

V:01:16 GRIEVANCE AND COMPLAINT PROCEDURES FOR NON-FACULTY PERSONNEL

1. APPLICATION OF GUIDELINE

- A. This policy applies to Volunteer State Community College for addressing grievances and complaints filed by Volunteer State Community College employees. There shall be two types of procedures, which Volunteer State Community College shall address through procedures developed pursuant to this policy. The two types are: 1) grievances, which are subject to committee review; and, 2) complaints which must be resolved without committee review.
- B. This policy has no application to a termination procedure initiated against a tenured faculty member under Tennessee Board of Regents policy No. 5:02:03:70 Section VI (G, 2). This policy is not to be used for support staff employees who are demoted, suspended without pay, or terminated. In accordance with Tenn. Code Ann. § 49-8-117, *Support Staff Grievance Procedure*, support staff employees who are demoted, suspended without pay, or terminated must follow the grievance process contained in guideline P-111.
- C. A Volunteer State Community College employee may choose to utilize the procedure for review by the grievance committee established pursuant to this policy in the following situations:
 - 1) actions relating to the suspension of employees for cause or termination in violation of an employment contract which fall under Tennessee Board of Regents Policy No. 1:06:00:05 (Cases Subject to TUAPA), or Tennessee Board of Regents Policy No. 5:02:03:70 Section VI (G, 2, b) (suspension of tenured faculty) or,
 - 2) actions involving hearings requested pursuant to Tennessee Board of Regents Guideline P-080 Section VI (D).
- D. Volunteer State Community College may choose to utilize the procedure for review by the grievance committee when resolving a complaint initiated pursuant to Tennessee Board of Regents Policy No. 5:02:03:30 (Faculty Promotion at Community Colleges).

2. DEFINITIONS

- A. **GRIEVANCE** – (Committee review available) – An employee may only grieve those matters defined in 1 – 3 below. If the grievance involves or is based on unlawful discrimination or unlawful harassment, the process set out in Guideline P – 080 must be utilized. A grievance may result from any actions Volunteer State Community College has taken against the employee which:
 - 1) violates Volunteer State Community College or Tennessee Board of Regents policy, or involves an inconsistent application of these same policies;
 - 2) violates any constitutional right. The most likely areas of concern are the First, Fourth or Fourteenth Amendment of the federal constitution when that action hampers free

speech, freedom of religion, the right to association, provides for improper search and seizure, or denies constitutionally required notice or procedures, or;

- 3) violates a federal or state statute not covered by Tennessee Board of Regents Guideline P-080.

B. COMPLAINT – (Committee review not available) – A complaint is a concern which an employee wants to discuss with supervisory personnel in an effort to resolve the matter. Personnel actions such as performance evaluations, rates of pay, position re-classifications, or position terminations due to reduction in force **do not** fall under the definition of complaint.

- 1) A complaint may be filed by any present employee, former employee, or an applicant for employment at Volunteer State Community College who believes discrimination in employment has been practiced against him/her or any employee who feels that employment practices at Volunteer State Community College have or will result in discrimination in employment against him/her.

C. EMPLOYEE

For purposes of the grievance and complaint procedures, an employee is defined as an administrator, faculty member (though not including faculty on adjunct contracts), professional, clerical and support staff personnel. Probationary employees are also included in this definition. Student workers are not included in the definition of employee.

3. APPLICABILITY OF PROCEDURES

- A. If any employee files a grievance/complaint, the supervisor involved should notify the Director of Human Resources/Affirmative Action Officer on the day of filing.
- B. All employees shall have access to the grievance/complaint procedure as long as the process was initiated within the time frame set out in the procedure.
- C. All employees are encouraged to discuss any problem with their supervisor or department head prior to utilizing any grievance/complaint procedure. Volunteer State Community College should attempt to resolve each grievance/complaint at the lowest possible level.

4. RESPONSIBILITY FOR IMPLEMENTATION

- A. The President of Volunteer State Community College has ultimate responsibility for implementation of the grievance and complaint procedures, and provides the final decision at the College level.
- B. Administrative, academic, and supervisory personnel are responsible for insuring that they inform and make available to all employees information concerning their right to file a grievance or complaint and their right to be protected from retaliation.

