

## **Impartial Hearing Panel (IHP) Procedures**

**Purpose.** The impartial hearing panel (herein after referred to as “panel”) shall provide the grievant with a full opportunity for a hearing regarding the matter being grieved in accordance with the University Staff Grievance policy.

The panel has jurisdiction to hear and decide appeals regarding cases of dismissal or suspension with loss of pay which have been appropriately filed with the panel.

The panel’s conclusions shall be based upon the application of the relevant University policies and procedures, including the principles of just cause and due process, as appropriate.

**Timing.** All appeals to the panel must comply with the rules and requirements established in the University Staff Grievance policy. As indicated in the policy, select grievances not resolved under the previous steps may be eligible to proceed to the IHP. The step 2 decision regarding a disciplinary action or dismissal, or failure to receive step 2 decision regarding a disciplinary action or dismissal within 30 calendar days, may be appealed to the Office of Human Resources (OHR) within 7 calendar days of receipt, or deadline for receipt, of decision. The grievance shall be submitted using the University Staff Grievance form.

**Grievance Eligibility.** The Office of Workforce Relations in the Office of Human Resources, in consultation with the panel, will review the submitted grievance form and attachments in order to determine whether the grievance is suitable for the panel and complies with applicable policies and procedures<sup>1</sup>. OHR will then issue a written decision indicating whether the matter has been accepted for hearing.

An appeal may be dismissed without a hearing if OHR, determines that the grievance is untimely, if it fails to state a claim for which the panel has jurisdiction to grant relief or if the grievance submitted is without merit on its face or frivolous. If the grievance is denied, the reasons for denial will be indicated in writing. If OHR determines that the grievance is dismissed without hearing based upon one of the aforementioned reasons, that decision may be appealed to the Vice Chancellor for Finance and Administration. The decision to dismiss the grievance without hearing may be appealed in writing within ten (10) calendar days. The appeal of the decision to dismiss the grievance without hearing must be accompanied by a statement outlining the grounds upon which it is claimed that the decision reached by OHR was incorrect under the terms of the grievances policy and that the matter is appropriately before the IHP. Failure to provide a timely appeal of the decision to dismiss the grievance without hearing will be sufficient grounds for denying the request, unless a reasonable request for extension is received and approved before the deadline.

**Clarification.** On the motion of a party, or at the panel’s own initiative, the panel may require that the appellant provide clarification, additional information, or other submission that the panel deems necessary to demonstrate the basis for the panel’s jurisdiction, or to make the appeal complete and understandable. A request for clarification must be made in a timely manner so that other parties may have a reasonable opportunity to respond before hearing.

**Notice of Hearing.** If deemed appropriate for hearing, the grievance hearing will be scheduled no less than forty five (45) calendar days after issuance of the OHR decision regarding appropriateness. The notice shall include the time, place and nature of the hearing, the names of all panel members, and a short and plain statement of the matter being grieved.

If any change is made to the panel subsequent to service of the notice of hearing, the parties, whenever possible, shall be notified of such changes.

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<sup>1</sup> See University Staff Grievances Policy

Grievance Hearing. Although generally informal in nature, appeal hearings have a structured format to elicit relevant information efficiently while providing the parties a fair opportunity for hearing. Hearings are closed meetings unless both parties mutually agree that the hearing shall be open, but only parties are permitted (e.g. Grievant, University, and one additional person for each).

The University shall present its case first. The number of presenters for each party shall be limited to two individuals. Each party shall have twenty (20) minutes to present its case, except in cases of dismissal where each party shall have thirty (30) minutes to present its case. Both parties shall have an opportunity for closing statements which may be used to summarize their case and to rebut the other party's case. Closing statements shall not extend beyond five (5) minutes for a grievance of a suspension with loss of pay, or ten (10) minutes for a grievance of a dismissal.

