

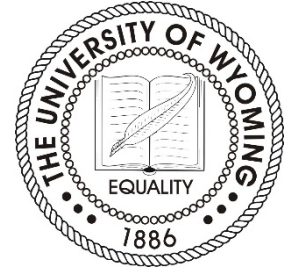
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## UNIVERSITY OF WYOMING REGULATIONS

**Subject:** Dismissal of Academic Personnel

**Number:** UW Regulation 2-6

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### I. PURPOSE

To establish dismissal procedures for Academic Personnel, including when it is alleged that a dismissal action is motivated by inappropriate interference with "academic freedom," as defined in UW Regulation 2-15.

### II. DEFINITIONS

**Academic Personnel:** Academic Personnel shall have the meaning assigned to it in UW Regulation 2-1.

**Cause:** Cause shall include conduct that seriously impairs the ability of the individual, the department, the college, or the University of Wyoming as a whole to carry out its professional functions. Such conduct includes, but is not limited to:

- A. A lack of satisfactory work performance as determined by University Regulation;
- B. A substantial physical or mental inability to perform assigned duties, provided that, consistent with laws prohibiting discrimination based upon disability, the individual cannot perform the essential functions of the individual's job with accommodations granted by the University through the interactive process or there are no reasonable accommodations possible;
- C. Academic misconduct or the serious or persistent violation of professional ethical standards;
- D. Neglect of duty, gross insubordination or persistent truancy;
- E. Serious or persistent violations of University Regulations, Presidential Directives, or other University policies and procedures;
- F. Serious or persistent work performance impairment associated with alcohol or controlled substance use;

- G.** Unlawful possession, use, or distribution of illicit drugs on University property or as part of any University activity;
- H.** Forms of harassment according to University Regulations;
- I.** Recklessly or intentionally endangering the safety of other UW employees or students;
- J.** Significant damage to or misappropriation of State or University property due to intentional or reckless conduct;
- K.** Behavior that leads to the conviction of a felony; and
- L.** A lack of civility or collegiality that substantially interferes with a faculty member's teaching, research, or service or with the department's functions, or which renders the faculty member unable to work effectively with colleagues or students. Mere curmudgeonliness, egocentricity, or conduct which is protected under UW Regulations does not satisfy this sub-paragraph.

**Extended-Term Appointment:** Shall have the meaning assigned to it in UW Regulation 2-1.

**Faculty Conciliator:** Shall have the meaning assigned to it in UW Regulation 2-2.

**Probationary Employment:** For purposes of this Regulation, probationary employment means the six-year probationary period for Extended-Term Appointments or the three-year probationary period for Fixed-Term Track Appointments plus three additional consecutive years of employment.

**Unit Head:** Shall have the meaning assigned to it in UW Regulation 2-8.

### **III. POLICY**

Tenured faculty members and Academic Personnel who have successfully completed their Probationary Employment may be dismissed (1) for Cause; (2) because of bona fide financial exigencies of the University as described in UW Regulation 2-11; or (3) because of program reorganization, consolidation, reduction or discontinuance as described in UW Regulation 2-13. Per UW Regulation 2-13, tenured faculty members may only be dismissed because of program discontinuance.

Section III shall not be interpreted as to constitute interference with academic freedom.

## IV. PROCEDURE

### A. Tenured faculty members and Academic Personnel who have successfully completed their Probationary Employment

Proposed dismissals for Cause of tenured faculty members and Academic Personnel who have successfully completed their Probationary Employment must follow the procedures set forth in Sections V through IX of this Regulation. The procedures set forth in this Regulation do not apply to dismissals of faculty members because of bona fide financial exigencies or because of program reorganization, consolidation, reduction or discontinuance (see UW Regulation 2-14, which provides a process for hearing the appeal of any faculty member whose appointment is terminated pursuant to UW Regulation 2-11 or UW Regulation 2-13).

### B. Other Full Time, Benefited Academic Personnel

The Provost may dismiss a faculty member under this Section B for Cause prior to the expiration of the faculty member's contract after consultation with the appropriate administrative and/or academic officers by following this procedure:

1. The Provost shall inform the employee in writing of the notice of intent to take such an employment action and the reasons for the action.
2. The employee shall have the right to respond in writing or meet with the Provost within three working days of the date of the notice of intent to take disciplinary action. The Provost may extend the deadline for the response or meeting in the Provost's sole discretion.
3. For faculty in their probationary period, the Provost *shall* instruct the University Reappointment, Tenure & Promotion Committee to review the matter. For other faculty covered under this Section B, the Provost *may* instruct the University Reappointment, Tenure & Promotion Committee to review the matter. The Committee shall notify the Provost in writing of its recommendations and rationale.
4. A final decision shall be given to the employee within fourteen working days from the date of the notice of intent to terminate unless the Provost requires additional time to finalize the decision.

