



UNIVERSITY GUIDELINES FOR A PROFESSIONAL STAFF MEMBER TO RESPOND TO OR CONTEST AN ANNUAL EVALUATION

Executive Summary – Rational for Recommended Changes

Current UNLV guidelines for a professional staff member to respond to or contest an annual evaluation include two avenues of redress:

- Within 30 calendar days of receiving the evaluation, the professional staff member may file a written rejoinder. The rejoinder requires no response by the supervisor, but must be filed together with the employee's original evaluation. The lack of a required response to the rejoinder often leaves employees feeling that the rejoinder process is not substantive.
- Within 15 calendar days of receiving the evaluation, the professional staff member may request a peer review committee to review the evaluation and convey a recommendation to the employee's division vice president to affirm the original evaluation or to recommend an alternative evaluation. The fact that the deadline for requesting a peer review precedes the deadline for filing a rejoinder often pushes employees to request the more formal peer review, when the rejoinder process may be adequate to resolve their concerns in a less adversarial manner.

With the concurrence of the Professional Staff Committee of the Faculty Senate and subject to an affirmative vote by the Professional Staff Unit (consisting of professional employees across all divisions), the Office of Human Resources recommends these guidelines to the President, including the following principal changes:

- These Guidelines would establish for the first time a meaningful process for an employee to file a rejoinder to his or her performance evaluation which requires a written response from the employee's 1st line supervisor and a decision by the 2nd line supervisor (who serves as the employee's performance reviewer) in response to the concerns voiced by the employee in his or her rejoinder. Employees would be encouraged (but not required) to use the rejoinder process before requesting a more formal peer review.
- For employees that use the rejoinder process, these Guidelines would provide an additional 15 calendar days following the response to the rejoinder to submit a request to the college/school dean or division vice president for a peer review. [Employees who elect to refrain from using the rejoinder process would continue to have 15 days from the date of their original evaluation to request a peer review, but would not be entitled to the extending filing deadline.]

- Finally, these Guidelines provide guidance to peer review committees, once appointed, on best practices for conducting peer reviews including the requirement that committees meet with the employee and supervisor in person, adopt a standard of reasonableness for making its recommendations to the division vice president, and outline components of a peer review committee report.

The Professional Staff Committee of the Faculty Senate reviewed these Guidelines in a number of meetings in late Spring and Summer 2007. The Committee endorsed these Guidelines on November 8, 2007, subject to soliciting public comment from professional employees across campus and subject to an affirmative vote of the Professional Staff Unit, as reflected in minutes of the Committee to be posted at <http://prostaff.unlv.edu/>.

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Policy Authority & Applicability of these Guidelines

1. The NSHE Code requires (at Title 2, Ch 5, §5.16) that “Each institution ... shall adopt, in their respective bylaws, a procedure for review of a faculty member’s adverse annual evaluation rating and a procedure to review denial of a salary increase.”
2. The Policies of the Board of Regents provide (at Title 4, Ch 3, §4.5) that “Academic and administrative faculty who disagree with the supervisor’s evaluation may submit a written rejoinder, and where authorized by the institution bylaws as provided in Section 5.16 of the NSHE Code, request a peer evaluation.”
3. The UNLV Bylaws provide (at Title 5, Ch 6, Subchapter III, §8) that, “If a faculty member disagrees with the evaluation, then he or she (a) within 30 calendar days after notification, may submit a written response to the evaluation to be incorporated therewith, and (b) within fifteen calendar days after notification, may request in writing to the college dean or appropriate vice president the formation of a committee of peers to conduct a separate evaluation.”

