

Contact: Susan Anderson

**REVISION TO POLICY MANUAL—APPEAL PROCEDURES**

**Action Requested:** Consider recommending to the Board, as first reading, the proposed new Chapter 10 of the Board of Regents Policy Manual as outlined below.

**Executive Summary:** For the past year, the Board Office and Regent institutions have been in the process of reviewing the Board's Policy Manual. An appeals process review committee composed of legal counsel from the Board Office, University of Iowa, Iowa State University, University of Northern Iowa and the Attorney General's Office was established to review existing appeal procedures and draft recommendations for the Board. The committee met several times over the past year to discuss and formulate a new proposed Chapter 10 for the Board's Policy Manual (shown as Attachment A). Minor revisions affecting other policy manual sections as a result of the new Chapter 10 are shown in Agenda Item 8d.

The members of the appeal process review committee include the following:

- Susan Anderson, Associate Counsel, Board Office
- Tim McKenna, General Counsel, University of Northern Iowa
- Marc Mills, General Counsel, University of Iowa
- Kathryn Atkinson Overberg, Associate Counsel, Iowa State University
- Keith Saunders, Associate Counsel, Board Office
- Diane Stahle, Attorney General's Office
- Paul Tanaka, General Counsel, Iowa State University

## **New Chapter 10: Appeals to the Board of Regents**

### **10.01 General Procedures**

A. Jurisdiction. An adversely affected employee or student of an institution under the jurisdiction of the Board of Regents, State of Iowa, who is aggrieved by final action of an institution may appeal the final action to the Board of Regents. The Board of Regents will consider, as a matter of right, appeals of the following matters:

1. An employee may appeal a final institutional decision regarding dismissal, suspension without pay, or the denial of tenure resulting from a regularly scheduled tenure review as defined by section 10.03.
2. A student may appeal a final institutional decision regarding expulsion from the institution.

All other matters will be considered discretionary review and may be appealed only if a right to appeal is specifically granted. The Executive Director will determine whether a discretionary appeal will be heard under this policy and will notify the parties in writing whether and, if applicable, when the appeal will be heard.

B. Appeals or Grievances Governed by Contract, Policy, Statute or Rule

1. An appeal arising out of a contested case as defined by Iowa Code Chapter 17A may be appealed as provided by Chapter 681 of the Iowa Administrative Code, subsection 20.27.
2. All employees covered by a collective bargaining agreement under Iowa Code Chapter 20 shall pursue appeals or grievances as identified in the agreement.
3. All Regent merit system appeals shall be conducted in accordance with administrative rules as provided by Chapter 681 of the Iowa Administrative Code, section 3.
4. Appeals from terminations of teacher contracts at the special schools shall be conducted in accordance with Iowa Code sections 279.12 through 279.19.
5. Vendor appeals shall be conducted in accordance with Board Policy section 7.06.

C. Single Appeal. In the event an institutional policy provides an employee or student with different options for an internal appeal within the institution, only one appeal of the same or substantially similar subject matter or parties shall be allowed to the Board of Regents. The Executive Director may reject or

consolidate appeals that arose out of the same subject matter. The Executive Director may also sever multiple claims brought as a single appeal.

- D. Counting Days. As used in this policy, “days” shall mean consecutive calendar days. If the last day of the counting period falls on a day when an office is closed, the counting period shall be extended to the next business day.
- E. When a party fails to exercise the appeal rights under this policy, the party accepts the final institutional decision and waives the right to contest the matter further.
- F. Parties may be represented by legal counsel during the appeal process.
- G. Prohibited Communications. Except for inquiries regarding procedure or scheduling only, no party shall communicate with the Executive Director, Board of Regents General Counsel, an employee of the Board Office, or a member of the Board of Regents regarding an appeal without notice to the other parties and an opportunity for all other parties to participate.

