



UTAH VALLEY UNIVERSITY

Policies and Procedures

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| POLICY TITLE | Staff Grievance (Temporary Emergency) | Policy Number | 335 |
| Section | Human Resources | Approval Date | October 25, 2018 |
| Subsection | Conditions of Employment | Effective Date | October 25, 2018 |
| Responsible Office | Office of the Vice President of Budget, Planning, and Human Resources | | |

1.0 PURPOSE

1.1 The purpose of this policy is to provide a fair and equitable process for eligible full-time staff employees to grieve qualifying adverse employment actions, including setting forth distinct procedures for the resolution of staff grievances regarding (a) employment actions other than termination and (b) termination of employment.

2.0 REFERENCES

2.1 Utah Code § 63G-2 *Government Records Access and Management Act (GRAMA)*

2.2 Utah Code § 67-21-3.7 *Utah Protection of Public Employees Act*

2.3 UVU Policy 162 *Sexual Misconduct*

2.4 UVU Policy 165 *Discrimination, Harassment, and Affirmative Action*

2.5 UVU Policy 331 *Performance Evaluation for Staff Employees*

2.6 UVU Policy 371 *Corrective Actions and Termination for Staff Employees*

3.0 DEFINITIONS

3.1 Adverse employment action: A formal corrective action or materially adverse change in the terms, conditions, or privileges of employment.

3.2 Arbitrary and capricious: Arbitrary and capricious review focuses on the decision-making process, rather than the “quantum and quality” of information upon which a decision is based. A decision is arbitrary and capricious if the decision maker relied on improper or irrelevant factors, entirely failed to consider an important aspect of the problem, offered an explanation for its



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decision that runs counter to the evidence before it, or is so implausible that it could not be ascribed to a difference in view or a product of the decision maker's expertise.

3.3 Associate Vice President for Human Resources (AVPHR): The administrator responsible for coordinating staff grievances under this policy.

3.4 Clear and convincing evidence: Clear and convincing evidence is an intermediate standard that requires more than a preponderance of evidence but does not require proof beyond a reasonable doubt. It requires existence of facts that make a conclusion very highly probable.

3.5 Confirmation of termination: Document that confirms a staff member's employment with the University is or will be terminated. This document is sent or provided to a staff member after the staff member has timely responded to a notice of termination document or the time period for response in a notice of termination document has lapsed.

3.6 Formal corrective action: An action imposed on an employee pursuant to UVU Policy 371 *Corrective Actions and Termination for Staff Employees*. Formal corrective actions include written warning; transfer, demotion, suspension, or reduction in pay for disciplinary reasons; and involuntary termination.

3.7 Full-time employee: An employee hired into a position in which the University has a reasonable belief that the employee will work at least 130 hours per month (30 hours per week) in a 12-month measurement period. A full-time employee is eligible for benefits, including medical insurance.

3.8 Grievance: The act of appealing an adverse employment action.

3.9 PACE President: The president of UVU's Professional Association of Campus Employees (PACE).

3.10 Probationary period: The period of initial employment that provides the employee and the University the opportunity to assess the employee's ability to perform the duties and fulfill the responsibilities of the position.

3.11 Substantial evidence: The substantial evidence standard is used to review a factfinder's decision rather than in fact-finding itself. A decision is supported by substantial evidence if there is a quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion. The party challenging the decision maker must marshal all of the evidence supporting the findings and show that despite the supporting facts, and in light of the conflicting or contradictory evidence, the findings are not supported by substantial evidence.



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4.0 POLICY

4.1 Scope of Policy

4.1.1 This policy applies only to full-time staff employees who have completed their probationary periods. This policy does not apply to any part-time employee or to part-time or full-time faculty (tenured, tenure-track, not on tenure track, adjunct) or executives.

4.1.2 This policy applies to grievances/appeals of adverse employment action, including formal corrective action under UVU Policy 371 *Corrective Actions and Termination for Staff Employees*.

