

REPORT FOR THE UNIVERSITY SENATE

University Senate Committee: Academic Staff Personnel Committee

Brief History of Issue - why the issue is being considered:

Current FASRP language regarding Dismissal of Academic Staff is and unclear regarding the process for Fixed Term and Instructional or Research Academic Staff.

Points Discussed by Committee:

Other than the hearing committee for a dismissal appeal, the appeal process for all Academic Staff is very similar. Therefore, reorganization and minor language changes clarifies the process and satisfies UW System requirements.

Pros of Recommendation:

Simplifies and clarifies FASRP language
Satisfies UW System requirements

Cons of Recommendation:

None determined

Technology/Human Resource/Workload Impact:

None determined

Committee Recommendation:

The following changes be made to the Faculty and Academic Staff Rules and Procedures, Part III, Article 5: Personnel Policies and Procedures, Section C – Academic Staff Personnel Policies and Procedures; 3. Academic Staff: Dismissals and Layoffs (pages 97-102)

MOTION FOR THE UNIVERSITY SENATE

The University Senate Committee:

by a vote of 4 for to 0 against on 1-28-2020 (Date)

Recommends that

The following changes be made to the Faculty and Academic Staff Rules and Procedures, Part III, Article 5: Personnel Policies and Procedures, Section C – Academic Staff Personnel Policies and Procedures; 3. Academic Staff: Dismissals and Layoffs (pages 97-102)

3. Academic Staff: Dismissals and Layoffs {based on UWS 11 http://docs.legis.wisconsin.gov/code/admin_code/uws/11 and UWS 12 http://docs.legis.wisconsin.gov/code/admin_code/uws/12}

- a. Academic Staff: Dismissal of Academic Staff for Cause (US 2/99)

Members of the academic staff are entitled to enjoy and exercise all rights of United States citizens and to perform their duties in accordance with appropriate professional codes of ethics. This policy shall be observed in determining whether or not just cause for dismissal exists. The burden of proof of the existence of just cause for a dismissal is on the administration. (US 02/20)

- 1) Dismissal for Cause – Indefinite Academic Staff Appointments – See UWS 11.01**

http://docs.legis.wisconsin.gov/code/admin_code/uws/11

- a) A member of the academic staff holding an indefinite appointment may be dismissed only for just cause under UWS 11.02 through 11.10 or for reasons of budget or program under UWS 12.

~~b) Members of the academic staff are entitled to enjoy and exercise all rights of United States citizens and to perform their duties in accordance with appropriate professional codes of ethics. This policy shall be observed in determining whether or not just cause for dismissal exists. The burden of proof of the existence of just cause for a dismissal is on the administration.~~

- 2) Dismissal for Cause – Fixed Term or Probationary Appointees – See UWS 11.11**

A member of the academic staff holding a probationary appointment, or a member of the academic staff holding a fixed term appointment and having completed six months in the position, may be dismissed prior to the end of the contract term only for just cause or for reasons of budget or program under UWS 12 http://docs.legis.wisconsin.gov/code/admin_code/uws/12. A nonrenewal of such an appointment is not a dismissal under this section. The provisions of UWS 11.01(2) through 11.07, 11.09, 11.10 and 11.11 shall apply to dismissal for just cause of fixed term or probationary academic staff appointees.

In no event shall a decision favorable to the appellant extend the term of the original appointment. If a proceeding on appeal is not concluded before the appointment expiration date, the academic staff member concerned may elect that such proceeding be carried to a final decision. Unless such election is made in writing, the proceeding shall be discontinued at the expiration of the appointment. If the chancellor ultimately decides in favor of the appellant, salary lost during the interim period between the effective date of dismissal and

the date of the chancellor's decision or the end of the contract period, whichever is earlier, shall be restored. (US 02/20)

3) Dismissal for Cause – Instructional and/or Research Academic Staff – See UWS 11.12

