II.E.12. Faculty Grievance Procedure
(Source: Offices of the President and Provost, Almanac, November 21, 1978; Addenda, Almanac, December 5, 1978; revised, Office of the Provost, Almanac, August 30, 1988; revised, Almanac, May 24, 1994; revised, Almanac, August 26, 2014.)

I. Applicability
This grievance procedure is available to any member of the standing faculty, standing faculty-clinician-educator, associated faculty, academic support staff, or compensated emeritus faculty at the University of Pennsylvania (members of these classes are referred to in this document as “faculty” or “faculty members”).

A grievance is a claim that action has been taken that involves a faculty member's personnel status or the terms or conditions of employment and that is: (1) arbitrary or capricious; (2) discriminatory with regard to race, color, sex, sexual orientation, gender identity, religion, creed, national or ethnic origin, citizenship status, age, disability, veteran status or any other legally protected class status; or (3) not in compliance with University procedures or regulations.

II. Faculty Grievance Commission
The Faculty Grievance Commission (the Commission) will be composed of three members of the standing faculty holding the rank of Professor. They will be appointed by the Senate Executive Committee for staggered three-year terms expiring June 30. These three members will serve serially as Chair-elect, Chair, and past-Chair of the Commission.

The Chair of the Commission will serve as the primary administrator of the Faculty Grievance Procedure, and will be the Presiding Officer at any grievance hearings during the Chair’s service in that position. The Chair-elect will observe the functions of the Commission, and additionally will serve as one of three hearing panel members should a complaint proceed to a hearing. The past-Chair will observe the functions of the Commission and serve as an alternate to the Chair and the Chair-elect in the roles described above. Each member of the Commission may substitute for any other member when a member is unable to serve. If for any reason a member of the Commission is unable to serve, the Commission, with the advice of the Chair of the Faculty Senate, may replace its missing members with former Commission members who still hold compensated faculty appointments.

There will be an independent Legal Officer to assist the Commission in its operations. The Legal Officer's appointment and terms of employment will be jointly determined by the Chair of the Faculty Senate and the Provost. Once appointed, the Legal Officer's professional responsibility will be to the Commission.
There will be a hearings list consisting of at least 30 persons selected by the Senate Executive Committee (SEC) from members of the standing and associated faculties. The list should be broadly representative of these faculties and include women and members of underrepresented minorities. The hearings list may not include faculty members holding administrative appointments at the level of department Chair or above. Faculty members will serve on the hearing list for three-year terms expiring on June 30. Appointments should be arranged so that the terms of approximately one-third of the members will expire each year. Replacements will be selected by SEC as needed.

III. Pre-Hearing Procedures

a. Before filing a grievance with the Commission, a faculty member must first review the complaint with his or her Department Chair or Dean, or, alternatively, the Vice Provost for Faculty in a case in which the grievance involves the dean. Every effort should be made to bring about an equitable resolution among the parties. If a resolution is not reached, the Department Chair, Dean, or the Vice Provost for Faculty, upon request of the grievant, must provide the grievant with a written statement of the reasons for the actions which are the subject of the complaint. Before filing a grievance with the Commission, the faculty member is advised to consult with the University Ombudsman, to determine whether the Ombudsman’s office can be of assistance in resolving the dispute, and whether the Commission is the appropriate body to hear the potential complaint.

If after these consultations, the faculty member still wishes to file a complaint, he or she may initiate a grievance with the Commission. The faculty member must submit written notice of the complaint, and the request for a hearing will be submitted to the Commission through its Chair. The faculty member must provide copies to the Provost and the Department Chair or Dean. Since grievances may be cumulative, a faculty member may base his or her grievance on prior as well as current events or conditions. The grievance must be initiated not later than two years after the grievant becomes aware of the initial event complained of and not later than four months after the end of the faculty member's compensated faculty appointment.

b. After the filing of a complaint, the grievant and the Chair of the Commission (or an individual the Chair designates for this role) will meet to discuss the grounds for the grievance. If the Chair believes that the faculty member's claims raise issues of academic freedom, or if the grievant so asserts, the Chair will send a copy of the grievance to the Senate Committee on Academic Freedom and Responsibility (SCAFR), which will promptly determine whether the grievance raises significant questions of academic freedom. If so, the Commission will not hear the matter until SCAFR has resolved such questions. SCAFR will communicate its findings to the Commission which will accept SCAFR’s findings with respect to the academic freedom portions of the complaint. If the complaint that is concerned with academic freedom is brought against a University administrator, Dean, or involves more than one school or University policies of
general interest, SCAFR will have jurisdiction. If the complaint concerns matters occurring in one school, the chair of SCAFR will forward the grievance to the chair of the appropriate school committee on academic freedom and responsibility, which will have jurisdiction in this matter.

