

POLICY MANUAL

**FACULTY**

# Number 410

**Subject: Academic Due Process: Sanctions and Hearing Procedures Effective Date: July 1, 1997**

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# 410.1 PURPOSE AND SCOPE

This policy describes allowable sanctions that may be imposed on a faculty member. Additionally, this section specifies procedures for the imposition of a sanction and for conducting a grievance hearing.

Where administrators have faculty assignments, they are subject to the provisions of this policy, and the provisions outlined herein will be carried out by their immediate supervisor(s).

In all proceedings in this policy, the University’s policies regarding records will be followed (see Policy 405.2.4 University Records: Access).

Notwithstanding any provisions of this policy or related policies, the University reserves the right to take any action as may be required by law.

# 410.2 ACADEMIC DUE PROCESS

Apparent failures to comply with the standards of conduct (see Policy 403 Academic Freedom and Professional Responsibility) are approached by positive attempts to clarify expectations and manage performance. Attempts to correct behavior will be proportional to the gravity of the conduct in question and guides by consistency and established precedent.

**2.1 Setting Expectations and Identifying Minor Issues**

Minor departures from standards of conduct can often be corrected by the faculty member’s department head or immediate supervisor calling the matter to the attention of the faculty member. The department head or immediate supervisor will address minor issues by informing the faculty member of the behavior and explaining how the faculty member can improve. The faculty member should be offered guidance, training, mentorship, and/or other resources to improve performance.

2.1.1 Communication of Expectations

In addition to any verbal communication, a letter or email from the department head or immediate supervisor will be used to communicate expectations to the faculty member when a minor issue in conduct has been observed. The communication will include a description of the conduct in question, provide guidance and direction for correction, and explain the expectations for future performance. The communication does not constitute formal disciplinary action and is kept by the department head or immediate supervisor. The faculty member may request a one-on-one meeting to discuss the communication of expectations with their department head or immediate supervisor.

**2.2 Measures in Lieu of Sanctions**

Measures such as a letter of expectations, a performance improvement plan, resignation or early retirement should be considered and taken in lieu of sanction when:

1. the measure is available;
2. the measure will provide reasonable assurance that the faculty member will not repeat the violation of professional responsibility;
3. substantial institutional interests are not undermined through use of the measure; and
4. the faculty member consents to the measure.

The faculty member should consult with the American with Disabilities Act (ADA) Coordinator in the Office of Human Resources if performance issues are medically related.

**2.3 Administrative Leave**

The president or provost, in consultation with the Offices of Human Resources, Equity, and General Counsel, as appropriate, may place a faculty member on administrative leave with full pay pending completion of the procedures described below or in Policy 305 Discrimination Complaints, Policy 321 Respectful Workplace, Interim Policy 339 Title IX Sexual Misconduct in an Employment or Education Program or Activity, Policy 339A Non-Title IX Sexual Misconduct, or when a faculty member is alleged to have violated these policies or charged with a crime that affects an institutional interest.

Administrative leave is designed to protect the institution, the faculty member, and the integrity of the university procedures and processes related to the underlying allegations or charge. Factors that will be considered in making the determination include:

1. The severity of the alleged conduct;
2. Number and recency of alleged violation or crime;
3. Number of individuals affected alleged conduct or crime;
4. Risk of potential harm to campus community (students, employees, visitors);
5. Potential risk of ongoing misconduct and/or repetitive behavior underlying the alleged violation or charged crime;
6. Potential for retaliation;
7. Whether investigation can be conducted effectively with the faculty member remaining in the physical and/or virtual work environment;
8. Existing power imbalance between faculty member and individuals affected by the alleged policy violation or charged crime; and
9. Impact of leave of faculty member.

These factors may be revisited and reassessed at any time during the administrative leave period.

Administrative leave is a non-punitive, interim measure outside of formal sanctions and distinguished from suspension imposed as a sanction. Administrative leave will remain in effect until such time a faculty member is cleared of the alleged policy violation, a material change in the circumstances that gave rise to the administrative leave occurs or is acquitted of such crime that gave rise to administrative leave.

**2.4 Sanctions**

Conduct contrary to the standards of conduct set forth in Policy 403 Academic Freedom and Professional Responsibility may lead to sanctions. Sanctions will be considered when failures to meet standards of conduct are severe or demonstrate a pattern of behavior that cannot be addressed through setting expectations and identifying minor issues (Policy 410.2.1), communication of expectations (Policy 410.2.1.1), or measures in lieu of sanctions (410.2.2).

2.4.1 Sanctioning Authority and Conflicts of Interest

Sanctions are mutually exclusive and are imposed by the provost under the authority of the president. The provost serves as the Sanctioning Authority. The provost, in consultation and with approval from the president, will determine when a sanction will be imposed.