As provided under UWS 11.03(2) and UWS 11.12, a dismissal hearing for instructional and/or research academic staff shall be heard before the Faculty Complaint, Grievance, and Termination Review Committee pursuant to UWS 11.02 through 11.10. In such cases, dismissal shall be effective immediately upon receipt of written notification to that effect from the chancellor, pursuant to recommendations of the Faculty Complaint, Grievance, and Termination Review Committee. Provisions for board review under UWS 4.08 will apply to allow the appellant opportunity for reinstatement or recovery of lost salary as provided under UWS 11.11. In no event, however, shall a decision favorable to the appellant extend the time of the original appointment specified in the letter of appointment. (US 02/20)

4) 2) Responsibility for Charges – See UWS 11.02 http://docs.legis.wisconsin.gov/code/admin_code/uws/11

a) Whenever the UW-Eau Claire chancellor receives an allegation which concerns an academic staff member ~~holding an indefinite appointment~~ which appears to be substantial and which, if true, might lead to dismissal under UWS 11.01, the chancellor shall request within twenty calendar days that the appropriate dean or director

(1) investigate the allegation,

(2) offer to discuss it informally with the individual, and

(3) provide information of rights to which members of the academic staff are entitled under UWS 11.

b) If such an investigation and discussion do not result in a resolution of the allegation and if the allegation is deemed sufficiently serious to warrant dismissal, the dean or director shall prepare a written statement of specific charges. A member of the academic staff may be dismissed only after receipt of such a statement of specific charges and, if a hearing is requested by the academic staff member, after a hearing held in accordance with the provisions of this chapter. If the staff member does not request a hearing, dismissal action shall proceed along normal administrative lines, but the provisions of UWS 11.02, 11.08, and 11.09 shall apply. In those cases where the immediate supervisor of the academic staff member concerned is a dean or director, the chancellor shall, to avoid potential prejudice, designate an appropriate administrative officer to act for the Dean or Director under this section.

c) The appeal procedures shall accompany any formal statement of specific charges sent to an academic staff member.

d) Any formal statement of specific charges shall be served personally or by certified mail, return receipt requested. If such service cannot be made within 20 calendar days, service shall be accomplished by first class mail and by publication as if the statement of charges were a summons and the provisions of section 801.11(1)(c) Wis. Stats., <http://docs.legis.wisconsin.gov/statutes/statutes/801>, were applicable. Such service by mailing and publication shall be effective as of the first insertion of the notice of statement of charges in the newspaper.

5) 3) Hearing Body – See UWS 11.03 http://docs.legis.wisconsin.gov/code/admin_code/uws/11

