

UW REGULATION 5-801

Procedures for Dismissal of Faculty Members

PURPOSE:

To establish dismissal procedures for tenured “faculty members,” as that employee classification is defined in UW Regulation 1-1(C)(1), for extended term academic professionals, as that employee classification is defined and referenced in UW Regulations 5-1(F) and 5-408, for American Heritage Center academic personnel on extended term appointment, as defined in UW Regulation 7-490, for Law Library academic personnel on extended term appointment, as defined in UW Regulation 7-570, for University Library academic personnel on extended term appointment, as defined in UW Regulation 7-631, and for any other academic personnel holding continuing appointments within classifications that the university has established, or may from time to time establish in the future, that provide for such appointments subject to applicable UW Regulations. For academic personnel with extended term appointments, these procedures apply only to cases where termination for cause is sought prior to the end of the extended term.

RATIONALE:

These procedures are intended to afford appropriate due process to individuals employed in the classifications referenced in the preceding section. The procedures are meant to apply principally to faculty members with tenure, as that term is defined in UW Regulation 5-1(D), and to academic personnel with extended term appointments, who are subject to charges potentially culminating in dismissal for “cause”, as that term is defined in UW Regulation 5-1(E). The procedures shall also apply to any academic personnel – whether tenured, non-tenured, or contract – when it is alleged that a dismissal action is motivated by inappropriate interference with “academic freedom,” as that term is defined in UW Regulation 5-1(A).

PRELIMINARY PROCEEDINGS:

- 1. Personal Conference:** If the unit head or comparable administrative officer (hereinafter denoted “AO”) determines the need to dismiss a tenured or extended term academic appointee (hereinafter denoted “AA”), the AO, as the charging officer, shall meet in person with the AA to discuss the matter in confidence. The matter may thereafter be concluded informally by mutual consent without the need for further proceedings.
- 2. Referral to a Peer Committee for Consultation:** If, however, the AO and the AA are unable to reach a mutually satisfactory accord within seven days after

the initial personal conference, or at such later time as all parties may agree, the matter shall be referred to a committee of the AA's peers, the composition of which shall be determined by the rules or regulations of the involved unit. The Peer Committee shall consult in confidence with all involved parties to explore informal resolution of the potential dismissal proceedings. In the event the Committee is able to achieve a resolution, the matter may thereafter be concluded informally, by mutual consent of the AO and AA, without the need for further proceedings. If, however, the Peer Committee is unable to negotiate a resolution, it shall recommend to the AO whether in its judgment formal dismissal proceedings should be initiated. The Peer Committee's findings and recommendations respecting the initiation of formal dismissal proceedings shall be submitted to the AO within 15 days of the Committee's receipt of the charge, or at such later time as all parties may agree.

3. **Referral to a College Committee for Consultation:** Within three days of the AO's receipt of the Peer Committee's findings and recommendations respecting the initiation of formal dismissal proceedings, the AO shall take one of the following actions. If the general recommendation of the Peer Committee is that formal dismissal proceedings should not be initiated, and the AO concurs in the recommendation, the AO will terminate further consideration of the matter, and notify all parties of the termination. If, on the other hand, the general recommendation of the peer committee is that formal dismissal proceedings should be initiated, and the AO concurs in the recommendation; or, if the AO disagrees with the Peer Committee's general recommendation that no formal dismissal proceedings be initiated, the AO shall refer the matter to the College Dean for consideration. Upon receipt of the AO's referral, the College Dean shall in turn refer the matter to a College Committee, the composition of which shall be determined by the rules or regulations of the involved college or comparable unit, within seven days, or at such later time as the parties may agree. The College Committee shall consult in confidence with all involved parties to explore informal resolution of the potential dismissal proceedings. In the event the committee is able to achieve a resolution the matter may thereafter be concluded informally, by mutual consent of the AO and AA, without the need for further proceedings. If, however, the College Committee is unable to negotiate a resolution, it shall submit its findings and recommendations to the College Dean as to whether in its judgment formal dismissal proceedings should be initiated. The College Committee's findings and recommendations respecting the initiation of formal dismissal proceedings shall be made to the College Dean within 15 days of the Committee's receipt of the charge, or at such later time as all parties may agree.
4. **Notification of the Provost and Vice President for Academic Affairs (hereinafter "Provost"):** Upon receiving the recommendation of the college committee, the Dean shall promptly inform the Provost of the peer and college committees' recommendations, along with any recommendation the Dean may choose to make, and shall thereafter submit a report within 10 working days of receipt of the recommendations of the College Committee. Following

consultation with a standing or ad hoc university committee, the Provost shall determine whether to initiate formal dismissal proceedings against the AA. The determination shall be made no later than 30 days from the Provost's receipt of the Dean's report. In the event the Provost should fail to render the determination respecting whether to initiate formal dismissal proceedings against the AA within 30 days, the AA's personnel record shall be expunged.

