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## CHAPTER 4

### SECTION 7

#### PROCEDURES FOR HEARINGS FOR FACULTY ON COMPLAINTS OF MISCONDUCT UNDER UWSP 6.01

(See Chapters UWS & UWSP 6)

#### INTRODUCTORY COMMENTS.

##### Coverage Comprehensive.

With the single exception of allegations of misconduct which might lead to dismissal, these proceedings apply to all allegations, from what-ever source, concerning conduct by a faculty member which violates university rules or policies, or which adversely affects performance of obligations to the university, and which might provide cause for disciplinary action.

##### Rights.

The exercise of rights shall not constitute adequate cause for disciplinary action. These are rights guaranteed by

- the United States Constitution;
- the Constitution of the state of Wisconsin;
- Board action;
- System rules, policies, or procedures;
- the Constitution of the Faculty Senate;
- UWSP rules, policies, or procedures; or
- principles of academic freedom as they are generally understood in higher education.

##### Student and Peer Evaluations.

Regardless of their content, including specific allegations of inappropriate behavior, neither student nor peer evaluations are complaints under Chapters UWS and UWSP 6 or these policies and procedures.

##### Applicable Documents.

A faculty member against whom a complaint is brought or an individual who is contemplating bringing a complaint against a faculty member is advised to become familiar with

- Chapters UWSP 1 - 6, the institutional faculty personnel rules;
- departmental personnel rules and procedures;
- appropriate sections of the Wisconsin Administrative Code, the UW System faculty personnel rules; and
- related documents in this handbook.

##### Counsel.

A faculty member who has been notified that a complaint or allegation of misconduct has been received by the chancellor or a designee may wish to seek advice from senior faculty or legal counsel familiar with the policies and procedures. The right to be

represented at meetings or hearings by individuals of the faculty member's choice is guaranteed under these procedures.

#### Time Limit.

##### Termination of Hearing.

Failure to meet any time limits established by these procedures will likely end the proceedings. A faculty member against whom a complaint is brought is urged to review these procedures and to act promptly.

##### Length of Process.

The time limits are intended to ensure action within a reasonable time period; nevertheless, the hearing process may be lengthy. The deliberative process in particular may take several months to conclude: the issues are significant; there is no limit on the number of deliberative sessions which may be held; and there is no limit on the length of the recesses which may occur between sessions.

#### Presence at Meetings.

##### No Exclusions.

Under the provisions of 19.89 of the Open Meetings Law, no member of a governmental body may be excluded from any meeting of that body. In addition, no member may be excluded from meetings of any of the body's subunits unless the rules of the parent body specifically state otherwise.

##### Personnel Matters.

No faculty member under consideration for any personnel matter (including consideration of filing of a complaint, investigation of charges, or taking action on a complaint) may be excluded from a department meeting at which the matter is to be considered, even if the meeting is moved into closed session. No faculty member may be excluded from any departmental committee meeting at which the matter is to be considered unless departmental rules specifically state to the contrary.

##### Right to Open Meeting.

###### *19.85 Wis. Stats.*

Under the provisions of the Open Meetings Law, a faculty member has the right to request and receive an open evidentiary hearing for any meeting of a department or unit or subunit involving consideration of disciplinary action or the investigation of charges against that individual.

**NOTE.** A meeting with one's chairperson or an administrator for the purpose of discussion or investigation of a complaint, even where the end result of the discussion or investigation may be a recommendation for disciplinary action or hearing, is not subject to the provisions of the Open Meetings Law: neither a chairperson nor an individual administrator is a "formally constituted subunit."

Under the Open Meetings Law, even when departmental policies provide that subunit or committee meetings be restricted to members of the subunit or committee, a faculty member under consideration has the right to request and receive an open meeting for the portion of the meeting that constitutes an evidentiary hearing involving consideration of disciplinary action or the investigation of charges against that individual.

##### *Departmental Policies.*

Normally, departmental policies will require a written request for an open meeting reasonably in advance of the meeting.

### Definitions.

#### Misconduct.

Misconduct by a faculty member is action or behavior which violates university rules or policies, or which adversely affects performance of obligations to the university, and which might warrant disciplinary action.

#### Chancellor's Designee.

For purposes of complaints under these procedures, the chancellor's designees shall be the provost/vice chancellor for academic affairs, the vice chancellors for business and student affairs (when persons with faculty appointments report to those individuals), and deans, and for limited purposes delineated below, department chairpersons and the special assistant to the chancellor for affirmative action and equity.

#### Disciplinary Action.

Disciplinary action means any sanction imposed by the chancellor or an appropriate designee against a faculty member for misconduct. Sanctions include but are not limited to

- official reprimand;
- reduction in salary (for other than budgetary reasons);
- reduction in rank;
- change in assigned duties; or
- temporary suspension from duties without pay.

#### *Who May Sanction.*

No disciplinary sanction may be imposed upon a faculty member by anyone other than the chancellor, provost, vice chancellor, or dean except as specified in the paragraph immediately below.

Chairperson. A disciplinary action may be included when a written complaint is brought to a department chairperson and, in discussion of that complaint, resolution of the complaint is accomplished by an appropriate response mutually agreed upon by the faculty member and the chairperson.

#### *Informal Resolution.*

A written complaint against a faculty member may be resolved informally any time after written notification of the complaint to the faculty member but before the involved administrator's final decision on the complaint has been mailed to the faculty member.

- An informal resolution consists of an appropriate response, which may include disciplinary action, mutually agreed upon by the faculty member and the administrator involved.
- Every informal resolution shall be reduced to writing and signed by the faculty member and the administrator involved; no further action shall be taken on the matter.
- One copy of the signed document shall be retained by the administrator involved and one given to the faculty member.

### PROCEDURES UPON RECEIPT OF A COMPLAINT.

### Informal Complaint: Complainant Does Not Wish to File a Written Complaint.

#### Appropriate Officers.

If a complaint is made to any officer of the university other than the chancellor, provost/vice chancellor for academic affairs or other vice chancellor, (if appropriate), dean, or department chairperson, that individual shall immediately refer the complainant to the appropriate administrative officer.

#### *Referral.*

Normally, all complaints except those involving affirmative action issues and those which might lead to charges for dismissal shall be referred to the department chairperson of the faculty member against whom the complaint is made. (For those members of the faculty holding limited appointments, the complaint normally shall be referred to the faculty member's immediate supervisor.)

#### *Affirmative Action Issues Involved.*

When a complaint concerns affirmative action issues (e.g., sexual harassment, gender discrimination, racial harassment), the individual to whom the complaint is brought

- determines if the complainant only wants to report the incident or wants to file a formal written complaint; and
- consults with the affirmative action officer.

#### *Report Only.*

When the complainant wishes only to report an incident, the officer proceeds as with other informal complaints but forwards a written report of the incident to the affirmative action officer.

#### *Record.*

The written report is kept in the Affirmative Action and Equity Office and is statistically reported annually under 36.12 (1), Wis. Stats.

#### Administrative Consultation.

Any officer of the University who receives an informal complaint may consult with appropriate administrative personnel prior to collegial consultation with the faculty member against whom allegations have been made in order to ensure compliance with relevant University policies and procedures.

#### Collegial Consultation.

When a chairperson (or other appropriate chancellor's designee under this chapter) receives a complaint, the chairperson shall first ascertain whether the complainant wishes to file a formal, written, signed complaint.

#### *Complainant Decides to File Written Complaint.*

If the complainant decides to file a formal written complaint, which must be signed by the complainant, the complaint is handled under procedures for written complaints [below].

#### *No Written Complaint.*

Individuals who allege misconduct on the part of a faculty member often do not want to initiate a formal investigation of the matter, but would prefer resolution through informal collegial consultation. While this approach is often possible, it should be noted that there are instances where an informal complaint could

result in a formal investigation. Allegations of criminal activity, for example, must be reported to appropriate law enforcement agencies. In addition, as a result of numerous court rulings that have found institutions liable for failing to investigate unwritten allegations of misconduct such as discrimination or harassment, UWSP cannot guarantee that an internal investigation will never be conducted in a specific case. However, every attempt will be made to confine university action to collegial consultation whenever a complaint is made informally.

If the complainant does not wish to file a signed, written complaint, the chairperson shall inform the complainant that

- whether the matter proceeds beyond the chairperson is at the chairperson's discretion;
- in the absence of compelling reasons to formally investigate the alleged misconduct, the chairperson will maintain the confidentiality of the complainant and will handle the issue with the faculty member on a collegial, consultative basis;
- if an internal investigation of the alleged misconduct is warranted, the faculty member will be informed of the nature of the allegations and the identity of the complainant;
- for cases handled through collegial consultation, a record of the complaint will be maintained in the chairperson's files for a period of 12 months;
  - ♦ If no further complaints of a similar nature have been received by the chairperson by the end of the 12 month period, the record will be destroyed and the issue considered closed.
  - ♦ If the chairperson receives other complaints of a similar nature during the 12 months, the chairperson may either contact the original complainant and request a signed, written complaint or use the record of the verbal complaint as alleged corroboration of more than one incident.

### Formal (Written) Complaints.

#### Information to Complainants.

Whenever the chancellor or an appropriate designee receives a written complaint against a faculty member, that official shall inform the complainant that the faculty member against whom the allegations have been made must be promptly notified in writing of the allegations and that such notice includes the identity of the complainant. The complainant shall also be informed of the procedures for both informal and formal complaints.

#### Administrative Consultation.

Any officer of the University who receives a formal written complaint may consult with appropriate administrative personnel prior to sending written notification to the faculty member against whom allegations have been made in order to ensure compliance with relevant University policies and procedures.

#### Notification to Faculty Required.

Whenever a written complaint which might lead to disciplinary action against a faculty member is brought to the chancellor or a designee, before taking any action

other than consulting with appropriate administrative personnel or discussing the allegations with an appropriate designee or the complainant, the individual who receives the complaint or an appropriate designee shall promptly (normally, within 10 working days of receipt of the complaint)

- notify the faculty member in writing of the allegations, identifying the complainant; and
- afford the faculty member the opportunity to respond to the complaint or to meet promptly to discuss the complaint informally.

The administrator's offer of the opportunity for an informal discussion may be in the notification of the allegations or by telephone. Normally, no meeting with a faculty member on such allegations shall occur before the faculty member has received a written copy of the allegations reasonably in advance of the meeting.

**NOTE.** A faculty member against whom a complaint is made and who is invited to meet informally on the complaint or to respond to the complaint is advised to consult legal counsel.

- Informal discussion with the chancellor may be advisable but a faculty member is not obligated to meet with the chancellor or a designee.
- If the faculty member decides to meet informally with the chancellor or a designee, the faculty member is advised to bring a representative, which may be legal counsel, to the informal discussion.

#### Opportunity for Response.

Whenever a written complaint against a faculty member has been received by an appropriate official and the faculty member notified in writing of the complaint, prior to taking further action the administrator shall afford the faculty member an opportunity to respond to the allegations.

#### Administrative Options.

After meeting with the faculty member informally and reviewing the faculty member's response, or in the absence of a meeting or response, the official shall either

- investigate the allegations to determine whether sufficient evidence exists to warrant disciplinary action; or
- refer the complaint to the Faculty Mediation Subcommittee for a hearing.

#### Insufficient Evidence.

If the administrator finds insufficient evidence of action or behavior which warrants disciplinary action, the complaint is dismissed and the faculty member notified in writing of the dismissal of the complaint.

Copies of the dismissal of charges and of the initial notification of allegations sent to the faculty member are attached to all file copies of the initial complaint.

#### Cause for Action.

If the administrator finds that sufficient evidence of action or behavior which warrants disciplinary action exists, the administrator shall afford the faculty member an opportunity to discuss the matter.

#### *Mutually Acceptable Response.*

The administrator may effect informal resolution through an appropriate response, which may include disciplinary action.



- Any informal resolution shall be mutually agreed upon by the faculty member and the administrator.
- Any informal resolution shall be reduced to writing and signed by the administrator and the faculty member; no further action shall be taken on the matter.
- One copy of the signed document shall be retained by the administrator involved and one given to the faculty member.

*Lack of Resolution.*

Department Chairperson.

If consultation does not produce a mutually acceptable response, the department chairperson forwards to the appropriate dean (or vice chancellor) a written report of the investigation on the complaint and recommends that the dean (or vice chancellor) either

- invoke an appropriate disciplinary response, which may be recommended by the chairperson, or
- refer the complaint to the Faculty Mediation Subcommittee for a hearing and recommendation.

Affirmative Action Officer.

If consultation does not produce a mutually acceptable response, the affirmative action officer forwards to the chancellor a written report of the investigation on the complaint and recommends that the chancellor either

- invoke an appropriate disciplinary response, which may be recommended by the affirmative action officer, or
- refer the complaint to the Faculty Mediation Subcommittee for a hearing and recommendation.

Chancellor, Vice Chancellor, or Dean.

The procedures described here are followed by these officials both when complaints originate with them or are referred to them.

- **Disciplinary Response Invoked.** If a disciplinary response is invoked, the administrator provides written notification to the faculty member which includes
  - ♦ the specific disciplinary sanction;
  - ♦ notice of the faculty member's right to a hearing by the Faculty Mediation Subcommittee;
  - ♦ notice that if the faculty member wants a hearing, the faculty member must provide a written request to the chairperson of the subcommittee within 10 days of receipt of the notification of disciplinary action; and
  - ♦ notice that failure to request a hearing within 10 days will likely end the opportunity for a hearing.

An administrative decision on a complaint in the absence of a hearing (or on a recommendation from a hearing committee) is final except that the Board may, at its option, grant a request by the faculty member for a review on the record.

- **Referral for Hearing.** If the complaint is referred to the Faculty Mediation Subcommittee for hearing and recommendation, the

administrator sends a copy of the referral and all other pertinent documents and information to the faculty member and to the subcommittee.

#### Termination of Proceedings.

If a faculty member is notified by the chancellor or a designee of a complaint of alleged misconduct and if the university thereafter discontinues proceedings on the alleged misconduct, the complaint and allegations are deemed to be withdrawn and without merit.

Copies of the statement of discontinuance, which shall include a specific statement that the complaint and allegations are withdrawn and deemed to be without merit, and of the initial notification of allegations sent to the faculty member are attached to all file copies of the initial complaint.

### REFERRALS OR REQUESTS FOR HEARING.

#### *Request for Hearing.*

A faculty member who receives written notification that an administrator has imposed a disciplinary sanction against the faculty member has 10 days from the receipt of the notification in which to request a hearing by the Faculty Mediation Subcommittee.

#### Written Request.

The request for hearing shall be in writing and addressed to the chairperson of the subcommittee. Failure to meet the 10 day deadline will likely terminate the opportunity for hearing.

#### No Hearing Requested.

If a faculty member who receives such notification does not request a hearing with the Faculty Mediation Subcommittee, the action of the administrator is final, except that the Board may, at its option, grant a request by the faculty member for a review on the record.

#### *Required Action.*

##### Notification.

Whenever the chairperson of the Faculty Mediation Subcommittee receives a request for a hearing from a faculty member or a referral from the chancellor or a designee requesting a hearing, the chairperson shall

- provide written notification to the vice chancellor so System legal counsel may be advised a case is pending;
- begin a file of all correspondence concerning the matter, which will be passed on to the chairperson of the hearing committee;
- provide written notification to the faculty member, the faculty member's department chairperson and dean (or vice chancellor, if appropriate), the provost, and the chancellor that a hearing on a complaint is in progress; and
- provide copies of all correspondence to the
  - ♦ faculty member;
  - ♦ hearing committee members; and
  - ♦ the administrator to whom the complaint was brought.

#### Appointment of Hearing Committee.

The chairperson shall appoint a hearing committee of 5 persons, at least 3 of whom shall be members of the Faculty Mediation Subcommittee. There shall be broad representation from the university but not necessarily a member from each college.

- Normally, at least 3 of the appointed members shall have had either
  - ♦ previous experience as a member of a hearing committee under either UWSP 3.08, 3.08m, 4.04, 5.12, 6.01, 6.02, 10.04, 11.04, or other similar hearing, or
  - ♦ orientation and training for a hearing procedure.
- One member, who normally shall have had previous experience as a member of a committee under either UWSP 3.08, 3.08m, 4.04, 5.12, 6.01, 6.02, 10.04, 11.04, or other similar hearing, shall be designated as the chairperson of the committee.
- No individual who brought the complaint of misconduct, or who was involved in any investigation by the chancellor or a designee, or who was involved in the action or behavior leading to the complaint, or who participated in drawing up the notification of complaint or of referral, or who is a material witness, or who is a member of the same department as the faculty member against whom the complaint was filed may serve on the hearing committee.
- The chairperson of the Faculty Mediation Subcommittee, if otherwise qualified, may serve either as a member or as chairperson of the hearing committee.
- Reasonable effort will be made to ensure that the members of the hearing committee are acceptable to the parties to the process.
  - ♦ Normally, this will be accomplished by informal contact with the proposed members and the parties to the process before the formal appointment.
  - ♦ The decision of whom to appoint is solely that of the chairperson of the subcommittee.
- After the committee is appointed, the faculty member has the unrestricted right to challenge and remove 1 member from the hearing committee.
- The decision on other challenges to committee members is made by the committee, excluding the member under challenge.
- If members are disqualified or disqualify themselves, the remaining members consult with the chairperson of the Faculty Mediation Subcommittee and appoint other members to serve.

#### Hearing Date.

The hearing committee shall meet to hear the matter within 20 days of receipt of the request for a hearing, except that this time limit may be extended by mutual consent of the parties or by order of the hearing committee.

#### *Notice.*

The faculty member involved in the hearing shall receive written notice of the hearing on the specific allegations of the complaint, and if appropriate, of the disciplinary responses recommended, at least 10 days prior to the hearing.

#### Hearing Committee Chairperson's Responsibilities.

Once the hearing committee is appointed, the chairperson of the hearing committee assumes responsibility for the hearing process. The chairperson shall

- conduct the hearing under the provisions of UWS/UWSP 6.01, these policies and procedures, and the guidelines for hearings on complaints which may be found in the following subsection or requested from the chairperson of the Faculty Mediation Subcommittee;
- establish appropriate communication with the chancellor, provost, the faculty member, the appropriate dean (or vice chancellor) and department chairperson, and keep each informed of the proceedings in the hearing;
- keep records of all correspondence among all the principals from the initiation of the request for hearing through the conclusion of the hearing;
- appoint a secretary for the hearing committee (normally an associate vice chancellor), and provide for a verbatim transcript of the hearing (usually a sound recording);
- secure appropriate facilities, schedule evidentiary hearings, and provide notices to conform with the Open Meetings Law;
- secure appropriate facilities and schedule and conduct deliberative sessions in which the committee formulates its findings and recommendations;
- prepare a summary of the evidence and the written report of the committee's findings and recommendations and transmit these materials to the faculty member, to the administrator involved, and to the chancellor, and send copies of the report to the faculty member's department chairperson and dean (or vice chancellor), and to the provost;
- send a copy of the hearing procedures with each written notification of the hearing, and
- send written notification of the hearing to the faculty member, the administrator involved, the chancellor, the provost, the faculty member's department chairperson and dean (or vice chancellor), the individual(s) who brought the complaint leading to the charges, and witnesses asked to appear on behalf of the parties or called by the hearing committee.

Written notification of the hearing shall include statements

- ♦ of the date, time, and place of the hearing;
- ♦ that all parties may be represented by an individual(s) of their choice, which may include legal counsel;

**NOTE.** If counsel has been requested by the committee from the chancellor, notice shall include a statement that the committee will have legal counsel present at the hearing.

- ♦ that normally, by a vote of the committee, the evidentiary hearing and the deliberative sessions will be closed but the faculty member, upon timely written request to the chairperson, has the right to request an open evidentiary meeting and any such request shall be honored;
- ♦ of whether the faculty member has requested an open evidentiary hearing ;
- ♦ that both parties have a right to copies of all documentary evidence relevant to the hearing;
- ♦ that all parties, including witnesses, are expected to provide to the hearing committee chairperson sufficient copies of their testimony for all other parties, and that these materials should be provided in sufficient time prior to the hearing for distribution to all parties, but that

failure to provide such copies will not preclude an individual from giving testimony;

- ♦ that either party may call persons to offer evidence or testimony;
- ♦ that both parties will be sent a list of the names of any persons to be called by either party, or by the hearing committee;
- ♦ that either party may offer testimony from any source;
- ♦ that the hearing committee is not bound by statutory rules of evidence but may hear testimony having reasonable probative value;
- ♦ that both parties have the right, under guidelines established by the chairperson, to question persons offering testimony;
- ♦ that adjournments will be granted to enable either party to investigate evidence as to which a valid claim of surprise is made;
- ♦ that the burden of proof of the existence of just cause for disciplinary action is on the administration;
- ♦ that the faculty member has the right to a verbatim record of the hearing, which may be a sound recording, at no cost;
- ♦ that if the faculty member is not tenured and proceedings are not concluded before the expiration of the faculty member's appointment, the proceedings will terminate at the normal expiration of the appointment unless the faculty member sends a written request to the chairperson of the Faculty Mediation Subcommittee that the proceedings be carried to their conclusion;
- ♦ that if the faculty member is tenured and proceedings are not concluded before the faculty member's retirement or resignation, the proceedings will terminate upon the faculty member's retirement or resignation unless the faculty member sends a written request to the chairperson of the Faculty Mediation Subcommittee that the proceedings be carried to their conclusion;
- ♦ that discontinuance of the proceedings by the university is deemed a withdrawal of the charges and a finding that the charges were without merit;
- ♦ that nothing prevents the settlement of the case by mutual agreement of the parties, provided that such settlement is reached prior to a final decision by the involved administrator;
- ♦ that any personal notes made during the procedures and retained by a participant are subject to subpoena if the matter is not resolved at the institutional or System level and becomes a legal matter;
  
- ♦ that a quorum for the evidentiary hearing consists of 4 members of the hearing committee;
- ♦ that a quorum for the deliberative sessions consists of 4 members of the hearing committee, except that in an emergency, the chairperson may declare a quorum when only 3 members are present;
- ♦ that the hearing committee will give a written statement of its findings and recommendations to the faculty member, the administrator involved, the chancellor, the provost, the faculty member's department chairperson, and the dean (or vice chancellor);
- ♦ that the faculty member's and the chancellor's copies will be accompanied by both a verbatim record of the hearing and a summary

of the evidence, unless the faculty member is represented by counsel, in which case the verbatim record and summary will be sent to counsel.

## GUIDELINES FOR HEARINGS.

### Quorum, Notice, and Confidentiality.

#### Quorum.

While all 5 members will be present whenever possible, a quorum for the hearing and for meetings of the hearing committee consists of 4 members of the committee.

In an emergency, the chairperson of the hearing committee has the discretion to declare a quorum for deliberative sessions when only 3 members of the hearing committee are present.

#### Notice.

Notices of meetings shall be sent to the University Newsletter for publication (without identifying the faculty member) and shall indicate whether the meetings will be open or closed.

#### Confidentiality.

##### *Committee.*

All matters related to the faculty member and the hearing are maintained in the strictest confidentiality by hearing committee members, except as may be necessary to meet provisions of the Open Meetings Law or other similar statutory, administrative rule, or faculty governance requirements.

##### *Documents.*

Following the conclusion of all deliberations and the submittal of the hearing committee's report, the chairperson shall collect all drafts and other documents related to the hearing from the members of the committee, from any appointed secretary, and from all other parties except the faculty member and the faculty member's representative(s). All minutes and materials provided by the parties and not forwarded to the chancellor as a part of the report shall be sealed and filed in the office of the chancellor for a period of 5 years, after which they shall be destroyed as permitted under the Public Records Law.

**NOTE.** Participants are reminded that any personal notes made during the procedures and retained after the hearing are subject to subpoena if the complaint is not resolved at the institutional or System level and becomes a legal matter.

### Evidentiary and Deliberative Sessions.

The process consists of two parts, an evidentiary hearing and a deliberative meeting.

#### Evidentiary Hearing.

The purpose of the evidentiary hearing is to determine the facts of the situation. Both parties may provide evidence at the evidentiary hearing and both parties have the right to be represented by another individual(s), which may be legal counsel. The hearing committee is not bound by legal rules of evidence. The burden of proof on the existence of just cause for a disciplinary sanction is on the administration. The hearing committee makes a verbatim record of the hearing.

#### Deliberative Meeting.

The purpose of the deliberative meeting is for the hearing committee to reach its conclusions, after which the chairperson of the hearing committee prepares a summary of the evidence and writes a draft report of the findings and recommendations of the hearing committee. Each member of the hearing committee must sign the final report or file a dissent. The report shall be distributed within 10 days of the close of deliberations.

### Closed and Open Sessions.

#### General Guideline.

Evidentiary hearings and deliberative meetings will normally be closed, as permitted by the Open Meetings Law, unless the chairperson of the hearing committee receives from the faculty member a written request for an open evidentiary hearing, in which case all evidentiary sessions will be open. Closed meetings require a majority vote of the hearing committee, by a roll call vote.

#### Evidentiary Hearings: Who May Attend/Speak.

##### *Closed Hearings.*

If the evidentiary hearing is closed, only parties directly involved in the complaint may attend. Those permitted to attend, who may speak when recognized by the chairperson for that purpose, are

- members of the hearing committee;
- the faculty member;
- the administrator bringing the charges on the complaint;
- the individual(s) making the complaint upon which charges were based;
- representatives for the parties;
- witnesses for the parties;
- individuals specifically called or designated by the hearing committee, which may include legal counsel; and
- an appointed secretary, who need not be a member of the committee.

##### *Open Hearings.*

If the evidentiary hearing is open, anyone may attend but only those parties directly concerned with the complaint and recognized for the purpose of speaking by the chairperson of the hearing committee are permitted to speak.

#### Deliberative Meetings: Who May Attend/Speak.

Only members of the hearing committee, an appointed secretary (who need not be a member of the committee), and the committee's legal counsel (if any) are permitted to attend, and may speak when recognized by the chairperson for that purpose. Only members of the hearing committee participate in determining findings and recommendations.

### Procedure for Evidentiary Hearing and Deliberative Meeting.

#### Introduction.

A copy of these procedures may be requested from the chairperson of the Faculty Mediation Subcommittee or the associate vice chancellor for personnel.

#### Presiding Officer.

The chairperson of the hearing committee convenes the hearing and serves as presiding officer. The chairperson assumes all the normal responsibilities of a

committee chairperson and rules on such questions as may arise on the procedure of the hearing, admissibility of evidence, and all other matters related to the hearing.

If the committee has legal counsel, the chairperson may request the advice of counsel on all matters pertaining to the hearing.

#### Evidentiary Hearing.

The evidentiary hearing normally proceeds in the order described here, but the chairperson may change the order as circumstances may require.

- Call to order; introduction of members of the committee and of the secretary.
- Explanation of the Open Meetings Law and either
  - ♦ explanation of limitations of open meetings, if an open meeting has been requested, or
  - ♦ a request for a motion to close the hearing under the appropriate section(s) of 19.85 Wis. Stats. [19.85 (a), (b), (c), or (f)], and a roll call vote on the motion.
- Introduction of the faculty member and the faculty member's representative(s), if any.
- Introduction of the involved administrator and the administrator's representative(s), if any.
- Reading of the charges for the record by a member of the administration or its representative.
- Presentation of the administration's case, including testimony from the individual(s) making the complaint upon which the charges are based, but not the testimony of other witnesses.
- Questions of the administration or the individual making the complaint by the faculty member or the faculty member's representative.
- Presentation of witnesses on behalf of the administration.
- Questions of the administration's witnesses by the faculty member or the faculty member's representative.
- Rebuttal questions of any of these parties by the administration or its representative.
- Presentation of the faculty member's case by the faculty member or the faculty member's representative but not the testimony of witnesses.
- Questions of the faculty member by the administration or its representative.
- Presentation of witnesses on behalf of the faculty member.
- Questions of the faculty member's witnesses by the administration or its representative.
- Rebuttal questions of any of these parties by the faculty member or the faculty member's representative.
- Questions of the faculty member's and the administration's witnesses by members of the hearing committee.
- Presentation by any witnesses who may have been called by the hearing committee and questions of these witnesses by members of the hearing committee.
- Questions of committee witnesses by the administration or its representative.
- Questions of committee witnesses by the faculty member or the faculty member's representative.
- Additional questions, if any, of witnesses by members of the hearing committee.



- Rebuttal or closing comments by the administration or its representative.
- Rebuttal or closing comments by the faculty member or the faculty member's representative.
- Questions of the faculty member by members of the hearing committee.
- Questions of the administration by members of the hearing committee.
- Additional questions, if any, of the faculty member (or the administration) by members of the hearing committee.
- Conclusion of the evidentiary hearing.

If the deliberative meeting does not follow immediately after the evidentiary hearing, the chairperson will request a motion to recess the hearing and to reconvene at the deliberative meeting [if possible, the date and time of the session will be included in the motion to recess], and will conduct a roll call vote on the motion.

### Deliberative Meeting.

The hearing committee deliberates on the hearing and writes a summary of the evidence and a report which includes the findings and recommendations of the committee.

#### *Findings.*

A finding that the facts are as stated in the complaint is not in itself enough to recommend disciplinary sanctions.

**Cause for Disciplinary Response.** The committee must be convinced that the evidence shows that the faculty member's conduct violates university rules or policies or substantially adversely affects the performance of obligations to the university, and that the conduct is not constitutionally or otherwise legally or ethically protected.

#### **Burden of Proof.**

The burden of proof is on the administration to show that cause exists for any disciplinary sanction.

#### **Validity of Complaint.**

Decisions on the validity of the complaint shall be determined by a majority of the members of the hearing committee. The vote shall be a roll call vote, which shall be recorded.

