

NON-SENATE ACADEMIC APPOINTEES/GRIEVANCES

I. REFERENCES AND RELATED POLICIES

[UCSD Policy and Procedural Manual](#)

200-10 Procedures for Sexual Harassment Complaint Resolution

230-7 Non-Senate Academic Appointees/Layoff and Involuntary Reduction in Time

[Academic Personnel Manual \(APM\)](#)

137 Non-Senate Academic Appointees/Term Appointment

140 Non-Senate Academic Appointees/Grievances

150 Non-Senate Academic Appointees/Corrective Action and Dismissal

390 Postdoctoral Scholars

[Standing Orders of the Regents](#)

103.2 Privilege of Hearing Before the Academic Senate

103.9 Tenure

105.1 Organization of the Academic Senate

[UC Academic Senate Bylaw 335: Privilege and Tenure - Grievance Cases](#)

[San Diego Division of the Academic Senate Bylaw 230: Privilege and Tenure](#)

II. POLICY

This policy provides non-Senate academic appointees the opportunity to present grievances. The use of this policy will not be discouraged by the University, either directly or indirectly.

III. SCOPE AND DEFINITION

- A. A grievance is defined as a complaint by an eligible non-Senate academic appointee alleging that:
1. a specific administrative act was arbitrary or capricious and adversely affected the appointee's then-existing terms or conditions of appointment; and/or
 2. a violation of applicable University rules, regulations, or Academic Personnel policies occurred which adversely affected the appointee's then-existing terms or conditions of appointment.

- B. For the purpose of this policy, an act is not arbitrary or capricious if the decision-maker exercised reasoned judgment.
- C. A grievance alleging a violation of APM 137 (Non-Senate Academic Appointees/Term Appointments), PPM 230-7 (Non-Senate Academic Appointees/Layoff and Involuntary Reduction in Time), or APM 150 (Non-Senate Academic Appointees/Corrective Action and Dismissal) may only be filed under PPM 230-5 Section III a. 2.

IV. ELIGIBILITY

- A. This policy applies to all academic appointees of the University who are not members of the Academic Senate, except as provided in IV b. through d. below. A complete list of non-Senate academic series, including non-Senate faculty series, is provided as [Supplement I](#).
- B. For appointees covered by a Collective Bargaining Agreement Memorandum of Understanding (MOU), this policy applies only to the extent provided for in the MOU.
- C. This policy does not apply to Postdoctoral Scholars.
- D. This policy does not apply to housestaff (interns and residents), fellows, and student academic appointees (who are not covered by a collective bargaining agreement MOU) if alternative grievance procedures exist. If no alternative grievance procedures exist, housestaff, fellows, and student academic appointees are only eligible to grieve matters related to their academic appointment. Complaints pertaining to academic standing or non-employment-related matters are under the jurisdiction of applicable student grievance or academic appeal procedures.
- E. When a non-Senate faculty member wishes to grieve an early termination (a termination that will occur prior to the established appointment ending date), he or she may select as a grievance mechanism either PPM 230-5, as described in this policy, or an early termination hearing before the Committee on Privilege and Tenure (P&T) of the San Diego Division of the Academic Senate. The procedures for an early termination hearing are described in Bylaw 230 of the San Diego Division. In selecting either PPM 230-5 or a P&T hearing, the non-Senate faculty member waives the right to invoke the other mechanism to review the same grievance.
- F. P&T has agreed to consider, on a case-by-case basis, grievances of appointees in the Adjunct Professor, salaried Health Sciences Clinical Professor, and Professional Research (Research Scientist) series. If P&T accepts a non-Senate appointee's grievance, the non-Senate appointee may not file a grievance under PPM 230-5 to review the same grievance.