#### **10.02 Appeals Other than Denial of Tenure**

- A. After exhausting all appeals within the institution, a student or employee (“Appellant”) may appeal only by filing a written notice of appeal. The notice of appeal must be filed within twenty (20) days of the date of the final institutional action. The notice of appeal is filed when it is received by fax or in hard copy by the close of business at the office of the institutional head.
  - 1. The notice of appeal must identify the following information:
    - a) The Appellant(s);
    - b) The decision or order from which appeal is taken;
    - c) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
    - d) The relief sought;
    - e) The grounds for relief; and
    - f) If a stay or suspension of final action is requested, the nature and reasons for such request.
  - 2. The Appellant must state all issues supporting the appeal in the notice of appeal. Failure to state an issue in the notice of appeal shall serve as a waiver of that issue on appeal.
  - 3. The Appellant may not raise an issue or argument before the Board of Regents that was not previously raised or presented to the institution.
- B. Suspension of Pending Action. A request to stay or suspend institutional action must be included in the notice of appeal or it is waived. The filing of a notice of appeal shall not result in an automatic stay or suspension of the final institutional action. Affirmative written approval by the Executive Director is required to stay

or suspend the action. If the Appellant has requested a stay or suspension of final action, the institution shall have seven (7) days after receipt of the notice of appeal to submit a response to the request. The response shall be delivered by the institution to the Board of Regents General Counsel and the Appellant.

C. The institutional head shall deliver the notice of appeal, the record (as defined below), along with a concise written response to the notice of appeal to the Board of Regents General Counsel no later than twenty (20) days after the receipt of the notice of appeal by the institutional head. The institutional head shall also send a copy of the record and the institution's written response to the notice of appeal to the Appellant, or to the Appellant's counsel.

1. The record shall include:

- a) Copies of institutional policies and procedures relevant to the appeal;
- b) All official communications between the institution and the Appellant relevant to the appeal, including prior official decisions and recommendations;
- c) The statement of charges or complaint documents provided to the Appellant, if applicable;
- d) A tape recording or written transcript of the hearing if available;
- e) Copies of all exhibits received by the hearing officer, board of review or institutional head;
- f) The written recommendations of the hearing officer or board of review;
- g) Any additional, non-privileged material considered by the institutional decision-maker in making the decision; and
- h) The written decision of the final institutional decision-maker.

2. Within ten (10) days of the date the record is sent, the Appellant may object to the record submitted by the institution.

- a) Such objection shall be in writing addressed to the Board of Regents, General Counsel, with a copy provided to the institution, and shall specify each specific objection to the record.
- b) If the hearing was recorded but no transcript of the hearing has been made, either party may request that a transcript be prepared.
  - (i) If such a request is made, a transcript will be prepared and a copy provided to each party at the expense of the party requesting the transcript unless alternative arrangements have been made for adequate cause;
  - (ii) The Board Office reserves the right to request that a transcript be prepared at the expense of the institution.
- c) If the Appellant desires to supplement the record, he or she must at the same time identify the documents or information to be supplemented and explain the reason the Appellant believes the document or information should be included in the record.

- d) The institution shall have ten (10) days to respond. The response shall be delivered to the Appellant by the institution.
  - e) The Board will not consider new or additional evidence or information that was available but not presented in any hearings or appeals at the institution.
3. The time limits specified in this subsection may be extended at the discretion of the Executive Director. The Executive Director will notify, in writing, each of the parties of any change to the time limits.

**D. Written Arguments by the Parties**

1. Within twenty (20) days of the date the record is sent, the Appellant shall file a memorandum in support of the appeal. The memorandum is filed when it is received by the Board of Regents General Counsel. The memorandum must be signed by the Appellant, or by the Appellant's counsel. Factual allegations must include specific references to the record at the institutional level. New factual material and new issues not a part of that record will not be considered on appeal to the Board.
2. The Appellant shall send a copy of the Appellant's memorandum to the institutional head. The institutional head or designee shall file a written response with the Board of Regents General Counsel no later than twenty (20) days from the institutional head's receipt of the Appellant's memorandum. Factual allegations must include specific references to the record at the institutional level. New factual material and new issues not a part of that record will not be considered on appeal to the Board. The institutional head or designee shall send a copy of the institution's response to the Appellant or to the Appellant's counsel.
3. No further written arguments will be accepted from either party unless requested or approved by the Executive Director.
4. If either party desires oral argument before the Board, the party shall make such a request in a separate document attached to the written argument. Oral argument shall be discretionary with the Executive Director.