#### *Recommendations.*

The committee's report and recommendations, which includes support for the recommendations, are sent to the administrator involved and the faculty member as soon as feasible but not later than 10 days following the conclusion of the deliberative session(s). The committee's recommendations may include but are not limited to a finding that

- the allegations are without merit, and dismissal of the complaint;
- the administration has not met the burden of proof, and withdrawal of the complaint;
- the actions attributed to the faculty member did occur but that cause for discipline does not exist, and dismissal of the complaint;
- the actions of the faculty member were constitutionally or otherwise protected, and the dismissal of the complaint;

- there is insufficient evidence to support the allegations, and withdrawal of the complaint; or
- the evidence supports cause for discipline, and the imposition of a disciplinary sanction, which may include but is not limited to
  - ♦ official reprimand;
  - ♦ suspension without pay for a specified period;
  - ♦ a freeze in salary for a specified period;
  - ♦ a reduction in salary;
  - ♦ a reduction in rank;
  - ♦ reassignment;
  - ♦ counseling or other similar rehabilitation; and
  - ♦ appropriate compensatory activities.

*Report.*

At an appropriate time in the deliberations, the chairperson recesses the meeting and prepares a summary of the evidence and a draft report. The draft is circulated among the members, after which the committee reconvenes to review the draft and make appropriate modifications. After the report has been adopted by the hearing committee, each member of the committee signs the report or files a dissent.

- The report shall be adopted by a majority of the members of the hearing committee. The vote shall be a roll call vote, which shall be recorded.
- The report shall be distributed not later than 10 days following the close of deliberations.
- The chairperson provides a verbatim record of the hearing, a summary of the evidence, and a copy of the report to both the faculty member and the involved administrator, and a copy each of the report to the chancellor, vice chancellor, the appropriate dean, and the faculty member's department chairperson.

Administrator's Action.

The administrator shall afford the faculty member an opportunity to discuss the report within 20 days after receiving it from the committee. The recommendations of the committee become the decision of the administrator within 30 days after the meeting with the faculty member, or in the absence of such meeting, within 40 days of the receipt of the committee's report by the administrator unless the administrator modifies the recommendations. The administrator may

- invoke a less severe disciplinary sanction than recommended; or
- invoke a more severe disciplinary response than recommended.

Recommendation Not Accepted.

If the administrator contemplates a decision substantially different from the recommendations of the committee, the administrator shall afford the committee an opportunity to discuss the report and the administrator's proposed decision before written notification of decision to the faculty member. Following the meeting with the committee or in the absence of a meeting, as soon as practicable, but not later than 40 days after receipt of the committee's initial report, the administrator sends written notification of decision to the faculty member and the chairperson of the hearing committee.

Possible Board Review.

The decision of the administrator shall be final, except that the Board, at the written request of the faculty member and at its option, may grant a review on the record.

Faculty Member Declines to Meet.

Failure of the faculty member to meet with the administrator does not impede or stop the process.

*No Double Jeopardy.*

After notification to the faculty member by the administrator, the faculty member may not again be placed in jeopardy for the same incident(s) of alleged misconduct.

## SECTION 8

### PROCEDURES FOR HEARINGS FOR FACULTY ON GRIEVANCES UNDER UWSP 6.02

(See Chapters UWS & UWSP 6)

#### INTRODUCTORY COMMENTS.

##### Grievances Defined.

Grievances may be brought by faculty members who believe their rights have been violated or that they have been treated unfairly.

##### Exceptions.

Actions relating to the following are not subject to a grievance under the provisions of Chapters UWS/UWSP 6.02; resolution must be sought under other appropriate sections of the personnel rules:

- renewal;
- consideration of tenure;
- layoff or termination for financial exigency;
- dismissal; and
- disciplinary action.

In addition, unless a faculty member can demonstrate through clear and compelling evidence that statements made on peer evaluations are false, peer evaluations--regardless of specific allegations of inappropriate behavior--are not subject to grievances under Chapters UWS and UWSP 6.02.

##### Applicable Documents.

A faculty member against whom a grievance has been filed or who is contemplating filing a grievance is advised to become familiar with

- Chapters UWSP 1 - 13, the institutional personnel rules;
- departmental personnel rules and procedures;
- appropriate sections of the Wisconsin Administrative Code, the UW System faculty and academic staff personnel rules; and
- related documents in this Handbook.

##### Counsel.

A faculty member who has been notified that a grievance has been brought against that faculty member or a faculty member who is contemplating filing a grievance may wish to seek advice from senior faculty or legal counsel familiar with the policies and procedures. The right to be represented at meetings or hearings by individuals of the faculty member's choice is guaranteed under these procedures.

##### Time Limit.

###### Termination of Hearing.

Failure to meet any time limits established by these procedures will likely end the proceedings. A faculty member against whom a grievance is brought is urged to review these procedures and to act promptly.

##### Length of Process.

The time limits are intended to ensure action within a reasonable time period; nevertheless, the process may be lengthy. The deliberative process in particular may take several months to conclude: the issues are significant; there is no limit on the number of deliberative sessions which may be held; and there is no limit on the length of the recesses which may occur between sessions.

### Presence at Meetings.

#### No Exclusions.

Under the provisions of 19.89 of the Open Meetings Law, no member of a governmental body may be excluded from any meeting of that body. In addition, no member may be excluded from meetings of any of the body's subunits unless the rules of the parent body specifically state otherwise.

#### Personnel Matters.

No faculty member under consideration for any personnel matter (including consideration of filing of a grievance or taking action on a grievance) may be excluded from a department meeting at which the matter is to be considered, even if the meeting is moved into closed session. No faculty member may be excluded from any departmental committee meeting at which the matter is to be considered unless departmental rules specifically state to the contrary.

#### Hearings and Closed Sessions.

Normally, a hearing committee will move into closed session as permitted under the Open Meetings Law. A decision on whether to grant a request from a faculty member for an open evidentiary hearing lies solely with the committee.

## INFORMAL RESOLUTION OF GRIEVANCES.

### Lowest Level Resolution.

#### Problem Arises at Department, Division, or School Level.

If the problem arises at the department, division, or school level, faculty members who feel their rights have been violated or that they have been dealt with unfairly shall first seek a mutually satisfactory resolution of the problem at the department, division, or school level.

- If the grievance is not resolved at the department, division, or school level, the faculty member shall seek resolution at the college level.
- If the grievance is not resolved at the college level, the faculty member may either seek informal resolution from the vice chancellor or request a hearing conducted by a hearing committee appointed by the chairperson of the Faculty Mediation Subcommittee.

**NOTE.** An aggrieved faculty member may elect to bring a representative, which may be legal counsel, to any meeting at any level to discuss informal resolution.

#### Problem Arises at College Level.

If the problem arises at the college level, the faculty member shall first seek a mutually satisfactory resolution of the problem at the college level.

- If the grievance is not resolved at the college level, the faculty member may either seek informal resolution from the vice chancellor or request a hearing conducted by a hearing committee appointed by the chairperson of the Faculty Mediation Subcommittee.

### Problem Arises Above the College Level.

If the problem arises at the vice chancellor's or chancellor's level, the faculty member may either seek a mutually satisfactory resolution of the problem at the appropriate level or request a hearing conducted by a hearing committee appointed by the chairperson of the Faculty Mediation Subcommittee.

- If informal resolution is sought but the grievance is not resolved, the faculty member may request a hearing.

### Procedure for Informal Resolution.

In an attempt to reach informal resolution, regardless of the level at which the problem arises, the appropriate individual--chairperson, dean, vice chancellor, provost, or chancellor--meets with the aggrieved faculty member and attempts to reach a mutually acceptable resolution. This process may necessitate informal discussions with other members of the faculty.

- During the attempts at informal resolution, the aggrieved faculty member need not file a written grievance.
- Any informal resolution shall be mutually agreed upon by the aggrieved faculty member and the official involved.
- Every informal resolution shall be reduced to writing and signed by the faculty member and the administrator involved; no further action shall be taken on the matter.
- One copy of the signed document shall be retained by the administrator and one given to the faculty member.

### No Informal Resolution.

#### Request for Hearing.

If an informal resolution cannot be reached, the aggrieved faculty member may request a hearing from the Faculty Mediation Subcommittee.

- A request for a hearing on a grievance shall be in writing and addressed to the chairperson of the Faculty Mediation Subcommittee.
- The aggrieved faculty member shall provide the full particulars of the grievance.
- Any request for a hearing on a grievance shall be honored.
- No faculty member is entitled to more than 1 hearing on any single grievance.

#### No Hearing Requested.

If the faculty member does not request a hearing, the grievance is considered dropped and the matter permanently closed.

## HEARINGS.

### Required Action.

#### Notification.

Whenever the chairperson of the Faculty Mediation Subcommittee receives a request for a hearing from a faculty member, the chairperson shall

- provide written notification to the vice chancellor so System legal counsel may be advised a case is pending;
- begin a file of all correspondence concerning the matter, which will be passed on to the chairperson of the hearing committee;

- provide written notification to the aggrieved faculty member, the individual(s) against whom the grievance is filed, the aggrieved faculty member's department chairperson and dean (or vice chancellor, if appropriate), the provost, and the chancellor that an investigation is in progress; and
- provide copies of all correspondence to the
  - ♦ aggrieved faculty member;
  - ♦ individual(s) against whom the grievance is filed; and
  - ♦ hearing committee members.

#### Appointment of Hearing Committee.

The chairperson will also appoint a hearing committee composed of a minimum of 5 persons, at least 3 of whom must be members of the Faculty Mediation Subcommittee. There will be broad representation from the university but not necessarily a member from each college.

- Normally, at least 3 of the appointed members shall have had either
  - ♦ previous experience as a member of an appeals hearing committee under either UWSP 3.08, 3.08m, 4.04, 5.12, 6.01, 6.02, 10.04, 11.04, or other similar appeal proceeding, or
  - ♦ orientation and training for a hearing procedure.
- One member, who normally shall have had previous experience as a member of an appeals hearing committee under either UWSP 3.08, 3.08m, 4.04, 5.12, 6.01, 6.02, 10.04, 11.04, or other similar appeal proceeding, shall be designated as the chairperson of the committee.
- No individual who was involved in the action or behavior leading to the grievance, or who was involved in an investigation of the grievance, or who is a material witness, or who is a member of the same department as the aggrieved faculty member, or of the same department as the individual(s) against whom the grievance was filed, may serve on the hearing committee.
- The chairperson of the Faculty Mediation Subcommittee, if otherwise qualified, may serve as a member or as chairperson of the hearing committee.
- Reasonable effort will be made to ensure that the members of the hearing committee are acceptable to the parties to the process.
  - ♦ Normally, this will be accomplished by informal contact with the proposed members and the parties to the process before the formal appointment.
  - ♦ The decision of whom to appoint is solely that of the chairperson of the subcommittee.
- After the committee is appointed, the faculty member has the unrestricted right to challenge and remove 1 member from the hearing committee.
- The decision on other challenges to committee members is made by the committee, excluding the member under challenge.
- If members are disqualified or disqualify themselves, the remaining members consult with the chairperson of the Faculty Mediation Subcommittee and appoint other members to serve.

#### Hearing Date.

The hearing committee shall meet to hear the matter within 20 days of receipt of the request for a hearing, except that this time limit may be extended by mutual consent of the parties or by order of the hearing committee.

*Notice.*

The faculty member requesting a hearing and the individual(s) against whom the grievance was filed shall receive written notice of the hearing and of the specific allegations of the grievance, at least 10 days prior to the hearing.

Hearing Committee Chairperson's Responsibilities.

Once the hearing committee is appointed, the chairperson of the hearing committee assumes responsibility for the hearing process. The chairperson shall

- conduct the hearing under the provisions of UWS/UWSP 6.02, these policies and procedures, and the guidelines for hearings on grievances which may be found in the following subsection or requested from the chairperson of the Faculty Mediation Subcommittee;
- establish appropriate communication with the chancellor, provost, aggrieved faculty member, individual(s) against whom the grievance was filed, and the aggrieved faculty member's department chairperson and dean (or vice chancellor), and keep each informed of the proceedings in the hearing;
- keep records of all correspondence among all the principals from the initiation of the request for hearing through the conclusion of the hearing;
- appoint a secretary for the hearing committee (normally an associate vice chancellor), and provide for a verbatim transcript of the hearing (usually a sound recording);
- secure appropriate facilities, schedule evidentiary hearings, and provide notices to conform with the Open Meetings Law;
- secure appropriate facilities and schedule and conduct deliberative sessions in which the committee formulates its findings and recommendations, and provide notices to conform with the Open Meetings Law;
- prepare a summary of the evidence and the written report of the committee's findings and recommendations and transmit these materials to the aggrieved faculty member, the individual(s) against whom the grievance was filed, and to the chancellor, and send copies of the report to the faculty member's department chairperson and dean (or vice chancellor), and to the provost;
- send a copy of the hearing procedures with each written notification of the hearing, and
- send written notification of the hearing to the aggrieved faculty member, the individual(s) against whom the grievance was filed, the chancellor, the provost, the faculty member's department chairperson and dean (or vice chancellor), and witnesses asked to appear on behalf of the parties or called by the hearing committee.

Written notification of the hearing shall include statements

- ♦ of the date, time, and place of the hearing;
- ♦ that all parties may be represented by an individual(s) of their choice, which may include legal counsel;

**NOTE.** If counsel has been requested by the committee from the chancellor, notice shall include a statement that the committee will have legal counsel present at the hearing.



- ♦ that normally, by a vote of the committee, the evidentiary hearing and the deliberative sessions will be closed;

**NOTE.** The decision on whether to grant a request from a faculty member for an open evidentiary meeting lies solely with the hearing committee.

- ♦ of whether any party has requested an open evidentiary hearing, and if so that one of the first orders of business will be a vote by the committee on whether to grant the request or move into closed session;
- ♦ that both parties have a right to copies of all documentary evidence relevant to the hearing;
- ♦ that all parties, including witnesses, are expected to provide to the hearing committee chairperson sufficient copies of their testimony for all other parties, and that these materials should be provided in sufficient time prior to the hearing for distribution to all parties, but that failure to provide such copies will not preclude an individual from giving testimony;
- ♦ that either party may call persons to offer evidence or testimony;
- ♦ that both parties will be sent a list of the names of any persons to be called by either party, or by the hearing committee;
- ♦ that either party may offer testimony from any source;
- ♦ that the hearing committee is not bound by statutory rules of evidence but may hear testimony having reasonable probative value;
- ♦ that both parties have the right, under guidelines established by the chairperson, to question persons offering testimony;
- ♦ that adjournments will be granted to enable either party to investigate evidence as to which a valid claim of surprise is made;
- ♦ that the burden of proof is on the grievant;
- ♦ that the aggrieved faculty member has the right to a verbatim record of the hearing, which may be a sound recording, at no cost;
- ♦ that if the aggrieved faculty member is not tenured and proceedings are not concluded before the expiration of the faculty member's appointment, the proceedings will terminate at the normal expiration of the appointment unless the faculty member sends a written request to the chairperson of the Faculty Mediation Subcommittee that the proceedings be carried to their conclusion;
- ♦ that if the aggrieved faculty member is tenured and proceedings are not concluded before the faculty member's retirement or resignation, the proceedings will terminate upon the faculty member's retirement or resignation unless the faculty member sends a written request to the chairperson of the Faculty Mediation Subcommittee that the proceedings be carried to their conclusion;
- ♦ that any personal notes made during the procedures and retained by a participant are subject to subpoena if the appeal is not resolved at the institutional or System level and becomes a legal matter;
- ♦ that a quorum for the evidentiary hearing consists of 4 members of the hearing committee;

- ♦ that a quorum for the deliberative sessions consists of 4 members of the hearing committee, except that in an emergency, the chairperson may declare a quorum when only 3 members are present;
- ♦ that the hearing committee will give a written statement of its findings and recommendations to the aggrieved faculty member, the individual against whom the grievance was filed, the chancellor, the provost, and the faculty member's department chairperson and dean (or vice chancellor);
- ♦ that the faculty member's and the chancellor's copies will be accompanied by both a verbatim record of the hearing and a summary of the evidence, unless the faculty member is represented by counsel, in which case the verbatim record and summary will be sent to counsel.

## GUIDELINES FOR HEARINGS.

### Quorum, Notice, and Confidentiality.

#### Quorum.

While all 5 members will be present whenever possible, a quorum for the hearing and for meetings of the hearing committee consists of 4 members of the committee.

In an emergency, the chairperson of the hearing committee has the discretion to declare a quorum for deliberative sessions when only 3 members of the hearing committee are present.

#### Notice.

Notices of meetings shall be sent to the University Newsletter for publication (without identifying the parties) and shall indicate whether the meetings will be open or closed.

#### Confidentiality.

##### *Committee.*

All matters related to the hearing are maintained in the strictest confidentiality by hearing committee members, except as may be necessary to meet provisions of the Open Meetings Law or other similar statutory, administrative rule, or faculty governance requirements.

##### *Documents.*

Following the conclusion of all deliberations and the submittal of the hearing committee's report, the chairperson will collect all drafts and other documents related to the hearing, except the report, from the members of the committee, from any appointed secretary, and from all other parties except the aggrieved faculty member and the faculty member's representative(s). All minutes and materials provided by the parties and not forwarded to the chancellor as a part of the report shall be sealed and filed in the office of the chancellor for a period of 5 years, after which they shall be destroyed as permitted under the Public Records Law.

**NOTE.** Participants are reminded that any personal notes made during the procedures and retained after the hearing are subject to subpoena if the appeal is not resolved at the institutional or System level and becomes a legal matter.

### Evidentiary and Deliberative Sessions.

The process consists of two parts, an evidentiary hearing and a deliberative meeting.

#### Evidentiary Hearing.

The purpose of the evidentiary hearing is to determine the facts of the situation.

Both parties may provide evidence at the evidentiary hearing and both parties have the right to be represented by another individual(s), which may be legal counsel.

The hearing committee is not bound by legal rules of evidence. The burden of proof is on the grievant. The hearing committee makes a verbatim record of the hearing.

#### Deliberative Meeting.

The purpose of the deliberative meeting is for the hearing committee to reach its conclusions, after which the chairperson of the hearing committee prepares a summary of the evidence and writes a draft report of the findings and recommendations of the hearing committee. Each member of the hearing committee shall sign the final report or file a dissent. The report shall be distributed within 10 days of the close of deliberations.

### Closed and Open Sessions.

#### General Guideline.

Evidentiary hearings and deliberative meetings will normally be closed, as permitted by the Open Meetings Law. Closed meetings require a majority vote of the hearing committee, by a roll call vote.

**NOTE.** The decision on whether to grant a request from a faculty member for an open evidentiary hearing lies solely with the hearing committee.

#### Evidentiary Hearings: Who May Attend/Speak.

##### *Closed Hearings.*

If the evidentiary hearing is closed, only parties directly involved in the complaint may attend. Those permitted to attend, who may speak when recognized by the chairperson for that purpose, are

- members of the hearing committee;
- the aggrieved faculty member;
- the individual(s) against whom the grievance was filed;
- representatives for the parties;
- witnesses for the parties;
- individuals specifically called or designated by the hearing committee, which may include legal counsel; and
- an appointed secretary, who need not be a member of the committee.

##### *Open Hearings.*

If the evidentiary hearing is open, anyone may attend but only those parties directly concerned with the grievance and recognized for the purpose of speaking by the chairperson of the hearing committee are permitted to speak.

#### Deliberative Meetings: Who May Attend/Speak.

Only members of the hearing committee, an appointed secretary (who need not be a member of the committee), and the committee's legal counsel (if any) are permitted to attend, and may speak when recognized by the chairperson for that purpose. Only members of the hearing committee participate in determining findings and recommendations.

## Procedure for Evidentiary Hearing and Deliberative Meeting.

### Introduction.

A copy of these procedures may be requested from the chairperson of the Faculty Mediation Subcommittee or the associate vice chancellor for personnel.

### Presiding Officer.

The chairperson of the hearing committee convenes the hearing and serves as presiding officer. The chairperson assumes all the normal responsibilities of a committee chairperson and rules on such questions as may arise on the procedure of the hearing, admissibility of evidence, and all other matters related to the hearing.

If the committee has legal counsel, the chairperson may request the advice of counsel on all matters pertaining to the hearing.

### Evidentiary Hearing.

The evidentiary hearing normally proceeds in the order described here, but the chairperson may change the order as circumstances may require.

- Call to order; introduction of members of the committee and of the secretary.
- Explanation of the Open Meetings Law and either
  - ♦ explanation of limitations of open meetings, if an open meeting has been requested; and
  - ♦ a request for a motion to conduct the meeting in open session, and a vote on the motion; or
  - ♦ a request for a motion to close the hearing under the appropriate section(s) of 19.85 Wis. Stats. [19.85 (a), (b), (c), or (f)], and a roll call vote on the motion.
- Introduction of the grievant and the grievant's representative(s), if any.
- Introduction of the individual(s) against whom the grievance was filed and the individual's representative(s), if any.
- Reading of the grievance (or if more appropriate, a precis) for the record by the chairperson of the hearing committee.
- Presentation of testimony by the grievant or the grievant's representative but not the testimony of witnesses.
- Questions of the grievant by the individual(s) against whom the grievance was filed or by the individual's representative.
- Presentation of witnesses on behalf of the grievant.
- Questions of the grievant's witnesses by the individual against whom the grievance was filed or by the individual's representative.
- Rebuttal questions of witnesses by the grievant or the grievant's representative.
- Presentation of testimony by the individual(s) against whom the grievance was filed or by the individual's representative, but not the testimony of witnesses.
- Questions of the individual against whom the grievance was filed by the aggrieved faculty member or the faculty member's representative.
- Presentation of witnesses on behalf of the individual against whom the grievance was filed.
- Questions of these witnesses by the grievant or the grievant's representative.

- Rebuttal questions of any of these witnesses by the individual against whom the grievance was filed or by the individual's representative.
- Questions of witnesses for both parties by members of the hearing committee.
- Presentation by any witnesses who may have been called by the hearing committee and questions of these witnesses by members of the hearing committee.
- Questions of committee witnesses by the individual against whom the grievance was filed or by the individual's representative.
- Questions of committee witnesses by the grievant or the grievant's representative.
- Additional questions, if any, of witnesses by members of the hearing committee.
- Rebuttal or closing comments by the individual against whom the grievance was filed or by the individual's representative.
- Rebuttal or closing comments by the grievant or the grievant's representative.
- Questions of the grievant by members of the hearing committee.
- Questions by members of the hearing committee of the individual against whom the grievance was filed.
- Additional questions, if any, of the grievant (or the individual against whom the grievance was filed) by members of the hearing committee.
- Conclusion of the evidentiary hearing.

If the deliberative meeting does not follow immediately after the evidentiary hearing, the chairperson will request a motion to recess the hearing and to reconvene at the deliberative meeting [if possible, the date and time of the session will be included in the motion to recess], and shall conduct a roll call vote on the motion.

### Deliberative Meeting.

The hearing committee deliberates on the hearing and writes a summary of the evidence and a report which includes the findings and recommendations of the committee.

#### *Findings.*

A finding that the facts are as stated in the grievance is not in itself enough to sustain the grievance. The committee must be convinced that the evidence shows that harm has accrued to the grievant.

#### Burden of Proof.

The burden of proof is on the grievant to show that harm has accrued to the grievant.

#### Validity of Grievance.

Decisions on the validity of the grievance shall be determined by a majority of the members of the hearing committee. The vote shall be a roll call vote, which shall be recorded.

#### *Recommendations.*

The committee's report and recommendations, which includes support for the recommendations, are sent to the parties as soon as feasible but not later than

10 days following the conclusion of the deliberative session(s). The committee recommends either that

- the grievance or part(s) of the grievance be upheld, and includes recommendations of appropriate action to remedy the situation; or
- the grievance be denied.

*Report.*

At an appropriate time in the deliberations, the chairperson recesses the meeting and prepares a summary of the evidence and a draft report. The draft is circulated among the members, after which the committee reconvenes to review the draft and make appropriate modifications. After the report has been adopted by the hearing committee, each member of the committee signs the report or files a dissent.

- The report shall be adopted by a majority of the members of the hearing committee. The vote shall be a roll call vote, which shall be recorded.
- The report shall be distributed not later than 10 days following the close of deliberations.
- The chairperson provides a verbatim record of the hearing, a summary of the evidence, and a copy of the report to both the grievant and the chancellor, and a copy each of the report to the individual against whom the grievance was filed, the grievant's department chairperson and dean (or vice chancellor), and the provost.

*Chancellor's Action.*

The recommendations of the hearing committee become the decision of the chancellor within 30 days of the receipt of the committee's report by the chancellor unless the chancellor modifies the recommendations.

- If the chancellor contemplates a decision substantially different from the recommendations of the committee, the chancellor shall afford the committee an opportunity to discuss the report and the chancellor's proposed decision before written notification of decision to the grievant.
- The chancellor sends written notification of decision to the grievant and the chairperson of the hearing committee within 30 days of receipt of the report of the committee.

*Possible Board Action.*

The decision of the chancellor is final except that the Board may, at the written request of the grievant or the hearing committee, and at its option, grant a review on the record.

## SECTION 9

### PROCEDURES FOR HEARING ON COMPLAINTS OF ACADEMIC STAFF MISCONDUCT UNDER UWSP 13.01

(See Chapters UWS & UWSP 13)

#### INTRODUCTORY COMMENTS.

##### Coverage Comprehensive.

With the single exception of allegations of misconduct which might lead to dismissal, these proceedings apply to all allegations except those which may be brought by the academic staff member's supervisor, concerning conduct by an academic staff member which violates university rules or policies, or which adversely affects performance of obligations to the university, and which might provide cause for disciplinary action.

##### Rights.

The exercise of rights shall not constitute adequate cause for disciplinary action. These are rights guaranteed by

- the United States Constitution;
- the Constitution of the state of Wisconsin;
- Board action;
- System rules, policies, or procedures;
- the Constitution of the Faculty Senate;
- UWSP rules, policies, or procedures; or
- one's professional code of ethics.

##### Student and Peer Evaluations.

Regardless of their content or specific allegations of inappropriate behavior, neither student nor peer evaluations of classroom teaching nor student or peer evaluations of job performance are complaints under Chapters UWS and UWSP 13 or these policies and procedures.

##### Applicable Documents.

A member of the academic staff against whom a complaint is brought or an individual who is contemplating bringing a complaint against an academic staff member is advised to become familiar with

- Chapters UWSP 9 - 13, the institutional academic staff personnel rules;
- departmental personnel rules and procedures;
- appropriate sections of the Wisconsin Administrative Code, the UW System academic staff personnel rules; and
- related documents in this Handbook.

##### Counsel.

An academic staff member who has been notified that a complaint or allegation of misconduct has been received by the chancellor or a designee may wish to seek advice from senior academic staff or faculty or legal counsel familiar with the policies and procedures. The right to be represented at meetings or hearings by individuals of the academic staff member's choice is guaranteed under these procedures.

##### Time Limit.

### Termination of Hearing.

Failure to meet any time limits established by these procedures will likely end the proceedings. An academic staff member against whom a complaint is brought is urged to review these procedures and to act promptly.

### Length of Process.

The time limits are intended to ensure action within a reasonable time period; nevertheless, the hearing process may be lengthy. The deliberative process in particular may take several months to conclude: the issues are significant; there is no limit on the number of deliberative sessions which may be held; and there is no limit on the length of the recesses which may occur between sessions.

### Presence at Meetings.

#### No Exclusions.

Under the provisions of 19.89 of the Open Meetings Law, no member of a governmental body may be excluded from any meeting of that body. In addition, no member may be excluded from meetings of any of the body's subunits unless the rules of the parent body specifically state otherwise.

#### Personnel Matters.

No academic staff member under consideration for any personnel matter (including consideration of filing a complaint or taking action on a complaint) may be excluded from a unit meeting at which the matter is to be considered, even if the meeting is moved into closed session. No academic staff member may be excluded from any unit committee meeting at which the matter is to be considered unless the unit's rules specifically state to the contrary.

### Right to Open Meeting.

#### *19.85 Wis. Stats.*

Under the provisions of the Open Meetings Law, an academic staff member has the right to request and receive an open evidentiary hearing for any meeting of a unit or subunit involving consideration of disciplinary action or the investigation of charges against that individual.

**NOTE.** A meeting with an administrator or one's department chairperson for the purpose of discussion or investigation of a complaint, even where the end result of the discussion or investigation may be a recommendation for disciplinary action or hearing, is not subject to the provisions of the Open Meetings Law: neither an individual administrator nor a department chairperson is a "formally constituted subunit."

Under the Open Meetings Law, even when departmental or unit policies provide that subunit or committee meetings be restricted to members of the subunit or committee, any academic staff member under consideration has the right to request and receive an open meeting for the portion of the meeting that constitutes an evidentiary hearing involving consideration of disciplinary action or the investigation of charges against that individual.

#### *Unit/Departmental Policies.*

Normally, unit/departmental policies will require a written request for an open meeting reasonably in advance of the meeting.

### Definitions.

#### Misconduct.



Misconduct by an academic staff member is action or behavior which violates university rules or policies, or which adversely affects performance of obligations to the university, and which might warrant disciplinary action.

#### Chancellor's Designee.

For purposes of these procedures, the chancellor's designees shall be the provost, vice chancellors, executive directors, deans, and for limited purposes hereinafter delineated, chairpersons, directors (or other administrators who are heads of units), and the special assistant to the chancellor for affirmative action and equity.

#### Disciplinary Action.

##### *Definition.*

Disciplinary action means any sanction imposed by the chancellor or an appropriate designee against an academic staff member for misconduct. Sanctions include but are not limited to

- official reprimand;
- reduction in salary (for other than budgetary reasons);
- demotion in title;
- change in assigned duties;
- temporary suspension from duties without pay.

##### *Who May Sanction.*

No disciplinary sanction may be imposed upon an academic staff member by anyone other than the chancellor, provost, vice chancellor, executive director, or dean except as specified in the paragraph immediately below.