V. GRIEVANCE LIAISON

- A. The Chancellor has designated the Academic Personnel Services office to be the grievance liaison for this policy. The grievance liaison serves as the initial point of contact for grievants. Contact information is available on the Academic Personnel Services Web

site. The grievance liaison determines whether grievances meet the requirements set forth in this policy and may accept or deny grievances, or parts thereof, accordingly. The grievance liaison may participate in resolving grievances informally. If no informal resolution is possible, or if the grievant elects to bypass the informal process and file a formal grievance, the grievance liaison will coordinate the grievance review, hearing, and appeal processes.

VI. FILING DEADLINES

The three steps of the grievance process are detailed below in Sections VII – IX. The following deadlines must be observed for Steps 2 and 3.

- a. A Step 2 formal grievance must be filed in writing with the grievance liaison within thirty (30) calendar days from the date on which the appointee knew, or could reasonably have been expected to know, of the event or action that gave rise to the grievance, or within thirty (30) calendar days after the date of separation, whichever is earlier. Informal resolution or mediation efforts will not extend the thirty (30) day time limit (unless otherwise agreed to in writing under section VI.c.).
- b. A Step 3 formal grievance appeal must be filed in writing with the grievance liaison within fifteen (15) calendar days from the date on which the Step 2 response is issued.
- c. Filing deadlines will apply unless a written extension has been granted by the grievance liaison. Either party may submit a written request for an extension of the filing deadline. It is the responsibility of the grievant to file a Step 2 formal grievance or a Step 3 formal grievance appeal by the filing deadline or to file a written request for an extension before the filing deadline.

VII. STEP 1: INFORMAL RESOLUTION

- a. Step 1 of the grievance process is to attempt informal resolution. Prior to filing a Step 2 formal grievance, the grievant is encouraged to attempt an informal resolution with the immediate supervisor or responsible administrator whose action is being grieved.
- b. If informal resolution with the immediate supervisor or responsible administrator is attempted but unsuccessful, the grievant may request that the grievance liaison assist in resolving the grievance. If appropriate, the grievance liaison will work with the parties to reach an informal resolution.
- c. If a grievance alleges sexual harassment, the grievant may elect to use the Procedures for Sexual Harassment Complaint Resolution, as provided in PPM 200-10, instead of Step 1 informal resolution. If a grievant selects this mechanism and the complaint is not resolved to the grievant's satisfaction, he or she may file a Step 2 formal grievance in writing with the grievance liaison within fifteen (15) calendar days from the date the grievant is notified of the result of the pre-grievance sexual harassment complaint resolution process, or within forty-five (45) calendar days from the date the grievant filed the sexual harassment complaint, whichever is earlier.

- d. Attempts at informal resolution do not extend the time limit for filing a Step 2 formal grievance unless a written extension is granted by the grievance liaison. Attempts at informal resolution may continue after a formal grievance has been filed, but are not required under this policy. It is the responsibility of the grievant to file a Step 2 formal grievance by the filing deadline or to file a written request for an extension before the filing deadline.

VIII. STEP 2: FORMAL GRIEVANCE REVIEW

- A. If a grievance is not resolved informally to the grievant's satisfaction, he or she may file a Step 2 formal grievance. A Step 2 formal grievance must be filed in writing with the grievance liaison no later than the expiration of the thirty (30) calendar day period specified in VI above, unless a written extension has been granted by the grievance liaison. Except by written mutual agreement of the parties, no additional issues may be introduced after the Step 2 grievance has been filed.
- B. The formal written grievance must include the following information:
 1. If the grievance alleges that a specific administrative act was arbitrary or capricious and adversely affected the grievant's then-existing terms or conditions of appointment, the grievance must state the specific administrative act(s) to be reviewed, the name(s) of the person(s) alleged to have carried out the administrative act(s), the date(s) the alleged act(s) occurred, and a description of how the administrative act(s) were arbitrary or capricious.
 2. If the grievance alleges that a violation of applicable University rules, regulations, or Academic Personnel policies occurred that adversely affected the grievant's then-existing terms or conditions of appointment, the grievance must state the applicable University rules, regulations, or Academic Personnel policies the grievant believes have been violated; the name(s) of the person(s) alleged to have violated the applicable University rules, regulations, or Academic Personnel policies; the date(s) the alleged violation(s) occurred; and a description of how the rules, regulations, or Academic Personnel policies were violated.
 3. All grievances must state how the alleged act(s) and/or violation(s) adversely affected the grievant's then-existing terms or conditions of appointment; the date(s) of attempts at informal resolution; the identity of individuals involved in such discussions, if any; and the remedy requested.
- C. Upon receipt of a formal written grievance, the grievance liaison will complete an initial review of the grievance and determine whether it is complete, timely, within the purview of PPM 230-5, and contains sufficient facts to support the allegations made in the grievance. Within ten (10) calendar days, the grievance liaison will notify the grievant in writing whether or not the grievance will be accepted. If the grievance is not accepted, the reasons will be specified as follows:
 1. Incomplete or Factually Insufficient

