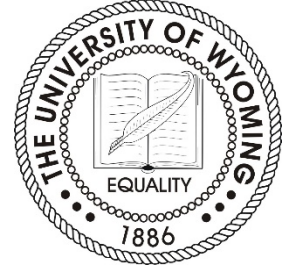

UNIVERSITY OF WYOMING REGULATIONS

Subject: Academic Personnel Dispute Resolution

Number: UW Regulation 2-2



I. PURPOSE

The following Regulation outlines the procedures related to certain disputes, as defined below.

II. DEFINITIONS

Academic Personnel/Employee: For purposes of this Regulation, Academic Personnel includes faculty as defined in UW Regulation 2-1.

Administrator: shall mean Academic Administrators as defined in UW Regulation 2-8, "Appointment, Evaluation and Removal of Academic Administrators."

Dispute: A claim which occurs when any academic personnel considers that any condition of employment, including actions or inactions by others, is unjust, inequitable, contrary to University regulations or policies, or a hindrance to effective faculty performance. Disputes addressed by this Regulation do not include the merits of decisions related to:

- A. Annual Performance Reviews. For these types of claims, the Academic Employee may submit a written statement to the applicable dean or director. The statement will be added to the Academic Employee's personnel file.
- B. Appointment, Evaluation, and Removal of Academic Administrators. For claims related to appointment, evaluation and removal of Academic Administrators see UW Regulation 2-8, "Appointment, Evaluation and Removal of Academic Administrators."
- C. Claims related to Settlement Amounts, Attorney Fees or Any Other Types of Fees, Costs, or Assessments.
- D. Compensation. Compensation and benefits are governed by UW Regulation 2-3, "Regulations Governing Vacation, Sick Leave, and Compensation for Faculty and University Officers" and the Employee Handbook.
- E. Discrimination and Harassment. For claims related to discrimination see UW Regulation 4-2, "Discrimination and Harassment."

- F. Dismissal. For claims related to dismissal see UW Regulation 2-6, “Dismissal of Academic Personnel.”
- G. Post-Tenure Review. For claims related to post-tenure review see UW Regulation 2-10, “Post-Tenure Review Policy.”
- H. Reappointment, Evaluation, Promotion, and Granting of Tenure. For claims related to reappointment, evaluation, promotion and the granting of tenure see UW Regulation 2-7, “Procedures for Reappointment, Tenure, Promotion and Fixed-Term.”
- I. Sexual Misconduct. For claims related to sexual misconduct see UW Regulation 4-3, “Title IX and Sexual Misconduct.”
- J. Violence in the Workplace. For claims related to violence in the workplace see UW Regulation 4-4, “Violence in the Workplace.”

Faculty Conciliator: An individual appointed by the President from a list of three or more persons nominated by the Faculty Senate, who serves at the pleasure of the President. The President, in consultation with the Executive Committee of the Faculty Senate shall establish the term and duties of the Faculty Conciliators or substitute Faculty Conciliators if required under section VI.C. and shall periodically review the functions of the office. The Office of Academic Affairs shall provide necessary financial support for the Faculty Conciliator.

Faculty Dispute Resolution Panel: The Faculty Dispute Resolution Panel shall consist of eighteen (18) members elected for three-year staggered terms by ballot of the Faculty, from nominations made by the Faculty Senate. Faculty Dispute Resolution Panel eligibility shall be limited to tenured faculty and academic personnel on a fixed or extended term who hold no administrative assignment, with no more than six (6) members to be elected from the same college of the University. A pool of alternates for the Faculty Dispute Resolution Panel shall be established, comprised of nominees who are not elected; if a member of the Faculty Dispute Resolution Panel is removed or leaves the Panel, the alternate with the greatest number of votes will automatically fill the term of the departing member.

Hearing Committee: The three-member committee selected in the manner set forth herein to resolve a dispute under Step Three of this Regulation.

Hearing Officer: One or more individuals nominated by the President who, after consultation with the Executive Committee of the Faculty Senate, shall make final appointments. Hearing Officers shall assist in the resolution of Disputes pursuant to this Regulation.

Parties: The parties to a hearing as described in Section VII.D. shall be the complaining Academic Employee (hereinafter “Complainant”), any other persons whose action or

inaction caused or contributed to the incident or conditions which gave rise to the Dispute (hereinafter “Respondent”), and any Administrator whose participation may be required in implementing a resolution of the Dispute.