4. The UNLV Bylaws (at Title 5, Ch 6, Subchapter III, §8.3) further provide that, “Each college or unit shall establish in its bylaws procedures for forming an elected peer review committee, and any operational guidelines deemed necessary.”
5. As provided at Title 5, Ch 6, Subchapter III, §3.5, all administrative and supervisory faculty working in all of the units of the University constitute the “Professional Staff Unit.”
6. In accordance with the UNLV Bylaws, the Professional Staff Unit has adopted a bylaw provision that provides if a professional staff member requests a peer review committee, “the procedures outlined in UNLV’s Policy and Procedures for the Creation of a Peer Review Committee for Professional Staff should be followed.” [Professional Staff Unit Bylaws, Article 7, Section 7.4.]
7. These Guidelines constitute UNLV’s “policy for the creation of a peer review committee for professional staff,” as well as guidelines for the rejoinder process. They have been adopted by the President on the recommendation of the Professional Staff Committee of the Faculty Senate, in compliance with the UNLV Bylaws and the Bylaws of the Professional Staff Unit, and upon an affirmative vote by the Professional Staff Unit.
8. These guidelines are consistent with the UNLV Bylaw provisions (at Title 5, Chapter 6, Subchapter III, Section 8.3), that, in the event a peer review committee is requested by the professional staff member, “The (peer review) committee’s purpose shall be to file a report which either recommends upholding the administrator’s original evaluation or reversing that evaluation and recommending an alternative one. ... Both the original evaluation and the recommendation of the peer review committee shall be forwarded to the appropriate dean and vice president or Executive Vice President and Provost and both evaluations shall be placed in the faculty member’s master personnel file. The appropriate vice president or Executive Vice President and Provost shall make the final decision on the evaluation to be issued to the faculty member for the year.”

Purpose of Performance Evaluation Program & Extended Deadline for Peer Reviews

The purpose of the University’s performance evaluation program is to ensure performance expectations are clear at the beginning of the evaluation cycle, to provide an objective process for evaluating employees’ contributions to the University, and to promote effective communication between employees and supervisors.

When an employee objects to material in his or her performance evaluation, best HR practices suggest it is advisable for the employee to first submit a rejoinder to the evaluation and for the supervisor to respond to the employee’s rejoinder, prior to the employee resorting to the peer review process.

The UNLV Bylaw provisions establish a 15 day deadline for requesting a peer review committee and a 30 day deadline for filing a rejoinder – seeming to envision that an employee will avail

himself or herself of one or the other of these avenues of redress. Under the NSHE Code & Policies, however, employees may avail themselves of either one or both of these remedies.

For this reason, and notwithstanding the deadline for filing a request for a peer review as enumerated in the UNLV Bylaws, the University has adopted these guidelines which encourage the use of the “rejoinder” process in advance of the “peer review” process by extending additional time for employees who file a rejoinder to subsequently request a peer review.

Consequently, under these Guidelines for the professional staff unit, an employee is encouraged to first use the rejoinder process to ascertain whether the employee and supervisor can reach agreement on a final performance evaluation. If the rejoinder process does not resolve the employee’s concerns, the employee may subsequently request a peer review (as provided in these guidelines). Effectively, this constitutes an exchange of consideration, such that the university agrees to extend the deadline for requesting a peer review committee to those professional staff members who agree to first participate in the rejoinder process.

Professional employees are encouraged (but are not obligated) to use the rejoinder process, prior to requesting a peer review. If an employee files a rejoinder (within 30 calendar days of receiving the original performance evaluation) and is not satisfied with the result of the rejoinder process, the employee will have 15 additional calendar days after receipt of the reviewing authority’s response to the rejoinder process within which to request a peer review.

As noted above, professional employees are not obligated to use the rejoinder process and remain at liberty to file a peer review without filing a rejoinder. If an employee does not file a rejoinder and elects only to request a peer review, the request for a peer review must be submitted within 15 calendar days of the receiving the original performance evaluation and the employee is not entitled to an extension of time to request a peer review under these guidelines.

Rejoinder Process

1. **Employee:** Within thirty calendar days after receipt of the final evaluation, the employee must submit a written rejoinder to the evaluation to the supervisor who prepared the original performance evaluation, outlining the factual basis and reasons why the employee believes the performance evaluation should be revised, with a concurrent copy provided to the performance reviewer.
2. **Supervisor:** Within five work days after receipt of the rejoinder, the supervisor must convey a recommendation in writing to the performance reviewer as to whether or not the supervisor concurs in revising the original performance evaluation on the basis of the employee’s rejoinder, with a concurrent copy provided to the employee.
3. **Reviewing Authority:** Within five work days after receipt of the supervisor’s recommendation, the reviewing authority (who is the supervisor’s manager and who is responsible for signing the employee’s performance evaluation) shall determine whether or not the original evaluation will be revised and must convey this decision in writing to the employee, with a concurrent copy provided to the supervisor.