##### *Chairperson or Director (or Other Unit Head).*

A disciplinary action may be included when any type of written complaint is brought to a chairperson or director (or other equivalent unit head) and in discussion of that complaint, resolution of the complaint is accomplished by an appropriate response mutually agreed upon by the academic staff member and the administrator.

##### *Informal Resolution.*

A written complaint against an academic staff member may be resolved informally at any time after written notification of the complaint to the academic staff member but before the involved administrator's final decision on the complaint has been mailed to the academic staff member.

- An informal resolution consists of an appropriate response, which may include disciplinary action, mutually agreed upon by the academic staff member and the administrator involved.
- Every informal resolution shall be reduced to writing and signed by the academic staff member and the administrator involved; no further action shall be taken on the matter.
- One copy of the signed document shall be retained by the administrator and one given to the academic staff member.

### PROCEDURES UPON RECEIPT OF A COMPLAINT.

#### *Informal Complaint: Complainant Does Not Wish to File a Written Complaint.*

##### Appropriate Officers.

If a complaint is made to any officer of the university other than the chancellor, provost, vice chancellor, executive director, dean, department chairperson, or director (or other equivalent unit head), that individual shall immediately refer the complainant to the appropriate administrative officer.

*Referral.*

Normally, all complaints except those involving affirmative action issues and those which might lead to charges for dismissal shall be referred to the director (or chairperson or other unit head) of the unit of the academic staff member against whom the complaint is made. (For those members of the academic staff holding limited appointments, the complaint normally shall be referred to the academic staff member's immediate supervisor.)

*Affirmative Action Issues Involved.*

When a complaint concerns affirmative action issues (e.g., sexual harassment, gender discrimination, racial harassment), the individual to whom the complaint is brought

- determines if the complainant only wants to report the incident or wants to file a formal written complaint; and
- consults with the affirmative action officer.

*Report Only.*

when the complainant wishes only to report an incident, the officer proceeds as with other informal complaints but forwards a written report of the incident to the affirmative action officer.

*Record.*

The written report is kept in the Affirmative Action and Equity Office and is statistically reported annually under 36.12 (1), Wis. Stats.

Administrative Consultation.

Any officer of the University who receives an informal complaint may consult with appropriate administrative personnel prior to collegial consultation with the academic staff member against whom allegations have been made in order to ensure compliance with relevant University policies and procedures.

Consultation.

When a director (or other appropriate chancellor's designee under this chapter) receives a complaint, the director shall first ascertain whether the complainant wishes to file a formal, written, signed complaint.

*Complainant Decides to File Written Complaint.*

If the complainant decides to file a formal written complaint, which must be signed by the complainant, the complaint is handled under procedures for written complaints [below].

*No Written Complaint.*

Individuals who allege misconduct on the part of an academic staff member often do not want to initiate a formal investigation of the matter, but would prefer resolution through informal collegial consultation. While this approach is often possible, it should be noted that there are circumstances where an informal complaint could result in a formal investigation. Allegations of criminal activity, for example, must be reported to appropriate law enforcement agencies. In

addition, as a result of numerous court rulings that have found institutions liable for failing to investigate unwritten allegations of misconduct such as discrimination or harassment, UWSP cannot guarantee that an internal investigation will never be conducted in a specific case. However, every attempt will be made to confine university action to collegial consultation whenever a complaint is made informally.

If the complainant does not wish to file a signed, written complaint, the director shall inform the complainant that

- whether the matter proceeds beyond the director is at the director's discretion;
- in the absence of compelling reasons to formally investigate the alleged misconduct, the director will maintain the confidentiality of the complainant and will handle the issue with the academic staff member on a collegial, consultative basis;
- if an internal investigation of the alleged misconduct is warranted, the academic staff member will be informed of the nature of the allegations and the identity of the complainant;
- for cases handled through collegial consultation, a record of the complaint will be maintained in the director's files for a period of 12 months;
  - ◆ If no further complaints of a similar nature have been received by the director by the end of the 12 month period, the record will be destroyed and the issue considered closed.
  - ◆ If the director receives other complaints of a similar nature during the 12 months, the director may either contact the original complainant and request a signed, written complaint or use the record of the verbal complaint as alleged corroboration of more than one incident.

### Formal (Written) Complaints.

#### Information to Complainants.

Whenever the chancellor or an appropriate designee receives a written complaint against an academic staff member, that official shall inform the complainant that the academic staff member against whom the allegations have been made must be promptly notified in writing of the allegations and that such notice includes the identity of the complainant. The complainant shall also be informed of the procedures for both informal and formal complaints.

#### Administrative Consultation.

Any officer of the University who receives an informal complaint may consult with appropriate administrative personnel prior to collegial consultation with the academic staff member against whom allegations have been made in order to ensure compliance with relevant University policies and procedures.

#### Notification to Academic Staff Required.

Whenever a written complaint which might lead to disciplinary action against an academic staff member to the chancellor or a designee, before taking any action

other than consulting with appropriate administrative personnel or discussing the allegations with an appropriate designee or the complainant, the individual who receives a complaint or an appropriate designee shall promptly (normally, within 10 working days of receipt of the complaint)

- notify the academic staff member in writing of the allegations, identifying the complainant; and
- afford the academic staff member the opportunity to respond to the complaint or to meet promptly to discuss the complaint informally.

The administrator's offer of the opportunity for an informal discussion may be in the notification of the allegations or by telephone. Normally, no meeting with an academic staff member on such allegations shall occur before the academic staff member has received a written copy of the allegations reasonably in advance of the meeting.

**NOTE.** An academic staff member against whom a complaint is made and who is invited to meet informally on the complaint or to respond to the complaint is advised to consult legal counsel.

- Informal discussion with the chancellor may be advisable but an academic staff member is not obligated to meet with the chancellor.
- If the academic staff member decides to meet informally with the chancellor or a designee, the academic staff member is advised to bring a representative, which may be legal counsel, to the informal discussion.

#### Opportunity for Response.

Whenever a written complaint against an academic staff member has been received by an appropriate official and the academic staff member notified in writing of the complaint, prior to taking further action the administrator shall afford the academic staff member an opportunity to respond to the allegations.

#### Administrative Options.

After reviewing the academic staff member's response, or in the absence of a response, the official shall either

- meet with the academic staff member informally on the complaint; or
- investigate the allegations to determine whether sufficient evidence exists to warrant disciplinary action; or
- refer the complaint to the Academic Staff Mediation Subcommittee for a hearing.

#### Insufficient Evidence.

If the administrator finds insufficient evidence of action or behavior which warrants disciplinary action, the complaint is dismissed and the academic staff member notified in writing of the dismissal of the complaint.

Copies of the dismissal of charges and of the initial notification of allegations sent to the academic staff member are attached to all file copies of the initial complaint.

#### Cause for Action.

If the administrator finds that sufficient evidence of action or behavior which warrants disciplinary action exists, the administrator shall afford the academic staff member an opportunity to discuss the matter.

*Mutually Acceptable Response.*

The administrator may effect informal resolution through an appropriate response, which may include disciplinary action.

- Any informal resolution shall be mutually agreed upon by the academic staff member and the administrator.
- Any informal resolution shall be reduced to writing and signed by the administrator and the academic staff member; no further action shall be taken on the matter.
- One copy of the signed document shall be retained by the administrator involved and one given to the academic staff member.

*Lack of Resolution.*

Director or Department Chairperson (or equivalent unit head).

If consultation does not produce a mutually acceptable response, the director or department chairperson forwards to the appropriate executive director, vice chancellor, or dean a written report of the investigation on the complaint and recommends that the administrator either

- invoke an appropriate disciplinary response, which may be recommended by the director or chairperson (or equivalent unit head); or
- refer the complaint to the Academic Staff Mediation Subcommittee for a hearing and recommendation.

Affirmative Action Officer.

If consultation does not produce a mutually acceptable response, the affirmative action officer forwards to the chancellor a written report of the investigation on the complaint and recommends that the chancellor either

- invoke an appropriate disciplinary response, which may be recommended by the affirmative action officer, or
- refer the complaint to the Academic Staff Mediation Subcommittee for a hearing and recommendation.

Chancellor, Provost, Vice Chancellor, Executive Director, or Dean.

The procedures described here are followed by these officials both when complaints originate with them or are referred to them.

- **Disciplinary Response Invoked.** If a disciplinary response is invoked, the administrator provides written notification to the academic staff member which includes
  - ♦ the specific disciplinary sanction;
  - ♦ notice of the academic staff member's right to a hearing by the Academic Staff Mediation Subcommittee;
  - ♦ notice that if the academic staff member wants a hearing, the staff member must provide a written request to the chairperson of the subcommittee within 10 days of receipt of the notification of disciplinary action; and
  - ♦ notice that failure to request a hearing within 10 days will likely end the opportunity for a hearing.
- **Referral for Hearing.** If the complaint is referred to the Academic Staff Mediation Subcommittee for hearing and recommendation, the administrator sends a copy of the referral and all other pertinent

documents and information to the academic staff member and to the subcommittee.

#### Termination of Proceedings.

If an academic staff member is notified by the chancellor or a designee of a complaint of alleged misconduct and if the university thereafter discontinues proceedings on the alleged misconduct, the complaint and allegations are deemed to be withdrawn and without merit.

Copies of the statement of discontinuance, which shall include a specific statement that the complaint and allegations are withdrawn and deemed without merit, and of the initial notification of allegations sent to the academic staff member shall be attached to all file copies of the initial complaint.

### REFERRALS OR REQUESTS FOR HEARING.

#### *Request for Hearing.*

An academic staff member who receives written notification that an administrator has imposed a disciplinary sanction against the academic staff member has 10 days from the receipt of the notification in which to request a hearing by the Academic Staff Mediation Subcommittee.

#### Written Request.

The request for hearing shall be in writing and addressed to the chairperson of the subcommittee. Failure to meet the 10 day deadline will likely terminate the opportunity for hearing.

#### No Hearing Requested.

If an academic staff member who receives such notification does not request a hearing with the Academic Staff Mediation Subcommittee, the action of the administrator is final.

#### *Required Action.*

##### Notification.

Whenever the chairperson of the Academic Staff Mediation Subcommittee receives a request for a hearing from an academic staff member or a referral from the chancellor or a designee requesting a hearing, the chairperson shall

- provide written notification to the vice chancellor so System legal counsel may be advised a case is pending;
- begin a file of all correspondence concerning the matter, which will be passed on to the chairperson of the hearing committee;
- provide written notification that a hearing on a complaint is in progress to
  - ♦ the administrative heads of the appellant's operational area and unit, the chairperson of the unit's personnel committee, and the appropriate executive director and vice chancellor (or the chairperson of the appellant's departmental personnel committee, department chairperson, and dean); and
  - ♦ the chancellor and chairperson of the Faculty Senate; and
- provide copies of all correspondence to the
  - ♦ appellant;
  - ♦ hearing committee members; and

- ♦ the decision-maker(s).

#### Appointment of Hearing Committee.

The chairperson will also appoint a hearing committee composed of a minimum of 5 persons, at least 3 of whom must be members of the Academic Staff Mediation Subcommittee. There will be broad representation from the university but not necessarily a member from each division or college.

- Normally, at least 3 of the appointed members shall have had either
  - ♦ previous experience as a member of a hearing committee under either UWSP 10.04, 11.04, 12.05, 13.01, 13.02 or other similar hearing, or
  - ♦ orientation and training for a hearing procedure.
- One member, who normally shall have had previous experience as a member of a hearing committee under either UWSP 10.04, 11.04, 12.05, 13.01, 13.02 or other similar hearing, shall be designated as the chairperson of the committee.
- No individual who brought the complaint of misconduct, or who was involved in any investigation by the chancellor or a designee, or who was involved in the action or behavior leading to the complaint, or who participated in drawing up the notification of complaint or of referral, or who is a material witness, or who is a member of the same unit or department as the academic staff member against whom the complaint was filed may serve on the hearing committee.
- The chairperson of the Academic Staff Mediation Subcommittee, if otherwise qualified, may serve either as a member or as chairperson of the hearing committee.
- Reasonable effort will be made to ensure that the members of the hearing committee are acceptable to both parties in the process.
  - ♦ Normally, this will be accomplished by informal contact with the proposed members and the parties to the process before the formal appointment.
  - ♦ The decision of whom to appoint is solely that of the chairperson of the subcommittee.
- After the committee is appointed, the academic staff member has the unrestricted right to challenge and remove 1 member from the hearing committee.
- The decision on other challenges to committee members is made by the committee, excluding the member under challenge.
- If members are disqualified or disqualify themselves, the remaining members consult with the chairperson of the Academic Staff Mediation Subcommittee and appoint other members to serve.

#### Hearing Date.

The hearing committee shall meet to hear the matter within 20 days of receipt of the request for a hearing, except that this time limit may be extended by mutual consent of the parties or by order of the hearing committee.

#### *Notice.*

The academic staff member involved in the hearing shall receive written notice of the hearing on the specific allegations of the complaint, and if appropriate, of the disciplinary responses recommended, at least 10 days prior to the hearing.

### Hearing Committee Chairperson's Responsibilities.

Once the hearing committee is appointed, the chairperson of the hearing committee assumes responsibility for the hearing process. The chairperson shall

- conduct the hearing under the provisions of UWS/UWSP 13.01, these policies and procedures, and the guidelines for hearings on complaints which in the following subsection or requested from the chairperson of the Academic Staff Mediation Subcommittee;
- establish appropriate communication with the chancellor, provost, the academic staff member, the appropriate executive director and vice chancellor, or dean, and academic staff member's operational area and unit head or department chairperson, and the administrator involved, and keep each informed of the proceedings in the hearing;
- keep records of all correspondence among all the principals from the initiation of the request for hearing through the conclusion of the hearing;
- appoint a secretary for the hearing committee (normally an associate vice chancellor), and provide for a verbatim transcript of the hearing (usually a sound recording);
- secure appropriate facilities, schedule evidentiary hearings, and provide notices to conform with the Open Meetings Law;
- secure appropriate facilities and schedule and conduct deliberative sessions in which the committee formulates its findings and recommendations;
- prepare a summary of the evidence and the written report of the committee's findings and recommendations and transmit these materials to the academic staff member, to the administrator involved, and to the chancellor, and send copies of the report to the academic staff member's unit head, executive director, and vice chancellor, or department chairperson and dean, and to the provost;
- send a copy of the hearing procedures with each written notification of the hearing, and
- send written notification of the hearing to the academic staff member, the administrator involved, the chancellor, the provost, the academic staff member's operational area administrator, unit head, executive director and vice chancellor, or department chairperson and dean, the individual(s) who brought the complaint leading to the charges, and witnesses asked to appear on behalf of the parties or called by the hearing committee.

Written notification of the hearing shall include statements

- ♦ of the date, time, and place of the hearing;
- ♦ that all parties may be represented by an individual(s) of their choice, which may include legal counsel;

**NOTE.** If counsel has been requested by the committee from the chancellor, notice shall include a statement that the committee will have legal counsel present at the hearing.

- ♦ that normally, by a vote of the committee, the evidentiary hearing and the deliberative sessions will be closed but the academic staff member, upon timely written request to the chairperson, has the right to request an open evidentiary hearing and any such request shall be honored;



- ♦ of whether the academic staff member has requested an open evidentiary hearing;
- ♦ that both parties have a right to copies of all documentary evidence relevant to the hearing;
- ♦ that all parties, including witnesses, are expected to provide to the hearing committee chairperson sufficient copies of their testimony for all other parties, and that these materials should be provided in sufficient time prior to the hearing for distribution to all parties, but that failure to provide such copies will not preclude an individual from giving testimony;
- ♦ that either party may call persons to offer evidence or testimony;
- ♦ that both parties will be sent a list of the names of any persons to be called by either party, or by the hearing committee;
- ♦ that either party may offer testimony from any source;
- ♦ that the hearing committee is not bound by statutory rules of evidence but may hear testimony having reasonable probative value;
- ♦ that both parties have the right, under guidelines established by the chairperson, to question persons offering testimony;
- ♦ that adjournments will be granted to enable either party to investigate evidence as to which a valid claim of surprise is made;
- ♦ that the burden of proof of the existence of just cause for disciplinary action is on the administration;
- ♦ that the academic staff member has the right to a verbatim record of the hearing, which may be a sound recording, at no cost;
- ♦ that if the academic staff member is not on indefinite appointment and proceedings are not concluded before the expiration of the academic staff member's appointment, the proceedings will terminate at the normal expiration of the appointment unless the academic staff member sends a written request to the chairperson of the Academic Staff Mediation Subcommittee that the proceedings be carried to their conclusion;
- ♦ that if the academic staff member is on indefinite appointment and proceedings are not concluded before the academic staff member's retirement or resignation, the proceedings will terminate upon the academic staff member's retirement or resignation unless the academic staff member sends a written request to the chairperson of the Academic Staff Mediation Subcommittee that the proceedings be carried to their conclusion;
- ♦ that discontinuance of the proceedings by the university is deemed a withdrawal of the charges and a finding that the charges were without merit;
- ♦ that nothing prevents the settlement of the case by mutual agreement of the parties, provided that such settlement is reached prior to a final decision by the involved administrator;
- ♦ that any personal notes made during the procedures and retained by a participant are subject to subpoena if the matter is not resolved at the institutional or System level and becomes a legal matter;
- ♦ that a quorum for the evidentiary hearing consists of 4 members of the hearing committee;

- ♦ that a quorum for the deliberative sessions consists of 4 members of the hearing committee, except that in an emergency, the chairperson may declare a quorum when only 3 members are present;
- ♦ that the hearing committee will give a written statement of its findings and recommendations to the academic staff member, the administrator involved, the chancellor, the provost, the academic staff member's operational area and unit heads or department chairperson, and the appropriate executive director and vice chancellor, or dean;
- ♦ that the academic staff member's and the chancellor's copies will be accompanied by both a verbatim record of the hearing and a summary of the evidence, unless the academic staff member is represented by counsel, in which case the verbatim record and summary will be sent to counsel.

## GUIDELINES FOR HEARINGS.

### Quorum, Notice, and Confidentiality.

#### Quorum.

While all 5 members will be present whenever possible, a quorum for the hearing and for meetings of the hearing committee consists of 4 members of the committee.

In an emergency, the chairperson of the hearing committee has the discretion to declare a quorum for deliberative sessions when only 3 members of the hearing committee are present.

#### Notice.

Notices of meetings shall be sent to the University Newsletter for publication (without identifying the academic staff member) and shall indicate whether the meetings will be open or closed.

#### Confidentiality.

##### *Committee.*

All matters related to the academic staff member and the hearing are maintained in the strictest confidentiality by hearing committee members, except as may be necessary to meet provisions of the Open Meetings Law or other similar statutory, administrative rule, or faculty governance requirements.

##### *Documents.*

Following the conclusion of all deliberations and the submittal of the hearing committee's report, the chairperson shall collect all drafts and other documents related to the hearing from the members of the committee, from any appointed secretary, and from all other parties except the academic staff member and the academic staff member's representative(s). All minutes and materials provided by the parties and not forwarded to the administrator involved as a part of the report shall be sealed and filed in the office of the chancellor for a period of 5 years, after which they shall be destroyed as permitted under the Public Records Law.

**NOTE.** Participants are reminded that any personal notes made during the procedures and retained after the hearing are subject to subpoena if the matter is not resolved at the institutional or System level and becomes a legal matter.

### Evidentiary and Deliberative Sessions.

The process consists of 2 parts, an evidentiary hearing and a deliberative meeting.

#### Evidentiary Hearing.

The purpose of the evidentiary hearing is to determine the facts of the situation.

Both parties may provide evidence at the evidentiary hearing and both parties have the right to be represented by another individual(s), which may be legal counsel.

The hearing committee is not bound by legal rules of evidence. The burden of proof on the existence of just cause for a disciplinary sanction is on the administration.

The hearing committee makes a verbatim record of the hearing.

#### Deliberative Meeting.

The purpose of the deliberative meeting is for the hearing committee to reach its conclusions, after which the chairperson of the hearing committee prepares a summary of the evidence and writes a draft report of the findings and

recommendations of the hearing committee. Each member of the hearing committee must sign the final report or file a dissent. The report shall be distributed

within 10 days of the close of deliberations.

### Closed and Open Sessions.

#### General Guideline.

Evidentiary hearings and deliberative meetings will normally be closed, as permitted by the Open Meetings Law, unless the chairperson of the hearing committee receives from the academic staff member a written request for an open evidentiary hearing in which case all evidentiary sessions will be open.. Closed meetings require a majority vote of the hearing committee, by a roll call vote.

#### Evidentiary Hearings: Who May Attend/Speak.

##### *Closed Hearings.*

If the evidentiary hearing is closed, only parties directly involved in the complaint may attend. Those permitted to attend, who may speak when recognized by the chairperson for that purpose, are

- members of the hearing committee;
- the academic staff member;
- the administrator bringing the charges on the complaint;
- the individual(s) making the complaint upon which charges were based;
- representatives for the parties;
- witnesses for the parties;
- individuals specifically called or designated by the hearing committee, which may include legal counsel; and
- an appointed secretary, who need not be a member of the committee.

##### *Open Hearings.*

If the evidentiary hearing is open, anyone may attend but only those parties directly concerned with the complaint (delineated above) and recognized for the purpose of speaking by the chairperson of the hearing committee are permitted to speak.

#### Deliberative Meetings: Who May Attend/Speak.

Only members of the hearing committee, an appointed secretary (who need not be a member of the committee), and the committee's legal counsel (if any) are

permitted to attend, and may speak when recognized by the chairperson for that purpose. Only members of the hearing committee participate in determining findings and recommendations.

### Procedure for Evidentiary Hearing and Deliberative Meeting.

#### Introduction.

A copy of these procedures may be requested from the chairperson of the Academic Staff Mediation Subcommittee or the associate vice chancellor for personnel.

#### Presiding Officer.

The chairperson of the hearing committee convenes the hearing and serves as presiding officer. The chairperson assumes all the normal responsibilities of a committee chairperson and rules on such questions as may arise on the procedure of the hearing, admissibility of evidence, and all other matters related to the hearing.

If the committee has legal counsel, the chairperson may request the advice of counsel on all matters pertaining to the hearing.

#### Evidentiary Hearing.

The evidentiary hearing normally proceeds in the order described here, but the chairperson may change the order as circumstances may require.

- Call to order; introduction of members of the committee and of the secretary.
- Explanation of the Open Meetings Law and either
  - ♦ explanation of limitations of open meetings, if an open meeting has been requested, or
  - ♦ a request for a motion to close the hearing under the appropriate section(s) of 19.85 Wis. Stats. [19.85 (a), (b), (c), or (f)], and a roll call vote on the motion.
- Introduction of the academic staff member and the academic staff member's representative(s), if any.
- Introduction of the involved administrator and the administrator's representative(s), if any.
- Reading of the charges for the record by a member of the administration or its representative.
- Presentation of the administration's case, including testimony from the individual(s) making the complaint upon which the charges are based, but not the testimony of other witnesses.
- Questions of the administration or the individual making the complaint by the academic staff member or the academic staff member's representative.
- Presentation of witnesses on behalf of the administration.
- Questions of the administration's witnesses by the academic staff member or the academic staff member's representative.
- Rebuttal questions of any of these parties by the administration or its representative.
- Presentation of the academic staff member's case by the academic staff member or the academic staff member's representative but not the testimony of witnesses.
- Questions of the academic staff member by the administration or its representative.
- Presentation of witnesses on behalf of the academic staff member.

- Questions of the academic staff member's witnesses by the administration or its representative.
- Rebuttal questions of any of these parties by the academic staff member or the academic staff member's representative.
- Questions of the academic staff member's and the administration's witnesses by members of the hearing committee.
- Presentation by any witnesses who may have been called by the hearing committee and questions of these witnesses by members of the hearing committee.
- Questions of committee witnesses by the administration or its representative.
- Questions of committee witnesses by the academic staff member or the academic staff member's representative.
- Additional questions, if any, of witnesses by members of the hearing committee.
- Rebuttal or closing comments by the administration or its representative.
- Rebuttal or closing comments by the academic staff member or the academic staff member's representative.
- Questions of the academic staff member by members of the hearing committee.
- Questions of the administration by members of the hearing committee.
- Additional questions, if any, of the academic staff member (or the administration) by members of the hearing committee.
- Conclusion of the evidentiary hearing.

If the deliberative meeting does not follow immediately after the evidentiary hearing, the chairperson will request a motion to recess the hearing and to reconvene at the deliberative meeting [if possible, the date and time of the session will be included in the motion to recess], and will conduct a roll call vote on the motion.

#### Deliberative Meeting.

The hearing committee deliberates on the hearing and writes a summary of the evidence and a report which includes the findings and recommendations of the committee.

#### *Findings.*

A finding that the facts are as stated in the complaint is not in itself enough to recommend disciplinary sanctions.

#### Cause for Disciplinary Response.

The committee must be convinced that the evidence shows that the academic staff member's conduct violates university rules or policies or substantially adversely affects the performance of obligations to the university, and that the conduct is not constitutionally or otherwise legally or ethically protected.

#### Burden of Proof.

The burden of proof is on the administration to show that cause exists for any disciplinary sanction.

#### Validity of Complaint.

Decisions on the validity of the complaint shall be determined by a majority of the members of the hearing committee. The vote shall be a roll call vote, which shall be recorded.

*Recommendations.*

The committee's report and recommendations, which includes support for the recommendations, are sent to the administrator involved and the academic staff member as soon as feasible but not later than 10 days following the conclusion of the deliberative session(s). The committee's recommendations may include but are not limited to a finding that

- the allegations are without merit, and dismissal of the complaint;
- the administration has not met the burden of proof, and withdrawal of the complaint;
- the actions attributed to the academic staff member did occur but that cause for discipline does not exist, and dismissal of the complaint;
- the actions of the academic staff member were constitutionally or otherwise protected, and the dismissal of the complaint;
- there is insufficient evidence to support the allegations, and withdrawal of the complaint; or
- the evidence supports cause for discipline, and the imposition of a disciplinary sanction, which may include but is not limited to
  - ♦ official reprimand;
  - ♦ suspension without pay for a specified period;
  - ♦ a freeze in salary for a specified period;
  - ♦ a reduction in salary;
  - ♦ a demotion in title;
  - ♦ reassignment;
  - ♦ counseling or other similar rehabilitation; and
  - ♦ appropriate compensatory activities.

*Report.*

At an appropriate time in the deliberations, the chairperson recesses the meeting and prepares a summary of the evidence and a draft report. The draft is circulated among the members, after which the committee reconvenes to review the draft and make appropriate modifications. After the report has been adopted by the hearing committee, each member of the committee signs the report or files a dissent.

- The report shall be adopted by a majority of the members of the hearing committee. The vote shall be a roll call vote, which shall be recorded.
- The report shall be distributed not later than 10 days following the close of deliberations.
- The chairperson provides a verbatim record of the hearing, a summary of the evidence, and a copy of the report to both the academic staff member and the involved administrator and a copy each of the report to the chancellor; the provost; the appropriate executive director and vice chancellor, or dean; and the academic staff member's operational area and unit heads, or department chairperson.

*Administrator's Action.*

The administrator shall afford the academic staff member an opportunity to discuss the report within 20 days after receiving it from the committee. The recommendations of the committee become the decision of the administrator within 30 days after the meeting with the academic staff member, or in the absence of such meeting, within 40 days of the receipt of the committee's report by the administrator unless the administrator modifies the recommendations. The administrator may

- invoke a less severe disciplinary sanction than recommended; or
- invoke a more severe disciplinary response than recommended.

Recommendation Not Accepted.

If the administrator contemplates a decision substantially different from the recommendations of the committee, the administrator shall afford the committee an opportunity to discuss the report and the administrator's proposed decision before written notification of decision to the academic staff member. Following the meeting with the committee or in the absence of a meeting, as soon as practicable not later than 40 days after receipt of the committee's initial report, the administrator sends written notification of decision to the academic staff member and the chairperson of the hearing committee. The decision of the administrator shall be final, except that the chancellor, at the written request of the academic staff member and at the chancellor's option, may grant a review on the record.

Chancellor's Decision Final.

If the academic staff member requests review by the chancellor and the chancellor grants a review on the record, the chancellor shall render a decision within 20 days of the receipt of the request by the academic staff member.

Academic staff Member Declines to Meet.

Failure of the academic staff member to meet with the administrator does not impede or stop the process.

No Double Jeopardy.

After notification to the academic staff member by the administrator, the academic staff member may not again be placed in jeopardy for the same incident(s) of alleged misconduct.

## SECTION 10

### PROCEDURES FOR HEARINGS ON ACADEMIC STAFF GRIEVANCES UNDER UWSP 13.02

(See Chapters UWS & UWSP 13)

#### INTRODUCTORY COMMENTS.

##### Grievances Defined.

Grievances may be brought by academic staff members who are dissatisfied with working conditions or believe their rights have been violated or that they have been treated unfairly.

##### Exceptions.

Actions relating to the following are not subject to a grievance under the provisions of Chapters UWS/UWSP 13.02; resolution must be sought under other appropriate sections of the personnel rules:

- renewal of probationary academic staff;
- consideration of indefinite appointment for probationary academic staff when denial also means nonrenewal;
- layoff or termination for financial exigency;
- dismissal; and
- disciplinary action invoked as a result of an Academic Staff Mediation Subcommittee hearing under UWSP 13.01.

In addition, unless an academic staff member can demonstrate through clear and compelling evidence that statements made on peer evaluations are false, peer evaluations--regardless of specific allegations of inappropriate behavior--are not subject to grievances under Chapters UWS and UWSP 13.02.

##### Applicable Documents.

An academic staff member against whom a grievance has been filed or an individual contemplating filing a grievance against an academic staff member is advised to become familiar with

- Chapters UWSP 9 - 13, the institutional academic staff personnel rules;
- unit or departmental personnel rules and procedures;
- appropriate sections of the Wisconsin Administrative Code, the UW System academic staff personnel rules; and
- related documents in this Handbook.

