

EXECUTIVE SUMMARY

ACTION ITEM: REVISIONS TO BOARD POLICY 6-301, "CONDITIONS OF PROFESSIONAL SERVICE," (Second Reading)

ISSUE: The Board is asked to approve policy revisions that would allow university presidents to make multiple-year appointments to academic professionals who are not eligible for continuing status; and to bring the policy into compliance with current law requiring certain procedural requirements in conducting grievance hearings for professional employees.

BACKGROUND:

- ABOR Policy 6-301B.5 identifies two categories of professional employees, academic professionals and service professionals. Academic professionals include librarians, cooperative extensionists, and non-faculty researchers.
- Currently, there are three types of appointments for academic professionals, probationary, continuing or year-to-year appointments. Academic professionals on probationary appointments are eligible for continuing status following a probationary period and a continuing status review process at several levels of evaluation. Year-to-year academic professionals are eligible for only one-year appointments. They do not accrue time toward continuing status and are not eligible for continuing status.
- On August 15, 2004, the Board approved revisions to ABOR 6-201, "Conditions of Faculty Service," to allow multiple-year appointments of up to three years for faculty members who are not eligible for tenure and do not accrue time towards tenure.
- In 1999, the Arizona Supreme Court decided Arizona State Board of Regents v. Arizona State Personnel Board and Camille Kimball, 191 Ariz. 160 (referred to as "the Kimball case"). The Court held that a provision of the Arizona Administrative Procedure Act, Arizona Revised Statutes Section 41-1062, applied to university hearings. As a result, university hearing policies needed to include three additional procedures:
 - the right of a grievant to representation by counsel prior to and during the hearing;
 - the right of a grievant to request reconsideration of the grievance decision;
 - the authority of the hearing officer or body to issue subpoenas for witness testimony and documentary evidence. Following the decision, the universities modified university hearing policies accordingly.

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DISCUSSION

- The proposed policy language is shown beginning on page 3.
- The proposed revisions will provide an additional option to university presidents to appoint qualified individuals to multiple-year terms whose qualifications, expertise and experience will contribute to the success of a university's academic support and research missions beyond a one-year period of time.
- Appointments could be made for terms of one to three years and are subject to renewal. A multiple-year appointment would carry no continuing status eligibility or expectation of renewal when the current appointment expires.
- The "Changing Directions" initiative is intended to enable the universities to become more entrepreneurial in seeking untapped markets and providing expanded educational opportunities for Arizona citizens. The universities desire the flexibility to hire academic professional employees not in continuing status ranks.
- After the Kimball case was decided, the universities modified their hearing procedures to comply with the decision. The Conditions of Professional Service Policy has not been modified since the decision and requires revision to bring the policy into compliance with the Court's decision.
- The universities have consulted with representatives of their academic senates regarding these proposed revisions and the academic senates agreed to the revisions.
- The proposed policy was presented to the Board for first reading at the June 2005 Board meeting.

RECOMMENDATION:

It is recommended that the Board approve the revised Board Policy 6-301, "Conditions of Professional Service."

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ARTICLE C. ACADEMIC PROFESSIONAL EMPLOYEES

6-301 Conditions of Professional Service

A. General

These Conditions of Professional Service shall constitute the policy under which professional employees of the Arizona Board of Regents are employed. Each notice of appointment for such professional employees shall incorporate this policy by reference and shall provide that acceptance of the notice of appointment is recognition that this policy constitutes the conditions of employment. The Board shall not be bound by, nor does it adopt or incorporate herein, the interpretations, policies or recommendations of other organizations, except as approved by the Board.

The Board is charged by law to exercise control and supervision of the state universities and their property. Any authority delegated by the Board is always subject to its ultimate authority. The Board retains the right of periodic review and modification of all aspects of governance of the state universities, and the right to enact such rules, regulations, policies, and orders as it deems proper.

It is recognized that individual professional employees may hold multiple appointments. Other appointments may be to positions subject to conditions other than the Conditions of Professional Service.

