

CHAPTER VI

RULES GOVERNING COMPLAINTS AND GRIEVANCES AGAINST FACULTY UNDER UWS CHAPTER 6 OF THE WISCONSIN ADMINISTRATIVE CODE

(Approved by Board of Regents on February 5, 1982 and August 18, 2006. Reviewed and Approved by UW-Whitewater Faculty Senate on August 8, 2016. Approved by Chancellor on August 19, 2016. Approved by Board of Regents on October 7, 2016)

SECTION A. GENERAL PRINCIPLES AND DEFINITIONS

1. Definitions:

a. **Statement of Charge(s):** A written statement issued by the Chancellor in response to a complaint filed against a faculty member that directs specific disciplinary action and penalties against said faculty member. The charge(s) shall describe the conduct alleged in the complaint, the university rule or policy that the faculty member's alleged conduct or pattern of conduct violated, and/or how the faculty member's alleged conduct or pattern of conduct adversely affected the faculty member's performance of his or her obligations to the university. [Note: Any complaint against a faculty member for conduct described in Section C shall be defined therein and subject to the regulations of the United States Department of Health and Human Services (See 42 C.F.R., Part 50.102)].

b. **Complaint:** A formal allegation of conduct against a faculty member which violates university rules or policies or which adversely affects the faculty member's performance of his or her obligation to the university and could lead to discipline or dismissal under UWS 4 or UWS 6.

c. **Conflict Resolution:** A voluntary alternative means of resolving disputes by which a neutral third party facilitates a mutually acceptable resolution between the complainant and faculty member to resolve all outstanding complaints, grievances, disputes or concerns.

d. **Grievance:** An allegation of dissatisfaction or wrongdoing in regard to a faculty member's working conditions, unfair treatment or dispute that does not rise to the level of a formal complaint. A grievance generally seeks some form of corrective resolution for the alleged conduct rather than punitive or disciplinary action.

e. **Penalty or Remedy:** As a part of the disciplinary process under this Chapter, the Chancellor may impose a penalty or remedy (or a combination thereof) as stated below which shall be included in the Statement of Charge(s):

i. **Reprimand:** A written warning by the Chancellor that the faculty member must cease the specified conduct which violated university rules or policies or adversely affected the faculty member's performance of his/her contractual obligations to the university.

- ii. Corrective intervention: Counseling, training, or other appropriate and reasonable remedies which would support necessary changes in behavior.
- iii. Fine: A one-time forfeiture of up to but not to exceed 10% of the faculty member's annual base salary.
- iv. Reduction of base salary: A reduction of up to but not to exceed 5% of the faculty member's annual base salary.
- v. Suspension without pay: Suspension without pay from all employment by the university and suspension of all rights and privileges derived from faculty appointment or rank or from departmental or college faculty membership up to but not more than a period equal to one contractual year.

2. General Principles:

a. Sections B and C of these rules shall apply when a complaint is filed against a faculty member by a student, university staff, academic staff, faculty member, administrator or member of the public. In cases involving allegations of misconduct related to research, Section C will apply. For all other complaints against faculty members, Section B will apply.

b. Section D of these rules shall apply when a faculty member files a grievance during his or her employment at the University of Wisconsin-Whitewater. These rules shall ensure a fair, just, and timely process in regard to the proceedings herein.

c. No person shall be denied recourse to the other means of relief specified in these rules, for example, conflict resolution. At any time in the process, the complainant, faculty member, and Chancellor by mutual written consent may choose to engage in a conflict resolution process.

d. Any complaint or grievance that would violate a faculty member's constitutional rights or protections or negatively impact the principles of academic freedom shall be dismissed, in whole or in part, by the Chancellor.

e. Any dispute, complaint or grievance filed by a student against a faculty member for a grade dispute or appeal shall be referred to the applicable provisions under UWS Chs. 14, 17 or the UW-Whitewater Handbook for student grade appeals.

f. All proceedings shall be conducted in a climate of presumed innocence. Every effort shall be made to preserve the rights and dignity of all parties.

g. If disciplinary action is imposed against a faculty member under Section B or C of this Chapter, the faculty member may not be disciplined twice for the original conduct under which the original complaint was made. This does not prevent the Chancellor from taking additional disciplinary action against a faculty member for conduct that was not considered during the original disciplinary charges, penalties or remedies.

h. During the pendency of the disciplinary process under Section B or C of this Chapter, the Chancellor may place a faculty member on administrative leave with pay or reassign the faculty member to different duties or obligations that are commensurate with the faculty's education or experience. Said action does not constitute disciplinary action (e.g. a penalty or remedy) under this Chapter.

i. Unless specifically stated otherwise during proceedings under Section B or C of this Chapter, a faculty member shall remain employed and fulfill his or her contractual obligations to the University during the proceedings under Section B, unless immediate suspension with or without pay is initiated under UWS Chs. 4 or 7.