c. For complaints not deemed to be significantly concerned with academic freedom, the Chair will respond to the complaint by discussing with the grievant possible options for resolution. The Chair or the Chair’s designee may also meet with the parties against whom the grievance has been filed to pursue possible resolution. The Chair may also arrange a meeting with the grievant and the person(s) against whom s/he is bringing the grievance in an attempt to mediate the dispute. The Chair, at his or her discretion, may include someone trained in formal mediation procedures from the university in such discussions. The Chair may gather such information and documentation from both parties and from other sources as he or she deems useful to aid in the resolution of the complaint.

d. If a resolution to the complaint cannot be reached, the Commission will evaluate whether a hearing is warranted based on the information available. The Commission may decide not to proceed with a hearing, for example, because the claim is deemed not to be a grievance as defined under Section I., because the matter at issue has been the subject of a previous grievance, or because the grievance is of so little consequence or merit that no panel should be created.

Once the Commission has decided to proceed with the grievance hearing, the Chair will so inform in writing the grievant, the dean, or department chair, as well as the Provost. This document will ask the Provost to name the University's representative (the respondent) who will act on behalf of all the persons complained of. The grievant and the respondent may each designate a University colleague to act as advisors during the hearing. The grievant's colleague may be any member of the standing, associated, or emeritus faculty; the respondent's colleague must be selected from the group of persons eligible to serve on panels. A colleague may not serve as a legal advocate, but may aid the grievant and the respondent in preparation and presentation of their respective cases. Neither the grievant nor the University may have counsel present in the hearing room; both parties may consult with attorneys outside of the hearing.

e. For each hearing, the Chair will form a hearing panel of three persons, including (1) the Chair-elect of the Commission, and (2) two faculty members from the hearings list selected by the Chair with due regard for relevant subject matter expertise, balance, and representativeness, and other considerations the Chair may deem important. As soon as possible after receiving notice from the Chair of the initial panel membership, either party may move the Commission to disqualify individuals from service on the hearing panel for cause, such as conflicts of interest due to personal relationships with individuals involved. In addition, both the grievant and the respondent may exercise one peremptory strike to remove a member of the hearing panel without cause, although neither of the parties may move to strike the Chair-elect. A party choosing to
exercise this right must inform the Chair in writing within one week of learning of the proposed composition of the panel. Replacements for disqualified panel members will be selected by the Chair of the Commission from the list of potential hearing members.

**IV. Hearings**

Hearings should begin within two months after the acceptance of a grievance by the Commission. Hearings will be convened and organized by the Chair of the Commission, assisted by the Legal Officer who may advise the Chair on procedural and evidentiary matters. The decision on the merits of a grievance will be made by the panel after hearings in which the grievant and the respondent have the opportunity to present their cases. Where consistent with confidentiality rules outlined in this section, each party should submit evidence and arguments in written form for prior distribution to the other side and to the panel. The Chair, as Presiding Officer, has the power to call witnesses and to introduce documents and obtain expert opinion from inside or outside the University. Each side will have the right to address questions to witnesses, and members of the panel may question witnesses during the hearing.

The hearings will be audio-recorded, and such recording will be kept in the custody of the Commission. The hearing panel, the grievant, the respondent, and their advisors will have reasonable access to this recording during the processing of a grievance. No copies of the whole or part of any such recording may be made without express permission of, and supervision by, the Commission. Such permission will be granted to the Provost and the grievant upon request.

A hearing will follow an agenda prepared by the Chair that is based on demonstration of relevance by the grievant or the respondent. The Chair may seek advice from the Legal Officer as to the admissibility or relevance of issues, oral statements, and other evidence presented. However, the final decision on admissibility or relevance will be made by the Chair.