B. Definitions

1. "ACADEMIC YEAR" SHALL MEAN THE PERIOD COMMENCING AND ENDING WITH EACH UNIVERSITY'S ACADEMIC CALENDAR.
2. "APPOINTMENT" MEANS EMPLOYMENT FOR A PERIOD AS SPECIFIED IN A NOTICE OF APPOINTMENT. THE TERM REFERS TO THE INITIAL APPOINTMENT AND ALL SUBSEQUENT APPOINTMENTS, REAPPOINTMENTS OR RENEWALS OF APPOINTMENTS.
43. "Board" shall mean the Arizona Board of Regents.
24. "Day" shall mean calendar day, except that where the last day of any time period set forth in this document falls on a Saturday, a

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Sunday or a university-recognized holiday, then the time period shall run until 5:00 p.m. of the next day which is not a Saturday, a Sunday or a university-recognized holiday.

5. "DISCRIMINATORY ACTION" MEANS AN EMPLOYMENT ACTION THAT CONSTITUTES DISCRIMINATION ON THE BASIS OF GENDER, RACE, COLOR, NATIONAL ORIGIN, RELIGION, AGE, VETERAN STATUS, SEXUAL ORIENTATION OR QUALIFIED HANDICAPPED STATUS OR ANY OTHER DISCRIMINATION PROHIBITED BY STATE OR FEDERAL LAW.
6. "FISCAL YEAR" SHALL MEAN A PERIOD OF TWELVE (12) MONTHS COMMENCING ON JULY 1.
7. "MULTIPLE-YEAR APPOINTMENT" SHALL MEAN AN APPOINTMENT AS AN ACADEMIC PROFESSIONAL EMPLOYEE FOR A PERIOD OF MORE THAN ONE ACADEMIC OR FISCAL YEAR BUT NOT MORE THAN THREE ACADEMIC OR FISCAL YEARS.
38. "President" shall mean the president of the appropriate university or the president's designated representative, and the Executive Director of the ~~central staff~~ Board of Regents.
49. "Professional and intellectual freedom" shall mean the right and responsibility to exercise judgment within the standards of the employee's profession. Professional and intellectual freedom is defined as "academic freedom" for those employees involved in teaching and/or research.
510. "Professional employee(s)" shall mean those employees designated by the notice of appointment as "professional" including:
 - a. Academic Professionals - non-classified employees involved with research or teaching programs who require professional and intellectual freedom and who report to a person below the level of vice president, including librarians, cooperative extensionists, and researchers.
 - b. Service Professionals - non-classified employees with a direct role in service who require professional and intellectual freedom and who report to a person below the level of vice president, including those in student services,

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technical services, student health services, and public service.

611. "Notice of Appointment" shall mean the document by which an appointment is made ~~each year~~ and which is signed by the president OR THE PRESIDENT'S DESIGNEE.
12. "RENEWAL" MEANS THE PROCESS BY WHICH AN APPOINTMENT IS EXTENDED FOR AN ADDITIONAL PERIOD.
13. "RULE" MEANS A WRITTEN STANDARD OF GENERAL APPLICABILITY THAT IMPLEMENTS, INTERPRETS OR PRESCRIBES LAW OR POLICY, OR DESCRIBES THE PROCEDURE TO BE UTILIZED IN IMPLEMENTING LAW OR POLICY.
14. "UNIVERSITY" MEANS THE UNIVERSITY OF ARIZONA, ARIZONA STATE UNIVERSITY, NORTHERN ARIZONA UNIVERSITY OR ANY OTHER UNIVERSTY UNDER THE JURISDICTION OF THE ARIZONA BOARD OF REGENTS.