If the grievance liaison determines that the grievance is incomplete or factually insufficient, the grievant will have ten (10) calendar days from the date of written notification of the deficiency to make the grievance complete or provide additional facts. If the grievant fails to make the grievance complete or provide sufficient facts, the grievance will be denied.

2. Denied

If the grievance liaison determines that the grievance is untimely or outside the purview of PPM 230-5, the grievance will be denied.

- D. If the grievance raises multiple issues, the grievance liaison will make a determination as described in VIII (c) 1 or 2 above with regard to each issue. The grievance liaison may accept some issues and deny others pursuant to this review process.
- E. If all or part of a grievance is denied at this stage, the grievance liaison will provide the grievant with a written explanation of the basis for the denial.
- F. If the formal written grievance is accepted, the grievance liaison will forward the grievance, along with any supporting materials provided by the grievant, to the Step 2 reviewer (see definition below) for review and written decision within fifteen (15) calendar days of receiving the grievance. The grievance liaison will notify the Step 2 reviewer and grievant of the date the Step 2 review is due.
- G. Generally, the Step 2 reviewer will be the department or unit head. However, if the department or unit head is the immediate supervisor of the grievant, or is named in the grievance as the administrator alleged to have implemented an arbitrary or capricious administrative act or violated applicable policies, or has been extensively involved in the informal resolution process, the grievance liaison may exercise discretion and designate another administrator as the Step 2 reviewer and so notify the department or unit head and the grievant.
- H. If a grievance raises allegations of discrimination, harassment, or retaliation in violation of APM 035, and these allegations are supported by the facts presented in the written grievance, the grievance liaison may determine, on a case-by-case basis, that an independent investigation into the allegations is warranted. If appropriate, the Senior Vice Chancellor for Academic Affairs will appoint an independent investigator, and the PPM 230-5 process will be suspended until completion of such an investigation. Upon completion, the Senior Vice Chancellor will provide a copy of the investigator's report to the Step 2 reviewer. The Step 2 reviewer may consider the report in formulating a Step 2 response.
- I. The Step 2 reviewer will review the Step 2 formal grievance and, if appropriate, will meet with the parties. The Step 2 reviewer will send a written response to the grievant and the grievance liaison within thirty (30) calendar days from the date of receipt of the formal grievance. The response will include a statement that the grievance is dismissed or upheld in whole or in part. If the grievance is dismissed in whole or in part, the response will state that the grievant has the right to appeal the decision in Step 3 of the grievance procedure.

IX. STEP 3: APPEAL

- A.** If a formal grievance is not resolved to the grievant's satisfaction at Step 2, the decision may be appealed in writing to the grievance liaison (Step 3) within fifteen (15) calendar days from the date on which the Step 2 response is issued. The Step 3 formal appeal must set forth the unresolved issue(s) and the remedy requested. Except by written mutual agreement of the parties, no additional issues may be introduced in the appeal that were not included in the original grievance.
- B.** All formal grievance appeals will be subject to administrative consideration (Step 3-A) unless there is a written request for a hearing consideration (Step 3-B) and the issue(s) appealed are subject to hearing consideration.