The Commission will have access to all documentary evidence that is in the custody of or under the control of the person or persons who took the action complained of or of the grievant and that is deemed by the Commission to be relevant to the grievance, with the exception of such evidence that was prepared specifically in connection with the Chair’s efforts to mediate and resolve the complaint described in Section III.b above. The Presiding Officer has the authority to obtain additional documents including the dossiers of other comparable members of the same department, or if none exists, comparable members of the same school who are alleged to have recently or currently received more favorable treatment. Such dossiers will be examined and held in accordance with the confidentiality procedures described below in subsection e. Notice is to be given to those faculty members whose dossiers are to be examined. The panel may request the Presiding Officer to obtain expert opinion from inside or outside the University.
If documentary evidence is needed by the grievant or the respondent in the preparation of his or her case, or by the panel in the course of its deliberations, application will be made to the Presiding Officer. The Presiding Officer will determine whether the evidence requested is relevant. The Presiding Officer will then obtain all relevant evidence. All such evidence will be available to the panel, the respondent, the colleagues, and, subject to the restrictions of confidentiality set forth below, to the grievant.

The confidentiality of peer evaluation materials, including letters of recommendation and evaluation, is integral to the tenure process. Accordingly, while the Commission may obtain peer evaluation materials, if during the hearings, the grievant asks that such materials be presented to the panel, the Presiding Officer will consider the following factors to determine whether disclosure to the panel is appropriate. The Presiding Officer will take into account, among other things, whether the grievant has shown cause to believe that the grievance is sufficiently well-founded to justify examination of confidential peer evaluation materials, and whether examination of confidential peer evaluation materials is essential to reach a judgment concerning the substance of the grievance.

If the Presiding Officer decides that peer evaluation materials are relevant and essential to reaching a judgment concerning the substance of the grievance, the Presiding Officer will make such materials available for examination by the hearing panel. Under no circumstances may such confidential materials be provided by the Grievance Commission or hearing panel to either the grievant or the respondent or their advisors.

Like all other members of the faculty, members of departmental or school personnel committees may testify in grievance hearings, although they will not be required to testify in any such proceeding. Members of such committees who agree to appear in grievance hearings may testify specifically about their own participation in committee deliberations, present the committee's vote, and give a general characterization of its discussion. They are explicitly prohibited from disclosing direct quotations, positions, or votes of other individuals on these committees. Unreasonable delays by either side may subject the offending party to sanctions. In cases where primary blame for the delay may be attributed to one side, the Commission has the right to suspend or terminate proceedings and recommend that the panel send to the Provost an accusatory report including reasons for this suspension or termination and recommendations for action. A copy of this document will be sent to the Chair of the Faculty Senate.

The Commission may establish further rules and procedures to govern its operations. Where procedures have not been adopted, the Presiding Officer may rule on the matter and may seek the advice of the Legal Officer in making such rulings. Appeals from rulings established in this way may be presented to the SEC to be decided by majority vote. Procedures adopted under this provision should be included in the Commission's annual report.
V. **Findings**

Upon conclusion of the hearings and after consultation with the Presiding Officer and the Legal Advisor concerning the format of the report, the panel will prepare a written report to the Provost which may include a minority opinion. The report will state each element of the grievance and in separate, clearly labeled sections record the findings of fact and the recommendations for action by the Provost.

As part of its recommendations, the panel may propose remedies. In cases where reappointment, promotion or tenure has been denied, it may recommend a full review and reevaluation of the case. The panel may also suggest to the Provost procedures that might be followed in such a reevaluation, but the choice of procedures remains with the Provost.

However, a panel will not have the responsibility or the authority to evaluate professional competence either in the case of an individual or in comparison with other individuals. If the Provost, on receiving the panel's report, decides that a reevaluation will be carried out, he or she will ensure that the recommendations of the panel and the relevant supporting documentation are included in the documents considered in that reevaluation.

The Presiding Officer will distribute the panel's report to the Provost, the dean, the grievant, the respondent, the person or persons who took the action complained of, and the Chair of the Faculty Senate. If the Provost wishes to consult with the Presiding Officer to obtain more information about the case, the Presiding Officer will provide details and make available the full documentation, including a copy of the hearing recording.

If the grievance is withdrawn or settled prior to the completion of the hearings, the Presiding Officer will dismiss the panel with thanks, and no report will be prepared. However, if the hearings are completed and the panel submits a report to the Provost, the Presiding Officer will be informed by the Provost when final action on the grievance has been taken within the University. The Presiding Officer will then dissolve the panel.

