

Chapter 17: Grievance

Key Terms You Need to Know for Chapter 18

- **Grievance** – any allegation or complaint by an employee or employee organization of a violation, misinterpretation or inequitable application of policies of the Board of Regents, or existing laws, or administrative directives and procedures, or of the right to fair treatment.
- **Grievance hearing** – a formal fact finding administrative procedure used to bring together all the parties involving in a complaint filed against one or more individuals by another individual (s) to resolve an issue internally.
- **Grievance Committee** – a three-member committee appointed to preside over a hearing regarding a formal complaint.
- **Legal Counsel** – lawyer.
- **Aggrieved employee** – the employee who is filing a complaint and is afforded the grievance hearing.
- **Informal Grievance** – discussing an issue or complaint with the supervisor or an administrator with the intension of resolving the issue quickly and informally.

Frequently Asked Questions	
✓ Am I required to have a lawyer in any grievance hearing?	✓ No.
✓ Will the college always have a lawyer in grievance hearing?	✓ No. If the aggrieved employee does not have a lawyer present, then the college will not have one.
✓ When can I file for formal grievance?	✓ Within 5 days of failure to resolve an issue informally.
✓ Where do I file my formal grievance?	✓ The President’s Office.
✓ Who will notify me if my request for formal request is approved?	✓ The president. You will receive a letter from the president advising you on the outcome and the procedures.
✓ Can I use the informal grievance procedure to resolve my employment termination?	✓ No. You use only the formal procedure to resolve your complaint on termination.
✓ Can I bring a family member to my grievance hearing?	✓ Yes, you may bring mutual support, but they will wait outside the room for you and not sit with you in the grievance hearing because it is a confidential procedure. However, if your family member is also your lawyer who represents you in the case, then he/she may sit with you in the room.

Types of Grievances and Their Procedures

Two types of grievances exist at COM-FSM:

- A formal grievance
- An informal grievance

The process for each is described below.

Filing for Informal Grievance

An employee who alleges or complains about “violation, misinterpretation or inequitable application of policies of the Board of Regents or existing laws or administrative directives and procedures” may file their complaint with their supervisor or administrator to resolve the issue. The supervisor or administrator will maintain a written report and narrative of the incident. When the efforts in this informal process fail to resolve the issue, the aggrieved employee may proceed to the formal process.

Filing for Formal Grievance

An employee shall file a formal grievance in writing with the president within five (5) days of the failure to informally resolve the issue through the informal process. A formal grievance can follow up to three steps, as listed in Figure 17.1.



Figure 17.1. The Three Steps Comprising a Formal Grievance

Step 1: Filing with the president

The aggrieved employee may file a written statement of the grievance with the president within five days of the failure to informally resolve the grievance. However, in no case may the statement of the grievance be presented more than 30 days from the act or acts forming the basis of the grievance. Failure to file a written grievance within this thirty-day period, will act as a total bar to the grievance and the acts complained of therein. The statement of the grievance shall include the following:

- General description of the nature of the grievance;
- Specific description of the act or acts upon which the grievance is based;
- Time, date and place of such act or acts;
- Name of all persons alleged to be involved in the act or acts giving rise to the grievance; and
- Remedy sought by the aggrieved employee to resolve the grievance. Remedies are limited to back pay, reinstatement, or removal or reconsideration of adverse actions.

Receipt of the Statement

The president shall issue a copy of the statement to all persons named in the complaint. Thereafter, the president will make a decision and communicate in writing such decision to the aggrieved employee within ten days from the date of receipt of the complaint. If the aggrieved employee disagrees with the decision of the president on the matter, or if the president failed to make a decision, the employee may file a written statement with the president within ten (10) days of receipt of the decision to initiate Step 2, Appeal to Grievance Committee. This period starts from the later of two dates: either the receipt by the aggrieved employee of the president's findings, or the president's failure to make findings within the ten-day period.

Failure of Aggrieved Employee to Request Initiation of Step 2

Failure to make such a request by the aggrieved employee in the time required will act as a total bar to the grievance and the actions alleged within the grievance.

Step 2: Appeal to Grievance Committee

The aggrieved employee files a written request to initiate Step 2 with the president.