After each party has presented its case and closing statement, the panel members may ask questions of the parties. After such questioning, the panel will retire to executive session to deliberate and vote, and thereby render its recommendation. Voting by a show of hands will be sufficient. When the panel goes into executive session, the panel may ask that others retire from the room. After a recommendation has been reached by a majority vote of the panel, the recommendation shall be reduced to writing and provided to the parties in a manner agreed upon by the panel. The panel has the authority to support, reject or modify any disciplinary action taken. Recommendations of the panel are then forwarded to the Chancellor or Chancellor's designee for review, and, in cases of discharge, the Board of Regents.

Parties affected by the panel's recommendation shall be given an opportunity to file written objections to the recommendation to the Chancellor's attention. The objection should briefly state the reasons and authorities for each objection. Objections to the recommendation shall be provided to OHR in writing within 15 calendar days of the panel's recommendation.

Within 35 calendar days of receipt of the panel's recommendation, regardless of whether or not written objections have been submitted, the Chancellor or Chancellor's designee shall release a decision in which he or she determines whether the panel's recommendation will be accepted, rejected or modified.

In cases of dismissal, the Chancellor's decision may be appealed to the Board of Regents, in accordance with the University Staff Grievances Policy.

Failure of the panel to reach a majority vote will create a deadlock or tied vote and shall be recorded as the outcome. In the event of a deadlock, the grievance may be appealed to the campus hearing officer in accordance with applicable policy and procedures.

Burden of Proof. Consistent with the University Staff Grievance policy, the university has the burden of demonstrating, by a preponderance of the evidence, the violation of university rule, regulation, policy, or practice that resulted in the dismissal or suspension with loss of pay.

Evidentiary Standard. The panel shall not be bound by common law or statutory rules of evidence. The panel shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact.

Documentary evidence may be received in the form of copies or excerpts. The panel may require that the parties be given an opportunity to compare the copy with the original, and that the complete document from which an excerpt is taken be made available for inspection by all parties.

Witness Statements, Exhibits and Argument. All witnesses, including subject matter experts, testifying must be truthful in their testimony.

Witness statements and/or exhibits (supporting documentation) may be provided at hearing. The party offering a document as an exhibit at the hearing shall supply a copy of the document to each party, as well as the panel, before the hearing.

Witness lists and/or any information not presented at step 2 of the grievance procedure that is to be used by either party will be exchanged between the parties at least fourteen (14) calendar days prior to the meeting of the panel. Exception will be allowed for evidence or witness statements submitted up to forty-eight (48) hours in advance of the meeting, if the information is mutually agreed upon. Information allowed under this exception must be of such significant nature as to potentially alter a reasonable decision on the grievance. If the party not submitting the documentation can make a justified argument that the party submitting the information had knowledge of the evidence or statements prior to the fourteen (14) calendar day rule, such late evidence or statements will not be allowed.

Withdrawal. An appeal may be withdrawn only by the appellant, in writing. Where an appeal is filed by more than one person, the appeal may be withdrawn only by the person designated as the party representative. An appellant's request to withdraw shall be granted as a matter of right and the appeal dismissed.

Default. The panel may dismiss an appeal by an order of default where, without good cause, the appellant fails to appear or is unprepared to proceed at a scheduled and properly noticed hearing.

Notice of Appearance. When a party is represented by an attorney, the attorney shall file a notice of appearance with the panel and serve a copy of the notice on the other parties at the earliest possible time in the proceedings.

Subpoena. A request may be made in writing to OHR for a subpoena to require a University employee to appear and testify at a hearing, or for a University employee to produce specified documents or other physical exhibits prior to or at hearing.

A motion for a subpoena for a person shall include the employee's name and address, show the relevance of that person's testimony, and demonstrate the reasonableness of the scope of the subpoena being sought. A request for a subpoena for documents or other physical exhibits shall include the name and address of the person who is to produce the documents or other physical exhibit, specify the materials to be produced, indicate the relevance of the materials subpoenaed to the issues on appeal, and demonstrate the reasonableness of the scope of the subpoena sought.

Unless otherwise allowed by OHR, subpoenas shall be served no later than seven (7) calendar days prior to the date the appearance or production is ordered.