5. **AA Request for Formal Proceedings:** At any time during the informal, preliminary proceedings set forth above, the AA may opt to initiate formal dismissal proceedings by directing a written request to that effect to the Provost. Upon the AA's tender of such a request, formal proceedings shall be initiated within 30 days of its receipt by the Provost and, absent agreement of all parties, failure to initiate formal proceedings within this time frame shall result in final termination of the matter with no subsequent opportunity for the university to pursue the same matter, and shall further result in the expunction of the details surrounding the matter from the AA's file.

FORMAL PROCEEDINGS:

1. **Statement of Charges:** The Provost shall initiate formal proceedings, within the time frame established in Paragraph 5 of the Preliminary Proceedings, above, by delivering a written statement of particulars to the AA. Copies of the statement will simultaneously also be delivered to the unit head and College Dean. The statement of particulars shall include the following:
 - A. An indication of an intent to dismiss with the specific grounds for dismissal (hereinafter "dismissal charges") as set forth by the AO.
 - B. A declaration advising the AA that:
 - i. A formal hearing on the dismissal charges will be conducted solely upon the AA's written request;
 - ii. A Hearing Committee selected from the Faculty Dispute Resolution Panel by the Faculty Senate Executive Committee will conduct any hearing held in connection with the dismissal charges
 - iii. Failure to submit to the Provost a written request for a hearing in time for it to be received within 30 thirty days of the statement of particulars' mailing may result in summary implementation of the dismissal charges.
 - C. A declaration that the purpose for holding a formal hearing is to determine whether dismissal should occur on the grounds stated.
 - D. A copy of UW Regulations 5-35(6) and 5-801 governing, respectively, the Faculty Dispute Resolution Panel and hearing procedures.

- E. An initial list of witnesses whom the AO would expect to testify in support of the dismissal charges at a formal hearing.
2. **Hearing Committee:** A Hearing Committee (hereinafter called "HC") shall be chosen from the Faculty Dispute Resolution Panel as established in UW Regulation 5-35(6). The functions, powers, composition of and challenges to the Hearing Committee are as follows:
- A. Functions: The HC shall conduct the hearing, make findings, and report, in writing, its conclusions and recommendations to the Provost. It may be represented by counsel, separate and apart from counsel for the AA and from University counsel.
 - B. Powers: The committee is a fact-finding body and serves solely in an advisory capacity.
 - C. Composition: The HC shall be composed of five regular members and seven alternates chosen by the Faculty Senate Executive Committee from the Faculty Dispute Resolution Panel. No more than one member of any academic department can serve as a regular or alternate member on the HC. Neither a regular nor any alternate HC member shall be a departmental colleague of the AA, nor shall any designated HC member be authorized to serve if possessing a good faith belief that personal considerations may interfere with reaching an unbiased decision. In the event a regular or alternate HC member possesses a good faith belief of an inability to make an unbiased decision, the Faculty Senate Executive Committee shall replace the regular or alternate HC member, as the case may be, with a new HC member selected from the Faculty Dispute Resolution Panel. In the event a regular HC member becomes unable to participate in all or a portion of the hearing after it has commenced, the Faculty Senate Executive Committee will, at its sole discretion, replace the regular member with one of the seven pre-designated alternate members. The regular HC members will designate one from among their number to serve as Chairperson.
 - D. Challenges: Either the AA or the AO may disqualify up to two members of the HC without providing a basis for such disqualification provided the proposed disqualifications are transmitted in writing to the HC Chairperson no later than seven days after the regular HC members have been designated..
- 3 **Scheduling the Formal Hearing:** The Chairperson of the Hearing Committee, in consultation with the AA and AO, shall designate a time, date and place for formal hearing, and for any proceedings ancillary to the formal hearing, and shall notify all involved parties of such times, dates and places. Sufficient time for the preparation of a defense, not to exceed 60 days after receipt of the formal charges

by the HC Chairperson, in the absence of good cause shown, shall be allowed to the AA.

