USUHS
INSTRUCTION
1205

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

SUBJECT: Faculty Grievances

Instruction 1205

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(ADF)

ABSTRACT

This Instruction establishes policies and procedures for the redress of Uniformed Services University of the Health Sciences (USUHS) military and civilian faculty grievances. It provides specific directions for the establishment of the Faculty Grievance Committee, defines responsibilities of the Committee members and the USUHS administration, and defines the rights and responsibilities of all parties to the grievance.

A. Reissuance and Purpose. This Instruction reissues USUHS Instruction 1205[a] and provides policies and procedures for redress of faculty grievances.

B. References. *See Enclosure 1.*

C. Applicability. This Instruction applies to all USUHS faculty components, except for:

1. Tenure-Ineligible Track faculty with appointments that are limited to less than one year;
2. Tenure-Ineligible Track faculty with ADJUNCT appointments;
3. Tenure-Ineligible Track faculty with VISITING appointments;
4. Tenure-Ineligible Track faculty with Instructor appointments;
5. Postdoctoral fellows; and
6. Administrative Positions held by faculty.

D. Policy. It is USUHS policy that:

1. A civilian faculty member may file a written petition with the Faculty Grievance Committee seeking redress of grievance(s) arising from furlough, relief of responsibilities, failure to be placed in consideration for promotion, non-reappointment of tenure-eligible faculty members who have not yet been granted tenure, reduction in pay, denial of tenure, termination of an appointment prior to the expiration of the appointment term, or termination of a tenured appointment;

2. A billeted military faculty member may file a written petition with the Faculty Grievance Committee seeking redress of grievance(s) arising from a proposal by the Dean of a USUHS School for termination of an academic appointment during a tour of duty, relief of responsibilities, or failure to be placed in consideration for promotion in academic rank;

3. A non-billeted military faculty member may file a written petition with the Faculty Grievance Committee seeking redress of grievance(s) arising from a proposal by the USUHS Department of

record for termination of an academic appointment, relief of responsibilities, or failure to be placed in consideration for promotion in academic rank;

4. The U.S. Government has mechanisms available to employees to resolve complaints that might also be the subject of grievances applicable to this Instruction and the Faculty Grievance Committee. To avoid conflict and duplication, a faculty member will not be heard before the Faculty Grievance Committee if he/she has initiated formal action to resolve the complaints through other U.S. Government mechanisms. Faculty members do not sacrifice any rights to pursue formal action with the U.S. Government by first pursuing the USUHS Faculty Grievance process:

a. prior to hearing a grievance, the Chair, Faculty Grievance Committee shall advise the Director, Civilian Human Resource (CHR) that a faculty member has sought to resolve a problem through the Faculty Grievance Committee,

b. the Director, CHR, shall advise the faculty member and the Chair, Faculty Grievance Committee, whether an existing U.S. Government procedure that precludes immediate consideration of the grievance by the Faculty Grievance Committee. Allegations of discrimination must be considered through the Equal Employment Opportunity (EEO) Complaint Procedure, and

c. the Director, CHR, shall notify the Dean, School of Medicine (DEN) or Dean, Graduate School of Nursing (DSN), and the Associate Dean, Faculty Affairs (ADF) whenever a grievance is initiated or resolved; and

5. In the following circumstances the Faculty Grievance Committee shall be limited to considering specific grounds for review:

a. if the basis of the grievance is failure to grant tenure, failure to reappoint a tenure-eligible member of the faculty, or failure to place a faculty member in consideration for promotion, the Faculty Grievance Committee is specifically enjoined from reviewing the substance of the grounds upon which that decision was made, but must limit its review to:

(1) allegations of bias, provided that consideration by the Faculty Grievance Committee is not prohibited under D.4.b. of this Instruction, or

(2) procedural irregularities (i.e., has the USUHS followed its own regulations?),

b. if the basis of the grievance is termination of a tenured appointment, termination of a non-tenured appointment prior to the expiration of the term, termination for medical reasons, or a termination based on financial exigency or reorganization, the Faculty Grievance Committee will determine if the facts warrant the decision, and may also review the grounds in D.5 a.(1) and/or (2), above.

A faculty member who alleges bias or procedural irregularities shall have the burden of proof.