- The president shall promptly appoint the first member to the grievance committee and notify the aggrieved employee in writing.
- The aggrieved employee shall also appoint the second committee member within three days from the appointment of the first member and notify the president in writing.
- The two established committee members will be notified in writing by the director of human resources of the hearing and of their responsibility to meet and elect the third member within three days from the date of appointment of the second member.
- The two committee members will meet, choose a third member and gain agreement to serve on the committee. They will notify the director of human resources in writing of the third and final member of the committee. *Note that if the period for appointment of the third member expires, the president shall forthwith appoint the third member.*

Documents

The director of human resources will compile the documents including documents used in the initial informal step. Normal documents and their transmittal follow these steps.

1. The supervisor/administrator of the aggrieved employee (if the employee used the informal process) will send to the Grievance Committee all reports and documents used in the informal procedure.
2. If the case was investigated or reported to or by the Security Office, the security supervisor will send to the director of human resources all reports filed and compiled on the matter.
3. The president will send to the director of human resources all documents received and issued on the matter.
4. The director of human resources will make copies of all documents received, copies of the grievance policy and procedures and related policies and prepare envelopes marked "Confidential" for these individuals:
 - The three grievance hearing committee members (one for each);
 - The college legal counsel (if participating in the process);
 - The aggrieved employee's legal counsel (if employee is represented);
 - The aggrieved employee (if employee is not represented);
 - The president;
 - Original copies, which shall be kept with the director of human resources.

Within 3 days from the appointment of the third member, the director of human resources shall meet with committee members as a group to directly hand them the documents, explain the hearing procedures and grievance procedures and answer administrative questions about the process. The director of human resources or designee will provide logistic support for the grievance hearing

The Hearing

The committee shall commence hearings within ten days of the appointment of the third member. Minutes of the hearing shall be recorded. The committee shall advise the parties (college and aggrieved employee or representative) to the grievance in writing of its decision within five days of the close of the hearing.

The standard of review for the committee shall be whether the college has abused its discretion in implementing the discipline imposed or interpreting the policies or contract. If the committee finds the college has abused its discretion in implementing the discipline imposed, the committee is to determine the appropriate discipline, if any, that should be implemented, and to make the appropriate findings. If these policies or the contract has been interpreted incorrectly, the committee shall award appropriate relief under the policies or contract.

The grievance shall be resolved by majority vote of the committee.

Step 3: Appeal to the Board of Regents

If the aggrieved employee is not satisfied with the decision of the Grievance Committee, he/she shall file with the president a written request for Board of Regents to review the findings of the committee file within ten (10) days from date of receipt of the committee's finding. The president will inform the Board in writing of the request of the aggrieved employee and will also notify the employee of the Board's response.

If the college is not satisfied with the findings of the grievance committee, the president will file with the Board in writing a request to review the committee's finding within ten (10) days from date of receipt of the committee's finding and notify the aggrieved employee of the request and of the response from the Board.

If Board Decides to Review Committee Findings

If the board chooses to review the findings of the grievance committee, the standard of review for the board will be whether the decision of the grievance committee was an abuse of discretion.

If the Board decides to review the findings of the grievance committee as requested by either party, the following steps shall occur:

1. The president shall notify the director of human resources to prepare for the Board's use the documents used in the hearing and any additional documents submitted to the president thereafter.
2. Copies of all documents used in the hearing including the findings of the committee and media files and recordings of the actual hearing shall be prepared for each individual member of the Board and handed to them by the director of human resources prior to their executive meeting on the matter.
3. Board members will return the documents to the director of human resources after the conclusion of their decision on that matter. They shall issue their decision to the president if he/she requested the Board review. If the aggrieved employee requested the Board review. The president will forward to the aggrieved employee the Board's decision.

Grievance by Executive Personnel

Grievance by the president or by a staff officer in the president's office, other than the president shall proceed in accordance with procedures set forth in this section. The Board of Regents shall resolve a grievance by the president in a manner prescribed by the Board. The decision of the Board is final.

When the Grievated Matter Goes to Court

When the internal grievance procedure is exhausted and the aggrieved employee is still not satisfied, at that time he/she may proceed to court. The president will authorize the legal counsel to represent the college and the director of human resources or a designee will provide administrative support as needed.