

Chapter SU 5

TEACHER TENURE

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SU 5.01 Procedure for dismissal of a non-tenured teacher during his term of employment. (1) A teacher who has not acquired tenure under section 37.31 (1), Wis. Stats., shall not be dismissed before the end of the term of his current appointment without being given an opportunity for a hearing, as hereinafter provided, unless he shall waive hearing.

(2) Whenever the president receives a complaint against a non-tenured teacher which he deems substantial and which contains allegations which if true might lead to the teacher's dismissal during the term of his current appointment, the president shall call the teacher in to discuss the matter informally. If the teacher does not report as requested or if the president is not satisfied with the teacher's explanation, the president shall give the teacher notice of the complaint with a summary of its allegations and shall advise him that he may have a hearing upon written request made to the president within 5 days. Such notice shall be given to the teacher in writing unless, upon oral notice, he shall acquiesce in the proposed dismissal and waive in writing further notice and hearing.

(3) If the teacher requests a hearing, it shall be held before a standing university committee on termination or a hearing agent, in either case selected as hereinafter provided, as soon as reasonably may be but not less than 10 days after the filing of the request for hearing. The time and place of the hearing shall be determined by the chairman of the committee or the hearing agent, as the case may be.

(4) The standing committee on termination shall be composed of tenured faculty members and may include administrative officers of the university. The size of the committee and the method of selecting its members and chairman shall be as provided in the faculty constitution. No person who has participated in the making of charges against the teacher or is a material witness shall be qualified to sit on the committee in that case.

(5) The committee, in consultation with the president and the teacher, may exercise its judgment as to whether the hearing should be public or closed to the public; but on request of the teacher it shall be open to the public unless harm to innocent persons may result from publicity.

(6) At the hearing, the teacher shall be accorded the following rights:

(a) A right to the names of witnesses and access to documentary evidence upon the basis of which dismissal is sought. Adjournments

shall be granted to enable either party to investigate and rebut evidence as to which a valid claim of surprise is made.

(b) A right to be heard in his own defense.

(c) A right to counsel and to another person as representative, and the right to offer witnesses.

(d) A right to confront and cross-examine witnesses against him.

(7) The hearing committee shall not be bound by common-law or statutory rules of evidence and shall admit testimony having reasonable probative value but shall exclude immaterial, irrelevant or unduly repetitious testimony, and shall give effect to the legal rules of privilege. Witnesses shall be sworn. The committee may receive and give credence and due consideration to affidavits signed by faculty members or others of known responsibility and integrity who are not available to testify, in lieu of their testimony given in person. Copies of all such affidavits shall be furnished to the opposite party. The committee may receive properly identified copies of documents, papers, etc. in evidence instead of requiring production of the originals.

(8) A stenographic record or tape recording of the hearing shall be kept unless waived by the teacher, and any exhibits shall be made a part of the record; and on request the teacher shall be given a copy of the record and transcript of testimony without cost to him, or in lieu of a transcript an opportunity to hear and transcribe the tape recording.

(9) After the hearing the committee shall make its findings and conclusions based on the evidence appearing in the hearing record, and the chairman shall transmit them to the president, and he may also report any recommendations the committee wishes to make with respect to the action he should take. A copy of the report shall be given or mailed to the teacher.

(9a) (a) In any case where the president, the accused teacher or the committee on termination shall request in writing, prior to the day set for commencement of the hearing, that a hearing agent be appointed to conduct the hearing, the executive director of the Wisconsin state universities system shall employ a disinterested hearing agent who is legally trained and familiar with the conduct of judicial or quasi-judicial proceedings, to hear the evidence and report his findings of fact, conclusions of law and recommended decision. Prompt notice that a hearing agent is being requested shall be given to the president, the teacher, and the committee on termination by the person or committee initiating the request.