4.1.3 This policy does not apply if any other policy applying to staff contains its own grievance or appeal procedures. In those cases, the other policy's grievance/appeal procedures apply. For example, this policy does not apply to any complaints, grievances, or appeals alleging or related to protected class discrimination, sexual misconduct, equal opportunity, or any other issues addressed by UVU Policy 162 *Sexual Misconduct* or UVU Policy 165 *Discrimination, Harassment, and Affirmative Action*, as such claims may be grieved or appealed only under UVU Policy 162 or UVU Policy 165. Moreover, this policy does not apply to appeals of performance evaluations addressed by UVU Policy 331 *Performance Evaluation for Staff Employees*.

4.1.4 Some adverse employment actions or other workplace issues may not be grieved under this policy, including but not limited to wages and salaries, classification actions, corrective action, or termination during probation and/or extension of the probationary period, reassignment of job duties and responsibilities, verbal warnings, and day-to-day directives and assignments to staff. A reduction in force or reorganization is not grievable unless it is alleged that appropriate UVU procedures have been violated.

4.2 Policy Statement

4.2.1 The University is committed to fair and equitable treatment of eligible employees who wish to grieve qualifying adverse employment actions. Full-time staff employees who have completed their probationary periods may grieve two aspects of an adverse employment action under this policy. First, staff members may grieve the decision of a supervisor to take adverse employment action on the grounds that the decision was based on incorrect conclusions of fact. Second, if the action is a formal corrective action, then the staff member may also grieve the severity of the corrective action taken.

4.2.2 The staff member must show by clear and convincing evidence that the factual basis for adverse employment action was materially untrue or that the corrective action decision was arbitrary and capricious or unsupported by substantial evidence. A presumption of validity attaches to the decision maker's action and the burden of proof rests with the staff member grieving the action.



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4.2.3 At any stage of the grievance process, either party may request mediation to resolve a potential grievance. Mediation will only occur if both parties willingly agree to participate. Mediation is a free service offered to all staff. If resolution is not reached through mediation, the grievant may withdraw the grievance or engage in the grievance process as outlined in this policy.

4.2.4 UVU's Associate Vice President of Human Resources (AVPHR) is responsible to coordinate staff grievances in accordance with this policy. If the AVPHR has a conflict or is otherwise not available, a designee of the AVPHR may serve in this role.

4.2.5 If a staff member receives a decision at any step of the grievance process and does not ask for further review of the grievance within the specified time limit, that particular grievance will be closed, with no additional internal grievance or appeal options.

4.2.6 A proposed resolution of a grievance that involves an exception to a university policy requires review by the Office of General Counsel and approval of the AVPHR and the supervising vice president (or the President if the grievance is based on an action by a vice president).

4.2.7 Information disclosed by a staff member during a grievance process shall be treated as confidential as long as it does not interfere with the University's legal obligations, including any obligation to investigate allegations of misconduct and to take corrective action.

4.2.8 No member of the university community may retaliate against any staff member for initiating the grievance process in good faith or for honestly participating in the grievance process as a witness, termination grievance panel member, or otherwise.

4.2.9 All documents, records, recordings, and information associated with the staff grievance process are designated as protected in accordance with the *Utah Government Records and Management Act (GRAMA)*.

5.0 PROCEDURES

5.1 Grievances Other Than Termination

5.1.1 Grievances of adverse employment actions other than termination proceed according to the following two-step process.

5.1.2 Step 1–Discussion Between Staff Member and Supervisor

5.1.2.1 Staff who wish to pursue a grievance shall initially attempt to informally resolve the grievance with their immediate supervisor or the immediate decision maker. To initiate this process, the grievant should present a written grievance, explaining their concerns, to their



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immediate supervisor within five working days of the notification of the adverse employment action.

5.1.2.2 The supervisor shall respond to the grievance in writing within ten working days of receiving the written grievance.

5.1.2.3 If the grievant believes the matter cannot be prudently discussed or resolved with the immediate supervisor at step 1, the grievant shall within five working days after the notification of the adverse employment action inform the AVPHR or designee that they wish to proceed to step 2.

