

MEMORANDUM

TO: JEROME SHELTON, CHAIR, OPERATIONS COMMITTEE

COPY TO: DEBORAH SULLIVAN, ASSISTANT VICE PRESIDENT, OFFICE OF TALENT MANAGEMENT
TROY LEMAILE-STOVALL, CHIEF OPERATING OFFICER

FROM: AVIS M. RUSSELL, ACTING GENERAL COUNSEL *Avis M. Russell*

SUBJECT: **NOTICE OF FINAL RULEMAKING, MODIFICATIONS TO THE UNIVERSITY RULES
REGARDING NON-BARGAINING UNIT GRIEVANCES, CH. 16**

DATE: April 8, 2020

On November 19, 2019, the Board of Trustees approved a Notice of Proposed Rulemaking (NPRM) to modify and revise Chapter 16, entitled "Grievances" as set forth in Title 8B of the District of Columbia Municipal Regulations to streamline the personnel process by eliminating the Impartial Grievance Hearing Panel and Procedures and standardizing timeframes; by excluding bargaining unit employee grievances that can be processed pursuant to a negotiated grievance procedure; and to provide that decisions by the President are final. The NPRM was published in the D.C. Register on February 21, 2020 (67 DCR 08) for a thirty (30) day comment period. The public comment period expired March 22, 2020 and no comments were received during the applicable period.

The NPRM was initially adopted and forwarded for consideration by the Operations Committee on August 27, 2019, placed initially on the agenda for the September 10, 2019 Board meeting and approved at the November 19, 2019 Board meeting. Pursuant to 8B DCMR §128.4, if no public comments are received on a Notice of Proposed Rulemaking, "the Chairperson of the Board Committee may forward the rules to the Board for final adoption without a meeting of or action by the committee." Accordingly, as Chairperson of the Operations Committee, you may forward the referenced rulemaking action to the full Board of Trustees for final rulemaking action at the Board meeting scheduled for April 21, 2020.

BOARD OF TRUSTEES
UNIVERSITY OF THE DISTRICT OF COLUMBIA
UDC RESOLUTION NO. 2020-_____

SUBJECT: NOTICE OF FINAL RULEMAKING, MODIFICATION TO THE UNIVERSITY RULES REGARDING NON-BARGAINING UNIT GRIEVANCES, CHAPTER 16

WHEREAS, pursuant to D.C. Official Code § 38-1202.01(a), the Board of Trustees of the University of the District of Columbia has the power to adopt, prescribe, amend, repeal, and enforce bylaws, rules, and regulations it considers necessary for the governance and administration of the University; and

WHEREAS, pursuant to D.C. Official Code § 38-1202.06(13), it is the duty of the Board to perform such duties and make such regulations as may be necessary to carry out the purposes of the University and that such regulations are adopted in accordance with the provisions of D.C. Official Code § 2-505(a); and

WHEREAS, the Board seeks to revise Chapter 16, entitled “Grievances” as set forth in Title 8B of the District of Columbia Municipal Regulations to streamline the personnel process by eliminating the Impartial Grievance Hearing Panel and Procedures and standardizing timeframes; by excluding bargaining unit employee grievances that can be processed pursuant to a negotiated grievance procedure; and to provide that decisions by the President are final; and

WHEREAS, the substance of the proposed rules enacted herein was published on February 22, 2020 at 67 DCR 08 for a thirty – day public comment period in accordance with D.C. Official Code § 2-505(a) and no public comments were received during the public comment period, and

WHEREAS, pursuant to 8 D.C.M.R. §128.4, where no comments are received, the Chairperson of the Board may forward the rules for final adoption without committee action;

NOW, THEREFORE BE IT RESOLVED that, the Board of Trustees of the University hereby adopts the Notice of Final Rulemaking attached and incorporated hereto as Exhibit A; and

BE IT FURTHER RESOLVED that the Rules enacted herein shall take effect upon publication in the DC Register and that all prior inconsistent resolution, customs, procedures, and practices are hereby repealed and the General Counsel is hereby directed to publish this Notice of Final Rulemaking in the D.C. Register.

Approved by the Board of Trustees:

April 21, 2020

Christopher D. Bell
Chairperson of the Board

EXHIBIT A

UNIVERSITY OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

The Board of Trustees of the University of the District of Columbia, pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.01(a); 38-1202.06(13) (2012 Repl.) hereby gives notice of its intent to amend Chapter 16 (Grievances) of Subtitle B (University of the District of Columbia) of Title 8 (Higher Education) of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of this rule is to revise the University's grievance procedures for employees not represented by a collective bargaining agreement.