(b) The executive director shall keep on file in his office the names of a panel of 5, 7 or 9 qualified persons nominated at his request by a disinterested person or agency, from which panel hearing agents may be chosen; and at least annually he shall review the panel and obtain additional names from a like source as required to keep it at full strength. On receipt of a request for appointment of a hearing agent, the executive director shall give the teacher notice of the names of the persons on the panel and shall set a date and place for choosing the hearing agent. The parties may agree upon a hearing agent, or if either party so request, each party shall strike names from the panel in alternation until only one name is left, and the person whose name last remains shall be appointed hearing agent. If the person so chosen shall not be available or shall not accept

appointment on a basis of compensation satisfactory to the executive director within 5 days after it is tendered to him, the selection process shall be repeated and another person chosen. If delay on the part of the teacher or his representative shall prevent the selection of a hearing agent in the manner thus specified within 15 days after the date set by the executive director for making the selection, the executive director may himself designate the hearing agent from the panel; and if delay on the part of the administration shall prevent the selection of a hearing agent in the manner thus specified within 15 days after the date set for making the selection, the charges against the teacher shall be deemed withdrawn.

(c) The hearing agent shall conduct the hearing in conformity with subsections (5), (6), (7) and (8) of this section and shall have the powers therein conferred upon the committee on termination and its chairman. He shall make his report to the president; and subsection (9) shall not apply. When charges against more than one teacher involving a common question of fact are pending before the hearing agent, he may after consultation with the parties and consideration of the circumstances and equities, order a joint hearing or trial of any or all of the matters in issue.

(d) The president shall cause copies of the hearing agent's findings, conclusions and recommendations to be served on the teacher, the university representative, and the chairman or a member of the committee on termination if there be such a committee then in existence; and on request made in writing within 10 days after such service he shall cause to be served on each of them a transcript or a recording of the hearing. Service may be made by personal delivery or by registered mail addressed to the last address of the persons shown on the university records. When service is by mail, the date of mailing shall be deemed the date of service.

(e) The teacher and university representative shall have 20 days after service of the hearing agent's findings, conclusions and recommendations, and of the transcript or recording if timely requested, to file exceptions to the hearing agent's report with the president, and to serve a copy of such exceptions on the other party and on the chairman or a member of the committee on termination. The committee on termination shall have 10 days after service of the exceptions to submit its recommendations to the president in writing, and to serve copies thereof on the teacher and university representative. The teacher and university representative shall have 7 days after service of such recommendations to submit their comments thereon to the president in writing. Thereafter the president shall consider the matter and proceed to a decision, following the procedure specified in subsection (10) in case he rejects the committee's recommendations.

(f) The hearing agent's findings of fact shall be conclusive, if supported by substantial evidence in view of the entire record.

(g) This subsection (9a) shall apply to all proceedings for dismissal of a teacher in which a hearing pursuant to subsection (3) has not been held at the effective date of this subsection.

(10) If the president rejects the committee's recommendations, he shall state his reasons for so doing in writing to the committee and to the teacher, and shall provide an opportunity for response within 10 days, before transmitting a recommendation adverse to the teacher to the board of regents.

(11) If, after consideration of the report of the hearing committee or the hearing agent, as the case may be, the president decides that the teacher should be dismissed before the end of the term of his current appointment, and so recommends to the board of regents, the teacher may, by written request mailed to the secretary of the board of regents within 5 days after receipt of notice of the president's decision, request a review of that decision by the board of regents and a hearing thereon.

(12) Each such request for review and hearing will be considered separately and the board of regents will, in its discretion, grant or deny a hearing in the individual case; however, in cases under subsection (10) the board of regents shall be considered to have granted a hearing if requested and shall consider the case under subsection (13).

(13) If the board of regents grants a hearing, the board may determine the scope of the hearing and whether it shall be open or closed to the public; but in any case the teacher and his counsel may attend and be heard, and one other person representing the teacher shall also be permitted to attend.

(14) The action and decision of the board of regents in the matter shall be final, and not subject to judicial review.

(15) Pending the president's decision as to his dismissal, the teacher shall not normally be relieved of his duties; but if the president finds that harm will result if the teacher is continued in his position, the teacher may be relieved immediately of his duties, but his salary shall continue until the president makes his decision as to dismissal.

(16) If a proceeding on charges against a probationary teacher is not concluded before his appointment would expire, he may elect that such proceedings be carried to a final decision. Unless he so elects in writing before expiration of his appointment, the proceeding shall be discontinued.

