

SECTION: ACADEMIC

SUBJECT: Faculty Grievance Policy

Background: The procedures set forth in this policy are to be used by Faculty who wish to resolve a dispute regarding a decision or action affecting the employee.

Point of Contact: Human Resource Services

Other LCSC offices directly involved with implementation of this policy, or significantly affected by the policy: Provost's office, President's office, Vice President for Finance & Administration; *Instructional Deans*, Faculty

Date of approval by LCSC authority: November 14, 2019

Date of State Board Approval: N/A

Date of Most Recent Review: November, 2019

Summary of Major Changes incorporated in this revision to the policy: Added paragraph 2.F. per advice from legal counsel; Updated hyperlink to the ISBOE Grievance and Appeal Procedures, II.M.; Added responsibilities of the Hearing Board Chairperson; Updated membership of Faculty Hearing Board to be consistent with the updated Student Hearing Board Policy. Changed section 2.A. to clarify which authority appoints which Hearing Board members, based on the policy that Faculty Senate approved in April 2019.

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1. Applicability

- A. The procedures set forth in this policy are to be used by faculty members who disagree with administrative decisions in such matters as salary, promotion, tenure, and performance evaluation; to challenge contents of personnel files; and to seek remedy for alleged infringements of academic freedom. The applicability of these procedures is limited in the case of non-renewal of fixed-term appointments (see Policy 3.118) and layoffs resulting from the declaration of financial exigency (see Policy 3.122). **These procedures are not applicable in the case of dismissal for cause** (Procedures for dismissals for cause are outlined in policy 3.117). Faculty teaching assignments are not grievable under this policy but are reviewable under the provisions of Section 6, "Review of Faculty Teaching Assignments."
- B. Faculty members are encouraged to use the grievance process to resolve disputes. No person who participates in the grievance process shall be disciplined or otherwise prejudiced in his/her employment for exercising his/her rights under these grievance

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procedures. No supervisor or any other official shall retaliate against a faculty member for:

1. filing a grievance or an appeal;
2. participating as a witness, a procedural observer, a member of the Faculty Hearing Board; or
3. assisting another employee in preparing or presenting a grievance.

2. Procedures for Initiating Grievance

- A. The faculty member should seek resolution informally by discussing his/her complaint with the administrator who made the decision. If the issue is not resolved by this means, the faculty member should go to the next administrative level for redress. The grievant may be accompanied by a faculty colleague, but not legal counsel, during this informal attempt to resolve the grievance. . A statement referencing any informal efforts to resolve the grievance should be included in the request for hearing.
- B. The faculty member who wishes to appeal a grievable administrative decision may do so by submitting a written request for a hearing to the Faculty Hearing Board.
 1. Such request must be made within fifteen (15) business days after receipt of the written notice of the institutional decision. Twenty (20) business days is allowed in cases of non-renewal of fixed-term appointments (see Policy 3.118).
 2. The grievant must state clearly what action or decision is being appealed and, briefly, the grounds upon which the appeal is based.
 3. A copy of the request for hearing shall be given to the administrator whose decision or action is being grieved.
- C. Not later than ten (10) business days after receipt of grievant's request for hearing, the administrator whose decision is being grieved:
 1. Shall prepare and give to the grievant and the Faculty Hearing Board a statement of reasons for the action or decision.
 2. A description of the evidence or allegations upon which the action or decision was based.
 3. Copies of all documents, if any, upon which the administrator relied, and the sources of the allegations or evidence relied upon.

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- D. Within ten (10) business days after receipt of the material from the administrator but in no event less than five (5) business days before the date of the hearing, the grievant shall:
1. Provide to the administrator and to the Faculty Hearing Board a statement setting out the grievant's contentions with respect to the administrator's decision and the administrator's statement of reasons for the decision.
 2. A description of the evidence or allegations upon which grievant's contentions are based. Carefully define the issues by specifying what conduct is being grieved and the institutional policies at issue.
 3. Copies of all documents, if any, upon which grievant relies to support those contentions, and the sources of the allegations or evidence supporting grievant's contentions.
 4. There should be no means by which the substance of any charge or contention, or other adverse information or allegation, can be kept secret from either party.
- E. A request for hearing involving non-renewal of a fixed term appointment shall be addressed to the President, with a copy to the chair of the Faculty Hearing Board and shall be governed by the provisions of LCSC policy 3.118 paragraphs E and F. In all other cases (except dismissal for cause), the request for hearing is addressed to the chair of the Faculty Hearing Board (with a copy to Human Resource Services).
- F. The chair of the Faculty Hearing Board will forward copies of the request to the Provost and Vice President for Academic Affairs and other administrators concerned.