Accessibility and Accommodation. Proceedings before the panel shall be accessible to the greatest extent practicable. If a hearing impaired or non-English speaking party requires an interpreter or other accommodation in order to fully and fairly participate in a hearing, the panel shall appoint a qualified and impartial interpreter in accordance with the panel's adopted procedures for using interpreters, or provide other necessary accommodation. The individual requesting interpretation or accommodation should indicate this need on the grievance form, or notify OHR no less than seven (7) calendar days prior to the scheduled hearing date.

Before beginning to interpret, every interpreter shall take an oath that to the best of the interpreter's ability, a true interpretation shall be made that is understandable for the person utilizing the interpreter, and that the interpreter shall repeat statements in English to the panel and the other parties, as appropriate. Hearings conducted with the assistance of an interpreter may result in the hearing presentation lengths being extended during the portion(s) requiring interpreter assistance, at the discretion of the panel.

Authority of Impartial Hearing Panel (Panel) Members. Panel members presiding at hearings may:

- a) Issue and enforce subpoenas

- b) Rule on offers of proof and receive relevant evidence
- c) Regulate the course of the hearing
- d) Hold conferences for the settlement or simplification of the issues by consent of the parties

Responsibilities of Impartial Hearing Panel (IHP) Members. Participation as a panel member is a significant responsibility. Failure to adhere to the following responsibilities may cast doubt regarding an individual member's ability to serve as an effective member of the panel, or on the fairness of the panel process or one or more panel decisions. Failure to comply with these responsibilities may result in a member's removal from the panel by the Assistant Vice Chancellor for Human Resources, or their designee.

Impartial Hearing Panel (Panel) Impartiality. Panel members must remain impartial throughout the course of their panel appointment. Panel members shall not act as a representative or an advocate for either party.

A panel member shall withdraw from participation prior to the hearing if:

- a) The panel member has pre-existing knowledge about the merits of the dispute being heard,
- b) A conflict of interest exists that casts serious doubt on the member's objectivity.

Either party who reasonably believes that one or more panel members cannot remain objective in the hearing due to bias, personal conflict, perceived personal conflict or other substantial reason, may request in writing to OHR as soon as the individual, with exercise of reasonable diligence, became aware of the issue, but no less than ten (10) calendar days prior to hearing that a panel member be disqualified from the hearing. The request must be accompanied by a statement outlining the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded and may be granted or denied at the discretion of OHR. Failure to provide a timely request will be sufficient grounds for denying the request.

The fact that a panel member has considered the same or a similar issue in another matter, or has made a ruling adverse to the interests of the party in the same or another matter, is not a basis for disqualification.

The written statement shall be submitted to OHR. OHR, in consultation with the Office of Legal Affairs, shall review the matter and may, at its discretion, receive relevant testimony or exhibits in making its determination. OHR shall issue its decision, or postpone the hearing, no less than seven (7) calendar days prior to the scheduled hearing date. If the hearing panel assignments change prior to hearing, and parties are notified less than ten (10) calendar days prior to the scheduled hearing, a party wishing to request a disqualification must make the request as soon as practicable after it learns of the new assignment(s). The decision to grant or deny the request may not be appealed.

Impartial Hearing Panel (Panel) Confidentiality. Impartial hearing panel (panel) members shall not disclose confidential information learned through their role as a panel member unless required by University policy, law or other legal authority. This includes, but is not limited to, information received through case presentation, witness testimony, cross-examination, case exhibits or any other related manner. Furthermore, panel members shall not use confidential information acquired during the hearing to gain personal advantage or advantage for others, or to adversely affect the interests of others.

Impartial Hearing Panel (Panel) Ex Parte Communications. Ex parte communications are defined as any material oral or written communications relevant to the merits of a proceeding that was neither on the record nor on reasonable prior notice to all parties. Ex parte communications between a panel member involved in the decision-making process and any interested party who directly or indirectly would have a substantial interest in the decision prior to the rendering of a decision, is prohibited. If an improper ex parte communication is made, panel members have the obligation to disclose it to the Secretary of the University Staff. The panel has the authority to take appropriate remedial measures, including but not limited to, disclosure of the matter prior to or at the hearing and providing the opportunity for the parties to comment upon the matter.