E. <u>Faculty Grievance Committee.</u>

1. <u>Creation and Composition</u>

a. A Faculty Grievance Committee will be established as a standing subcommittee of the Faculty Assembly.

b. The Faculty Grievance Committee will be selected by the officers of the Faculty Assembly with the concurrence of the Faculty Senate:

(1) The twelve members will include:

(a) five members from the School of Medicine (SOM) basic science departments,

(b) five members from the SOM clinical science departments, and

(c) two members from the Graduate School of Nursing (GSN);

(2) Of these twelve members, at least three must be civilians and three must be uniformed services officers;

(3) Of these twelve members, at least three must be department chairs (2 SOM, 1 GSN);

(4) No more than two members of any department may serve on the Committee at any one time;

(5) Except for department chairs and Deans, neither Associate Deans nor Assistant Deans will serve on the Committee;

(6) At least eight members will be either tenured civilian faculty or uniformed services faculty at the rank of Associate Professor or Professor;

(7) Members of the Committee will not also serve concurrently on the Committee on Appointments, Promotion and Tenure (CAPT). If a faculty member is mistakenly appointed to both Committees, they will resign from one of the two Committees within 14 calendar days; and

(8) The Director, CHR, will meet with the Committee and its subcommittees (*ex-officio* without vote) to assure compliance with Office of Personnel Management (OPM) policies and procedures.

c. The Committee will annually elect one member of the Committee as the Chair and one member as the Vice Chair. These Committee officers may be re-elected at the pleasure of the Committee.

d. Committee members will be selected for terms of three years; terms will be staggered so that a maximum of 1/3 of the committee is replaced each year:

(1) A maximum of four new members will be selected each year to replace members whose terms are expiring; and

(2) In addition, vacancies will be filled annually or as needed. If an appointment is made to fill an unexpired term, the replacement member will serve until the expiration of the unfilled term.

2. Subcommittees

a. Upon receipt of a petition for redress of a grievance, the Chair, Faculty Grievance Committee will appoint subcommittee members from among the members of the Committee. The Chair, Faculty Grievance Committee will not serve on specific subcommittees appointed to hear individual grievances.

b. A Preliminary Hearing Subcommittee will consist of three members, including a Chair.

c. A Formal Hearing Subcommittee will consist of seven members, including a Chair. The Chair, Faculty Grievance Committee will impanel the Formal Hearing Subcommittee in consultation with the parties to the issue. The same persons will not serve on both the Preliminary Hearing Subcommittee and the Formal

Hearing Subcommittee for redress of a grievance, and the Chair, Faculty Grievance Committee will not serve on either Subcommittee. If it becomes necessary to appoint individuals who are not members of the Faculty Grievance Committee, then certain procedures will be followed.

F. <u>Procedures.</u> *See Enclosure 2.*

James A. Zimble, M.D.
President

Enclosures:
1. References
2. Procedures

Enclosure 1

REFERENCES

(a) USUHS Instruction 1205, "Faculty Grievances," dated July 7, 1988 (hereby cancelled)

(b) USUHS Instruction 1100, "Appointments, Promotion, and Tenure of Faculty," dated December 14, 1998

PROCEDURES

A. Petition for Consideration of Grievance

1. A faculty member with a grievance will petition the Committee Chair in writing to have his/her grievance considered. If the Chair is not available, the Vice Chair will perform the functions of the Chair, Faculty Grievance Committee as specified in B.1.d of this Enclosure.

2. This formal petition will set forth, in detail, the basis for the grievance and will state against whom the grievance is directed and the nature of the redress sought. It will contain pertinent factual data and information.

3. The faculty member's formal petition must be submitted within 30 calendar days following the occurrence of the circumstance, condition, or matter that is the subject of the grievance or within 30 calendar days after the faculty member became aware or should have been aware of the subject of the grievance. If the time when the faculty member became aware of the subject of the grievance is in dispute, the Committee Chair will rule on whether to accept the petition. The Committee Chair may grant an extension of time for submission of a formal petition, provided there is adequate reason for an extension. Failure to submit a grievance or to request an extension within the allotted 30 calendar days will foreclose the use of the faculty grievance procedure.

4. A formal grievance must be filed while the grievant is an employee of the USUHS.

5. Policies concerning grounds for termination or suspension of appointments, termination salary or notice, and necessity for a hearing are defined in USUHS Instruction 1100[b]. Unless the grievant has been terminated for cause under conditions that do not require terminal notice or salary, as defined in USUHS Instruction 1100[b], the faculty member will continue to maintain his/her faculty appointment and current salary until the procedures for consideration of the grievance have been completed. The faculty member may be relieved from such duties, as the Dean may deem appropriate, while grievance procedures are in progress.