Within ten working days after receipt of the Provost's final decision to terminate, the employee may submit a written statement of position to the President, asserting any grounds upon which the employee believes the President should accept, reject or

suggest modification to the Provost's decision. The decision of the President shall be final and binding.

This Section B does not apply to at-will employees, including postdoctoral associates and academic administrators. An at-will appointment may be terminated at any time and for any reason except an unlawful one.

**V. PRELIMINARY PROCEEDINGS FOR TENURED FACULTY MEMBERS AND ACADEMIC PERSONNEL WHO HAVE SUCCESSFULLY COMPLETED THEIR PROBATIONARY EMPLOYMENT**

**A. Personal Conference**

If the unit head or Dean ("Administrative Officer") and the Provost and Vice President for Academic Affairs ("Provost") determine the need to dismiss a tenured faculty member or an Academic Personnel who has successfully completed their Probationary Employment ("Employee"), the Administrative Officer and the Provost, shall meet in person with the Employee to discuss the matter in confidence. The matter may thereafter be concluded informally by mutual consent of the Administrative Officer, the Provost and the Employee without the need for further proceedings.

**B. Referral to the Faculty Conciliator**

If, however, the Administrative Officer, the Provost and the Employee are unable to reach a mutually satisfactory accord within seven calendar days after the initial personal conference, or at such later time as all parties may agree, the Employee may request that the Provost refer the matter to the Faculty Conciliator ("Conciliator"). The Conciliator shall consult in confidence with all involved parties to explore informal resolution of the potential dismissal proceedings. In the event the Conciliator is able to achieve a resolution, the matter may thereafter be concluded informally, by mutual consent of the Administrative Officer, the Provost, and the Employee, without the need for further proceedings.

If, however, the Conciliator is unable to negotiate a resolution within fifteen calendar days of the Conciliator's receipt of the charge, or at such later time as all parties may agree, the Conciliator shall recommend to the Provost whether, in the Conciliator's judgment, the Provost should initiate formal dismissal proceedings.

Upon receiving the recommendation of the Conciliator, the Provost shall determine whether to initiate formal dismissal proceedings against the Employee no later than ten calendar days from the Provost's receipt of the Conciliator's recommendation.

**C. Request for Formal Proceedings**

At any time during the informal, preliminary proceedings set forth above, the Administrative Officer or the Employee may opt to initiate formal dismissal proceedings by directing a written request to the Provost. The Provost shall initiate formal proceedings within ten calendar days of receipt of the request. The Provost may also opt to initiate dismissal proceedings at any time during the informal, preliminary proceedings set forth above.

**VI. FORMAL PROCEEDINGS FOR TENURED FACULTY AND ACADEMIC PERSONNEL WHO HAVE SUCCESSFULLY COMPLETED THEIR PROBATIONARY EMPLOYMENT**

**A. Initiation of Formal Proceedings**

The Provost shall initiate formal proceedings by hand-delivering a written Statement of Particulars to the Employee. The Employee shall acknowledge receipt of the Statement of Particulars by signing a receipt upon delivery. If the Employee refuses to acknowledge receipt of the Statement of Particulars, the person attempting to deliver the Statement to the Employee shall sign a statement documenting the attempt to deliver the Statement and the refusal of the Employee to acknowledge receipt thereof, and shall nevertheless leave the Statement of Particulars with the Employee. All time constraints for further proceedings listed below shall be measured from the date of delivery or attempted delivery of the Statement of Particulars, as reflected on the receipt signed by the Employee or the statement signed by the person attempting to deliver the Statement.

**B. Statement of Particulars**

The Statement of Particulars shall include the following:

1. An indication of the intent to dismiss with the specific grounds for dismissal ("dismissal charges") as set forth by the Provost.
2. A declaration advising the Employee that:
  - a. A formal hearing on the dismissal charges will be conducted solely upon the Employee's written request;
  - b. Employee has thirty calendar days from the date of the delivery of the Statement of Particulars to submit, to the Provost, a written request for a hearing and a written answer to the dismissal charges;
  - c. If the Employee does not submit a written request for a hearing and a written answer within the time period specified in sub-paragraph b, the

Employee will be dismissed effective on the 31<sup>st</sup> day after the delivery of the Statement of Particulars;

- d. If the Employee does submit a written request for a hearing and a written answer, the Provost has five calendar days to forward the written request for a hearing to the Faculty Senate Executive Committee, who will select a Hearing Committee from the Faculty Dispute Resolution Panel as established in UW Regulation 2-2.
3. A declaration that the purpose for holding a formal hearing is to determine whether dismissal should occur on the grounds stated.
4. A copy of UW Regulation 2-2 and Appendix A thereto governing the Faculty Dispute Resolution Panel and hearing procedures, as well as a copy of this UW Regulation 2-6.
5. An initial list of witnesses whom the Provost would expect to testify in support of the dismissal charges at a formal hearing.