There may be instances when a faculty member subject to a sanction believes that the Sanctioning Authority has a conflict of interest in relation to the faculty member’s case.

When a faculty member subject to a sanction believes the Sanctioning Authority has a conflict of interest, they may allege that conflict in writing to the provost. The president will review the allegation of conflict and determine whether an actual conflict exists and communicate their determination to the faculty member in writing. If the president determines that there is an actual conflict of interest, they will serve as the Sanctioning Authority. Where the president is alleged to have a conflict of interest, that allegation will be considered and determined by the Board of Trustees.

2.4.2 Review of Alleged Misconduct

When an allegation of misconduct by a faculty member has been made, the provost will conduct or delegate the authority to conduct a review of the allegation and determine if there are sufficient grounds to impose a sanction.

If the review indicates that sufficient grounds exist to support the allegation of misconduct, the provost will report in writing the outcome to the president and begin the sanction process. If the preliminary review does not indicate sufficient grounds to support the allegation, the provost will also report that result to the president. The procedures for sanctions are described in 410.2.5 Procedures for Reprimands and 410.2.6 Procedures for Sanctions Other Than Reprimands.

# 2.4.3 Purpose of Sanctions

 A sanction serves one or more of the following purposes:

(a) to induce self-improvement and reform by a faculty member whose conduct demonstrates the need for self-improvement and reform;

(b) to indicate to the faculty member the seriousness of their violation and thereby deter them from future violations;

(c) to reassure the institutional community that violations of the standards of conduct will not be tolerated, thereby helping maintain respect for and commitment to the standards by other members of the institutional community; or

(d) to remove from institutional employment faculty members whose violation of the standards of conduct makes them unsuitable to continue in beneficial service to the institution.

# 2.4.4 Imposing a Sanction

The decision to impose a sanction will be guided by consistency and established precedent. A sanction will be imposed when:

(a) the purpose set forth in Policy 410.2.2 SANCTIONS cannot be adequately served by measures in lieu of sanctions (410.2.2);

(b) the sanction is not disproportionately severe in relation to the violation of the standards of conduct for which it is imposed; and

(c) the imposition of such sanction is fair and just to the faculty member involved, giving due consideration to the situation and to any relevant matters tending to mitigate the seriousness of the violation.

Sanctions are not cumulative; the sanctions are progressive in severity, but do not have to be imposed progressively.

# 2.4.5 Authorized Sanctions

# The following list describes the authorized sanctions that may be imposed for violations of the standards of conduct in Policy 403. Failure to fulfill the terms of a sanction may result in further discipline.

1. Reprimand.

A reprimand is a written statement detailing a violation of the standards of conduct in Policy 403.

1. Sanction-based probation.

Sanction-based probation is a period of time, not to exceed one (1) year, during which faculty members who have violated the standards of conduct set forth in Policy 403 are afforded the opportunity to demonstrate their ability to comply with their professional responsibilities.

1. Suspension.

Suspension is the barring of a faculty member from the exercise of all or part of their duties for a period of time, not to exceed one (1) year. Suspension may be imposed with full pay, partial pay, or without pay.

1. Reduction in rank.

Reduction in rank is a one-step reduction in faculty rank as defined in Policy 401. Reduction in rank is different from reduction in status (see Policy 406).

1. Dismissal for cause.

Dismissal for cause is the ending of employment.

Termination and nonrenewal are defined here to differentiate them from dismissal for cause. Termination and nonrenewal are not sanctions. Termination is the ending of employment of a tenured faculty member or a faculty member with a term appointment for program discontinuance, financial crisis, or bona fide financial exigency. Nonrenewal is the ending of employment of a faculty member without tenure or a faculty member with a term appointment by nonrenewal of their contract (see Policy 406).

# 2.4.6 Remediation

When a sanction less than dismissal for cause is imposed, the terms of the sanction may include the requirement that the faculty member take reasonable action to remedy a situation created by a violation of the standards of conduct.

2.4.7 Compounding Violations When a faculty member has been found non-responsible for an alleged violation of policy, the behavior underlying the allegation will not be raised against the faculty member again in subsequent allegations.

However, where the faculty member is found responsible for a violation of policy, that finding may be relevant, and can be used in a compounding analysis for sanction or to prove a pattern or practice of misconduct.

Where a faculty member has been subject to proceedings in a court of law, a sanction will not be imposed on the faculty member for the same acts unless the acts constitute violations of the standards of conduct in University Policies.

2.4.8 Extensions for Good Cause

With good cause, the schedule of events for sanctions may be suspended for a reasonable time either because one or more participants are unavailable to participate for other serious and compelling reasons. Such extensions will be by mutual agreement between the faculty member and other parties.