STEP 3-A: ADMINISTRATIVE CONSIDERATION

1. Except when a grievance is otherwise eligible for hearing consideration, within seven (7) calendar days from receipt of a formal grievance appeal, the grievance liaison will forward the appeal, the Step 2 formal grievance, and the Step 2 response to an administrative reviewer for review and written decision.
2. Based on the record, the administrative reviewer will determine whether the Step 2 formal grievance was properly reviewed and whether the decision made at Step 2 will be upheld, rejected, or modified.
3. The administrative reviewer will provide a final written decision to the grievant within thirty (30) calendar days following receipt of the formal grievance appeal. The written decision will include a statement of the reasons if the decision of the Step 2 reviewer is rejected or modified in whole or in part and a statement that the administrative reviewer's decision is final.

STEP 3-B: HEARING CONSIDERATION

1. Only the following issues may be appealed for Step 3-B hearing consideration:
 - i. Non-reappointment for appointees with eight or more consecutive years of service (see APM 137, Non-Senate Academic Appointees/Term Appointments, Section 137-30-c);
 - ii. Layoff or involuntary reduction in time (see PPM 230-7, Policy on Layoff and Involuntary Reductions in Time for Non-Senate Academic Appointees);
 - iii. Corrective action, i.e., written censure, suspension, reduction in salary, or demotion (see APM – 150, Non-Senate Academic Appointees/Corrective Action and Dismissal);

- iv. Dismissal (see APM – 150, Non-Senate Academic Appointees/Corrective Action and Dismissal);
 - v. Allegations of discrimination in violation of APM 035, Affirmative Action and Nondiscrimination in Employment, involving non-reappointment, layoff, involuntary reduction in time, corrective action, or dismissal;
 - vi. Allegations that procedures in a personnel review were not in consonance with the applicable rules and requirements of the University, and/or that the challenged decision was reached on the basis of impermissible criteria, including (but not limited to) race, sex, or political conviction.
2. Within seven (7) calendar days from receipt of a written request for hearing consideration, the grievance liaison will determine whether the grievant has identified an issue eligible to be appealed for hearing consideration. If the grievance liaison determines the appeal does not identify an issue eligible to be appealed for hearing consideration, the grievance liaison will notify the grievant and submit the appeal for determination under Step 3-A: Administrative Consideration.

X. CONDUCT OF A HEARING

Within forty-five (45) calendar days from the receipt of an appeal eligible for hearing consideration, a hearing officer will be selected, and within sixty (60) calendar days thereafter, a hearing date will be scheduled. The grievance liaison will coordinate the hearing process and may grant exceptions to the timelines to either party.

A. Election of a Hearing Officer

The grievant may elect to have the grievance heard by a University or a non-University hearing officer. Election by the grievant must be in writing and will be final.

1. University Hearing Officer

The grievance liaison will maintain a current list of individuals who have agreed to serve as hearing officers. The list will be made available to the grievant prior to deciding whether to select a University or non-University hearing officer.

The hearing officer will be selected by a process of elimination, with the grievance liaison and the grievant alternately striking names from the list until agreement is reached or until all but one name is eliminated, in which case the remaining person will be the hearing officer.

2. Non-University Hearing Officer

A grievant may elect to have a grievance heard by a non-University hearing officer. The grievance liaison will provide the grievant the names of five potential outside hearing officers. The grievance liaison and the grievant will alternately strike names from the list until agreement is reached on an outside hearing officer. If the grievance liaison and grievant are unable to agree on an outside

hearing officer from the first list, a second list of names may be requested and the striking process repeated. In this instance, however, if the grievance liaison and grievant are unable to agree, the remaining name on the list will be selected.