C. Appointment Procedures

1. The president shall establish procedures for securing recommendations for appointments to professional positions. An appointment may become effective as of the date it is approved by the president OR THE PRESIDENT'S DESIGNEE.
2. All professional employees shall ~~receive~~ BE OFFERED each year an appointment for an academic year or for a fiscal year ~~beginning July 1~~ or a portion thereof. Appointments and reappointments shall not be for more than one fiscal year EXCEPT FOR ACADEMIC PROFESSIONALS. ACADEMIC PROFESSONALS MAY RECEIVE A MULTIPLE-YEAR APPOINTMENT WHICH MAY BE RENEWED AT THE END OF THE APPOINTMENT PERIOD FOR ANOTHER MULTIPLE-YEAR APPOINTMENT OR FOR A ONE-YEAR ACADEMIC OR FISCAL YEAR, OR ANY PORTION THEREOF. IN ACCORDANCE WITH PROCEDURES ADOPTED BY EACH UNIVERSITY, REVIEW FOR RENEWAL WLL BE CONDUCTED DURING THE YEAR PRIOR TO THE FINAL YEAR. NO MULTIPLE-YEAR APPOINTMENT SHALL BECOME EFFECTIVE UNTIL APPROVED BY THE UNIVERSTY PRESIDENT OR THE PRESIDENT'S DESIGNEE. THERE IS NO

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LIMIT ON THE NUMBER OF RENEWALS. No oral or written communication made prior to or after the execution of a notice of appointment that is inconsistent or in conflict with the Conditions of Professional Service (6-301) shall become a part of the conditions of employment.

3. The type of professional appointment involved shall be determined by the president OR THE PRESIDENT'S DESIGNEE and shall be indicated on the notice of appointment by use of the designation "probationary", "continuing", or "year-to-year" OR "MULTIPLE-YEAR".
4. Appointments which are dependent for continuation on funding from a specific source other than state appropriations shall so state in the notice of appointment and may terminate when the funding is no longer available. Professional employees appointed to positions supported by non-state funds may be designated by contract as having other conditions relative to (a) ninety-day notice of non-renewal of appointment and (b) fringe benefits.

D. Types of Professional Appointments

1. Persons employed under a year-to-year appointment shall have no expectation of employment beyond the end of the current appointment period and are not subject to review for continuing status. There is no limit to the number of appointment periods to which a person employed under a year-to-year contract may be appointed. Such appointments may be for a period of less than one year.
 - a. A person employed under a year-to-year appointment may be subsequently employed under a probationary appointment. In such event, the extent to which the person's prior service under year-to-year appointments is considered in any review for continuing status shall be determined by the university.
2. Persons employed under a probationary appointment shall have no expectation of employment beyond the end of the current appointment period, but shall be reviewed for continuing status in accordance with procedures outlined in this document. A person shall hold a probationary appointment for no more than seven

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years, including any terminal appointment which a university may choose to provide.

a. A person employed under a probationary appointment shall not be subsequently employed under a year-to-year appointment except as permitted under 6-301D.4 below (Conditions of Professional Service, Types of Professional Appointments).

3. Persons employed under a continuing appointment shall have an expectation that the president will renew their appointment for successive appointment periods, except when such a recommendation is precluded by reason of retirement, resignation, release for budgetary reasons or reorganization, or dismissal for just cause.

4. PERSONS EMPLOYED UNDER A MULTIPLE-YEAR APPOINTMENT SHALL HAVE NO EXPECTATION OF EMPLOYMENT BEYOND THE END OF THE APPOINTMENT PERIOD. ANY RENEWAL OF A MULTIPLE-YEAR APPOINTMENT SHALL BE IN ACCORDANCE WITH PROCEDURES ADOPTED BY EACH UNIVERSITY.

45. Each university shall determine policies for part-time professional employees.

E. Compensation

1. The president may set individual salaries. Salary rates for reappointments will depend upon available funding. Merit raises may be allocated by the president within the limitation of available funds.

2. Certain fringe benefits are made available to university employees and are subject to change by the Legislature, the Board, or the university.