Time Limits: The Faculty Conciliator or the Hearing Officer, in the interest of arriving at a just resolution, may extend the time limits prescribed by this regulation until the final Hearing Committee convenes. All parties shall be immediately notified of any change in time limits. In calculating periods of time, Saturdays, Sunday, University holidays and legal holidays shall be excluded.

III. POLICY

The University recognizes the right of Academic Personnel to express differences of opinion and to seek fair and timely resolutions of disputes. It is the policy of the University that disputes shall be settled informally if possible and that all persons have the obligation to participate in good faith in the informal dispute resolution process before resorting to formal grievance procedures. The University encourages open communication and resolution of disputes through the informal processes described in this University Regulation. The University will not tolerate reprisals, harassment or discrimination against any person because of participation in this process. This regulation establishes an internal process to provide University Academic Personnel a prompt and efficient review and resolution of disputes. This regulation is the sole method for resolution of disputes as defined herein or appeals from terminations resulting from financial exigency.

IV. ADMINISTRATIVE RESPONSIBILITY

All University Administrators shall inform, listen to, and counsel with Academic Personnel concerning disputes arising in areas over which the Administrators have supervisory or other responsibilities, and shall to the best of their ability contribute to timely resolution of any dispute taken to them.

V. STEP ONE – INFORMAL RESOLUTION

A. It is the policy of the University that Disputes shall be settled informally, if possible, and that Academic Personnel must participate in good faith in informally resolving the dispute before continuing onto the steps outlined below.

VI. STEP TWO – CONSULTATION WITH THE FACULTY CONCILIATOR

A. Academic Personnel must demonstrate to the Faculty Conciliator that he/she has participated in a reasonable attempt to resolve the Dispute informally, including participating in appropriate discussion with the persons whose actions have given rise to the Dispute and a discussion with the appropriate supervisor under Step One or provide an appropriate reason for not doing so.

- B.** Academic Personnel must consult with the Faculty Conciliator before proceeding to Steps Three or Four.
- C.** The Faculty Conciliator shall be available to assist all Parties in good faith attempts to resolve a Dispute informally, prior to submission to the Hearing Committee. The Faculty Conciliator may require any person, including Administrators at any level, to participate in any meeting called by the Faculty Conciliator for the purpose of effecting informal resolution of a Dispute.

In the event that the Faculty Conciliator is named as a party in a complaining Academic Employee's Dispute, or in circumstances in which the Faculty Conciliator may be involved in a Dispute as a witness, the President may, upon request of the complaining Academic Employee and in consultation with the Executive Committee of the Faculty Senate, appoint a substitute Faculty Conciliator for purposes of that dispute. If for any reason the President cannot act under this Regulation, the President shall appoint a neutral third-party, not in the same college as any Party, to act in the President's stead.

- D.** No statements made by the Parties in the course of the conciliation and no documents specially prepared by the Parties for use in the conciliation shall be admissible in Steps Three and Four. Statements, documents and other evidence which were made or existed prior to the conciliation shall not preclude admission of those statements, documents and other evidence in Steps Three and Four.
- E.** Participation of the Faculty Conciliator in informal resolution efforts shall be for the purpose of effecting informal resolution of Disputes, and the Faculty Conciliator may not testify in Step Three.
- F.** If the Dispute is not resolved within twenty (20) days after initiation of consultation with the Faculty Conciliator, the Faculty Conciliator shall notify the Parties in writing that the period for informal resolution is terminated.
- G.** Within five (5) days after receipt of the termination notice, any party may commence to Step Three by submitting to the Faculty Conciliator, a written request to begin the Step Three process, as well as a written statement which must contain the following:
 - 1.** A brief statement detailing the nature and facts giving rise to the Dispute;
 - 2.** A designation of the Parties involved; and
 - 3.** A statement of the remedy and/or resolution requested.
- H.** Within five (5) days after receipt of the written statement, the Faculty Conciliator shall transfer the matter to a Hearing Officer selected as set forth below. If neither

party submits a written statement within the time provided, the Faculty Conciliator shall dismiss the Dispute, and report the dismissal to both Parties.

VII. STEP THREE – SUBMISSION TO THE HEARING COMMITTEE

The Hearing Committee shall hear the Dispute in accordance with the Hearing Procedures outlined below.

