

APPENDIX D.

UNIVERSITY GRIEVANCE COMMITTEE FOR FACULTY (DUE PROCESS PROCEDURES) *Taken from the Duquesne University Faculty Handbook*

The standing University Grievance Committee for Faculty, elected by the faculty, is responsible for receiving and investigating grievances according to due process procedures originating in the office of the Provost/Vice President for Academic Affairs. If approved by the President, its decisions are binding. (Statute VII.)

1. Purposes

The University Grievance Committee for Faculty (UGCF) exists to review specific complaints and other grievances. Its decisions are binding on the University when such decisions have been reviewed and approved by the President of the University.

In each case presented to it, the UGCF's charge is to assure the proper applications of the rules and criteria which the schools and/or the University have adopted or, in the absence of specified regulations, have historically applied. The UGCF does not determine the policies and procedures of the several schools nor does it establish the criteria to be used in considering promotion and tenure. It is within the purview of the UGCF, however, to determine in a case before it if local criteria are consistent with University policy and to make certain that the criteria which are used in reaching decisions are those which the school has established, that they are applied uniformly and consistently, and that in applying them adequate consideration is given to all the available relevant information.

2. Composition and Election

The University Grievance Committee for Faculty is elected by full-time faculty members. In accordance with procedures established by its Dean, each college/school, and the University Library will select one representative to serve on the UGCF. The election of a member and an alternate will take place at the first meeting of the faculty in the academic year. New members will begin service in September. The term of service will be for three years. Annually in September, the UGCF will elect a chair who may succeed himself/herself. Procedures for electing members to the UGCF will be implemented as the term of service of each initial appointee is about to expire.

The election of members and alternates will be staggered throughout a three-year period to insure continuity on the UGCF. They will be elected according to the following schedule:

2003, 2006, 2009 Law, Education, Nursing, Natural and Environmental Sciences
2004, 2007, 2010 Pharmacy, College, Business Administration, Health Sciences
2005, 2008, 2011 Music, College, Library

The cycle will then continue to repeat itself. If a member resigns before his/her term is over, the alternate will serve out the remaining term. This will serve to keep the election

schedule intact. The UGCF should meet at least once a semester. Five members constitute a quorum.

3. Procedures for Receiving and Investigating Grievances

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a. A faculty member may submit a request for review of a complaint regarding matters of tenure, promotion, academic freedom or other grievances to the UGCF only after all regular channels of appeal in his/her school and in the University have been exhausted. However, a grievant may petition the UGCF to intervene or take jurisdiction of a case in which the grievant feels the normal channels have not been made available or that the regular procedures are being unreasonably delayed.

b. A request for review shall be initiated by contacting the chair of the UGCF and by filing the grievance in a form specified by the UGCF's internal procedural guidelines. The faculty member may choose to present the request to the UGCF in person.

c. Upon submission, a grievance shall be reviewed by the UGCF, which will decide whether the facts as presented merit further review or whether the grievance should be dismissed. Submission of a grievance will not automatically entail investigation, detailed consideration, or a formal hearing.

The UGCF shall have discretion to conduct an investigation either informally or as a formal hearing under Section 4. In the following instances, however, the faculty member may demand certain procedure as matter of right, as follows:

- i. In the case of a grievance concerning a dismissal, the faculty member may demand an investigation as his/her right;
- ii. In the case of the dismissal of a tenured faculty member, the grievant may demand as his/her right that the UGCF conduct a formal hearing;
and
- iii. In the case of the dismissal of a faculty member in violation of the provisions of University Statute IV, the grievant may demand that his/her right that the UGCF conduct a formal hearing.

d. The UGCF shall define the scope of the investigation.

e. At any time during the proceedings, the UGCF may seek to bring about a settlement of the issue satisfactory to both parties.

f. The UGCF will have access to all University records it deems pertinent, the right to meet and talk with the President and the Provost/Vice President for Academic Affairs, and the right to hear evidence from any persons in any matter pertaining to the dispute. Confidential records shall be held in confidence by the UGCF and records and contents thereof shall not be disclosed to any other party.