3. The Faculty Hearing Board

- A. Membership of the Faculty Hearing Board. The Faculty Hearing Board shall be composed of seven (7) faculty members (the majority of whom shall be tenured), and two alternates (2) for a total of nine (9) committee members. Members are elected or appointed as follows:
1. Faculty Association: Elects three (3) faculty committee members.
 2. President: Appoints three (3) faculty committee members.
 3. Faculty Senate: Elects one (1) faculty alternate, one (1) Division Chair committee member and one (1) Division Chair alternate.
 - a. The committee chair shall be elected each year from the voting members of the Faculty Hearing Board. Five hearing board members (the committee

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chair and four (4) members), plus one (1) alternate (non-voting) member, will hear a faculty grievance and render a recommendation by majority vote.

- B. Term of Service. Members of the Faculty Hearing Board shall serve for a period of three (3) academic years, one-third (1/3) of the faculty members being selected each year. No more than three (3) new board members shall join the board in any given year.
- C. Appointment of Substitute for Division/department chair Member. In the event a hearing is requested by a faculty member who is employed in the division supervised by the division/department chair who is a member of the Faculty Hearing Board, that division/department chair shall not serve with respect to that hearing. In such cases, the alternate Division/department chair shall serve. In the event there is a conflict with both the appointed and the alternate Division/department chair, the Faculty Senate shall appoint another division/department chair to serve as a full voting member of the Faculty Hearing Board for that hearing.
- D. Quorum. Five (5) of the Faculty Hearing Board shall constitute a quorum for the purpose of hearing a grievance and rendering a recommendation by majority vote of those present. No member of the Hearing Board who has not attended the evidentiary hearings shall participate in the decision.
- E. Chair. The committee chair shall be a voting member of the Faculty Hearing Board. The chair shall preside at all hearings or shall designate another member of the Board to do so.
- F. Guidance. Procedural questions regarding this policy shall be directed to and resolved by the Board Chair. The Board Chair may seek guidance regarding procedural questions from Human Resource Services or, if approved by Human Resource Services, from LCSC's legal counsel.
- G. Hearing Board's Authority: The scope of the Hearing Board's authority shall be to determine whether there has been any:
1. Failure to comply with prescribed procedures
 2. Application of inappropriate considerations
 3. Gross abuse of discretion, or
 4. Abuse of the grievant's academic rights or privileges.
- H. Disqualification. No member of the Faculty Hearing Board who has an interest in a case may serve as a member of the Faculty Hearing Board with regard to the case in which he or she has an interest. It is the responsibility of the Hearing Board member

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to disclose any previous relationship or possible bias to the Chair and must disqualify him or herself upon notification of the impending hearing.

- I. The grievant or administration may challenge any member or members of the Faculty Hearing Board. Any such challenge shall set forth with particularity the alleged interest for which disqualification is being sought. The eligibility of any member or members so challenged shall be determined by a majority vote of a quorum of the remaining members of the Faculty Hearing Board. In the event of disqualification of a member of the Faculty Hearing Board, the Faculty Hearing Board chair shall appoint an alternate member, to the extent possible, who shall be from the same appointment category as the disqualified member.

4. Responsibility of the Faculty Hearing Board Chair

- A. Be responsible for collecting, distributing to the board, and retaining all documentation, notes, and records of the hearing. All written notes of hearing board members will be considered official documents of the hearing and must be collected at the conclusion of the hearing. Once the hearing has been completed, all documentation must be delivered to and stored in Human Resource Services.
- B. Notify all parties of the hearing dates, times and locations.
- C. Review Faculty Grievance Policy with all parties. Notify all parties of their rights and responsibilities during the hearing process.
- D. State that the purpose of the hearing is to determine whether a violation of institutional policy occurred, and, if so, what should be done about it. Cite the policy and section that applies.

5. Responsibility of the Faculty Hearing Board

Please note: The procedures that are outlined for the Faculty Hearing Board to address faculty grievances in this policy may differ from the procedures outlined for the Hearing Board in Policy 5.105, Student Code of Conduct & Student Hearing Board.

- A. In each case the Board has the following responsibilities:
 1. To hear each grievance promptly and in no event more than thirty (30) calendar days after filing of the grievance.
 2. To review all evidence presented to it.
 3. To grant extensions of time when circumstances warrant.

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- 4 To determine whether there has been any (a) failure to comply with prescribed procedures, (b) application of inappropriate considerations, (c) gross abuse of discretion, or (d) abuse of the grievant's academic rights and privileges.
5. To make written findings and recommendations to the President, addressing all four items in #4 above. These may include procedural or substantive recommendations.
6. To respect the confidentiality of the information and records related to the hearing. Any information related to the hearing should not be discussed with any party outside of the Hearing Board.