##### Counsel.

An academic staff member who has been notified that a grievance has been brought against that academic staff member or an academic staff member who is contemplating filing a grievance may wish to seek advice from senior academic staff or faculty or legal counsel familiar with the policies and procedures. The right to be represented at meetings or hearings by individuals of the academic staff member's choice is guaranteed under these procedures.

##### Time Limit.



### Termination of Hearing.

Failure to meet any time limits established by these procedures will likely end the proceedings. An academic staff member against whom a grievance is brought is urged to review these procedures and to act promptly.

### Length of Process.

The time limits are intended to ensure action within a reasonable time period; nevertheless, the process may be lengthy. The deliberative process in particular may take several months to conclude: the issues are significant; there is no limit on the number of deliberative sessions which may be held; and there is no limit on the length of the recesses which may occur between sessions.

### Presence at Meetings.

#### No Exclusions.

Under the provisions of 19.89 of the Open Meetings Law, no member of a governmental body may be excluded from any meeting of that body. In addition, no member may be excluded from meetings of any of the body's subunits unless the rules of the parent body specifically state otherwise.

#### Personnel Matters.

No academic staff member under consideration for any personnel matter (including consideration of filing of a grievance or taking action on a grievance) may be excluded from a unit or department meeting at which the matter is to be considered, even if the meeting is moved into closed session. No academic staff member may be excluded from any unit or departmental committee meeting at which the matter is to be considered unless unit or departmental rules specifically state to the contrary.

#### Hearings and Closed Sessions.

Normally, a committee hearing a grievance will move into closed session as permitted under the Open Meetings Law. An academic staff member has the right to request an open evidentiary hearing; however, the decision on whether to grant such a request lies solely with the committee.

**NOTE.** A meeting with an administrator for the purpose of discussion of a grievance is not subject to the provisions of the Open Meetings Law: an individual administrator is not a "formally constituted subunit."

### INFORMAL RESOLUTION OF GRIEVANCES.

#### Lowest Level Resolution.

##### Problem Arises at Unit/Department Level.

If the problem arises at the unit or department level, academic staff members who are dissatisfied with working conditions or feel their rights have been violated or that they have been dealt with unfairly shall first seek a mutually satisfactory resolution of the problem at the unit or department level.

- If the grievance is not resolved at the unit or department level, the academic staff member shall seek resolution at the next higher administrative level.
- If the grievance is not resolved at the next level, the academic staff member shall proceed to the next higher administrative level, and ultimately may either seek informal resolution from the unit's vice chancellor or the provost, as appropriate, or request a hearing conducted by a hearing committee appointed by the chairperson of the Academic Staff Mediation Subcommittee.

**NOTE.** An aggrieved academic staff member may elect to bring a representative, which may be legal counsel, to any meeting at any level to discuss informal resolution.

Problem Arises Above the Unit/Department Level.

If the problem arises above the unit or department level, the academic staff member shall first seek a mutually satisfactory resolution of the problem at the administrative level at which the problem occurs.

- If the grievance is not resolved at that level, the academic staff member shall proceed to the next higher administrative level, and ultimately may either seek informal resolution from the unit's vice chancellor or the provost, as appropriate, or request a hearing conducted by a hearing committee appointed by the chairperson of the Academic Staff Mediation Subcommittee.

Problem Arises at the Vice Chancellor, Provost or Chancellor Level.

If the problem arises at the vice chancellor's, provost's, or chancellor's level, the academic staff member may either seek a mutually satisfactory resolution of the problem at the appropriate level or request a hearing conducted by a hearing committee appointed by the chairperson of the Academic Staff Mediation Subcommittee.

- If informal resolution is sought but the grievance is not resolved, the academic staff member may request a hearing.

Procedure for Informal Resolution.

In an attempt to reach informal resolution, regardless of the level at which the problem arises, the appropriate individual--administrative head of the operational area, director, chairperson, dean, vice chancellor, provost, or chancellor--meets with the aggrieved academic staff member and attempts to reach a mutually acceptable resolution. This process may necessitate informal discussions with other members of the academic staff.

- During the attempts at informal resolution, the aggrieved academic staff member need not file a written grievance.
- Any informal resolution shall be mutually agreed upon by the aggrieved academic staff member and the official involved.
- Every informal resolution shall be reduced to writing and signed by the academic staff member and the administrator involved; no further action shall be taken on the matter.
- One copy of the signed document shall be retained by the administrator and one given to the academic staff member.

No Informal Resolution.

Request for Hearing.

If an informal resolution cannot be reached, the aggrieved academic staff member may request a hearing from the Academic Staff Mediation Subcommittee.

- A request for a hearing on a grievance shall be in writing and addressed to the chairperson of the Academic Staff Mediation Subcommittee.
- The aggrieved academic staff member shall provide the full particulars of the grievance.
- Any request for a hearing on a grievance shall be honored.

- No academic staff member is entitled to more than 1 hearing on any single grievance.

No Hearing Requested.

If the academic staff member does not request a hearing, the grievance is considered dropped and the matter permanently closed.

HEARINGS.

Required Action.

Notification.

Whenever the chairperson of the Academic Staff Mediation Subcommittee receives a request for a hearing from an academic staff member, the chairperson shall

- provide written notification to the vice chancellor so System legal counsel may be advised a case is pending;
- begin a file of all correspondence concerning the matter, which will be passed on to the chairperson of the hearing committee;
- provide written notification that a grievance is in progress to
  - ♦ the aggrieved academic staff member;
  - ♦ the individual(s) against whom the grievance is filed;
  - ♦ the administrative heads of the aggrieved academic staff member's operational area and unit, the chairperson of the unit's personnel committee, and the appropriate executive director and vice chancellor (or the chairperson of the appellant's departmental personnel committee, department chairperson, and dean); and
  - ♦ the provost and chancellor; and
- provide copies of all correspondence to the
  - ♦ aggrieved academic staff member;
  - ♦ individual(s) against whom the grievance is filed; and
  - ♦ hearing committee members.

Appointment of Hearing Committee.

The chairperson will also appoint a hearing committee composed of a minimum of 5 persons, at least 3 of whom must be members of the Academic Staff Mediation Subcommittee. There will be broad representation from the university but not necessarily a member from each division or college.

- Normally, at least 3 of the appointed members shall have had either
  - ♦ previous experience as a member of a hearing committee under either UWSP 10.04, 11.04, 12.05, 13.01, 13.02 or other similar hearing, or
  - ♦ orientation and training for a hearing procedure.
- One member, who normally shall have had previous experience as a member of a hearing committee under either UWSP 10.04, 11.04, 12.05, 13.01, 13.02 or other similar hearing, shall be designated as the chairperson of the committee.
- No individual who was involved in the action or behavior leading to the grievance, or who was involved in an investigation of the grievance, or who is a material witness, or who is a member of the same unit or department as the aggrieved academic staff member, or of the same unit or department as the individual(s) against whom the grievance was filed, may serve on the hearing committee.

- The chairperson of the Academic Staff Mediation Subcommittee, if otherwise qualified, may serve as a member or as chairperson of the hearing committee.
- Reasonable effort will be made to ensure that the members of the hearing committee are acceptable to the parties to the process.
  - ♦ Normally, this will be accomplished by informal contact with the proposed members and the parties to the process before the formal appointment.
  - ♦ The decision of whom to appoint is solely that of the chairperson of the subcommittee.
- After the committee is appointed, the academic staff member has the unrestricted right to challenge and remove 1 member from the hearing committee.
- The decision on other challenges to committee members is made by the committee, excluding the member under challenge.
- If members are disqualified or disqualify themselves, the remaining members consult with the chairperson of the Academic Staff Mediation Subcommittee and appoint other members to serve.

#### Hearing Date.

The hearing committee shall meet to hear the matter within 20 days of receipt of the request for a hearing, except that this time limit may be extended by mutual consent of the parties or by order of the hearing committee.

#### *Notice.*

The academic staff member requesting a hearing and the individual(s) against whom the grievance was filed shall receive written notice of the hearing and of the specific allegations of the grievance, at least 10 days prior to the hearing.

#### Hearing Committee Chairperson's Responsibilities.

Once the hearing committee is appointed, the chairperson of the hearing committee assumes responsibility for the hearing process. The chairperson shall

- conduct the hearing under the provisions of UWS/UWSP 13.02, these policies and procedures, and the guidelines for hearings on grievances which in the following subsection or requested from the chairperson of the Academic Staff Mediation Subcommittee;
- establish appropriate communication with the chancellor, provost, aggrieved academic staff member, individual(s) against whom the grievance was filed, the administrative heads of the aggrieved academic staff member's operational area and unit, or department chairperson, and the appropriate executive director and vice chancellor, or dean, and keep each informed of the proceedings in the hearing;
- keep records of all correspondence among all the principals from the initiation of the request for hearing through the conclusion of the hearing;
- appoint a secretary for the hearing committee (normally an associate vice chancellor), and provide for a verbatim transcript of the hearing (usually a sound recording);
- secure appropriate facilities, schedule evidentiary hearings, and provide notices to conform with the Open Meetings Law;

- secure appropriate facilities and schedule and conduct deliberative sessions in which the committee formulates its findings and recommendations, and provide notices to conform with the Open Meetings Law;
- prepare a summary of the evidence and the written report of the committee's findings and recommendations and transmit these materials to the aggrieved academic staff member, the individual(s) against whom the grievance was filed, and to the chancellor, and send copies of the report to the academic staff member's operational area and unit heads, or department chairperson, and the appropriate executive director and vice chancellor, or dean, and to the provost;
- send a copy of the hearing procedures with each written notification of the hearing, and
- send written notification of the hearing to the aggrieved academic staff member, the individual(s) against whom the grievance was filed, the chancellor, the provost, the administrative heads of the academic staff member's operational area and unit, or department chairperson, the appropriate executive director and vice chancellor, or dean, and witnesses asked to appear on behalf of the parties or called by the hearing committee.

Written notification of the hearing shall include statements

- ♦ of the date, time, and place of the hearing;
- ♦ that all parties may be represented by an individual(s) of their choice, which may include legal counsel;

**NOTE.** If counsel has been requested by the committee from the chancellor, notice shall include a statement that the committee will have legal counsel present at the hearing.

- ♦ that normally, by a vote of the committee, the evidentiary hearing and the deliberative sessions will be closed;

**NOTE.** The decision on whether to grant a request from an academic staff member for an open evidentiary hearing lies solely with the hearing committee.

- ♦ of whether any party has requested an open evidentiary hearing, and if so that one of the first orders of business will be a vote by the committee on whether to grant the request or move into closed session;
- ♦ that both parties have a right to copies of all documentary evidence relevant to the hearing;
- ♦ that all parties, including witnesses, are expected to provide to the hearing committee chairperson sufficient copies of their testimony for all other parties, and that these materials should be provided in sufficient time prior to the hearing for distribution to all parties, but that failure to provide such copies will not preclude an individual from giving testimony;
- ♦ that either party may call persons to offer evidence or testimony;
- ♦ that both parties will be sent a list of the names of any persons to be called by either party, or by the hearing committee;

- ♦ that either party may offer testimony from any source;
- ♦ that the hearing committee is not bound by statutory rules of evidence but may hear testimony having reasonable probative value;
- ♦ that both parties have the right, under guidelines established by the chairperson, to question persons offering testimony;
- ♦ that adjournments will be granted to enable either party to investigate evidence as to which a valid claim of surprise is made;
- ♦ that the burden of proof is on the grievant;
- ♦ that the aggrieved academic staff member has the right to a verbatim record of the hearing, which may be a sound recording, at no cost;
- ♦ that if the aggrieved academic staff member is not on indefinite appointment and proceedings are not concluded before the expiration of the academic staff member's appointment, the proceedings will terminate at the normal expiration of the appointment unless the academic staff member sends a written request to the chairperson of the Academic Staff Mediation Subcommittee that the proceedings be carried to their conclusion;
- ♦ that if the aggrieved academic staff member is on indefinite appointment and proceedings are not concluded before the academic staff member's retirement or resignation, the proceedings will terminate upon the academic staff member's retirement or resignation unless the academic staff member sends a written request to the chairperson of the Academic Staff Mediation Subcommittee that the proceedings be carried to their conclusion;
- ♦ that any personal notes made during the procedures and retained by a participant are subject to subpoena if the grievance is not resolved at the institutional or System level and becomes a legal matter;
- ♦ that a quorum for the evidentiary hearing consists of 4 members of the hearing committee;
- ♦ that a quorum for the deliberative sessions consists of 4 members of the hearing committee, except that in an emergency, the chairperson may declare a quorum when only 3 members are present;
- ♦ that the hearing committee will give a written statement of its findings and recommendations to the aggrieved academic staff member, the individual against whom the grievance was filed, the chancellor, the provost, and the administrative heads of the academic staff member's operational area and unit, or department chairperson, and executive director and vice chancellor, or dean; and
- ♦ that the academic staff member's and the chancellor's copies will be accompanied by both a verbatim record of the hearing and a summary of the evidence, unless the academic staff member is represented by counsel, in which case the verbatim record and summary will be sent to counsel.

## GUIDELINES FOR HEARINGS.

### *Quorum, Notice, and Confidentiality.*

#### Quorum.

While all 5 members will be present whenever possible, a quorum for the hearing and for meetings of the hearing committee consists of 4 members of the committee.

In an emergency, the chairperson of the hearing committee has the discretion to declare a quorum for deliberative sessions when only 3 members of the hearing committee are present.

Notice.

Notices of meetings shall be sent to the University Newsletter for publication (without identifying the parties) and shall indicate whether the meetings will be open or closed.

Confidentiality.

*Committee.*

All matters related to the hearing are maintained in the strictest confidentiality by hearing committee members, except as may be necessary to meet provisions of the Open Meetings Law or other similar statutory, administrative rule, or faculty governance requirements.

*Documents.*

Following the conclusion of all deliberations and the submittal of the hearing committee's report, the chairperson will collect all drafts and other documents related to the hearing, except the report, from the members of the committee, from any appointed secretary, and from all other parties except the aggrieved academic staff member and the academic staff member's representative(s). All minutes and materials provided by the parties and not forwarded to the chancellor as a part of the report shall be sealed and filed in the office of the chancellor for a period of 5 years, after which they shall be destroyed as permitted under the Public Records Law.

**NOTE.** Participants are reminded that any personal notes made during the procedures and retained after the hearing are subject to subpoena if the grievance is not resolved at the institutional or System level and becomes a legal matter.

Evidentiary and Deliberative Sessions.

The process consists of two parts, an evidentiary hearing and a deliberative meeting.

Evidentiary Hearing.

The purpose of the evidentiary hearing is to determine the facts of the situation. Both parties may provide evidence at the evidentiary hearing and both parties have the right to be represented by another individual(s), which may be legal counsel. The hearing committee is not bound by legal rules of evidence. The burden of proof is on the grievant. The hearing committee makes a verbatim record of the hearing.

Deliberative Meeting.

The purpose of the deliberative meeting is for the hearing committee to reach its conclusions, after which the chairperson of the hearing committee prepares a summary of the evidence and writes a draft report of the findings and recommendations of the hearing committee. Each member of the hearing committee shall sign the final report or file a dissent. The report shall be distributed within 10 days of the close of deliberations.

Closed and Open Sessions.

General Guideline.

Evidentiary hearings and deliberative meetings will normally be closed, as permitted by the Open Meetings Law. Closed meetings require a majority vote of the hearing committee, by a roll call vote.

**NOTE.** The decision on whether to grant a request from a academic staff member for an open evidentiary hearing lies solely with the hearing committee.

#### Evidentiary Hearings: Who May Attend/Speak.

##### *Closed Hearings.*

If the evidentiary hearing is closed, only parties directly involved in the complaint may attend. Those permitted to attend, who may speak when recognized by the chairperson for that purpose, are

- members of the hearing committee;
- the aggrieved academic staff member;
- the individual(s) against whom the grievance was filed;
- representatives for the parties;
- witnesses for the parties;
- individuals specifically called or designated by the hearing committee, which may include legal counsel; and
- an appointed secretary, who need not be a member of the committee.

##### *Open Hearings.*

If the evidentiary hearing is open, anyone may attend but only those parties directly concerned with the grievance and recognized for the purpose of speaking by the chairperson of the hearing committee are permitted to speak.

#### Deliberative Meetings: Who May Attend/Speak.

Only members of the hearing committee, an appointed secretary (who need not be a member of the committee), and the committee's legal counsel (if any) are permitted to attend, and may speak when recognized by the chairperson for that purpose. Only members of the hearing committee participate in determining findings and recommendations.

#### Procedure for Evidentiary Hearing and Deliberative Meeting.

##### Introduction.

A copy of these procedures may be requested from the chairperson of the Academic Staff Mediation Subcommittee or the associate vice chancellor for personnel.

##### Presiding Officer.

The chairperson of the hearing committee convenes the hearing and serves as presiding officer. The chairperson assumes all the normal responsibilities of a committee chairperson and rules on such questions as may arise on the procedure of the hearing, admissibility of evidence, and all other matters related to the hearing.

If the committee has legal counsel, the chairperson may request the advice of counsel on all matters pertaining to the hearing.

##### Evidentiary Hearing.

The evidentiary hearing normally proceeds in the order described here, but the chairperson may change the order as circumstances may require.

- Call to order; introduction of members of the committee and of the secretary.
- Explanation of the Open Meetings Law and either



- ♦ explanation of limitations of open meetings, if an open meeting has been requested, and
  - ♦ a request for a motion to conduct the meeting in open session, and a vote on the motion; or
  - ♦ a request for a motion to close the hearing under the appropriate section(s) of 19.85 Wis. Stats. [19.85 (a), (b), (c), or (f)], and a roll call vote on the motion.
- Introduction of the grievant and the grievant's representative(s), if any.
  - Introduction of the individual(s) against whom the grievance was filed and the individual's representative(s), if any.
  - Reading of the grievance (or if more appropriate, a precis) for the record by the chairperson of the hearing committee.
  - Presentation of testimony by the grievant or the grievant's representative but not the testimony of witnesses.
  - Questions of the grievant by the individual(s) against whom the grievance was filed or by the individual's representative.
  - Presentation of witnesses on behalf of the grievant.
  - Questions of the grievant's witnesses by the individual against whom the grievance was filed or by the individual's representative.
  - Rebuttal questions of witnesses by the grievant or the grievant's representative.
  - Presentation of testimony by the individual(s) against whom the grievance was filed or by the individual's representative, but not the testimony of witnesses.
  - Questions of the individual against whom the grievance was filed by the aggrieved academic staff member or the academic staff member's representative.
  - Presentation of witnesses on behalf of the individual against whom the grievance was filed.
  - Questions of these witnesses by the grievant or the grievant's representative.
  - Rebuttal questions of any of these witnesses by the individual against whom the grievance was filed or by the individual's representative.
  - Questions of witnesses for both parties by members of the hearing committee.
  - Presentation by any witnesses who may have been called by the hearing committee and questions of these witnesses by members of the hearing committee.
  - Questions of committee witnesses by the individual against whom the grievance was filed or by the individual's representative.
  - Questions of committee witnesses by the grievant or the grievant's representative.
  - Additional questions, if any, of witnesses by members of the hearing committee.
  - Rebuttal or closing comments by the individual against whom the grievance was filed or by the individual's representative.
  - Rebuttal or closing comments by the grievant or the grievant's representative.
  - Questions of the grievant by members of the hearing committee.
  - Questions by members of the hearing committee of the individual against whom the grievance was filed.

- Additional questions, if any, of the grievant (or the individual against whom the grievance was filed) by members of the hearing committee.
- Conclusion of the evidentiary hearing.

If the deliberative meeting does not follow immediately after the evidentiary hearing, the chairperson will request a motion to recess the hearing and to reconvene at the deliberative meeting [if possible, the date and time of the session will be included in the motion to recess], and shall conduct a roll call vote on the motion.

### Deliberative Meeting.

The hearing committee deliberates on the hearing and writes a summary of the evidence and a report which includes the findings and recommendations of the committee.

#### *Findings.*

A finding that the facts are as stated in the grievance is not in itself enough to sustain the grievance. The committee must be convinced that the evidence shows that harm has accrued to the grievant.

#### Burden of Proof.

The burden of proof is on the grievant to show that harm has accrued to the grievant.

#### Validity of Grievance.

Decisions on the validity of the grievance shall be determined by a majority of the members of the hearing committee. The vote shall be a roll call vote, which shall be recorded.

#### *Recommendations.*

The committee's report and recommendations, which includes support for the recommendations, are sent to the parties as soon as feasible but not later than 10 days following the conclusion of the deliberative session(s). The committee recommends either that

- the grievance or part(s) of the grievance be upheld, and includes recommendations of appropriate action to remedy the situation; or
- the grievance be denied.

#### *Report.*

At an appropriate time in the deliberations, the chairperson recesses the meeting and prepares a summary of the evidence and a draft report. The draft is circulated among the members, after which the committee reconvenes to review the draft and make appropriate modifications. After the report has been adopted by the hearing committee, each member of the committee signs the report or files a dissent.

- The report shall be adopted by a majority of the members of the hearing committee. The vote shall be a roll call vote, which shall be recorded.
- The report shall be distributed not later than 10 days following the close of deliberations.
- The chairperson provides a verbatim record of the hearing, a summary of the evidence, and a copy of the report to both the grievant and the chancellor, and a copy each of the report to the individual against whom

the grievance was filed; the administrative heads of the grievant's operational area and unit, or department chairperson; the grievant's executive director and vice chancellor, or dean; and the provost.

Chancellor's Action.

The recommendations of the hearing committee become the decision of the chancellor within 30 days of the receipt of the committee's report by the chancellor unless the chancellor modifies the recommendations.

- If the chancellor contemplates a decision substantially different from the recommendations of the committee, the chancellor shall afford the committee an opportunity to discuss the report and the chancellor's proposed decision before written notification of decision to the grievant.
- The chancellor sends written notification of decision to the grievant and the chairperson of the hearing committee within 30 days of receipt of the report of the committee.

Possible Board Action.

The decision of the chancellor is final except that the Board may, at the written request of the grievant or the hearing committee, and at its option, grant a review on the record.

## SECTION 11

### OVERVIEW OF THE PROCESS AND PROCEDURES FOR HEARING OF CHARGES AND NOTICE OF DISMISSAL OF FACULTY UNDER UWSP 4.04

(See Chapters UWS & UWSP 4)

#### INTRODUCTORY COMMENTS.

##### Coverage.

These proceedings apply to all allegations, from whatever source, concerning conduct based directly and substantially on a faculty member's actions in carrying out professional responsibilities where such conduct has resulted in substantial or fundamental harm to the university, and which might provide cause for dismissal.

##### Rights.

The exercise of rights shall not constitute adequate cause for dismissal or other disciplinary action. These are rights guaranteed by

- the United States Constitution;
- the Constitution of the state of Wisconsin;
- Board action;
- System rules, policies, or procedures;
- the Constitution of the Faculty Senate;
- UWSP rules, policies, or procedures; or
- principles of academic freedom as they are generally understood in higher education.

##### Student and Peer Evaluations.

Regardless of their content, including specific allegations of inappropriate behavior, neither student nor peer evaluations are allegations of inappropriate conduct under Chapters UWS and UWSP 4 or these policies and procedures.

##### Applicable Documents.

A faculty member against whom allegations of misconduct which might lead to dismissal have been brought or an individual who is contemplating bringing allegations which might lead to dismissal of a faculty member is advised to become familiar with

- Chapters UWSP 1 - 6, the institutional faculty personnel rules;
- departmental personnel rules and procedures;
- appropriate sections of the Wisconsin Administrative Code, the UW System faculty personnel rules;
- Chapters 801.11 (1)(c), 227.45, and 227.46 of the Wisconsin statutes; and
- related documents in this handbook.

##### Counsel.

A faculty member who has been notified that an allegation of misconduct which might lead to dismissal has been received by the chancellor may wish to seek advice from senior faculty familiar with the policies and procedures, and is advised to retain legal counsel. The right to be represented at meetings or hearings by individuals of the

faculty member's choice is guaranteed under Chapters UWS and UWSP 4 and these procedures.

### Time Limits.

#### Termination of Hearing.

Failure to meet any time limits established by these procedures will likely end the proceedings. A faculty member against whom allegations of misconduct have been brought is urged to review these procedures and to act promptly.

#### Length of Process.

The time limits are intended to ensure action within a reasonable time period; nevertheless, the hearing process may be lengthy. The deliberative process in particular may take several months to conclude: the issue is significant; there is no limit on the number of deliberative sessions which may be held; and there is no limit on the length of recesses which may occur between sessions.

### Presence at Meetings.

#### No Exclusions.

Under the provisions of 19.89 of the Open Meetings Law, no member of a governmental body may be excluded from any meeting of that body. In addition, no member may be excluded from meetings of any of the body's subunits unless the rules of the parent body specifically state otherwise.

#### Personnel Matters.

No faculty member under consideration for any personnel matter (including consideration of filing of a complaint or taking action on a complaint) may be excluded from a department meeting at which the matter is to be considered, even if the meeting is moved into closed session. No faculty member may be excluded from any departmental committee meeting at which the matter is to be considered unless departmental rules specifically state to the contrary.

#### Right to Open Meeting.

##### *19.85 Wis. Stats.*

Under the provisions of the Open Meetings Law, a faculty member has the right to request and receive an open evidentiary hearing for any meeting of a unit or subunit involving consideration of disciplinary action against that individual.

**NOTE.** A meeting with an administrator for the purpose of discussion or investigation of allegations of charges which might lead to dismissal, even where the end result of the discussion or investigation may be a recommendation for disciplinary action or hearing, is not subject to the provisions of the Open Meetings Law: an individual administrator is not a "formally constituted subunit."

Under the Open Meetings Law, even when departmental policies provide that subunit or committee meetings be restricted to members of the subunit or committee, a faculty member under consideration has the right to request and receive an open meeting for the portion of the meeting that constitutes an evidentiary hearing involving consideration of disciplinary action against that individual.

#### *Departmental Policies.*

Normally, departmental policies will require a written request for an open meeting reasonably in advance of the meeting.

### Settlement.

Nothing in these procedures or in Chapters UWS or UWSP 4 shall be construed to prevent the settlement of allegations against a faculty member at any time in the proceedings prior to a final decision by the Board.

- Any such settlement consists of an appropriate response, which may include disciplinary action, mutually agreed upon by the faculty member and the chancellor.
- Every settlement shall be reduced to writing and signed by the faculty member and the chancellor; no further action shall be taken on the matter.
- One copy of the signed document shall be retained by the chancellor and one given to the faculty member.

## PROCEDURES UPON RECEIPT OF A COMPLAINT.

### Action on Complaints.

Unless otherwise provided in these procedures, the chancellor shall act on all complaints or allegations which might lead to dismissal, except that the chancellor may assign a designee to conduct investigations of allegations or complaints which might lead to dismissal.

### Charges.

#### Basis for Charges.

Dismissal of a faculty member may be sought only for cause based directly and substantially on a faculty member's conduct in carrying out professional responsibilities where such conduct has resulted in substantial or fundamental harm to the university.

#### Complaints to Chancellor.

Whenever any official receives a complaint which might lead to dismissal, the complainant shall immediately be referred to the chancellor for action.

#### Filing of Charges.

Charges seeking dismissal of a faculty member shall be filed by the chancellor.

### Notification of Complaint Required.

Whenever the chancellor receives or initiates a complaint which might lead to dismissal of a faculty member, the chancellor may consult with appropriate administrative personnel or System legal counsel and shall

- promptly send written notification of the allegations to the faculty member;
- afford the faculty member the opportunity to meet promptly to discuss the complaint informally; and
- proceed immediately to an investigation of the charges if the faculty member declines to meet.
  - ♦ Notification normally shall be within 7 working days of the receipt of the complaint;
  - ♦ The chancellor's offer of the opportunity for an informal discussion may be in the notification of the allegations or by telephone.
  - ♦ Normally, no meeting with a faculty member on such allegations shall occur before the faculty member has received written notification of the allegations reasonably in advance of the meeting.

- ◆ Normally, the chancellor or a designee shall not proceed with any investigation of allegations before the faculty member has received written notification of the allegations.
- ◆ Accompanying the notification of allegations shall be a copy of these procedures and information as to where to locate other rights under UWS/UWSP 4.

**NOTE.** A faculty member against whom a complaint is made and who is invited to meet informally on the complaint to respond to the complaint is advised to consult legal counsel.

- Informal discussion with the chancellor may be advisable but a faculty member is not obligated to meet with the chancellor.
- If the faculty member decides to meet informally with the chancellor, the faculty member is advised to bring a representative, which may be legal counsel, to the informal discussion.

#### *Informal Discussion Outcomes.*

One of these alternatives will result from the informal discussion--

- the chancellor will determine that the complaint is unjustified: no charges will be filed nor will other action adverse to the faculty member be taken;
  - If the chancellor determines the complaint is unjustified, a written statement to that effect shall be sent to the faculty member and a copy placed in the faculty member's personnel file.
- the chancellor will determine that the complaint may be justified and either
  - ◆ the chancellor and the faculty member will agree to a mutually satisfactory resolution, which will end the matter; or
  - ◆ the chancellor will proceed to an investigation of the charges; or
  - ◆ the chancellor will proceed to formal filing of charges, which must be accompanied by a statement of the appeal procedures available to the faculty member.

#### Request for Hearing.

A faculty member who has received a formal statement of charges seeking dismissal has 20 days from the receipt of the charges to request a hearing conducted under the auspices of the Faculty Mediation Subcommittee.

#### Hearing Outcomes.

Following a hearing on charges for dismissal, the hearing committee issues its report of findings and recommendations. The committee may find that the charges are without foundation or not proven, that the charges are valid but a sanction less than dismissal is warranted, or that the charges are valid and dismissal is an appropriate response on the part of the university.