- a) ~~A hearing committee of~~ The Academic Staff Complaint, Grievance, and Review Committee shall hear all dismissal appeals **for staff with indefinite appointments and the Faculty Complaint, Grievance and Termination Review Committee shall hear dismissal appeals for Academic Staff with probationary or fixed term appointments.** The hearing committee shall operate as the hearing agent for the chancellor pursuant to Wisconsin statutes and conduct the hearing, make a verbatim record of the hearing, prepare a summary of the evidence, and transmit such record and summary along with its recommended findings of fact and decision to the chancellor (UWS 11.07) **(US 02/20)**
- b) ~~Dismissal for just cause of a member of the academic staff having teaching responsibilities shall be heard by the Faculty Complaint, Grievance and Termination Review Committee. The hearing shall be held pursuant to the provisions of UWS 11.~~
- 6) 4) Hearing Procedures for Dismissal Appeals – See UWS 11.04
{http://docs.legis.wisconsin.gov/code/admin_code/uws/11}
- a) If a staff member requests a hearing within 20 calendar days from the service of the statement of specific charges (25 calendar days if notice is by first class mail and publication), such hearing shall be convened no later than 20 calendar days after the request, except that this time limit may be extended by mutual consent of the parties or by order of the hearing committee.
- b) The request for a hearing must be submitted in writing to the chair of the ~~Academic Staff~~ **appropriate** Complaint, Grievance, and Review Committee. **(US 02/20)**
- c) Within five working days of receipt of the hearing request, the ~~Academic Staff~~ appropriate Complaint, Grievance, and Review Committee Chair shall acknowledge, in writing, receipt of the request and shall provide a copy of the acknowledgement to the petitioner's dean or director. In the acknowledgement the chair shall ask the petitioner to submit a clear written statement of the reasons for the hearing request and any relevant documentation. The chair shall request, in writing, that the dean or director provide a copy of the statement of charges and any other relevant documentation. Such documentation may include (but is not limited to) information regarding the sequence of events leading to the charge(s), correspondence regarding pertinent events in the case, names of individuals with direct knowledge of those events, and commentary regarding the nature of their knowledge. All documentation must be submitted to the hearing committee chair by the date set at the pre-hearing conference. Documents from the petitioner and from the dean or director will be exchanged on the date set at the pre-hearing conference. Documents shall not be shared by the committee with either party prior to this date.
- d) Selection of Hearing Committee
- (1) Within five working days after a request for a hearing has been filed, the Academic Staff Complaint, Grievance and Review Committee Chair shall call a meeting of the full committee. The committee shall select from its own membership a Hearing Committee of five. Selection of hearing committee members shall be by a random selection process.
- (2) Members of the committee may request to be disqualified from the case on the grounds of bias. Likewise, either party to the appeal may request that a particular committee member be disqualified for cause. In either case, the remaining committee members shall hear the explanation for the request. By majority vote they shall determine whether to honor the request or deny it [UWS 11.06(2)(a)].

- (3) When a member of the hearing committee has been disqualified, the committee shall randomly select a replacement from among the remaining members of the committee. The composition of the hearing committee shall in no way compromise the provisions of UWS 11.06(1)(a).
 - (4) The hearing committee shall convene and elect a chair. The chair shall request of the chancellor personnel assistance to provide a verbatim record of the proceedings [UWS 11.05(1)(e)], clerical assistance to record written findings [UWS 11.05(1)(f)], and legal counsel [UWS 11.06(2)(b)].
 - (5) In consultation with the hearing committee, the chair will set a date for a pre-hearing conference and for the hearing. Service of written notice of the Hearing and the pre-hearing conference shall be provided to both parties at least ten calendar days prior to the hearing.
- e) Hearing Procedures for Dismissal Cases
- (1) The hearing committee shall conduct a pre-hearing conference within ten calendar days of receipt of the original hearing request. The pre-hearing conference shall be held with all parties involved to:
 - (a) confirm the names and official mailing addresses of all parties involved,
 - (b) confirm that there is a dismissal appeal to be heard,
 - (c) identify the applicable UWS and UWEC rules having jurisdiction over the matter,
 - (d) state clearly the charge(s), the petitioner's interest in the matter, the remedy being sought,
 - (e) hear any opening statements, pre-hearing motions, or closing statements made by the parties,
 - (f) decide whether the hearing will be open or closed,
 - (g) stipulate facts agreed upon, and
 - (h) determine a timetable for the exchange of witness lists and documents.

A written summary of the pre-hearing conference shall be distributed to all parties involved within one working day of the conclusion of the pre-hearing conference.
 - (2) The hearing committee subsequently shall convene to hear the appeal. The hearing shall proceed according to UWS 11.04, 11.05, and 11.06. In consultation with the hearing committee, the chair shall be responsible for maintaining the decorum of the hearing and determining the relevance of the questions asked. It is recommended that the hearing committee pursue the following order of business:
 - (a) The chair shall summarize the purpose of the hearing and the issues involved.
 - (b) The chair shall ask both parties (the institution or its representative first and the petitioner second) whether they have any questions before the hearing proceeds. This order of presentation should be maintained consistently throughout the hearing.
 - (c) The Chair shall ask whether each party wishes to make an opening statement.

