Proposed Changes in *Faculty-Staff Handbook Section 3840 – Faculty Appeals*

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**FSH 3840 PROCEDURES FOR FACULTY APPEALS**

PREAMBLE: This section deals with the procedures for faculty appeals. It formed a part of the 1979 Handbook and was revised in July of 1994 to add harassment on the basis of race, color, religion, gender, national origin, age or disability to the "areas of concern" and in January of 1996 so as to remove the Faculty Affairs Committee from those bodies through which an appeal had to travel before being heard. The section was substantially revised in July 1999 to clarify the committee's scope and its procedures. Further information is available from the Provost's Office (208-885-6448) or the Office of the Faculty Secretary (208-885-6151). [ed. and rev. 7-99, ed. 7-00]

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A. AREAS OF CONCERN. The procedures provided in this policy are to be used by faculty members to appeal administrative decisions in such matters as denial of tenure, denial of promotion, position description, performance evaluation, and salary determination, and to challenge the contents of personnel files. Applicability of these procedures to some matters is subject to certain limitations and exclusions—nonrenewal of fixed-term appointments [see 3900 E and F], dismissal for cause [see 3910, in particular, 3910 D-5-c], and layoff resulting from a declaration of financial exigency [see 3970]. Allegations of sexual harassment or discrimination based on race, color, sex, national origin, religion, age, sexual orientation, or disability are not subject to this policy, but should be brought to the Office of Diversity and Human Rights. Decisions of the president concerning administrative assignments are not appealable under this policy. [rev. 7-99]

B. PROCEDURES FOR INITIATING AN APPEAL.
B-1. Before, or in addition to, filing an appeal, the faculty member should seek satisfaction informally by discussing his or her complaint with the administrator who made the decision. If the issue is not resolved by this means, the faculty member should then go to the next administrative level for redress. Reference to these discussions should be included in the request for a hearing.

B-2. A faculty member who wishes to appeal an institutional decision may do so by submitting a written request for a formal hearing. Such a request must be made within 30 calendar days after he or she receives written notice of the institutional decision, except that a 20-day period is allowed in cases of nonrenewal of fixed-term appointments [see 3900 F], a 14-day period is allowed in cases of denial of tenure or promotion, and a 15-day period is allowed in cases of dismissal for cause [see 3910 D-5-a]. If the appeal concerns salary determination, the 30-day period allowed for filing begins with receipt of notice of the dollar amount of salary assigned [see 3420 C-3, C-6]; the earlier assignment to a salary-increment category [see 3420 C-3] may be appealed by the informal means described in B-1 or may be included in the appeal after the salary amount has been fixed. In the request, the appellant faculty member must state clearly what decision is being appealed and, briefly, the grounds on which the appeal is based. If the time deadlines contained in this provision or in any rules or procedures adopted by the Faculty Appeals Hearing Board are not complied with the appeal shall be dismissed unless the Faculty Appeals Hearing Board determines that extraordinary circumstances justified the delay. [rev. 7-99, ed. 7-01]

B-3. The request for a hearing is addressed to the chair of the Faculty Appeals Hearing Board (FAHB). The FAHB chair will forward copies of the request to the provost, and other administrators concerned. The provost, or another administrator designated by the provost, will furnish the FAHB chair and the appellant faculty member a written statement of the reasons for the administrative decision. [rev. and renumbered 7-99]

B-4. A request for a hearing does not affect the effective date of the decision being appealed.

C. THE FACULTY APPEALS HEARING BOARD.
C-1. The Committee on Committees appoints, subject to confirmation by the Faculty Council, a Faculty Appeals Hearing Board. The board consists of five faculty members, one of whom is a departmental administrator, as principal members. In addition, five other faculty members, two other departmental administrators, and three off-campus faculty members are appointed as alternate members of the board. The off-campus alternates will serve, in place of principal faculty members chosen by lot, when an appeal by an off-campus faculty member is to be heard. The other alternate members will serve, as appropriate, when a principal member is deemed to have a conflict of interest. [rev. 7-99]

C-2. A majority of the members of the hearing board must be tenured and each of them must have had employment at UI for longer than two years.