(17) If a teacher whose dismissal is sought has requested a hearing, discontinuance of the proceeding by the administration is deemed a withdrawal of charges and a finding that the charges were without merit.

(18) Dismissal of a non-tenured teacher in accordance with the foregoing procedure shall automatically cancel any appointment he may have received or have become entitled to receive for another term.

(19) The requirements of this rule do not apply to the non-retention or non-employment of a non-tenured teacher for a period following the expiration of his current appointment, as contrasted with dismissal during the period of his current appointment.

(20) There shall be no rights to hearing or appeal in case of non-renewal of a probationary employment.

**History:** Cr. Register, March, 1970, No 171, eff. 4-1-70; am. (3) and (11) and cr. (9a), Register, January, 1971, No. 181, eff. 2-1-71.

**SU 5.02 Procedure for dismissal of a teacher having tenure.** (1) Section 37.31 (1), Wis. Stats. provides that the employment of a teacher in the Wisconsin state universities system who has attained tenure "shall be permanent during efficiency and good behavior" and "shall not be terminated involuntarily except for cause upon written

charges." The statute further provides that "Within 20 days of receiving written notice that his employment has been terminated, such permanently employed teacher may appeal the termination to the board of regents by a written notice to the president of the board", and that "The board shall hear the case and provide the teacher with a written statement as to its decision". This rule is adopted to prescribe minimum procedural requirements in dismissal cases involving teachers who are subject to those statutory provisions.

(2) Whenever the president of a Wisconsin state university receives a complaint against a tenured teacher at his university which he deems substantial and which contains allegations which if true might lead to the teacher's dismissal, the president shall call the teacher in to discuss the matter informally. If the teacher does not report as requested or if the president is not satisfied with the teacher's explanations, and if any procedure which may be established at the particular university for investigation and consultation with faculty representatives in such cases shall have failed to produce a satisfactory disposition of the matter within 15 days after the president shall have given notice to the teacher that the procedure is available to him, the president shall give the teacher notice of the charge against him with a summary of its allegations and shall advise him that he may have a hearing before a university committee upon written request made to the president within 5 days. Such notice shall be given to the teacher in writing unless, upon oral notice, he shall acquiesce in the proposed dismissal and waive in writing further notice and hearing.

(3) If the teacher requests a hearing, it shall be held before a standing university committee on termination or a hearing agent, in either case selected as hereinafter provided, as soon as reasonably may be but not less than 10 days after the filing of the request for hearing. The time and the place of the hearing shall be determined by the chairman of the committee or the hearing agent, as the case may be.

(4) The standing committee on termination shall be composed of tenured faculty members and may include administrative officers of the university. The size of the committee and the method of selecting its members and chairman shall be as provided in the faculty constitution. No person who has participated in the making of charges against the teacher or is a material witness shall be qualified to sit on the committee in that case.

(5) The committee, in consultation with the president and the teacher, may exercise its judgment as to whether the hearing should be public or closed to the public; but on request of the teacher it shall be open to the public unless harm to innocent persons may result from publicity.

(6) At the hearing, the teacher shall be accorded the following rights:

(a) A right to the names of witnesses and access to documentary evidence upon the basis of which dismissal is sought. Adjournments shall be granted to enable either party to investigate and rebut evidence as to which a valid claim of surprise is made.

(b) A right to be heard in his own defense.

(c) A right to counsel and to another person as representative, and the right to offer witnesses.

(d) A right to confront and cross-examine witnesses against him.

(7) The hearing committee shall not be bound by common-law or statutory rules of evidence and shall admit testimony having reasonable probative value but shall exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to the legal rules of privilege. Witnesses shall be sworn. The committee may receive and give credence and due consideration to affidavits signed by faculty members or others of known responsibility and integrity who are not available to testify, in lieu of their testimony given in person. Copies of all such affidavits shall be furnished to the opposite party. The committee may receive properly identified copies of documents, papers, etc. in evidence instead of requiring production of the originals.

