

**Policy Procedures:** Alternative Dispute Resolution (ADR) and Grievance Procedures

**Procedure Number:** 417P

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**Forms:** [Alternative Dispute Resolution and Grievance Procedures Form 105-166](#)

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### **Step 1: Informal Concerns Procedure**

The majority of workplace concerns are resolved through open and effective communication and utilizing an open door policy.

1. When a faculty member has a dispute with a co-worker, it is usually best first to communicate and share concerns directly with that individual.
  - a. If the issue is unresolved, he or she should bring the matter to the attention of his/her supervisor/dean or the supervisor/dean of the other party. Likewise, if there is a concern about an organizational policy or practice, the faculty member should bring the matter to the attention of his/her immediate supervisor/dean.
  - b. If the supervisor/dean(s) involved are unable to resolve the matter, the matter should be brought to the attention of the next level leader. It is an appropriate protocol to inform the supervisor/dean or other official that one disagrees with the resolution of a matter before taking the matter to the next level.
2. Open Door Policy
  - a. An open door policy means that specific matters that are under the purview of a particular official can and should be brought to the attention of that official without regard to one's position, level, or reporting location in the organizational structure.
  - b. The official involved may refer the faculty member involved to a workplace policy, protocol, or procedure as a means of addressing the matter. If the official cannot advise the faculty member that there is an established protocol designed to address the type concern in question, the faculty member is obligated to follow the established protocol or procedure.
3. Informal Concerns Procedures conclude at the level of the vice president/provost.

### **Step 2: Dispute Resolution Process (Semi-Formal)**

When informal procedures have been followed and have not resolved the matter at hand, the next step can be taken to address a workplace concern. There are two structured mechanisms for addressing matters that have not been resolved informally—an ombuds-like activity and the Mediation Process.

1. Faculty Dispute Facilitators represent an ombuds-like activity where peer faculty are deputized by NOVA to assist in the resolution of workplace concerns. These neutral professionals receive

advanced training in dispute resolution. Their official role is to be advocates for fairness and of the dispute resolution process itself. They do not take sides—either any faculty member’s side or the organization’s—instead they work as a resource to help the parties involved gather information, communicate, find common ground, follow appropriate policies and procedures, and otherwise look for ways of resolving the issue at hand. Through their training and service, they are acquainted with the organizational structure, and are knowledgeable about the college’s policies, procedures, protocols, and people. One of their primary roles is to be a source of unbiased information.

- a. Within the VCCS, there are two designated ombuds-like role. Every human resources office has one or more ombuds-like officers, to include the chief human resources officer.
  - b. Additionally, each college will have trained peer facilitators. Interactions with facilitators or human resources professionals shall be treated as confidential in the same manner as other communications governed by the personnel policies of the VCCS.
  - c. When matters are such that the faculty dispute facilitators/ombudspersons available are unable to assist because of complicated relationships or other organizational dynamics, a dispute facilitator from a sister college can be requested. A request for a different facilitator is made to the appropriate vice president/provost through the college’s chief human resources officer.
  - d. Faculty Dispute Facilitators perform limited informal mediation in the course of their support for dispute resolution.
2. The Mediation Process is used when workplace matters are not resolved through other means, be they informal procedures or facilitation. Some issues may be deemed eligible for mediation but not be eligible for the Formal Grievance Process.
- a. The semi-formal Mediation Process must be requested in writing to the college’s chief human resources officer by any party to a dispute.
  - b. The appointment of a mediator will be approved by the appropriate vice president/provost or presidential designee. Mediations will be conducted by a mediator certified as such by the VCCS, and the mediation is conducted at the discretion of the mediator. Once the issue is deemed eligible for mediation, the Mediator will direct the mediation process.
  - c. In cases where there is not enough information to help parties resolve a matter, the mediator may request that each party present relevant information in support of their case. The mediator may request outside resources to clarify policy, fact, or the interests of the parties to glean a better understanding of matters related to the dispute. Either party may request that the mediation be recorded. The approval of any agreement resulting from the Mediation Process must be approved by the vice president/provost.
  - d. If both parties come to an agreement during the Mediation Process, the matter is resolved and not eligible for the formal grievance step of the ADR policy. After receiving vice president/provost approval, the mediator will provide both parties a memo, for signature, defining the details of the agreement. The memo should be presented to the appropriate executive for approval within 10 business days of the completion of the mediation.