C-3. The chair presides at hearings or designates another member to do so.
D. THE BOARD’S RESPONSIBILITY. In each case referred to it, the board has the following responsibilities:

D-1. To review all documentary evidence submitted by the parties prior to the hearing and all evidence submitted by the parties at the hearing. The board may require the parties to submit evidence deemed relevant by the board. [rev. and renumbered 7-99]

D-2. To determine whether there has been any (1) failure to comply with prescribed procedures, (2) application of inappropriate considerations (for example race or gender), (3) abuse of discretion, or (4) abuse of the appellant’s academic rights and privileges. [rev. and renumbered 7-99]

D-3. To make recommendations to the president. [renumbered 7-99]

E. HEARING PROCEDURES.

E-1. The hearing board may adopt rules of procedure from time to time. In a particular case these rules may be altered by the Board in the interest of fairness. These rules are available on request from the chair of the board and the faculty secretary. [add. 7-99]

E-2. The board will meet before the hearing to consider the nature of the parties’ expected presentations, to make decisions about the procedure that will be followed in the hearing, and to set mutually acceptable dates for the hearing, including the time and duration of the presentations. The board communicates these decisions in writing to the parties and allows each of them five working days in which to respond. The chair of the board negotiates any disputed matters. [ed. and renumbered 7-99]

E-3. The chair of the board summons the appellant faculty member and the officer (or a representative of the body) whose decision is under appeal. The chair also summons other UI employees or students to appear on the request of either party or of the board itself; the summons must set a reasonable time and place to appear and must give due notice. Persons summoned have the obligation to respond as though summoned by the president. Either party may be assisted by counsel of its choice in an advisory capacity only. Both parties are entitled to be present during the entire hearing. [rev. and renumbered 7-99]

E-4. During the hearing, the appellant faculty member’s case will be presented first, in whatever manner he or she desires: e.g., through the testimony of witnesses, submission of documents, or oral statements. The board may then question the appellant faculty member. The administration then presents its case, followed by questions from the board. The appellant faculty member is given an opportunity to respond and to summarize his or her case. [ed. 7-97; renumbered 7-99]

E-5. As a general rule, the board admits, rather than excludes, presentations that either party desires to make. The chair may rule against presentations that are clearly repetitive or irrelevant. [renumbered 7-99]

E-6. The appellant faculty member and the board should know of the existence and substance of all materials on which the administration has relied in making the decision being appealed [see 3040]; there should be no means by which the substance of any charge, or other adverse information or allegation, can be kept secret from the appellant faculty member. [renumbered 7-99]

F. PROCEDURES FOLLOWING THE HEARING.

F-1. The findings and recommendations of the hearing board are reported promptly in writing to the appellant faculty member, his or her departmental administrator and dean, the provost, and the president. [rev. 7-99]

F-2. The president, following receipt of the report of the hearing board, has the responsibility of promptly responding in writing—and in any case within 45 days—to the appellant faculty member, and the hearing board, and of providing a statement of the rationale for his or her decision. [rev. 7-99]

F-3. Appeal to the Regents. RGPIM2.b.

A nonclassified employee may elect to petition the Board to review any final personnel related decision of the chief executive officer. Any written petition must be filed in the Office of the State Board of Education within fifteen (15) calendar days after the employee receives written notice of final action under the internal procedures of the institution, agency, school, or office. The Board may agree to review the final action, setting out whatever procedure and conditions for review it deems appropriate, or it may choose not to review the final action. The fact that a written petition has been filed does not stay the effectiveness of the final decision nor does it grant a petition for review unless specifically provided by the Board. Board review is not a matter of right. An employee need not petition the Board for review in order to have exhausted administrative remedies for the purposes of judicial review.