5.1.3 Step 2–Review by Appropriate Vice President

5.1.3.1 A grievant may appeal the step 1 decision in writing to the vice president who oversees the grievant with a copy of the written appeal submitted to the AVPHR within ten working days of:

- a) Notification of the adverse employment action; or
- b) Receipt of the step 1 decision; or
- c) Failure of the immediate supervisor to respond to step 1 of the grievance process within 10 working days.

5.1.3.2 The vice president who oversees the grievant will reach a decision on the appeal in accordance with the standards in sections 4.2.1 and 4.2.2, and issue a written decision to the grievant within 10 working days of receiving the appeal. If the grievant reports directly to the vice president, or if the vice president has a conflict of interest as determined by the AVPHR, in consultation with the Office of General Counsel, then the President will decide the appeal.

5.1.3.3 The decision of the vice president (or, as outlined in 5.1.3.2, the President) shall be final and binding; and the grievance is considered closed.

5.2 Grievance of Termination

5.2.1 A grievant may request a termination grievance hearing before a termination grievance panel in writing to the AVPHR within five working days after a *Confirmation of Termination* document from the grievant's supervisor is sent or provided to the grievant. The written request for a grievance hearing must state the grounds for the request (based on one or more the scopes of grievance set forth in section 4.2.1) and provide the reasons supporting the ground(s).



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5.2.2 Selection and Training of Termination Grievance Panel

5.2.2.1 If a staff member requests a termination grievance hearing, then the AVPHR shall promptly convene a 3-member termination grievance panel either from the Policy 162/165 review panel pool or by choosing staff members and seeking approval to utilize such staff members on the grievance panel from the PACE President.

5.2.2.2 Each termination grievance panel member must be in good standing with the University; must not be employed in the same organizational unit as the grievant; must not be a supervisor of the grievant; and must not have any conflicts of interest relating to the grievant or any allegation in the grievance.

5.2.2.3 The AVPHR will inform the parties (the grievant and the responding manager/decision maker) of the chosen panel members and give each party the option to provide any objections to the panel members based on bias or conflict of interest within three working days. Consulting with the Office of General Counsel, the AVPHR will review and decide on any conflict of interest or bias objections raised by the parties.

5.2.2.4 The AVPHR shall arrange for the selected termination grievance panel members to attend a training on these procedures provided by the Office of General Counsel.

5.2.3 Hearing Officer

5.2.3.1 The Office of General Counsel will appoint an impartial attorney to preside over the grievance hearing as hearing officer. This attorney must have no prior involvement in either advocacy or investigatory matters related to the grievance. The hearing officer will ensure order, fairness, due process, efficiency, and civility at the hearing, and ensure a relevant and sufficient evidentiary record for the panel's consideration. To advance this aim, the hearing officer may set time limits proportionate to the complexity of the case; exclude irrelevant and unduly repetitious exhibits, witnesses, questions, statements, or other information; and exclude material deemed privileged under the law. Formal rules of evidence do not apply.

5.2.3.2 Parties must appear in person at the hearing. Witnesses must appear in person or remotely via two-way videoconferencing. Written witness statements in lieu of appearance in person or via videoconferencing are inadmissible.

5.2.3.3 The hearing officer may conduct a pre-hearing conference to formulate or simplify the issues; obtain admissions of fact and documents that will avoid unnecessary proof; arrange for the exchange of proposed exhibits; outline expectations for the hearing; or agree to other matters that may expedite the orderly conduct of the hearing.



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5.2.4 Preparing for Hearing

5.2.4.1 The AVPHR will schedule a hearing within 20 working days of confirming the panel and hearing officer, unless the schedules of the parties, panel members, or hearing officer require that the hearing be scheduled on a later date. The AVPHR may recommend a panel chair to the panel, based on prior panel experience and/or prior experience with UVU's policies and processes. The selected panel members shall promptly meet or communicate with one another electronically and choose a termination grievance panel chair. The name of the selected termination grievance panel chair shall be communicated by the panel members to the AVPHR, the hearing officer, and the parties.

