

32.01.02.W1/BF

Complaint Procedures for Nonfaculty Employees

Approved February 6, 2003

Supplements System Policy 32.01 and System Regulation 32.01.02

1. GENERAL

- 1.1 The Director of Personnel Services will be responsible for administration and interpretation of this rule and process. This includes, but is not limited to, providing assistance to employees concerning the complaint process and assurance that the proper procedures and time periods have been followed.
- 1.2 Employees may present complaints individually and/or through a representative. However, under Texas law the representative may not claim a right to strike or to bargain collectively. If an employee intends to have a representative present at any of the meetings described in this procedure, he or she must notify the person with whom the meeting is to be held of the name of such person and whether or not that person is an attorney. The role of any representative of the employee, including an attorney, shall be confined to giving advice to the employee. If the employee appears with a representative without having given the notice, the uninformed party may postpone the meeting.

2. PURPOSE

- 2.1 The following procedures are intended to provide a process for resolving nonfaculty employee complaints in a prompt and equitable manner without prejudice, discrimination or malice toward the person or persons initiating the complaint. Fundamental to the process is the principle that all parties make a good-faith effort to resolve the complaint at the lowest possible level.
- 2.2 This rule contains procedural steps which might need to be modified in order to provide a fair and workable process for the employee and/or WTAMU and its administration. The Director of Personnel Services is authorized to modify these procedures in conformity with the principle and intent of the procedures specified in this rule.

3. DEFINITIONS

- 3.1 For purposes of these procedures, the definition of a nonfaculty employee is an employee, either part or full-time, whose job classification in the official personnel records of the University does not meet the criteria for a faculty member found in the Faculty Handbook and may, therefore, not utilize the faculty grievance procedures to resolve disputes with employees and/or administration.
- 3.2 For purposes of these procedures, the definition of a classified employee is an employee, either part or full-time, whose job classification in the official personnel records of the University is one or more of the job titles listed in the

Classified Pay Plan of the University. Classified positions generally involve the performance of secretarial, clerical, craft, trades, technical, maintenance or service activities or, as a primary responsibility, the direct supervision of individuals performing such activities. Most, but not all, classified positions are considered nonexempt, meaning that they must adhere to the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA).

- 3.3 For purposes of these procedures, the definition of a nonclassified employee is an employee, either part or full-time, whose job classification in the official personnel records of the University is one or more of the job titles listed in the Nonclassified Pay Plan of the University. Nonclassified positions generally include professional and administrative, research and extension, academic, and board-appointed positions. Most, but not all, nonclassified positions are considered exempt, meaning that they are exempt from the overtime provisions of the FLSA.
- 3.4 For purposes of these procedures, the term “party/parties” refers to the employee filing the complaint and the employee against whom the complaint has been filed.
- 3.5 For purposes of these procedures, a working day is as established in the official calendar for the department in which the employee filing the grievance is employed. In all procedures in this policy, the “working day” period is automatically extended by the number of working days falling within the period during which either party is on official absence from the University due to vacation, sick or emergency leave. All parties must be notified in writing of these circumstances.
- 3.6 Complaints are allegations regarding improper, arbitrary or discriminatory application of West Texas A&M University's policies and practices relating to the terms and conditions of employment, including termination.

4. INFORMAL COMPLAINT PROCEDURE

- 4.1 An employee who has a complaint about a coworker is encouraged to resolve the complaint by discussing it with the coworker. If the employee does not feel comfortable discussing it with the coworker, the complaint should be discussed with the complainant’s immediate supervisor.
- 4.2 If the complaint involves the supervisor, the employee should discuss the complaint with the department head. If the department head is the immediate supervisor, the employee should discuss the complaint with the department head’s superior, the Director of Personnel Services or the Equal Employment Opportunity Officer.
- 4.3 If agreement cannot be reached after meeting with the department head’s superior, the Director of Personnel Services or the Equal Employment Opportunity Officer,

the complaint should be communicated in writing and forwarded to the Vice President for Business and Finance (VPBF). The VPBF may refer the complaint to an additional level of administration for a final attempt at resolution. If an agreement cannot be reached or if there is no additional level of administration, the VPBF will advise the employee that he or she may request that a panel of the Grievance (Non-Faculty) Non-Classified Pool Committee or Grievance (Non-Faculty) Classified Pool Committee, whichever is appropriate according to the complainant's job classification, hear the complaint.

5. FORMAL COMPLAINT PROCEDURE

5.1 If the employee elects to have a grievance committee hear the complaint, he or she must submit the complaint in writing to the Director of Personnel Services within seven (7) working days following the counsel by the VPBF. The Director of Personnel Services will forward the complaint to the chair of the appropriate grievance committee. The complaint should contain a minimum of:

- (a) date of request;
- (b) employee's name;
- (c) employee's title;
- (d) name(s) of other principal parties;
- (e) nature of the complaint;
- (f) date the complaint occurred;
- (g) relief requested;
- (h) any other information pertinent to the complaint, and
- (i) a brief account of the steps taken to resolve the complaint.

6. GRIEVANCE (NON-FACULTY) NON-CLASSIFIED POOL COMMITTEE AND HEARING PANEL

6.1 The Grievance (Non-Faculty) Non-Classified Pool Committee is a standing committee consisting of eight (8) full-time non-faculty non-classified employees who have been employed at the University at least two years, appointed by the President and with the Chair of the Grievance (Non-Faculty) Non-Classified Pool Committee appointed by the President as non-voting chair. Initial appointments shall be: three (3) members for one (1) year; three (3) members for two (2) years; and two (2) members for three (3) years. Thereafter, all appointments shall be for two (2) years. The University Legal Counsel shall be an ex-officio, non-voting member of the committee and available to the Chair for advice as required.