4. **Records Retention:** Regardless of the performance reviewer's decision, copies of the employee's rejoinder, the supervisor's recommendation to the performance reviewer, and the performance reviewer's decision shall be attached to the original performance evaluation and become a part of the employee's official personnel file.
5. **Optimal Outcome:** If the rejoinder process (described above) satisfactorily resolves the employee's concerns, the result should be improved communications between the employee and the supervisor, with the awareness and concurrence of the performance reviewer. This should be the objective of an effective rejoinder process.
6. **Subsequent Request for Peer Review:** If the rejoinder process does not satisfy the employee's concerns, the employee may within 15 calendar days of receiving the performance reviewer's decision, file a request for a peer review committee with the employee's appointing authority (the division vice president or the director of athletics) or the Office of Human Resources (as described in the remainder of these guidelines).

Note: While rejoinders are submitted to the "reviewing authority" who is the supervisor's next-in-line higher level manager, peer review requests are submitted directly to the "appointing authority" who is the division vice president or director of athletics, regardless of the number of levels of supervision that may be between the employee and the appointing authority. Employees who do not report through a division vice president or the director of athletics (or who report directly to a division vice president or the director of athletics) should submit their request for a peer review committee directly to the Office of Human Resources (c/o Staff Development & Employee Relations).

Peer Review Process

Role of Human Resources in the Peer Review Process

Upon receipt of a request for a peer review, the appointing authority should refer the request to the Office of Human Resources to establish a peer review committee. Human Resources will facilitate the formation of the peer review committee within fifteen calendar days after receipt of a request for peer review.

A representative of the Employee Relations unit of the Office of Human Resources shall attend all committee meetings and advise the chair of the peer review committee during the process. During committee meetings, the role of the Human Resources representative shall be (1) to provide logistical or administrative support to the committee; (2) to advise the chair of the committee on policy issues; and (3) shall be non-deliberative with respect to peer review issues.

Committee Purpose

The committee's purpose, as provided in the UNLV Bylaws, shall be to file a report with the employee's appointing authority (division vice president, director of athletics, or president)

which either recommends upholding the supervisor's original evaluation or revising the evaluation and recommending an alternative rating.

Composition & Size of Committee

The peer review committee shall consist of professional staff members drawn from a list of professional staff members who have been designated for this purpose by university executive officers and previously trained by the Office of Human Resources. All prospective committee members must be from departments other than the employee, and no two prospective committee members may be from the same unit.

The size of the peer review committee shall be determined by the appointing authority, provided it shall be not less than three and not more than five members. After receiving a request to establish a peer review committee and the size of the desired committee from the appointing authority, the Office of Human Resources will submit a list of prospective committee members to both the employee and the supervisor. Both the employee and the supervisor may select one person to serve on the peer review committee and may object to other names in writing based on specific conflicts of interest, with such conflicts of interest to be resolved by the appointing authority. The appointing authority shall then select the remaining individuals to serve on the committee and shall designate one individual as the chair. Human Resources will advise each person, in writing, of their selection and charge.

Peer Evaluation File

The employee, within fifteen calendar days after notification that a committee has been charged, may assemble a Peer Evaluation File to include materials the employee believes are pertinent to the matter being evaluated. Letters from constituents referencing an employee's character will not be accepted as supporting documentation.

Department heads or managers shall establish supporting documentation to be included in the Peer Evaluation File. Supporting documentation submitted by the department head should include: (1) a copy of the performance evaluation in dispute; (2) evidence of performance expectations (e.g., enumerated in the prior year's performance evaluation, official position description or other documents setting forth performance expectations available to the employee during the evaluation period; and (3) the supervisor's rationale for the evaluation rating assigned.