B. Hearing

Hearings will be conducted as follows:

1. The hearing officer will convene a hearing in which each party will have the opportunity to present evidence, cross-examine witnesses, and submit rebuttal evidence. Evidence may be oral and/or documentary. Issues regarding admissibility and weight of evidence will be decided by the hearing officer. Evidence that is irrelevant or unduly repetitious may be excluded by the hearing officer.
2. Except by written agreement of the parties, no additional issues may be introduced at the hearing that were not included in the original grievance.
3. In advance of the hearing, the parties will attempt to stipulate in writing issues to be submitted for review at the hearing. If the parties cannot agree on the issues, the hearing officer will define the issues for review at the hearing. Only those issues specified in the written grievance submitted by the grievant will be considered.
4. The hearing officer does not have the authority to issue subpoenas.
5. The hearing officer will handle all procedural issues that arise before and during the hearing.
6. Each party will, upon request, provide the other party with copies of materials to be introduced at the hearing and the names of witnesses who will testify on the party's behalf in its case. To the extent possible, such materials and names of witnesses should be exchanged at least ten (10) calendar days prior to the hearing.
7. In cases alleging a violation of APM 137-30-c, PPM 230-7 or APM 150, the University's representative will proceed first in presenting the University's case at the hearing. In all other cases, the grievant will proceed first in presenting his or her case at the hearing.
8. The hearing will be closed unless both parties agree in writing to the presence of additional persons. In the absence of such an agreement, the hearing will be closed to all persons other than the principal parties to the grievance, i.e., the supervisor or department or unit head, the supervisor's or department or unit head's representative, the grievant, the grievant's representative, and the grievance liaison.
9. An audio recording will be made by the University unless the parties agree in advance to share the costs of a stenographic record. The grievant may be permitted to arrange for a stenographic recording at the grievant's expense if the University does not agree to share the cost. The parties should be made aware that an audio recording is being made, who will have custody of the

recording, and how copies are to be obtained.

10. All materials, reports, and other evidence introduced into the hearing and recorded by an audio recorder, a stenographic service, or by other means will be considered confidential to the extent allowed by law and University policy.
11. The provisions of APM 160-20-d(2), pertaining to the Academic Senate Committee on Privilege and Tenure, regarding access to records and evaluation of academic qualifications or professional competence, apply to hearings conducted under this policy.

C. Findings and Recommendations

1. The hearing officer will provide the Senior Vice Chancellor for Academic Affairs and the parties, via the grievance liaison, with a written statement of findings and recommendation(s) within thirty (30) calendar days of the close of the hearing.
2. In cases alleging a violation of PPM 230-7 or APM 150, the hearing officer will determine whether the University has established by a preponderance of evidence that it had good cause to take the grieved action.
3. In cases alleging a violation of APM 137-30-c, the hearing officer will determine whether the University has established by a preponderance of evidence that it met the standard set forth in APM 137-30-c.
4. In all other cases, the hearing officer will determine whether the grievant has established that (1) a specific administrative act was arbitrary or capricious and adversely affected the appointee's then-existing terms or conditions of appointment; and/or (2) that a violation of applicable University rules, regulations, or Academic Personnel policies occurred that adversely affected the appointee's then-existing terms or conditions of appointment.
5. The hearing officer will make findings of fact based upon evidence presented at the hearing. The hearing officer may not recommend adding to, deleting from, or otherwise modifying the provisions of University rules, regulations, or Academic Personnel policies.
6. No evidence other than that presented at the hearing will be considered by the hearing officer or have weight, except that notice may be taken of facts that are commonly known and accepted by the parties.
7. The hearing officer may not substitute his or her judgment for the academic judgment of a peer review committee or administrative officer, nor may he or she evaluate the academic qualifications or competence of academic appointees.
8. The Senior Vice Chancellor will review the hearing officer's findings and recommendations and issue a final written decision within thirty (30) calendar days of receipt of the hearing officer's finding(s) and recommendation(s). The Senior Vice Chancellor will provide to the grievant a copy of the hearing

officer's finding(s) and recommendation(s) and a statement of the reasons, if any, for the rejection or modification of the hearing officer's recommendation(s). If a decision is based on facts different from those found by the hearing officer, that decision must be based on materials in the record.