3. Policies governing outside activities and supplementary compensation are administered by each university.

F. Employment-related Board Policies

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1. The Board has adopted various policies which may be a part of the employment relationship depending upon the terms of the particular policy. Among these policies is the patent policy, Medical Service Plan, royalty policy and leave policy. Changes to existing policies may be made by the Board and such changes will normally become effective at the beginning of the first appointment period following the period in which a change is adopted. Additional policies may be added to be effective as determined by the Board.
2. Each university shall maintain a compilation of such policies and shall take reasonable steps to inform the professional employees of the existence of such policies.

G. Duties and Responsibilities

1. Duties and responsibilities of a professional employee shall consist of those assigned by the president OR THE PRESIDENT'S DESIGNEE. All duties and responsibilities shall be carried out under the direction of the president OR THE PRESIDENT'S DESIGNEE. Duties and responsibilities shall be related to the expertise and competence of the professional employee.
2. Performance of assigned duties by professional employees shall be subject to evaluation by an appropriate administrator and performance shall be considered in decisions relating to compensation, retention, advancement/promotion, termination or a decision not to reappoint. A university may, through implementation of these Conditions of Professional Service (6-301), establish a university policy by which an administrator may be required to consult a peer group in evaluating certain professional employees.

H. Advancement/Promotion, Reappointment, Acquisition of Continuing Contract Status

1. Decisions relating to advancement/promotion, reappointment and acquisition of continuing status shall be made in accordance with university rules and procedures approved by the president. Decisions of the president regarding advancement/promotion, reappointment or acquisition of continuing status are final. A professional employee who does not acquire continuing status or whose probationary or year-to-year OR MULTIPLE-YEAR

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appointment is not renewed shall not be entitled to a statement of reasons for that action.

2. Professional employees on a year-to-year OR MULTIPLE-YEAR appointment shall be given at least a ninety (90) day notification of non-renewal PRIOR TO THE END OF THE APPOINTMENT PERIOD. Failure to provide a professional employee with a ninety (90) day notification of non-renewal shall not constitute an automatic renewal of appointment. If notice of non-renewal is given less than ninety days prior to the end of a professional employee's appointment period, the employee shall be entitled to continuation of salary for ninety (90) days from the date of notification.
3. University rules and procedures applicable to professional employees holding probationary appointments shall include maximum probationary periods, mandatory periodic review, and at least ninety (90) day notice of non-reappointment.
 - a. Decisions on advancement, continuing status and reappointment shall be based upon written criteria developed at each university with participation of appropriate professional employees and approved by the president.
 - b. A person is advanced, granted continuing status or reappointed on the basis of excellent performance and the promise of continued excellence. The denial of advancement, continuing status or reappointment, however, need not be construed as due to failure or poor performance on the candidate's part. Considerations such as the need for a different area of specialization or for new emphases, the lack of a continuing position, or the need to shift a position or resources to another department may dictate that the individual not be reappointed or granted continuing status.
 - c. Attainment of continuing status shall not result from inaction or inadvertence.

I. Termination

1. Methods of Termination

The employment of a professional employee may terminate through resignation, retirement, release due to financial emergency or due

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to reorganization (as defined in ABOR Policy 6-301J.3 (Conditions of Professional Service, Release of Professional Employees, Release Due to Reorganization)), non-renewal of probationary or year-to-year OR MULTIPLE-YEAR appointment, or dismissal for just cause.

