

SECTION: PERSONNEL

SUBJECT: Grievance Procedures for Professional Staff Employees

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**Background** The procedures set forth in this policy are to be used by Professional Staff employees who wish to resolve a dispute regarding a decision or action affecting the employee.

**Point of Contact:** Human Resources Services

**Other LCSC offices directly involved with implementation of this policy, or significantly affected by the policy:** President; Provost & Vice President for Academic Affairs; Vice President for Finance & Administration; Vice President for Student Affairs; Title IX

**Date of approval by LCSC authority:** November 29, 2018

**Date of State Board Approval:** February 2002

**Date of Most Recent Review:** 11/2018

**Summary of Major Changes incorporated in this revision to the policy:** Added information to 1.A. if there is an allegation of discrimination, sexual harassment or sexual misconduct.

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**SUBJECT: GRIEVANCE PROCEDURE FOR PROFESSIONAL STAFF EMPLOYEES**

## STATEMENT OF PURPOSE

### **Applicability:**

The procedures set forth in the policy are to be used by professional staff employees who wish to resolve a dispute or disagreement regarding a decision or action affecting the employee. Professional Staff include contracted exempt employees who work at least half time. Professional Staff does not include employees in classified positions, (who are subject to the guidelines of the Idaho Division of Human Resources) or employees holding faculty rank whose primary responsibility is teaching. The applicability of these procedures is limited to cases involving fixed-term appointments which are not for cause (see policy 3.118) and layoffs resulting from declaration of financial exigency (see policy 3.122). **Grievance procedures do not apply to dismissals for cause.** Procedures for dismissals for cause are outlined in policy 3.117.

## **1. General Provisions**

- A. Discrimination, sexual harassment, sexual misconduct and other illegal discrimination based on race, color, age, religion, gender, national origin or disability or any other status protected by law are absolutely prohibited. Allegations of the above will be reviewed and potentially investigated under Policy 3.110, the policy prohibiting discrimination, sexual harassment, and sexual misconduct and corresponding Procedural Guidelines for Responding to Allegations of Discrimination, Sexual Harassment, and Sexual Misconduct.

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- B. Professional staff employees are encouraged to use this grievance process to resolve other disputes. No person who participates in the grievance process shall be disciplined or otherwise prejudiced in his/her employment for exercising his/her rights under these grievance procedures. No supervisor or any other official shall retaliate against the employee for:
- (1) Filing a grievance or an appeal.
  - (2) Participating as a witness, a procedural observer, a member of a Hearing Board; or
  - (3) Assisting another employee in preparing a grievance.
- C. A request for hearing involving non-renewal of a fixed term appointment shall be addressed to the President with a copy to the Professional Staff Hearing Board and shall be governed by the provisions of LCSC Policy 3.118. In all other cases, except dismissal for cause, the request for a hearing is addressed to the Professional Staff Hearing Board with a copy to Human Resource Services.

**2. Procedures for Initiating Grievance**

- A. Before filing a grievance, the employee should seek satisfaction informally by discussing his/her complaint with the person(s) responsible for the decision/action being grieved. If the issue is not resolved by this means, the employee should go to the next administrative level for redress. The grievant may be accompanied by a person of his/her choice, but not legal counsel, during this informal attempt to resolve the dispute. While use of this informal method to resolve disagreements is not a prerequisite for questioning a decision or action before the Professional Staff Hearing Board under the procedures outlined below, the grievant is urged to use this informal means of resolution. A statement referencing any informal efforts to resolve the issue should be included in the request for hearing.
- B. The employee who wishes to file a grievance should do so by submitting a written request to the Professional Staff Hearing Board. Such request must be made within fifteen (15) working days from the time the employee is notified or becomes aware of a grievable matter. If the grievance alleges an ongoing pattern of harassment or illegal discrimination, the grievance will be considered timely if it is filed within fifteen (15) working days of the last allegedly offensive action. The grievant must state clearly what action or decision is being grieved and the grounds upon which the grievance is based. A copy of the request for hearing shall be given to the party being grieved and to the Human Resource Services office.

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- C. Not later than ten (10) working days after receipt of the grievant's request for hearing, the grieved party shall prepare and give to the grievant and the Professional Staff Hearing Board the following:
- (1) A description of the evidence or allegations upon which the action or decision was based.
  - (2) Copies of all documents, if any, upon which the grieved party relied, (which may include copies of documents in the grievant's personnel file and /or documents which are not in the personnel file, but of which the grievant is aware).
  - (3) The sources of the allegation or evidence relied upon.
- D. Within ten (10) working days after receipt of the material from the grieved party, but in no event less than five (5) working days before the date of the hearing, the grievant shall provide to the grieved party and to the Professional Staff Hearing Board the following:
- (1) A statement setting out the grievant's contentions with respect to decision or action being grieved.
  - (2) A description of the evidence or allegations upon which the grievant's contentions are based.
  - (3) Copies of all documents, if any, upon which the grievant relied to support those contentions.
  - (4) The sources of the allegations or evidence supporting the grievant's contentions.
- E. Each party is entitled to a copy of all other materials, if any that are intended to be used by the other party during the course of the hearing. These copies shall be provided at least five (5) days prior to commencement of the hearing.
- F. The chair of the Professional Staff Hearing Board will forward copies of the request for a hearing to the appropriate Vice President, or President (for Direct Reporting Units).