6. Pre-Hearing Procedures

- A. **Pre-Hearing Conference:** The Faculty Hearing Board may meet before the hearing to consider the nature of the parties' expected presentations, to agree on the policy and section that applies to the grievance, to make decisions about the procedure that will be followed in the hearing, and to set mutually acceptable dates for the hearing, including time and duration of the presentations.
- B. **Notice Requirements:** The Faculty Hearing Board shall give written notice to all parties not less than seven (7) business days prior to the hearing of the date, place, and time set for the initial hearing. Hearings shall be conducted at such reasonable times and locations as may be determined by the Faculty Hearing Board.
- C. The Faculty Hearing Board shall summon the grievant, the grieved party whose decision is under appeal, and a mutually acceptable procedural observer, who will be present during the entire hearing, to appear before the Faculty Hearing Board. At the request of either party, the Board shall summon any other LCSC employee or student to appear. Any party may be assisted in the hearing by legal or non-legal counsel of its choice provided that such counsel shall act in an **advisory** capacity only and may not present evidence, question witnesses or make argument to the Faculty Hearing Board. Both parties are entitled to be present during the entire hearing.
- D. At the request of either party or at the direction of the chair of the Faculty Hearing Board, the proceedings of the Faculty Hearing Board (other than the Board's deliberations) shall be recorded. The digital recorder can be obtained from the Human Resource Services department. Either party shall also have the right to have the proceedings stenographically recorded by a court reporter at his/her own expense. If the hearing is recorded, the recording shall be retained in the Human Resource Services office for five (5) years following the conclusion of proceedings and shall be made available on request to either of the parties or their authorized representatives. Records of all grievance proceedings shall be subject to the provisions of Idaho Code Section 9-340.
- E. Opening Remarks

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1. The Hearing Board chair should discuss the following at the beginning of the hearing:
 - a. State the issues the board is to decide.
 - b. Explain that all communications should be verbal; gestures, nods, shrugs, etc. are unable to be recorded. Tell both parties that copies of the recording will be available upon their request.
 - c. Remind both parties, hearing board members and witnesses that the hearing and any documentation, emails, etc. are confidential and not to be shared with anyone outside of the hearing.
 - d. Turn on the recorder and ask everyone in the room to state their name, their position and their role in the hearing.
 - e. Remind everyone that the hearing board is a neutral fact finder and is not siding with either side in the dispute. The panel will base its recommendations only on the evidence presented to it.
 - f. Explain the schedule for the hearing, and summarize who may ask or submit questions and when.
 - g. Explain the role of advocates and attorneys (if applicable.)
 - h. State that non-party witnesses will not be present except while testifying.
 - i. Remind both parties that the purpose of the hearing is to determine whether a violation of institutional policy occurred, and, if so, what should be done about it. Name the policy and section you believe applies. Announce that if either party believes any other policy is involved, it should be called to the chair's attention at that time.

Order of Arguments and Evidence:

1. The grievant shall proceed first and may present testimony of witnesses, documentary evidence, or oral statements. The grievant, witness, etc. shall be allowed to present their statements without interruption by either party or the Hearing Board members. The Faculty Hearing Board and the administrator (grieved party) may question the grievant, witnesses, or persons speaking on the grievant's behalf after the grievant's presentation.
2. The administrator shall then proceed and may present testimony of witnesses, documentary evidence or oral statements. The Board and the grievant may question the administrator, witnesses or persons speaking on behalf of the administration. Questions shall be limited to the specific issues agreed upon

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prior to the hearing as described in E.1.a.

3. The grievant shall be permitted to respond to the administrator's testimony and evidence.
 4. The Faculty Hearing Board and the administrator may question the grievant or his/her witness upon that response.
 5. Each party may then summarize his/her case.
 6. No further questions will be taken from the Hearing Board or other parties.
- G. As a general rule, the Faculty Hearing Board will admit and consider all evidence, testimony, and argument of any party, but may exclude matters which are clearly repetitive or outside the scope of the agreed upon grievance.
- H. All hearings of the Board will normally be closed to the public.

7. Post-Hearing Procedures

- A. The findings in relation to the 4 areas listed in 4.A.4 and recommendations of the Faculty Hearing Board shall be reported in writing promptly, and in no event more than five (5) business days after the close of the hearing, to each party, the relevant Instructional Dean, the Provost and Vice President for Academic Affairs, and the President.
- B. The President shall render his/her decision to the grievant and to the Faculty Hearing Board in writing, not later than twenty (20) business days following receipt of the Faculty Hearing Board's written findings and recommendations. The President's written response shall include a statement of the rationale for his/her decision.
- C. The record of the hearing shall include at a minimum:
 1. the grievant's request for hearing;
 2. the response of the person being grieved;
 3. the findings and recommendations of the Faculty Hearing Board;
 4. the President's decision.
- D. Such record shall be retained in the Human Resource Services office for a period of not less than five (5) years after the date of the President's decision.
- E. LCSC's decision at the conclusion of the grievance process is final per SBOE policy II.M.2, <https://boardofed.idaho.gov/board-policies-rules/board-policies/human->

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resources-policies-section-ii/grievance-and-appeal-procedures-all-employees-ii-m/.