### C. **Hearing Committee**

The Faculty Senate Executive Committee shall choose a Hearing Committee ("HC") from the Faculty Dispute Resolution Panel. The functions, powers, composition of, and challenges to the HC are as follows:

1. **Functions:** The HC shall conduct the hearing, make findings, and submit to the President its written conclusions and recommendations.
2. **Powers:** The HC is a fact-finding body and serves solely in an advisory capacity.
3. **Selection of the Hearing Committee**
  - a. The Faculty Senate Executive Committee shall randomly draw the names of 12 members of the Faculty Dispute Resolution Panel. The names shall be assigned a number from 1 to 12 according to the order in which the names were randomly selected.
  - b. If any of the initial 12 persons selected is a member of the same academic department as the Employee, that person will be excused and another name will be selected at random from the remaining members of the Faculty Dispute Resolution Panel. The new name will be assigned the same number as the person who had been excused.

- c. If there are two or more members of the same academic department on the initial list of 12 persons, the later-chosen person or persons will be excused and another name or names will be selected at random from the remaining members of the Faculty Dispute Resolution Panel. The new name or names will be assigned the same number as the person or persons who had been excused.
- d. Once a list of 12 members of the Faculty Dispute Resolution Panel has been chosen, and which includes no members of the Employee's academic department, and no more than two members from the same academic department, the persons numbered one through five shall be designated tentative committee members, and the remaining seven persons shall be designated tentative alternates.
- e. The list of 12 tentative committee members and alternates will then be submitted to the Employee and the Provost.
- f. *Dismissal for cause.* If either the Employee or the Provost objects to any of the twelve persons on the list, the Employee or the Provost shall notify the Chair of the Faculty Senate Executive Committee of their objection, no later than four days after receiving the list. The only grounds for objection are that the proposed HC member has a clearly demonstrated personal animosity toward either the Provost or the Employee; that the proposed HC member may be a witness or otherwise has close involvement with or non-public knowledge of the event or events which form the basis of the dismissal proceeding; or that there exists other serious and compelling reason why the proposed HC member is unfit to serve on the HC. The Chair of the Faculty Senate Executive Committee will rule on any objections for cause under this paragraph within three days after receiving them. If the Chair agrees with any dismissals for cause, another name or names will be chosen from the then-remaining members of the Faculty Dispute Resolution Panel, and added to the bottom of the list of twelve. If one or more of the tentative committee members has been dismissed for cause, alternates shall be moved up on the list into tentative committee members in the rank order in which they appear.
- g. *Peremptory dismissals.* After all dismissals for cause have been resolved, the final list of five tentative committee members and seven alternates will be provided to the Employee and the Provost. The Employee and the Provost will then meet with the Chair of the Faculty Senate Executive Committee within seven days after receiving the final list to exercise any peremptory challenges to the list. Both the Employee and the Provost shall have the right to strike two tentative committee

members each, without providing any basis for such disqualification. The Provost will make the first strike (if desired), followed by the Employee (if desired). The Provost may then make his or her second strike (if desired), and the Employee may then make his or her second strike (if desired). After each strike (if any), the next person listed as an alternate will move up the list into a position as a tentative member of the HC.

- h.** The five members remaining as members of the HC at the end of the peremptory strikes shall be appointed as the HC. Any members still listed as tentative alternates at the end of the peremptory strikes shall be designated alternate members of the HC.
- i.** The five HC members shall be notified of their selection as a member of the HC to consider the appeal filed by the Employee. They shall be asked to report to the Chair of the Faculty Senate Executive Committee, no later than 3 days after receiving the appointment, whether they accept the appointment. The only grounds for failing to accept the appointment shall be a good faith belief that personal considerations may interfere with reaching an unbiased decision. If the Chair of the Faculty Senate Executive Committee accepts that member's belief, the member shall be excused and replaced with the next alternate member.
- j.** Any member designated an alternate in step h above shall be notified only that he or she has been listed as a potential alternate in a dismissal proceeding. The name of the Employee involved in the dismissal proceeding shall not be given to that alternate, unless and until that alternate is placed on the HC due to the unavailability of a member of the HC under steps i or k.
- k.** Once all five members of the HC have accepted their appointments under step i, the Provost and the Employee shall be notified of the final composition of the HC. The HC will then proceed to schedule a hearing and conduct the pre-hearing and hearing processes listed below. If, however, unforeseen circumstances arise after the final appointment of the HC and the beginning of the hearing that make it impossible for any member of the HC to participate in the hearing, that member or members may be replaced on the HC by the next remaining alternate.