#### Termination of Proceedings.

##### Probationary Faculty.

If the hearing process for a probationary faculty member is not concluded before the term of appointment expires, the proceedings will automatically end at the expiration of the appointment unless the faculty member sends a written request to the chairperson of the Faculty Mediation Subcommittee that the proceedings continue to their conclusion.

### Tenured Faculty.

If the hearing process for a tenured faculty member is not concluded before the faculty member's retirement or resignation, the proceedings will automatically end at the faculty member's retirement or resignation unless the faculty member sends a written request to the chairperson of the Faculty Mediation Subcommittee that the proceedings continue to their conclusion.

### Discontinuance.

If the university discontinues proceedings for dismissal against a faculty member who has requested a hearing, the charges are deemed to be withdrawn and without merit.

### Settlement.

The proceedings may be discontinued by a settlement reached by mutual agreement between the administration and the faculty member. Any settlement must be reached prior to a final decision by the Board.

### Continuation of Duties and Salary.

#### Suspension.

Unless the chancellor, in consultation with the executive committee of the Faculty Senate, specifically finds that substantial harm may result to the institution if a faculty member whose dismissal is sought continues with normal duties, the faculty member shall not be relieved of those duties pending the final decision of the Board.

#### Salary.

If a faculty member is suspended before the final decision on dismissal by the Board, the faculty member's salary shall nonetheless be continued until the decision is reached.

## FILING A REQUEST FOR HEARING.

### Written Request.

Upon receipt of a formal statement of specific charges for dismissal, the faculty member has 20 days in which to request a hearing by the Faculty Mediation Subcommittee.

- Failure to meet the 20 day deadline will likely end the opportunity for a hearing.
- The request shall be in writing and addressed to the chairperson of the subcommittee.
- The request should provide a historical resume of all actions taken to this point.

### No Request Filed.

If a faculty member whose dismissal is sought does not file a request for a hearing with the Faculty Mediation Subcommittee, the Board will take appropriate action upon receipt of the statement of charges and the recommendation of the chancellor.

### Required Action.

#### Notification.

If the chairperson determines that the individual requesting a hearing holds a faculty appointment, the chairperson shall

- provide written notification of the request for hearing to the chancellor so System legal counsel may be advised a case is pending;
- begin a file of all correspondence concerning the hearing, which will be passed on to the chairperson of the hearing committee;



- provide written notification that the hearing procedure is in progress to the faculty member, the faculty member's department chairperson and dean, the vice chancellor, the chairperson of the Faculty Senate, and the chancellor; and
- provide copies of all correspondence to the
  - ♦ faculty member;
  - ♦ hearing committee members; and
  - ♦ chancellor.

#### Appointment of Hearing Committee.

The chairperson will also appoint a hearing committee composed of a minimum of 5 persons, at least 3 of whom must be members of the Faculty Mediation Subcommittee. There will be broad representation from the university but not necessarily a member from each college.

- Normally, at least 3 of the appointed members shall have had either
  - ♦ previous experience as a member of a hearing committee under either UWSP 3.08, 3.08m, 4.04, 5.12, 6.01, 6.02, 10.04, 11.04, or other similar hearing, or
  - ♦ orientation and training for a hearing procedure.
- One member, who normally shall have had previous experience as a member of a hearing committee under either UWSP 3.08, 3.08m, 4.04, 5.12, 6.01, 6.02, 10.04, 11.04, or other similar hearing, shall be designated as the chairperson of the committee.
- No individual who participated in the investigation leading to the filing of charges, or in the filing of charges, or who is a material witness, or who is a member of the same department as the faculty member requesting the hearing may serve on the hearing committee.
- The chairperson of the Faculty Mediation Subcommittee, if otherwise qualified, may serve as either a member or as chairperson of the hearing committee.
- Reasonable effort will be made to ensure that the members of the hearing committee are acceptable to both parties in the hearing process.
  - ♦ Normally, this will be accomplished by informal contact with the proposed members and the parties to the hearing before the formal appointment.
  - ♦ The decision of whom to appoint is solely that of the chairperson of the subcommittee.
- After the committee is appointed, the faculty member has the unrestricted right to challenge and remove 1 member from the hearing committee.
- The decision on other challenges to committee members shall be made by the committee, excluding the member under challenge.
  - ♦ If members are disqualified or disqualify themselves, the remaining members consult with the chairperson of the Faculty Affairs Committee and the chairperson of the Faculty Mediation Subcommittee and appoint other members to serve.

#### Hearing Date.

The hearing committee shall meet to hear the matter within 20 days of receipt of the request for a hearing, except that this time limit may be extended by mutual consent of the parties or by order of the hearing committee.

*Notice.* The faculty member requesting a hearing shall receive written notice of the specific charges and of the hearing at least 10 days prior to the hearing.

#### Hearing Committee Chairperson's Responsibilities.

Once the hearing committee is appointed, the chairperson of the hearing committee assumes responsibility for the hearing process. The chairperson shall

- conduct the hearing under the provisions of UWS/UWSP 4.04 through 4.07, the provisions of Chapter 227.45, 227.46, and 801.11 (1)(c) of the Wisconsin statutes, these policies and procedures, and the guidelines for hearings under 4.04 (which may be found in the following subsection or requested from the chairperson of the Faculty Mediation Subcommittee);
- establish appropriate communication with the chancellor, vice chancellor, faculty member, appropriate dean, and department chairperson, and keep each informed of the proceedings in the hearing;
- keep records of all correspondence among all the principals from the initiation of the hearing through its conclusion;
- appoint a secretary for the hearing committee (normally an associate vice chancellor), and provide for a verbatim transcript of the hearing (usually a sound recording);
- secure appropriate facilities, schedule evidentiary hearings, and provide notices to conform with the Open Meetings Law;
- secure appropriate facilities and schedule and conduct deliberative sessions in which the committee formulates its findings and recommendations;
- prepare a summary of the evidence and the written report of the committee's findings and recommendations and transmit these materials to the faculty member and to the chancellor (for transmittal to the Board pursuant to the provisions of UWSP 4.07), and send copies of the report to the faculty member's department chairperson and dean, and to the vice chancellor;
- send a copy of the hearing procedures with each written notification of the hearing, and
- send written notification of the hearing to the faculty member, the chancellor, the vice chancellor, the appropriate dean, the department chairperson, the individual(s) who brought the complaint leading to the formal charges, and witnesses asked to appear on behalf of the parties or called by the hearing committee.

Written notification of the hearing shall include statements

- ♦ of the date, time, and place of the hearing;
- ♦ that all parties may be represented by an individual(s) of their choice, which may include legal counsel;

**NOTE.** If counsel has been requested by the committee from the chancellor, notice shall include a statement that the committee will have legal counsel present at the hearing.

- ♦ that normally, by a vote of the committee, the evidentiary hearing and the deliberative sessions will be closed but the faculty member requesting the hearing, upon timely written request to the chairperson, has the right to request an open evidentiary hearing and any such request shall be honored;

- ♦ of whether the faculty member has requested an open evidentiary hearing;
- ♦ that both parties have a right to copies of all documentary evidence relevant to the hearing;
- ♦ that all parties, including witnesses, are expected to provide to the hearing committee chairperson sufficient copies of their testimony for all other parties, and that these materials should be provided in sufficient time prior to the hearing for distribution to all parties, but that failure to provide such copies will not preclude an individual from giving testimony;
- ♦ that either party may call persons to offer evidence or testimony;
- ♦ that both parties will be sent a list of the names of any persons to be called by either party, or by the hearing committee;
- ♦ that either party may offer testimony from any source;
- ♦ that the hearing committee is not bound by statutory rules of evidence but may hear testimony having reasonable probative value;
- ♦ that both parties have the right, under guidelines established by the chairperson, to question persons offering testimony;
- ♦ that adjournments will be granted to enable either party to investigate evidence as to which a valid claim of surprise is made;
- ♦ that the burden of proof of the existence of just cause for dismissal is on the administration or its representative;
- ♦ that the faculty member has the right to a verbatim record of the hearing, which may be a sound recording, at no cost;
- ♦ that if the faculty member is not tenured and proceedings are not concluded before the expiration of the faculty member's appointment, the proceedings will terminate at the normal expiration of the appointment unless the faculty member sends a written request to the chair-person of the Faculty Mediation Subcommittee that the proceedings be carried to their conclusion;
- ♦ that discontinuance of the proceedings by the university is deemed a withdrawal of the charges and a finding that the charges were without merit;
- ♦ that nothing shall prevent the settlement of the case by mutual agreement of the parties, provided that such settlement is reached prior to a final decision by the Board;
- ♦ that any personal notes made during the procedures and retained by a participant are subject to subpoena if the matter is not resolved at the institutional or System level and becomes a legal matter;
- ♦ that a quorum for the evidentiary hearing consists of 4 members of the hearing committee;
- ♦ that a quorum for the deliberative sessions consists of 4 members of the hearing committee, except that in an emergency, the chairperson may declare a quorum when only 3 members are present;
- ♦ that the hearing committee will give a written statement of its findings and recommendations to the chancellor, the vice chancellor, the appropriate dean, the department chairperson, and the faculty member; and

- ♦ that the faculty member's and the chancellor's copies will be accompanied by both a verbatim record of the hearing and a summary of the evidence, unless the faculty member is represented by counsel, in which case the verbatim record and summary will be sent to counsel.

## GUIDELINES FOR HEARINGS.

### Quorum, Notice, and Confidentiality.

#### Quorum.

While all 5 members will be present whenever possible, a quorum for the hearing and for meetings of the hearing committee consists of 4 members of the committee.

In an emergency, the chairperson of the hearing committee has the discretion to declare a quorum for deliberative sessions when only 3 members of the hearing committee are present.

#### Notice.

Notices of meetings shall be sent to the University Newsletter for publication (without identifying the faculty member) and shall indicate whether the meetings will be open or closed.

#### Confidentiality.

##### *Committee.*

All matters related to the faculty member and the hearing are maintained in the strictest confidentiality by hearing committee members, except as may be necessary to meet provisions of the Open Meetings Law or other similar statutory, administrative rule, or faculty governance requirements.

##### *Documents.*

Following the conclusion of all deliberations and the submittal of the hearing committee's report, the chairperson shall collect all drafts and other documents related to the hearing from the members of the committee, from any appointed secretary, and from all other parties except the faculty member and faculty member's representative(s). All minutes and materials provided by the parties and not forwarded to the chancellor as a part of the report shall be sealed and filed in the office of the chancellor for a period of 5 years, after which they shall be destroyed as permitted under the Public Records Law.

**NOTE.** Participants are reminded that any personal notes made during the procedures and retained after the hearing are subject to subpoena if the appeal is not resolved at the institutional or System level and becomes a legal matter.

### Evidentiary and Deliberative Sessions.

The hearing process consists of two parts, an evidentiary hearing and a deliberative meeting.

#### Evidentiary Hearing.

The purpose of the evidentiary hearing is to determine the facts of the situation.

Both parties may provide evidence at the evidentiary hearing and both parties have the right to be represented by another individual(s), which may be legal counsel.

The hearing committee is not bound by legal rules of evidence. The burden of proof

on the existence of just cause for dismissal is on the administration. The hearing committee shall make a verbatim record of the hearing.

#### Deliberative Meeting.

The purpose of the deliberative meeting is for the hearing committee to reach its conclusions, after which the chairperson of the hearing committee will prepare a summary of the evidence and write a draft report of the findings and recommendations of the hearing committee. Each member of the hearing committee must sign the final report or file a dissent. The report shall be distributed within 10 days of the close of deliberations.

#### Closed and Open Sessions.

##### General Guideline.

Evidentiary hearings and deliberative meetings will normally be closed, as permitted by the Open Meetings Law, unless the chairperson of the hearing committee receives from the faculty member a written request for an open evidentiary hearing, in which case all evidentiary sessions will be open. Closed meetings require a majority vote of the hearing committee, by a roll call vote.

##### Evidentiary Hearings: Who May Attend/Speak.

###### *Closed Hearings.*

If the evidentiary hearing is closed, only parties directly involved in the hearing may attend. Those permitted to attend, who may speak when recognized by the chairperson for that purpose, are

- members of the hearing committee;
- the faculty member;
- the chancellor or a designee;
- the individual(s) making the complaint upon which charges were based;
- representatives for the parties;
- witnesses for the parties;
- individuals specifically called or designated by the hearing committee, which may include legal counsel; and
- an appointed secretary, who need not be a member of the committee.

###### *Open Hearings.*

If the evidentiary hearing is open, anyone may attend but only those parties directly concerned with the grievance (delineated above) and recognized for the purpose of speaking by the chairperson of the hearing committee are permitted to speak.

##### Deliberative Meetings: Who May Attend/Speak.

Only members of the hearing committee, an appointed secretary (who need not be a member of the committee), and the committee's legal counsel (if any) are permitted to attend, and may speak when recognized by the chairperson for that purpose. Only members of the hearing committee participate in determining findings of fact and decision.

#### Procedure for Evidentiary Hearing and Deliberative Meeting.

##### Introduction.

A copy of these procedures may be requested from the chairperson of the Faculty Mediation Subcommittee or the associate vice chancellor for personnel.

### Presiding Officer.

The chairperson of the hearing committee convenes the hearing and serves as presiding officer. The chairperson assumes all the normal responsibilities of a committee chairperson and rules on such questions as may arise on the procedure of the hearing, admissibility of evidence, and all other matters related to the hearing.

If the committee has legal counsel, the chairperson may request the advice of counsel on all matters pertaining to the hearing.

### Evidentiary Hearing.

The evidentiary hearing normally proceeds in the order described here, but the chairperson may change the order as circumstances may require.

- Call to order; introduction of members of the committee and of the secretary.
- Explanation of the Open Meetings Law and either
  - ♦ explanation of limitations of open meetings, if an open meeting has been requested, or
  - ♦ a request for a motion to close the hearing under the appropriate section(s) of 19.85 Wis. Stats. [19.85 (a), (b), (c), or (f)], and a roll call vote on the motion.
- Introduction of the faculty member, and the faculty member's representative(s), if any.
- Introduction of the chancellor or the chancellor's designee, and the chancellor's or the designee's representative(s), if any.
- Reading of the charges for the record by a member of the administration or its representative.
- Presentation of the administration's case, including testimony from the individual(s) making the complaint upon which the charges are based, but not the testimony of other witnesses.
- Questions of the administration or the individual making the complaint by the faculty member or the faculty member's representative.
- Presentation of witnesses on behalf of the administration.
- Questions of the administration's witnesses by the faculty member or the faculty member's representative.
- Rebuttal questions of any of these parties by the administration or its representative.
- Presentation of testimony by the faculty member or the faculty member's representative but not the testimony of witnesses.
- Questions of the faculty member by the administration or its representative.
- Presentation of witnesses on behalf of the faculty member.
- Questions of faculty member's witnesses by the administration or its representative.
- Rebuttal questions of any of these parties by the faculty member or the faculty member's representative.
- Questions of the faculty member's and the administration's witnesses by members of the hearing committee.
- Presentation by any witnesses who may have been called by the hearing committee and questions of these witnesses by members of the hearing committee.
- Questions of committee witnesses by the administration or its representative.

- Questions of committee witnesses by the faculty member or the faculty member's representative.
- Additional questions, if any, of witnesses by members of the hearing committee.
- Rebuttal or closing comments by the administration or its representative.
- Rebuttal or closing comments by the faculty member or the faculty member's representative.
- Questions of the faculty member by members of the hearing committee.
- Questions of the administration by members of the hearing committee.
- Additional questions, if any, of the faculty member or the administration by members of the hearing committee.
- Conclusion of the evidentiary hearing.

If the deliberative meeting does not follow immediately after the evidentiary hearing, the chairperson will request a motion to recess the hearing and to reconvene at the deliberative meeting [if possible, the date and time of the session will be included in the motion to recess], and will conduct a roll call vote on the motion.

#### Deliberative Meeting.

The hearing committee deliberates on the hearing and writes a summary of the evidence and a report which includes the findings and recommendations of the committee.

#### *Findings.*

A finding that the facts are as described by the administration is not in itself enough to recommend dismissal or a lesser sanction.

#### Cause for Dismissal.

To warrant a finding for dismissal, the committee must be convinced by the evidence that substantial or fundamental harm to the institution has resulted directly and substantially from the faculty member's actions in carrying out professional responsibilities, and that dismissal is the most appropriate response by the university.

#### Burden of Proof.

The burden of proof is on the administration to show that cause exists for dismissal or a lesser sanction.

#### Validity of Charges.

Decisions on the validity of the charges shall be determined by a majority of the members of the hearing committee. The vote(s) shall be a roll call vote, which shall be recorded.

#### *Recommendations.*

The committee's report and recommendations, which includes support for the recommendations, are sent to the chancellor as soon as feasible following the conclusion of the deliberative session(s).

- If the committee finds that the administration has not met the burden of proof or that cause for discipline does not exist, it shall recommend that the charges be found without merit and withdrawn.

- If the committee finds that the administration has met the burden of proof and that dismissal is the most appropriate response, it shall recommend dismissal.
- If the committee finds that the administration has met the burden of proof for cause for discipline but for a sanction less than dismissal, it shall recommend an appropriate sanction other than dismissal.
  - ♦ To warrant a finding for a severe sanction but less than dismissal, the committee must be convinced by the evidence that significant or grievous harm to the institution has resulted directly and substantially from the faculty member's actions in carrying out professional responsibilities, and that a severe sanction but less than dismissal is the most appropriate response by the university.
  - ♦ Severe sanctions less than dismissal include but are not limited to
    - suspension without pay for a specified period;
    - a freeze in salary for a specified period;
    - a reduction in salary;
    - a reduction in rank;
    - reassignment;
    - counseling or other similar rehabilitation; and
    - appropriate compensation and/or service.

#### *Report.*

At an appropriate time in the deliberations, the chairperson recesses the meeting and prepares a summary of the evidence and a draft report. The draft is circulated among the members, after which the committee reconvenes to review the draft and make appropriate modifications. After the report has been adopted by the hearing committee, each member of the committee signs the report or files a dissent.

- The report shall be adopted by a majority of the members of the hearing committee. The vote shall be a roll call vote, which shall be recorded.
- The report shall be distributed not later than 10 days following the close of deliberations.
- The chairperson provides a verbatim record of the hearing, a summary of the evidence, and a copy of the report to both the faculty member and the chancellor, and a copy each of the report to the vice chancellor, the appropriate dean, and the faculty member's department chairperson.

#### Chancellor's Action.

The chancellor shall afford the faculty member an opportunity to discuss the report within 20 days after receiving it from the committee. Within 20 days of the meeting with the faculty member (or 30 days from the receipt of the report if the faculty member declines to meet), the chancellor prepares written recommendations for the Board unless the chancellor's proposed recommendations differ substantially from those of the committee or the chancellor decides on a sanction less severe than dismissal.

#### Substantial Differences.

If the chancellor's proposed recommendations differ substantially from those of the hearing committee, the chancellor promptly consults the committee and provides it a reasonable opportunity for a written response prior to forwarding the recommendations to the Board.



Dismissal Recommended.

If the recommendation is for dismissal, the chancellor submits it through the president of the System to the Board, along with a copy of the subcommittee's report and recommendations. A copy of the chancellor's recommendation is also sent to the faculty member.

Lesser Sanction.

If the chancellor determines that disciplinary action less severe than dismissal is appropriate, the chancellor may take such action after having met with the faculty member to discuss the record. However, upon written request of the faculty member, the chancellor shall submit the proposed course of action as a recommendation to the Board through the president. Any such recommendation shall also be accompanied by a copy of the hearing committee's report and recommendations.

Possible Board Action.

Refer to UWSP 4.08 for options available to the Board.

No Double Jeopardy.

After notification to the faculty member of the final decision by the chancellor or the board, the faculty member may not again be placed in jeopardy for the same incident(s) of alleged behavior.

## SECTION 12

### OVERVIEW OF THE PROCESS AND PROCEDURES FOR REVIEW HEARING OF LAYOFF/TERMINATION OF FACULTY FOR FINANCIAL EMERGENCY UNDER UWSP 5.12

(See Chapters UWS & UWSP 5)

#### INTRODUCTORY COMMENTS.

##### *Applicable Documents.*

A faculty member who has received notification of layoff or who is contemplating a request for hearing on layoff or termination is advised to become familiar with

- Chapters UWSP 1 - 6, the institutional faculty personnel rules;
- departmental personnel rules and procedures;
- appropriate sections of the Wisconsin Administrative Code, the UW System faculty personnel rules;
- Chapters 227.45 and 227.46 of the Wisconsin statutes; and
- related documents in this handbook.

##### *Counsel.*

A faculty member who has received notification of layoff or who is contemplating a hearing on layoff or termination may wish to seek advice from senior faculty familiar with the policies and procedures, and is advised to retain legal counsel. The right to be represented at hearings by individuals of the faculty member's choice is guaranteed under Chapters UWS and UWSP 5.

##### *Time Limits.*

###### Termination of Appeal.

Failure to meet any time limits established by these procedures will likely end the proceedings. A faculty member considering an appeal of notification of layoff or termination is urged to review these procedures and to act promptly.

###### Length of Process.

The time limits are intended to ensure action within a reason-able time period; nevertheless, the appeal process may be lengthy. The deliberative process in particular may take several months to conclude: the issues are significant; there is no limit on the number of deliberative sessions which may be held; and there is no limit on the length of the recesses which may occur between sessions.

##### *Presence at Meetings.*

###### No Exclusions.

Under the provisions of 19.89 of the Open Meetings Law, no member of a governmental body may be excluded from any meeting of the body. In addition, no member may be excluded from meetings of the body's subunits unless the rules of the body specifically state otherwise.

###### Personnel Matters.

No faculty member under consideration for any personnel matter may be excluded from a department or unit meeting at which the matter is to be considered, even if the meeting is moved into closed session. No faculty member may be excluded

from any departmental or unit committee meeting at which the matter is to be considered unless departmental or unit rules specifically state to the contrary.

### Right to Open Meeting.

#### *19.85 Wis. Stats.*

Under the provisions of the Open Meetings Law, a faculty member has the right to request and receive an open evidentiary hearing for any meeting of a unit or subunit involving consideration of dismissal for that individual.

**NOTE.** (1) Although layoff for financial emergency is not considered dismissal under Board rules, it is likely that layoff is dismissal for purposes of the Open Meetings Law.

(2) A meeting with an administrator for the purpose of discussion of possible layoff, even where the end result of the discussion may be a recommendation to lay off, is not subject to the provisions of the Open Meetings Law: an individual administrator is not a "formally constituted subunit."

Under the Open Meetings Law, even when departmental or unit policies provide that subunit or committee meetings be restricted to members of the subunit or committee, any faculty member under consideration has the right to request and receive an open meeting for the portion of the meeting that constitutes an evidentiary hearing involving consideration of dismissal of that individual.

#### *Departmental Policies.*

Normally, unit/departmental policies will require a written request for an open meeting reasonably in advance of the meeting.

### Declaration of Financial Emergency.

#### Board.

Before any member of the faculty may receive notification of layoff from the chancellor, the Board, under the provisions of UWSP 5.02, shall have declared a state of financial emergency to exist for UWSP.

#### Chancellor.

Before a declaration of financial emergency by the Board, the chancellor shall have consulted with the Faculty Advisory Committee as specified in UWSP 5.04 and 5.05; shall have met the requirements of 5.04 and 5.05; and shall have made appropriate recommendations to the president and the Board pursuant to UWSP 5.06.

#### Department.

After a Board declaration of financial emergency and before notification to any faculty, the tenured members of the affected department(s) shall make recommendations for layoff under the provisions of UWSP 5.07 and 5.08.

### Notification.

A faculty member whose position has been recommended for elimination shall already have received prompt written notification from the chancellor. Written notification of layoff or termination shall include

- a summary of the reasons and evidence supporting the declaration of financial emergency;
- reasons and data leading to the selection of the colleges, schools, departments, or programs selected for reductions;

- the basis on which the individual position was identified, and the criteria, data, and reasons supporting the choice;
- the effective date of the layoff; and
- a copy of Chapter UWSP 5 and these policies and procedures.

Effective date of layoff.

Notification of layoff shall be given not less than 12 months prior to the effective date. The effective date shall coincide with the end of the academic year for an academic year appointment and shall be June 30 for an annual appointment.

Termination.

During the notification period and prior to layoff, the chancellor may offer and the faculty member may accept either

- terminal leave and retirement, or
- relocation leave accompanied by resignation.

Acceptance of either ends the faculty member's association with the UW System at the end of the leave period.

Entitlement to review.

A faculty member who has received notification of layoff is entitled to a review before a hearing committee of the Faculty Mediation Subcommittee on whether the layoff decision is appropriate.

- A faculty member who requests a review may not question the existence of a state of financial emergency or the designation of the area(s) in which faculty positions are to be eliminated.
- If a faculty member does not request a hearing, the chancellor's recommendation is considered proper and forwarded to the president of the System and the Board.

FILING REVIEW REQUEST.

Written Request.

Upon receipt of notification of designation for layoff, the faculty member has 20 days in which to request a review hearing by the Faculty Mediation Subcommittee.

- Failure to meet the 20 day deadline will likely end the opportunity for a hearing.
- The request shall be in writing and addressed to the chairperson of the subcommittee.
- As the burden of proof is on the faculty member to establish a *prima facie* case that the decision was improper, the request shall state specifically the grounds upon which the faculty member is seeking to establish the impropriety of the layoff decision.
- The request for review may also include a request for relevant information supplementary to that contained in the letter of notification.

No Request Filed.

If a faculty member notified of layoff does not file a request for hearing with the Faculty Mediation Subcommittee, the Board will take appropriate action under UWSP 5.14 upon receipt of the recommendation of the chancellor.

Required Action.

Notification.

If the chairperson determines that the individual requesting the hearing holds a faculty appointment, the chairperson will

- contact the faculty member to determine that the written request contains all pertinent facts, and to remind the faculty member of the right of access to all evidence upon which the administration intends to rely to support the decision to lay off;
- provide written notification of the request for hearing to the chancellor so System legal counsel may be advised a case is pending;
- begin a file of all correspondence concerning the hearing, which will be passed on to the chairperson of the hearing committee;
- provide written notification to the faculty member, the faculty member's department chairperson, the dean, the vice chancellor, the chancellor, and the chairperson of the Faculty Senate that an review hearing is in progress; and
- provide copies of all correspondence to the
  - ♦ faculty member;
  - ♦ hearing committee members; and
  - ♦ chancellor.

#### Appointment of Hearing Committee.

The chairperson will also appoint a hearing committee composed of a minimum of 5 persons, at least 3 of whom must be members of the Faculty Mediation Subcommittee. There will be broad representation from the university but not necessarily a member from each college.

- Normally, at least 3 of the appointed members shall have had either
  - ♦ previous experience as a member of a hearing committee under either UWSP 3.08, 3.08m, 4.04, 5.12, 6.01, 6.02, 10.04, 11.04, or other similar hearing, or
  - ♦ orientation and training for a hearing procedure.
- One member, who normally shall have had previous experience as a member of a hearing committee under either UWSP 3.08, 3.08m, 4.04, 5.12, 6.01, 6.02, 10.04, 11.04, or other similar hearing, shall be designated as the chairperson of the committee.
- The following faculty members may not serve on the hearing committee:
  - ♦ anyone who is a member of the University Planning Committee or any of its subcommittees which participated in the consultation regarding declaration of financial emergency;
  - ♦ anyone who is a member of the faculty member's department;
  - ♦ anyone who assisted or consulted with the department regarding individual designations for layoff; and
  - ♦ anyone who is a material witness.
- If qualified, the chairperson of the Faculty Mediation Subcommittee may serve as either a member or as chairperson of the hearing committee.
- Reasonable effort will be made to ensure that the members of the hearing committee are acceptable to both parties in the hearing process.
  - ♦ Normally, this will be accomplished by informal contact with the proposed members and the parties to the hearing before the formal appointment.

- ♦ The decision of whom to appoint is solely that of the chairperson of the subcommittee.
- After the committee is appointed, the faculty member has the unrestricted right to challenge and remove 1 member from the hearing committee.
- The decision on other challenges to committee members shall be made by the committee, excluding the member under challenge.
  - ♦ If members are disqualified or disqualify themselves, the remaining members consult with the chairperson of the Faculty Affairs Committee and the chairperson of the Faculty Mediation Subcommittee and appoint other members to serve.

#### Hearing Date.

The hearing committee shall meet to hear the matter within 20 days of receipt of the request for a hearing, except that this time limit may be extended by mutual consent of the parties or by order of the hearing committee. The faculty member requesting a hearing must receive written notice of the hearing at least 10 days prior to the hearing.

#### Hearing Committee Chairperson's Responsibilities.

Once the hearing committee is appointed, the chairperson of the hearing committee assumes responsibility for the hearing process. The chairperson shall

- conduct the hearing under the provisions of UWS/UWSP 5.11 through 5.14, the provisions of Chapter 227.45 and 227.46, these policies and procedures, and the guidelines for hearings (which may be found in the following subsection or requested from the chairperson of the Faculty Mediation Subcommittee);
- establish appropriate communication with the chancellor, vice chancellor, the faculty member, the appropriate dean and department chairperson, and the chairperson of the Faculty Senate, and keep each informed of the proceedings in the hearing;
- keep records of all correspondence among all the principals from the initiation of the hearing through its conclusion;
- appoint a secretary for the hearing committee (normally an associate vice chancellor), and provide for a verbatim transcript of the hearing (usually a sound recording);
- secure appropriate facilities, schedule evidentiary hearings, and provide notices to conform with the Open Meetings Law;
- secure appropriate facilities and schedule and conduct deliberative sessions in which the committee formulates its findings and recommendations;
- prepare a summary of the evidence and the written report of the committee's findings and recommendations and transmit these materials and a verbatim record of the hearing to the faculty member and to the chancellor (for transmittal to the Board pursuant to the provisions of UWSP 5.14), and send copies of the summary and the report to the faculty member's department chairperson and dean, to the chairperson of the Faculty Senate, and to the vice chancellor;
- send a copy of the hearing procedures with each written notification of the hearing, and

- send written notification of the hearing to the faculty member, the chancellor, the vice chancellor, the appropriate dean, the department chairperson, and witnesses asked to appear on behalf of the parties or called by the hearing committee.

