

Guidelines for Grievances (with Sanctions Timeline)

**Academic Freedom and Tenure Committee
Utah State University
5 May 2016**

Introduction

An important role of the Academic Freedom and Tenure (AFT) Committee at Utah State University is to hear both complaints initiated by the University against a faculty member (sanctions) and grievance petitions brought by a faculty member (grievances). In doing so, the AFT Committee acts as neither the faculty member's advocate nor their opponent, but ensures that faculty code is followed as it relates to the sanction and grievance process.

The purpose of this handbook is to highlight for faculty members and administrators the relevant issues and timelines associated with sanctions and grievances, with an emphasis on grievances. The contents of this handbook are based on faculty code (particularly Policy 407) and the experiences of AFT Committee members. Should any discrepancy be found between this handbook and the faculty code, the handbook defers to the faculty code.

Guidelines for Potential Grievants

The grievant (faculty member filing a grievance) must use the AFT Committee's "Grievance Statement Filing Form".

Carefully read Policy 407 of the faculty code (<http://www.usu.edu/hr/htm/policies>), particularly Policy 407.5, which specifies that a faculty member may only grieve actions taken against them which involve one or more of the following:

- (i) arbitrary or capricious conduct
- (ii) violations of legal, constitutional, or statutory rights
- (iii) violations of faculty code or other adopted policies and procedures

In practice, all allegations involving (ii) are necessarily referred to the AA/EO Office (Policy 407.5.2). As a result, the AFT Committee most often responds to allegations of (i) or (iii).

Faculty members sometimes seek clarification on the meaning of “arbitrary or capricious.” For the purpose of helping faculty members focus discussion on relevant issues (whether those faculty members are grievants, respondents, or hearing panel members), the AFT Committee will use the following working definition:

“Arbitrary or capricious” means doing something according to one’s will or whim (as in a sudden, unpredictable change). An action or decision is arbitrary if it is not supported by logic or the necessary facts, or if it is made in the absence of decision-making criteria consistent with USU policy and procedures. An action or decision is capricious if it is adopted without thought or reason, or is irrational.¹

The AFT Committee and its hearing panels are not empowered to intervene in disagreements between faculty members and supervisors. A faculty member’s disagreement with an administrative decision (including non-renewal of appointment or denial of promotion) does not in and of itself constitute a valid grievance. Grounds for a valid grievance exist only in arbitrary or capricious conduct, or in a violation of the faculty code, when such conduct or such a violation materially affected the administrative decision. In other words, grievances are not for simply appealing an administrative decision.

The purpose of the grievance hearing is not for the grievant to discover new evidence, but to present evidence (as given in the grievance statement and as provided at the pre-hearing conference) for the hearing panel to consider. As such, a faculty member should only consider filing a grievance when they have the necessary evidence to support their grievance. The hearing itself is not an investigative tool, and should not be thought of as a court-like proceeding, but instead as an opportunity for faculty colleagues on the hearing panel to consider whether the evidence provided supports the grievance.

Faculty members seeking clarification about whether their situation might constitute a valid grievance may contact the AFT Committee chair, whose name should be current at <http://www.usu.edu/fsenate/aft/membership/>. In such preliminary discussions, the AFT Committee chair will not assess the truth of any allegations, and will not dissuade the faculty member from pursuing a grievance, but can clarify both the grievance timeline (visualized later in this handbook) and the necessary elements that must be included in a formal written notice of intent to grieve (Policy 407.5.1) and grievance statement (Policy 407.5.2; “Grievance Statement Filing Form”).

¹ While this working definition is based in part on language found at <http://definitions.uslegal.com>, it is not intended for (and may in fact be inappropriate for) usage in legal actions outside the USU grievance process. In fact, the USU grievance process is in no way meant to mirror or serve as a precursor to subsequent legal steps, but is intended only as an internal evaluation by faculty peers (the grievance panel) of the evidence presented by the grievant.

Guidelines for Respondents

A faculty member's grievance statement (Policy 407.5.2) must identify individuals who should respond to the grievance statement. These individuals are those alleged to being party to the grieved action taken against the faculty member. Policy 407.5.6(2) says, in part, "Compliance with such requests" [from the grievant or hearing panel to respond, to produce records, or to testify to the hearing panel] "is an obligation of employment of any university official or employee" [with some limited exceptions].