(8) A stenographic record or tape recording of the hearing shall be kept unless waived by the teacher, and any exhibits shall be made a part of the record; and on request the teacher shall be given a copy of the record and transcript of testimony without cost to him, or in lieu of a transcript, an opportunity to hear and transcribe the tape recording.

(9) After the hearing the committee shall consider the evidence and shall make findings of fact and conclusions, the findings of fact to consist of a concise and separate statement of the ultimate conclusions upon each material issue of fact without recital of evidence.

(9a) (a) In any case where the president, the accused teacher or the committee on termination shall request in writing, prior to the day set for commencement of the hearing, that a hearing agent be appointed to conduct the hearing, the executive director of the Wisconsin state universities system shall employ a disinterested hearing agent who is legally trained and familiar with the conduct of judicial or quasi-judicial proceedings, to hear the evidence and report his findings of fact, conclusions of law, and recommended decision. Prompt notice that a hearing agent is being requested shall be given to the president, the teacher, and the committee on termination by the person or committee initiating the request.

(b) The executive director shall keep on file in his office the names of a panel of 5, 7 or 9 qualified persons nominated at his request by a disinterested person or agency, from which panel hearing agents may be chosen; and at least annually he shall review the panel and obtain additional names from a like source as required to keep it at full strength. On receipt of a request for appointment of a hearing agent, the executive director shall give the teacher notice of the names of the persons on the panel and shall set a date and place for choosing the hearing agent. The parties may agree upon a hearing agent, or if either party so request, each party shall strike names from the panel in alternation until only one name is left, and the person whose name last remains shall be appointed hearing agent. If the person so chosen shall not be available or shall not accept appointment on a basis of compensation satisfactory to the executive director within 5 days after it is tendered to him, the selection process shall be repeated and another person chosen. If delay on the part of the teacher or his representative shall prevent the selection of a hearing agent in the manner thus specified within 15 days after the date set by the executive director for making the selection, the executive director may himself designate the hear-

agent from the panel; and if delay on the part of the administration shall prevent the selection of a hearing agent in the manner thus specified within 15 days after the date set for making the selection, the charges against the teacher shall be deemed withdrawn.

(c) The hearing agent shall conduct the hearing in conformity with subsections (5), (6), (7) and (8) of this subsection and shall have the powers therein conferred upon the committee on termination and its chairman. He shall make his report to the president; and subsections (9) and (10) shall not apply. When charges against more than one teacher involving a common question of fact are pending before the hearing agent, he may after consultation with the parties and consideration of the circumstances and equities, order a joint hearing or trial of any or all the matters in issue.

(d) The president shall cause copies of the hearing agent's findings, conclusions and recommendations to be served on the teacher, the university representative, and the chairman or a member of the committee on termination if there be such a committee then in existence; and on request made in writing within 10 days after such service he shall cause to be served on each of them a transcript or a recording of the hearing. Service may be made by personal delivery or by registered mail addressed to the last address of the person shown on the university records. When service is by mail the date of mailing shall be deemed the date of service.

(e) The teacher and university representative shall have 20 days after service of the hearing agent's findings, conclusion and recommendations, and of the transcript or recording if timely requested, to file exceptions to the hearing agent's report with the president, and to serve a copy of such exceptions on the other party and on the chairman or a member of the committee on termination. The committee on termination shall have 10 days after service of the exceptions to submit its recommendations to the president in writing, and to serve copies thereof on the teacher and university representative. The teacher and university representative shall have 7 days after service of such recommendations to submit their comments thereon to the president in writing. Thereafter the president shall consider the matter and proceed to a decision, following the procedure specified in subsection (11) in case he rejects the committee's recommendations.

(f) The hearing agent's findings of fact shall be conclusive, if supported by substantial evidence in view of the entire record.

(g) This subsection (9a) shall apply to all proceedings for dismissal of a teacher in which a hearing pursuant to subsection (3) has not been held at the effective date of this subsection.

(10) The chairman of the committee shall report its findings of fact and conclusions to the president, and may also report any recommendations the committee wishes to make with respect to the action he should take. A copy of the report shall be given or mailed to the teacher. The president shall read the evidence in the record made by the committee, or hear the tape recording of it, before taking any action contrary to the recommendation of the committee and adverse to the teacher.

