

Proposed Amendments to Bylaw 7

UCRC Committee & AFTPRS Committee

Faculty Grievance Processes

- [Regulation 7.041](#) provides three methods for review and resolution of faculty grievances:
 - Faculty members in the collective bargaining unit are governed by the Collective Bargaining Agreement and cannot elect to use a different process.
 - Faculty members outside the collective bargaining unit may use [Regulation 7.042](#) “for those matters involving University or Board of Governors regulations.”
 - **Bylaw 7 Process:** Faculty members outside the collective bargaining unit may use [Regulation 7.0441](#) for matters “bearing on academic freedom, tenure, professional ethics, or the general welfare of the faculty.”

Regulation 7.0441

- Regulation Title: “Procedures of the University Senate Committee on Academic Freedom, Tenure, Professional Relations and Standards Committee.”
- Current Bylaw 7 largely tracks the Regulation language.
- Regulation is detailed in many areas but contains relatively few details in others.
 - Examples of details included in Regulation: deadline to file grievance; timeline for AFTPRS Chairperson to appoint Inquiry panel
 - Examples of details omitted: approach for ex parte communication; approach if no AFTPRS member has due process familiarity

Overview of UCRC & AFTPRS Approach in Drafting Proposed Changes to Bylaw 7

- [The proposed changes](#) interpret Regulation 7.0441 by clarifying and supporting the AFTPRS process and do not conflict with Regulation 7.0441.
 - The proposed changes are intended to facilitate and support the exercise of the rights of faculty under Bylaw 7.
 - The proposed changes are also intended to provide clearer notice about Inquiry & Hearing Panel authority to the parties and provide clearer procedures for the committee Chairperson, Panel members, and parties to the grievance.
 - Finally, proposed changes make additional minor changes to conform Bylaw 7 to existing practice.

Examples of Changes that Facilitate Exercise of Faculty Rights

- **Current Bylaw:** “Parties shall have and be informed of the following rights: To be represented by a colleague authorized in writing by the part to act on his or her behalf or by counsel:
 - **Proposal adds:** “A faculty member complainant may request that the AFTPRS Committee Chairperson or designee appoint a member of the AFTPRS Committee who was not on the Inquiry or Hearing Panel to act as their representative.”
- **Current Bylaw:** “Whenever feasible, at least one panel member shall be a person familiar with due process of law by training or experience . . .”
 - **Proposal adds:** “If no members of the AFTPRS Committee with familiarity with due process of law are available to serve on the Hearing Panel, the AFTPRS Chairperson, or designee, may request that other academic units refer up to three volunteers with such due process familiarity to the AFTPRS Committee Chairperson, who may designate one or more of such volunteers to serve on the Hearing Panel; any such voluntarily appointed Hearing Panel members must otherwise be eligible to serve on the AFTPRS Committee.”

Examples of Changes that Facilitate Exercise of Faculty Rights (cont.)

- **Current Bylaws:** Silent with respect to decorum.
 - **Proposal adds:** “The Hearing Panel shall ensure that direct examination and cross-examination are handled in a professional and respectful manner.”

Examples of Changes that Facilitate Clearer Notice About Panel Authority

- **Current Bylaw:** “Counseling is not considered disciplinary action.”
 - **Proposal adds:** Counseling, **including the issuance of a Letter of Counsel**, is not considered disciplinary action.
- **Current Bylaw:** “Admissible evidence shall be any evidence of a type commonly relied upon by a reasonably prudent person in the conduct of his or her affairs; however, hearsay may be used only to supplement or explain other evidence, and shall not be sufficient, in itself, to support a finding.”
 - **Proposal adds:** “The Hearing Panel may exclude any evidence, including witness testimony, if it determines that the evidence is not relevant or is duplicative of other evidence. The Hearing Panel has the discretion to allow leeway to the parties in presenting evidence and make its final determination as to admissibility when writing its report. The Hearing Panel may request that parties submit additional evidence at any point in the process before the final report is completed.”

Examples of Changes that Facilitate Clearer Notice About Panel Authority (cont.)

- **Current Bylaw:** “Following selection, the Hearing Panel may meet for pre-hearing conferences and schedule a hearing after notice to affected parties.”
 - **Proposal adds:** The Hearing Panel “shall have the power to dismiss all or some of the charges if it determines there is no genuine dispute about material facts and the Hearing Panel determines that a party will not establish by a preponderance of the evidence that a violation has occurred. In making any determination that a violation is not supported by a preponderance of the evidence, the facts shall be viewed in the light most favorable to the person claiming the violation occurred. The Hearing Panel shall have the same powers in soliciting and weighing evidence in making such a determination as described in sections 7(8)(h)-(i).”

Examples of Changes that Facilitate Clearer Procedures

- **Current Bylaws:** Silent with respect to communication between parties and Panel outside of the Hearing (ex parte communication)
 - **Proposal adds:** “In order to limit ex parte communication between the parties and the Hearing Panel, all communications, including document submissions, will be provided to the AFTPRS Committee Chairperson, or Chairperson’s designee, who shall distribute them to the relevant parties or Hearing Panel. The Chairperson, or designee, may request that the Hearing Panel make a determination as to the relevance of evidence prior to submitting that evidence to the opposing party, and if the Hearing Panel determines it is not relevant, the Hearing Panel Chairperson, or designee, may opt not to bring it into the record of the proceedings and notify the party of that decision. The AFTPRS Committee Chairperson, or designee, may provide that parties should not expect communication about the hearing outside of normal business hours.”

Examples of Changes that Facilitate Clearer Procedure (cont.)

- **Current Bylaw:** “The hearings shall be held no earlier than 15 days after notice to affected parties, unless otherwise agreed by all affected parties.”
 - **Proposal adds:** “The Hearing Panel shall have the discretion to set the timetable for all matters relating to the hearing, including scheduling the hearing and imposing procedures and deadlines for the submission of additional evidence, witness lists, and rebuttal materials. The Hearing Panel may schedule the hearing over multiple days, and the hearing may be held virtually.”
- **Current Bylaw:** Silent as to when Hearing Panel may dismiss the matter for failure to adhere to procedures and deadlines.
 - **Proposal adds:** “Parties shall adhere to the procedures and deadlines required by the Hearing Panel and AFTPRS Committee Chairperson or designee. **The Hearing Panel may, by majority vote, dismiss the matter because of repeated lack of compliance by the filer of the complaint but only after a good faith consideration of the filer’s reasons for failing to adhere to procedures and deadlines and after consulting with the AFTPRS Committee Chairperson.**”

Example of Minor Changes to Conform Bylaw 7 to Existing Practice

- Add to references to University President the phrase “or designee.”