XI. GENERAL PROVISIONS

A. Fees

There will be no cost to the grievant for a University hearing officer. In the case of a grievance heard by a non-University hearing officer, the hearing officer's fees will be borne equally by the grievant and the University. However, if the Senior Vice Chancellor rejects or modifies the recommendation(s) of the non-University hearing officer, the hearing officer's fees will be borne entirely by the University and the grievant shall be reimbursed for any fees actually paid to the non-University hearing officer. The cost of stenographic services will be borne by the party requesting the services unless the parties agree in advance to share the cost.

B. Representation

A grievant may represent him or herself or may be represented by another person at any stage of the grievance process. The University will be represented as the Senior Vice Chancellor deems appropriate; representation may be provided by the Office of General Counsel or Campus Counsel.

C. Time Limits

Prior to the expiration of a time limit, extensions may be granted by the grievance liaison upon written request by either party. If the grievant fails to meet a deadline, the grievance will be considered resolved on the basis of the last University response. If a University official fails to meet a deadline, the grievant may move the grievance to the next step in the process. Time limits expiring on days that are not University business days will be automatically extended to the next University business day.

D. Pay Status

The grievant and the grievant's University representative, if any, will be granted leave with pay based on their regular pay status to attend hearings and meetings convened by the University to consider PPM 230-5 grievances. Leave with pay will not be granted for time spent investigating and preparing for a grievance. University employees who testify as witnesses in meetings and hearings convened by the University will be granted leave with pay based on their regular pay status for the time they are participating in the grievance hearing or meeting.

E. Remedy

If the grievance is sustained in whole or in part, the remedy may not exceed restoring the grievant's pay, benefits, or rights lost as a result of the violation of University rules, regulations, or Academic Personnel policies, or as a result of an arbitrary or capricious

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administrative action, less any income earned from any other employment. If the hearing officer's findings and recommendations(s) include a remedy for back pay, the amount of back pay will be determined by the Senior Vice Chancellor. Disputes as to the amount of back pay due may be referred to the hearing officer for a separate recommendation. Any claim of back pay by the grievant must be supported by appropriate documentation. Payment of an attorney's fees may not be part of any non-Senate grievance remedy. Unless specifically authorized by the Senior Vice Chancellor, compensation may not be paid for any period that is the result of extension(s) of time requested by or on behalf of the grievant.

F. Consolidation of Grievances

The following may be consolidated into one review: (1) grievances by two or more non-Senate academic appointees, if the grievances are related and consolidation is appropriate under the circumstances; (2) two or more grievances that are based on the same incident, issues, or act; (3) two or more grievances filed by the same grievant that are based on the same pattern of conduct. The grievance liaison will decide whether consolidation is appropriate.

Supplement I

NON-SENATE (NON-FACULTY) SERIES

Academic Administrator

Academic Coordinator

Continuing Educator

Coordinator of Public Programs

Librarian

- Assistant Librarian
- Associate Librarian
- Librarian
- Assistant University Librarian
- Associate University Librarian
- Visiting Assistant Librarian
- Visiting Associate Librarian
- Visiting Librarian

Professional Research (Research Scientist)

- Assistant Research Scientist
- Associate Research Scientist
- Research Scientist
- Visiting Assistant Research Scientist
- Visiting Associate Research Scientist
- Visiting Research Scientist

Project Scientist

- Assistant Project Scientist
- Associate Project Scientist
- Project Scientist
- Visiting Assistant Project Scientist
- Visiting Associate Project Scientist
- Visiting Project Scientist

Specialist

- Assistant Specialist
- Associate Specialist
- Specialist

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Supplement I

NON-SENATE FACULTY SERIES

Acting Assistant Professor

Adjunct Professor

Assistant Adjunct Professor

Associate Adjunct Professor

Adjunct Professor

Visiting

Visiting Assistant Professor

Visiting Associate Professor

Visiting Professor

Health Sciences Clinical Professor

Health Sciences Assistant Clinical Professor

Health Sciences Associate Clinical Professor

Health Sciences Clinical Professor

Lecturer or Senior Lecturer (Unit 18)