(11) If the president rejects the committee's recommendations, he shall state his reasons for so doing in writing to the committee and to the teacher, and shall provide an opportunity for response

within 10 days, and before transmitting a recommendation adverse to the teacher to the board of regents.

(12) If, after consideration of the report of the committee on termination or the hearing agent, as the case may be, and of the record on which the report is based, and of any response made pursuant to subsection (11) of this rule the president decides that the teacher should be dismissed and so recommends to the board of regents, the teacher may, by written notice mailed to the president of the board of regents within twenty days after receipt of notice of the president's decision, appeal the decision to the board of regents.

(13) Upon receipt of an appeal pursuant to subsection (12), the board of regents will determine whether the case shall be reviewed and decided on the record made at the university, or whether there shall be a trial de novo.

(14) In the event of a trial de novo the board of regents may hear the evidence itself or appoint a disinterested hearing agent who is legally trained and familiar with the conduct of judicial or quasi-judicial trials, to hear the evidence and report his findings of fact, conclusions of law, and recommended decision; and in either case the hearing shall be conducted in general conformity with the requirements of sections 227.07 and 227.09-227.11, Wis. Stats., and with subsections (6) and (8) of this rule.

(15) If a hearing agent is employed, he shall have all powers in the conduct of the hearing which the board of regents would have. The appellant teacher and the president of the university shall be furnished with a copy of the hearing agent's findings, conclusions and recommendations and if requested, access to a transcript or tape recording of the evidence, or a summary thereof prepared by the hearing agent, and each shall be given a reasonable opportunity to file exceptions to the findings, conclusions and recommendations and to argue with respect to them before the board of regents. The board of regents shall be governed by sec. 227.12, Wis. Stats.

(16) If the board of regents elects to hear the appeal on the record made at the university, opportunity will be given on not less than 10 days notice to the teacher and the president of the university, for argument, oral or written or both, by them or their representatives.

(17) If before the date set for hearing, application is made to the board by either party for leave to present additional evidence on the issues in the case, and if it is shown to the satisfaction of the board that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the university committee on terminations, the board itself may take the additional evidence or it may direct that the additional evidence be taken before the university committee on terminations, which shall then report the evidence so taken to the board.

(18) The decision of the board of regents following a hearing shall be in writing accompanied by findings of fact and conclusions of law, the findings of fact to consist of a concise and separate statement of the ultimate conclusions on each material issue of fact without recital of evidence.

(19) Every decision when made, signed and filed, shall be served forthwith by personal delivery or mailing of a copy to the teacher or his attorney of record and to the president of the university.

(20) Pending the president's decision as to his dismissal, the teacher shall not normally be relieved of his duties; but if the president finds that harm will result if the teacher is continued in his position, the teacher may be relieved immediately of his duties, but his salary shall continue until the president makes his decision as to dismissal.

(21) If a teacher whose dismissal is sought has requested a hearing, discontinuance of the proceeding by the administration is deemed a withdrawal of charges and a finding that the charges were without merit.

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**History:** Cr. Register, March, 1970, No. 171, eff. 4-1-70: am. (2), (3), and (12) and cr. (9a), Register, January, 1971, No. 181, eff. 2-1-71.

**SU 5.03 Dates for notice to non-tenured teachers, relative to re-appointment or non-reappointment for another academic year.** A teacher who is employed on probation pursuant to sec. 37.31 (1), Wis. Stats., shall be given written notice of his reappointment or non-reappointment for another academic year in advance of the expiration of his current appointment as follows:

(1) When the appointment terminates at the end of an academic year, not later than March 1st of the first academic year and not later than December 15th of the second consecutive academic year of service;

(2) If the initial appointment terminates during an academic year; at least 3 months prior to its termination; if a second consecutive appointment terminates during an academic year, at least 6 months prior to its termination;

(3) After 2 or more years of continuous service in the Wisconsin state universities system, such notice shall be given at least 12 months before the expiration of any appointment.

**History:** Cr. Register, March, 1970, No. 171, eff. 4-1-70.