### **Selection of Impartial Hearing Panel Members**

Impartial hearing panel members should have sufficient knowledge of relevant University policies, procedures and other relevant substantive matters to be an effective member of the panel. Individuals selected to serve on this panel should have a foundation in the aforementioned areas and shall additionally be expected to comply with the responsibilities section of these guidelines.

Selection of Campus Administration Representatives. The University will, in the manner that it so identifies, select two (2) primary panel members, and a ranked list of no less than four (4) alternate panel members to serve as panel members. The list of names will be submitted to OHR and the University Staff Executive Committee (USEC) as members are identified or removed.

The individuals serving in this role shall serve ongoing terms on the committee. Members may end their participation on this committee voluntarily, be removed at the discretion of OHR, or be removed for violation of the responsibilities section of these guidelines.

Selection of University Staff Representatives. The University Staff Congress will, in the manner that the body so identifies, select two (2) primary panel members, and a ranked list of no less than four (4) alternate panel members. The list of names will be submitted to OHR and the University Staff Executive Committee (USEC) as members are identified or removed.

The individuals serving in this role shall serve terms on the committee as defined by the University Staff Congress. Members may end their participation on this committee voluntarily, be removed at the discretion of Congress, or be removed for violation of the responsibilities section of these guidelines.

Identification of Panel Members for Hearings. In accordance with the Grievance Policy, two campus representatives and two University Staff representatives shall conduct hearings in accordance with these guidelines.



## **Campus Hearing Officer (CHO) Procedures**

**Overview.** Effective July 1, 2015, a university staff employee who appeals a disciplinary action or dismissal decision in accordance with the University Staff Grievances Policy and the impartial hearing panel (IHP) fails to reach a majority vote (i.e. deadlocks) the grievant may appeal the decision to the campus hearing officer (CHO).

**Selection of CHO.** The CHO will be selected in a manner jointly identified by campus administration and the University Staff Shared Governance Executive Committee (USEC). The hearing procedures shall include, but may not necessarily be limited to, the following:

**Scheduling of Hearing.** Upon proper appeal to OHR, the CHO, the Employer's representative, the employee and employee's representative (if applicable) will jointly schedule a date for the hearing.

**Location of Hearing.** The hearing will generally be held on the UW-Madison campus in a room equipped to accommodate the proceeding.

**Timing.** All appeals to the CHO must comply with the rules and requirements established in the University Staff Grievance policy. Failure to provide a timely appeal of the grievance will be sufficient grounds for denial.

**Pre-hearing Protocol.** The UW-Madison campus administration (hereinafter the "Employer") shall provide the CHO with, at minimum, a copy of the disciplinary action or dismissal letter and the employee's appeal documentation.

**Hearing Protocol.** Although generally informal in nature, appeal hearings have a structured format to elicit relevant information efficiently while providing the parties a fair opportunity for hearing. Hearings are closed meetings unless both parties mutually agree that the hearing shall be open, but only parties to the grievance are permitted to participate in the hearing. The CHO will hear presentations from each party to the grievance. All objections, arguments and requests are to be addressed to the CHO.

**Opening Statement.** Each party may make a brief opening statement. Opening statements shall last no longer than 10-minutes

**Evidence Presentation.** Unless the CHO determines otherwise, the employer shall present its position at the hearing first. The employer, or the employer's representative, may present oral and/or written evidence. Evidence presentation shall last no longer than 45-minutes.

Unless the CHO determines otherwise, the employee shall present his or her case at the hearing second. The employee, or the employee's representative, may present oral and/or written evidence, including witnesses. Evidence presentation, including direct examination, shall last no longer than 45-minutes.