A. Committee Selection

1. The Hearing Officer shall select a Hearing Committee (hereinafter “HC”) of three (3) members by lot from the full Faculty Dispute Resolution Panel. The Committee shall be comprised of no more than two (2) members from the same college or unit under the supervision of the Provost and Vice President of Academic Affairs.
2. The Hearing Officer shall select the HC within ten (10) days of receipt of the written statement by the Hearing Officer.
3. The Hearing Officer shall convene the HC no later than fifteen (15) days after providing notification of the composition of the Hearing Committee. In the event of challenges to one (1) or more members of the HC, this meeting shall be held within twenty (20) days of providing the notification of the composition of the Hearing Committee. The HC shall select a hearing chairperson at its first meeting.

B. Challenges

The Complainant or any Respondent shall have the right to challenge any member of the HC for cause. Either party is limited to two challenges and shall submit the basis for the challenge in writing to the Hearing Officer within three days of the notification of the composition of the Hearing Committee. The Hearing Officer then has three days to decide whether to grant the challenge. In the case of disqualification, absence, or other inability to serve, replacement HC members shall be selected by lot; first from the remaining Faculty Dispute Resolution Panel members, then, if necessary, from the pool of alternates.

C. Jurisdiction

The HC shall decide whether to accept jurisdiction or whether the Dispute is frivolous, repetitive, involves harmless error, or is otherwise a Dispute beyond the authority of the HC to consider under this Regulation within fifteen (15) days after being convened by the Hearing Officer. If the HC concludes that it cannot consider the Dispute, it shall notify all Parties, in writing, of the reasons for that conclusion,

and immediately dismiss the matter. If either Party disagrees with the dismissal, they may submit a written statement to the President pursuant to Section VIII.

If accepting jurisdiction of the dispute, the HC shall meet to conduct a hearing within fifteen (15) days after issuing a jurisdictional decision.

D. Proceedings

The following guidelines apply throughout the hearing:

1. All documents shall be provided to the opposite side through the Hearing Officer at least ten (10) days prior to the hearing. In the discretion of the HC, documents not so disclosed may be received in evidence for good cause shown and in the interest of justice.
2. The hearing shall be held in confidence unless the Complainant requests, in writing, a public hearing. In that event, the HC may, at its discretion, allow a public hearing.
3. The Parties have the option of being represented by counsel, or by any other individual. If a Party chooses to be represented by counsel, he/she is responsible for all costs of that counsel. University Officers or other designated representatives of the University may be represented by the Office of General Counsel.
4. The HC shall determine the order of proof, is entitled to conduct the questioning of witnesses, and shall determine the relevance and admissibility of evidence and testimony.
5. The HC shall attempt to resolve factual disputes by receiving witness testimony and other relevant evidence offered by the Parties.
6. Parties or their representatives, if any, have the right to question all witnesses testifying in connection with the hearing in person. At the sole discretion of the HC, testimony may take place via electronic media or be taken by deposition upon good cause shown.
7. The HC may direct the Parties to produce evidence on specific issues and may call witnesses and introduce evidence on its own motion.
8. All evidence and testimony considered by the HC shall be part of the hearing record. All HC decisions shall be based solely on the hearing record. The burden of proof that an existing regulation, policy, and/or procedure was violated, misapplied, or misinterpreted and the alleged violation, misapplication, or misinterpretation adversely affected the Complainant's

professional or academic capacity rests at all times with the Complainant and shall be satisfied only by substantial evidence in the record considered as a whole.

9. All evidence and testimony relevant to the dispute is admissible. The Parties may object to evidence on grounds of relevance and surprise only. All decisions regarding the admissibility of evidence and testimony shall be made by the HC in its sole discretion. If the HC declines to hear some evidence or testimony, it will be accepted for purposes of the file to preserve Complainant's appeal, but specifically excluded from the record used by the HC for its decision.
10. The HC may set reasonable time limits upon the Parties and the hearing for the presentation of the Parties' evidence and testimony in its sole discretion.
11. After consultation with the Parties and the Hearing Officer, the HC may grant reasonable continuances of the deadlines herein in its sole discretion, especially when required in the interests of justice to consider newly presented evidence for which a Party could not reasonably have been prepared.
12. The HC shall not be bound by formal rules of procedure or evidence otherwise applicable in civil litigation. Notwithstanding any language in this Regulation to the contrary, legally recognized privilege and confidentiality protections shall apply to the proposed use of any evidence and testimony.
13. The Provost and Vice President for Academic Affairs (or designee) shall secure the cooperation of witnesses if the witness is a University employee and insofar as feasible. However, it is the responsibility of each Party to call, notify, and arrange for their own witnesses' testimony.
14. Every administrative office of the University shall make available to the Complainant and the Respondent any relevant requested documents over which the University has control, and which are not privileged from disclosure by law.
15. A written verbatim record of the hearing shall be produced, the expense of which shall be borne by the University.