- e. If the mediation is not successful, the Mediator, should present a memo stating the mediation is not successful and authorizing utilization of the formal grievance process, if appropriate.
3. The Mediation Process must be undertaken before a formal grievance can be filed. A matter is only eligible for the formal grievance process after the semi-formal dispute resolution process is exhausted. It is the expectation that all parties will consent to good faith participation in the mediation process prior to requesting the matter be moved to the formal grievance process. Fulfilment of these exceptions are subject to the review of the appropriate vice president/provost. A grievance can be filed after mediation or with the approval of appropriate vice president/provost.

### **Step 3: Formal Grievance**

A formal grievance is a last resort resolution of workplace concerns that have not been resolved through informal or semi-formal methods. Except for in the cases of non – reappointment or dismissal, including reduction in force,, in order to be eligible for the Formal Grievance Process, matters must first exhaust steps 1 and 2 of the Alternative Dispute Resolution procedures.

1. Grievances are restricted to serious unresolved workplace concerns involving adverse personnel actions that materially affect a faculty member’s employment. Only matters related to performance reviews, multi-year appointments, promotion, disciplinary suspension, non-reappointment, dismissal, and academic freedom are subject to the Formal Grievance process. Interim appointments are not eligible for the formal grievance process. Per current DHRM and VCCS policy all complaints of retaliation, whistleblowing, and discrimination will be investigated.
2. Part One: The first part of the formal grievance process is filing a written grievance with the vice president/provost within 20 business days of the conclusion of mediation. The grievance must include a summary of the informal complaint procedures followed, the outcome of mediation, a concise explanation of the basis for the grievance, and the remedy(ies) requested.
  - a. The vice president/provost shall review the grievance file and will have ten (10) business days to respond to the parties to notify them of the next steps in the process, whether those steps are meetings, a fact-finding, or other appropriate actions.
  - b. Both parties will have the opportunity to present additional information they feel is relevant to the grievance. This process is not an evidentiary hearing.
  - c. Unless there is good cause for a delay, the vice president/provost should provide a written response to the party(ies) to the grievance within 30 calendar days of receipt of the grievance. The vice president/provost shall notify the grievant/parties of any unforeseen delay in writing, as soon as possible. The decision shall include findings of facts and the rationale for the decision.
3. Part Two: The second and final part of the Formal Grievance Process is an appellant process. Either party may request a review by an ad hoc grievance panel or the college president. The requesting party must include a summary of the prior proceedings, a concise explanation of the basis for the appeal, and the remedy(ies) requested.
  - a. If selected, the role and function of the grievance panel is to determine whether the challenged action is within policy and the authority of the person taking the action.
  - b. Panels may not exceed the scope of the purpose for which the panel was established.

- c. The ad hoc panel will review the record, read and review statements from the grievant and college representative(s), review the policies and procedures of the institution, and deliberate as appropriate.
- d. The panel will provide a written report of the findings of fact, rationale for their determinations, and a recommendation to the President.
- e. The disposition determined by the college president (whether upon the recommendation of an ad hoc panel or not) is deemed the final adjudication of the matter at hand.
- f. The written request for an ad hoc panel or presidential review must be made within ten (10) business days of receiving the vice president/provost's ruling in the First Step. The president will have fifteen (15) business days to convene the ad hoc panel or review the matter. Once the ad hoc grievance panel has met, it will have ten (10) business days to make a recommendation to the president, and the president will have up to ten (10) business days to provide a written determination of the appeal to the party(ies) involved. An attempt will be made to complete the grievance process at the second Step within 30 business days, unless good cause exists to delay.