3. Class Reassignment of Student:

During the proceedings herein, if an administrator seeks to reassign a student from a faculty member's class to a comparable class taught by another faculty member, the administrator will make every reasonable effort to obtain the verbal consent of the student and receiving faculty member unless reassignment is necessary to address a health or safety concern of the student or faculty member. The administrator, or his or her designee, shall inform the faculty member under investigation, his or her department chair and dean of the college of the basis for the reassignment. All reasonable efforts shall be taken to ensure that the reassignment does not disadvantage the student or the receiving faculty member.

4. Voluntary Resolution:

At any point during this process, the Chancellor, complainant or faculty member may initiate a mutually acceptable resolution of the complaint. If a resolution is considered, the Chancellor and faculty member shall agree to such resolution in writing and stipulate to a mutually agreeable extension of any deadlines herein. Any agreement to seek conflict resolution shall be voluntary in nature, uncoerced and without precondition as to outcome. If necessary, a facilitator may be assigned by the Chancellor to assist the parties in seeking a mutual resolution.

SECTION B. COMPLAINTS AGAINST FACULTY

1. Receipt of a Complaint:

a. Time to File: A complaint must be signed by the complainant (or his or her representative) and filed with the Chancellor's Office within one hundred twenty (120) calendar days of the alleged acts or omissions that led to the complaint unless said allegations are a part of a consistent and continuing pattern of similar behavior(s) that occurred prior to the 120 calendar day period.

b. Notice to Faculty Member: Within twenty-one (21) calendar days from the Chancellor's receipt of a complaint against a faculty member, the Chancellor, or his or her designee, shall notify the faculty member in writing by email and first class mail to last known residence that a complaint has been received. The Chancellor, or his or her designee, shall

provide the faculty member with a copy of the complaint or in the alternative, a written summary of the allegations contained in the complaint.

c. Initial Action by Chancellor: Upon consideration of the complaint, the Chancellor may request additional information from the complainant, dismiss the complaint for lack of merit or untimeliness, or initiate an investigation into the allegations through the use of an investigator to determine whether there is sufficient evidence to issue a Statement of Charge(s).

- i. If the Chancellor dismisses the complaint for lack of merit or untimeliness, the Chancellor will notify the complainant and faculty member in writing of the decision within twenty-one (21) calendar days with the stated reasons for dismissal. The complainant shall be notified of any rights to appeal said decision under any applicable university or system policy or procedure.
- ii. If the Chancellor concludes that an investigation is necessary to determine whether to file a charge, the process under subsection B.2 below will be initiated.
- iii. If the faculty member admits to all of the allegations contained in the complaint, then the Chancellor may proceed to issuing a Statement of Charge(s) pursuant to subsection B.3.

d. At any time during this process under Section B, either the complainant and/or the faculty member may request that the Chancellor assign an impartial administrator or employee of the university to serve as an advocate for either party throughout the process to ensure that all rights and responsibilities are clearly understood.

e. In accordance with Title IX of the Education Amendments of 1972 and the Violence Against Women Reauthorization Act of 2013, if a complaint or allegation involves sexual harassment, sexual assault, domestic or dating violence or stalking, the complainant or person who was allegedly subjected to said conduct shall have all procedural rights and protections provided to the faculty member during the process, including a right to be simultaneously notified of any action, decision or appeal rights that the faculty member receives from the Chancellor, or designee.