Written notification of the hearing shall include statements

- ♦ of the date, time, and place of the hearing;
- ♦ that all parties may be represented by an individual(s) of their choice, which may include legal counsel;

**NOTE.** If counsel has been requested by the committee from the chancellor, notice will include a statement that the committee will have legal counsel present at the hearing.

- ♦ that normally, by a vote of the committee, the evidentiary hearing and the deliberative sessions will be closed but the faculty member, upon timely written request to the chairperson, has the right to request an open evidentiary hearing and any such request must be honored;
- ♦ of whether the faculty member has requested an open evidentiary hearing;
- ♦ that both parties have a right to copies of all documentary evidence relevant to the hearing;
- ♦ that the faculty member must establish a *prima facie* case that improper factor(s) enumerated in UWSP 5.12 (2)(a), (b), or (c) significantly entered into the decision to lay off or the committee, in deliberative session, must find the decision to have been proper, and adjourn the hearing;

**NOTE.** Hearings under 5.12 may require 2 evidentiary sessions and 2 deliberative sessions. These are explained later, under "Procedure for Evidentiary Hearing and Deliberative Meeting."

- ♦ that if a *prima facie* case is established, the hearing shall be reconvened and the chancellor or a designee afforded an opportunity to present evidence to support the decision, after which the faculty member may present evidence in rebuttal;
- ♦ that after hearing all the evidence, the committee must make its determination as follows--
  - The committee first determines whether 1 or more improper factors entered into the decision to lay off. Unless the committee is convinced that an improper factor entered significantly into the decision, it must find the decision to have been proper.
  - If the committee finds 1 or more improper factors may have entered into the decision but is nonetheless convinced that the same decision would have been reached had the error(s) not occurred, it must find the decision to have been proper.
  - If the committee is convinced that 1 or more improper factors entered significantly into and affected the decision, it must find the decision to have been improper.

- ♦ that all parties, including witnesses, are expected to provide to the hearing committee chairperson sufficient copies of their testimony for all other parties, and that these materials should be provided in sufficient time prior to the hearing for distribution to all parties, but that failure to provide such copies will not preclude an individual from giving testimony;
- ♦ that either party may call persons to offer evidence or testimony;
- ♦ that both parties will be sent a list of the names of any persons to be called by either party, or by the hearing committee;
- ♦ that either party may offer testimony from any source;
- ♦ that the hearing committee is not bound by statutory rules of evidence but may hear testimony having reasonable probative value;
- ♦ that both parties have the right, under guidelines established by the chairperson, to question persons offering testimony;
- ♦ that adjournments shall be granted to enable either party to investigate evidence as to which a valid claim of surprise is made;
- ♦ that any personal notes made during the procedures and retained by a participant are subject to subpoena if the appeal is not resolved at the institutional or System level and becomes a legal matter;
- ♦ that a quorum for the evidentiary hearing consists of 4 members of the hearing committee;
- ♦ that a quorum for the deliberative sessions consists of 4 members of the hearing committee, except that in an emergency, the chairperson may declare a quorum when only 3 members are present;
- ♦ that the hearing committee shall give a report of its findings and decision to the chancellor, the vice chancellor, the appropriate dean, the faculty member's department chairperson, the chairperson of the Faculty Senate, and the faculty member; and
- ♦ that the faculty member's and the chancellor's copies shall be accompanied by both a verbatim record of the hearing and a summary of the evidence, unless the faculty member is represented by counsel, in which case the verbatim record and summary shall be sent to counsel.

## GUIDELINES FOR HEARINGS.

### *Quorum, Notice, and Confidentiality.*

#### Quorum.

While all 5 members will be present whenever possible, a quorum for the hearing and for meetings of the hearing committee consists of 4 members of the committee.

In an emergency, the chairperson of the hearing committee has the discretion to declare a quorum for deliberative sessions when only 3 members of the hearing committee are present.

#### Notice.

Notices of meetings shall be sent to the University Newsletter for publication (without identifying the faculty member) and shall indicate whether the meetings will be open or closed.

#### Confidentiality. Committee.



All matters related to the faculty member and the hearing are maintained in the strictest confidentiality by hearing committee members, except as may be necessary to meet provisions of the Open Meetings Law or other similar statutory, administrative rule, or faculty governance requirements.

#### Documents.

Following the conclusion of all deliberations and the submittal of the hearing committee's report, the chairperson shall collect all drafts and other documents related to the hearing from the members of the committee, from any appointed secretary, and from all other parties except the faculty member and faculty member's representative(s). All minutes and materials provided by the parties and not forwarded to the chancellor as a part of the report shall be sealed and filed in the office of the chancellor for a period of 5 years, after which they shall be destroyed as permitted under the Public Records Law.

**NOTE.** Participants are reminded that any personal notes made during the procedures and retained after the hearing are subject to subpoena if the appeal is not resolved at the institutional or System level and becomes a legal matter.

#### Evidentiary and Deliberative Sessions.

The hearing process consists of an evidentiary hearing and a deliberative meeting.

##### Evidentiary Hearing.

The purpose of the initial session of the evidentiary hearing is to provide an opportunity for the faculty member to present evidence that 1 or more improper factors in UWSP 5.12 (2)(a), (b), or (c) entered into the decision to lay off. The faculty member has the right to be represented by another individual(s), which may be legal counsel. The hearing committee is not bound by legal rules of evidence. The committee must make a verbatim record of the hearing.

##### Deliberative Session.

After the faculty member has presented evidence, the hearing committee deliberates on whether the evidence presented constitutes a *prima facie* case that 1 or more improper factors entered into the decision to lay off.

- If the hearing committee finds no case established, it finds the decision to have been proper, reports its findings to the faculty member and the chancellor, and adjourns.
- If the hearing committee finds that improper factors entered into the decision, it reconvenes in a second evidentiary hearing.

##### Second Evidentiary Hearing Session.

If the committee finds that a *prima facie* case was established, the chancellor or a designee is entitled to present evidence to support the layoff decision.

- Following the administration's presentation, the faculty member may present evidence in rebuttal.
- Following the faculty member's rebuttal presentation, if any, the committee reconvenes in a second deliberative session.

##### Second Deliberative Session.

The purpose of the second deliberative meeting is for the hearing committee to reach its conclusions, after which the chairperson of the hearing committee shall

prepare a summary of the evidence and write a draft report of the findings and recommendations of the hearing committee. Each member of the hearing committee shall sign the final report or file a dissent. The report shall be distributed as soon as feasible following the close of deliberations.

### Closed and Open Sessions.

#### General Guideline.

Evidentiary hearings and deliberative meetings will normally be closed, as permitted by the Open Meetings Law, unless the chairperson of the hearing committee receives from the faculty member a written request for an open evidentiary hearing, in which case all evidentiary sessions shall be open. Closed meetings require a majority vote of the hearing committee, by a roll call vote.

#### Evidentiary Hearings: Who May Attend/Speak.

##### *Closed Hearings.*

If the evidentiary hearing is closed, only parties directly involved in the hearing may attend. Those permitted to attend, who may speak when recognized by the chairperson for that purpose, are

- members of the hearing committee;
- the faculty member;
- the chancellor or a designee;
- representatives for the parties;
- witnesses for the parties;
- individuals specifically called or designated by the hearing committee, which may include legal counsel; and
- an appointed secretary, who need not be a member of the committee.

##### *Open Hearings.*

If the evidentiary hearing is open, anyone may attend but only those parties directly concerned with the hearing (delineated above) and recognized for the purpose of speaking by the chairperson of the hearing committee are permitted to speak.

#### Deliberative Meetings: Who May Attend/Speak.

Only members of the hearing committee, an appointed secretary (who need not be a member of the committee), and the committee's legal counsel (if any) are permitted to attend, and may speak when recognized by the chairperson for that purpose. Only members of the hearing committee participate in determining findings of fact and decision.

### Procedure for Evidentiary Hearing and Deliberative Meeting.

#### Introduction.

A copy of these procedures may be requested from the chairperson of the Faculty Mediation Subcommittee or the associate vice chancellor for personnel.

#### Presiding Officer.

The chairperson of the hearing committee convenes the hearing and serves as presiding officer. The chairperson assumes all the normal responsibilities of a committee chairperson and rules on such questions as may arise on the procedure of the hearing, admissibility of evidence, and all other matters related to the hearing.

If the committee has legal counsel, the chairperson may request the advice of counsel on all matters pertaining to the hearing.

### Evidentiary Hearing.

The evidentiary hearing normally proceeds in the order described here, but the chairperson may change the order as circumstances may require.

- Call to order; introduction of members of the committee and of the secretary.
- Explanation of the Open Meetings Law and either
  - ♦ explanation of limitations of open meetings, if an open hearing has been requested, or
  - ♦ a request for a motion to close the hearing under the appropriate section(s) of 19.85 Wis. Stats. [19.85 (a), (b), (c), or (f)], and a roll call vote on the motion.
- Introduction of the faculty member, and the faculty member's representative(s), if any.
- Introduction of the chancellor or the chancellor's designee, and the administration's representative(s), if any.
- Announcement that
  - ♦ the initial session affords the faculty member the opportunity to establish a *prima facie* case that 1 or more improper factors entered into the decision to lay off;
  - ♦ following the faculty member's presentation of evidence and testimony, the hearing will be recessed to a deliberative session; and
  - ♦ depending upon the committee's findings, the hearing will either be
    - reconvened and adjourned following an announcement that no *prima facie* case was established, or
    - reconvened to permit the chancellor or a designee to present evidence in support of the decision.
- Presentation of the faculty member's case by the faculty member or the faculty member's representative, but not the testimony of witnesses.
- Questions of the faculty member by the administration or the administration's representative.
- Presentation of witnesses on behalf of the faculty member.
- Questions of witnesses by the administration or the administration's representative.
- Rebuttal questions of witnesses by the faculty member or the faculty member's representative.
- Presentation by any witnesses who may have been called by the hearing committee.
- Questions of committee witnesses by the administration or the administration's representative.
- Questions of committee witnesses by the faculty member or the faculty member's representative.
- Questions of all witnesses by members of the hearing committee.
- Recess of the evidentiary hearing.

If the deliberative meeting does not follow immediately after the evidentiary hearing, the chairperson will request a motion to recess the hearing and to reconvene at the deliberative meeting [if possible, the date and time of the session will be included in the motion to recess], and shall conduct a roll call vote on the motion.

### Deliberative Meeting: Issue for Determination.

The committee's sole determination at this point is whether the faculty member established a *prima facie* case that 1 or more improper factors entered into the decision to lay off.

*No Prima Facie Case Established.*

If the committee finds that no *prima facie* case was established, the hearing shall be reconvened and the chairperson will announce the decision, indicate that the committee's report of findings will be forthcoming to the faculty member and the chancellor as soon as feasible, and adjourn the hearing.

The committee will reconvene in deliberative meeting to prepare its report of its findings and recommendation prepared as described below.

*Prima Facie Case Established.*

If the committee finds that a *prima facie* case was established, the hearing shall be reconvened, the chairperson will announce the decision, and proceed with the second part of the evidentiary hearing.

*Determination by Vote.*

Decisions on the establishment of a *prima facie* case shall be determined by a majority of the members of the hearing committee. The vote shall be a roll call vote, which shall be recorded.

Second Evidentiary Hearing Session.

- Presentation of the administration's case in support of the layoff decision, but not the testimony of witnesses other than the faculty member (if the faculty member is called by the administration).
- Questions of the administration by the faculty member or the faculty member's representative.
- Presentation of witnesses on behalf of the administration.
- Questions of the witnesses by the faculty member or the faculty member's representative.
- Rebuttal questions of witnesses by the administration or its representative.
- Presentation by any witnesses who may have been called by the hearing committee.
- Questions of committee witnesses by the administration or the administration's representative.
- Questions of committee witnesses by the faculty member or the faculty member's representative.
- Questions of all witnesses by members of the hearing committee.
- Rebuttal or closing comments by the administration or the administration's representative.
- Rebuttal evidence by the faculty member or the faculty member's representative, which may include the calling of additional witnesses or the recall of witnesses previously called.
- If the faculty member calls any witnesses in rebuttal, the administration and then the committee have the opportunity to question those witnesses.
- Rebuttal or closing comments by the faculty member or the faculty member's representative.
- Questions of the administration by members of the hearing committee.
- Questions of the faculty member by members of the hearing committee.

- Rebuttal questions of the administration by members of the hearing committee, if any.
- Conclusion of the evidentiary hearing.

If the deliberative meeting does not follow immediately after the evidentiary hearing, the chairperson will request a motion to recess the hearing and to reconvene at the deliberative meeting [if possible, the date and time of the session will be included in the motion to recess], and shall conduct a roll call vote on the motion.

### Second Deliberative Session.

The hearing committee shall deliberate on the hearing and shall write a summary of the evidence and a report which includes the findings of law and decision, and the recommendations of the committee.

#### *Findings.*

##### No Case Established.

If the faculty member did not establish a *prima facie* case in the initial part of the hearing, the committee shall find the decision to have been proper and reports this finding to the chancellor, to the faculty member, and the other parties receiving copies of the report (enumerated below).

##### Case Established.

If the faculty member did establish a *prima facie* case and the hearing moved into the second part of the hearing, the hearing committee shall make its determination as follows--

- The committee shall first consider whether 1 or more improper factors in UWSP 5.12 (2)(a), (b), or (c) entered into the decision to lay off.
  - Unless the committee is convinced that 1 or more improper factors did enter significantly into the decision, it shall find the decision to have been proper.
- If the committee believes that improper factors may have entered into the decision but is nonetheless convinced that the same decision would have been reached had the error(s) not occurred, it shall find the decision to have been proper.
- If the committee is convinced that improper factors entered significantly into and affected the decision to lay off, it shall find the decision to have been improper.

##### Determination of Findings.

Decisions on the validity of the layoff and on any recommendations shall be determined by a majority of the members of the hearing committee. The vote shall be a roll call vote, which shall be recorded.

#### *Decision and Recommendations.*

The committee shall send its report of findings, decision, and recommendations, if any, to the chancellor as soon as feasible following the conclusion of the deliberative session(s).

- If the committee finds the decision to lay off to have been proper, it shall so report, normally without recommendation.

- If the committee finds the decision to have been improper, it shall so report and may elect to make a recommendation, not limited because of enumeration, to
  - ♦ discontinue layoff proceedings entirely; or
  - ♦ rescind the notification of layoff for the individual and begin the layoff process anew.

*Report.*

At an appropriate time in the deliberations, the chairperson shall recess the meeting and shall prepare a summary of the evidence and a draft report. The draft shall be circulated among the members, after which the committee shall reconvene to review the draft and make appropriate modifications. After the report has been adopted by the hearing committee, each member of the committee shall sign the report or file a dissent.

- The report shall be adopted by a majority of the members of the hearing committee. The vote shall be a roll call, which shall be recorded.
- The report shall be distributed as soon as feasible after the close of deliberations but not later than 20 days following adjournment.
- The chairperson provides a verbatim record of the hearing, a summary of the evidence, and a copy of the report to both the faculty member and the chancellor, and a copy each of the report to the vice chancellor, the appropriate dean, the faculty member's department chairperson, and the chairperson of the Faculty Senate.

*Chancellor's Action.*

*Decision Found Proper.*

If the committee has found the decision to have been proper, the chancellor forwards the committee's report to the president of the system and to the Board with a recommendation, and provides a copy of the recommendation to the faculty member.

*Board Review.*

The faculty member may request a review by the Board. The Board decides whether to grant the review. (Refer to UWSP 5.15 for Board review process.)

*Review Not Granted.*

If the Board chooses not to grant a review, the recommended findings of fact and decision of the committee must be the decision of the Board.

*Decision Found Improper.*

If the committee has found the decision to have been improper, the chancellor shall review and give careful consideration to the committee's findings.

*Recommendation Accepted.*

If the chancellor accepts the committee's findings, the chancellor's decision is final.

*Recommendation Not Accepted.*

If the chancellor contests the committee's finding that the decision was improper, the chancellor shall forward the verbatim record, the summary of the evidence, and the committee's report of findings and recommendations to the Board review panel (refer to UWSP 5.15).

- The faculty member and chancellor also receive copies of the materials forwarded to the Board and shall have a reasonable opportunity to file written exceptions to the summary, findings, and proposed decision.
- The faculty member and the chancellor are afforded the opportunity to argue orally and in writing before the Board review panel.
- The decision of the Board review panel is final.

## SECTION 13

### OVERVIEW OF THE PROCESS AND PROCEDURES FOR HEARING OF CHARGES AND NOTICE OF DISMISSAL OF ACADEMIC STAFF UNDER UWSP 11.04

(See Chapters UWS & UWSP 11)

**NOTE.** Under the provisions of UWSP 11.03 (2) and 11.12, **classroom teaching academic staff** may elect to file appeals of dismissal with either the Academic Staff Mediation Subcommittee or the Faculty Mediation Subcommittee, but may have access to only one subcommittee for each case. For ease of reading, all references in this chapter are to the Academic Staff Mediation Subcommittee only.

**Regardless of which subcommittee hears the appeal, the hearing shall be held pursuant to the provisions of Chapter UWSP 11 and these procedures.**

#### **ALL ACADEMIC STAFF**

##### INTRODUCTORY COMMENTS.

###### Coverage.

These proceedings apply to all allegations, from whatever source, concerning conduct based directly and substantially on an academic staff member's actions in carrying out professional responsibilities where such conduct has resulted in substantial or fundamental harm to the university, and which might provide cause for dismissal.

###### Rights.

The exercise of rights shall not constitute adequate cause for dismissal or other disciplinary action. These are rights guaranteed by

- the United States Constitution;
- the Constitution of the state of Wisconsin;
- Board action;
- System rules, policies, or procedures;
- the Constitution of the Faculty Senate;
- UWSP rules, policies, or procedures; or
- one's professional code of ethics.

###### Student and Peer Evaluations.

Regardless of their content, including specific allegations of inappropriate behavior, neither student nor peer evaluations are allegations of inappropriate conduct under Chapters UWS and UWSP 11 or these policies and procedures.

###### Applicable Documents.

An academic staff member against whom allegations of misconduct which might lead to dismissal have been brought or an individual who is contemplating bringing allegations which might lead to dismissal of an academic staff member is advised to become familiar with

- Chapters UWSP 9 - 13, the institutional academic staff personnel rules;
- unit or departmental personnel rules and procedures;



- appropriate sections of the Wisconsin Administrative Code, the UW System academic staff personnel rules;
- Chapters 801.11 (1)(c), 227.45, and 227.46 of the Wisconsin statutes; and
- related documents in this handbook.

### Counsel.

An academic staff member who has been notified that an allegation of misconduct which might lead to dismissal has been received by the chancellor may wish to seek advice from senior academic staff or faculty familiar with the policies and procedures, and is advised to retain legal counsel. The right to be represented at meetings or hearings by individuals of the academic staff member's choice is guaranteed under Chapters UWS and UWSP 11 and these procedures.

### Time Limits.

#### Termination of Hearing.

Failure to meet any time limits established by these procedures will likely end the proceedings. An academic staff member against whom allegations of misconduct have been brought is urged to review these procedures and to act promptly.

#### Length of Process.

The time limits are intended to ensure action within a reasonable time period; nevertheless, the hearing process may be lengthy. The deliberative process in particular may take several months to conclude: the issue is significant; there is no limit on the number of deliberative sessions which may be held; and there is no limit on the length of recesses which may occur between sessions.

### Presence at Meetings.

#### No Exclusions.

Under the provisions of 19.89 of the Open Meetings Law, no member of a governmental body may be excluded from any meeting of that body. In addition, no member may be excluded from meetings of any of the body's subunits unless the rules of the parent body specifically state otherwise.

#### Personnel Matters.

No academic staff member under consideration for any personnel matter (including consideration of filing of a complaint or taking action on a complaint) may be excluded from a unit or department meeting at which the matter is to be considered, even if the meeting is moved into closed session. No academic staff member may be excluded from any unit or departmental committee meeting at which the matter is to be considered unless unit or departmental rules specifically state to the contrary.

### Right to Open Meeting.

#### *19.85 Wis. Stats.*

Under the provisions of the Open Meetings Law, an academic staff member has the right to request and receive an open evidentiary hearing for any meeting of a unit or subunit involving consideration of disciplinary action against that individual.

**NOTE.** A meeting with an administrator or a chairperson for the purpose of discussion or investigation of allegations of charges which might lead to dismissal, even where the end result of the discussion or investigation may be a recommendation for disciplinary action or hearing, is not subject to the

provisions of the Open Meetings Law: neither an individual administrator nor a chairperson is a "formally constituted subunit."

Under the Open Meetings Law, even when departmental or unit policies provide that subunit or committee meetings be restricted to members of the subunit or committee, any academic staff member under consideration has the right to request and receive an open meeting for the portion of the meeting that constitutes an evidentiary hearing involving consideration of disciplinary action against that individual.

*Unit/Departmental Policies.*

Normally, unit/departmental policies will require a written request for an open meeting reasonably in advance of the meeting.

Settlement.

Nothing in these procedures or in Chapters UWS or UWSP 11 shall be construed to prevent the settlement of allegations by mutual agreement between the administration and the academic staff member, with the approval of the chancellor, at any time in the proceedings prior to a final decision by the chancellor, or when appropriate, with the Board's approval prior to a final decision by the Board.

- Any such settlement consists of an appropriate response, which may include disciplinary action, mutually agreed upon by the academic staff member and the chancellor, and, where appropriate, having the approval of the Board.
- Every settlement shall be reduced to writing and signed by the academic staff member and the chancellor; no further action shall be taken on the matter.
- One copy of the signed document shall be retained by the chancellor and one given to the academic staff member.

Charges.

Basis for Charges.

Dismissal of a academic staff member may be sought only for cause based directly and substantially on the academic staff member's conduct in carrying out professional responsibilities where such conduct has resulted in substantial or fundamental harm to the university.

Complaints to Chancellor.

Whenever any official receives a complaint which might lead to dismissal, the complainant and the complaint shall immediately be referred to the chancellor for action.

Filing of Charges.

Charges seeking dismissal of an academic staff member shall be filed by the appropriate chancellor's designee.

## **INDEFINITE APPOINTMENT ACADEMIC STAFF**

**Under the provisions of UWSP 11.12, a member of the academic staff whose primary responsibility is as a classroom teacher, with a fixed term appointment of .5 FTE or more, and who has accumulated 7 academic years of service at .5 FTE or more per semester follows the same procedures as academic staff holding indefinite appointments. In this subsection, wherever the phrase**

**"teaching academic staff" appears, it refers *only to those fixed term personnel.***

## PROCEDURES UPON RECEIPT OF A Complaint.

### *Chancellor's Action on a Complaint.*

Whenever the chancellor receives or initiates a complaint against a teaching academic staff member or an academic staff member holding an indefinite appointment and where the complaint might lead to dismissal, before taking any action other than discussing the allegations with a designee or the complainant, the chancellor (or a designee) shall promptly notify the appropriate director or dean of the allegations and ask the administrator to take appropriate action.

In those instances where the immediate supervisor of the academic staff member concerned is a director or dean, the chancellor shall appoint an appropriate administrative officer to carry out the director's or dean's responsibilities under UWSP 11.02 and these procedures.

### *Notification of Complaint Required; Administrator's Action.*

#### *Informal Discussion.*

When a director, dean, or other administrator receives from the chancellor notification of allegations of misconduct which might lead to dismissal of a teaching academic staff member or an academic staff member holding an indefinite appointment, the administrator may consult with appropriate administrative personnel or System legal counsel and shall

- promptly send written notification of the allegations to the academic staff member;
- afford the academic staff member the opportunity to meet promptly to discuss the complaint informally; and
- proceed immediately to an investigation of the charges if the academic staff member declines to meet.
  - ◆ Notification normally shall be within 7 working days of the receipt of the allegations from the chancellor.
  - ◆ The administrator's offer of the opportunity for an informal discussion may be in the notification of the allegations or by telephone.
  - ◆ Normally, no meeting with an academic staff member on such allegations shall occur before the academic staff member has received written notification of the allegations reasonably in advance of the meeting.
  - ◆ Normally, the administrator shall not proceed with any investigation of allegations before the academic staff member has received written notification of the allegations and met or declined to meet with the administrator informally to discuss the allegations.
  - ◆ Accompanying the notification of allegations shall be a copy of these procedures and information as to where to locate other rights under UWS/UWSP 11.

**NOTE.** An academic staff member against whom a complaint is made and who is invited to meet informally on the complaint or to respond to the complaint is advised to consult legal counsel.

- Informal discussion with the administration may be advisable but an academic staff member is not obligated to meet with the administrator.
- If the academic staff member decides to meet informally with the administrator, the academic staff member is advised to bring a representative, which may be legal counsel, to the informal discussion.

#### *Informal Discussion Outcomes.*

One of these alternatives will result from the informal discussion--

- the administrator will determine that the complaint is unjustified: no charges will be filed nor will other action adverse to the academic staff member be taken;

If the administrator determines the complaint is unjustified, a written statement to that effect shall be sent to the academic staff member and the chancellor, and a copy placed in the academic staff member's personnel file.

- the administrator will determine that the complaint may be justified and either
  - ♦ the administrator and the academic staff member will agree to a mutually satisfactory resolution, which will end the matter; or
  - ♦ the administrator will proceed to an investigation of the charges.

#### *Investigation Outcomes.*

One of these alternatives will result from the administrator's investigation--

- the administrator will determine and inform the academic staff member that the complaint is unjustified: no charges will be filed nor will other action adverse to the academic staff member be taken; or

If the administrator determines the complaint is unjustified, a written statement to that effect shall be sent to the academic staff member and the chancellor, and a copy placed in the academic staff member's personnel file.

- the administrator will determine and inform the academic staff member that the complaint is justified but warrants disciplinary action less severe than dismissal, and the university will proceed under the provisions of Chapter UWSP 13.01; or
- the administrator will determine and notify the academic staff member that the complaint is justified and file formal charges for dismissal against the academic staff member.

#### *Request for Hearing.*

A member of the teaching academic staff or an academic staff member who holds an indefinite appointment who has received a formal statement of charges seeking dismissal has 20 days from the receipt of the charges to request a hearing conducted under the auspices of the Academic Staff Mediation Subcommittee.

#### *Hearing Outcomes.*

Following a hearing on charges for dismissal, the hearing committee issues its report of findings and recommendations. The committee may find that the charges are without foundation or not proven, that the charges are valid but a sanction less than dismissal is warranted, or that the charges are valid and dismissal is an appropriate response on the part of the university.

### Termination of Proceedings.

#### Indefinite Appointment.

If the hearing process for an academic staff member holding an indefinite appointment is not concluded before the academic staff member's retirement or resignation, the proceedings will automatically end at the academic staff member's retirement or resignation unless the academic staff member sends a written request to the chairperson of the Academic Staff Mediation Subcommittee that the proceedings continue to their conclusion.

#### Fixed Term Appointment.

If the hearing process for an academic staff member holding a fixed term appointment is not concluded before the expiration of the appointment or the academic staff member's retirement or resignation, the proceedings will automatically end at the expiration of the appointment or the academic staff member's retirement or resignation unless the academic staff member sends a written request to the chairperson of the Academic Staff Mediation Subcommittee that the proceedings continue to their conclusion.

#### Discontinuance.

If the university discontinues proceedings for dismissal against an academic staff member who has requested a hearing, the charges are deemed to be withdrawn and without merit.

#### Settlement.

The proceedings may be discontinued by a settlement reached by mutual agreement between the administration and the academic staff member and with the concurrence of the chancellor prior to a final decision by the chancellor, or if appropriate, concurrence of the Board prior to a final decision by the Board.

### Continuation of Duties and Salary.

#### Suspension.

Unless the chancellor, in consultation with the Academic Staff Council, specifically finds that substantial harm may result to the institution if an academic staff member whose dismissal is sought continues with normal duties, the academic staff member shall not be relieved of those duties pending the final decision of the chancellor, or where appropriate, the Board.

#### Salary.

If an academic staff member is suspended before the final decision on dismissal by the chancellor or Board, the academic staff member's salary shall nonetheless be continued until the decision is reached.

## FILING A REQUEST FOR HEARING.

### Written Request.

Upon receipt of a formal statement of specific charges for dismissal, a teaching academic staff member or an academic staff member holding an indefinite appointment

has 20 days in which to request a hearing by the Academic Staff Mediation Subcommittee.

- Failure to meet the 20 day deadline will likely end the opportunity for a hearing.
- The request shall be in writing and addressed to the chairperson of the subcommittee.
- The request should provide a historical resume of all actions taken to this point.

#### No Request Filed.

If an academic staff member whose dismissal is sought does not file a request for a hearing with the Academic Staff Mediation Subcommittee, the dismissal will proceed along normal administrative lines and the decision of the chancellor shall be final.

#### Required Action.

##### Notification.

If the chairperson determines that the individual requesting a hearing holds a teaching academic staff appointment or an indefinite academic staff appointment, the chairperson shall

- provide written notification of the request for hearing to the chancellor so System legal counsel may be advised a case is pending;
- begin a file of all correspondence concerning the hearing, which will be passed on to the chairperson of the hearing committee;
- provide written notification that the hearing procedure is in progress to
  - ♦ the academic staff member;
  - ♦ the administrative heads of the appellant's operational area and unit, the chairperson of the unit's personnel committee, and the appropriate executive director and vice chancellor (or the chairperson of the appellant's departmental personnel committee, department chairperson, and dean); and
  - ♦ the chairpersons of the Academic Staff Council and the Faculty Senate; and
  - ♦ the chancellor; and
- provide copies of all correspondence to the
  - ♦ academic staff member;
  - ♦ hearing committee members; and
  - ♦ chancellor.