- C. Retaliation- No employee shall retaliate or discriminate against another employee because of the latter employee's filing of a grievance or complaint. In addition, no employee shall coerce another employee or interfere with the action of another employee in the latter employee's attempt to file a grievance or complaint. Administrative, academic and supervisory personnel should also be informed that they are responsible for ensuring that the employee is free from retaliation, coercion and/or discrimination arising from the employee's filing of or intent to file a grievance or complaint.

5. GRIEVANCE/COMPLAINT PROCEDURE

A. GRIEVANCES

- 1) Grievances which cannot be resolved shall, upon the request of the grievant, be referred to a grievance committee as set out in Section 2, C above. The grievant has the option of choosing committee review where he or she has attempted to resolve the matter without success, or it is apparent that such an attempt would be futile.
- 2) Grievances which are processed through the grievance committee are appealable to the Chancellor only where they fall within the parameters set out in Tennessee Board of Regents Policy No. 1:02:11:00. This generally includes all grievances defined in Section 2, A above, except those where the complainant has filed a lawsuit or appeal with a state or federal administrative body.

B. COMPLAINT PROCEDURE

- 1) The complaint procedure must be brought to the attention of the employee's supervisor within ten (10) working days after the employee becomes aware of a problem. If the complaint arises from a repeated or continuing occurrence, the time limit begins from the date of the last such occurrence. Any complaint not presented within the ten (10) working days time limit, is waived and shall not be considered. Once a final determination is made, the employee may not later present the same complaint in an attempt to gain a more favorable outcome.
- 2) If the supervisor and employee cannot reach a mutual agreement within five (5) working days, the employee may discuss the matter with the next level of supervision. The employee should proceed to this step within five (5) working days of the decision of the immediate supervisor. Failure to comply with this step within the time frame allotted will waive the rights of the employee to complain on the matter.
- 3) In the event that an agreement is not reached at the level of supervision in Section 5, B; within five (5) working days, the employee can continue the process within five (5) working days of each unsuccessful agreement. If the complaint reaches the executive administrative level and cannot be resolved, the employee should file a written complaint with the Director of Human Resources/Affirmative Action Officer.
- 4) The written complaint must be filed within five (5) working days of the date of the decision of the executive/administrator. Failure to comply within the time frame allotted (five (5) working days) will waive the employee's right to complain the matter and the complaint may not be raised again.

- 5) Upon receipt of the written complaint, the Director of Human Resources/Affirmative Action Officer will permit the employee to present facts and/or material relative to the complaint. The Director of Human Resources/Affirmative Action Officer will investigate the matter and recommend a solution. The Director of Human Resources/Affirmative Action Officer will submit a written recommendation to the President within five (5) working days.
- 6) Upon receipt of the recommendation, the President may accept the recommendation or provide an alternate solution. The President's decision shall be final. Complaints do not include a right to any type of hearing, adversarial proceeding, nor the right to appeal to the Chancellor.

6. GRIEVANCE PROCEDURE

A.

- 1) Grievances which cannot be resolved shall, upon the request of the grievant, be referred to a grievance committee as set out in Section 2, C above. The grievant has the option of choosing committee review where he or she has attempted to resolve the matter without success, or it is apparent that such an attempt would be futile.
- 2) Grievances which are processed though the grievances committee is appealable to the Chancellor only where they fall within the parameters in Tennessee Board of Regents Policy No. 1:02:11:00. This generally includes all grievances defined in Section 2, A above, except those where the complainant has filed a lawsuit or appeal with a state or federal administrative body.

B. The employee should begin the process by providing a written grievance to his/her immediate supervisor. In the event that the grievance is against the supervisor, the employee can submit the grievance to the Director of Human Resources/Affirmative Action Officer. An attempt should be made to begin the procedure at the supervisory level.

C. The Director of Human Resources/Affirmative Action Officer should resolve the grievance within ten (10) working days from the time that the grievance is filed. In the event that the problem cannot be resolved at this level, the employee should elevate the grievance to the next level of management.

D. If the next level of management cannot resolve the grievance, the employee should continue the process through the chain of command until it reaches the executive administrator. At all levels of the hierarchy, the process should be handled within ten (10) working days of the time that it is received by the superior.