**Cross-Examination and Rebuttal.** Parties shall be afforded the opportunity to conduct cross-examinations and rebuttal reasonably required for a full and true disclosure of the facts or to refute evidence presented by either party. Cross-examination and rebuttal shall last no longer than 30-minutes for each side.

**CHO Questioning.** The CHO may ask any questions of either party throughout the course of the hearing as he or she deems appropriate.

**Closing Arguments.** After all the evidence has been presented, the CHO will permit each party to present closing arguments either orally or in writing. Closing arguments may summarize or discuss the evidence that has been presented, suggest how much credit or weight should be given to certain testimony, explain evidence that might appear confusing, and argue how the case should be decided. Parties may not submit additional evidence and may only discuss evidence that has been presented during the hearing. Closing arguments shall last no longer than 15-minutes for each side.

Evidentiary Standard. The CHO is not bound by common law or statutory rules of evidence. The CHO shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony or evidence. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact.

Documentary evidence may be received in the form of copies or excerpts. The CHO may require that the parties be given an opportunity to compare the copy with the original, and that the complete document from which an excerpt is taken be made available for inspection by all parties.

Witness Statements, Exhibits and Argument. All witnesses testifying must take an oath or affirmation to be truthful in their testimony. All witnesses who testify are subject to cross-examination by the other party.

Witness statements and/or exhibits (supporting documentation) may be provided at hearing. The party offering a document as an exhibit at the hearing shall supply a copy of the document to each party, as well as the CHO, either before or at the hearing.

Witness lists and/or any information not presented at step 2 of the grievance procedure or to the IHP that is to be used by either party will be exchanged between the parties at least fourteen (14) calendar days prior to the CHO hearing. Exception will be allowed for evidence or witness statements submitted up to forty-eight (48) hours in advance of the hearing, if the information is mutually agreed upon. Information allowed under this exception must be of such significant nature as to potentially alter a reasonable decision on the grievance. If the party not submitting the documentation can make a justified argument that the party submitting the information had knowledge of the evidence or statements prior to the fourteen (14) calendar day rule, such late evidence or statements will not be allowed.

Withdrawal. An appeal may be withdrawn only by the appellant, in writing. Where an appeal is filed by more than one person, the appeal may be withdrawn only by the person designated as the party representative. An appellant's request to withdraw shall be granted as a matter of right and the appeal dismissed.

Default. The panel may dismiss an appeal by an order of default where, without good cause, the appellant fails to appear or is unprepared to proceed at a scheduled and properly noticed hearing.

Notice of Appearance. When a party is represented by an attorney, the attorney shall file a notice of appearance with the panel and serve a copy of the notice on the other parties at the earliest possible time in the proceedings.

Subpoena. A request may be made in writing to OHR for a subpoena to require a University employee to appear and testify at a hearing, or for a University employee to produce specified documents or other physical exhibits prior to or at hearing.

A motion for a subpoena for a person shall include the employee's name and address, show the relevance of that person's testimony, and demonstrate the reasonableness of the scope of the subpoena being sought. A request for a subpoena for documents or other physical exhibits shall include the name and address of the person who is to produce the documents or other physical exhibit, specify the materials to be produced, indicate the relevance of the materials subpoenaed to the issues on appeal, and demonstrate the reasonableness of the scope of the subpoena sought.

Unless otherwise allowed by OHR, subpoenas shall be served no later than seven (7) calendar days prior to the date the appearance or production is ordered.

Accessibility and Accommodation. Proceedings before the CHO shall be accessible to the greatest extent practicable. If a hearing impaired or non-English speaking party requires an interpreter or other accommodation in order to fully and fairly participate in a hearing, the CHO shall appoint a qualified and impartial interpreter in accordance with the CHO's procedures for using interpreters, or provide other necessary accommodation. The individual requesting



interpretation or accommodation should indicate this need on the grievance form, or notify OHR no less than seven (7) calendar days prior to the scheduled hearing date.

