

APPENDIX B TO UW REG 2-2

1. **PURPOSE.** To supplement UW Regulation 2-2 to provide a timely process for hearing the appeal of any faculty member whose appointment is terminated pursuant to UW Regulation 2-11, Financial Exigency and UW Regulation 2-13, Academic Program Elimination.
2. **RIGHT TO REVIEW AND HEARING.** Any tenured faculty member whose employment is terminated pursuant to a Financial Crisis Plan adopted by the Board of Trustees pursuant to UW Regulation 2-11 or whose employment is terminated pursuant to UW Regulation 2-13 shall have the right to a hearing before an independent Hearing Officer.

The rights of staff employees whose employment is terminated pursuant to a Financial Crisis Plan adopted by the Board of Trustees or whose employment is terminated pursuant to program elimination are governed by UW Regulation 5-3.

3. **NOTICE OF REQUEST FOR HEARING.** A person who has a right under this Regulation to appeal termination of employment pursuant to a Financial Crisis Plan or termination of employment pursuant to program elimination may appeal by delivering a written notice of request for hearing to the Office of the Vice President for Academic Affairs within ten (10) days of receiving notice of termination of employment.

The notice shall state with particularity the grounds to be relied upon by the appellant.

Filing a notice of request for hearing shall not act to delay the termination of employment.

4. **GROUND FOR APPEAL.** Grounds for appeal shall be limited to whether the decision to terminate employment was based upon some improper factor or criterion, including:
 - A. Conduct, expressions or beliefs by the appellant which are protected constitutionally or by the principles of academic freedom;
 - B. Factors proscribed by applicable state or federal law regarding fair employment practices;
 - C. Improper selection of the individual to be terminated, as a result of any of the following which had a substantial impact upon the decision to terminate:
 1. Failure to follow procedures or criteria required by UW Regulation 2-11 or UW Regulation 2-13;
 2. Failure to consider available data relevant to the role of the appellant in the University;
 3. Reliance upon unfounded or arbitrary assumptions of fact;
 4. Reliance upon other immaterial or improper factors.

- 5. PARTIES TO APPEAL.** The parties to appeal shall be:
- A. Appellant – the tenured faculty member who has received notice of termination of employment pursuant to a Financial Crisis Plan or pursuant to program elimination.
 - B. Respondent – the Vice President for Academic Affairs of the University.

6. HEARING OFFICERS. Hearing Officers shall serve pursuant to the following procedures:

A. Designation of Hearing Officers

A panel of Hearing Officers shall be identified in advance of any elimination of positions and maintained by the University upon recommendation of a committee of three tenured faculty members appointed by the Faculty Senate. Hearing Officers shall be impartial individuals who are experienced in higher education, labor and employment matters. No Hearing Officer shall be engaged who is not a member of said panel.

B. Selection by the Faculty Member

Any faculty member who requests a hearing shall be provided a list of designated Hearing officers immediately upon receipt of any requests for hearing by the Vice President for Academic Affairs. Within five (5) days the faculty member shall select any member on the list of Hearing Officers, subject to the personal availability of the Hearing Officer.

7. SCHEDULING AND NOTICE OF HEARING. A hearing shall be scheduled by the Hearing Officer to commence not less than fifteen (15) nor more than thirty (30) days following appointment of the Hearing Officer. The parties shall be notified in writing of the time and place of the hearing not less than ten (10) days prior to the hearing.

8. PRE-HEARING CONFERENCE. The Hearing Officer shall convene a pre-hearing conference with the parties not less than five (5) days preceding any scheduled hearing. The purpose of the pre-hearing conference shall be to exchange lists of witnesses to be called by either party; to identify, examine or arrange for copying of any documentary or other real evidence; to make any requests for pre-hearing discovery which shall be ruled upon by the Hearing Officer and to receive any further instructions as determined by the Hearing Officer.

Any failure by a party to furnish names and addresses of witnesses, to disclose documentary or other evidence, or to furnish information identified at the pre-hearing conference shall be ruled upon by the Hearing Officer, who may order disclosure, grant a continuance of the hearing, or impose appropriate sanctions including not allowing undisclosed witnesses to testify or not admitting undisclosed evidence at the hearing.