E. If the matter cannot be resolved at the executive administrator level, the employee may file the written grievance with the Director of Human Resources/Affirmative Action Officer within ten (10) working days. At the filing of the written grievance with the Director of Human Resources/Affirmative Action Officer, the employee has the option to request the grievance to: 1) be investigated by the Dean or Director; 2) request a hearing by the grievance committee. If the employee chooses an investigation by the Director of

Human Resources/Affirmative Action Officer, who will make a thorough and independent study of the grievance. The Director of Human Resources/Affirmative Action Officer will forward a recommendation of the solution to the President. Upon receipt of the recommendation, the President may accept the recommendation of the Director of Human Resources/Affirmative Action Officer or provide an alternate solution. The President's decision shall be directed to the employee within five (5) working days. The President's decision shall be final and binding to all parties concerned. An employee dissatisfied with the solution may not request a hearing by the grievance committee.

- F. If the employee chooses to request a hearing by a grievance committee, the President shall appoint a grievance committee as established with this policy. Within ten (10) working days of the filing of the request for a hearing on the grievance, the grievance committee shall conduct an impartial hearing on the grievance, at which time it will accept and review all pertinent information presented by the employee and the chairperson of the committee as well as any other information it deems appropriate. The grievance committee shall make a thorough and independent study. The procedure by committee shall consist of fact finding. The committee shall be allowed to hear each witness, including the grievant, separately. The grievant shall be allowed to present any pertinent evidence to the committee and to have the committee call those witnesses who have testimony pertinent to the committee's recommendation. Within three (3) working days after the hearing, the Chairperson of the committee shall prepare a written report of the committee's recommendation and reasons to the President. The recommendation shall be based on the facts and circumstances as known to the committee. The report shall also contain a summary of the committee's investigation and findings. Copies of the report shall be submitted to all parties involved.
- G. Upon receipt of the recommendation, the President may accept the recommendation of the committee, in whole or part, or provide an alternate solution. Within five (5) working days, the President's decision shall be directed to the Chairperson of the committee and all parties involved. The President's decision shall be final and binding as to all parties concerned. However, grievances which are processed through the grievance committee are appealable to the Chancellor only where they fall with the parameters set out in Tennessee Board of Regents policy No: 1:02:11:00.

7. ADDITIONAL REQUIREMENTS FOR GRIEVANCES ONLY

- A. Grievances must be presented within thirty (30) days after the date of the occurrence giving rise to the grievance. If the grievance arises from repeated or continuing occurrence, the time limit is from the date of the last such occurrence. Any grievance not presented within the time limit is waived. Once a final determination is made, the employee may not present the same grievance again in an attempt to gain a more favorable decision.
- B. The grievance should be stated in reasonable and temperate terms.

- C. A grievance must contain the following information:
 - 1) The grievant's name and job title;
 - 2) The department in which the grievant is employed;
 - 3) An explanation of the grievance;
 - 4) Names of persons to whom the grievance has previously been presented and the date on which the grievance was presented to each;
 - 5) Corrective action desired;
 - 6) The date the written grievance is filed;
 - 7) Signature of the grievant.

- D. The grievance may be returned to the grievant for additional information or restatement in clear terms at any step in the process.

- E. All employees are entitled to be accompanied by an advisor at each step of the grievance procedure; however, the advisor may not act as an advocate, but may act as an advisor only.

- F. Decisions should be based on full and fair consideration of all pertinent facts and circumstances.

- G. Employees may pursue grievances during regular business hours. Volunteer State Community College will ensure that all parties have access to all persons, places, and official records for information necessary to the determination and processing of a grievance within specified time limits. This access shall not interfere with normal work-flow of Volunteer State Community College. Any questions should be referred to the Director of Human Resources/Affirmative Action Officer.

- H. Grievances may be withdrawn in writing within any stage of the procedure.

- I. A grievance which is the subject of an action filed with an external body shall not be processed through this grievance procedure. The term "external body" includes a court or federal or state administrative body such as the Equal Employment Opportunity Commission, Office of Civil Rights, or Tennessee Human Rights Commission.

- J. The person or committee charged with making the decision at each step in the process has the responsibility and authority to conduct a thorough and independent investigation.

- K. At any step in the grievance process, the President is authorized to grant reasonable extensions of the time limits upon a showing of good cause.