2. Investigation:

a. The Chancellor will assign an individual to conduct an investigation into the allegations contained in the complaint. The investigation shall be completed within one hundred twenty (120) calendar days from the date it is assigned to the investigator, unless additional time is required to conduct a thorough and complete investigation. During the investigation, the investigator will provide the complainant, pertinent witnesses and the faculty member with an opportunity to provide verbal or written information related to the allegations within a twenty one (21) calendar day period. At the conclusion of the investigation, the investigator will

submit his or her findings in writing to the Chancellor with the following: i) a summary of the allegations; ii) the names of all individuals interviewed; iii) findings of fact based on the evidence considered; and iv) copies of all documents that were relied upon for the findings of facts.

b. Within thirty (30) calendar days from receipt of the investigative report, the Chancellor shall either dismiss the complaint or issue a Statement of Charge(s) against the faculty member. If the Chancellor dismisses the complaint in light of the investigative findings, the Chancellor will notify the complainant and faculty member by email and first class mail to last known residence of the decision with the stated reasons for dismissal. The complainant shall be notified of any rights to appeal the decision under any applicable university or system policy or procedure. If the Chancellor determines that there is sufficient evidence to conclude that the faculty member's conduct violates university rules or policies or adversely affects the faculty member's performance of his or her obligation to the university, a Statement of Charge(s) shall be issued in accordance with subsection 3 below.

3. Statement of Charge(s):

If the Chancellor determines that there is sufficient evidence to conclude that the faculty member's conduct violates university rules or policies or adversely affects the faculty member's performance of his or her obligation to the university, the Chancellor shall prepare a written Statement of Charge(s) to be delivered to the faculty member's official university email account and by U.S. First Class mail to the faculty member's last known home address. The Statement of Charge(s) shall include the following:

- a. A description of the conduct alleged in the complaint;
- b. The university rule or policy that the faculty member's alleged conduct or pattern of conduct violated;
- c. A description of how the faculty member's alleged conduct or pattern of conduct adversely affected the faculty member's performance of his or her obligation to the university;
- d. The name of the complainant(s)(unless there is a privacy or safety concern that would prevent the disclosure of personal information of the complainant or other individuals);
- e. The name of the individual who investigated the allegation(s), if applicable;
- f. The names of any individuals who may have pertinent information in relation to the charge;
- g. A copy of non-redacted documents or materials that were relied upon by the Chancellor to issue or support the charge, unless privacy laws require redaction;

- h. The Chancellor's initial determination as to whether the charge seeks disciplinary action pursuant to UWS 6 and UW-Whitewater Ch. VI, Section B rather than UWS 4;
- i. A description of any penalty and/or remedy;
- j. The faculty member's right to an advocate or legal representation at his or her own expense at any point in the process; and
- k. The faculty member's right to request a hearing before the Faculty Appeals, Grievance and Disciplinary Hearing Committee in regard to either the findings and/or the penalties or remedies no later than twenty-one (21) calendar days from the date of the Statement of Charge(s).

4. Response by Faculty Member:

Within twenty-one (21) calendar days from the date of the Statement of Charge(s), the faculty member may submit a written request for a hearing to the Chancellor. Failure to file a written request for a hearing within the timeframe herein shall result in the charge(s) being final and any penalties and/or remedies may be immediately imposed against the faculty member.

5. Request for Hearing:

If a faculty member submits a written request to the Chancellor for a hearing within the timeframe herein, then the Chancellor shall stay any penalty or remedy until the hearing process is concluded. The Chancellor shall contact the Faculty Senate Chair and request that a five (5) member hearing panel be formed (plus 2 alternate members) from the membership of the Faculty Appeals, Grievance and Disciplinary Hearing Committee. The Chancellor shall provide the Faculty Senate Chair with a copy of the Statement of Charge(s) (with attachments).

6. Composition of Hearing Panel:

a. Within twenty-one (21) calendar days from receipt of the Chancellor's request for a hearing panel, the Faculty Senate Chair shall select five (5) eligible Faculty Appeals, Grievance and Disciplinary Hearing Committee members and two (2) alternates to serve as the Hearing Panel. Upon the Faculty Senate Chair's receipt of each selected member's confirmation of their availability to serve as a Hearing Panel member, the Faculty Senate Chair will submit the Hearing Panel member's and alternate's names and titles in writing to the Chancellor and faculty member.

b. The Chancellor or the faculty member may each object to one Hearing Panel member or alternate, in which case a new panel member may be chosen.

c. No Hearing Panel member or alternate shall be a member of the faculty member's department, nor shall a member or alternate have a conflict of interest or personal

relationship which would impact the member's or alternate's ability to be an impartial and unbiased Hearing Panel member.

