**Staff Employee Mediation and Grievance UPPS No. 04.04.41**

**Policy Issue No. 17**

 **Effective Date: 06/10/2022**

**Next Review Date: 04/01/2026 (E4Y)**

**Sr. Reviewer: Assistant Vice President for Human Resources**

**POLICY STATEMENT**

*Texas State University is committed to providing a fair process through which staff employees may raise work-related concerns.*

**01. SCOPE**

01.01 The intent of this policy is to establish procedures for staff employee mediation and grievances, excluding staff discrimination, harassment, and sexual misconduct complaint which are handled in accordance with the provisions of [UPPS No. 04.04.46](https://policies.txstate.edu/university-policies/04-04-46.html), Prohibition of Discrimination and [The Texas State University System (TSUS) Sexual Misconduct Policy](https://www.tsus.edu/about-tsus/policies.html).

**02. DEFINITIONS**

* 1. Business Day – any day the university is open for business excluding energy conservation days, closure for dates noted on the official university academic calendar, closure of school due to emergencies, or closure by order of state or federal government officials.

02.02 Department Head – the person with line authority for the employee involved in the action or condition against which the grievance is filed.

02.03 Employment At-Will – Staff employees serve without fixed terms and at the pleasure of the president while the president serves at the pleasure of the TSUS Board of Regents. As at-will employees, either the university or the staff employee may terminate the employment relationship at any time with or without cause and without liability for failure to continue the employment.

02.04 Fair Process – Department Heads and decision-makers should strive to be fair and objective in rendering decisions.

02.05 Grievance (Formal Grievance) – an appeal of a disciplinary action or a disagreement affecting an employee’s wages, hours of work, or conditions of work. Appeals of written reprimands, demotions, suspensions without pay, reductions in pay, and all terminations (disciplinary and non-disciplinary) both at-will and for cause will also be addressed through the grievance process (see [The TSUS Board of Regents Rule, Chapter V.2 General 2.15](https://www.tsus.edu/about-tsus/policies.html) for more information).

02.06 Grievant – staff employee who submits a grievance.

02.07 Hearing Officer – the appropriate divisional vice president, unless otherwise designated by the president.

02.08 Mediation – a form of alternative dispute resolution outside of the university’s formal grievance process in which an impartial person, a mediator, facilitates communication between disputing parties to promote reconciliation, settlement, and understanding.

02.09 Staff Employee – any employee other than a student employee or a faculty employee, as defined in the [TSUS Rules and Regulations](https://www.tsus.edu/about-tsus/policies.html).

02.10 Staff Title IX Dispute – a dispute of a finding or sanction issued under the [TSUS Sexual Misconduct Policy](https://www.tsus.edu/about-tsus/policies.html).

02.11 Termination for Cause – involuntary discharge of an employee who fails to meet performance expectations or whose behavior or conduct has been deemed unsatisfactory. Failure to meet performance expectations can include but is not limited to: failure to comply with state or federal law, failure to meet performance, conduct or behavioral standards in a way that affects the efficient operation of the university, insubordinate acts directed at a supervisor, and any behavior or conduct that is not in the best interest of Texas State.

02.12 Vice President – the person with line authority for the employee involved in the action or condition against which the grievance is filed and identified as vice president (including the individual in the position of Athletic Director) in the [University Pay Plan](https://www.hr.txstate.edu/compensation/universitypayplan.html).

1. **MEDIATION PROCEDURES**
	1. Mediation Process – The mediation process will follow the procedures contained in the [Mediation Guidelines for Staff](https://gato-docs.its.txstate.edu/jcr%3Ab98cb6bd-cd80-4d42-8cae-d8e5eb5a2be6/Mediation%20Guidelines%20for%20Staff_12.2017.pdf) found on the Human Resources (HR) [website](http://www.hr.txstate.edu/). Both regular and non-regular staff employees may use mediation (see [UPPS No. 04.04.03](http://www.txstate.edu/effective/upps/upps-04-04-03.html), Staff Employment, for a definition of non-regular employees).
	2. Voluntary Participation – While the university encourages mediation, participation is voluntary, and both parties must agree to the process.
	3. Confidentiality – HR will respect information pertaining to mediation but may share it with supervisory officials managing the employees involved, as well as any other university official HR deems appropriate.
	4. Mediator – When mediation is requested and agreed to by the mediating parties, HR will secure certain administrative record data and the services of a trained mediator to facilitate the mediation of the conflict or dispute at no expense to the mediating parties.
	5. Time-Limits
		1. The staff member has 10 business days to file a grievance after HR receives written notification from the mediator that mediation has failed or from either party that they wish to decline participation in the mediation process.

03.06 Failed Mediation – Mediation fails when any party declines the mediation process, declines further participation once the process has begun, or the mediator notifies all parties and HR in writing of failure to reach an acceptable mediation agreement.

**04. GRIEVANCE PROCEDURES**

04.01 Staff employees may use the grievance procedures as appropriate within the time-limits noted below.

04.02 Informal Resolution – Staff employees should discuss work-related problems with their supervisor. Employee and supervisor should cooperate to resolve problems efficiently and informally. An employee may use these grievance procedures only if they have first discussed the problem with the supervisor, and they are unable to resolve the problem informally. The employee should begin informal resolution as soon as possible, and supervisors need to respond promptly to the employee's request for resolution.

Attempts at informal resolution do not change the 10-business-day time- limit for filing grievances, as discussed in Section 04.04. The employee must file a grievance as appropriate within the 10-business-day time-limit if they want to pursue such action.