If any respondent named in a faculty member's grievance statement refuses to respond within the timeline specified (Policy 407.5.4), the hearing panel chair or AFT Committee chair should petition the respondent's supervisor(s) (department head, dean, or provost) as necessary to achieve the required response.

The initial response of the respondent(s) should concisely address the specific allegations found in the grievance statement, and may also include supporting documentary evidence.

Guidelines for AFT Committee Chair

Prior to a faculty member formally giving their written notice of intent to grieve, they may contact the AFT Chair to inquire about the grievance process. The AFT Chair can use this time to help the faculty member understand Policy 407.5 and the guidelines included in this handbook, in particular helping them understand what would and would not constitute a grievable offense – without trying to assess the truth of specific allegations.

Once a faculty member formally gives their written notice of intent to grieve, and again when the grievance statement is filed (using the "Grievance Statement Filing Form"), the AFT Chair should inform the Provost's Office.

Guidelines for Grievance Panel Chairs

To be the chair is a very time consuming process! Be organized and conscious of timelines (see visual timeline later in this handbook), keep both parties in the loop, keep an email trail of everything from start to finish, be prepared for lots of questions from both parties (as this process is seldom used), make sure both parties see all documentation (transparency) and have a chance to respond, keep an electronic record of the Grievance Panel, and do not show bias for either party.

Prehearing Conference

The AFT Chair, the Grievance Panel Chair, the grievant, and the respondents attend this conference. The AFT Chair must fill out the AFT Committee's "Prehearing Conference Form" at this meeting. The purpose of the meeting is not to "try" the case, but to establish the following:

- What is the Grievance?
- What evidence is to be presented at the Grievance Hearing?
- Who will be the witnesses?
- What are the elements and relevant issues in the grievance statement that will go forward to the full grievance panel?
- What deviations are needed from the hearing schedule outline at the end of the "Prehearing Conference Form" to "make the hearing fair, effective, and expeditious"? (Policy 407.5.5)

The Grievance Hearing needs to be scheduled within 20 days of the Pre Hearing.

Grievance Hearing

The Grievance Panel members, the grievant, the respondents, and the witnesses attend this conference. The grievant and the respondents may each have one advisor or counselor present. The following points will be helpful for the panel chair and members:

1. The schedule outline at the end of the AFT Committee's "Prehearing Conference Form" should be used to ensure fairness and consistency.
2. The hearing is not a legal proceeding and is not bound by strict rules of evidence. While the Policy Manual does mandate general requirements for the hearing, it does not provide specific procedures. This gives the hearing panel discretion in establishing procedure, so deviations from the schedule outline are allowed at the discretion of the hearing panel.
3. Schedule sufficient time for the hearing. Although some hearings only take a few hours, the hearing could go much longer. This can be difficult to find an entire day as there are many people involved. The outline at the end of the AFT Committee's "Prehearing Conference Form" should help estimate the needed time. The hearing can be prevented from running excessively long if all involved keep in mind the fact that the hearing itself is not an investigative tool, but instead is an opportunity for faculty colleagues on the hearing panel to consider whether the evidence provided by the grievant supports the grievance.

4. Before the hearing, complete the final assignments list at the end of the "Prehearing Conference Form".
5. At the hearing:
 - Be consistent in applying the set rules.
 - Record the entire hearing.
 - After each witness, give both sides a chance to question witnesses and give all panel members a chance to ask questions.