B. Consideration by Faculty Grievance Committee

1. Responsibilities of the Chair, Faculty Grievance Committee:

a. The Chair shall bear the major responsibility for the functioning of the Committee and its Subcommittees and ensure that the grievance is handled expeditiously;

b. Where no other procedures are designated, the Committee Chair will follow whatever specific procedures seem appropriate to the particular case;

c. The Chair shall serve as a source of information and counsel to the faculty in matters relating to the appropriate processing of grievances. Prior to the appointment of a Preliminary Hearing Subcommittee, the Chair, Faculty Grievance Committee may seek to facilitate the redress of grievances through administrative channels or by other informal procedures; and

d. If the Chair disqualifies himself/ herself for conflict of interest, or for any other reason is not able to assume the Chair, the Vice Chair will perform the functions of the Chair, Faculty Grievance Committee.

2. Responsibilities of the Subcommittees:

a. The Committee shall function through two Subcommittees, the Preliminary Hearing Subcommittee and the Formal Hearing Subcommittee;

b. After the Chair is satisfied that a formal petition of grievance has been sufficiently explored through informal and administrative channels and that the petition merits further processing, he/she will appoint a Preliminary Hearing Subcommittee to investigate the grievance according to the procedures set forth in paragraph B.3. of this Enclosure; and

c. If necessary, the Chair (or Vice Chair, if appropriate) will impanel a Formal Hearing Subcommittee to investigate the grievance according to the procedures set forth in paragraph B.4.c. of this Enclosure.

3. Preliminary Hearing

a. The Preliminary Hearing Subcommittee will elect its own Chair. If any member of the Preliminary Hearing Subcommittee is unable to continue during the preliminary hearing process, the Chair, Faculty Grievance Committee will appoint an appropriate replacement.

b. The Subcommittee will have the right to decide whether or not the facts merit an investigation. <u>All decisions by the Subcommittee will be by majority vote.</u> A submission to the Subcommittee will not automatically entail investigation or detailed consideration thereof.

(1) If the Subcommittee decides, without investigation, that the matter does not merit consideration, the Chair, Faculty Grievance Committee will report this decision to the parties in writing. There is no appeal to the full Faculty Grievance Committee from such determination.

(2) If the Subcommittee finds that an investigation appears to be warranted, the Subcommittee will conduct an investigation. If, in the opinion of the Subcommittee, the grievant succeeds in establishing a *prima facie* case with regard to allegations of bias or procedural irregularities, the individual(s) against whom the grievance is directed must respond to requests from the Subcommittee to provide rebuttal evidence. After considering all the available evidence, including that provided by all parties to the grievance, the Subcommittee must confirm or reverse its initial decision about the existence of a *prima facie* case. The Subcommittee will consult with the USUHS General Counsel (OGC) before concluding that a *prima facie* case exists.

(3) At any time the Subcommittee may seek by negotiation to settle the issue in a manner satisfactory to the parties. If a settlement is negotiated

successfully, a formal record of the settlement will then be provided to the Chair, Faculty Grievance Committee, who will provide a copy to the President, USUHS for approval or disapproval.

c. If the Subcommittee finds, after investigation, that the grievant has not established a *prima facie* case or that the grievance does not merit further consideration, the Subcommittee will report this conclusion through the Chair, Faculty Grievance Committee to the parties in writing. The Subcommittee's decision will be final.

d. If the Subcommittee does not negotiate a mutually acceptable settlement and finds after preliminary investigation that the grievant has established a *prima facie* case and that the grievance merits consideration or action by a Formal Hearing Subcommittee, the Subcommittee will report its recommendations to the Committee Chair. The Committee Chair will promptly report them in writing to the appropriate persons. The grievant will have 10 calendar days from receipt of the report to ask that a formal hearing be held.

e. Unless an extension is granted by the Committee Chair, or consideration of the grievance is deferred as described in this Instruction, no more than 45 calendar days may pass between the time the Committee Chair receives a petition from a faculty member to whom this procedure applies and the time that the Chair receives a concluding report from a Preliminary Hearing Subcommittee. If no concluding report has been received after this time, the faculty member may request that the grievance go directly to the Formal Hearing Subcommittee without action by the Preliminary Hearing Subcommittee.

f. At the discretion of the Subcommittee Chair, the Preliminary Hearing Subcommittee will follow whatever specific procedures, short of a formal hearing, that seem appropriate to the particular grievance. In instances of doubt, the Chair will be guided by the applicable procedures of the Formal Hearing Subcommittee.