2. Dismissal

- a. Professional employees holding continuing appointments shall not be dismissed except for just cause. Dismissal shall not occur until the professional employee has been given an opportunity for a hearing as prescribed in ABOR Policy 6-301K (Conditions of Professional Service, Dismissal Procedures).
- b. Just cause shall include, but not be limited to, any of following:
 - (1) Demonstrated incompetence or dishonesty in professional activities related to the fulfillment of assigned duties and responsibilities associated with the position;
 - (2) Substantial neglect of properly assigned duties;
 - (3) Personal conduct that substantially impairs the individual's fulfillment of properly assigned duties and responsibilities;
 - (4) Substantial incapacity (physical or mental) to perform properly assigned duties, but due consideration shall be given to the nature and duration of the incapacity;
 - (5) Violation of the Code of Conduct of a serious nature.
- c. Those professional employees not holding continuing appointments, whether a probationary or year-to-year OR MULTIPLE-YEAR appointment, may be dismissed during an appointment period only after a finding of just cause as defined in ABOR Policy 6-301I.2.b above (Conditions of Professional Service, Termination, Dismissal). Dismissal shall not occur until the professional employee has been given an opportunity for a hearing as prescribed in ABOR

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Policy 6-301K (Conditions of Professional Service, Dismissal Procedures).

3. The president may decide not to renew the appointment of any professional employee not holding a continuing contract appointment. In such case, the professional employee is not entitled to a hearing either prior to or subsequent to the president's decision except as provided in ABOR Policy 6-301L (Conditions of Professional Service, Discrimination Review Procedures).

4. Interim Action

A professional employee may be suspended with pay pending a hearing in a case in which the president determines that continued presence of the employee on the campus constitutes a substantial interference with the orderly functioning of the university or of a substantial area, unit, college or department of the university.

- J. Release of Professional Employees

1. In addition to other bases for termination specified in this document, termination of professional employees holding continuing appointments, or of other professional employees prior to the end of an appointment period, may occur because of a financial emergency or because of reorganization. Such a termination of appointment shall be designated a "release".
2. Release Due to Financial Emergency
 - a. Release of a professional employee may occur when deemed necessary by the president due to a financial emergency as declared by the Board. Upon occurrence of the release, the individual's personnel file shall designate that the release was due to financial exigency.
 - b. A professional employee released due to financial EMERGENCY exigency shall be accorded the following rights and privileges:
 - (1) The individual shall be notified in writing of the decision to effectuate his or her release. Such notice shall be provided as far in advance of the release date as the president deems possible.

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- (2) Each university shall make a reasonable effort to secure alternative appointments within the university in open positions for which the affected individual is qualified under existing criteria. Each university shall make a reasonable effort to ensure that the individual is made aware of openings at other Arizona universities and opportunities for retraining or further professional growth.
 - (3) If, within a period of two (2) years from the date of the release of a professional employee with continuing status, the president determines that the professional employee's position should be reopened, then reappointment to the position shall first be offered to the released professional employee. The offer shall be sent to the last known mailing address of the employee and he or she shall have a reasonable time, not to exceed thirty (30) days, within which to accept or decline the offer of reappointment.
 - (4) The individual shall be entitled to a hearing in accordance with the procedures provided in ABOR Policy 6-301L (Conditions of Professional Service, Discrimination Review Procedures). Such a hearing may occur subsequent to release unless the emergency circumstances permit a prior hearing.
3. Release Due to Reorganization
- a. Release of professional employees at a university may occur when a reorganization is deemed necessary due to a budget or program decision requiring program discontinuance, curtailment, modification or redirection and when such a reorganization plan is approved by the Board of Regents. Such a release shall be designated in the employee's personnel records as a "release for reorganization".
 - b. If the reorganization plan under consideration requires the release of professional employees, the following procedures shall be followed:

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- (1) The president shall review and approve the proposed reorganization plan. This review shall consider the reasons for the reorganization and the impact upon the university community as a whole.
 - (2) Upon review of the materials received, the president shall decide whether or not the reorganization should be executed and shall submit the plan to the Board for approval.
- c. A professional employee released for reorganization shall be accorded the following rights and privileges:
- (1) The individual shall be notified in writing of the proposed course of action which will result in his or her release. Such notice shall be provided as far in advance of the release date as the president deems possible.
 - (2) Each university shall make a reasonable effort to secure alternative appointments within the university in open positions for which the affected individual is qualified under existing criteria and to provide to the employee information concerning other employment opportunities which may be available.
 - (3) In the event that the program element which has been terminated should be reinstated within a period of two years, new positions consisting of duties reasonably comparable to those of the released professional employee with continuing status shall not be filled without first offering reappointment to the released professional employee with continuing status. The released professional employee must be given a reasonable time, not to exceed thirty (30) days, within which to accept or decline reappointment.
 - (4) An individual released for reorganization shall be entitled to a grievance hearing as provided in ABOR Policy 6-301L (Conditions of Professional Service, Discrimination Review Procedures) upon written request filed with the president of the university within fifteen (15) days of receipt of notice of such release.