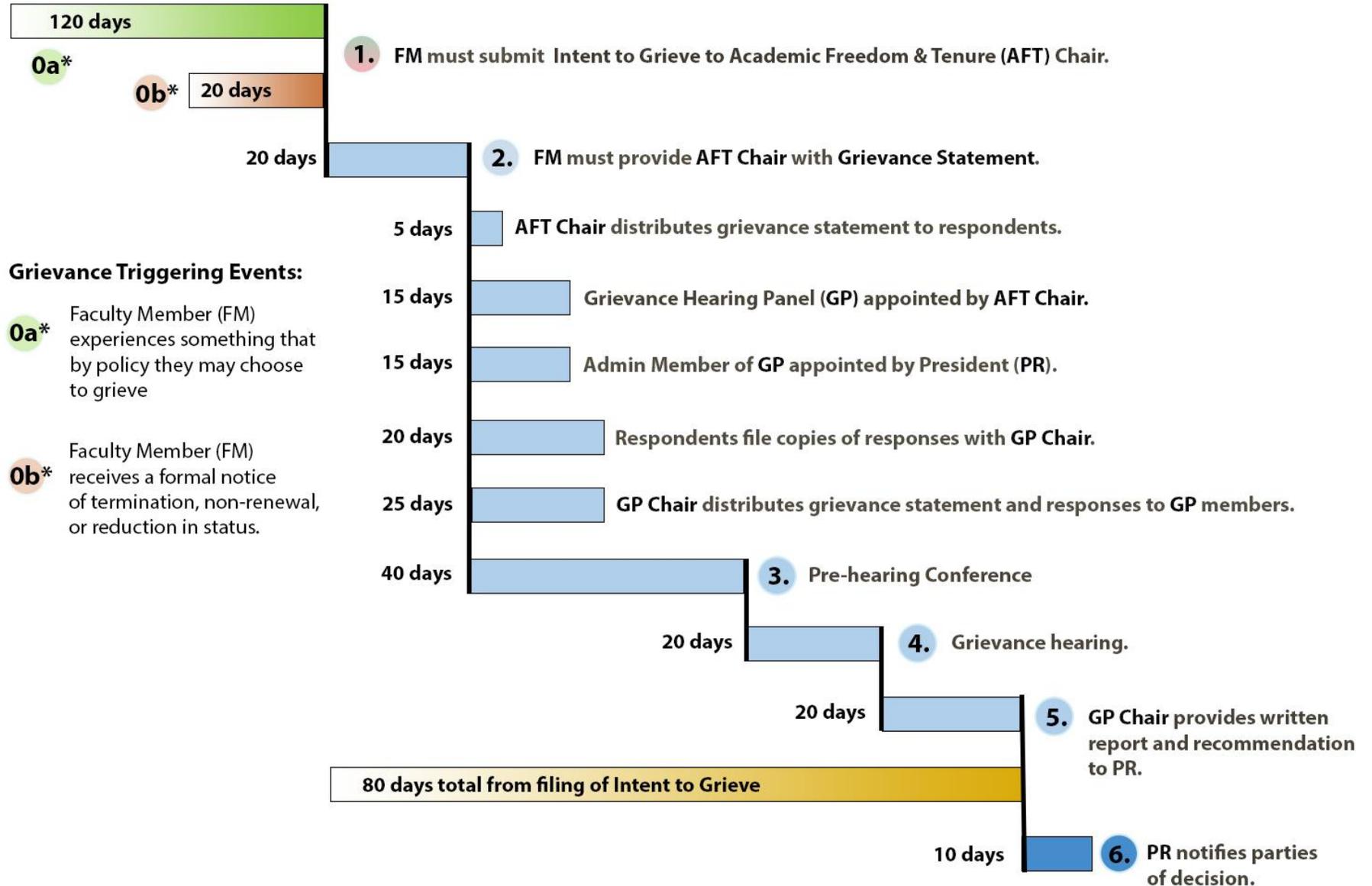
Grievance Hearing Panel Report

The chair and hearing panel (AFT members) will create a report of the hearing outcome for the President. The chair will develop the first draft and other members make comments and changes.

