

## **ARTICLE 26**

### **ALTERNATIVE DISPUTE RESOLUTION PROCESS**

#### **A. POLICY**

This Policy provides librarians in this bargaining unit the opportunity to present complaints. The intent of this process is to encourage voluntary resolution when it is desired by both parties. The use of this Policy shall not be discouraged by the University by any means, either direct or indirect. Librarians may use either the Alternative Dispute Process to process a complaint or the Grievance and Arbitration process set forth in Articles 24 and 25, but may not avail themselves of both procedures.

#### **B. SCOPE/DEFINITION**

A complaint is defined as:

1. A complaint/appeal by a bargaining unit librarian that a specific administrative act was arbitrary or capricious and adversely affects the librarian's existing terms or conditions of employment; or
2. A claim by a bargaining unit librarian of a violation of a provision of applicable University rules, regulations, or the policies contained in Article 4 which adversely affects the librarian's existing terms or conditions of employment.

#### **C. ELIGIBILITY**

This Policy applies to all bargaining unit librarians of the University.

#### **D. STANDARDS/PROCEDURES**

1. A complaint resolution liaison shall be designated on each campus.
2. Informal Review
  - a. Prior to filing a formal complaint, the complainant may attempt informally to resolve the complaint with the immediate supervisor or responsible administrator whose action is being challenged. If the complaint cannot be resolved through informal discussion, the complainant may pursue the formal review process. Attempts at informal resolution do not extend the time limits for filing a formal complaint unless a written exception is granted by the complaint resolution liaison.
  - b. If informal resolution with the immediate supervisor or responsible administrator is attempted or is unsuccessful, a complainant may request that complaint resolution liaison assist in resolving the complaint. Where appropriate, the complaint resolution liaison may work with the parties to reach an informal resolution.

- c. The complainant may waive the informal review and move directly to Step 1 of the Alternative Dispute Resolution Process.

### 3. Step 1 Formal Review

- a. A formal complaint must be filed in writing with the complaint resolution liaison within thirty (30) calendar days from the date on which the librarian knew, or could reasonably be expected to know, of the event or action which gave rise to the complaint, or within thirty (30) calendar days after the date of separation, whichever is earlier. Informal review does not extend this thirty-day time limit. Attempts at informal resolution may continue after a formal complaint has been filed, but are not required. Except by mutual written agreement of the parties, no additional issues shall be introduced after the appeal has been filed.
- b. The complaint must:
  - 1) Identify the specific administrative act(s) to be reviewed;
  - 2) Specify how the complainant was adversely affected;
  - 3) Specify in what regard, if any, the administrative act(s) were arbitrary or capricious;
  - 4) List the section(s) and specific provision(s) of applicable University rules, regulations, or policies listed in Article 4 alleged to have been violated, if any, and how those provisions were violated;
  - 5) Provide date(s) of attempts at informal resolution (if any) and identity of persons contacted; and
  - 6) Specify the remedy requested.
- c. Upon receipt of a Step 1 complaint, the resolution liaison shall complete an initial review of the complaint and determine whether the complaint is complete, timely, and within the jurisdiction of this alternative dispute resolution process. Within ten (10) calendar days, the complaint resolution liaison shall notify the complainant in writing of the acceptance of the complaint. If the complaint is not accepted, the reasons shall be specified as follows:
  - 1) If the complaint resolution liaison determines that the complaint is incomplete or factually insufficient, the complainant will have ten (10) calendar days from the date of the written notice to provide information to make the complaint complete, including additional facts. If the complainant fails to make the complaint complete or provide sufficient facts, the complaint will be dismissed.