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K. Dismissal or SUSPENSION Procedures

1. General

- a. When a professional employee is recommended for suspension or dismissal, or whenever a professional employee is accused of a violation of the Code of Conduct, (5-301 et al) the employee shall be subject to the procedures set forth herein.
- b. The procedures set forth herein are not required and shall not be followed in:
 - (1) Decisions relating to advancement/promotion, leaves, and retention past compulsory retirement age.
 - (2) Decisions relating to non-reappointment of professional employees not holding continuing appointments.
 - (3) Decisions relating to release from employment due to financial emergency or reorganization.
 - (4) Decisions relating to reduction in salary.
- c. The procedures are not judicial. The structure of a judicial proceeding is neither required nor particularly appropriate. Formal rules of evidence are not applicable. Deviation from these procedures shall not invalidate a decision or proceeding unless they cause significant prejudice to the respondent or the university.

2. Initiation of Procedures

These procedures shall be initiated through a written referral signed by the complainant and filed with the president or the president's designee.

3. Informal Procedures

Each university shall adopt informal procedures consistent with the following:

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- a. Upon receipt of a referral, a designated administrator or conciliation committee shall:
 - (1) Consult with the complainant, and conduct a review and investigation to (a) ascertain the facts and (b) determine if the matter should be pursued.
 - (2) Confer with the respondent to (a) ascertain the respondent's position, (b) attempt conciliation, and (c) report the findings and recommendations to be made.
 - b. The findings, decisions and sanctions, if any, to be recommended shall be written on a form prepared by the designated administrator or conciliation committee and submitted to the president, who may approve, disapprove, modify or otherwise render a determination.
 - (1) If the respondent is willing to accept the determination, the respondent shall acknowledge acceptance by signing the form in an appropriately designated place, and all action on the referral shall be closed.
 - (2) If the respondent refuses or fails to accept the determination, THE RESPONDENT SHALL HAVE TEN (10) DAYS FROM RECEIPT OF THE DETERMINATION TO PROVIDE THE PRESIDENT OR THE PRESIDENT'S DESIGNEE A WRITTEN OBJECTION TO THE DETERMINATION, SETTING FORTH THE GROUNDS FOR RESPONDENT'S OBJECTION OR FAILURE TO ACCEPT THE DETERMINATION. UPON RECEIPT OF THE WRITTEN OBJECTION, the matter shall be referred for formal hearing before a committee established in accordance with procedures adopted by each university.
4. Formal Hearing Procedures
- a. Each university shall adopt formal hearing procedures to deal with just cause dismissals in the event informal procedures are unsuccessful.

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- b. The procedures shall provide for the establishment of a committee to conduct formal hearings. The title and composition of the committee shall be determined by the university.
- c. The procedures shall provide for a written notice to be given to the parties at least twenty (20) days prior to the date set for the hearing, which notice shall include at least the following:
 - (1) A statement of the time, place and nature of the hearing.
 - (2) A copy of the statement of charges as prepared by the person representing the university at the hearing.
 - (3) The name and university address of the chair or person to whom all correspondence or other matters should be directed.
- d. The procedures shall provide that the written charges contain at least the following:
 - (1) The specific basis for recommending suspension or dismissal or the specific Code provisions alleged to have been violated by the respondent.
 - (2) A short and plain statement of the relevant facts, including if known, the time, date and place of the alleged incident or incidents giving rise to the charges.
 - (3) The name of the complainant who initiated the referral.
 - (4) The names of any witnesses which may be presented on behalf of the university.
- e. The procedures shall provide for the specific manner in which the hearing before the committee is conducted. However, at least the following rights shall be afforded the respondent:

