



Reviewed and Endorsed by Regulation Committee 10-4-17  
Campus feedback reviewed and modifications incorporated  
Complete redline version 4-18-18

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## UNIVERSITY OF WYOMING REGULATIONS

**Subject:** Appeal Procedures – Financial Exigency and Academic Program Reorganization, Consolidation, Reduction and Discontinuance

**Number:** UW Regulation 6-44

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### I. PURPOSE

To provide a timely process for hearing the appeal of any tenured faculty member or extended term academic professional whose appointment is terminated pursuant to UW Regulation 6-41, ~~(Financial Exigency~~ and ~~) or~~ UW Regulation 6-43, ~~(Academic Program Elimination~~ Reorganization, Consolidation, Reduction and Discontinuance).

### II. 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 6-41 or or~~ extended term academic professional whose employment is terminated pursuant to UW Regulation 6-41 or 6-43 shall have the right to a hearing before an independent Hearing Officer. (see section VI). This hearing is the exclusive remedy for a termination pursuant to UW Regulation 6-41 or 6-43.

~~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 4-174.~~

### III. 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) calendar days of receiving notice of termination of employment.

The notice shall state with particularity the grounds to be relied upon by the appellant. Complainant. Filing a notice of request for hearing shall not act to delay the termination of employment.

#### IV. GROUND(S) FOR APPEAL

Grounds for appeal shall be limited to ~~whether the decision to terminate employment was based upon some improper factor or criterion, including following:~~

- A. Conduct, expressions or beliefs by the ~~appellant~~Complainant which are protected constitutionally or by the principles of academic freedom;
- B. Factors proscribed by applicable state or federal law regarding fair employment practices; or
- ~~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:~~
- D.C. Failure to follow procedures or criteria required by UW Regulation ~~6-41 or UW Regulation 6-43;~~
  - ~~1. Failure to consider available data relevant to the role of the appellant in the University;~~
  - ~~2. Reliance upon unfounded or arbitrary assumptions of fact;~~
  - ~~3. Reliance upon other immaterial or improper factors.~~

#### V. PARTIES TO APPEAL

The ~~parties~~Parties to appeal shall be: as follows: (1) Complainant – the tenured faculty member or extended term academic professional who has received notice of termination of employment pursuant to ~~a Financial Crisis Plan or pursuant to program elimination.~~UW Regulation 6-41 or 6-43; and (2) Respondent – the Provost and Vice President for Academic Affairs ~~of the University~~or designee.

#### VI. HEARING OFFICERS

~~Each fiscal year, one or more individuals shall be nominated by the President after consultation with the Executive Committee of the Faculty Senate to serve as Hearing Officers shall serve pursuant to the following procedures: A panel of this Regulation. 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 for a one-year term and 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.~~has not been appointed by the President.

## VII. SCHEDULING AND NOTICE OF HEARING

~~The Office of Selection~~Any faculty member who requests a hearing shall be provided a list designated Hearing officers immediately upon receipt of any requests for hearing by the Vice President for Academic Affairs. Within five (5) shall provide notice to the Hearing Officer of the request for a hearing within ten (10) calendar days the faculty member shall select any member on the list of Hearing Officers, subject to the personal availabilityreceiving notice of the Hearing Officer.~~Complainant's written request.~~ A hearing shall be scheduled by the Hearing Officer to commence not less than fifteen (15) calendar days nor more than ~~thirty (30)~~sixty (60) calendar days following ~~appointment~~of notice to the Hearing Officer. The parties shall be notified in writing of the time and place of the hearing not less than ten (10) calendar days prior to the hearing.

## VIII. PRE-HEARING CONFERENCE

The Hearing Officer shall convene a pre-hearing conference with the ~~parties~~Parties not less than ~~five (5)~~seven (7) calendar 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~~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 undiscovered witnesses to testify or not admitting undiscovered evidence at the hearing.~~

## IX. 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~~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 relevant evidence ~~in~~on the ~~party's~~Party's behalf;
4. To rely upon the administration of the University to secure the cooperation of witnesses, 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~~Party and testifying in person;
6. To have access without charge to a verbatim record of the hearing, which may be ~~a sound~~an audio recording;
7. To record the hearing through a court reporter or other means, at the ~~party's~~Party's own cost; and
8. To receive a written copy of the ~~findings of fact and decision~~recommendations of the Hearing Officer.

## B. Hearing Procedure

The order of proceedings at the hearing shall be:

1. ~~The parties~~Each Party may make a brief opening statement to the Hearing Officer setting forth the grounds for the appeal and summarizing the evidence ~~which~~that the ~~party~~Party intends to introduce.
2. The ~~appellant~~Complainant 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.~~3.~~The respondent may~~The Respondent shall present witnesses and other evidence to support the recommended termination decision.

~~5.4.~~ The ~~appellant~~ Complainant may present evidence in rebuttal.

~~6.5.~~ The ~~parties~~ Each Party may make a brief ~~argument in summation~~ closing statement.

### 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.

### ~~A. 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.~~

### D. Representation and Costs

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

### E. Confidentiality

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

## X. DECISION

On the basis of all of the evidence received at the hearing, the Hearing Officer shall ~~make~~ recommend findings and ~~recommendations~~ conclusions as follows:

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- A. The Hearing Officer shall consider whether one or more of the improper factors listed in Section ~~3~~IV hereof entered significantly into the decision to terminate, and shall make a finding thereof. If the ~~hearing~~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~~improper factors not occurred, the Hearing officer shall make a finding thereof.
- B. Within twenty (20) calendar days following the conclusion of the hearing, the Hearing Officer shall forward ~~the~~his or her recommended findings and conclusions and the written report explaining the reasons for the recommendations to the Board of Trustees with copies to the ~~appellant~~Complainant, the Provost and Vice President for Academic Affairs, and the President of the University.

## XI. REVIEW BY THE BOARD OF TRUSTEES

If a tenured faculty member or extended term academic professional 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:~~

~~The~~If the tenured faculty member or extended term academic professional whose employment is recommended for termination does request a hearing pursuant to this Regulation, the Board of Trustees shall review the ~~findings of fact and recommendation~~recommendations submitted by the Hearing Officer and within ~~twenty (20)~~thirty (30) calendar days after receipt, issue a written order to either terminate ~~the faculty member or to~~ retain the faculty member-employee. If the Board terminates the ~~faculty member's employment~~employee 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-employee and a copy shall be entered into the University records pertaining to the faculty member-employee. Any action by the Board pursuant to this ~~subsection~~section shall be approved by the majority of the members of the Board of Trustees.

### ~~1. EFFECT OF RESCISSION OF DECISION TO TERMINATE EMPLOYMENT.~~

~~Rescission of a decision made under UW Regulation 6-41 or UW Regulation 6-43 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.~~

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~~2. **CALCULATION OF TIME.** In calculating period of time, Saturdays, Sunday, University holidays and legal holidays shall be excluded.~~

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**Responsible Division/Unit:** Office of Academic Affairs

**Source:** None.

**Link:** <http://www.uwyo.edu/generalcounsel/current-uw-regulations-and-presidential-directives/index.html>.

**Associated Regulations, Policies, and Forms:** UW Regulation 6-41 (Financial Exigency) and UW Regulation 6-43 (Academic Program Reorganization, Consolidation, Reduction and Discontinuance)

**History:**

Revisions adopted 11/15/13 Board of Trustees meeting