# 410.2.5 PROCEDURES FOR REPRIMANDS

**2.5.1 Notification of Intent to Issue a Reprimand**

If a faculty member’s department head or immediate supervisor, in consultation with the dean or the vice president for extension or provost, believes that a faculty member has violated the standards of conduct in Policy 403 Academic Freedom and Professional Responsibility and such violation warrants a reprimand, they will notify the faculty member of the basis of the proposed reprimand in writing. The notice will include the standard violated and the specific actions, behavior, or circumstance that violated the standards of conduct. The faculty member will be afforded an opportunity to meet with those imposing the reprimand within seven (7) days of receiving the notification and explain why they believe the proposed reprimand should not be imposed. If a reprimand is imposed, it must be issued within five (5) days of the meeting.

# 2.5.2 Review of Reprimand

If a faculty member believes that the reprimand has been unjustly imposed, the faculty member may request a review of the reprimand by the Academic Freedom and Tenure (AFT) Committee. Such a request will be made in writing to the chair of AFT within twenty (20) days of the imposition of the reprimand. The faculty member’s request must include a detailed written statement explaining why they believe the reprimand was unjustly imposed. Within twenty (20) days of receipt of a written request for review, the chair of AFTwill will select by lot and convene a panel of three (3) members of the AFT Committee for a hearing (see Policy 402.12.3.2). willwill

# 2.5.3 Reprimand Hearing

The reprimand hearing will occur within ten (10) days after the panel has been formed. The hearing will provide the faculty member and those imposing the reprimand with the opportunity to be present, to be heard, and to present evidence.

Within ten (10) days of the hearing, the panel will report its findings and recommendations in writing to the faculty member and to those imposing the reprimand. If the panel determines that the reprimand is unjust or otherwise inappropriate, such sanction will be rescinded by those who imposed it and removed from the faculty member’s file. A letter with the hearing panel’s decision will be drafted by the panel and a copy will be sent to the faculty member and those who imposed the reprimand.

# 410.2.6 PROCEDURES FOR SANCTIONS OTHER THAN REPRIMANDS

A sanction, other than a reprimand (see 410.2.5), may be imposed on a faculty member after it has been determined, by the proceedings set forth or referred to in this policy or in Policy 305 (Discrimination Complaints), that the faculty member has violated the standards of conduct in Policy 403 Academic Freedom And Professional Responsibility, Policy 305, Policy 339, or Policy 339A

The sanction process will be transparent, expeditious, and equitable for all involved parties. Faculty may choose to be accompanied by an advocate or observer during any sanction-related meeting with USU personnel or other representative(s). Faculty may request a reasonable delay of an ad hoc meeting to obtain such assistance and must be informed of all relevant progress or decisions made in their absence per section 410.2.4.8 Extensions for Good Cause.

The following procedures will be followed in all proceedings to impose a sanction other than a reprimand, except for proceedings involving

t (see Addressing Allegations of Research Misconduct

1. Discrimination (Policy 410.2.10 Discrimination, Sexual Misconduct, and Disallowed Relationships and Policy 305 Discrimination Complaints),
2. Sexual misconduct (Policy 410.2.10 Discrimination, Sexual Misconduct, and Disallowed Relationships, Policy 339 Sexual Misconduct in an Employment or Educational Program or Activity, and its sub-policies).

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# 2.6.1 Initiation of a Sanction

The provost as the Sanctioning Authority may initiate proceedings for a sanction when a review of alleged misconduct (410.2.4.2 Review of Alleged Misconduct) has produced sufficient grounds to believe that a faculty member has failed to comply with the standards of conduct in Policy 403.

# 2.6.2 Notice of Intent to Impose a Sanction

The provost will arrange for written notice to be delivered personally or by certified mail, return receipt requested, to the faculty member for whom a sanction has been recommended A copy of this notice will be sent to the chair of the AFT Committee, along with a statement confirming the date the faculty member

received it. Copies will also be sent to the faculty member’s department head or immediate supervisor and dean, vice president for extension, or, where appropriate, vice president for statewide campus.

Notice of intent to impose a sanction will contain the following:

1. A concise and clear statement of the facts, conduct, or circumstances alleged to constitute failure to comply with the standards of conduct in Policy 403 Academic Freedom and Professional Responsibility, including a statement of the standard(s) the faculty member is alleged to have violated.
2. A statement of the sanction proposed.
3. A statement that (a) the faculty member has the right to be heard in a conference with the provost (see Policy 407.4.5 Procedures for Sanctions Other than Reprimands – Conference with Provost) either in person or by electronic conferencing; (b) should the faculty member desire, the faculty member may invite a person of their choosing to be present and serve as a supportive resource and/or advisor at such a conference; (c) this conference must be requested in writing within five (5) days after receipt of the notice by the faculty member; and (d) this conference must be held within ten (10) days after receipt of notice by the faculty member.
4. A statement of the schedule of events that lead to a formal hearing, and that a faculty member, should they desire, may invite a person of their choosing to be present and serve as a supportive resource and/or advisor at such a hearing.
5. A statement that within twenty (20) days of the receipt of this notice, the faculty member, should they wish to contest the alleged violation, must file in writing with the chair of the Academic Freedom and Tenure Committee a statement of intent to contest the alleged violation through formal hearing; and that failure to do so will result in the imposition of the proposed sanction.
6. A statement that within forty (40) days of the notice of intent to impose a sanction, the faculty member must file, with the chair of the hearing panel, a written response which answers the alleged violation contained in the original notice; and that failure to do so will result in the imposition of the proposed sanction.