04.03 Within 10 business days after learning of the action or condition giving rise to the grievance and after attempting informal resolution, the grievant must complete and submit a grievance form to HR. The form must include details of the action or condition the employee is requesting to grieve, including evidence supporting the claim. HR will review the information presented and may request that the grievant provide additional clarifying information. HR will provide the employee with information related to policy and procedure, explain the grievance process, determine whether the concern qualifies as a formal grievance under the policy, and notify the grievant of this determination within three business days. If the grievant disagrees with this determination, they may resubmit their concern for review to the assistant vice president for HR (AVPHR), who will have the final decision in making this determination. The grievant will be notified within three business days of this final decision.

04.04 If HR determines that the concern qualifies as a formal grievance, HR will assign the concern to an investigator. The investigator will be selected from a pool of trained Texas State staff employees from various divisions. Whenever possible, a grievance will be assigned to an investigator that is not within the same division as the grievant. HR will send notification of assignment to both the grievant and respondent within three business days.

* + 1. The investigator will follow Texas State’s investigation protocol and provide a summary report, including findings, to HR within five business days. HR will review the summary report and findings with the appropriate decision-maker within the respondent’s chain of command. A copy of the summary report and findings will also be provided to the grievant and respondent. The decision-maker is defined as the next level of management within the department’s organization structure, which may include titles such as manager, assistant or associate director, director, assistant or associate vice president, or vice president.
		2. Extensions to the five-business day timeline are outlined in Section 05.02.
	1. If it is determined that the grievance is founded, the grievant and respondent will receive written notification to that effect. The grievant may or may not be informed of the specific responsive action taken against the respondent. Any responsive action involving disciplinary measures shall follow the process outlined in [UPPS No. 04.04.40](https://policies.txstate.edu/university-policies/04-04-40.html), Disciplining and Terminating Staff Employees.

If it is determined that the grievance is unfounded, the grievant and respondent will receive notification to that effect. The grievant may elect to appeal this determination by resubmitting the grievance form to HR within five business days.

Appeals of initial determinations will be reviewed by HR and assigned to a decision-maker at the next level above the original decision-maker within the grievant and respondent’s line of supervision for review. The next-level decision-maker will review the summary report and findings, as well as the initial decision-maker’s rationale for determination. The next-level decision-maker may also consult with the investigator or request supplemental information from the grievant or respondent. The next-level decision-maker will consult with HR, then make a determination to support or alter the initial decision. A notification of this determination will be sent to both the grievant and respondent within five business days, with a copy sent to HR. This determination will be considered final and is not eligible for further appeal.

04.06 If the respondent in a grievance is a member of the President’s Cabinet, HR will consult with the president to identify an appropriate investigator. If the respondent in a grievance is the president, HR will consult with the TSUS Office of General Counsel to identify an appropriate investigator.

**05. RULES FOR GRIEVANCES**

05.01 Forms – Employees seeking to file a grievance must provide all the information requested on the form, including:

1. a clear statement of the problem;
2. a description of the action or condition that gave rise to the problem;
3. the identity of persons involved; and
4. the relief sought.

Incomplete forms will not be accepted and may result in a notification of denial of the request to file a grievance as determined by HR.

05.02 Time-Limits

a. Since it is important to resolve problems as rapidly as possible, persons involved should consider time limits in this procedure as maximums. All attempts should be made to expedite the process.

* + 1. An employee must submit the request to file a grievance to HR within 10 business days after learning of an action or condition giving rise to the grievance. Although the parties involved may still resolve the matter informally, they may not use the formal procedures as outlined in this policy after the expiration of this time-limit.

c. HR may extend time-limits at any step in the process for good cause upon request of the grievant, respondent, investigator, decision-maker, or other involved party. If an extension is granted, HR will notify the involved parties in writing within two business days.

05.03 Time Off for Grievances – Involved parties (e.g., grievants, witnesses, respondents) are permitted time off from their regular duties with pay to attend meetings under this process. These meetings include conferences with HR representatives, investigators, or supervisors. Employees should notify their supervisors in writing in advance of any meetings.

Grievants may take annual leave, compensatory leave, or leave without pay under normal leave procedures, as outlined in [UPPS No. 04.04.30](https://policies.txstate.edu/university-policies/04-04-30.html), University Leave Policy, to research or otherwise prepare for grievances.

05.04 Retaliation Prohibited – No person may penalize, discipline, or otherwise retaliate against an employee for:

1. presenting a grievance;
2. testifying on behalf of another employee; or
3. representing or assisting another employee with a grievance.

05.05 Confidentiality – Those involved in the process should maintain confidentiality to the extent permitted by the [Texas Public Information Act](https://www.tsl.texas.gov/agency/customer/pia.html).

05.06 Records – HR and the administrators involved will maintain records of grievances.

05.07 Notifications – All notifications to involved parties are considered complete when the notice is sent via email, given directly, sent to the department via campus mail, or sent via U.S. mail to the home address on file in HR.

05.08 Investigation Meetings – Both the grievant and respondent may have a representative or advisor present at meetings with the investigator, decision-maker, or other university administrator related to the grievance. The representative or advisor may provide support, guidance, or advice to the grievant or respondent, but may not directly participate in the meetings.

**06. FORMS**

06.01 All forms referred to within this document are available on the HR [website](https://www.hr.txstate.edu/forms.htmll).

**07. REVIEWERS OF THIS UPPS**

07.01 Reviewers of this UPPS include the following:

Position Date

Assistant Vice President for April 1 E4Y

Human Resources

Chair, Staff Council April 1 E4Y

**08. CERTIFICATION STATEMENT**

This UPPS has been approved by the following individuals in their official capacities and represents Texas State policy and procedure from the date of this document until superseded.

Assistant Vice President for Human Resources; senior reviewer of this UPPS

Vice President for Finance and Support Services

President