5.2.4.2 The termination grievance panel shall consult with the hearing officer during the grievance process regarding legal, procedural, policy, and other questions as needed. The hearing officer, in consultation with the panel, will review and respond to any pre-hearing questions or objections from the parties related to hearing matters.

5.2.4.3 The AVPHR will provide to the parties, panel members, and hearing officer (1) the written request for hearing by the grievant, (2) the manager or decision maker(s)' written responses (if any), (3) material documents related to the decision(s) being grieved. If the materially relevant documents include confidential information, the documents may be provided via a secure cloud-based storage system where documents may be viewed but not printed. The AVPHR may ask parties and participants in the grievance process to sign a confidentiality agreement before giving them access to the documents.

5.2.4.4 The hearing is an opportunity for the parties to address the termination grievance panel in person about the issues being grieved. Each party will have the opportunity to be heard and to respond to any questions from the panel as the panel applies sections 4.2.1 and 4.2.2 to the grievance.

5.2.4.5 At least 7 working days before the hearing date, the grievant and the manager/decision maker shall provide the other party, termination grievance panel chair, and hearing officer the following materials:

- 1) A "Statement Document" of no more than 5 pages that addresses the grievant's issues, concerns, and proposed solutions framed in terms of the scope of the grievance in section 4.2.1 and the standard of proof in section 4.2.2. The Statement Document(s) shall be provided in electronic format.
- 2) A complete list of all proposed witnesses that each party will call to testify (in person or via two-way video communication) at the hearing and a brief description of the testimony and/or information such witnesses may provide. The witness list shall be provided in an electronic format.



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3) Copies of all documents, exhibits, reports, and any other information (collectively referred to hereinafter as “exhibits”) in support of the parties’ respective positions on the issues and proposed solution. All exhibits shall be provided in an electronic format to the extent possible; the parties may also submit the documents in hard copy form in binders.

4) Notice of whether the party will bring a support person to the hearing, the email address and phone number of the support person, and whether the support person is an attorney. UVU employees that have a conflict of interest may not serve as support persons.

5.2.5 Conducting the Hearing

5.2.5.1 If grievant fails to appear at the hearing at the specified time and place, without good cause, the grievance will be deemed abandoned and therefore closed. In the event the manager or decision maker fails to appear at the hearing at the specified time and place, without good cause, the grievance will still be heard by the grievance panel.

5.2.5.2 The hearing officer is charged with conducting the termination grievance in a thorough, fair, equitable and impartial manner; the panel is charged with addressing and deciding the matter in this manner as well.

5.2.5.3 While the hearing is a closed proceeding, the hearing (except for deliberations) will be recorded by the AVPHR or the AVPHR’s designee. The proceedings of the hearing may be transcribed by the University.

5.2.5.4 The hearing officer will conduct the hearing and will regulate the introduction of evidence for the panel’s consideration in accordance with section 5.2.3.1.

5.2.5.5 The hearing officer will open the hearing by naming the parties and shall state, in a neutral manner, the nature of the actions taken thus far in the grievance process. The hearing officer may also remind the panel and parties of this policy and procedures. All participants at the hearing should be identified at the beginning of the hearing.

5.2.5.6 Each party has up to 120 minutes to present their portion of the case (testimony of the party and that party’s witnesses and questioning of the other party’s witnesses). The opening and closing statements, and questioning by the hearing officer or panel, are not included in this 120-minute time limit. The hearing officer or designee will keep track of the amount of time each party takes to present their portion of the case. The hearing officer may extend the amount of time equitably to each of the parties if the grievant shows the need for such an extension.

5.2.5.7 If a party has brought a support person, either the party or the support person should present the opening statement, testimony, and closing statement. For example, the party could present the opening statement, while the support person questions the witnesses and closing statement, but the witnesses may not be questioned by both the party and that party’s support



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person. After issuing a warning, the hearing officer has authority to exclude from the hearing any party, support person, or other participant whose behavior the panel finds unduly disruptive.