# 2.6.3 Schedule of Events

The proceedings will commence with the receipt by the faculty member of the written notice to impose a sanction as described in Policy 410.2.6.2Notice of Intent to Impose a Sanction. The provost must deliver a copy of the notice to the chair of the AFT Committee within ten (10) days of receipt of notice by the faculty member.

2.6.3.1 Conference with the Provost.

A faculty member notified of an intent to impose a sanction has the right to be heard in conference with the provost either in person or by electronic conferencing. If the faculty member desires a conference with the provost, the faculty member must request it within five (5) days of receipt of notice. The conference must be held within ten (10) days of receipt of notice. The purpose of the conference is to attempt to reach an agreement or settlement. In the event that the alleged violations are disposed of by mutual agreement or negotiation at the conference, no hearing need be held. A copy of the settlement will be sent to the chair of the AFT Committee.

The right to a conference with the provost is at the discretion of the faculty member. Requesting or rejecting such a conference does not abrogate the faculty member’s right to a formal hearing.

2.6.3.2 Notice of Intent to Contest the Alleged Violation

A faculty member notified of intent to impose a sanction must file a notice of intent to contest the alleged violation if the faculty member desires a formal hearing. The notice of intent to contest the alleged violation must be filed with the chair of the AFT Committee within twenty (20) days of receipt of notice. Failure to do so will result in entry of the faculty member’s default and the imposition of the proposed sanction.

The chair of the Academic Freedom and Tenure Committee must notify the provost of the faculty member’s intent to contest the alleged violation through formal hearing within ten (10) days of receiving such statement of intent. The chair of the Academic Freedom and Tenure Committee must appoint four members of a hearing panel (Policy 402.12.3.6 Senate Standing Committees – Academic Freedom and Tenure Committee – Hearing Panels), including a hearing panel chair, within ten (10) days of the filing of the written statement of intent to contest the alleged violation through formal hearing. The provost will appoint an administrative member of the hearing panel within the same time.

2.6.3.3 Response to the Alleged Violation

The faculty member must file a written response which answers the alleged violation contained in the original notice with the chair of the hearing panel within twenty (20) days of the filing of the written statement of intent to contest the alleged violation. Appropriate, substantiating documentation will be submitted with the response. Failure to do so will result in entry of the faculty member’s default and the imposition of the proposed sanction.

The chair of the hearing panel will provide the provost with a copy of the faculty member’s written response within five (5) days of receiving such response.

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# 2.6.3.4 Pre-hearing Conference

A pre-hearing conference will be held no more than ten (10) days before the formal hearing. The formal hearing will be scheduled within forty (40) days of receipt of the faculty member’s statement of intent to contest the alleged violation through formal hearing. The chair of the hearing panel will schedule the hearing date.

The chair of the AFT Committee will preside at the pre-hearing conference. The chair of the hearing panel will also attend. At this pre-hearing conference the provost or administrative representative and the faculty member will make available to each other the names of their proposed witnesses and a list of the documentary evidence to be introduced at the hearing. The pre-hearing conference will delineate the issues to be examined at the hearing, stipulate the facts to be agreed upon, and achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious.

Before the hearing, upon request, either party will allow the other to examine all documentary evidence and any written or recorded statements that were made by witnesses listed by either party.

**2.6.4 Procedures for Hearing to Contest Imposition of a Sanction**

The following describes the procedures for the hearing to contest the imposition of a sanction.

2.6.4.1 Date.

The hearing to contest the imposition of a sanction will be held within forty (40) days of receipt of the faculty member’s statement of intent to contest the alleged violation through formal hearing. The chair of the hearing panel will schedule the hearing date. The formal hearing may be continued upon good cause shown by either party per 410.2.2.8. The panel will grant adjournment to enable either party to investigate evidence to which a valid claim of surprise is made.

