

From: Lindner, Bernhard L
Sent: Friday, April 15, 2016 2:54 PM
To: Dillon, Robert T
Cc: McGee, Brian; Hillenius, Willem Jacob; Auerbach, Mike
Subject: Re: Notice of Grievance

Hi Rob,

We understand your disappointment. Unlike the other committees on campus, the Hearing Committee is strongly regulated by the state (you can even see footnotes in the FAM showing links to specific state codes). All state agencies have very specific procedures for hearings; and because we are a state agency, we are governed by those procedures. Indeed, Kathryn Bender, a former Legal Counselor for the College, once told me to use Appendix I in the FAM as a Bible, following it to the letter. That Appendix clearly lists where our jurisdiction lies, and it is mostly in cases where a faculty member has been terminated or dismissed, which thankfully doesn't apply in your case. As you point out, the By-Laws are more vague and ambiguous; hence we used that to consider your notice of grievance.

I polled my committee members on your questions and got some responses (which I have made anonymous) that may help answer your questions on procedural matters (I've got some fabulous faculty on the committee!). Note that nothing in this email that I am now sending you constitutes a formal response to your memo; your memo did not make a formal request of our committee and we have not met to discuss today's memo.

"I don't think that refiling the academic freedom grievance will matter since we all judged that insisting on course specific learning objectives for the syllabus was not a violation of academic freedom. We've all essentially seen the evidence and you mentioned that our judgement was formed from the things Rob had circulated earlier. Today is the last day he can grieve due process for the only real grievable issue which is reassigning him and taking him out of the classroom in mid semester, but the only remedy would have been to put him back in the classroom this semester but the semester will be long over by the time a hearing concludes, so any remedy is moot and without a viable remedy I don't see the point of a hearing. And for Fall him being out of the classroom is part of the sanction, a different matter. He can't grieve that the sanctions are too harsh, for several reasons, grieving the sanctions was part of the academic freedom grievance and that has already been dealt with, and our purview is not to judge the severity of sanctions only whether or not any sanction is warranted based on our supporting the grievance or not. However we did comment on the severity of the sanctions which is an unofficial action since that is not in our purview."

"The email above was incorrect when stating today is the last day Rob can grieve due process for being reassigned out of the classroom. Indication that he was reassigned was confirmed on February 19 in a memo from Brian McGee to Rob. So the deadline for Rob to file a due process grievance to our committee for improperly being reassigned out of the classroom is long past. So there is no viable grievance left the way I read it."

“There are two different issues here. (1) appealing McGee’s “assignment to new duties.” That re-assignment took place Feb 18th, and so the deadline has passed to file a grievance related to the re-assignment. (And this is, to my eye, the most serious “due process” violation.) (2) Appealing the sanction (which was imposed 3/18). Today would be the last day to appeal to our committee, but the sanction is not within our jurisdiction, as far as I can tell. The question I have is this: could he appeal to the grievance committee?”

Not meaning to pass the buck, but have you considered the Grievance Committee? Their duties include grievances not in the purview of the Hearing Committee, and they also mediate grievances, which may be useful to you. You could also check with the Welfare Committee or the Faculty Senate. None of these may be viable avenues, but you may wish to check into them.

Again, none of this email should be considered a formal, legal response, but merely some thoughts put together to address your procedural questions.

Sorry,
Lee

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