- 4 Pre-Hearing Conference:** A pre-hearing conference shall be scheduled 14 days prior to the formal hearing, or at such other time as all parties may agree, to exchange evidence and witness lists. A preliminary list of witnesses for the formal hearing will be developed at this conference.

5 Performance of Duties During Dismissal Proceedings:

- A. Suspension of the AA 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.
- B. In the absence of suspension during the pendency of dismissal proceedings, as described above in paragraph A, the AA may, in the alternative, be reassigned to any duties reasonably suited to the AA's skills and abilities that the Provost deems warranted. Any such reassignment shall be with pay.

6. Committee Proceedings:

- A. The AA shall submit to the AO and the Chairperson of the HC a written answer to the dismissal charges that must be received by the Chairperson within 30 days of the Provost's initiation of Formal Proceedings as described in Paragraph 1 of the Formal Proceedings section, above.
- B. Failure of the AA to dispute the charges reflected in the statement of particulars will be deemed an admission of the charges. The HC will in that event be privileged to consider whether the admission establishes on its face adequate grounds for dismissal, or whether, notwithstanding the admission, hearing testimony will be required to determine whether the University has satisfied its burden of proving that dismissal of the AA is warranted. The HC shall thereafter either convene a hearing, or, in the event it determines no hearing to be necessary, forward its written recommended findings and decision to the AA, AO and Provost.
- C. If, on the other hand, the AA submits a written answer, the HC shall conduct a hearing to consider both the statement of particulars and the AA's written answer to the statement. The following guidelines apply throughout the hearing:
 - i. The hearing shall be held in confidence unless the AA requests, in writing, a public hearing. In that event, the HC may, at its discretion, allow a public hearing.
 - ii. The AA and the AO have the option of being represented by counsel, or by any other individual. The HC may also be

represented by counsel. If the AA chooses to be represented by counsel, he/she is responsible for all costs of that counsel. If the AO and/or HC exercise their option to arrange for counsel, the University Legal Office will contract for that counsel.

- iii. The HC shall determine the order of proof, is entitled to conduct the questioning of witnesses, and shall determine the relevance of evidence. The HC shall at all times make good faith efforts to develop reasonably grounded and reliable evidence.
- iv. The HC shall attempt to resolve factual disputes by receiving witness testimony and other relevant evidence offered by the parties.
- v. 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 taken by deposition upon good cause shown.
- vi. The HC may direct the parties to produce evidence on specific issues and may call witnesses and introduce evidence on its own motion.
- vii. 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 AO and shall be satisfied only by clear and convincing evidence in the record considered as a whole.
- viii. The HC may allow the parties to object to evidence on relevance grounds. At its discretion, the HC may allow amendments to the statement of particulars or to the AA's answer to the statement, at any time following the commencement of the hearing and before the closing of the hearing. If, in the judgment of the HC, such an amendment would introduce new issues or factual disputes for which the adverse party could not reasonably have been prepared, the HC may allow the hearing to be continued or extended to allow the adverse party adequate time to prepare.
- ix. 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.
- x. The HC shall not be bound by formal rules of procedure or evidence otherwise applicable in civil litigation.
- xi. The Provost's office shall secure the cooperation of witnesses insofar as feasible.

- xii. Every administrative office of the University shall make available to the AA and AO any requested documents over which the University has control, and which are not privileged from disclosure by law.
- xiii. Allegations of the AA's inadequate work performance must be supported by competent and reliable evidence. Testimony concerning such alleged inadequacies should be corroborated.
- xiv. A written verbatim record of the hearing shall be produced, the expense of which shall be borne by the University.

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

- 1. The parties shall have the opportunity to present opening statements.
- 2. The AO shall present evidence in support of the charges and stated grounds for dismissal.
- 3. The AA 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.

E. Within 30 days of the close of hearing, the HC shall notify the AA, the AO and the Provost, in writing, of its recommendations, findings and rationale in support of the decision, and provide all parties with the official record upon which the decision was based.