4. Formal Procedures

a. Initiation by Faculty Member

A formal proceeding initiated by a faculty member, on the basis of a report from the Preliminary Hearing Subcommittee, will begin with the faculty member's formal petition.

b. Time and Place of Hearing

(1) If a written petition for a formal hearing is made by the faculty member within 10 calendar days of receipt of the written report of the Preliminary Hearing Subcommittee, the Chair, Faculty Grievance Committee will consult with the faculty member and the individual against whom the grievance is directed and set a time and place for the hearing. The faculty member will have 30 calendar days prior to the hearing date, exclusive of legal holidays, to prepare documentation concerning his/her grievance, unless the faculty member consents to proceed sooner.

(2) The faculty member will be informed that he/she may provide the Committee with a written statement concerning the action forming the basis for his/her grievance, no sooner than 14 calendar days before the date of the hearing.

c. Formal Hearing

(1) The formal hearing process will be completed within 45 calendar days from the start date of the hearing unless an extension is granted by the Chair, Faculty Grievance Committee.

(2) Seven Faculty Grievance Committee members will constitute the Formal Hearing Subcommittee as described in this Instruction. A majority will constitute a quorum for conducting a hearing. The Chair, Faculty Grievance Committee will appoint the Chair, Formal Hearing Subcommittee. If, in the opinion of the Formal Hearing Subcommittee, the grievant succeeds in establishing a *prima facie* case with regard to allegations of bias or procedural irregularities, the individual(s) against whom the grievance is(are) directed must respond to requests from the Subcommittee to provide rebuttal evidence.

(3) A member of the Faculty Grievance Committee will not sit when the Committee is considering a matter directly involving him/her or a departmental or interdepartmental program colleague of such Committee member.

(4) A Subcommittee member will be replaced if he/she believes that some personal consideration might interfere with his her reaching an objective conclusion.

(5) The faculty member may challenge for cause, members of the Subcommittee, stating the basis of the challenge. The Chair, Faculty Grievance Committee will rule on such challenges.

(6) The Chair, Faculty Grievance Committee may appoint *ad hoc* members from the Committee to constitute a full seven-member Subcommittee in the event that regular members are disqualified under B.4.c.(3), (4), or (5) of this Enclosure or are otherwise not available to serve.

(7) The faculty member and any individual against whom the grievance is directed will have the option of being represented by counsel or one advisor, or both.

(8) The following persons are entitled to be present at the formal hearing:

(a) The faculty member, his/her counsel, or other authorized representative;

(b) The individual against whom the grievance is directed, his/her counsel, or other authorized representative;

(c) The Subcommittee members (including *ex officio* representative of CHR); and

(d) Other such persons as are specifically authorized by the Chair, Formal Hearing Subcommittee and reported to both sides at the beginning of each session of the hearing.

(9) The Subcommittee Chair will exclude witnesses from the hearing except while testifying.

(10) Counsel for the parties may be present during the hearing with the understanding that their role is limited to privately conveying advice to his/her client. Counsel is not to act as advocates and may be asked to leave the session by the Subcommittee Chair.

(11) The hearing will be closed.

(12) If the facts are in dispute, testimony of witnesses or their statements and other evidence relevant to the issues will be received.

(13) Under normal circumstances the hearing will proceed in the following sequence:

(a) Evidence in support of the faculty member's grievance;

(b) Evidence by individuals against whom grievance is directed;

(c) Closing argument of faculty member;

(d) Closing argument of individual(s) against whom grievance is directed; and

(e) If circumstances warrant, the Subcommittee may vary the normal order of proceeding. The decision of the Subcommittee Chair on this matter will be final.

(14) Subcommittee members and each party to the grievance will have the right to question witnesses. In the event that witnesses cannot appear in person, depositions or other statements from these witnesses may be presented. All evidence will be made part of the record.

(15) The Subcommittee may call additional witnesses of its choosing or request the introduction of relevant evidence, provided that release of such evidence is not otherwise prohibited by law or regulation.

(16) A tape recording of the proceedings will be kept and the USUHS will bear the cost. At the direction of the President, USUHS, after consultation with the USUHS OGC, a copy of the tape recording will be made available to persons or organizations not party to the proceedings but having an interest consistent with the tenets of academic freedom and consistent with law or regulation. Upon written request the Subcommittee Chair will provide duplicate copies of the tape recording of the proceeding to the faculty member and to the individual against whom the grievance is directed. The tape recording of these proceedings will be held for seven years in the archives of the USUHS.

(17) If the faculty member's academic competence is questioned, the Subcommittee should seek testimony or written reports of teachers or other scholars, either from the USUHS or from other academic health science centers.