### **3. The Professional Staff Hearing Board**

- A. The Professional Staff Hearing Board shall consist of five (5) members (all of whom are professional staff at LCSC). The Professional Staff Organization (PSO) will elect a pool of seven (7) members to serve a two-year term. As the

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need arises, three (3) members of the pool will be selected by the PSO to serve on the Hearing Board and one of the 3 selected members will be designated by the Chair of the PSO to serve as Chair of the Hearing Board. The final two members of the hearing board will be appointed, one by the President and one by the grievant.

- B. Professional Staff Hearing Board members shall not include individuals who have an interest in the case, or who have supervisory authority over the grievant, or in some other way, have a conflict of interest or bias in the case. In the event a member must excuse him or herself due to a conflict; a replacement will be identified by the same entity that appointed that member.
- C. Three (3) of the five (5) members of the Professional Staff Hearing Board shall constitute a quorum for the purpose of hearing a grievance and rendering a decision by majority vote of those present. No member of the Professional Staff Hearing Board who has not attended the evidentiary hearing shall participate in the decision.

#### **4. Responsibility of the Professional Staff Hearing Board**

- A. In each case, the Professional Staff Hearing Board has the following responsibilities:
  - (1) To hear each grievance promptly and in no event more than thirty (30) calendar days after filing of the grievance.
  - (2) To review all evidence presented to it.
  - (3) To grant extensions of time when circumstances warrant.
  - (4) To determine whether there has been any (a) failure to comply with prescribed procedures, (b) application of inappropriate considerations, (c) gross abuse of discretion or confidentiality, or (d) abuse of the grievant's rights and privileges.
  - (5) To make written findings and recommendations to the President, which may include procedural or substantive recommendations.

#### **5. Hearing Procedure**

- A. The Professional Staff Hearing Board may meet before the hearing to consider the nature of the parties' expected presentations, to make decisions about the procedure that will be followed in the hearing, and to set mutually acceptable dates for the hearing, including time and duration of presentations.

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- B. The Professional Staff Hearing Board shall give written notice to all parties not less than seven (7) working days prior to the hearing of the date, place, and time set for the initial hearing.
- C. The Professional Staff Hearing Board shall summon the grievant, the grieved party and a mutually acceptable procedural observer, who will be present during the entire hearing, to appear before the Professional Staff Hearing Board. Any party may be assisted in the hearing by legal or non-legal counsel of its choice provided that such counsel shall act in an advising capacity only and may not present evidence, question witnesses or make argument to the Professional Staff Hearing Board. The hearing shall be closed except that both parties and their representatives are entitled to be present during the entire hearing. The deliberations of the Professional Staff Hearing Board shall be conducted in private.
- D. The provision of the Professional Staff Grievance Policy which prohibits representation of the employee by an attorney and prohibits the attorney from fully participating in the grievance proceeding shall not apply to the grievance of a recommendation to dismiss or demote the employee. Both the employee and the college may be represented by attorneys who may present evidence, cross-examine witnesses called by the other side, make arguments to the Hearing Board and otherwise fully represent those parties during the grievance proceeding. In the event either side is represented by an attorney, LCSC may, at its expense, engage an attorney, an active or retired judge, or other person having experience acting as a judge or administrative hearing officer, who is acceptable to both parties, to act as the procedural observer and as a legal advisor to the Hearing Board. Such attorney-procedural observer may act as the presiding officer during the grievance hearing at the request of the majority of the hearing board who are hearing the grievance. (Policy 3.117-7. (c).)
- E. The grievant shall proceed first and may present testimony of witnesses, documentary evidence, and oral statements. The Professional Staff Hearing Board and the grieved party may question the grievant, witnesses, or people speaking on the grievant's behalf. The grieved party shall then proceed and may present testimony of witnesses, or persons speaking on behalf of the grieved party. The grievant shall be permitted to respond to the grieved party's testimony and evidence. The Professional Staff Hearing Board and the grieved party may question the grievant or his/her witness upon that response. Each party may then summarize his/her case.
- F. As a general rule, the Professional Staff Hearing Board will admit and consider all evidence, testimony, and argument of any party, but may exclude matters, which are clearly repetitive or irrelevant.

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- G. At the request of either party or at the direction of the Professional Staff Hearing Board, the proceedings of the Professional Staff Hearing Board (other than the Hearing Board's deliberations) shall be recorded. Either party shall also have the right to have the proceedings steno graphically recorded by a court reporter at his/her own expense. If the hearing is recorded, that shall be retained in the Human Resource Services office for one (1) year following the conclusion of proceedings and shall be made available on request to either party or authorized representative. Records of all grievance proceedings shall be subject to the provisions of Idaho Code Section 9-340.
- H. The findings and recommendations of the Professional Staff Hearing Board shall be reported in writing promptly, and in no event more than five (5) working days after the close of the hearing, to each party, the appropriate Vice President and the President.

**6. President's Decision**

- A. The President shall render his/her decision to the grievant and to the Professional Staff Hearing Board in writing, no later than twenty (20) working days following the receipt of the Professional Staff Hearing Board's written findings and recommendations. The President's written response shall include a statement of the rationale for his/her decision.
- B. The record of the hearing shall include at a minimum:
  - (1) The grievant's request for hearing.
  - (2) The response of the person being grieved.
  - (3) The findings and recommendations of the Professional Staff Hearing Board.
  - (4) The President's decision.

Such record shall be retained by Human Resource Services for a period of not less than five (5) years after the date of the President's decision. LCSC's decision at the conclusion of the grievance process is final per [SBOE Policy II.M.2.](#)