#### **Appeal for Discretionary Review**

1. In all alternate dispute resolution and grievance procedures, the determination of the college president is final.
2. In exceptional circumstances, a faculty member may appeal to the Chancellor, through the Associate Vice Chancellor for Human Resources, for an additional discretionary review. A discretionary review is not automatic and the Chancellor's Office can choose to either review the matter or allow the college president's action to stand.
  - a. To petition the Chancellor, the appellant must file a written request within twenty (20) calendar days of receipt of the final decision by the president. The written request must include a summary of prior findings through the mediation and grievance processes, a concise explanation of the basis for the petition for further review, justification of the exceptional nature of the request, and the remedy requested. If a discretionary review is granted, the chancellor or designee shall communicate the process and timeline for reviewing that matter to the parties involved.

#### **Discrimination, Retaliation, or Protected Activities**

When the matter at hand is related to equal opportunity or legal considerations such as discrimination, retaliation, harassment, or whistleblowing, the complainant may bypass normal alternative dispute resolution procedures. In accordance with DHRM and VCCS policies, such matters will be investigated and addressed in accordance with all relevant policies and laws.

#### **Additional Considerations**

1. Mediation Process
  - a. This is an administrative process instituted by the Virginia Community College System to resolve employee disputes within the institution.
  - b. This should not be confused or compared to the state mediation process sanctioned by the Supreme Court of Virginia.

2. Administrative Process
  - a. All of the elements of the alternate dispute resolution and grievance policy and procedures are administrative processes; they are not legal processes.
  - b. Attorneys are not allowed to participate at any level of the process.
3. No Retaliation
  - a. Nothing should infringe upon a faculty member's ability to express a concern, complaint, or grievance and no action should be taken against a faculty member for pursuing a redress of their concerns. This ability is protected by policy and in many cases by law.
4. Privacy and Confidentiality
  - a. There is an expectation of privacy and confidentiality in the handling of all personnel matters and all communication should be treated as such. The parties involved in a concern, complaint, or grievance should make every effort to abide by the spirit and intent of the privacy and confidentiality of the process and all who are involved.
5. Ad Hoc Grievance Panel Composition
  - a. Ad Hoc Grievance panels are usually five randomly assigned members and should have a composition that reflects the complainant.
    - i. If a teaching faculty member is the complainant, there should be three teaching faculty members and two administrative or professional faculty members;
    - ii. If an administrative or professional faculty member is the complainant, there should be three members of that group on a five-member panel.
6. VCCS Dispute Resolution Officer
  - a. The Associate Vice Chancellor for Human Resources/chief human resources officer is designated the dispute resolution officer for the VCCS.
  - b. The interpretation and administration of the process and procedures governing the Alternative Dispute Resolution and Grievance policy rests solely with the VCCS Human Resources office.
7. President or Vice President/Provost Parties to a Dispute
  - a. When a vice president/provost is a party to a formal grievance, the matter can start with the second step of the Formal Grievance Process upon completion of the informal process.
  - b. When the president is party to a matter—such as a complaint from a direct report—the matter can be forwarded to the Chancellor's Office by the college's chief human resources officer on behalf of the complainant.

## **Definitions**

Faculty Dispute Facilitator: A faculty, staff, or administrator trained as a neutral third party to perform ombuds-like activities assisting with conflict resolution both at individual colleges and regionally.

VCCS Certified Mediator: Individual trained by the VCCS to conduct facilitated conversations to find resolution between two parties that are in dispute. The Mediator is responsible for directing and leading the mediation process. The mediator is responsible for establishing and maintaining the record, including copies of all documents related to the mediation and grievance process. It is the responsibility of the mediator to initiate, call, manage all meetings, and inform both parties of the status of the

mediation process. The mediator is also responsible for drafting the final memo at the completion of the mediation.