##### Appointment of Hearing Committee.

The chairperson will also appoint a hearing committee composed of a minimum of 5 persons, at least 3 of whom must be members of the Academic Staff Mediation Subcommittee. There will be broad representation from the university but not necessarily a member from each division or college.

- Normally, at least 3 of the appointed members shall have had either
  - ♦ previous experience as a member of a hearing committee under either UWSP 10.04, 11.04, 12.05, 13.01, 13.02 or other similar hearing, or
  - ♦ orientation and training for a hearing procedure.
- One member, who normally shall have had previous experience as a member of a hearing committee under either UWSP 10.04, 11.04, 12.05, 13.01, 13.02 or other similar hearing, shall be designated as the chairperson of the committee.

- No individual who participated in the investigation leading to the filing of charges, or in the filing of charges, or who is a material witness, or who is a member of the same unit or department as the academic staff member requesting the hearing may serve on the hearing committee.
- The chairperson of the Academic Staff Mediation Subcommittee, if otherwise qualified, may serve as either a member or as chairperson of the hearing committee.
- Reasonable effort will be made to ensure that the members of the hearing committee are acceptable to both parties in the hearing process.
  - ♦ Normally, this will be accomplished by informal contact with the proposed members and the parties to the hearing before the formal appointment.
  - ♦ The decision of whom to appoint is solely that of the chairperson of the subcommittee.
- After the committee is appointed, the academic staff member has the unrestricted right to challenge and remove 1 member from the hearing committee.
- The decision on other challenges to committee members shall be made by the committee, excluding the member under challenge.
  - ♦ If members are disqualified or disqualify themselves, the remaining members consult with the chairperson of the Academic Staff Council and the chairperson of the Academic Staff Mediation Subcommittee and appoint other members to serve.

#### Hearing Date.

The hearing committee shall meet to hear the matter within 20 days of receipt of the request for a hearing, except that this time limit may be extended by mutual consent of the parties or by order of the hearing committee.

*Notice.* The academic staff member requesting a hearing shall receive written notice of the specific charges and of the hearing at least 10 days prior to the hearing.

#### Hearing Committee Chairperson's Responsibilities.

Once the hearing committee is appointed, the chairperson of the hearing committee assumes responsibility for the hearing process. The chairperson shall

- conduct the hearing under the provisions of UWS/UWSP 11.04 through 11.07, the provisions of Chapter 227.45, 227.46, and 801.11 (1)(c) of the Wisconsin statutes, these policies and procedures, and the guidelines for hearings under 11.04 (which may be found in the following subsection or requested from the chairperson of the Academic Staff Mediation Subcommittee);
- establish appropriate communication with the chancellor, provost, academic staff member, appropriate executive director and vice chancellor, or dean, and unit administrative head, or department chairperson, and keep each informed of the proceedings in the hearing;
- keep records of all correspondence among all the principals from the initiation of the hearing through its conclusion;
- appoint a secretary for the hearing committee (normally an associate vice chancellor), and provide for a verbatim transcript of the hearing (usually a sound recording);

- secure appropriate facilities, schedule evidentiary hearings, and provide notices to conform with the Open Meetings Law;
- secure appropriate facilities and schedule and conduct deliberative sessions in which the committee formulates its findings and recommendations;
- prepare a summary of the evidence and the written report of the committee's findings and recommendations and transmit these materials to the academic staff member and to the chancellor, and send copies of the report to the academic staff member's unit head or department chairperson, executive director and vice chancellor, or dean, and to the provost;
- send a copy of the hearing procedures with each written notification of the hearing, and
- send written notification of the hearing to the academic staff member, the chancellor, the provost, the appropriate executive director and vice chancellor, or dean, the unit head or department chairperson, the individual(s) who brought the complaint leading to the formal charges, and witnesses asked to appear on behalf of the parties or called by the hearing committee.

Written notification of the hearing shall include statements

- ♦ of the date, time, and place of the hearing;
- ♦ that all parties may be represented by an individual(s) of their choice, which may include legal counsel;

**NOTE.** If counsel has been requested by the committee from the chancellor, notice shall include a statement that the committee will have legal counsel present at the hearing.

- ♦ that normally, by a vote of the committee, the evidentiary hearing and the deliberative sessions will be closed but the academic staff member requesting the hearing, upon timely written request to the chairperson, has the right to request an open evidentiary hearing and any such request shall be honored;
- ♦ of whether the academic staff member has requested an open evidentiary hearing;
- ♦ that both parties have a right to copies of all documentary evidence relevant to the hearing;
- ♦ that all parties, including witnesses, are expected to provide to the hearing committee chairperson sufficient copies of their testimony for all other parties, and that these materials should be provided in sufficient time prior to the hearing for distribution to all parties, but that failure to provide such copies will not preclude an individual from giving testimony;
- ♦ that either party may call persons to offer evidence or testimony;
- ♦ that both parties will be sent a list of the names of any persons to be called by either party, or by the hearing committee;
- ♦ that either party may offer testimony from any source;
- ♦ that the hearing committee is not bound by statutory rules of evidence but may hear testimony having reasonable probative value;
- ♦ that both parties have the right, under guidelines established by the chairperson, to question persons offering testimony;
- ♦ that adjournments will be granted to enable either party to investigate evidence as to which a valid claim of surprise is made;



- ♦ that the burden of proof of the existence of just cause for dismissal is on the administration or its representative;
- ♦ that the academic staff member has the right to a verbatim record of the hearing, which may be a sound recording, at no cost;
- ♦ that if the proceedings are not concluded before the retirement or resignation of the academic staff member, the proceedings will terminate at the academic staff member's retirement or resignation unless the academic staff member sends a written request to the chairperson of the Academic Staff Mediation Subcommittee that the proceedings be carried to their conclusion;
- ♦ that discontinuance of the proceedings by the university is deemed a withdrawal of the charges and a finding that the charges were without merit;
- ♦ that nothing shall prevent the settlement of the case by mutual agreement of the parties and the agreement of the chancellor, provided that such settlement is reached prior to a final decision by the chancellor, or where appropriate, approval of the Board prior to a final decision by the Board;
- ♦ that any personal notes made during the procedures and retained by a participant are subject to subpoena if the appeal is not resolved at the institutional or System level and becomes a legal matter;
- ♦ that a quorum for the evidentiary hearing consists of 4 members of the hearing committee;
- ♦ that a quorum for the deliberative sessions consists of 4 members of the hearing committee, except that in an emergency, the chairperson may declare a quorum when only 3 members are present;
- ♦ that the hearing committee will give a written statement of its findings and recommendations to the chancellor, the provost, the appropriate executive director and vice chancellor, or dean, the unit head or department chairperson, and the academic staff member; and
- ♦ that the academic staff member's and the chancellor's copies will be accompanied by both a verbatim record of the hearing and a summary of the evidence, unless the academic staff member is represented by counsel, in which case the verbatim record and summary will be sent to counsel.

## GUIDELINES FOR HEARINGS.

### Quorum, Notice, and Confidentiality.

#### Quorum.

While all 5 members will be present whenever possible, a quorum for the hearing and for meetings of the hearing committee consists of 4 members of the committee.

In an emergency, the chairperson of the hearing committee has the discretion to declare a quorum for deliberative sessions when only 3 members of the hearing committee are present.

#### Notice.

Notices of meetings shall be sent to the University Newsletter for publication (without identifying the academic staff member) and shall indicate whether the meetings will be open or closed.

## Confidentiality.

### *Committee.*

All matters related to the academic staff member and the hearing are maintained in the strictest confidentiality by hearing committee members, except as may be necessary to meet provisions of the Open Meetings Law or other similar statutory, administrative rule, or faculty governance requirements.

### *Documents.*

Following the conclusion of all deliberations and the submittal of the hearing committee's report, the chairperson shall collect all drafts and other documents related to the hearing from the members of the committee, from any appointed secretary, and from all other parties except the academic staff member and academic staff member's representative(s). All minutes and materials provided by the parties and not forwarded to the chancellor as a part of the report shall be sealed and filed in the office of the chancellor for a period of 5 years, after which they shall be destroyed as permitted under the Public Records Law.

**NOTE.** Participants are reminded that any personal notes made during the procedures and retained after the hearing are subject to subpoena if the appeal is not resolved at the institutional or System level and becomes a legal matter.

## Evidentiary and Deliberative Sessions.

The hearing process consists of 2 parts, an evidentiary hearing and a deliberative meeting.

### Evidentiary Hearing.

The purpose of the evidentiary hearing is to determine the facts of the situation. Both parties may provide evidence at the evidentiary hearing and both parties have the right to be represented by another individual(s), which may be legal counsel. The hearing committee is not bound by legal rules of evidence. The burden of proof on the existence of just cause for dismissal is on the administration. The hearing committee shall make a verbatim record of the hearing.

### Deliberative Meeting.

The purpose of the deliberative meeting is for the hearing committee to reach its conclusions, after which the chairperson of the hearing committee will prepare a summary of the evidence and write a draft report of the findings and recommendations of the hearing committee. Each member of the hearing committee must sign the final report or file a dissent. The report shall be distributed within 10 days of the close of deliberations.

## Closed and Open Sessions.

### General Guideline.

Evidentiary hearings and deliberative meetings will normally be closed, as permitted by the Open Meetings Law, unless the chairperson of the hearing committee receives from the academic staff member a written request for an open evidentiary hearing, in which case all evidentiary sessions will be open. Closed meetings require a majority vote of the hearing committee, by a roll call vote.

## Evidentiary Hearings: Who May Attend/Speak.

### *Closed Hearings.*

If the evidentiary hearing is closed, only parties directly involved in the hearing may attend. Those permitted to attend, who may speak when recognized by the chairperson for that purpose, are

- members of the hearing committee;
- the academic staff member;
- the chancellor or a designee;
- the individual(s) making the complaint upon which charges were based;
- representatives for the parties;
- witnesses for the parties;
- individuals specifically called or designated by the hearing committee, which may include legal counsel; and
- an appointed secretary, who need not be a member of the committee.

#### *Open Hearings.*

If the evidentiary hearing is open, anyone may attend but only those parties directly concerned with the grievance and recognized for the purpose of speaking by the chairperson of the hearing committee are permitted to speak.

#### Deliberative Meetings: Who May Attend/Speak.

Only members of the hearing committee, an appointed secretary (who need not be a member of the committee), and the committee's legal counsel (if any) are permitted to attend, and may speak when recognized by the chairperson for that purpose. Only members of the hearing committee participate in determining findings of fact and decision.

#### Procedure for Evidentiary Hearing and Deliberative Meeting.

##### Introduction.

A copy of these procedures may be requested from the chairperson of the Academic Staff Mediation Subcommittee or the associate vice chancellor for personnel.

##### Presiding Officer.

The chairperson of the hearing committee convenes the hearing and serves as presiding officer. The chairperson assumes all the normal responsibilities of a committee chairperson and rules on such questions as may arise on the procedure of the hearing, admissibility of evidence, and all other matters related to the hearing.

If the committee has legal counsel, the chairperson may request the advice of counsel on all matters pertaining to the hearing.

##### Evidentiary Hearing.

The evidentiary hearing normally proceeds in the order described here, but the chairperson may change the order as circumstances may require.

- Call to order; introduction of members of the committee and of the secretary.
- Explanation of the Open Meetings Law and either
  - ♦ explanation of limitations of open meetings, if an open meeting has been requested, or
  - ♦ a request for a motion to close the hearing under the appropriate section(s) of 19.85 Wis. Stats. [19.85 (a), (b), (c), or (f)], and a roll call vote on the motion.
- Introduction of the academic staff member, and the academic staff member's representative(s), if any.

- Introduction of the chancellor or the chancellor's designee, and the chancellor's or the designee's representative(s), if any.
- Reading of the charges for the record by a member of the administration or its representative.
- Presentation of the administration's case, including testimony from the individual(s) making the complaint upon which the charges are based, but not the testimony of other witnesses.
- Questions of the administration or the individual making the complaint by the academic staff member or the academic staff member's representative.
- Presentation of witnesses on behalf of the administration.
- Questions of the administration's witnesses by the academic staff member or the academic staff member's representative.
- Rebuttal questions of any of these parties by the administration or its representative.
- Presentation of testimony by the academic staff member or the academic staff member's representative but not the testimony of witnesses.
- Questions of the academic staff member by the administration or its representative.
- Presentation of witnesses on behalf of the academic staff member.
- Questions of academic staff member's witnesses by the administration or its representative.
- Rebuttal questions of any of these parties by the academic staff member or the academic staff member's representative.
- Questions of the academic staff member's and the administration's witnesses by members of the hearing committee.
- Presentation by any witnesses who may have been called by the hearing committee and questions of these witnesses by members of the hearing committee.
- Questions of committee witnesses by the administration or its representative.
- Questions of committee witnesses by the academic staff member or the academic staff member's representative.
- Additional questions, if any, of witnesses by members of the hearing committee.
- Rebuttal or closing comments by the administration or its representative.
- Rebuttal or closing comments by the academic staff member or the academic staff member's representative.
- Questions of the academic staff member by members of the hearing committee.
- Questions of the administration by members of the hearing committee.
- Additional questions, if any, of the academic staff member or the administration by members of the hearing committee.
- Conclusion of the evidentiary hearing.

If the deliberative meeting does not follow immediately after the evidentiary hearing, the chairperson will request a motion to recess the hearing and to reconvene at the deliberative meeting [if possible, the date and time of the session will be included in the motion to recess], and will conduct a roll call vote on the motion.

### Deliberative Meeting.

The hearing committee deliberates on the hearing and writes a summary of the evidence and a report which includes the findings and recommendations of the committee.

*Findings.*

A finding that the facts are as described by the administration is not in itself enough to recommend dismissal or a lesser sanction.

*Cause for Dismissal.*

To warrant a finding for dismissal, the committee must be convinced by the evidence that substantial or fundamental harm to the institution has resulted directly and substantially from the academic staff member's actions in carrying out professional responsibilities, and that dismissal is the most appropriate response by the university.

*Burden of Proof.*

The burden of proof is on the administration to show that cause exists for dismissal or a lesser sanction.

*Validity of Charges.*

Decisions on the validity of the charges shall be determined by a majority of the members of the hearing committee. The vote(s) shall be a roll call vote, which shall be recorded.

*Recommendations.*

The committee's report and recommendations, which includes support for the recommendations, are sent to the chancellor as soon as feasible following the conclusion of the deliberative session(s).

- If the committee finds that the administration has not met the burden of proof or that cause for discipline does not exist, it shall recommend that the charges be found without merit and withdrawn.
- If the committee finds that the administration has met the burden of proof and that dismissal is the most appropriate response, it shall recommend dismissal.
- If the committee finds that the administration has met the burden of proof for cause for discipline but for a sanction less than dismissal, it shall recommend an appropriate sanction other than dismissal.
  - ♦ To warrant a finding for a severe sanction but less than dismissal, the committee must be convinced by the evidence that significant or grievous harm to the institution has resulted directly and substantially from the academic staff member's actions in carrying out professional responsibilities, and that a severe sanction but less than dismissal is the most appropriate response by the university.
  - ♦ Severe sanctions less than dismissal include but are not limited to
    - suspension without pay for a specified period;
    - a freeze in salary for a specified period;
    - a reduction in salary;
    - a demotion in title;
    - reassignment;
    - counseling or other similar rehabilitation; and
    - appropriate compensation and/or service.

### *Report.*

At an appropriate time in the deliberations, the chairperson recesses the meeting and prepares a summary of the evidence and a draft report. The draft is circulated among the members, after which the committee reconvenes to review the draft and make appropriate modifications. After the report has been adopted by the hearing committee, each member of the committee signs the report or files a dissent.

- The report shall be adopted by a majority of the members of the hearing committee. The vote shall be a roll call vote, which shall be recorded.
- The report shall be distributed not later than 10 days following the close of deliberations.
- The chairperson provides a verbatim record of the hearing, a summary of the evidence, and a copy of the report to both the academic staff member and the chancellor, and a copy each of the report to the provost; the appropriate executive director and vice chancellor, or dean; and the academic staff member's unit head or department chairperson.

### Chancellor's Action.

The chancellor shall afford the academic staff member an opportunity to discuss the report within 20 days after receiving it from the committee. Within 20 days of the meeting with the academic staff member (or 30 days from the receipt of the report if the academic staff member declines to meet), the chancellor shall provide the academic staff member with a written decision, which shall be final unless the Board, at the request of the academic staff member, grants a review on the record.

### Substantial Differences.

If the chancellor's proposed decision differs substantially from the recommendations of the hearing committee, the chancellor shall promptly consult the committee and provide it a reasonable opportunity for a written response prior to rendering a final decision.

### Dismissal Recommended.

If the recommendation is for dismissal, the chancellor must specify the effective date of dismissal. If the Board grants review and concurs in the decision to dismiss, the Board shall specify the effective date of dismissal in its decision.

### Lesser Sanction.

If the chancellor determines that disciplinary action less severe than dismissal is appropriate, the chancellor may take such action after having met with the academic staff member to discuss the record.

### Possible Board Action.

Refer to UWSP 11.10 for options available to the Board.

### No Double Jeopardy.

After notification to the academic staff member of the final decision by the chancellor or the board, the academic staff member may not again be placed in jeopardy for the same incident(s) of alleged inappropriate behavior.

## **PROBATIONARY ACADEMIC STAFF AND FIXED TERM ACADEMIC STAFF WHOSE PRIMARY RESPONSIBILITY IS OTHER THAN CLASSROOM TEACHING**

**NOTE.** Although the term "fixed term" is used throughout this subsection, the proceedings apply only to those fixed term academic staff whose primary responsibilities are other than classroom teaching. Classroom teaching academic staff are covered in the previous subsection.

## PROCEDURES UPON RECEIPT OF A COMPLAINT.

### Chancellor's Action.

Whenever the chancellor receives or initiates a complaint against an academic staff member holding a probationary or fixed term appointment and where the complaint might lead to dismissal, before taking any action other than discussing the allegations with a designee or the complainant, the chancellor (or a designee) shall promptly notify an appropriate administrative officer of the allegations and ask the administrator to take appropriate action.

### Notification of Complaint Required; Administrator's Action.

#### Informal Discussion.

When an administrator receives from the chancellor notification of allegations of misconduct which might lead to dismissal of an academic staff member holding a probationary or a fixed term appointment, the administrator may consult with appropriate administrative personnel or System legal counsel and shall

- promptly send written notification of the allegations to the academic staff member;
- afford the academic staff member the opportunity to meet promptly to discuss the complaint informally; and
- proceed immediately to an investigation of the charges if the academic staff member declines to meet.
  - ◆ Notification normally shall be within 7 working days of the receipt of the allegations from the chancellor.
  - ◆ The administrator's offer of the opportunity for an informal discussion may be in the notification of the allegations or by telephone.
  - ◆ Normally, no meeting with an academic staff member on such allegations shall occur before the academic staff member has received written notification of the allegations reasonably in advance of the meeting.
  - ◆ Normally, the administrator shall not proceed with any investigation of allegations before the academic staff member has received written notification of the allegations and met or declined to meet with the administrator informally to discuss the allegations.
  - ◆ Accompanying the notification of allegations shall be a copy of these procedures and information as to where to locate other rights under UWS/UWSP 11.

**NOTE.** An academic staff member against whom a complaint is made and who is invited to meet informally on the complaint or to respond to the complaint is advised to consult legal counsel.

- Informal discussion with the administration may be advisable but an academic staff member is not obligated to meet with the administrator.

- If the academic staff member decides to meet informally with the administrator, the academic staff member is advised to bring a representative, which may be legal counsel, to the informal discussion.

*Informal Discussion Outcomes.*

One of these alternatives will result from the informal discussion--

- the administrator will determine that the complaint is unjustified: no charges will be filed nor will other action adverse to the academic staff member be taken;

If the administrator determines the complaint is unjustified, a written statement to that effect shall be sent to the academic staff member and the chancellor, and a copy placed in the academic staff member's personnel file.

- the administrator will determine that the complaint may be justified and either
  - ♦ the administrator and the academic staff member will agree to a mutually satisfactory resolution, which will end the matter; or
  - ♦ the administrator will proceed to an investigation of the charges.

*Investigation Outcomes.*

One of these alternatives will result from the administrator's investigation--

- the administrator will determine and inform the academic staff member that the complaint is unjustified: no charges will be filed nor will other action adverse to the academic staff member be taken; or

If the administrator determines the complaint is unjustified, a written statement to that effect shall be sent to the academic staff member and the chancellor, and a copy placed in the academic staff member's personnel file.

- the administrator will determine and inform the academic staff member that the complaint is justified but warrants disciplinary action less severe than dismissal, and the university will proceed under the provisions of Chapter UWSP 13.01; or
- the administrator will determine and notify the academic staff member that the complaint is justified and file formal charges for dismissal, including the effective date of dismissal, against the academic staff member.

Any formal charge must also be accompanied by the proffer of an opportunity for a hearing before the academic staff member's executive director (or vice chancellor, if there is no executive director for the unit) or dean.

*Request for Administrative Hearing.*

An academic staff member who holds a probationary or fixed term appointment and who has received a formal statement of charges seeking dismissal has 20 days from the receipt of the charges to request a hearing before the appropriate vice chancellor or dean.

*Hearing Agent.*



In those instances where the academic staff member's immediate supervisor is an vice chancellor or dean, and was involved in bringing or investigating the complaint, the chancellor shall appoint another administrator to conduct the administrative hearing.

#### Hearing Procedure.

A hearing before the vice chancellor or dean shall provide the academic staff member the opportunity to present evidence and argument concerning the allegations. Normally, this hearing will not include testimony from witnesses but the administrator may elect to hear the individual bringing the complaint and the individual conducting the investigation into the complaint.

#### Hearing Outcomes.

Following the hearing, the administrator determines the validity of the allegations and acts on one of these options--

- the administrator will determine and inform the academic staff member that the complaint is unjustified: no charges will be filed nor will other action adverse to the academic staff member be taken; or
- the administrator will determine and inform the academic staff member that the complaint is justified but warrants disciplinary action less severe than dismissal, and render a written decision which may include an appropriate disciplinary response; or
- the administrator will determine and notify the academic staff member that the complaint is justified and dismiss the academic staff member.

Dismissal shall be effective upon receipt of the written notice of dismissal unless a different dismissal date is specified by the administrator.

#### No Administrative Hearing Requested.

If the academic staff member has not requested a hearing, the effective date of dismissal shall be as specified in the original statement of charges.

#### Request for Appeal Hearing.

An academic staff member who holds a probationary or fixed term appointment and who has received a formal statement of dismissal has 20 days from the receipt of the statement to request an appeal hearing conducted under the auspices of the Academic Staff Mediation Subcommittee.

#### Hearing Outcomes.

Following an appeal hearing on the dismissal, the hearing committee issues its report of findings and recommendations. The committee may find that the charges are without foundation or not proven, that the charges are valid but a sanction less than dismissal is warranted, or that the charges are valid and dismissal is an appropriate response on the part of the university.

#### Termination of Proceedings.

If the hearing process for an academic staff member holding a probationary or fixed term appointment is not concluded before the academic staff member's appointment expires, the proceedings will automatically end at the expiration of the academic staff member's appointment unless the academic staff member sends a written request to the chairperson of the Academic Staff Mediation Subcommittee that the proceedings continue to their conclusion. Continuation of the process shall not be construed as an extension of the term of appointment.

### Discontinuance.

If the university discontinues proceedings for dismissal against an academic staff member who has requested a hearing, the charges are deemed to be withdrawn and without merit.

### Settlement.

The proceedings may be discontinued by a settlement reached by mutual agreement between the administration and the academic staff member and with the concurrence of the chancellor prior to a final decision by the chancellor, or if appropriate, concurrence of the Board prior to a final decision by the Board.

### Continuation of Duties and Salary.

#### Suspension.

Unless the chancellor, in consultation with the Academic Staff Council, specifically finds that substantial harm may result to the institution if an academic staff member whose dismissal is sought continues with normal duties, the academic staff member shall not be relieved of those duties pending the final decision of the chancellor, or where appropriate, the Board.

#### Salary.

If an academic staff member is suspended before the final decision on dismissal by the chancellor or Board, the academic staff member's salary shall nonetheless be continued until the decision is reached.

#### Expiration of Appointment.

Where an academic staff member's appointment has expired and following an appeal, the chancellor (or where appropriate, the Board) finds on behalf of the academic staff member, salary lost during the period shall be restored pursuant to the provisions of UWSP 11.11 (6).

## FILING A REQUEST FOR HEARING.

### Written Request.

Upon receipt of a formal statement of dismissal, an academic staff member holding a probationary or fixed term appointment has 20 days in which to request a hearing by the Academic Staff Mediation Subcommittee.

- Failure to meet the 20 day deadline will likely end the opportunity for a hearing.
- The request shall be in writing and addressed to the chairperson of the subcommittee.
- The request should provide a historical resume of all actions taken to this point.

### No Request Filed.

If an academic staff member who has received notice of dismissal does not file a request for a hearing with the Academic Staff Mediation Subcommittee, the dismissal is effective upon the date specified in the letter of dismissal.

### Procedures.

The process, procedures, and guidelines for the hearing are identical to those for academic staff holding an indefinite appointment, described earlier in this section.

## SECTION 14

### OVERVIEW OF THE PROCESS AND PROCEDURES FOR REVIEW HEARING OF LAYOFF/TERMINATION OF ACADEMIC STAFF FOR REASONS OF BUDGET OR PROGRAM UNDER UWSP 12.05

(See Chapters UWS & UWSP 12)

#### INTRODUCTORY COMMENTS.

##### Applicable Documents.

An academic staff member contemplating a request for hearing on layoff or termination is advised to become familiar with

- Chapters UWSP 9 - 13, the institutional academic staff personnel rules;
- unit or departmental personnel rules and procedures;
- appropriate sections of the Wisconsin Administrative Code, the UW System academic staff personnel rules;
- Chapters 227.45 and 227.46 of the Wisconsin statutes; and
- related documents in this handbook.

##### Counsel.

An academic staff member who has received notification of layoff or termination or who is contemplating a hearing on layoff or termination may wish to seek advice from senior academic staff or faculty familiar with the policies and procedures, and is advised to retain legal counsel. The right to be represented at hearings by individuals of the academic staff member's choice is guaranteed under Chapters UWS and UWSP 12.

##### Time Limits.

###### Termination of Appeal.

Failure to meet any time limits established by these procedures will likely end the proceedings. An academic staff member considering an appeal of notification of a decision to lay off is urged to review these procedures and to act promptly.

###### Length of Process.

The time limits are intended to ensure action within a reasonable time period; nevertheless, the appeal process may be lengthy. The deliberative process in particular may take several months to conclude: the issues are significant; there is no limit on the number of deliberative sessions which may be held; and there is no limit on the length of the recesses which may occur between sessions.

##### Presence at Meetings.

###### No Exclusions.

Under the provisions of 19.89 of the Open Meetings Law, no member of a governmental body may be excluded from any meeting of the body. In addition, no member may be excluded from meetings of the body's subunits unless the rules of the body specifically state otherwise.

###### Personnel Matters.

No academic staff member under consideration for any personnel matter may be excluded from a department or unit meeting at which the matter is to be considered,

even if the meeting is moved into closed session. No academic staff member may be excluded from any departmental or unit committee meeting at which the matter is to be considered unless departmental or unit rules specifically state to the contrary.

#### Right to Open Meeting.

##### *19.85 Wis. Stats.*

Under the provisions of the Open Meetings Law, an academic staff member has the right to request and receive an open evidentiary hearing for any meeting of a unit or subunit involving consideration of dismissal for that individual.

**NOTE.** (1) Although layoff for financial emergency or reasons of program is not considered dismissal under Board rules, it is likely that layoff is dismissal for purposes of the Open Meetings Law.

(2) A meeting with an administrator for the purpose of discussion of possible layoff, even where the end result of the discussion may be a recommendation to lay off, is not subject to the provisions of the Open Meetings Law: an individual administrator is not a "formally constituted subunit."

Under the Open Meetings Law, even when departmental or unit policies provide that subunit or committee meetings be restricted to members of the subunit or committee, any academic staff member under consideration has the right to request and receive an open meeting for the portion of the meeting that constitutes an evidentiary hearing involving consideration of dismissal of that individual.

##### *Unit/Departmental Policies.*

Normally, unit/departmental policies will require a written request for an open meeting reasonably in advance of the meeting.

#### Consultation Prior to Layoff.

##### Chancellor.

Before any member of the academic staff may receive notification of layoff by the chancellor under the provisions of UWSP 12, the chancellor shall have consulted with and sought the advice of the Academic Staff Council as specified in UWSP 12.01 and in the paragraphs below headed "Academic Staff Council."

##### *Justification.*

The chancellor shall have provided to the Council all of the evidence and justification to support contemplated layoffs, including evidence that alternatives have been exhausted. These alternatives include but are not limited to

- increases in fees;
- retraining;
- nonrenewal of fixed term or probationary academic staff prior to layoff of indefinite appointment academic staff;
- reassignment; and
- other methods of budget reduction.

#### Academic Staff Council.

##### *Consultation.*

Before any member of the academic staff may receive notification of layoff and following consultation with the chancellor, the Academic Staff Council shall have met the requirements of UWSP 12.01 (4). The Council shall have

- reviewed the documentation provided by the chancellor;
- consulted with the personnel of the affected budget area or program;
- consulted, as appropriate, with other appropriate personnel;
- consulted with the Faculty Senate or a designated Senate committee;
- determined whether alternatives have been exhausted;
- provided an opportunity for the affected areas to give their advice to the Council as specified below ("Affected Unit/Department"); and
- provided its written advice concerning the contemplated layoffs, and the rationale for that advice, to the chancellor.