Each party is responsible for submitting one complete packet of documentation for review by the committee. Documentation should be submitted through Human Resources for dissemination to committee members.

Committee Process

The peer review shall include (1) a review of all written materials submitted by the employee and the supervisor; (2) an informal hearing in which the employee and supervisor present their respective views to the committee in person and in one another's presence; and (3) interviews with such other individuals as the committee may determine necessary. Interviews with 3rd

parties, likewise should be conducted in the presence of the employee and supervisor, and should be limited to persons who have direct knowledge of either the performance expectations or performance level of the employee. Generally, character interviews should not be allowed, unless the evaluation relies on an assessment of character and character issues are inherent in the nature of the employee's request for a peer review.

The role of the committee is to:

- Make findings of fact, if facts are in dispute, based on an evaluation of the whole record (including both documentary and testimonial evidence), and relying on a standard of what a reasonable person would find "more likely than not."
- Determine whether performance expectations were conveyed in an appropriate manner, whether the employee had adequate resources to accomplish duties and responsibilities or the extent to which factors beyond the employee's control may have prevented the employee from accomplishing duties and responsibilities, and whether the supervisor found it necessary to allocate additional resources to meet operational requirements that should have been within the employee's control.
- Determine whether management's evaluation reflects a reasonable and rational evaluation of the employee's contributions to the unit in light of the facts determined during the review.

Once the committee has completed its review, it should formulate a recommendation to the appointing authority as to whether:

- The evaluation should be affirmed; or
- The evaluation should be revised.

Whichever recommendation reflects the committee's judgment, the committee must describe its rationale for the recommendation, including a description of the factual basis or the specific actions or failures to act on the part of the employee or the supervisor that support its recommendation.

It is not the role of the committee to serve either as an advocate for the employee or as a defender of the supervisor; nor to simply supplant the manager's judgment for its own. Rather, the role of the peer review committee is to determine whether the original performance evaluation was a reasonable and rational evaluation of the employee's performance in light of the entire record. A recommendation to modify or overturn the supervisor's original evaluation must include a finding that specific management actions or failures to act constitute either unreasonable or irrational supervisory behavior in determining the original evaluation.

In accordance with BoR policies and UNLV Bylaws, the committee's findings and recommendations are advisory in nature and do not bind the appointing authority or limit the discretion of the appointing authority to determine the professional staff member's final performance evaluation. In any instance, a copy of the peer review committee's findings and

recommendations and the appointing authority's final determination shall be provided to the employee, the supervisor, and placed in the employee's official personnel file.

The committee shall complete its work in as expeditious a manner as possible and within 60 days of the date the peer review committee is appointed.

Peer Review Report

The peer review report should include the following information in narrative form (typically ranging from two to three pages in length):

- Introduction
 - Identification of employee and supervisor (titles and units)
 - Identification of committee members (titles and units)
 - Summary of the employee's position, including specific resolution requested by the employee.
 - Summary of the supervisor's position, including rationale for the original performance evaluation.

- Findings & Discussion

This section should detail the committees' findings of fact – based on both documentary and testimonial evidence. The standard for management decision making is that a manager's decision must be both reasonable and rational, given the facts available to the decision maker. In similar fashion, the recommendations of the peer review committee must be predicated on a reasonable and rational basis, based on the evidence. It is not the role of the peer review committee to simply supplant the manager's judgment of its own. Thus, the findings of the committee should be based on the evidence and supported by reasonable and rational discussion.

- Recommendation

The peer review report must specifically recommend that the original performance evaluation should be either sustained or revised, and if revised, what the final evaluation rating should be. A recommendation to overturn or modify the manager's decision must be supported by a specific finding that the manager's decision failed to reflect a reasonable and rational decision, given the facts available to the decision maker at the time the decision was made.

Consensus-based decisions are strongly recommended. The committee report should reflect the decision-making process of the committee and indicate whether decisions were adopted by consensus or voting. If the committee does not achieve consensus in its deliberations, the report may reflect a minority view or a minority report may accompany the committee chair's report.