2.6.4.2 Records

Upon request by either the sanctioning authority, the faculty member, or any member of the hearing panel, the chair of the hearing panel will request the production of university records and the presence of witnesses to appear and testify. Compliance with such requests is an obligation of employment of any university official or employee and access to university records as provided in Policy

405.6.4 Tenure, Promotion, and Review: General Procedures – University Records: Access will be honored by the panel.

2.6.4.3 Witness and Counsel.

The faculty member and the sanctioning authority each have the right to have present any one (1) person of their choosing as a a supportive resource and/or advisor at all stages of the hearing. The faculty member and the sanctioning authority will also each have the right to question witnesses, to present evidence and call witnesses in their own behalf, to testify, and to be present with their advisor and/or counsel at all meetings and proceedings of the panel except sessions which are closed for deliberation and vote. Advisors are permitted to advise and counsel their respective parties but are not permitted to argue the case or interrogate witnesses. Members of the hearing panel may question witnesses and parties to the hearing.

2.6.4.4 Confidentiality of Information Shared During Hearing

Access to anything requested pursuant to 410.2.6.4.2 Records will be temporary and will be permitted only during the sanction process. At the end of the process, such records will be returned to their proper custodians. Such files may be protected under the Family Education Rights and Privacy Act (FERPA) or Utah’s Government Records Access and Management Act (GRAMA).

2.6.4.5 Opening the hearing to the public.

Hearings will be closed to the public unless the faculty member requests that they be open and the panel determines, following such request, that an open hearing will not prejudice the interests of the university, the faculty member, or the witnesses. When an open hearing is requested by the faculty member but such request is denied, the specific reason(s) for denial will be stated in the record. In any closed hearing the faculty member and the sanctioning authority will each have the right to the presence of not more than three (3) persons each designated as observers.

2.6.4.6 Hearing record.

A recording of the hearing or hearings will be made by the president’s office and, upon request, a written copy will be made available to the faculty member.

2.6.4.7 Burden of proof.

The burden of proof that sufficient cause exists to impose a sanction rests with sanctioning authority and will be satisfied only by a preponderance of the evidence in the record considered as a whole.

The panel is not bound by rules of evidence and will admit any evidence that is of probative value in determining that the misconduct occurred and warrants a sanction. Every possible effort will be made to obtain the most reliable evidence available.

The findings of fact and the recommendation will be based solely on the hearing record.

2.6.4.8 Publicity.

Except for simple announcements as may be required that state the time of the hearing and similar matters, public statements and publicity about the case by all parties and persons involved or present will be avoided as far as possible until the proceedings have been completed.

2.6.4.9 Deliberations and standards for review.

The hearing panel deliberations and voting will be conducted in closed sessions from which all other persons are excluded. Upon request of any member of the panel, votes will be taken by secret written ballot. A simple majority of members will be required for recommendations by the hearing panel. The panel chair will be entitled to vote on all questions. The hearing panel may recommend the sanction proposed by the provost, a less severe sanction, or no sanction at all.

The standard of review by the hearing panel will be whether the imposition of the proposed sanction

(a) is an arbitrary or capricious action,

(b) fails to accord the faculty member the academic due process established by these policies,

(c) violates the academic freedom of the faculty member, or

(d) violates the legal, statutory, or constitutional rights of the faculty member.

If the faculty member asserts a violation of statutory or constitutional civil rights in any of the protected categories (see Policy 305 Discrimination Based on Protected Characteristics), in their written response to the alleged violation or at any time during the course of the proceedings, such claims will be immediately referred in writing to the Office of Equity by the chair of the hearing panel. All such statutory and constitutional civil rights claims shall

2.6.4.10 Recommendation of the Hearing Panel

The hearing panel must report its recommendation to the president, the provost, and to the faculty member within twenty (20) days of the hearing.

# 2.6.4.11 Decision by the President

The president will review the report and recommendation of the hearing panel and notify the faculty member, the provost, and the chair of the AFT Committee of their decision within ten (10) days.

2.6.4.12 Remand

Prior to making their decision, the president may remand the matter to the hearing panel for review and further hearing, if necessary. The president will state in writing to the chair of the hearing panel the specific purposes or reasons for the remand. The further review and hearing shallThe hearing panel will complete its review and report its conclusions to the president within twenty (20) days after receipt of the remand by the chair of the hearing panel. The president will review the report and notify the faculty member, the provost, and the chair of the AFT Committee within ten (10) days of the president’s decision.

The decision of the president is final.

# 410.2.7GRIEVANCES

Faculty members may grieve actions taken against them, including actions initiated by the university against the faculty member. Grievances are allegations of (a) arbitrary or capricious conduct; (b) violations of legal, constitutional, or statutory rights; or (c) violations of university policies and procedures. A faculty member may not grieve a decision reached under Policies 410.2..3 PROCEDURES FOR REPRIMANDS and 407.4 PROCEDURES FOR SANCTIONS

# 2.7.1 Initiation of Grievance

A faculty member who has grounds to file a grievance must file written notice of intent to grieve with the chair of the Academic Freedom and Tenure (AFT) Committee within twenty (20) days of receipt of notice of termination, nonrenewal, or reduction in status.