9. HEARING.

A. Rights of Parties

An appellant shall have access to the evidence on which the administration intends to rely to support the decision to terminate the appointment, and the parties shall be guaranteed the following minimal procedural safeguards:

1. To be present in person at all phases of the hearing
2. To be represented by counsel or other representatives
3. To testify and to present witnesses and other evidence in the party's behalf
4. To rely upon the administration of the University, insofar as it is possible for it to do so, to secure the cooperation of witnesses
5. To confront and cross-examine witnesses brought by either party and testifying in person
6. To have access without charge to a verbatim record of the hearing, which may be a sound recording
7. To record the hearing through a court reporter or other means, at the party's own cost
8. To receive a written copy of the findings of fact and decision of the Hearing Officer

B. Hearing Procedure

The order of proceedings at the hearing shall be:

1. The parties may make a brief opening statement to the Hearing Officer setting forth the grounds for the appeal and summarizing the evidence which the party intends to introduce.
2. The appellant shall present witnesses and other evidence in support of the appeal.
3. The Hearing Officer shall determine whether the appellant has presented a prima facie case to support the grounds for appeal. If no prima facie case has been made, the Hearing Officer shall dismiss the appeal.
4. The respondent may present witnesses and other evidence to support the recommended termination decision.
5. The appellant may present evidence in rebuttal.

6. The parties may make a brief argument in summation.

C. Admissibility of Evidence

Formal rules of judicial evidence shall not apply at the hearing. Reception of evidence shall be informal and all relevant and material evidence shall be received at the discretion of the Hearing Officer. Witnesses at the hearing shall testify under oath or affirmation. The Hearing Officer shall rule upon any objections to evidence.

D. Adjournment of Hearing

Reasonable adjournments of the hearing may be granted by the Hearing Officer to enable either party to respond to evidence as to which a valid claim of surprise is made.

E. Representation and Costs

The appellant may be represented by himself or herself, by legal counsel or any other representative of choice. The administration shall be entitled to utilize the university's legal resources. Administrative costs of the hearing shall be borne by the University. Any cost incurred by the appellant in preparing the hearing or securing representation shall be borne by the appellant.

F. Confidentiality

The hearing shall be private and restricted to such persons as shall be permitted by the Hearing Officer unless the appellant requests not later than at the pre-hearing conference that the hearing shall be public.

10. DECISION. On the basis of all of the evidence received at the hearing, the Hearing Officer shall make findings and recommendations as follows:

A. The Hearing Officer shall consider whether one or more of the improper factors listed in Section 3 hereof entered significantly into the decision to terminate, and shall make a finding thereof. If the hearing Officer finds that improper factors may have entered into the decision to terminate, but further finds that the same decision would have been reached had the improprieties not occurred, the Hearing officer shall make a finding thereof.

B. Within twenty (20) days following the conclusion of the hearing, the Hearing Officer shall forward the findings and recommendations to the Board of Trustees with copies to the appellant, the Vice President for Academic Affairs, and the President of the University.

11. REVIEW BY THE BOARD OF TRUSTEES. If a faculty member whose employment is recommended for termination does not request a hearing, that termination shall be deemed proper and shall be acted upon by the Board of Trustees upon recommendation of the

President of the University. The case of any faculty member who receives a hearing pursuant to this University Regulation shall be acted upon by the Board of Trustees as follows:

- A. The Board of Trustees shall review the findings of fact and recommendation submitted by the Hearing Officer and within twenty (20) days after receipt, issue a written order to either terminate the faculty member or to retain the faculty member. If the Board terminates the faculty member's employment over a recommendation by the Hearing Officer for retention, the written order of the Board shall include a conclusion together with reasons supported by the record. A copy of the order shall be provided to the faculty member and a copy shall be entered into the University records pertaining to the faculty member. Any action by the Board pursuant to this subsection shall be approved by the majority of the members of the Board of Trustees.

12. EFFECT OF RESCISSION OF DECISION TO TERMINATE EMPLOYMENT.

Rescission of a decision made under UW Regulation 2-11 or UW Regulation 2-13 to terminate the employment of a tenured faculty member shall not prevent further proceedings pursuant to these regulations which may affect continuation of the employment of the tenured faculty member.

13. CALCULATION OF TIME. In calculating period of time, Saturdays, Sunday, University holidays and legal holidays shall be excluded.

Source:

Revisions adopted 11/15/2013 Board of Trustees meeting

Renumbered 7/1/2018: previously Appendix B to UW Regulation 5-35, now Appendix B to UW Regulation 2-2