(18) If evidence is objected to at the hearing, on the grounds that it is not within the issues raised, either by the statement of the faculty member or the response of the individual against whom the grievance is directed, the Subcommittee Chair will rule on the objection. Where appropriate, the Subcommittee Chair may allow the evidence to be amended and will do so freely when it decides the presentation of the substantive issues will be served thereby. Where appropriate, the Subcommittee Chair will grant a continuance to give the objecting party reasonable time in which to meet the evidence.

(19) The Subcommittee will not follow strict rules of legal evidence. All forms of evidence deemed relevant by the Subcommittee Chair may be admitted.

(20) The Subcommittee Chair, at his/her discretion, may adjourn the hearing from time to time for a reasonable period to permit the parties to obtain further evidence, to seek its own evidence, or for any other reasonable purpose.

(21) Either party (the grievant or the individual named in the grievance) may request information or the presence of

witnesses and/or the production of other evidence relevant to the issues of the hearing, provided that the requestor bears the cost of obtaining such witnesses or evidence, and further, that the release of such information is not otherwise prohibited by law or regulation. The Subcommittee Chair will rule on the request, and his/her decision is final.

(22) Consideration of matters by the Formal Hearing Subcommittee will proceed as follows:

(a) The Subcommittee may request or accept written statements/ arguments from the parties prior to preparing its written conclusions and recommendation(s);

(b) The Subcommittee will submit its written conclusions and recommendations to the Chair, Faculty Grievance Committee, who will provide them to the President, USUHS;

(c) The President, USUHS, the individual(s) against whom the grievance is directed, and the faculty member will be notified in writing of the Subcommittee's findings of fact, conclusions and recommendation(s). Notification procedures will be coordinated by the Chair, Faculty Grievance Committee. The recipients must respond in writing to the Committee Chair within two working days that the materials have been received;

(d) The Subcommittee's recommendation(s) will conclude the Formal Hearing by the Faculty Grievance Committee. Either the faculty member or the individual against whom the grievance is directed may file a formal notice to appeal to the President, USUHS within 14 calendar days of the date of documented receipt of the of the Subcommittee's findings and recommendation(s). The Chair, Faculty Grievance Committee will be the official agent for service of this formal notice;

(e) Following receipt of the notice to appeal, the grievant will have 14 calendar days to file any supporting documentation or arguments with the President, USUHS. The respondent will then also have 14 calendar days from the date that the above mentioned submitted materials are received to prepare and file any supporting documents or arguments with the President, USUHS; and

(f) The entire process from formal notice of appeal to respondent preparation is limited to 42 calendar days.

C. <u>Consideration by President, USUHS</u>

1. Upon receiving the Formal Hearing Subcommittee's report with all evidence attached and any appellate information and documents the President, USUHS will review the findings and recommendations and appellate materials. There will be no other formal argument or personal appearance before the President, USUHS.

2. The President, USUHS may accept or reject the Formal Hearing Subcommittee's recommendations or return the matter to the Subcommittee for reconsideration. The basis for reconsideration may include, but is not limited to, a review of all materials submitted through the appeal process, or a request that the subcommittee seek additional evidence.

3. If the President, USUHS accepts, rejects, or modifies the Committee's recommendations, the decision is final, and there is no further administrative appeal. The President, USUHS will notify, in writing, the Chair, Faculty Grievance Committee, the grievant(s), and the appropriate respondent(s) of the decision.

4. If the President, USUHS returns the matter to the Formal Hearing Subcommittee for reconsideration, he/she will advise the Subcommittee of the specific issues he/she wishes it to address and/or any additional evidence needed. The President, USUHS will notify, in writing, the Chair, Faculty Grievance Committee, the grievant, and the appropriate respondent(s) of the decision.

5. The Chair, Faculty Grievance Committee will notify the Chair, Formal Hearing Subcommittee of the decision. If the President, USUHS requests reconsideration, the Subcommittee Chair will notify the subcommittee members, the grievant, and the appropriate respondent(s) that a hearing will be held within 15 calendar days. The basis for the reconsideration will be the materials submitted through the appeals process or other evidence as requested by the President, USUHS.

6. After reconsideration of the case, the Subcommittee will prepare its findings and recommendations and communicate them to the President, USUHS in the manner previously described.

7. In a decision involving termination of an appointment, if the decision is adverse to the faculty member, he/she will be deemed to have been terminated at the request of the USUHS as of the date established by the decision of the President, USUHS.

8. If the President, USUHS is a party to the grievance, he/she will be so notified by the Chair, Faculty Grievance Committee. In such circumstances, the President, USUHS will withdraw from the proceedings and delegate his/her responsibilities.

9. The President, USUHS will notify the Chair, Board of Regents (BOR) as to status of any and all faculty grievances that are investigated and resolved under this Instruction.