For all other matters, the faculty member who has grounds and wishes to file a grievance must file written notice of intent to grieve with the chair of the AFT Committee in a timely fashion, but in no instance later than 120 days after the grievant knew or should have known the facts and circumstances giving rise to the grievance.

Once notice of intent to grieve has been filed with the chair of the AFT Committee, the actual grievance statement must be filed in writing with the chair of the AFT Committee within twenty (20) days. Failure to file the grievance statement during this time dismisses the intent to grieve with prejudice against the faculty member refiling the grievance

2.7.1.2 Extensions for Good Cause

With good cause, the schedule of events for sanctions may be suspended for a reasonable time either because one of more participants is unavailable to participate for other serious and compelling reasons. Such extensions will be by mutual agreement between the faculty member and other parties.

# 2.7.2 Grievance Statement

The grievance statement must identify a specific action, a concise summary of the evidence with supporting documentation, and a list of individuals who are asked to respond to the grievance statement. The grievance statement must be submitted to the chair of the AFT Committee.

If a faculty member asserts a violation of statutory or constitutional civil rights in any of the protected categories identified in Policy 305 in their grievance statement (or at any time during the course of the proceeding), such claims will be immediately referred in writing to the Office of Equity by the chair of the AFT Committee and the faculty member will be notified in writing that a referral has been made. All such statutory and constitutional civil rights claims will be handled as outlined in Policy 305 Discrimination Complaints.

# 2.7.3 Grievance Hearing Panel

Once the grievance statement has been filed a hearing panel will be formed within fifteen (15) days by the chair of the AFT Committee. The hearing panel will be formed in accordance with the process outlined in Policy 402.12.3.6 Senate Standing Committees – Academic Freedom and Tenure Committee – Hearing Panel. The university president will appoint the fifth member of the hearing panel within fifteen (15) days of the filing of the grievance statement. The chair of the AFT Committee will appoint a chair of the hearing panel.

# 2.7.4 Distribution of Grievance Statement and Responses

Within five (5) days of the filing of the grievance statement, the chair of the AFT Committee will make the grievance statement available to the hearing panel members.

Within twenty (20) days after the filing of the grievance statement, the respondents must file their written responses with the chair of the hearing panel. Within twenty-five (25) days after the filing of the grievance statement, the chair of the hearing panel will make the respondents’ responses available to the grievant.

Within twenty-five (25) days after the filing of the grievance statement, the chair of the hearing panel will make the grievance statement and the respondents’ responses available to the remaining members of the hearing panel.

# 2.7.5 Pre-hearing Conference

Within forty (40) days after the filing of the grievance statement, a pre-hearing conference will be held before the chair of the AFT Committee, who will preside, and the chair of the hearing panel. At this pre-hearing conference the parties will make available to each other the names of their witnesses and a list of the documentary evidence to be introduced at the hearing. The pre-hearing conference will delineate the issues to be examined at the hearing, stipulate the facts to be agreed upon, and achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious.

Before the formal hearing begins, upon request, either party will allow the other to examine all documentary evidence and any written or recorded statements that were made by witnesses listed by either party.

# 2.7.6 Grievance Hearing

# The following describes the procedures for the grievance hearing.

2.7.6.1 Date.

The grievance hearing will be held within twenty (20) days of the pre-hearing conference. The hearing panel chair will schedule the hearing. The grievance hearing may be continued upon good cause shown by any of the parties and mutual agreement thereto as outlined in section 410.2.7.1.2 Extensions for Good Cause. The grievance hearing panel will grant adjournment to enable either party to investigate evidence to which a valid claim of surprise is made.

2.7.6.2 Records

Upon request by either of the parties to the grievance, the hearing panel will request the production of university records. Compliance with such requests is an obligation of employment of any university official and access to university records as provided in Policy 405.6.4 ADVISORY COMMITTEES – University Records: Access will be honored by the hearing panel.

2.7.6.3 Witnesses and Counsel

Each party to the grievance has the right to have present any one (1) person of their choosing to serve as a supportive resource and/or advisor at all stages of the hearing. Each party will also have the right to question witnesses, to present evidence and call witnesses in their own behalf, to testify, and to be present with their advisor at all meetings and proceedings of the hearing panel. The faculty member’s advisor and the university’s advisor are permitted to advise and counsel their respective parties but are not permitted to argue the case or question witnesses. Members of the hearing panel may question witnesses and parties to the hearing.

2.7.6.4 Confidentiality of information shared during hearing.

Access to any records requested pursuant to 2.7.6.2 will be temporary and will be permitted only during the grievance process. At the end of the process, such records will be returned to their proper custodians. Such files may be protected under the Family Education Rights and Privacy Act (FERPA) or Utah’s Government Records Access and Management Act (GRAMA).