*Failure to Act.*

If the Council chooses not to respond under these provisions, the chancellor shall determine the individuals to be affected, using such advice as deemed of value.

Affected Unit/Department.

*Consultation.*

Before any member of the academic staff may receive notice of layoff, before the Academic Staff Council sends its advice and recommendations to the chancellor, and following consultation with the Academic Staff Council, the affected areas shall make recommendations to the Council for layoffs under the provisions of UWSP 12.03 and these procedures.

- Recommendations from an affected academic department shall be made by the tenured faculty of the department, in consultation with other departmental faculty and academic staff and other appropriate personnel.
- Recommendations from an affected support unit shall be made by supervisory personnel and indefinite appointment academic staff of the affected operational area(s), in consultation with other personnel in the unit and other appropriate personnel.

*Failure to Act.*

If the affected unit or department does not respond, the Council shall make its recommendations to the chancellor using such advice as deemed of value.

Notification.

General.

An academic staff member whose position has been recommended for elimination shall receive prompt written notification from the chancellor. Written notification of layoff or termination shall include

- reasons and data leading to the selection of the divisions, units, operational areas, colleges, schools, departments, or programs selected for reductions;
- the basis on which the individual position was identified, and the criteria, data, and reasons supporting the choice;
- the effective date of the layoff; and
- a copy of Chapter UWSP 12 and these policies and procedures.

Effective Date of Layoff.

*Indefinite Appointment.*

Notification of layoff for academic staff with indefinite appointment must be given not less than 12 months prior to the effective date, unless there are compelling reasons to the contrary (*i.e.*, almost immediate cutoff of funds). The effective

date shall normally be the end of the academic year for an academic year appointment and June 30 for an annual appointment.

*Probationary Appointment.*

Notification of layoff for academic staff with probationary appointments must be given not less than 3 months prior to the end of the appointment in the 2nd year, and 12 months thereafter, unless there are compelling reasons to the contrary (*i.e.*, almost immediate cutoff of funds). The effective date shall normally be the end of the academic year for an academic year appointment and June 30 for an annual appointment.

*Fixed Term Appointment, Half-time or More with 7 Years of Service.*

Notification of layoff for academic staff with fixed term appointments of .5 FTE or more and who have accumulated 7 years of service at .5 FTE or more per semester must be given not less than 9 months prior to the end of the appointment in the 8th through 10th years, and 12 months thereafter, unless there are compelling reasons to the contrary (*i.e.*, almost immediate cutoff of funds). The effective date shall normally be the end of the academic year for an academic year appointment and June 30 for an annual appointment.

*Fixed Term Appointment, Half-time or More with Less than 7 Years.*

Notification of layoff for academic staff with fixed term appointments of .5 FTE or more with less than 7 years of service at .5 FTE per semester must be given not less than 3 months prior to the end of the appointment in the first 2 years, and 6 months before the end of the appointment during the 3rd through 7th years, unless there are compelling reasons to the contrary (*i.e.*, almost immediate cutoff of funds). The effective date shall normally be the end of the academic year for an academic year appointment and June 30 for an annual appointment.

*Fixed Term Appointment, Less than Half-time.*

Notification of layoff for academic staff with fixed term appointments of less than .5 FTE must be given not less than 3 months prior to the end of the appointment in the first 2 years, and 6 months before the end of the appointment thereafter, unless there are compelling reasons to the contrary (*i.e.*, almost immediate cutoff of funds). The effective date shall normally be the end of the academic year for an academic year appointment and June 30 for an annual appointment.

Termination, Indefinite and Probationary Appointments.

During the notification period and prior to layoff, the chancellor may offer and the academic staff member on an indefinite or a probationary appointment may accept either

- terminal leave and retirement;
- relocation leave accompanied by resignation; or
- alternate employment at UWSP.

Acceptance of either of the first 2 alternatives ends the academic staff member's association with the UW System at the end of the leave period.

Entitlement to Review.

An academic staff member on indefinite appointment, or on probationary appointment, or on fixed term appointment with at least 3 years of service at UWSP, and who has received notification of layoff is entitled to a review before a hearing

committee of the Academic Staff Mediation Subcommittee on whether the layoff decision is appropriate.

*Presumption of Good Faith.*

An academic staff member who requests a review, and the committee conducting the hearing, shall presume that the decision to curtail the affected program was made in good faith and for proper reasons. However, if the academic staff member shows that the chancellor's decision to layoff is contrary to the advice of the Academic Staff Council, the chancellor or a designee must present evidence to support the decision.

*Hearing Not Requested.*

If an academic staff member does not request a hearing, the chancellor's recommendation is considered proper and the layoff is effective on the date specified in the notification.

*Nonrenewal Not Layoff.*

Nonrenewal, or a decision not to reappoint fixed term academic staff, regardless of reasons, is not a layoff under these policies and procedures.

*Layoff Proceeds.*

A request for a hearing does not forestall the actual layoff if the effective date is reached prior to the conclusion of an appeal.

FILING REVIEW REQUEST.

*Request for Supporting Data.*

Upon receipt of notification of designation for layoff, the academic staff member eligible for a hearing under "Entitlement to Review" (immediately above) has 20 days in which to request data related to the decision to layoff. Failure to meet the 20 day deadline will likely end the opportunity for a review hearing.

*Written Request.*

The request for data shall be in writing and shall be addressed to the chancellor.

*Request Honored.*

Any request from an eligible academic staff member who has received notification of designation for layoff shall be honored, and the material provided to the academic staff member within 15 days of receipt of the written request.

*Available Information.*

The academic staff member may request and shall receive upon request

- a written statement of the reasons for the decision to layoff;
- a summary of the reasons and data leading to the selection of the various units or programs in which reductions are to be made;
- a statement of the basis upon which the individual was selected, including if and how seniority was determined and applied, or if seniority was not the basis, the data and reasons supporting the choice;
- the effective date of layoff; and
- a copy of Chapter UWSP 12, these policies and procedures, and such other information or procedural regulations as the chancellor or Academic Staff Council deems appropriate.

*Request for Hearing.*

### Written Request.

Upon receipt of the supporting data described above, the eligible academic staff member has 20 days in which to request a review hearing by the Academic Staff Mediation Subcommittee.

- Failure to meet the 20 day deadline will likely end the opportunity for a hearing.
- The request shall be in writing and addressed to the chancellor and the chairperson of the subcommittee.
- As the burden of proof is on the academic staff member to establish a *prima facie* case that the decision was improper, the request shall state specifically the grounds upon which the academic staff member is seeking to establish the impropriety of the layoff decision.
- The request for review may also include a request for relevant information supplementary to that contained in the letter of notification.

### No Request Filed.

If an academic staff member notified of layoff does not file a request for hearing with the Academic Staff Mediation Subcommittee, the layoff shall be effective upon the date specified in the letter of notification.

### Required Action.

#### Notification.

If the chairperson determines that the individual requesting the hearing holds an academic staff appointment and is eligible for review hearing, the chairperson will

- contact the academic staff member to determine that the written request contains all pertinent facts, and to remind the academic staff member of the right of access to all evidence upon which the administration intends to rely to support the decision to lay off;
- provide written notification of the request for hearing to the chancellor so System legal counsel may be advised a case is pending;
- begin a file of all correspondence concerning the hearing, which will be passed on to the chairperson of the hearing committee;
- provide written notification that a hearing is in progress to the academic staff member; the administrative heads of the academic staff member's operational area and unit, or department chairperson; the appropriate executive director and vice chancellor, or dean; the provost; the chancellor; and the chairpersons of the Academic Staff Council and Faculty Senate; and
- provide copies of all correspondence to the
  - ♦ academic staff member;
  - ♦ hearing committee members; and
  - ♦ chancellor.

#### Appointment of Hearing Committee.

The chairperson will also appoint a hearing committee composed of a minimum of 5 persons, at least 3 of whom must be members of the Academic Staff Mediation Subcommittee. There will be broad representation from the university but not necessarily a member from each division or college.

- Normally, at least 3 of the appointed members shall have had either



- ♦ previous experience as a member of a hearing committee under either UWSP 10.04, 11.04, 12.05, 13.01, 13.02 or other similar hearing, or
  - ♦ orientation and training for a hearing procedure.
- One member, who normally shall have had previous experience as a member of a hearing committee under either UWSP 10.04, 11.04, 12.05, 13.01, 13.02 or other similar hearing, shall be designated as the chairperson of the committee.
- The following academic staff members may not serve on the hearing committee:
  - ♦ anyone who is a member of the Academic Staff Council or any of its subcommittees which participated in the consultation regarding layoffs;
  - ♦ anyone who is a member of the academic staff member's department/unit;
  - ♦ anyone who assisted or consulted with the department/unit regarding individual designations for layoff; and
  - ♦ anyone who is a material witness.
- If otherwise qualified, the chairperson of the Academic Staff Mediation Subcommittee may serve as either a member or as chairperson of the hearing committee.
- Reasonable effort will be made to ensure that the members of the hearing committee are acceptable to both parties in the hearing process.
  - ♦ Normally, this will be accomplished by informal contact with the proposed members and the parties to the hearing before the formal appointment.
  - ♦ The decision of whom to appoint is solely that of the chairperson of the subcommittee.
- After the committee is appointed, the academic staff member has the unrestricted right to challenge and remove 1 member from the hearing committee.
- The decision on other challenges to committee members shall be made by the committee, excluding the member under challenge.
  - ♦ If members are disqualified or disqualify themselves, the remaining members consult with the chairperson of the Academic Staff Council and the chairperson of the Academic Staff Mediation Subcommittee and appoint other members to serve.

#### Hearing Date.

The hearing committee shall meet to hear the matter within 20 days of receipt of the request for a hearing, except that this time limit may be extended by mutual consent of the parties or by order of the hearing committee. The academic staff member requesting a hearing must receive written notice of the hearing at least 10 days prior to the hearing.

#### Hearing Committee Chairperson's Responsibilities.

Once the hearing committee is appointed, the chairperson of the hearing committee assumes responsibility for the hearing process. The chairperson shall

- conduct the hearing under the provisions of UWS/UWSP 12.04 and 12.05 or 12.06, the provisions of Chapter 227.45 and 227.46, these policies and procedures, and the guidelines for hearings (which may be found in the following subsection or requested from the chairperson of the Academic Staff Mediation Subcommittee);
- establish appropriate communication with the chancellor; the vice chancellor; the academic staff member, the administrative heads of the academic staff member's operational area and unit, or department chairperson; the appropriate executive director and vice chancellor, or dean; and the chairperson of the Faculty Senate, and keep each informed of the proceedings in the hearing;
- keep records of all correspondence among all the principals from the initiation of the hearing through its conclusion;
- appoint a secretary for the hearing committee (normally an associate vice chancellor), and provide for a verbatim transcript of the hearing (usually a sound recording);
- secure appropriate facilities, schedule evidentiary hearings, and provide notices to conform with the Open Meetings Law;
- secure appropriate facilities and schedule and conduct deliberative sessions in which the committee formulates its findings and recommendations;
- prepare a summary of the evidence and the written report of the committee's findings and recommendations and transmit these materials and a verbatim record of the hearing to the academic staff member and to the chancellor, and send copies of the summary and the report to the administrative heads of the academic staff member's operational area or unit, or department chairperson; the appropriate executive director and vice chancellor, or dean; the chairperson of the Faculty Senate; and the provost;
- send a copy of the hearing procedures with each written notification of the hearing, and
- send written notification of the hearing to the academic staff member; the chancellor; the provost; the administrative heads of the academic staff member's operational area and unit, or department chairperson; the appropriate executive director and vice chancellor, or dean; and witnesses asked to appear on behalf of the parties or called by the hearing committee.

Written notification of the hearing shall include statements

- ♦ of the date, time, and place of the hearing;
- ♦ that all parties may be represented by an individual(s) of their choice, which may include legal counsel;

**NOTE.** If counsel has been requested by the committee from the chancellor, notice will include a statement that the committee will have legal counsel present at the hearing.

- ♦ that normally, by a vote of the committee, the evidentiary hearing and the deliberative sessions will be closed but the academic staff member, upon timely written request to the chairperson, has the right to request an open evidentiary hearing and any such request must be honored;
- ♦ of whether the academic staff member has requested an open evidentiary hearing;

- ♦ that both parties have a right to copies of all documentary evidence relevant to the hearing;
- ♦ that the academic staff member must establish a *prima facie* case that improper factor(s) enumerated in UWSP 12.05 (5) (a), (b), or (c) significantly entered into the decision to lay off or the committee, in deliberative session, must find the decision to have been proper, and adjourn the hearing;

*NOTE.* Hearings under 12.05 may require 2 evidentiary sessions and 2 deliberative sessions. These are explained later, under "Procedure for Evidentiary Hearing and Deliberative Meeting."

- ♦ that if a *prima facie* case is established, the hearing shall be reconvened and the chancellor or a designee afforded an opportunity to present evidence to support the decision, after which the academic staff member may present evidence in rebuttal;
- ♦ that after hearing all the evidence, the committee must make its determination as follows--
  - The committee first determines whether 1 or more improper factors entered into the decision to lay off. Unless the committee is convinced that an improper factor entered significantly into the decision, it must find the decision to have been proper.
  - If the committee finds 1 or more improper factors may have entered into the decision, it must nonetheless find the decision to have been proper if it is convinced that
    - ♣ there were legitimate programmatic or budgetary reasons for layoff;
    - ♣ the determination of those reasons was made as prescribed and in accordance with the provisions of 12.01; and
    - ♣ the decision to layoff the academic staff member was in accordance with the provisions of 12.03.
  - The committee shall find the decision to have been improper if the committee believes that 1 or more improper factors entered into the decision and
    - ♣ there were no legitimate programmatic or budgetary reasons for layoff; or
    - ♣ the determination of those reasons was not made as prescribed in or in accordance with the provisions of Chapter UWSP 12.01; or
    - ♣ the decision to lay off the academic staff member was not in accordance with the provisions of UWSP 12.03.
  - In reaching its decision, the committee must presume the decision to curtail the program was made in good faith and for proper reasons, and shall not substitute its judgment or priorities for that of the administration. However, if evidence is presented to show that the chancellor's decision to lay off the individual is contrary to the advice of the Academic Staff Council as provided under UWSP 12.01, the chancellor or a designee shall present

evidence and data in support of the decision to the hearing committee.

- ♦ that all parties, including witnesses, are expected to provide to the hearing committee chairperson sufficient copies of their testimony for all other parties, and that these materials should be provided in sufficient time prior to the hearing for distribution to all parties, but that failure to provide such copies will not preclude an individual from giving testimony;
- ♦ that either party may call persons to offer evidence or testimony;
- ♦ that both parties will be sent a list of the names of any persons to be called by either party, or by the hearing committee;
- ♦ that either party may offer testimony from any source;
- ♦ that the hearing committee is not bound by statutory rules of evidence but may hear testimony having reasonable probative value;
- ♦ that both parties have the right, under guidelines established by the chairperson, to question persons offering testimony;
- ♦ that adjournments shall be granted to enable either party to investigate evidence as to which a valid claim of surprise is made;
- ♦ that any personal notes made during the procedures and retained by a participant are subject to subpoena if the appeal is not resolved at the institutional or System level and becomes a legal matter;
- ♦ that a quorum for the evidentiary hearing consists of 4 members of the hearing committee;
- ♦ that a quorum for the deliberative sessions consists of 4 members of the hearing committee, except that in an emergency, the chairperson may declare a quorum when only 3 members are present;
- ♦ that the hearing committee shall give a report of its findings and decision to the chancellor; the provost; the administrative heads of the academic staff member's operational area and unit, or department chairperson; the appropriate executive director and vice chancellor, or dean; the chairperson of the Faculty Senate; and the academic staff member; and
- ♦ that the academic staff member's and the chancellor's copies shall be accompanied by both a verbatim record of the hearing and a summary of the evidence, unless the academic staff member is represented by counsel, in which case the verbatim record and summary shall be sent to counsel.

## GUIDELINES FOR HEARINGS.

### *Quorum, Notice, and Confidentiality.*

#### Quorum.

While all 5 members will be present whenever possible, a quorum for the hearing and for meetings of the hearing committee consists of 4 members of the committee.

In an emergency, the chairperson of the hearing committee has the discretion to declare a quorum for deliberative sessions when only 3 members of the hearing committee are present.

#### Notice.

Notices of meetings shall be sent to the University Newsletter for publication (without identifying the academic staff member) and shall indicate whether the meetings will be open or closed.

### Confidentiality.

#### *Committee.*

All matters related to the academic staff member and the hearing are maintained in the strictest confidentiality by hearing committee members, except as may be necessary to meet provisions of the Open Meetings Law or other similar statutory, administrative rule, or academic staff governance requirements.

#### *Documents.*

Following the conclusion of all deliberations and the submittal of the hearing committee's report, the chairperson shall collect all drafts and other documents related to the hearing from the members of the committee, from any appointed secretary, and from all other parties except the academic staff member and academic staff member's representative(s). All minutes and materials provided by the parties and not forwarded to the chancellor as a part of the report shall be sealed and filed in the office of the chancellor for a period of 5 years, after which they shall be destroyed as permitted under the Public Records Law.

**NOTE.** Participants are reminded that any personal notes made during the procedures and retained after the hearing are subject to subpoena if the appeal is not resolved at the institutional or System level and becomes a legal matter.

### Evidentiary and Deliberative Sessions.

The hearing process consists of an evidentiary hearing and a deliberative meeting.

#### Evidentiary Hearing.

The purpose of the initial session of the evidentiary hearing is to provide an opportunity for the academic staff member to present evidence that one or more improper factors in UWSP 12.05 (5) (a), (b), or (c) entered into the decision to lay off. The academic staff member has the right to be represented by another individual(s), which may be legal counsel. The hearing committee is not bound by legal rules of evidence. The committee must make a verbatim record of the hearing.

#### Deliberative Session.

After the academic staff member has presented evidence, the hearing committee deliberates on whether the evidence presented constitutes a *prima facie* case that 1 or more improper factors entered into the decision to lay off.

- If the hearing committee finds no case established, it finds the decision to have been proper, reports its findings to the academic staff member and the chancellor, and adjourns.
- If the hearing committee finds that improper factors entered into the decision, it reconvenes in a second evidentiary hearing.

#### Second Evidentiary Hearing Session.

If the committee finds that a *prima facie* case was established, the chancellor or a designee is entitled to present evidence to support the layoff decision.

- Following the administration's presentation, the academic staff member may present evidence in rebuttal.

- Following the academic staff member's rebuttal presentation, if any, the committee reconvenes in a second deliberative session.

### Second Deliberative Session.

The purpose of the second deliberative meeting is for the hearing committee to reach its conclusions, after which the chairperson of the hearing committee shall prepare a summary of the evidence and write a draft report of the findings and recommendations of the hearing committee. Each member of the hearing committee shall sign the final report or file a dissent. The report shall be distributed as soon as feasible following the close of deliberations.

### Closed and Open Sessions.

#### General Guideline.

Evidentiary hearings and deliberative meetings will normally be closed, as permitted by the Open Meetings Law, unless the chairperson of the hearing committee receives from the academic staff member a written request for an open evidentiary hearing, in which case all evidentiary sessions shall be open. Closed meetings require a majority vote of the hearing committee, by a roll call vote.

#### Evidentiary Hearings: Who May Attend/Speak.

##### *Closed Hearings.*

If the evidentiary hearing is closed, only parties directly involved in the hearing may attend. Those permitted to attend, who may speak when recognized by the chairperson for that purpose, are

- members of the hearing committee;
- the academic staff member;
- the chancellor or a designee;
- representatives for the parties;
- witnesses for the parties;
- individuals specifically called or designated by the hearing committee, which may include legal counsel; and
- an appointed secretary, who need not be a member of the committee.

##### *Open Hearings.*

If the evidentiary hearing is open, anyone may attend but only those parties directly concerned with the hearing (delineated above) and recognized for the purpose of speaking by the chairperson of the hearing committee are permitted to speak.

#### Deliberative Meetings: Who May Attend/Speak.

Only members of the hearing committee, an appointed secretary (who need not be a member of the committee), and the committee's legal counsel (if any) are permitted to attend, and may speak when recognized by the chairperson for that purpose. Only members of the hearing committee participate in determining findings of fact and decision.

### Procedure for Evidentiary Hearing and Deliberative Meeting.

#### Introduction.

A copy of these procedures may be requested from the chairperson of the Academic Staff Mediation Subcommittee or the associate vice chancellor for personnel.

### Presiding Officer.

The chairperson of the hearing committee convenes the hearing and serves as presiding officer. The chairperson assumes all the normal responsibilities of a committee chairperson and rules on such questions as may arise on the procedure of the hearing, admissibility of evidence, and all other matters related to the hearing.

If the committee has legal counsel, the chairperson may request the advice of counsel on all matters pertaining to the hearing.

### Evidentiary Hearing.

The evidentiary hearing normally proceeds in the order described here, but the chairperson may change the order as circumstances may require.

- Call to order; introduction of members of the committee and of the secretary.
- Explanation of the Open Meetings Law and either
  - ♦ explanation of limitations of open meetings, if an open hearing has been requested, or
  - ♦ a request for a motion to close the hearing under the appropriate section(s) of 19.85 Wis. Stats. [19.85 (a), (b), (c), or (f)], and a roll call vote on the motion.
- Introduction of the academic staff member, and the academic staff member's representative(s), if any.
- Introduction of the chancellor or the chancellor's designee, and the administration's representative(s), if any.
- Announcement that
  - ♦ the initial session affords the academic staff member the opportunity to establish a *prima facie* case that 1 or more improper factors entered into the decision to lay off;
  - ♦ following the academic staff member's presentation of evidence and testimony, the hearing will be recessed to a deliberative session; and
  - ♦ depending upon the committee's findings, the hearing will either be
    - reconvened and adjourned following an announcement that no *prima facie* case was established, or
    - reconvened to permit the chancellor or a designee to present evidence in support of the decision.
- Presentation of the academic staff member's case by the academic staff member or the academic staff member's representative, but not the testimony of witnesses.
- Questions of the academic staff member by the administration or the administration's representative.
- Presentation of witnesses on behalf of the academic staff member.
- Questions of witnesses by the administration or the administration's representative.
- Rebuttal questions of witnesses by the academic staff member or the academic staff member's representative.
- Presentation by any witnesses who may have been called by the hearing committee.
- Questions of committee witnesses by the administration or the administration's representative.
- Questions of committee witnesses by the academic staff member or the academic staff member's representative.

- Questions of all witnesses by members of the hearing committee.
- Recess of the evidentiary hearing.

If the deliberative meeting does not follow immediately after the evidentiary hearing, the chairperson will request a motion to recess the hearing and to reconvene at the deliberative meeting [if possible, the date and time of the session will be included in the motion to recess], and shall conduct a roll call vote on the motion.

#### Deliberative Meeting: Issue for Determination.

The committee's sole determination at this point is whether the academic staff member established a *prima facie* case that 1 or more improper factors entered into the decision to lay off.

##### *No Prima Facie Case Established.*

If the committee finds that no *prima facie* case was established, the hearing shall be reconvened and the chairperson will announce the decision, indicate that the committee's report of findings will be forthcoming to the academic staff member and the chancellor as soon as feasible, and adjourn the hearing.

The committee will reconvene in deliberative meeting to prepare its report of its findings and recommendation prepared as described below.

##### *Prima Facie Case Established.*

If the committee finds that a *prima facie* case was established, the hearing shall be reconvened, the chairperson will announce the decision, and proceed with the second part of the evidentiary hearing.

##### *Determination by Vote.*

Decisions on the establishment of a *prima facie* case shall be determined by a majority of the members of the hearing committee. The vote shall be a roll call vote, which shall be recorded.

#### Second Evidentiary Hearing Session.

- Presentation of the administration's case in support of the layoff decision, but not the testimony of witnesses other than the academic staff member (if the academic staff member is called by the administration).
- Questions of the administration by the academic staff member or the academic staff member's representative.
- Presentation of witnesses on behalf of the administration.
- Questions of the witnesses by the academic staff member or the academic staff member's representative.
- Rebuttal questions of witnesses by the administration or its representative.
- Presentation by any witnesses who may have been called by the hearing committee.
- Questions of committee witnesses by the administration or the administration's representative.
- Questions of committee witnesses by the academic staff member or the academic staff member's representative.
- Questions of all witnesses by members of the hearing committee.
- Rebuttal or closing comments by the administration or the administration's representative.



- Rebuttal evidence by the academic staff member or the academic staff member's representative, which may include the calling of additional witnesses or the recall of witnesses previously called.
- If the academic staff member calls any witnesses in rebuttal, the administration and then the committee have the opportunity to question those witnesses.
- Rebuttal or closing comments by the academic staff member or the academic staff member's representative.
- Questions of the administration by members of the hearing committee.
- Questions of the academic staff member by members of the hearing committee.
- Rebuttal questions of the administration by members of the hearing committee, if any.
- Conclusion of the evidentiary hearing.

If the deliberative meeting does not follow immediately after the evidentiary hearing, the chairperson will request a motion to recess the hearing and to reconvene at the deliberative meeting [if possible, the date and time of the session will be included in the motion to recess], and shall conduct a roll call vote on the motion.

### Second Deliberative Session.

The hearing committee shall deliberate on the hearing and shall write a summary of the evidence and a report which includes the findings of law and decision, and the recommendations of the committee.

#### *Findings.*

##### No Case Established.

If the academic staff member did not establish a *prima facie* case in the initial part of the hearing, the committee shall find the decision to have been proper and reports this finding to the chancellor, to the academic staff member, and the other parties receiving copies of the report (enumerated below).

##### Case Established.

If the academic staff member did establish a *prima facie* case and the hearing moved into the second part of the hearing, the hearing committee shall make its determination as follows--

- ♦ the committee shall first consider whether 1 or more improper factors in UWSP 12.05 (5) (a), (b), or (c) entered into the decision to lay off.
  - Unless the committee is convinced that an improper factor entered significantly into the decision, it must find the decision to have been proper.
- ♦ If the committee believes 1 or more improper factors may have entered into the decision, it must nonetheless find the decision to have been proper if it is convinced that
  - there were legitimate programmatic or budgetary reasons for layoff;
  - the determination of those reasons was made as prescribed and in accordance with the provisions of 12.01; and

- the decision to layoff the academic staff member was in accordance with the provisions of 12.03.
- ◆ The committee shall find the decision to have been improper if the committee believes that 1 or more improper factors entered into the decision and
  - there were no legitimate programmatic or budgetary reasons for layoff; or
  - the determination of those reasons was not made as prescribed in or in accordance with the provisions of Chapter UWSP 12.01; or
  - the decision to lay off the academic staff member was not in accordance with the provisions of UWSP 12.03.
- ◆ In reaching its decision, the committee must presume the decision to curtail the program was made in good faith and for proper reasons, and shall not substitute its judgment or priorities for that of the administration. However, if evidence is presented to show that the chancellor's decision to lay off the individual is contrary to the advice of the Academic Staff Council as provided under UWSP 12.01, the chancellor or a designee shall present evidence and data in support of the decision to the hearing committee.

#### *Determination of Findings.*

Decisions on the validity of the layoff and on any recommendations shall be determined by a majority of the members of the hearing committee. The vote shall be a roll call vote, which shall be recorded.

#### *Decision and Recommendations.*

The committee shall send its report of findings, decision, and recommendations, if any, to the chancellor as soon as feasible following the conclusion of the deliberative session(s).

- If the committee finds the decision to lay off to have been proper, it shall so report, normally without recommendation.
- If the committee finds the decision to have been improper, it shall so report and may elect to make a recommendation, not limited because of enumeration, to
  - ◆ discontinue layoff proceedings entirely; or
  - ◆ rescind the notification of layoff for the individual and begin the layoff process anew.

#### *Report.*

At an appropriate time in the deliberations, the chairperson shall recess the meeting and shall prepare a summary of the evidence and a draft report. The draft shall be circulated among the members, after which the committee shall reconvene to review the draft and make appropriate modifications. After the report has been adopted by the hearing committee, each member of the committee shall sign the report or file a dissent.

- The report shall be adopted by a majority of the members of the hearing committee. The vote shall be a roll call, which shall be recorded.
- The report shall be distributed as soon as feasible after the close of deliberations but not later than 20 days following adjournment.

- The chairperson provides a verbatim record of the hearing, a summary of the evidence, and a copy of the report to both the academic staff member and the chancellor, and a copy each of the report to the provost; the administrative heads of the academic staff member's operational area and unit, or department chairperson; the appropriate executive director and vice chancellor, or dean; and the chairperson of the Faculty Senate.

### Chancellor's Action.

#### Decision Found Proper.

If the committee has found the decision to have been proper, the layoff shall be effective on the date specified in the letter of notification.

#### *Board Review.*

The academic staff member may request a review by the Board. The Board decides whether to grant the review.

#### Decision Found Improper.

If the committee has found the decision to have been improper, the chancellor shall review and give careful consideration to the committee's findings.

#### *Recommendation Accepted.*

If the chancellor accepts the committee's findings, the chancellor's decision is final.

#### *Recommendation Not Accepted.*

If the chancellor contests the committee's finding that the decision was improper, the chancellor shall afford the academic staff member an opportunity to discuss the report within 20 days after receiving it from the committee. Within 20 days of the meeting with the academic staff member (or of the date of the meeting, if the academic staff member chooses not to attend), the chancellor shall provide the academic staff member with a written decision, which shall be final unless the Board, at the request of the academic staff member, grants a review on the record.

#### Substantial Differences.

If the chancellor's proposed decision differs substantially from the recommendations of the hearing committee, the chancellor shall promptly consult the committee and provide it a reasonable opportunity for a written response prior to rendering a final decision.

## **APPROVAL OF CHANGES TO CHAPTER 4C**

- Changes to Chapter 4C, Sections 7, 8, 9, 10, 11, 12, 13, and 14, require the approval of Faculty Senate and the Chancellor.