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- (1) The right to be heard in person and to present witnesses AND SUBMIT EVIDENCE INCLUDING DOCUMENTARY EVIDENCE.
 - (2) The right to confront and cross-examine adverse witnesses.
 - (3) The right to a hearing before an impartial body.
 - (4) ~~The right to be accompanied by an advisor, who may be an attorney. While the advisor may consult with and advise the respondent, the advisor shall not in any other way participate in the proceedings.~~ AT THE RESPONDENT'S OWN ELECTION AND COST, TO BE REPRESENTED BY COUNSEL OR ACCOMPANIED BY AN ADVISOR, WHICH ADVISOR MAY CONSULT WITH AND ADVISE THE PARTY BUT SHALL NOT OTHERWISE PARTICIPATE.
 - (5) The right to a written statement prepared by the hearing body setting forth its recommendation, its reasons for reaching such recommendation, and the facts relied upon in reaching such recommendation. The written statement may be forwarded to the respondent along with the final decision of the president on the matter.
- f. The procedures shall also provide as follows:
- (1) That failure of the respondent to appear at a scheduled hearing shall be treated as consent to the charges pending. Each university may provide for withdrawal of such consent under appropriate circumstances if it so chooses.
 - (2) That the hearing and deliberations shall be closed to the public except for the immediate members of the respondent's family and for the respondent's advisor. An open hearing will be held if requested by the respondent.

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- (3) That a mechanical or stenographic record of the hearing shall be made, a transcript of which may be obtained by any party at that party's own cost.
- (4) THE CHAIR OF THE HEARING COMMITTEE SHALL HAVE THE AUTHORITY TO ISSUE SUBPOENAS FOR THE ATTENDANCE OF WITNESSES AND FOR THE PRODUCTION OF BOOKS, RECORDS, DOCUMENTS AND OTHER EVIDENCE, AND SHALL HAVE THE POWER TO ADMINISTER OATHS. THE SUBPOENA SHALL BE IN WRITING AND SHALL BE SERVED UPON THE WITNESS IN PERSON. MEMBERS OF THE UNIVERSITY COMMUNITY ARE REQUIRED TO COMPLY WITH SUBPOENAS ISSUED PURSUANT TO THIS PROCEDURE UNLESS COMPLAINT WOULD RESULT IN UNAVOIDABLE PERSONAL HARDSHIP OR PARTICIPATION BEYOND THE TERMS OF THE CONTRACT.
- (45) That a finding of just cause or violation of the Code of Conduct (5-301 et al) must be based on a preponderance of the evidence.
- (56) That the written statement prepared by the hearing body shall be forwarded to the president within thirty (30) days after conclusion of the hearing EXCEPT UPON GOOD CAUSE THE DATE FOR FORWARDING THE WRITTEN STATEMENT MAY BE EXTENDED BY AN ADDITIONAL THIRTY (30) DAYS, and that, upon receipt and review, the president shall approve, disapprove, amend or otherwise issue a final decision in writing NO LATER THAN FORTY-FIVE (45) DAYS FOLLOWING THE RECEIPT OF THE RECOMMENDATION. THE PRESIDENT SHALL NOT BE BOUND BY THE RECOMMENDATIONS OF THE HEARING BODY. A copy of this final decision, along with a copy of the Committee's written statement, shall be mailed to the respondent and the date of mailing shall be the effective date of the decision. THE PRESIDENT'S DECISION SHALL INCLUDE A STATEMENT THAT AN APPEAL TO THE SUPERIOR COURT

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PURSUANT TO THE ADMINISTRATIVE REVIEW ACT, A.R.S. §12-901, ET.SEQ., IF DESIRED, MUST BE FILED WITHIN THIRTY-FIVE (35) DAYS FROM THE DATE WHEN A COPY OF THE DECISION SOUGHT TO BE REVIEWED IS SERVED UPON THE PARTY AFFECTED.