2.7.6.5 Opening the hearing to the public.

Grievance hearings will be closed to the public unless a party requests that they be open, the other party agrees, and the hearing panel determines that an open hearing will not prejudice the interests of any of the parties to the grievance. Where an open hearing is requested on the mutual consent of the parties but such request is denied, the specific reason(s) for denial will be stated in the record. In any closed grievance hearing the parties will have the right to choose and to have present not more than three (3) persons each designated by them as observers.

2.7.6.6 Hearing Record.

The recording of the hearing or hearings will be made by the president’s office and, upon request, a written copy will be made available to the grievant.

2.7.6.7 Burden of proof.

The burden of proof that adequate cause for grievance exists rests with the faculty member and will be satisfied only by a preponderance of the evidence in the record considered as a whole.

The hearing panel will not be bound by strict rules of evidence and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

The findings of fact and the recommendation of the hearing panel will be based solely on the hearing record.

2.7.6.8 Publicity.

Except for simple pronouncements as may be required that state the time of the hearing and similar matters, public statements and publicity about the grievance by all parties and persons involved or present will be avoided as far as possible until the proceedings have been completed.

2.7.6.9 Deliberations.

Hearing panel deliberations and voting will be conducted in closed sessions from which all other persons are excluded. Upon request of any member of the hearing panel, votes will be taken by secret ballot. A simple majority of members will be required for recommendations. The chair will be entitled to vote on all questions.

2.7.6.10 Recommendation of the hearing panel.

In its finding, the hearing panel will determine only whether the grievance is valid or not valid; that is, whether or not there has been (a) arbitrary or capricious conduct, (b) violations of legal, constitutional, or statutory rights, or (c) violations of university policies and procedures.

The determination of the hearing panel will be binding on the AFT Committee as a whole. The hearing panel will submit a written report and recommendation to the president within twenty (20) days of the hearing. A copy of the hearing panel’s report will be forwarded to all parties to the grievance.

2.7.6.11 Presidential review and recommendation.

The president will review the report and recommendation of the hearing panel and notify the parties to the grievance of their decision within ten (10) days of receipt of the hearing panel’s report.

The decision of the president is final.

# 410.2.8 NONRENEWAL

Nonrenewal is the ending of employment of tenure-eligible or term appointment faculty, other than by dismissal for cause (Policy 410.2.4.5 Authorized Sanctions) or by termination (Policy 406.2.3.2 Program Discontinuation for Academic Reasons – Termination; Reduction in Status – Definition of a termination and reduction in status). When nonrenewal occurs at the end of the pre-tenure probationary period for tenure-eligible faculty (Policy 405.1.4 TENURE: INTRODUCTION, RIGHTS CONFERRED, ELIGIBILITY, PRE-TENURE PROBATIONARY PERIOD – Pre-tenure Probationary Period), it is a denial of tenure.

# 2.8.1 Reasons for Non-Renewal

There are three reasons for nonrenewal:

1. unsatisfactory performance of the faculty member’s assigned role (Policy 405.6.1 Role Statement and Role Assignment (for tenured and tenure eligible faculty) and Policy 405.11.1 Role Statement and Role Assignments (for term appointment faculty));
2. failure to satisfy the criteria for the award of tenure (for tenure-eligible faculty); or
3. cessation of extramural funding that is required for a substantial portion of the salary support of the faculty member.

For tenure-eligible faculty nonrenewal prior to the end of the pre-tenure probationary period is an administrative decision of the department head or immediate supervisor and the dean or the vice president for extension, and must be approved by the provost and president. In making a decision regarding nonrenewal, the department head or immediate supervisor and the dean or the vice president for extension are to take into consideration the most current and all previous reports from the Tenure Advisory Committee (Policy 405.6.2.1 Tenure Advisory Committee (TAC)).

If a tenure-eligible or term faculty member believes their appointment was nonrenewed for a reason that violates their academic freedom or legal rights, the faculty member can choose to grieve the decision.

# 2.8.2 Notice of Nonrenewal

The following describes the procedures for notifying a faculty member of nonrenewal.

2.8.2.1 Delivery of notice.

The president or the president’s designee will prepare written notice of nonrenewal and will arrange for written notice to be delivered personally or by certified mail, return receipt requested, to the faculty member. The written notice may include the reasons for nonrenewal and reference letters from the department head or immediate supervisor, dean or vice president for extension, at the president’s discretion.

2.8.2.2 Notification schedule for tenure-eligible and term appointment faculty.

For tenure-eligible faculty appointments, nonrenewal must first be preceded by the following minimum notice (a) not later than March 1 for first-year and second-year appointees; (b) not later than December 10 of the year the interim comprehensive review is conducted; and (c) no later than January 29 prior to the issuance of a terminal year appointment for fourth-year and fifth-year appointees, except in the case of denial of tenure (see Policy 410.2.8 NONRENEWAL), where minimum notice is no later than April 15.