7. Initial Meeting of Hearing Panel:

Within twenty-one (21) calendar days of the official composition of the Hearing Panel, the Faculty Senate Chair shall meet with the Hearing Panel in-person or by teleconference and provide the Hearing Panel with a copy of the Statement of Charge(s) and attachments. During this meeting, the Hearing Panel shall appoint a Chairperson to officiate the hearing proceedings, conduct all necessary communication with the parties during the process and respond to any procedural matters on behalf of the Hearing Panel.

8. Legal Advisor to Hearing Panel:

Upon the Hearing Panel's request to the Chancellor, an attorney from the UW System Office of General Counsel may be assigned to work with the Hearing Panel in regard to procedural matters and/or drafting of written communications during the hearing process. The function of legal counsel shall be to advise the Hearing Panel, consult with Hearing Panel members on legal matters, and such other responsibilities as shall be determined by the Hearing Panel within the provisions of these rules and procedures.

9. Confidential Materials:

During this hearing process, all documents received by the Faculty Senate Chair and Hearing Panel shall be considered confidential in nature. Only individuals who are involved in the hearing proceedings shall have access to the information contained therein as necessary to participate in the hearing, unless otherwise subject to disclosure by law.

10. Preliminary Meeting:

a. Procedural Issues: Within thirty (30) calendar days from the initial meeting between the Faculty Senate Chair and the Hearing Panel, the Chair of Hearing Panel shall meet with the parties for a preliminary meeting (in person or by teleconference) in order to determine the following:

- i. The date, time and location of the hearing;
- ii. The order in which the parties will present their cases and the time allotted for such presentations;
- iii. Submission and exchange of any pertinent documents that the parties would like the Hearing Panel to consider;
- iv. A date in which the disclosure and exchange of the names and contact information of any witnesses will be provided to the Chair of the Hearing Panel and parties;
- v. The names and contact information of any advocate or legal representative, if any, that will be assisting either party during the hearing proceedings;

- vi. The method of recording the hearing;
- vii. Whether the hearing shall be conducted in open or closed session; and
- viii. Any objections or concerns from either party related to the hearing process.

b. Substantive Procedural Errors: If the faculty member alleges, through credible information, that there has been one or more significant procedural errors in the process, the Chair of the Hearing Panel, in consultation with UW System Office of General Counsel, shall review the alleged error and determine whether such error is substantial enough to prevent a fair, prompt and impartial proceeding. If so, the Chair of the Hearing Panel shall suspend further proceedings and issue a written statement to the Chancellor for consideration within seven (7) calendar days of the date of the allegations. Upon receipt of said statement, and within ten (10) calendar days, the Chancellor shall review said information and issue a determination as to whether, in light of such information, the charge(s) should be dismissed, modified or remain as written. The Chancellor's determination shall be issued in writing to the faculty member and Chair of the Hearing Panel. If the charge(s) are not dismissed, the Chair of the Hearing Panel shall proceed to the hearing stage of this process.

11. Hearing Proceedings:

a. Hearing Date: A hearing shall be conducted within sixty (60) calendar days from the initial meeting between the Faculty Senate Chair and the Hearing Panel. The Chair of the Hearing Panel shall notify all parties of the date, time and location of the hearing by email and First Class mail to the last known residence no less than five (5) calendar days prior to the hearing. The Chair of the Hearing Panel, in consultation with the parties, may extend the hearing date due to a break in the academic calendar, the unavailability of Hearing Panel members, parties or pertinent witnesses, or other extenuating circumstances.

b. Procedural Rights: During the hearing, the faculty member shall have the following procedural rights and protections:

- i. A fair and impartial hearing;
- ii. Reasonable access to all documents presented in evidence;
- iii. Be represented by a university advocate or legal counsel (at the party's expense). Said advocate or legal counsel may speak on behalf of the party and present the case on behalf of the party;
- iv. Be heard on the party's own behalf;
- v. Present witnesses to testify on behalf of the party;
- vi. Receive a reasonable opportunity to cross examine any witnesses called by the other party;
- vii. Request a temporary recess if necessary, to consider new evidence or information not previously known or reasonably discovered prior to the hearing; and
- viii. Upon request, obtain a copy of any transcript or recording of the hearing at the party's expense, if applicable.

c. Open Meetings Law: The hearing shall be conducted in accordance with the Wisconsin Open Meetings Law pursuant to Wis. Stats. Ch. 19.85, et. al. The faculty member may request that the hearing be conducted in either open or closed session. However, the Chair of the Hearing Panel shall determine whether to grant said request, considering both the personnel nature of the proceedings and the sensitive information that may be disclosed through testimony during the proceedings. All deliberations of the Hearing Panel shall be conducted in closed session.