- F. Except as otherwise provided in SBOE policy II.F, <https://boardofed.idaho.gov/board-policies-rules/board-policies/human-resources-policies-section-ii/policies-regarding-nonclassified-employees-ii-f/>, human resource matters are not appealable to the Board. Internal institution and agency policies must be exhausted before an employee may seek judicial review.

Timeline	Action
Within 15 days after receipt of decision	<ul style="list-style-type: none"> • Faculty member who wishes to appeal a grievable administrative decision submits a written request for a hearing to the Faculty Hearing Board • (20 days is allowed in cases of non-renewal of fixed-term appointments per Policy 3.119)
Within 10 days	<ul style="list-style-type: none"> • Administrator prepares and gives to grievant and Faculty Hearing Board a statement of reasons for the action or decision
Within 10 days but not less than 5 business days before hearing date	<ul style="list-style-type: none"> • Faculty member provides administrator and Faculty Hearing Board a statement setting out contentions with respect to the administrator's decision and statement
Within 30 days of grievance being filed	<ul style="list-style-type: none"> • Hearing is held • Notice to all parties must be provided not less than seven (7) days prior to hearing date
Within 5 business days after close of hearing	<ul style="list-style-type: none"> • Findings and recommendations of the Faculty Hearing Board submitted in writing to each party, relevant Instructional Dean, Provost and President
Within 20 days of receipt of decision	<ul style="list-style-type: none"> • President shall render a decision to the grievant and Faculty Hearing Board in writing

8. Review of Faculty Teaching Assignments

- A. Recognizing that quality of instruction, the central goal of the College, is related to faculty welfare, full-time contract faculty are encouraged to use the review policy established herein when they believe a teaching assignment will jeopardize either.
1. The following procedures are designed as an expedient means of resolving disputes regarding teaching assignments and thus require strict adherence to the established timeline:

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- a. No later than one working day after a faculty member disputes a teaching assignment, the faculty member should discuss the assignment with his/her Division/department chair and Dean;
 - b. If there is no resolution, no later than one working day after the discussion, the faculty member should file a written request for review with the Division/department chair and the Chair of the Faculty Senate. Failure to comply with the timeline will nullify the review process;
 - c. No later than three working days after the request for review is filed, it will be reviewed by a committee composed of the Division/department chair and a majority of the full-time faculty members of the Division; also present will be the faculty member requesting the review and an outside observer appointed by the Chair of the Faculty Senate; the outside observer will engage in conflict resolution as appropriate;
 - d. If this meeting yields no resolution or does not occur within the allotted time, no more than two working days after the Division review or the deadline for such review, the Chair of the Faculty Senate will convene the Teaching Assignment Review Committee. This Committee will adjourn only after delivering its resolution, and any recommendations, to the faculty member requesting the review and the Division. The President's review of the decision should occur only if there are extenuating circumstances, but the decision of the President shall be final.
2. Membership of Teaching Assignment Review Committee. The Teaching Assignment Review Committee shall be composed of five voting members and a non-voting chair. The five voting members shall be (1) the Provost and Vice President for Academic Affairs or his/her designee; (2) a Division/department chair, other than the grievant's Chair but within the grievant's School, designated by the Chair of the Faculty Senate; (3) two Faculty Senators, one from the grievant's Division and one from outside the Division but within the grievant's School, appointed by the Chair of the Faculty Affairs Committee (if a Senator is unable to attend, the Chair of the Faculty Affairs Committee shall designate an alternate from the same category); (4) the Chair of the Faculty Senate. The Chair of the Faculty Affairs Committee will chair the Teaching Assignment Review Committee but will not have a vote.
 3. Review Procedure.
 - a. The Committee will hear an oral presentation (not to exceed thirty minutes) by the faculty member requesting the review explaining how the disputed teaching assignment violates either the standard of "quality of instruction" or of "faculty welfare" or both. The Committee may question the faculty member.

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- b. The Committee will hear an oral presentation (not to exceed thirty minutes) by the Division/department chair explaining how the disputed teaching assignment meets the standard(s) being cited, either "quality of instruction" or "faculty welfare" or both. The Committee may question the Division/department chair.
- c. The Committee will then review in closed session both presentations and arrive at a resolution by written ballot; if appropriate, the Committee may also make recommendations.