- 2) If the complaint resolution liaison determines that the complaint is untimely or outside the jurisdiction of this alternative dispute resolution process, the complaint will be dismissed.
  - 3) If the complaint raises multiple issues, the complaint resolution liaison will make a determination described above with regard to each issue. The complaint resolution liaison may accept some issues and dismiss others pursuant to this review process.
  - 4) If all or part of a complaint is dismissed at this stage, the complaint resolution liaison will provide the complainant with a written explanation of the basis for the dismissal.
- d. When a formal written complaint is accepted, the complaint resolution liaison shall forward the complaint and any supporting materials to the Step 1 reviewer for review and written decision, and notify the Step 1 reviewer and the complainant of the date that the Step 1 response is due. If the department or unit head took the action that is the subject of the complaint, the complaint resolution liaison shall designate another administrator as the Step 1 reviewer, and so notify the department or unit head and the complainant.
  - e. The Step 1 reviewer shall review the complaint, and, if appropriate, investigate, and/or meet with the parties. The reviewer shall respond in writing to the complainant and the complaint resolution liaison within thirty (30) calendar days after the date the formal complaint is received by the Step 1 reviewer. The response will include a statement that the complaint is denied or upheld in whole or in part and that the complainant has the right to appeal the decision to Step 2 of the complaint resolution procedure.
  - f. A complaint that is not resolved at Step 1 may be appealed to Step 2.
4. Step 2 Appeal
- a. A formal complaint not resolved to the satisfaction of the complainant at Step 1 may be appealed in writing to Step 2 with the complaint resolution liaison within fifteen (15) calendar days from the day on which the Step 1 response is issued, or should have been issued. The Step 2 appeal must set forth the unresolved issue(s) and the remedy requested. Except by mutual written agreement of the parties, no issues shall be introduced in the appeal that were not included in the Step 1 complaint.
  - b. Within seven (7) calendar days from the receipt of a Step 2 appeal, the complaint resolution liaison shall forward the appeal, the Step 1 complaint, and the Step 1 response to the University official for review and written decision. The University official shall have the authority to uphold, modify, or reject the decision made by the library official who made the decision at issue.

- c. The appellant may request and receive a review meeting with the University official.
- d. Based on the record the University official shall determine whether the Step 2 complaint was properly reviewed and whether the decision made at Step 2 shall be upheld, rejected, or modified.
- e. The University official shall provide a final written decision to the complainant within thirty (30) calendar days following receipt of the Step 2 appeal. The written decision shall include a statement of the reasons if the decision of the Step 2 reviewer is rejected or modified in whole or in part and a statement that the decision is final.

## 5. General Provisions

### a. Representation

- 1) A complainant may be self-represented or may be represented by another person at any stage of the complaint process.
- 2) The University shall be represented as the designated campus official deems appropriate; representation may be provided by the Office of General Counsel.

### b. Time Limits

- 1) Prior to expiration of a time limit, extensions may be granted by the complaint resolution liaison upon written request by either party.
- 2) Complaints not appealed in a timely manner will be resolved on the basis of the University's response at the previous step of the alternative dispute resolution process. The failure of the administration to respond in a timely manner shall be a basis for the complainant to appeal to the next step. Time limits which fall on a Saturday, Sunday, or University-observed holiday shall be automatically extended to the next University business day.

### c. Pay Status

The complainant and the complainant's representative, if any, shall be granted leave with pay to attend hearings and meetings convened by the University to consider complaints. Except as specified below, time spent by the complainant in investigation and preparation of a complaint shall not be on pay status. Time spent by University employee-witnesses in meetings and hearings convened by the University shall be leave with pay.

### d. Remedy

If the complaint is sustained in whole or in part, the remedy shall not exceed restoring to the complainant the pay, benefits, or rights lost as a result of the violation of University rules, regulations, or policies listed in Article 4, or as a result of an arbitrary or capricious

administrative action, less any income earned from any other employment. If the reviewer's finding and recommendation(s) include a remedy for back pay, the amount of back pay shall be determined by the administration. Disputes over the amount of back pay may be referred back to the reviewer for a separate recommendation. Any claim of back pay must be supported by appropriate documentation. Payment of attorney's fees shall not be part of the remedy. Unless specifically authorized by the complaint resolution liaison, compensation shall not be paid for any period that is the result of extension(s) of time requested by or on behalf of the complainant.