

1 **Part D. Appeals of Nonrenewals or Denials of Tenure.**

2 **FAC 4.D.1. UWS 3.08 {Appeal of a Nonrenewal Decision} of the *Wisconsin Administrative Code*,**  
3 **Rules of the Board of Regents.**

4 **UWS 3.08 Appeal of a nonrenewal decision.**

- 5 (1) The faculty and Chancellor of each institution, after consultation with appropriate students, shall  
6 establish rules and procedures for the appeal of a nonrenewal decision. Such rules and proce-  
7 dures shall provide for the review of a nonrenewal decision by an appropriate standing faculty  
8 committee upon written appeal by the faculty member concerned within 20 days of notice that the  
9 reconsideration has affirmed the nonrenewal decision (25 days if notice is by first class mail and  
10 publication). Such review shall be held not later than 20 days after the request, except that this  
11 time limit may be enlarged by mutual consent of the parties, or by order of the review committee.  
12 The faculty member shall be given at least 10 days notice of such review. The burden of proof in  
13 such an appeal shall be on the faculty member, and the scope of the review shall be limited to the  
14 question of whether the decision was based in any significant degree upon one or more of the fol-  
15 lowing factors, with material prejudice to the individual:
- 16 (a) Conduct, expressions, or beliefs which are constitutionally protected, or protected by the prin-  
17 ciples of academic freedom, or
  - 18 (b) Factors proscribed by applicable state or federal law regarding fair employment practices, or
  - 19 (c) Improper consideration of qualifications for reappointment or renewal. For purposes of this  
20 section, "improper consideration" shall be deemed to have been given to the qualifications of  
21 a faculty member in question if material prejudice resulted because of any of the following:
    - 22 1. The procedures required by rules of the faculty or board were not followed, or
    - 23 2. Available data bearing materially on the quality of performance were not considered, or
    - 24 3. Unfounded, arbitrary or irrelevant assumptions of fact were made about work or conduct.
- 25 (2) The appeals committee shall report on the validity of the appeal to the body or official making the  
26 nonrenewal decision and to the appropriate dean and the Chancellor.
- 27 (3) Such a report may include remedies which may, without limitation because of enumeration, take  
28 the form of a reconsideration by the decision maker, a reconsideration by the decision maker un-  
29 der instructions from the committee, or a recommendation to the next higher appointing level.  
30 Cases shall be remanded for reconsideration by the decision maker in all instances unless the  
31 appeals committee specifically finds that such a remand would serve no useful purpose. The ap-  
32 peals committee shall retain jurisdiction during the pendency of any reconsideration. The decision  
33 of the Chancellor will be final on such matters.

34 History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

35 **FAC 4.D.2. Rules and Procedures.**

- 36 (1) If a reconsideration process results in affirmation of the nonrenewal decision, the faculty member  
37 may appeal that decision in writing to the chairperson of the Faculty Hearing Committee, through  
38 the president of the Faculty Senate, within twenty calendar days (twenty-five days if notice is by  
39 first class mail and publication) after the date of the document informing the faculty member of the  
40 decision. The chairperson of the Faculty Senate Hearing Committee will form a hearing subcom-  
41 mittee. The chairperson also has the responsibility to brief the Subcommittee on the rules and  
42 procedures applicable to the review, prior to the start of the Subcommittee's deliberations.
- 43 (2) The hearing subcommittee shall begin its review of the appeal within twenty calendar days after  
44 receiving the notice for appeal, unless extended by mutual consent of the parties or by order of  
45 the hearing subcommittee. The subcommittee chairperson shall notify the faculty member making  
46 the appeal at least ten calendar days in advance of the beginning of the review. The subcommit-  
47 tee shall complete its review not later than thirty calendar days after its first meeting unless ex-  
48 tended by mutual consent of the parties or by order of the review subcommittee.