E. Order of Proceedings

The order of proceedings shall, to the extent practicable, conform to the following pattern:

1. The Parties shall have the opportunity to present summary opening statements. The Complainant shall present evidence and testimony supporting the written Dispute.

2. The Respondent shall present evidence and testimony in opposition to the written Dispute.
3. The HC shall permit the Parties such rebuttal evidence as is not cumulative, repetitious, or irrelevant.
4. The Parties shall have the opportunity to present closing arguments.
5. The HC may vary the order of proceedings in its sole discretion if circumstances warrant.

F. Recommendation

Within twenty (20) days of the receipt of the transcript of the hearing, the HC shall notify the Parties, the Provost and Vice President for Academic Affairs, and any affected Dean, in writing, of its recommendations, findings of fact (including the resolution of any relevant factual disputes), and rationale in support of its decision. These recommendations must directly relate to the Dispute. The official record upon which the decision was based shall be made available to the Parties upon their request.

VIII. STEP FOUR – WRITTEN STATEMENT TO THE PRESIDENT

- A. Within ten (10) days after receipt of the Hearing Committee's written findings and recommendations, any Party may submit a written statement of position to the President, stating the Party's position with respect to the Hearing Committee's decision and any grounds upon which the Party believes the President should accept, reject or suggest modification of the Hearing Committee's findings and recommendations.
- B. The President, within 30 days, shall
 1. Render a decision based upon the record presented;
 2. Remand the matter back to the HC with a specific request for clarification of the HC's written findings or recommendations; or
 3. Request that the HC reconvene and hear additional testimony on questions of fact that the President requests additional evidence about.
- C. The President shall render a decision in writing 30 days after determining that the record is complete and sufficient to support a decision. The President's decision shall be immediately forwarded to the parties and the HC.
- D. The decision of the President shall be final and binding upon the Parties.

IX. ROLE OF THE HEARING OFFICER

All Disputes shall be submitted in writing to the Hearing Officer as outlined above, who shall transmit a copy to the Parties named in the statement initiating the dispute proceedings. The Hearing Officer shall be responsible for coordinating all prehearing matters such as production of documents and requests for information. The Hearing Officer shall schedule all hearings and logistical arrangements for the location of meetings and hearings, and inform the Parties and the HC of all proceedings and issues relevant to the efficient administration of the Dispute.

The Hearing Officer shall preside over hearings, but shall not vote on the disposition of the case. The Hearing Officer shall consult with and advise the members of the HC on all matters of hearing procedure, including the admissibility of evidence, the general conduct of the hearing, the order or presentation of evidence, examination and cross-examination of witnesses, oral arguments, and post-hearing briefs, if any. The Hearing Officer shall also arrange for a record of the hearing, including findings and any recommendations made by the Committee and a summary of evidence on which such findings are based. Ex parte evidentiary hearings and ex parte communications with HC members will not be permitted.

The Hearing Officer may confer with the HC during its private deliberations and provide it with assistance in drafting its decision.

At any time during or after the hearing, the Hearing Officer may suspend or terminate the hearing to facilitate further efforts by the Parties to resolve the dispute informally, if so requested by the Parties and the Faculty Conciliator. The Hearing Officer also may, but is not required to, terminate the hearing if so requested by the Complainant. Any such dismissal shall be deemed and proceed in the same manner as a complete and final decision regarding the Dispute.

It is the responsibility of the Hearing Officer to ensure that all Time Limits are enforced and that all procedures set forth in this Regulation are followed.

Responsible Division/Unit: Office of the Provost and Vice President for Academic Affairs

Source: None

Links: <http://www.uwyo.edu/regs-policies>

Associated Regulations, Policies, and Forms: None

History:

University Regulation 35, Revision 1; adopted 7/17/2008 Board of Trustees meeting

Revisions adopted 11/15/2013 Board of Trustees meeting

Revisions adopted 7/13/2016 Board of Trustees meeting

Reformatted 7/1/2018: previously UW Regulation 5-35, now UW Regulation 2-2

Revisions adopted 5/14/2020 Board of Trustees meeting