5.2.5.8 The order of the hearing shall be as follows:

- 1) Opening statement by grievant
- 2) Opening statement by responding manager/decision maker
- 3) Testimony of the grievant, including presentation of exhibits
- 4) Testimony of grievant's witnesses, including any exhibits
- 5) Testimony of the manager/decision maker, including presentation of exhibits
- 6) Testimony of the manager/decision maker's witnesses, including any exhibits
- 7) Closing statement by grievant
- 8) Closing statement by manager/decision maker

5.2.5.9 The grievant's opening statement should briefly summarize the nature of the grievance and requested remedy. The manager/decision maker's opening statement should briefly summarize their response to the grievant's concerns and requested remedy. There should be no cross examination during the opening statements. In most cases, a 5-minute opening statement will suffice, though the hearing officer may adjust as appropriate.

5.2.5.10 Each party may testify and offer relevant evidence (i.e., exhibits) to all parties and panel members in support of their positions. At any time, the termination grievance panel members may ask questions of either party. At the end of a party's testimony, the other party shall have the opportunity to ask any questions regarding the testimony and exhibits, limited to the scope of testimony provided by the party.

5.2.5.11 In addition to their own testimony and submission of exhibits, each party may call witnesses, who shall not be allowed in the hearing room until called to testify. Each witness shall provide their own information and testimony to the panel and may be questioned and cross-examined by the panel at any time. At the end of each witness's testimony, the other party and panel members shall have the opportunity to ask any questions of the witness regarding the witness's testimony, limited to the scope of testimony provided by the witness.

5.2.5.12 At the conclusion of a party's presentation, the hearing officer will call for any final questions from the other party or panel member regarding the presentation.



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5.2.5.13 The closing statements of both parties should summarize their positions and set forth proposed remedies. In most cases, a 15-minute closing statement will suffice, though the hearing officer may adjust as appropriate.

5.2.6 Panel Deliberations and Decision

5.2.6.1 The termination grievance panel members are prohibited from discussing any matter related to the hearing with the parties, witnesses, and/or others (except the hearing officer) before or after the hearing. Violation of confidentiality may result in dismissal from the panel and/or other corrective or disciplinary action. Parties, panel members, hearing officers, support persons, and others who attend the hearing will be required to sign confidentiality acknowledgments before participating in the hearing process.

5.2.6.2 Termination grievance panel deliberations and voting shall occur in closed sessions from which all other persons (except the hearing officer) are excluded. Votes shall be cast by secret ballot. A majority vote by the members of the termination grievance panel who attended the hearing shall be required for recommendations. The hearing officer shall be present during the deliberations but shall have no vote. The AVPHR shall not participate in the panel's deliberations.

5.2.7 The termination grievance panel shall determine whether the grievant has shown by clear and convincing evidence the bases for the grievance stated in section 4.2.1. The panel will make findings and recommendation(s) regarding whether and how to uphold or modify the termination decision and regarding any other relevant issues to remedy a substantiated grievance. The panel chair will report the panel's findings and recommendation(s) in writing to the AVPHR and appropriate vice president (or, if the manager/decision maker is a vice president, to the President) within five working days after conclusion of the hearing.

5.2.8 Within 10 working days of receiving the panel's written report, the appropriate vice president will review the submitted documentation and recommendations and issue a final written decision to the grievant, manager/decision maker, the grievant's and manager/decision maker's respective counsel, the AVPHR. If the manager/decision maker is a vice president grievant or if the vice president has a conflict of interest, then the President will receive the panel's written report and render the final decision. In cases where both the vice president and the President have a conflict of interest, the final decision will be made by an appropriate person designated by the AVPHR in consultation with the Office of General Counsel. The Office of General Counsel shall assign an attorney who did not serve as the hearing officer or previously advise the manager/decision maker on the grievance to provide legal counsel to the vice president or President as needed.

5.2.9 The decision of the vice president, President, or other designated person (as outlined in 5.2.8) shall be final and binding; and the grievance is considered closed with no additional internal appeals available to the grievant.



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| POLICY HISTORY | | |
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| October 25, 2018 | Approved for entrance into the Policy Manual as a temporary emergency policy. | UVU Board of Trustees |
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