- 1 (3) Appeals shall be submitted in writing and include documentation supporting the contention that  
2 the decision was based on factors listed in section UWS 3.08(1)(a), (b), or (c). After reviewing the  
3 written material filed with the appeal, if the subcommittee determines that there is a basis to hold  
4 a hearing on that matter, the subcommittee shall approve a motion to hold a hearing consistent  
5 with the established Faculty Senate Hearing procedures. Alternatively, if the subcommittee does  
6 not vote to conduct a hearing, it shall approve a motion denying the further review of the appeal.  
7 Copies of the subcommittee's actions shall be sent to all concerned parties, including, the faculty  
8 member, the initial level of review, the Dean, the Provost and Vice Chancellor, the Executive  
9 Committee of the Faculty Senate, and the Chancellor.
- 10 (4) If a hearing is held, the decision maker shall appear before the subcommittee to offer testimony  
11 about the nature of the consideration and the decision that was made.
- 12 (5) During its consideration of the appeal, the hearing subcommittee shall remand the case for re-  
13 consideration, with instructions, to the review level deciding nonrenewal unless the hearing sub-  
14 committee specifically finds that such a remand would serve no useful purpose. The hearing sub-  
15 committee shall retain jurisdiction pending any such reconsideration. If the subcommittee finds a  
16 remand would serve no useful purpose, the reasons for this finding must be included in the sub-  
17 committee's final report.
- 18 (6) Within ten days after the completion of the hearing the subcommittee shall complete its findings  
19 and recommendation. The report of the subcommittee may reject the appeal, or include remedies  
20 which may, without limitation because of enumeration, take the form of a reconsideration by the  
21 decision maker, a reconsideration by the decision maker under restrictions from the committee, or  
22 a recommendation to the next higher appointing level. Once made, the subcommittee's report  
23 shall be simultaneously sent to all concerned parties, including, the faculty member, the initial lev-  
24 el of review, the Dean, the Provost and Vice Chancellor, the Executive Committee of the Faculty  
25 Senate, and the Chancellor.
- 26 (7) The Chancellor shall act on the recommendation of the hearing subcommittee within twenty ca-  
27 lendar days of receiving the subcommittee's report.
- 28 (8) Notestein Provisions. This section applies to those appeals of denials of tenure that originated in  
29 an academic department (or its functional equivalent). After following the procedures listed in this  
30 chapter (i.e., after the matter has been remanded for reconsideration -- with or without restrictions  
31 -- or after making a finding that such a remand would serve no useful purpose), if the hearing  
32 subcommittee finds that the nonrenewal continues to be based on impermissible factors (as listed  
33 under UWS 3.08(1), the following procedures shall apply:
- 34 (a) The report of the faculty hearing subcommittee to the Chancellor must include a specific find-  
35 ing that one or more impermissible factors were considered by the academic department (or  
36 functional equivalent) in reviewing the credentials and in forming the recommendation that  
37 denied tenure.
- 38 1. The report shall also list, identify and discuss the specific impermissible factor(s), as  
39 found by the subcommittee.
- 40 2. On the basis of these findings, the subcommittees report shall also recommend to the  
41 Chancellor the formation (as set forth below) of an ad hoc committee to make a recom-  
42 mendation on tenure as a substitute for the recommendation originally offered by the de-  
43 partment (or equivalent).
- 44 3. Recognizing the importance of resolving any pending appeal, the Chancellor and the in-  
45 volved faculty are properly expected to devote the time required to bring this further re-  
46 view to an expeditious resolution.
- 47 (b) The Chancellor shall approve all recommendations from faculty hearing subcommittees to  
48 form an ad hoc committee. In these instances, the Chancellor shall also inform the probatio-  
49 nary faculty member of the specific actions that are to follow as provided under these rules.
- 50 (c) Upon receiving copies of the Chancellor's action on the report of the subcommittee, the Fa-  
51 culty Senate Executive Committee will meet with the Provost and Vice Chancellor to appoint

1 an ad hoc committee and chair, consisting of five members, to independently review the cre-  
2 dentials of the concerned faculty member.

3 1. Members of the ad hoc committee may be appointed from within or outside the University  
4 (or a combination of both) with the stipulation (required under section 36.13(2)(b)3.,  
5 stats.) that no person shall be appointed to the committee who is a member of the aca-  
6 demic department or its functional equivalent that made the initial negative recommenda-  
7 tion.

8 2. The committee shall consist of persons knowledgeable or experienced in the faculty  
9 member's academic field or in a substantially similar academic field (also per section  
10 36.13(2)(b)3., stats.).

11 3. The committee and chair shall receive a formal letter of appointment from the Provost  
12 and Vice Chancellor within 20 working days after the Provost and Vice Chancellor rece-  
13 ives the subcommittee report, unless this time is extended for cause by the order of the  
14 Provost and Vice Chancellor.

15 (d) The ad hoc committee shall review the original tenure form, or, at the choice of the probatio-  
16 nary faculty member, a revised form with all additions or comments on the original form re-  
17 moved. This provision does not extend, change, or modify the original probationary period in  
18 that performance data beyond that the time of the decision of the initial level of review shall  
19 not be considered or allowed. The ad hoc committee shall use the criteria for tenure as pub-  
20 lished by the University and other levels of review.

21 1. The ad hoc committee shall not base its tenure recommendation upon impermissible fac-  
22 tors, as defined by UWS 3.08(1).

23 2. Within twenty working days after appointment, unless the time is extended for cause by  
24 order of the Provost and Vice Chancellor, the ad hoc committee shall send its recom-  
25 mendation concerning tenure for the concerned faculty member to the following individu-  
26 als and offices: (a) the chair of the faculty hearing subcommittee, (b) the chair of the  
27 committee that made the initial nonrenewal decision, (c) the appropriate Dean or Vice  
28 Chancellor, (d) the President of the Faculty Senate, (e) the Provost and Vice Chancellor,  
29 and (f) the Chancellor.

30 (e) 1. If the ad hoc committee recommends the denial of tenure, the Chancellor will inform the  
31 faculty member of that decision to deny tenure. In this instance, the faculty member will  
32 be afforded an opportunity to request the reasons for the decision, and to pursue recon-  
33 sideration of the decision through discussions with the ad hoc committee in a manner  
34 consistent with the general framework set forth in these rules. If the faculty member is  
35 dissatisfied with the results of the reconsideration by the ad hoc committee, they shall be  
36 afforded an opportunity to petition for further review of the decision by a second faculty  
37 hearing subcommittee formed in a manner consistent with these rules. In the event that  
38 such a request is filed, it shall be governed by the general principles set forth above, as  
39 they may be modified by agreement of the Chancellor and the Faculty Senate Executive  
40 Committee to meet and balance any unique or particular needs required due to the timing  
41 of this petition for review.

42 2. If the ad hoc committee recommends that tenure be granted, that recommendation shall  
43 have the force and status of the initial recommendation from the department or equiva-  
44 lent unit, and it should be forwarded to the other levels of review, as provided in the facul-  
45 ty renewal process. The only modification to the applicable rules is that the time line for  
46 each level of action shall be fifteen calendar days, unless the time is extended for cause  
47 by order of the Provost and Vice Chancellor.

48 If the Chancellor decides to recommend a grant of tenure, the Chancellor shall include in  
49 his or her written recommendation to the President of the University of Wisconsin System  
50 a summary of the original findings of impermissible factors and a specific notation that  
51 the recommendation for tenure was made by the ad hoc committee acting as a substitute  
52 for the department (or equivalent).