Before beginning to interpret, every interpreter shall take an oath that to the best of the interpreter's ability, a true interpretation shall be made that is understandable for the person utilizing the interpreter, and that the interpreter shall repeat statements in English to the panel and the other parties, as appropriate. Hearings conducted with the assistance of an interpreter may result in the hearing presentation lengths being extended during the portion(s) requiring interpreter assistance, at the discretion of the CHO.

Audio Recording. An audio recording of the hearing shall be made by the Employer, and the Employer shall provide the CHO with a copy of the recording.

CHO Impartiality. The CHO must be impartial and have no bias, personal conflict or perceived personal conflict in the case throughout the course of their involvement in the hearing.

No employee, or representative, shall communicate ex parte, directly or indirectly, with the CHO concerning the merits of any pending matter. This rule shall not prohibit ex parte communications concerning procedural matters.

A CHO should recuse themselves from participation in proceedings in which they are, or have been identified to become CHO in the event that a bias, personal conflict or perceived personal conflict casts serious doubt on the CHO's objectivity.

Either party who reasonably believes that the CHO cannot remain objective in the hearing due to bias, personal conflict, perceived personal conflict or other substantial reason, may request in writing to OHR as soon as the individual, with exercise of reasonable diligence, became aware of the issue, but no less than ten (10) calendar days prior to hearing that the CHO be removed from the hearing. The request must be accompanied by a statement outlining the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded and may be granted or denied at the discretion of OHR. Failure to provide a timely request will be sufficient grounds for denying the request.

The fact that the CHO has considered the same or a similar issue in another matter, or has made a ruling adverse to the interests of the party in the same or another matter, is not a basis for disqualification.

The written statement objecting to the CHO shall be submitted to OHR. OHR, in consultation with the Office of Legal Affairs, shall review the matter and may, at its discretion, receive relevant testimony or exhibits in making its determination. OHR shall issue its decision, or postpone the hearing, no less than seven (7) calendar days prior to the scheduled hearing date. The decision to grant or deny the request may not be appealed.

Burden of Proof. Consistent with the University Staff Grievance policy, the university has the burden of demonstrating, by the preponderance of the evidence, the violation of university rule, regulation, policy, or practice that resulted in the dismissal or suspension with loss of pay.

Post-Hearing Protocol. Within 30 calendar days of the hearing, the CHO shall issue a written report that provides a brief statement of the pertinent facts and provides a rationale for the CHO's recommendation as to whether the grievance should be sustained or denied. The CHO's report and recommendation are advisory to the Chancellor and, in cases of discharge, the Board of Regents.

Parties affected by the CHO recommendation shall be given an opportunity to file written objections to the recommendation to the Chancellor's attention. The objection should briefly state the reasons and authorities for each objection. Objections to the recommendation shall be provided to OHR in writing within 15 calendar days of the CHO recommendation.

Within 35 calendar days of receipt of the CHO recommendation, regardless of whether or not written objections have been submitted, the Chancellor or Chancellor's designee shall release a decision in which he or she determines whether the panel's recommendation will be accepted, rejected or modified.

In cases of dismissal, the Chancellor's decision may be appealed to the Board of Regents, in accordance with the University Staff Grievances Policy.

Hearing Costs. Hearing costs include the CHO's reasonable fees and expenses as well as other costs associated with the hearing, but does not include fees and/or expenses (including attorney's fees) incurred by either party in preparing or presenting, or defending the appeal.

An appeal to the CHO shall be accompanied by a \$125.00 filing fee. The filing fee must be received by OHR prior to the CHO filing deadline. The filing fee will be used to pay for the employee share of the hearing cost in the event that the employer prevails. The filing fee will be reimbursed to the employee in the event that the employee prevails.

In the event that the employer prevails, the employee shall be responsible for 50% of the hearing costs, less the \$125.00 filing fee, and the employer shall be responsible for 50% of the costs. In the event that the employee prevails, the employer shall be responsible for all hearing costs and the employee will be reimbursed the \$125.00 filing fee.

Payment for Hearing. The Employer shall be responsible for ensuring that the CHO is paid for their reasonable fees and expenses.