6.2 Upon receipt of a request for a hearing, the Chair of the Grievance (Non-Faculty) Non-Classified Pool Committee shall convene the Committee within seven (7) working days. The Committee shall first determine whether the initial procedures of this rule have been followed. If the initial procedures have not been followed, the Committee shall remand the complaint to the appropriate level (Supervisor, Department Head, Director of Personnel Services or EEO Officer, VPBF). If the

initial procedures have been followed, the Committee shall then, under the supervision of the Chair of the Grievance (Non-Faculty) Non-Classified Pool Committee choose by lot, five (5) of its members to form a Hearing Panel. The Chair of the Grievance (Non-Faculty) Non-Classified Pool Committee shall inform each party in writing of those committee members chosen to hear the complaint.

- 6.3 Within seven (7) working days of the panel's final selection, its members shall meet with the non-voting chair of the Committee who will chair the Hearing Panel. The panel shall also establish a time, day and place of hearing within the same seven (7) working day period.

7. GRIEVANCE (NON-FACULTY) CLASSIFIED POOL COMMITTEE AND HEARING PANEL

- 7.1 The Grievance (Non-Faculty) Classified Pool Committee is a standing committee consisting of eight (8) full-time classified employees who have been employed at the University at least two years, appointed by the President and with the Chair of the Grievance (Non-Faculty) Classified Pool Committee appointed by the President as non-voting chair. Initial appointments shall be: three (3) members for one (1) year; three (3) members for two (2) years; and two (2) members for three (3) years. Thereafter, all appointments shall be for two (2) years. The University Legal Counsel shall be an ex-officio, non-voting member of the committee and available to the Chair for advice as required.

- 7.2 Upon receipt of a request for a hearing, the Chair of the Grievance (Non-Faculty) Classified Pool Committee shall convene the Committee within seven (7) working days. The Committee shall first determine whether the initial procedures of this rule have been followed. If the initial procedures have not been followed, the Committee shall remand the complaint to the appropriate level (Supervisor, Department Head, Director of Personnel Services or EEO Officer, VPBF). If the initial procedures have been followed, the Committee shall then, under the supervision of the Chair of the Grievance (Non-Faculty) Classified Pool Committee choose by lot, five (5) of its members to form a Hearing Panel. The Chair of the Grievance (Non-Faculty) Classified Pool Committee shall inform each party in writing of those committee members chosen to hear the complaint.

- 7.3 Within seven (7) working days of the panel's final selection, its members shall meet with the non-voting chair of the Committee who will chair the Hearing Panel. The panel shall also establish a time, day and place of hearing within the same seven (7) working day period.

8. GRIEVANCE HEARING

- 8.1 The Chair of the Hearing Panel shall inform both parties in writing of the time, date and place of hearing at least seven (7) working days prior to the hearing.

- 8.2 Both parties shall submit written statements to the Chair of the Hearing Panel at least five (5) working days in advance, and each party and panel member shall receive copies of all pertinent documents at least two (2) working days prior to the hearing. The written statements of the parties should contain the information requested in section 5.1 above.
- 8.3 The hearing shall be closed, and witnesses for either side shall be present only while testifying. All present, for whatever length of time, shall consider the proceedings and deliberations to be confidential, both during and after the hearing. Confidential minutes of the proceedings will be retained by the Chair of the panel until the final report is written and said minutes shall be deposited with the University Custodian of Records.
- 8.4 Each party to the complaint may select one person to appear with him/her and offer support and advice. The “support person” may not make direct comments to the panel or witnesses. Each party to the complaint shall have the right to present documentation, and to call and question witnesses, including witnesses for the opposing side.
- 8.5 Upon completion of the hearing, the Chair of the Hearing Panel shall, within seven (7) working days, submit a written report of the Panel's findings and recommendations to both parties and to the President of the University. Each member of the panel shall sign the report and indicate individual agreement or disagreement with it.

9. ACCEPTANCE OF THE HEARING PANEL'S REPORT

- 9.1 If the President of the University accepts the Panel's report, the Panel's decisions become final, and the President is charged with overseeing the implementation of any and all recommendations contained in the report.
- 9.2 If the President does not accept the Panel's report, he shall, within seven (7) working days, inform both parties in writing of his objections to the report and of his final decision in the case. In the event the President is named as a principal party to the grievance, the Chancellor or his designee shall substitute for the role of the President in the complaint process.

10. MEDIATION

- 10.1 At any point in the complaint process but prior to a Grievance Panel hearing the complaint, an employee may submit a request for mediation to the Director of Personnel Services. Both parties must agree to mediation. Mediation is a voluntary process by which a neutral third party acts as a facilitator to assist in resolving a dispute between two or more parties. The role of the mediator is to facilitate communication between the parties, assist them on focusing on real

issues of the dispute and help them generate options for settlement. The goal is that the parties themselves arrive at a mutually acceptable resolution to the dispute.

- 10.2 Within 7 (seven) working days of the receipt of a request for mediation, a mediator will be selected from the System wide pool according to pool procedures. Mediators must have met the requirements listed in System Regulation 32.01.02, section 4.6.
- 10.3 A settlement by the parties of some or all issues in the case, at any stage of the proceedings, will close the mediation. Issues settled will be set forth in a memorandum of understanding and signed by all parties (not the mediator). If no agreement is reached at mediation, either party may request formal problem solving (grievance hearing panel).
- 10.4 Mediation may continue for a reasonable period of time; usually not more than 2 (two) days, but may be terminated if the mediator determines that no progress is being made.
- 10.5 There are several actions not eligible for mediation and these are listed in System Regulation 32.01.02, sections 4.2 and 4.3.

CONTACT FOR INTERPRETATION: Director of Personnel Services

APPROVAL: _____
 President/CEO Date