d. Documentation: No less than three (3) calendar days prior to the scheduled hearing, the parties shall submit an electronic copy of all documentation that the parties intend to submit to the Hearing Panel for consideration (labeled with numbers and a table of contents), a list of all potential witnesses that either party intends to call to testify during the hearing and the name of each party's representative(s) or legal counsel, if applicable.

e. Hearing Procedures and Rules of Evidence: The Hearing Panel shall not be bound by common law or statutory rules of evidence and may admit evidence having reasonable probative value but shall exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to recognized legal privileges. The Hearing Panel may take reasonable steps to maintain order, and to adopt procedures for conducting the hearing in a manner that will provide a reasonable opportunity for both parties to present their cases and question witnesses, provided, however, whatever procedure is adopted, the parties are allowed to effectively present and refute evidence.

f. Recording of Hearing: The Chair of the Hearing Panel shall be responsible for creating a recording of the hearing with a reliable recording device. If the hearing is conducted in open session, any person may record the open meeting unless said recording unduly interferes with the hearing proceedings. If the hearing is conducted in closed session, the Chair of the Hearing Panel shall be responsible for securing the record to prevent any improper disclosure. Either party may request a copy of the recording at their own expense which shall be provided as soon as reasonably practicable.

g. Burden of Proof: The Chancellor shall have the burden of proof to present evidence that proves by a preponderance of the evidence that the allegations contained in the Statement of Charge(s) occurred.

h. Failure to Appear: If either party fails to appear at the hearing, the Chair of the Hearing Panel may proceed with the hearing in their absence or postpone the hearing to a later date.

i. Witnesses: During the hearing, either party may call to testify any individual who is reasonably likely to have relevant or material information that is pertinent to the substantive issues contained in the Statement of Charge. Any witness who is an employee of the University may appear, upon request by either party, but said attendance is voluntary and no discipline shall be imposed against an employee for failing or refusing to appear as a witness at the hearing. If an employee appears at the hearing, the supervisor shall excuse the employee from work to attend the hearing. If either party is unable to secure a witness to attend the

hearing, the Chair of the Hearing Panel may consider alternative options of receiving any relevant information the witness may have, such as a video conference or teleconference.

j. Evidence Considered: During the hearing, the Hearing Panel shall accept evidence in the form of statements by the parties, testimony by witnesses and written documentation submitted prior to or during the hearing. The Hearing Panel shall only consider evidence that is credible, relevant and probative in value. The Hearing Panel shall not consider any evidence that it determines to be redundant, immaterial or lacking in probative value. At the conclusion of the hearing, the Hearing Panel shall deliberate in closed session to consider the evidence and issue its findings of facts and recommendations. At the conclusion of the deliberations, the Hearing Panel members shall take a vote to affirm or oppose each charge listed in the Chancellor's statement of charge letter and affirm, oppose or propose a lesser penalty and/or remedy contained in the Statement of Charge(s). An affirmative vote of a simple majority of the Hearing Panel members shall be required to sustain a motion.

12. Hearing Panel's Report:

Within twenty-one (21) calendar days from the conclusion of the Hearing Panel's deliberations, the Chair of the Hearing Panel shall prepare a written report to the Chancellor, with a copy to the faculty member by email and First Class mail to last known residence, which includes the Hearing Panel's findings of facts, conclusions and recommendations in regard to each of the Chancellor's charge(s), penalties and/or remedies contained in the Statement of Charge(s).

13. Chancellor's Decision:

Within thirty (30) calendar days from receipt of the Hearing Panel's report, the Chancellor shall issue a final decision. The Chancellor may impose a lesser or different penalty and/or different remedy than originally proposed. The Chancellor's decision shall be final except that the Board of Regents may, at its discretion, grant a review on the record in accordance with UWS 6.01(5).

14. Retention of Records:

All documentation (including hard copies, email communications, photos, videos, cell phone messages, etc...) that was a part of the evidentiary record considered by the Hearing Panel, including the recording of the hearing, shall be submitted to the Faculty Senate Chair for collection and secure forwarding to the Office of the Provost and Vice Chancellor for Academic Affairs to be placed in the faculty member's personnel file and in the University Archives.