For term appointments commencing at times other than the beginning of the academic year, notice of nonrenewal must be no later than (a) 60 days prior to the end of the first year of service; (b) 130 days prior to the end of the second year of service; or (c) 30 days prior to the issuance of a terminal year appointment after two or more years of service.

2.8.2.3 Conference.

Within five (5) days of the receipt of the notice of nonrenewal, at the faculty member’s request, a conference to discuss the nonrenewal will occur between the department head and the faculty member who received notice of nonrenewal.

2.8.2.4 Review by higher administrative level.

Within fifteen (15) days of the notice of nonrenewal, at the faculty member’s request, the nonrenewal and relevant documentation will be reviewed in a conference including the faculty member and the dean or vice president for extension, and, where appropriate, the associate vice president for statewide campuses. Unless specifically requested by the faculty member, this conference will not include the department head or supervisor.

# 410.2.9 ADDRESSING ALLEGATIONS OF RESEARCH MISCONDUCT

Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research Misconduct does not include honest error or differences of opinion.

In order to distinguish research misconduct from honest error and ambiguities of interpretation that are inherent in research, and to provide an environment that promotes integrity, the university has adopted procedures for assessing allegations and conducting inquiries and investigations related to possible research misconduct. These procedures are contained in the most recent version of “[Utah State University Research Misconduct Procedures](https://research.usu.edu/compliance/research-misconduct)” (USU-RMP). The USU-RMP procedures primarily follow the standards provided by the Office of Research Integrity of the U.S. Department of Health and Human Services. The USU-RMP, including definitions, are maintained and made available by the Vice President for Research.

2.9.1 Applicability

The Research Misconduct Procedures apply to all faculty, professional employees, graduate and undergraduate researchers, trainees, technicians, staff members, fellows, guest researchers or collaborators conducting funded research at USU.

If the imposition of a sanction is recommended for a member of the faculty as a result of a finding of research misconduct the sanctions outlined in Policy 410.2.6 apply and will be governed by the procedures described in Policy 410.2.6.4.

**410.2.10 ALLEGATIONS OF DISCRIMINATION AND SEXUAL MISCONDUCT**

2.10.1 Discrimination and Sexual Misconduct Complaint Adjudication

Complaints alleging that a faculty member engaged in discrimination or retaliation in violation of any provision(s) of Policy 305 shall in all respects be processed, investigated, heard, and sanctioned pursuant to the procedures set forth in Policy 305. Likewise, complaints alleging that a faculty member engaged in sexual misconduct in violation of Policy 339, or its sub-policies shall in all respects be processed, investigated, heard, and sanctioned pursuant to the procedures set forth in Policy 339 and its sub-policies.

2.10.2 Appeals of Discrimination and Sexual Misconduct Determinations or Sanctions

Allegations involving potential violations of Policy 305 or Policy 339 or Policy 339A are adjudicated pursuant to a hearing panel composed of members of the Equity Hearing Council as described in the procedures for Policy 305, Policy 339, and Policy 339A respectively. Any appeal to the determination or sanction resulting from Policy 305, Policy 339, or Policy 339A violation will include at least one faculty member on the appeal panel.

2.10.3 Report of Discrimination of Sexual Misconduct to the Academic Freedom and Tenure Committee

Whenever a referral has been made to the Office of Equity by the chair of the AFT Committee or hearing panel chair related to a discrimination or sexual misconduct claim by a faculty member pursuant to Policy 410.2.6, the grievance process will be stayed until the conclusion of the Office of Equity process. Once concluded the Office of Equity will notify the chair of the AFT Committee and the chair of the hearing panel of whether there will be an investigation and will meet with them to share the results of any such investigation.

2.10.4 Exclusive Action

A faculty member may not file a grievance under Policy 410.2.6 to challenge the proceedings under section 410.2.9, including without limitation proceedings under Policy 305, Policy 339, and Policy 339A.

**410.3 RESPONSIBILITIES**

3.1 Revision of Policy

Revisions of this policy will be directed by the Professional Responsibilities and Procedures Committee with input from the full faculty senate, university administration, and other organizations as appropriate.

**410.4 REFERENCES**

**410.5 RELATED USU POLICIES**

* Policy 305
* Policy 321
* Policy 339
* Policy 339A
* Policy 403
* Policy 405
* Policy 406
* Policy 407
* Policy 408
* Policy 409

**410.6 DEFINITIONS**

6.1 Definition of Days

* In all proceedings under this policy, a day is defined as a calendar day. Deadlines that fall on a weekend will be moved forward to the next business day.