

## **UWEX FACULTY POLICIES AND PROCEDURES**

### **Chapter UWEX 6**

#### **COMPLAINTS, GRIEVANCES AND HEARINGS**

- 6.01 Complaints.** Complaints are allegations by the administration, students, faculty members, academic staff members, classified staff members, or members of the public concerning conduct by a faculty member which violates University of Wisconsin System rules and policies, or which adversely affects the faculty member's performance of his/her obligation to the University of Wisconsin System, but which are not serious enough to warrant dismissal under Chapter UWEX 4.
- (1) Complaints shall be in writing to the Chancellor or to another administrator or the Secretary of the Faculty who shall forward it to the Chancellor, describing specifically the alleged misconduct.
  - (2) The Chancellor may recommend an informal discussion and settlement of the complaint before reviewing and taking action. The informal discussion and settlement route shall follow the upward levels of supervision and employment; department or administrative unit, dean. If the complaint is not settled by this route, it shall be returned to the Chancellor.
  - (3) If the Chancellor deems the complaint substantial, he/she may take disciplinary action, or he/she may refer the complaint to the Faculty Hearings Committee, established in UWEX 2.02, for a hearing.
  - (4) The Chancellor shall notify the faculty member who is the subject of the complaint in writing of the specific allegations, the identity of the person or party who made the complaint, and his/her disposition of the complaint.
  - (5) The hearing body shall hold a hearing according to procedures described in UWEX 6.03 and 6.04 on a complaint at the request of the Chancellor, or at the request of the faculty member concerned if the Chancellor invokes a disciplinary action without requesting a hearing. This request must be made in writing, addressed to the chair of the hearing body or Secretary of the Faculty within 20 days after receipt of notice of the Chancellor's disciplinary action.
  - (6) The burden of proof of the existence of misconduct shall be on the person or party making the complaint.
  - (7) After the hearing the hearing body shall recommend to the Chancellor; dismissal of the complaint, or invocation of specific disciplinary actions, or modification or affirmation of the disciplinary action imposed by the Chancellor.
  - (8) The decision of the Chancellor on the recommendation of the hearing body, or on the complaint in the absence of a hearing body recommendation, shall be final, except that the board, at its option, may grant a review on the record.

- (9) The faculty member shall not again be investigated or penalized for the same alleged misconduct after a final decision on a previous complaint.

**6.02 Grievances.**

- (1) A grievance is a personnel problem, perceived by a faculty member to involve unfair treatment or violation of the faculty member's rights and privileges accorded by law, UWEX policy, or established UWEX practice.
- (2) The Faculty Hearings Committee, established in UWEX 2.02, shall hear faculty grievances in accordance with these policies and procedures. Dismissals, layoffs, and non-renewals which are otherwise appealed in accordance with these Chapters may not be grieved under this Chapter.
- (3) Prior to filing a request for a hearing before the hearing body, the complaining faculty member shall attempt to discuss the grievance with his/her supervisor, department chair, dean, or other appropriate administrative official. The faculty member shall notify the appropriate administrative official of a desire to discuss the grievance within 120 calendar days after the grievant knew or should have known about the incident which gave rise to the grievance. This provision may be waived by the hearing body in exceptional cases.
- (4) The request for a hearing shall be made in writing to the chair of the hearing body or Secretary of the Faculty either within 60 calendar days of the meeting between the grievant and the appropriate administrative official or within 180 calendar days from the time the grievant knew or should have known about the incident which gave rise to the grievance. The grievance shall be described in detail, providing information on the nature of the disputed action, time, place, and relevant surrounding circumstances. It shall also state what informal settlement attempts were made, or state the grievant's reasons for not making such attempts.
- (5) A hearing committee shall have 30 days to consider the request, 10 days to inform the faculty member of the decision on whether to grant a hearing, and 90 additional days to conduct the hearing. If the decision is to grant a hearing, the relevant unit of UWEX will be informed at the same time. These time limits may be informed at the same time. These time limits may be extended by mutual consent of the parties or by order of the hearing committee.
- (6) The grievant bears the burden of proof at a grievance hearing.
- (7) The hearing body may refuse to hear a grievance if:
  - (a) Appropriate informal settlement efforts were not made by the faculty member; or
  - (b) The request does not state a grievance or fails to state a cause of action upon which the Chancellor can grant relief; or
  - (c) The matter was previously grieved and heard by the committee; or