8. GRIEVANCE COMMITTEE

- A. The President will establish a grievance committee to provide advice on those grievances which reach the final decision-making level. The committee will be chosen from the Grievance Committee Hearing Pool and will include at least one (1) peer representative in accordance with Section 2, C above.
- B. Members of the committee will be selected to ensure that committee members will be disinterested in the outcome. Any committee member selected who has a particular interest in the outcome of the decision will be replaced with an alternate to avoid a biased decision. Every effort will be made to include minorities, i.e., ethnic minorities and women, in the composition of the committee.
- C. Five (5) individuals will serve on the committee. A chairperson will be selected by the committee. All members must be present for all proceedings.
- D. The committee will conduct an independent and thorough investigation. In so doing, it will have the power to receive evidence from the grievant, gather evidence from other sources and call witnesses.
- E. The procedures shall consist of a fact finding by the committee. The committee will hear each witness, including the grievant, separately. The grievant will be allowed to present any pertinent evidence to the committee and to have the committee call those witnesses who have testimony pertinent to the decision. All witnesses will swear or affirm the truthfulness of their testimony.
- F. The Chairperson has the responsibility to:
 - 1) rule on questions of procedure,
 - 2) rule on the appropriateness of questions directed to any party, and
 - 3) assure that all witnesses have been heard.
- G. The testimony of witnesses shall be tape-recorded under the control of the chairperson of the committee, and the tapes shall become an official part of the record.
- H. The committee chairperson will prepare a written report within five (5) days which includes the fact findings and the committee's recommendation to the President. Upon receipt of the recommendation, the President may accept it or provide an appropriate alternative solution. The President's decision, together with a copy of the committee report, will be forwarded to the parties and the chairperson of the committee.

9. MAINTENANCE OF RECORDS

Copies of written grievances and complaints, and accompanying responses and documentation should be maintained in the Office of Human Resources for at least three (3) years. If a finding adverse to the grievant/complainant is made, the finding shall be maintained in the grievant/complainant's personnel file.

TBR Sources: 1:02:11:00: Board of Regents Bylaws, as amended; SBR Meeting September 30, 1983; SBR Meeting December 12, 1986; SBR Meeting March 17, 1989; TBR Meeting March 25, 1994. Note: Revised policy approved on September 30, 1983, to be effective on December 16, 1983. 1:06:00:05: TBR Meetings, June 30, 1978; September 30, 1983; December 14, 1984; March 15, 2002. 5:02:03:30: April 2, 2004. 5:02:03:70: April 2, 2004 This policy is a result of a comprehensive revision of former TBR Policy 5:02:03:00, Academic Freedom, Responsibility and Tenure. The former policy included provisions related to academic freedom and responsibility and tenure in both universities and community colleges. The revision, approved by the Tennessee Board of Regents on April 2, 2004, created a separate policy on academic freedom and responsibility pertinent to both universities and community colleges, established separate policies relative to tenure for universities and community colleges, and instituted separate policies on faculty appointments for universities and community colleges. Faculty members appointed prior to July 1, 2004, may elect to be considered for tenure under the provisions of Policy 5:02:03:00 or under the revised policy for a four-year phase-in period. The revised policy will be applicable to all tenure action taken on or subsequent to July 1, 2008, for faculty whose employment began on or after July 1, 2004. P-080: Presidents Meeting; November 14, 1984 and November 16, 1984 AVTS Sub-Council meeting; August 16, 1988; February 14, 1989 ; November 10, 1992 ; August 13, 1996; February 13, 2001; August 16, 2005 ; November 8, 2005; February 13, 2008: P-110: Presidents Meeting: August 18, 1987; May 16, 1989; August 21, 2001; February 13, 2002; February 13, 2008. P-111: TBR Meetings: February 13, 2002; May 21, 2002; February 13, 2008 [Authority: Tenn. Code Ann. § 49-8-117, Acts 1993, ch. 301, § 1; Tenn. Code Ann. § 4-5-301 et seq.; Tenn. Code Ann. § 9-8-307, TBR Policy 1:06:00:05, Uniform Procedures for Cases Subject to the Tennessee Uniform Administrative Procedures Act.]

VSCC Source: December 17, 1987, President; April 2, 1999, President; January 23, 2009, President's Cabinet.