The substance of the rules adopted herein was published in the *D.C. Register* on February 22, 2020 at 67 DCR 08 for a period of public comment of not less than thirty (30) days, in accordance with D.C. Official Code § 2-505(a) (2016 Repl.).

No public comment was received by the Board within the public comment period. The rule was adopted by the Board as final on April 21, 2020 and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 16, GRIEVANCES, of Title 8-B DCMR, UNIVERSITY OF THE DISTRICT OF COLUMBIA, is amended by deleting it and replacing it in its entirety as follows:

DCMR Chapter 16, GRIEVANCES

1600 GENERAL PROVISIONS: APPLICABILITY

- 1600.1 The informal presentation by employees of concerns and grievances is encouraged and shall be reasonably accommodated by management. The provisions of this chapter set forth formal grievance procedures that shall be used by University employees (except those excluded below) to seek resolution of conflict, the prompt and equitable relief of personal concerns and the redress of grievances.
- 1600.2 This chapter shall apply only to non-bargaining unit employees.
- 1600.3 The grievance procedures set forth in this chapter shall not apply to the following employees:

- (a) A bargaining unit employee subject to a negotiated grievance process;
- (b) A probationary employee seeking to challenge his/her termination during probation;
- (c) A temporary employee or an employee with a time-limited appointment seeking to challenge the termination of that appointment.

1600.4 The grievance procedures set forth in this chapter shall not apply to:

- (a) Applicants for employment; or
- (b) Former employees.

1600.5 A grievance may consist of a complaint of dissatisfaction or dispute concerning the following:

- (a) The interpretation or application of University policies or procedures;
- (b) A claimed violation, misrepresentation, or misapplication of University rules or applicable law; or
- (c) A failure to act pursuant to the policies and practices of the University or other applicable policies and practices.

1600.6 The following matters are not subject to this grievance procedure:

- (a) Any action implemented to comply with a decision by the Office of Employee Appeals, an arbitrator of competent jurisdiction, the Office of the Inspector General, the Executive Office of the Mayor, the Office of Human Rights, the Commission on Human Rights, a court of competent jurisdiction, or any other agency authorized by law to mandate a particular action;
- (b) Any action terminating an employee's temporary promotion that returns the employee to the position from which the employee was temporarily promoted or to a different position that is not at a lower grade or level than the position from which the employee was temporarily promoted;
- (c) Expiration of an appointment with a specific time limit;
- (d) Forfeiture of position due to failure to maintain bona fide District residency, or to meet the residency or domicile requirements;
- (e) Termination or discipline of an employee serving a probationary period;
- (f) The return or assignment to the position from which promoted or to an equivalent position of an employee who does not successfully complete a supervisory probationary period;
- (g) Termination of a term promotion upon completion or termination of an assigned project, and the return of the employee to the position from which promoted or to a different position of equivalent grade and pay;
- (h) An action reassigning an employee to a different position that is not at a lower grade;
- (i) Termination or discipline prior to the expiration of a temporary appointment;

- (j) An appeal from a disciplinary action or adverse action under the provisions of Chapter 15 of this subtitle;
- (k) Voluntary action initiated by, or at the request of, an employee;
- (l) Reduction of an employee's rate of pay from an erroneous rate;
- (m) An allegation of unlawful discrimination, or any other matter within the jurisdiction of the Office of Human Rights;
- (n) An allegation of an unfair labor practice, or any other matter required to be decided by the Public Employee Relations Board;
- (o) A final University decision which, pursuant to the D.C. Official Code Section 1-606.03(a), may be appealed to the Office of Employee Appeals;
- (p) A grievance that could be submitted through the grievance procedures contained in a collective bargaining agreement
- (q) Non-selection for any competitive or non-competitive appointment or promotion from a group of candidates who were properly qualified, ranked or certified;
- (r) Performance evaluations conducted under the provisions of Chapter 19 of Title 8B of the DCMR;
- (s) The application or coverage of the Fair Labor Standards Act;
- (t) A prior grievance dismissed with prejudice;
- (u) Non-adoption of a suggestion;
- (v) Disapproval of a quality salary increase, performance award or other kind of honorary or discretionary award;
- (w) Any matter which is not subject to the jurisdiction of the Board of Trustees; and/or
- (x) The substantive content of any resolution, policy or procedure of the Board of Trustees.