g. The member of the UGCF who represents the constituency from which the grievance emanates may participate in the UGCF's deliberations, but will be excluded from voting on its final recommendations. The UGCF's decision must be approved by a majority of those eligible to vote.

h. Following a final determination, the findings and recommendations of the UGCF will be transmitted in writing to both parties to the dispute, to the Provost/Vice President for Academic Affairs, and to the President of the University. Explicit findings should be made with respect to all questions at issue and a reasoned decision should be written.

i. Before a final decision is made by the President, he may meet with the UGCF to discuss the merits of the UGCF's findings and recommendations. No decision is to be made by the President at this meeting.

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j. The President will make his final decision and communicate it to the parties, the UGCF, and the Provost/Vice President for Academic Affairs.

4. Procedures for Conducting a Formal Hearing

a. In a case where the grievant demands a formal hearing, the grievant shall submit his or her grievance to the UGCF by filing it with the UGCF's chairperson in a form specified in the UGCF's internal procedural guidelines. The grievance shall include any statement received by the grievant from the University concerning the grounds for the dismissal, and written responses by the grievant to that statement. The grievant may petition the UGCF to make the hearing public. The UGCF will exercise its judgment as to whether a hearing should be public or private.

b. At least 20 days prior to the hearing, the UGCF shall make service of written notice of the time and place of the hearing and of specific issues to be considered at the hearing. A hearing may commence at an earlier date provided all parties agree in writing. The faculty member may waive a hearing or may respond in writing at any time before the hearing. If the faculty member waives a hearing but does not withdraw the grievance, the UGCF will evaluate all available evidence and rest its recommendation upon the evidence in the record.

c. The UGCF may, with the consent of all parties concerned, hold joint pre-hearing meetings with the parties in order to (1) simplify the issues, (2) effect stipulation of facts, (3) provide for the exchange of documentary or other information, and (4) achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious.

d. During a formal hearing, the faculty member and the University will be permitted to have advisors or other counsel of their choosing. Participants in the internal grievance procedures are to function as colleagues, and the advisor or other counsel shall function as private counsel to the parties and not as active participants in the hearing.

- e. The proceedings may be audiotaped for the exclusive use of the UGCF if the UGCF determines that a tape is necessary to facilitate its deliberations. There will be no other recording of the proceedings unless the parties and the UGCF agree.
- f. The burden of proof that the University has followed the established procedures for the dismissal of a faculty member and that adequate cause exists for the dismissal of a tenured faculty member rests with the institution and shall be satisfied only by clear and convincing evidence in the record considered as a whole.
- g. The UGCF will grant continuances or adjournments to enable either party to investigate matters in regard to which a valid claim of surprise is made.
- h. All parties to the dispute will be afforded an opportunity to obtain witnesses and documentary and other evidence. The administration will cooperate with the UGCF in securing witnesses and making available documentary or other evidence. Every possible effort will be made to obtain the most reliable evidence available.
- i. All parties to the dispute and the UGCF will have the right to question the witnesses. Where the witnesses cannot or will not appear, but the UGCF determines that the interest of justice require admission of their statements, the UGCF will identify the witnesses. The parties and the UGCF may submit interrogatories. The responses or other statements of the witnesses will be disclosed to the parties.
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- j. In a hearing of charges of incompetence the testimony shall include that of qualified faculty members from this or other institutions of higher learning.
- k. The hearing will be conducted according to rules established by the UGCF. The UGCF will not be bound by strict rules of legal evidence and may admit any evidence that will assist it in determining the merits of the issues.
- l. The findings of fact and the decision will be based solely on the evidence produced at the hearing. The decision of the UGCF shall be in writing and shall include findings of fact, a statement of the basis in the record for its findings of fact, and an explanation of the reasons for the decision.
- m. The UGCF will issue its report as provided in Section 3(h) to the University and no public statements will be made about the particulars of the case by the UGCF or any of its members, except for such announcements as may be required covering the time of a hearing and similar matters. Public statements and publicity about the case will be avoided so far as possible by all parties to the dispute until the proceedings have been completed.