#### **D. Scheduling the Formal Hearing**

Within thirty calendar days after final formation of the HC, the HC shall meet and select from among its members a Chairperson. The function of the Chairperson shall be to coordinate with the Provost, the Employee, and the members of the HC



the selection of a time, date and place for the formal hearing, and for any proceedings ancillary to the formal hearing; notify all involved parties of such times, dates and places; and to preside at the formal hearing.

**E. Pre-Hearing Conference**

A pre-hearing conference shall be scheduled fourteen calendar days prior to the formal hearing, or at such other time as all parties may agree, to exchange evidence and witness lists.

**F. Performance of Duties during Dismissal Proceedings**

Suspension of the Employee during the pendency of dismissal proceedings lies within the discretion of the Provost. Any such suspension, however, shall be with pay, except in the event suspension is based on a criminal conviction or on an abandonment of employment. In the absence of suspension during the pendency of dismissal proceedings, the Provost may reassign the Employee to any duties reasonably suited to the Employee's skills and abilities that the Provost deems warranted. Any such reassignment shall be with pay.

**VII. COMMITTEE PROCEEDINGS FOR TENURED FACULTY AND ACADEMIC PERSONNEL WHO HAVE SUCCESSFULLY COMPLETED THEIR PROBATIONARY EMPLOYMENT**

**A. Hearing Procedure**

1. The HC shall hold the hearing in confidence unless the Employee requests, in writing, a public hearing. In that event, the HC shall allow a public hearing.
2. The Employee has the option of being represented by counsel, or by any other individual. If the Employee chooses to be represented by counsel, he/she is responsible for all costs of that counsel.
3. The HC shall determine the order of proof, is entitled to conduct the questioning of witnesses, and shall determine the relevance of evidence.
4. The HC shall attempt to resolve factual disputes by receiving witness testimony and other relevant evidence offered by the parties.
5. All witnesses shall testify under oath or affirmation. All parties have the right to hear and confront witnesses. 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 be received by deposition upon good cause shown, so long as both the Employee and the Provost have had the opportunity to participate in the deposition and to ask

questions during the deposition. Witnesses may be permitted to participate by electronic means so long as the electronic participation is synchronous with the formal hearing and the electronic method allows all participants at the formal hearing to hear each other and ask questions.

6. The HC may direct the parties to produce evidence on specific issues and may call witnesses and introduce evidence on its own motion.
7. All evidence is part of the hearing record. All HC decisions are based solely on the hearing record. The burden of proof that there is adequate cause for dismissal rests at all times with the Provost and shall be satisfied only by clear and convincing evidence in the record considered as a whole.
8. The HC may allow the parties to object to evidence on relevance grounds.
9. The HC may grant reasonable continuances, especially when required in the interests of justice to meet newly presented evidence for which a party could not reasonably have been prepared.
10. The HC shall not be bound by formal rules of procedure or evidence otherwise applicable in civil litigation.
11. The Provost's office shall secure the cooperation of witnesses insofar as feasible.
12. Every administrative office of the University shall make available to the Employee and the Provost any requested documents over which the University has control, and which are not privileged from disclosure by law.
13. The University shall produce a written verbatim record of the hearing at its expense.

**B. Order of Proceedings**

1. The parties shall have the opportunity to present opening statements.
2. The Provost shall present evidence in support of the charges and stated grounds for dismissal.
3. The Employee shall present evidence in opposition to the charges and stated grounds for dismissal.
4. The HC shall permit the parties such rebuttal evidence as is not cumulative, repetitious, or irrelevant.

5. The parties shall have the opportunity to present closing arguments.
6. The HC may vary the order of proceedings if circumstances warrant, and may admit any evidence probative of the issues in dispute. The HC is not bound by formal rules of evidence.

**C. Written Recommendations, Findings, and Rationale**

Within thirty calendar days of the close of hearing, the HC shall notify the Employee, the Provost, and the President in writing, of its recommendations, findings and rationale in support of the decision and shall provide all parties with the official record upon which the decision was based.

**VIII. CONSIDERATION BY THE PRESIDENT**

The President shall review the HC's recommendations, findings, and rationale and the record of the underlying proceedings and shall submit his or her written recommendation to the Board of Trustees within thirty calendar days of receipt of the HC's recommendations, findings and rationale. The President shall provide all parties with a copy of his or her written recommendation.

**IX. CONSIDERATION BY THE BOARD OF TRUSTEES**

The Board of Trustees shall review the President's written recommendation and the record of the underlying proceedings, and if practicable, shall render its final decision on the dismissal within thirty calendar days of its receipt of the President's recommendation. The Board of Trustees shall provide all parties with a copy of its final decision.

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**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 801, Revision 1 and Change 1; adopted 7/17/2008 Board of Trustees meeting

Revisions adopted 3/23/2012 Board of Trustees meeting

Reformatted 7/1/2018: previously UW Regulation 5-801, now UW Regulation 2-6

Revisions adopted 5/14/2020 Board of Trustees meeting