F-43. The chair of the board shall report annually to the Faculty Council regarding the nature of the matters considered by the board during the preceding year. [add. 7-99]
II. HUMAN RESOURCES POLICIES AND PROCEDURES
Subsection: G. Policies Regarding Faculty (Institutional Faculty Only)
Revised July 1, 2001  Published February 2000

(1) Nonrenewal is not subject to investigation or review except that the employee may request an investigation or review to establish that written notice was or was not received in accordance with the time requirements set forth in this section. In such cases, the investigation or review will be concerned only with manner and date of notification of nonrenewal. The employee must request such investigation or review in writing of the chief executive officer within fifteen (15) days of receipt of the written notice of nonrenewal.

(2) Provided, however, that if the non-tenured faculty member presents bona fide allegations and evidence in writing to the chief executive officer of the institution that the non-reappointment was the result of discrimination prohibited by applicable law, the nontenured faculty member is entitled to use the internal discrimination grievance procedure to test the allegation. In such cases, the same procedures, burden of proof, time limits etc. as set forth for the grievance of non-renewal by nonclassified employees shall be used. (see subsection F.)

c. Nontenured faculty members who are notified that they will not be reappointed or that the succeeding academic year will be the terminal year of appointment are not entitled to a statement of reasons upon which the decision for such action is based. No hearing to review such a decision will be held.

II. HUMAN RESOURCES POLICIES AND PROCEDURES
Subsection: M. Grievance and Appeal Procedure – All Employees Revised July 1, 2001
Published February 2000

M. Grievance and Appeal Procedure – All Employees

1. Classified Employees
Provisions for grievance and appeals procedures for classified employees are provided for in Chapter 53, Title 67 Idaho Code and the rules of the State Division of Human Resources. The University of Idaho shall, to the extent practical, provide for similar grievance and appeals procedures for its classified employees.

2. Nonclassified Employees (including Faculty Employees)
a. Internal Policies and Procedures
Each institution, agency, school, and office must establish general procedures to provide for grievances and appeals for human resource matters. Such procedures shall be forwarded to the executive director for review and maintenance on file in the Office of the State Board of Education. Internal procedures must include the following elements:

(1) provision for informal resolution;
(2) procedures for filing a formal, written complaint;
(3) reasonable time requirements;
(4) a description of the hearing body; and
(5) requirements for retention of records.

b. Appeal to the Board
A nonclassified employee may elect to petition the Board to review any final personnel related decision of the chief executive officer. Any written petition must be filed in the Office of the State Board of Education within fifteen (15) calendar days after the employee receives written notice of final action under the internal procedures of the institution, agency, school, or office. The Board may agree to review the final action, setting out whatever procedure and conditions for review it deems appropriate, or it may choose not to review the final action. The fact that a written petition has been filed does not stay the effectiveness of the final decision nor does it grant a petition for review unless specifically provided by the Board. Board review is not a matter of right. An employee need not petition the Board for review in order to have exhausted administrative remedies for the purposes of judicial review.

L. Discipline - Adequate Cause – All Employees

(3) Each institution, agency, school, or office shall provide for internal grievance procedures in addition to the foregoing in accordance with Section II.M., Grievance and Appeal Procedure. Except as set forth in Section II.M, discipline, up to and including dismissal, may be effective prior to the initiation by the employee of the internal grievance procedure.

b. Upon receipt of the final findings and recommendations, including those resulting from an internal grievance, an employee may file an appeal with the Board as set forth in Section II.M. The Board may, if it chooses to hear an appeal, by a majority of the total membership, approve, reject, or amend such findings, recommendations, or suggestions, if any, or may remand the matter for additional evidence, recommendations, or suggestions, if any. Reasons for approval, rejection, or amendment of such findings, recommendations, or suggestions will be stated in writing and communicated to the employee. The Board may employ a hearing officer for carrying out the Board’s duties under this paragraph.