1601 GENERAL PROVISIONS

- 1601.1 An employee shall first attempt to resolve a grievance informally through discussions with his or her supervisor. If the grievance is not resolved satisfactorily through informal discussion, the employee may pursue the grievance formally, beginning with the procedures set forth in §1604.
- 1601.2 An employee shall not knowingly make false or unfounded charges when presenting a grievance.
- 1601.3 An employee filing a grievance under this chapter shall present the grievance within fifteen (15) days after the date that he or she knew or should have known of the act or occurrence that is the subject of the grievance.
- 1601.4 Each grievant and/or witness will be free from restraint, coercion, interference, discrimination, or reprisal for the act of filing or supporting a grievance.

1601.5 The timeframes set forth in this chapter may be extended by mutual consent of the parties involved.

1602 RIGHTS OF EMPLOYEES

1602.1 An employee shall have the right to be accompanied by a person of his or her choosing at any stage in the consideration of a grievance. If the employee chooses to be represented by an attorney, notice shall be provided to the supervisor or Cabinet member as applicable, 48 hours before the grievance is heard. In such case, the supervisor or Cabinet member may have an attorney present.

1602.2 An employee submitting a grievance under the provisions of this chapter may be granted a reasonable amount of official time for the preparation and/or presentation of the grievance. If questions arise, the Vice President for Talent Management will determine what constitutes a reasonable amount of time.

1603 RESPONSIBILITIES OF SUPERVISORS

1603.1 An employee's supervisor shall be responsible for making a sincere effort to resolve the grievance presented by the employee.

1603.2 During an interview with the employee, the supervisor will note the employee's specific allegations, the facts supporting those assertions, and the relief being sought by the employee and determine whether a legitimate grievance has been presented based upon §§1600 and 1601.

1603.3 Each supervisor shall use sound judgment, keep superiors informed of the status of each grievance, and as necessary, request guidance from Talent Management.

1603.4 A grievance shall be given full, impartial, and prompt consideration, and (except in unusual circumstances) a decision shall be rendered by the supervisor on a grievance within ten (10) days after receipt of the grievance.

1603.5 If a supervisor hearing a grievance has reason to believe that the employee is knowingly making false and damaging statements, the supervisor should advise the employee that if those charges are found to be intentionally false and damaging, the employee may be subject to disciplinary action up to and including termination.

1604 FORMAL GRIEVANCE PROCEDURE: STEP 1

- 1604.1 To begin formal grievance procedures at Step 1, the employee shall present the grievance in writing to his or her immediate supervisor within 15 days of the act, violation, or occurrence, or within 15 days of the date the employee became aware of the act, violation, or occurrence.
- 1604.2 The formal grievance will be referred to as a “Statement of the Grievance”. The Statement of the Grievance shall contain enough detail to clearly identify the basis for the grievance, the facts supporting the grievance, and the specific relief requested.
- 1604.3 Within five (5) days of receipt of the Statement of the Grievance, the supervisor shall do one of the following:
- a. Acknowledge receipt of the grievance and begin processing;
 - b. Deny the grievance as being a matter not subject to review;
 - c. Deny the grievance as being untimely; or
 - d. Request the employee to supply additional information or inform the employee that additional information will be gathered. The parties may agree to extend timeframes to permit the gathering of such additional information.
- 1604.4 The supervisor shall conduct an interview and discussion with the employee and advise the employee in writing of his or her decision within ten (10) days following receipt of the Statement of the Grievance, unless additional information is required and the parties have agreed to extend timeframes.
- 1604.5 If the supervisor does not grant the relief sought by the employee, or lacks authority to grant the relief sought, the supervisor shall advise the employee in writing, stating the basis for the decision and inform the employee of his or her right to appeal the grievance to the Step 2 level within five (5) days from the date of receipt of the notification.
- 1604.6 If the employee does not receive a written answer to the Statement of the Grievance within ten (10) days following receipt of the Statement of the Grievance (and the parties have not agreed upon an extension of time), or the employee disagrees with the supervisor’s decision, the employee shall have the right to appeal the grievance to Step 2.

1605 FORMAL GRIEVANCE PROCEDURE: STEP 2

- 1605.1 If a grievance is not resolved under §1604, it shall be presented by the employee to the employee's second level supervisor in the chain of command within five (5) days after receipt of the supervisor’s decision or the expiration of the required period for a decision to be made in Step 1.