7. Consideration by the Provost

Within 30 days of receipt of the HC's recommendation, the Provost shall take one of the following courses of action:

- A. If the HC has concluded that the evidence of record has not established cause for dismissal, and the Provost accepts the conclusion, then the charges in question shall be expunged, the record of hearing shall not become part of the AA's personnel file, and the AA shall remain in, or be reinstated to, as the case may be, his or her position, with all rights and privileges attendant thereto.
- B. If, on the other hand, the HC has concluded that the evidence of record has established adequate cause for dismissal, but the Provost rejects the conclusion, the Provost shall provide all parties of record with written reasons for the rejection, and shall allow all such parties 30 days from their receipt of

the Provost's written reasons for rejection within which to file written responses to the reasons. Following the expiration of this 30 day period, the charges in question shall be expunged, the record of hearing shall not become part of the AA's personnel file, and the AA shall remain in, or be reinstated to, as the case may be, his or her position, with all rights and privileges attendant thereto, unless the Provost, within 15 days following the 30 day period allowed to parties to file responses, chooses on further reflection to adopt the HC's decision. In that event, the Provost shall forward findings, conclusions, and recommendations from the underlying proceedings, with the record of hearing and the Provost's individual recommendation, to the President for further consideration

- C. If the HC has concluded that the evidence has established adequate cause for dismissal and the Provost accepts the conclusion, the Provost shall forward findings, conclusions, and recommendations from the underlying proceedings, with the record of hearing, to the President for further consideration.
- D. If the HC has concluded that the evidence has not established cause for dismissal, and the Provost rejects the conclusion, the Provost shall provide all parties of record with written reasons for the rejection, and shall allow all such parties 30 days from their receipt of the Provost's written reasons for rejection within which to file written responses to the reasons. If, after reviewing written responses submitted within the 30 day period, the Provost continues to reject the HC's conclusion, the Provost shall, within 15 days following the 30 day period allowed to parties to file responses, forward findings, conclusions, and recommendations from the underlying proceedings, with the record of hearing and the Provost's recommendation, to the President for further consideration. If, on the other hand, after reviewing written responses submitted within the 30 day period, the Provost chooses on further reflection to adopt the HC's conclusion, the charges in question shall be expunged, the record of hearing shall not become part of the AA's personnel file, and the AA shall remain in, or be reinstated to, as the case may be, his or her position, with all rights and privileges attendant thereto.

8. Consideration by the President

Within 30 days of receipt from the Provost of findings, conclusions, and recommendations from the underlying proceedings, with the record of hearing, the President shall take one of the following courses of action:

- A. If the Provost has decided that the evidence has established adequate cause for dismissal and the President accepts the decision, the President shall forward findings, conclusions, and recommendations from the underlying proceedings, with the record of hearing and the President's recommendation, to the Board of Trustees for further consideration.
- B. If the Provost has decided that the evidence has established adequate cause for dismissal and the President rejects the decision, the President shall provide all parties of record with written reasons for the rejection, and shall allow all such parties 30 days from their receipt of the President's written reasons for

rejection within which to file written responses to the reasons. Following the expiration of this 30 day period, the charges in question shall be expunged, the record of hearing shall not become part of the AA's personnel file, and the AA shall remain in, or be reinstated to, as the case may be, his or her position, with all rights and privileges attendant thereto, unless the President, within 15 days following the 30 day period allowed to parties to file responses, chooses on further reflection to adopt the Provost's decision. In that event, the President shall forward findings, conclusions, and recommendations from the underlying proceedings, with the record of hearing and the President's recommendation, to the Board of Trustees for further consideration

9. Consideration by the Board of Trustees

Within 60 days of receipt from the President of findings, conclusions, and recommendations from the underlying proceedings, with the record of hearing, or as soon thereafter as is practicable, the Board of Trustees shall review the proposed decision to dismiss the AA. The Board at its discretion may provide further opportunity to the parties for oral or written argument. Whenever possible, the Board shall render its final decision on the dismissal within 60 days of its receipt of findings, conclusions, and recommendations from the underlying proceedings, with the record of hearing, or within 60 days from the conclusion of any additional arguments allowed.

Source:

University Regulation 801, Revision 1 and Change 1; adopted 7/17/08 Board of Trustees meeting

Revisions adopted 3/23/12 Board of Trustees meeting