**E. The Appellant shall have the burden of proof on the appeal. The Appellant must show by a preponderance of the evidence that the institution's final decision was:**

1. Not supported by substantial evidence in the record;
2. Arbitrary and capricious; or
3. Unconstitutional or otherwise contrary to law, including procedural irregularities or deficiencies materially prejudicial to the Appellant.

- F. Following the review, the Board may affirm, modify, remand, or reverse all or any part of the order or decision of the institution. The Board shall give due regard to the fact finder's opportunity to observe witnesses and parties. The decision of the Board represents final agency action. The Appellant may seek judicial review as permitted by law.

**10.03 Tenure Appeals**

- A. A tenure-track faculty member ("Appellant") may appeal the denial of tenure stemming from a regularly scheduled tenure review only by filing a written notice of appeal.
1. The regularly-scheduled tenure review is a review which is mandatory under the applicable institution's policies. Early consideration for tenure and a review occurring after the regularly-scheduled tenure review are discretionary, and the procedures of this section apply only if discretionary review is granted and the Executive Director elects to use them.
  2. The notice of appeal must be filed within twenty (20) days of the date of the final institutional decision. The notice of appeal is filed when it is received by fax or in hard copy by the close of business at the office of the institutional head.
    - a) The notice of appeal must identify the following information:
      - i. The Appellant(s);
      - ii. The decision or order from which appeal is taken;
      - iii. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
      - iv. The relief sought; and
      - v. The grounds for relief.
    - b) The Appellant must state all issues supporting the appeal in the notice of appeal. Failure to state an issue in the notice of appeal shall serve as a waiver of that issue on appeal.
  3. The Appellant may not raise an issue or argument before the Board of Regents that was not previously raised or presented to the institution.
- B. The institutional head shall deliver the notice of appeal, the record (as defined below), along with a concise written response to the notice of appeal, to the Board of Regents General Counsel no later than twenty (20) days after the receipt of the notice of appeal by the institutional head. The institutional head shall also send a copy of the record and the institution's written response to the notice of appeal to the Appellant or to the Appellant's counsel.
1. The record shall include:

- a) Copies of institutional and department policies and procedures relevant to the appeal;
  - b) Confidential recommendations or reviews (refereed or others as determined by the institution) that were part of the tenure decision. The institution may claim privilege in the identity of reviewer or in entire content of the review or recommendation, in which case the Appellant will not receive that information identified as privileged.
  - c) Copies of all other non-privileged materials contained in the Appellant's official tenure file. The institution shall notify the Board of Regents General Counsel whether any other items are withheld under a privilege, and shall identify those items;
  - d) All official communications between the institution and the Appellant relevant to the appeal, including recommendations of any grievance committee or reviewing body;
  - e) Documents submitted by the parties to a grievance committee or reviewing body;
  - f) The written decision of the final institutional decision-maker.
2. Within ten (10) days of the date the record is sent, the Appellant may object to the record submitted by the institution.
- a) Such objection shall be in writing addressed to the Board of Regents, General Counsel, with a copy provided to the institution, and shall specify each specific objection to the record.
  - b) If the hearing was recorded but no transcript of the hearing has been made, either party may request that a transcript be prepared.
    - i. If such a request is made, a transcript will be prepared and a copy provided to each party at the expense of the party requesting the transcript unless alternative arrangements have been made for adequate cause;
    - ii. The Board Office reserves the right to request that a transcript be prepared at the expense of the institution.
  - c) If the Appellant desires to supplement the record, he or she must at the same time identify the documents or information to be supplemented and explain the reason the Appellant believes the document or information should be included in the record.
  - d) The institution shall have ten (10) days to respond. The response shall be delivered to the Appellant by the institution.
  - e) The Board will not consider new or additional evidence or information that was available but not presented in any hearings or appeals at the institution.
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