- (d) Each party shall have the opportunity to present documents and witnesses to support the case. Each party may pose questions to the witnesses.
 - (e) The chair shall ask whether each party wishes to make a closing statement.
 - (f) The chair shall inquire if there are any final questions and shall close the hearing.
- (3) Notwithstanding UWS 11.06(1)(b), the final deliberation of the hearing committee in the formulation of its recommendation(s) shall be in closed meeting as provided by Subchapter V, Chapter 19 <http://docs.legis.wisconsin.gov/statutes/statutes/19>, Wis. Stats. The hearing committee shall allow for a minority report in all of its recommendations. The hearing committee's recommendations and the consideration thereof will proceed as specified in UWS 11.07.
- f) The hearing committee is authorized to develop additional procedures not inconsistent with the provisions of Chapter UWS 11.
 - g) The timelines for hearings cited in UWS or UWEC rules may be extended by mutual consent of the parties involved or by order of the hearing committee.
- 7) ↗ Adequate Due Process – See UWS 11.05 http://docs.legis.wisconsin.gov/code/admin_code/uws/11**
- A fair hearing for an academic staff member whose dismissal is sought under UWS 11.01, except as specifically limited in UWS 11.11 or 11.12, shall include the following:
- a) a right to the names of witnesses and of access to documentary evidence upon the basis of which dismissal is sought;
 - b) a right to be heard in his or her defense;
 - c) a right to counsel and/or other representative, and to offer witnesses;
 - d) a right to confront and cross-examine adverse witnesses;
 - e) a verbatim record of all hearings, which might be a sound recording, provided at no cost;
 - f) written findings of fact and decision based on the hearing record;
 - g) admissibility of evidence governed by Wisconsin Statutes.
- 8) ↗ Procedural Guarantees – See UWS 11.06 http://docs.legis.wisconsin.gov/code/admin_code/uws/11**
- A fair hearing for an academic staff member under UWS 11, except as specifically limited in UWS 11.11 or 11.12, shall include the following procedural guarantees:
- a) Any person who participated in the investigations of allegations leading to the filing of a statement of charges, or in the filing of a statement of charges, or who is a material witness shall not be qualified to participate as a member of the hearing body.
 - b) The hearing shall be closed unless the staff member under charges requests an open hearing, in which case it shall be open (as provided by Chapter 19.85(1)(b), Subchapter V, Wis. Stats., Open Meeting Law, <http://docs.legis.wisconsin.gov/statutes/statutes/19>).
 - c) The hearing body 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, and shall give effect to recognized legal privileges.
 - d) The burden of proof of the existence of just cause is on the administration or its representatives.

- e) If a staff member whose dismissal is sought has requested a hearing, discontinuance of the proceeding by the institution is deemed a withdrawal of charges and a finding that the charges were without merit.
 - f) Nothing in par. e) shall prevent the settlement of cases by mutual agreement between the administration and the staff member, with the chancellor's approval, 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.
 - g) Adjournments shall be granted to enable either party to investigate evidence as to which a valid claim of surprise is made.
- 9) ~~7~~ Recommendation to the Chancellor in Dismissal Cases – See UWS 11.07**
{http://docs.legis.wisconsin.gov/code/admin_code/uws/11}
- a) Within 20 working days of the hearing, the hearing committee shall send a verbatim record of the testimony, which may be a sound recording, and a copy of its report, findings, and recommendations to the chancellor and to the staff member concerned. The report shall include:
 - (1) the names and official mailing addresses of all parties involved,
 - (2) a statement of the petitioner's request and the UWS and UWEC chapters and sections under which it was filed,
 - (3) the hearing committee's findings of fact,
 - (4) the hearing committee's conclusions of law, i.e., its rationale as to whether the alleged charges are valid or not, and
 - (5) the hearing committee's recommendations to the chancellor to
 - (a) dismiss the staff member,
 - (b) impose a lesser disciplinary action, or
 - (c) find in favor of the staff member, dismiss the charges against the staff member, and remove any record of the charges from the staff member's personnel file.
 - b) After reviewing the matter on record and considering arguments if submitted by the parties, the chancellor shall issue a decision to both parties and the hearing committee within 20 working days. This decision shall be deemed final unless the board of regents, upon request of the staff member, grants a review based on the record. In dismissal cases against an indefinite appointee, the board shall review the case according to UWS 11.10.
- 10) ~~8~~ Suspension from Duties – See UWS 11.08**
- The staff member with an indefinite appointment shall continue to receive his or her salary until the chancellor makes a decision as to dismissal and shall not be relieved of his or her duties except as noted in UWS 11.08.
- 11) ~~9~~ Date of Dismissal – See UWS 11.09**
- A decision by the chancellor ordering dismissal shall specify the effective date of the dismissal.
- 12) ~~10~~ Board Review – See UWS 11.10**
- A member of the academic staff ~~on indefinite appointment~~ who has been dismissed for just cause by the chancellor following a hearing may appeal this action to the board of regents. Any