Grievance Hearing Panel Timeline

(calendar days, excluding USU employee holidays)

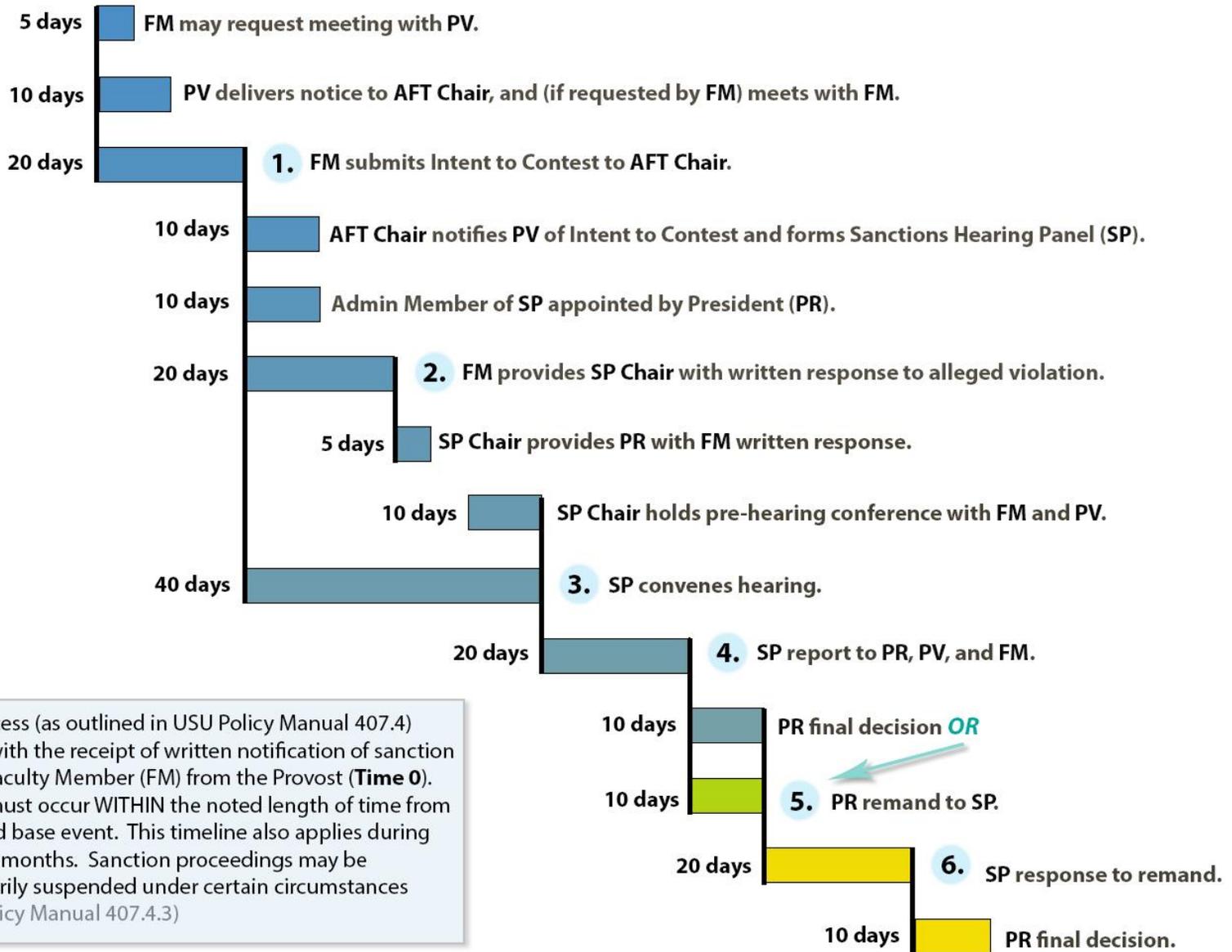
The grievance process begins with one of two possible events (0a and 0b). Events must occur WITHIN the noted length of time from indicated base events. This timeline also applies during summer months. Grievance proceedings may be temporarily suspended under certain circumstances. (USU Policy Manual 407.5.1)



Sanctions Timeline

(calendar days, excluding USU employee holidays)

0. Faculty member (FM) receives notice of intent to impose a sanction from Provost (PV).



The process (as outlined in USU Policy Manual 407.4) begins with the receipt of written notification of sanction by the Faculty Member (FM) from the Provost (**Time 0**). Events must occur **WITHIN** the noted length of time from indicated base event. This timeline also applies during summer months. Sanction proceedings may be temporarily suspended under certain circumstances (USU Policy Manual 407.4.3)

120 day maximum