- (d) Following a request for information, a prehearing conference or exchange of evidence and witness lists by the parties, the committee decides that no credible evidence supporting the grievance will be forthcoming.
- (8) The Chancellor shall make a decision on the grievance within 30 calendar days after receiving the report of the hearing body.
- (9) The decision of the Chancellor on the recommendation of the committee, or on the grievance in the absence of a committee recommendation, shall be final except that the Board, upon petition of a grievant or the committee or other faculty body, may grant a review on the record.
- (10) In deciding whether or not to grant a discretionary review the Board of Regents will consider the following:
  - (a) does the case involve substantial constitutional claims?
  - (b) is there a serious concern that the Chancellor has abused his/her discretion or exceeded his/her authority?
  - (c) could the decision made at the institutional level have systemwide implications?
  - (d) is the final institutional decision based upon facts not supported by the record, resulting in material prejudice to the individual seeking review?

**6.03 Hearings Committee.**

- (1) The UWEX Faculty Hearings Committee specified in UWEX 2.02 shall hear all appeals, complaints, and grievances under UWEX 3, 4, 5, 6, and 8.
- (2) The Hearings Committee not only hears evidence, but is also responsible for conducting the hearing in accordance with UWEX 6.04:
  - (a) The Committee applies the policies and procedures relevant to a hearing;
  - (b) The Committee rules on requests of the parties and on procedural issues;
  - (c) The Committee schedules and sets the parameters for a hearing; and
  - (d) The Committee selects the moderator of the hearing proceedings.
- (3) Following a hearing, the Committee shall provide to the Chancellor and the parties involved a report consisting of a summary of the evidence, findings of fact, and recommendations and access to a verbatim record of the hearing, which may be a sound recording.

**6.04 Hearings Committee Procedures.** Whenever the UWEX Faculty Hearings Committee holds a hearing under UWEX 3, 4, 5, 6, or 8, the following conditions and rules shall apply.

- (1) Anyone who participated in the decision of the action being appealed or grieved, who is a material witness, who participated in the investigation of the matter of the hearing for either party, or who otherwise has a conflict of interest, shall not be qualified to participate as a member of the Hearings Committee for that hearing. The Committee may by its own action or at the request of either party, disqualify any one of its members for any of the

above reasons by a majority vote. If one or more of the Hearings Committee members disqualify themselves or are disqualified, the remaining members will select a number of replacements equal to the number who have been disqualified to serve.

- (2) If the Hearings Committee requests, the Chancellor shall provide legal counsel after consulting with the Committee concerning its wishes in this regard. The function of legal counsel shall be to advise the Committee, consult with them on legal matters, and such other responsibilities as shall be determined by the Committee within the provisions of the policies and procedures adopted by the institution.
- (3) Not later than 30 days following the filing of a request for a hearing, unless otherwise specified in the rules, a hearing shall be held except time limits in which to conduct a hearing may be extended by mutual consent of the parties or by order of the Hearings Committee.
- (4) Hearings shall be conducted in open session except as a closed session is permitted under section 19.85, Wis. Stats. In the case of a hearing involving a tenure decision, the faculty member involved has the right to demand an open hearing.
- (5) The Hearings Committee shall determine whether a pre-hearing conference is necessary.
- (6) The Hearings Committee shall not be bound by common law or statutory rules of evidence and may admit evidence having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony. Admissibility of evidence is governed by 227.45 Wis. Stats. The Hearings Committee shall give effect to recognized legal privileges.
- (7) Additional procedures may be established by the Hearings Committee.
- (8) The following due process rights apply to both parties involved in the matter of the hearing:
  - (a) At least 10 days' written notice of the hearing;
  - (b) The right to advance notice of the names of witnesses and advance access to documentary evidence which may be called forward or entered as evidence at the hearing by the other party;
  - (c) The right to testify on his/her own behalf;
  - (d) The right to counsel and other appropriate representatives;
  - (e) The right to offer witnesses;
  - (f) The right to confront and cross-examine adverse witnesses;
  - (g) The right to enjoy and exercise all the rights and privileges of a United States citizen and the right and privileges of appropriate professional codes of ethics; and
  - (h) The right to a decision based on the hearing record.
- (9) The Hearings Committee may call witnesses and/or have access to documentary evidence which is in the control of either party.

- (10) Nothing in these procedures shall prevent the settlement of cases by mutual agreement between the two parties at any time prior to a final decision by the Chancellor; or when appropriate, with the Board's approval prior to a final decision by the Board.
- (11) Adjournments shall be granted to enable either party to investigate evidence as to which a valid claim of surprise is made.