- 1605.2 The Step 1 grievance appeal shall be in writing, shall contain the materials presented at Step 1 and enough details to clearly identify the basis for the appeal, and the relief sought by the employee. No new allegations may be added to the Step 2 grievance.
- 1605.3 The second level supervisor shall review the grievance materials and advise the employee in writing of his or her decision within ten (10) days of receipt of the Step 1 grievance appeal or advise the employee of the need for additional information. The parties may agree to extend timeframes to permit the gathering of such additional information.
- 1605.4 If the second level supervisor does not grant the relief sought by the employee, or lacks authority to grant the relief sought, the second level supervisor shall advise the employee in writing, stating the basis for the decision and inform the employee of his or her right to appeal the grievance to the Step 3 level within five (5) days from date of receipt of the Step 2 decision.
- 1605.5 If the employee does not receive a written answer within ten (10) days following the second level supervisor's receipt of the Step 2 appeal (and the parties have not agreed upon an extension of time), or if the employee disagrees with the second level supervisor's decision, the employee shall have the right to appeal the grievance to Step 3.

1606 FORMAL GRIEVANCE PROCEDURE: STEP 3

- 1606.1 Within five (5) days of receipt of the Step 2 decision or the expiration of the required period for a decision to be made, the grievant may appeal the action to the appropriate Cabinet member (the official within the employee's chain of command or a Cabinet member designated by the President).
- 1606.2 The Step 2 grievance appeal shall be in writing, shall contain the materials presented at Step 2 and enough details to clearly identify the basis for the appeal, and the relief sought by the employee. No new allegations may be added to the Step 3 grievance.
- 1606.3 The appropriate Cabinet member shall review the grievance materials and advise the employee in writing of his or her decision within ten (10) days from receipt of the Step 2 appeal or advise the employee of the need for additional information. The parties may agree to extend timeframes to permit the gathering of such additional information.
- 1606.4 If the appropriate Cabinet member does not grant the relief sought by the employee, or lacks authority to grant the relief sought, the appropriate Cabinet member shall advise the employee in writing, stating the basis for the decision

and inform the employee of his or her right to appeal the grievance to the Step 4 level within five (5) days from the date of receipt of the Step 3 decision.

- 1606.5 If the employee does not receive a written answer within ten (10) days following receipt of the Step 3 appeal (and the parties have not agreed upon an extension of time), or if the employee disagrees with the appropriate Cabinet member's decision, the employee shall have the right to appeal the grievance to Step 4.

1607 FORMAL GRIEVANCE PROCEDURE: STEP 4 – FINAL APPEAL TO THE PRESIDENT

- 1607.1 Within ten (10) days of the Step 3 decision or the expiration of the required period for a decision to be made, the grievant may appeal the action to the President.
- 1607.2 The appeal must be in writing with all documentation from the previous appeals attached, and enough details to clearly identify the basis for the appeal, and the relief sought by the employee. No new allegations may be added to the Step 4 grievance.
- 1607.3 The President shall review the grievance materials, and advise the employee in writing of his or her decision within ten (10) days from receipt of the Step 3 appeal, or advise the employee of the need for additional information, in which case, the President shall advise the employee of the date by which a final decision will be issued.
- 1607.4 The decision of the President shall be final.

1608 EMPLOYEES REPORTING TO THE PRESIDENT OR A CABINET MEMBER

- 1608.1 In all instances where the President is the first or second line supervisor, the employee's appeal rights shall terminate with the President, whose decision shall be final.

1609 DISMISSAL OF GRIEVANCE

- 1609.1 An employee may request a dismissal of the grievance at any time.
- 1609.2 A supervisor or second level supervisor may dismiss a grievance if the employee fails to carry out his or her responsibilities; fails to participate; separates from the University; or otherwise impedes the grievance process under

this chapter.

1609.3 A dismissal requested by an employee or issued pursuant to this section following the issuance of a Step 2 grievance shall be final.

FISCAL IMPACT STATEMENT

TO: Board of Trustees

FROM: Managing Director of Finance *David A. Franklin*

DATE: September 10, 2019

SUBJECT: DCMR Change – Title 8B, Chapter 16 – Grievances

Conclusion

It is concluded that there is no significant fiscal impact associated with the Board of Trustees' authority to adopt, prescribe, amend, repeal, and enforce bylaws, rules, and regulations that it believes necessary for the governance and administration of the University.

Background

Pursuant to 8B DCMR, the Board of Trustees intends to revise Chapter 16 (Grievances) of its regulations to streamline the grievance process by eliminating the Impartial Grievance Hearing Panel and Procedures, standardizing timeframes, excluding bargaining unit employee grievances that can be processed pursuant to a negotiated grievance procedure, and providing that decisions by the President are final.

These changes have been determined to represent improvements to the existing grievance-related regulations to the extent they streamline and simplify the process and eliminate duplicative avenues for resolving grievances.

Financial Impact

The University expects the impact of its revision of the Grievance procedures to be immaterial. The University may realize some modest savings in expenses as a result of the elimination of duplicative avenues for grievance resolution.