Committee Chair shall designate a new member to the Panel.

Conflicts of Interest: Any Committee member who has a direct or potential conflict of interest in any grievance shall disclose the conflict to the Chair. If the Chair has a conflict, the Vice Chair shall serve as Chair for the particular grievance. Conflicts may include having a personal relationship with a party to the grievance or having a role in the decision making or actions that relate to the grievance. If either the Grievant or Respondent believes that any individual selected for the Committee has a conflict of interest, the Grievant or Respondent must, within three (3) business days of receipt of the names of the individuals selected for the Committee, provide a written statement to the Chair of the Grievance Committee, clearly stating the specific reason(s)

they believe the Committee member cannot be unbiased. If the Chair of the Grievance Committee determines that the Committee member has an actual conflict of interest, that person will be removed from the Committee and a new individual appointed. The Chair's decision is final in this regard.

Forms

Mediation Request Form

http://www.uvm.edu/hrs/forms/mediation_request_form.pdf

Staff Grievance Information Form

http://www.uvm.edu/hrs/forms/staff_grievance_information_form.pdf

Grievant Reply Form

http://www.uvm.edu/hrs/forms/grievant_reply_form.pdf

Contacts

The Provost and Senior Vice President is the University official responsible for interpretation of this policy, in active consultation with the Vice President for Finance and Administration.

Staff Grievance Coordinator

Human Resource Services

228 Waterman Building

656-3150

hrsinfo@uvm.edu

Related Documents/Policies/Resources

Equal Employment Opportunity/Affirmative Action Policy

http://www.uvm.edu/~uvmppg/ppg/general_html/affirm.pdf

Sexual Harassment Policy

<http://www.uvm.edu/~uvmppg/ppg/hr/sexharasemp.pdf>

Staff Council Office, 656-4493 or

<http://www.uvm.edu/~stffcncl/>

Human Resource Services Employee Advising

656-3150 or hrsinfo@uvm.edu

Employee Assistance Program

656-2100 or <http://www.uvm.edu/eap/>

Center for Cultural Pluralism

656- 8833 or <http://www.uvm.edu/~ccpuvm/>

Office of Affirmative Action and Equal Opportunity
656-3368 or <http://www.uvm.edu/~aaeo/>

Position Classification and Salary Appeals
<http://www.uvm.edu/hrs/info/compensation/fygrievance.html>
<http://www.uvm.edu/hrs/info/classification/pdhowto.html>

Selection and training process for peer advisors and mediators.

Grievance and Mediation Flow Chart

Effective Date

Approved by the President on July 5, 2011