appeal must be made within 30 days of the date of the decision of the chancellor to dismiss. Upon receiving an appeal the Board shall review the case on the record. Following such review, the board may confirm the chancellor's decision, or direct a different decision, or approve a further hearing before the board with an opportunity for filing exceptions to the hearing body's recommendations or the chancellor's decision and for oral argument on the record. If further review with opportunity for oral argument on the record is provided, this review shall be closed unless the staff member requests an open hearing. [See Chapter 19.85(1)(b), Subchapter V, Wis. Stats., Open Meeting Law, <http://docs.legis.wisconsin.gov/statutes/statutes/19>] All decisions of the board, whether after review on the record or after oral argument, shall be expressed in writing and shall indicate the basis for such decision.

~~11) Dismissal for Cause – Fixed Term or Probationary Appointees – See UWS 11.11~~

~~A member of the academic staff holding a probationary appointment, or a member of the academic staff holding a fixed term appointment and having completed six months in the position, may be dismissed prior to the end of the contract term only for just cause or for reasons of budget or program under UWS 12 <http://docs.legis.wisconsin.gov/code/admin-code/uws/12>. A nonrenewal of such an appointment is not a dismissal under this section. The provisions of UWS 11.01(2) through 11.07, 11.09 and 11.11 shall apply to dismissal for just cause of fixed term or probationary academic staff appointees.~~

~~In no event shall a decision favorable to the appellant extend the term of the original appointment. If a proceeding on appeal is not concluded before the appointment expiration date, the academic staff member concerned may elect that such proceeding be carried to a final decision. Unless such election is made in writing, the proceeding shall be discontinued at the expiration of the appointment. If the chancellor ultimately decides in favor of the appellant, salary lost during the interim period between the effective date of dismissal and the date of the chancellor's decision or the end of the contract period, whichever is earlier, shall be restored.~~

~~12) Dismissal for Cause – Instructional and/or Research Academic Staff – See UWS 11.12~~

~~As provided under UWS 11.03(2) and UWS 11.12, a dismissal hearing for instructional and/or research academic staff shall be heard before the Faculty Complaint, Grievance, and Termination Review Committee pursuant to UWS 11.02 through 11.10. In such cases, dismissal shall be effective immediately upon receipt of written notification to that effect from the chancellor, pursuant to recommendations of the Faculty Complaint, Grievance, and Termination Review Committee. Provisions for board review under UWS 4.08 will apply to allow the appellant opportunity for reinstatement or recovery of lost salary as provided under UWS 11.11. In no event, however, shall a decision favorable to the appellant extend the time of the original appointment specified in the letter of appointment.~~

Implementation Date: Upon publication of the July 2020 FASRP

Signed: _____
Chair of the Committee

Send to: University Senate Office