

Procedure 33.01.02 K1.01 Non-faculty Employee Complaint and Appeal

1. Goal

The complaint and appeal procedures provide employees with the opportunity to request a facilitated discussion or mediation for issues other than sexual harassment, harassment or discrimination (see procedure 34.01.99.K1.01). A facilitated discussion is one in which a neutral party encourages discussion between the disputing parties. Mediation is a process in which a trained, impartial mediator facilitates communication between the parties to promote reconciliation, settlement or understanding between them. The goal in each instance is to facilitate the voluntary resolution of the dispute by the parties.

2. Informal Complaints

2.1 An employee should first discuss a complaint with his or her immediate supervisor or, if the employee does not feel comfortable discussing the complaint with his or her supervisor, the employee may request a meeting with the human resources officer. The human resources officer may take a statement from the employee and provide the statement to the supervisor. In addition, the human resources officer may provide information and assistance to the employee concerning policies, regulations, rules and procedures, including an explanation of available options, and may assist the employee with any other step in the complaint and appeal process.

2.2 If the complaint is not resolved through informal discussions with the supervisor, the employee may request a meeting with his or her department or unit head. The purpose of the meeting will be to seek a mutually satisfactory resolution through discussion. The employee may request the meeting personally or may request that the human resources officer make the arrangements.

2.2.1 The human resources officer may attend the meeting to serve as a facilitator and/or to provide assistance in interpreting policies, regulations, rules and procedures. The human resources officer may not serve as advisor to either party at the meeting.

2.2.2 The supervisor may attend the meeting if agreeable to the employee and department head.

2.2.3 The department or unit head may advise the employee of the decision at the time of the meeting and within five working days must provide a written decision to the employee and send copies to the human resource officer and supervisor.

3. Formal Complaints

3.1 Following the completion of the informal complaint process, the employee may elect to pursue a formal complaint. The formal process begins when the employee completes a complaint form (attached) and delivers the form to the human resources officer. Delivery

may be by telefax, personal delivery, campus mail, or U.S. mail (certified mail, return receipt requested).

3.2 The human resources officer is available to answer questions regarding the complaint form and policies, regulations, rules and procedures and to provide assistance as needed, such as when an employee has communication difficulties due to language barriers or has a disability.

3.3 The human resources officer will retain the original complaint form and forward copies to the department or unit head and to the appropriate vice president to review complaints under this rule. The human resources officer also will facilitate and coordinate the investigation of the complaint. The Human Resource Officer is authorized to appoint representatives to perform any or all of the duties described in Rule 34.01.01.K1.

3.4 The appropriate vice president will review the complaint and provide within five working days a written decision to the employee based on merits of the complaint. A copy of the decision will be sent to the human resources officer. This will be the final decision on the complaint.

3.5 The following is the timing and steps for an official complaint:

- Within 10 working days of the incident the employee must explore the informal solutions and deliver a completed Complaint and Appeal Form (attached) to Human Resources
- Within 5 working days, Human Resources will discuss and schedule an appeal or mediation, whichever is appropriate.
- Within 5 working days of the completion of mediation Human Resources will communicate the results to the parties involved. If an appeal has not been requested, the mediation results will be the final decision.
- Within 5 working days of the appeal, Human Resources will prepare a response to the employee with the final decision.

4. Mediation

4.1 At any point in the informal or formal complaint process, but before the administrator issues a decision, an employee may request a facilitated discussion or mediation.

The following actions are not eligible for mediation under the terms of this policy:

1. Non-renewal of a written contract of employment for a specific term.
2. Termination of an employee due to lack of grant funds.
3. Termination of a probationary employee's employment.
4. The voluntary resignation of an employee due to the employee's perception of unsatisfactory working conditions.
5. Termination under a reduction in force.
6. Discrimination and sexual harassment complaints.
7. Any complaints alleging illegal activity.

4.2 Mediation is not available for complaints regarding anyone missing a deadline stated in a policy, regulation or rule, or a supervisor's failure to follow all steps in System Regulation 32.02.02, Discipline and Dismissal Procedures for Nonfaculty Employees, unless the employee can produce evidence that such actions directly affected the employee's right to due process as provided by state and federal law.

4.3 The human resource officer will designate an appropriate person to represent TAMUK during the mediation process. The representative will generally be the department or unit head involved or a senior administrator. The representative must be authorized to resolve the issues and have the authority to enter into a memorandum of understanding.

4.3.1 TAMUK has an obligation to allow co-mediators from their own or other System components to participate in mediations for training purposes.

4.4 TAMUK will maintain its own pool of mediators as well as participate in a System-wide pool administered by the System Human Resources Office. Any System employee may be considered for inclusion in either pool if the employee:

4.4.1 Has completed at least 40 hours of dispute resolution training as required by Texas Civil Practice and Remedies Code, Section 154.052.

4.4.2 Has participated in at least three cases of mediation as an intern, mediator or co-mediator.

4.4.3 Has his or her department head's, or next higher-level manager's approval to serve as a mediator.

4.5 A settlement by the parties of some or all issues in the case, at any stage of the proceedings, will close the mediation with regard to any issues settled. Issues not settled will be resolved through the process in section 5 of this rule. Issues settled in the informal or formal stages of the complaint rule will not be reopened during mediation.

4.6 Agreements will be set forth in a written memorandum of understanding. All parties must agree to the wording of the memorandum. Once the human resources office has reviewed the Memorandum of understanding, parties to the mediation must sign the memorandum stating they're understanding and full agreement of these terms.

4.7 The mediation will be confidential and will not be open to the public. In addition, the mediator and all parties will not make public any matters discussed in the proceedings or any resolution made in the mediation. Generally, a mediator will not be called as a witness in any subsequent proceeding or hearings, either internal or external to the System, and all parts of the mediation will remain confidential. To protect privacy, the mediator will shred all notes from the mediation session, keeping only the final memorandum of understanding and a schedule of the dates and times of the meetings.

5. Resolution If Mediation Agreement Is Not Reached

5.1 If mediation ends without full agreement, all information related to the complaint, except that which was revealed during the mediation process, will be passed on from the human resources officer to the appropriate vice president. If both parties agree in writing, information from the mediation may be passed on to the administrator. If either party does not agree to pass on information from the mediation, that information will not be provided to the administrator. Any full or partial agreements resulting from the mediation will remain binding and will not be settled by the administrator. Once the administrator makes a decision, that decision will be final.

5.2 The administrator will notify the human resources officer of his/her decision in writing within five working days. The human resources officer will notify the complainant and the department or unit head of the complainant of the final decision.

7/2002

Texas A&M University-Kingsville
Employee Complaint and Appeal Form
Please route in order

Human Resources Officer (Please print): _____

Signature: _____ Date Received _____

Dean, Director or Department Head (Please print): _____

Signature: _____ Date Received _____

Vice President (Please print): _____

Signature: _____ Date Received _____

Statement of Complaint:

Please state the details of your complaint, including the dates of occurrence. Include how you wish the complaint resolved. Attach pages if needed.

Employee (Please Print) Signature Date