After the receipt of the panel's final report, the Presiding Officer will return all borrowed documents to their owners and turn over to the Commission a complete file of the case for secure retention -- including one complete set of documents and the audio-recording of the hearings. The Presiding Officer will destroy all other copies of the documents used by the panel. The confidentiality of peer evaluation materials, including outside letters, will be preserved by the Commission. Except when the Chair of the Commission determines otherwise, the complete file will be sent to the archive for permanent storage according to the University archives policy for six years after the grievance has terminated. However, the panel's report will be kept permanently on file along with the Provost's response.
Although the panel's report is to be accorded great weight, it is advisory and not binding upon the Provost. The Provost's decision will be communicated in writing without undue delay to the Chair of the Commission, the grievant, and the respondent.

In the event the Provost declines to implement one or more of the Commission’s recommendations, the written communication will include the detailed reasons for the failure to adopt the relevant recommendation and will be sent also to the Chair of the Faculty Senate. If the grievance proceeding identifies an administrative action or practice that seemingly violated University procedures or otherwise led to inequitable treatment, the Commission on behalf of itself or the panel should bring the matter to the attention of the Provost and the Chair of the Faculty Senate. The Provost and the Chair of the Faculty Senate should examine the matter and see to it that appropriate corrections are made if needed. Within six months they will inform the Senate Executive Committee concerning the problem and its resolution.

VI. Confidentiality
The work of the Commission and its panels requires the highest level of sensitivity to the privacy of all concerned. Members of the Commission, members of panels, grievants, respondents, colleagues, witnesses and all other concerned parties have the professional obligation to maintain confidentiality with respect to oral and documentary evidence presented and deliberations occurring during the processing of grievances (except as necessary for the preparation of a grievance or as subject to legal process, or as otherwise noted in this document). Any breaches of confidentiality will be reported by the Chair of the Commission to the Provost and the Chair of the Faculty Senate. In the event of a breach of confidentiality, the Commission has the right to terminate proceedings. In such a case it may advise the panel that it should send to the Provost its recommendations in a report.

Except as otherwise provided in this document or as authorized by the Provost or the Chair of the Faculty Senate, the report of a panel will be treated as confidential by all participants in a grievance hearing and by all members of the University community.

VII. Hearings by Senate Committee on Academic Freedom and Responsibility
In cases in which reappointment, promotion, or tenure has been denied to the grievant, and in which the Provost has declined or failed to implement the recommendations of the panel, within one month after the issuance of the Provost's response, the grievant may request a hearing before SCAFR to review the Provost’s decision. The report of the panel and the Provost's decision will be made available to SCAFR which will then decide whether to hold its own hearing on the matter. SCAFR will also have access to all evidence presented to the panel and to the records of the grievance hearings.
SCAFR will follow the procedures outlined in Part IV of these Grievance Procedures, except that the parties will not be permitted to introduce evidence before SCAFR. The findings of fact made by the panel will be binding on SCAFR, except to the extent SCAFR finds from the records that the Commission’s findings are not substantially supported by the evidence. SCAFR will issue an opinion as to whether the Provost's action in declining or failing to implement the recommendations of the panel was reasonable. If, however, SCAFR finds that there is significant evidence not previously available to the panel, SCAFR may return the case to the Presiding Officer for reconsideration by the panel.

SCAFR will promptly report its findings and recommendations to the President, with copies to the Provost, the Chair of the Commission, the panel, the Chair of the Faculty Senate, the grievant and the respondent, and the Almanac for publication.

VIII. Expenses
The Commission's appropriate expenses for processing a grievance, including compensation for the Legal Officer, will be met from University resources. It will be the responsibility of the Presiding Officer to determine what is appropriate; such expenses will not include any per diem expenses, released time charges, or travel expenses for any participant in the hearings. To the extent possible, administrative and secretarial services will be provided by the office of the Senate. Services that cannot be provided in this way and other appropriate expenses should be charged to the Faculty Senate. These charges will be under the administration of the Chair of the Grievance Commission.

IX. Annual Report
At the end of each academic year, the Commission will write a report describing its activities and giving a summary account of the cases completed or in progress. The report will be sent to the president, the Provost, and the Chair of the Faculty Senate. The Commission must send a separate report to the Almanac for publication. This report must be written with due regard for the maintenance of confidentiality of any involved parties, and should contain only a brief summary of the matters addressed or decided.