- g. The procedures may include such additional provisions as are not inconsistent with the provisions of these Conditions of Professional Service (6-301).

- h. THE RESPONDENT MAY REQUEST RECONSIDERATION OF THE PRESIDENT'S DECISION BY FILING A WRITTEN REQUEST SETTING FORTH A GROUND FOR RECONSIDERATION WITH SPECIFICITY WITHIN FIFTEEN (15) DAYS OF RECEIPT OF THE DECISION. IF NO REQUEST FOR RECONSIDERATION IS MADE, THE PRESIDENT'S DECISION IS EFFECTIVE AT THE EXPIRATION OF THE PERIOD IN WHICH TO REQUEST RECONSIDERATION. THE GROUNDS FOR RECONSIDERATION ARE:
 - (1) IRREGULARITIES IN THE PROCEEDINGS INCLUDING BUT NOT LIMITED TO ANY ABUSE OF DISCRETION OR MISCONDUCT BY THE COMMITTEE WHICH HAS DEPRIVED THE EMPLOYEE OF A FAIR AND IMPARTIAL PROCESS,
 - (2) ACCIDENT OR SURPRISE THAT COULD NOT HAVE BEEN PREVENTED BY ORDINARY PRUDENCE,
 - (3) NEWLY DISCOVERED MATERIAL EVIDENCE WHICH COULD NOT HAVE BEEN AVAILABLE FOR THE PRESENTATION,
 - (4) EXCESSIVE OR INSUFFICIENT RESULT,
 - (5) THE DECISION IS NOT JUSTIFIED BY THE EVIDENCE OR IS CONTRARY TO LAW.

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- i. IF THE RESPONDENT REQUESTS RECONSIDERATION, THE PRESIDENT SHALL ISSUE A DECISION ON RECONSIDERATION WITHIN TWENTY (20) DAYS OF RECEIVING A REQUEST FOR RECONSIDERATION. THE PRESIDENT'S DECISION ON RECONSIDERATION SHALL INCLUDE A STATEMENT THAT AN APPEAL TO SUPERIOR COURT PURSUANT TO THE ADMINISTRATIVE REVIEW ACT, A.R.S. §12-901, ET. SEQ., IF DESIRED, MUST BE FILED WITHIN THIRTY-FIVE (35) DAYS FROM THE DATE ON WHICH THE DECISION ON RECONSIDERATION IS SERVED ON THE PARTY AFFECTED.

L. Discrimination Review Procedures

1. Each university shall maintain a procedure for reviewing claims of unlawful discrimination. At the election of the university, the procedure may involve an investigation and determination by the university's affirmative action office, or a hearing before an appropriate university committee established by the president, or both.
2. Whenever an aggrieved professional employee claims that a decision on advancement, continuing status, reappointment or release pursuant to ABOR Policy 6-301J (Conditions of Professional Service, Release of Professional Employees) was based on unlawful discrimination, the employee shall have a right to have his or her claim reviewed in accordance with the procedures referred to in ABOR Policy 6-301L.1 above (Conditions of Professional Service, Discrimination Review Procedures).
3. The procedures referred to in ABOR Policy 6-301L (Conditions of Professional Service, Discrimination Review Procedures) shall not be applicable as a means of reviewing a decision rendered in connection with proceedings brought under ABOR Policy 6-301K (Conditions of Professional Service, Dismissal Procedures).

M. Implementation

The president shall establish such additional policies and procedures consistent with this policy as may be needed to carry out the Conditions of Professional Service (6-301).

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N. Severability

If any section, paragraph, subdivision, clause, sentence or phrase of this policy shall for any reason be held illegal or unenforceable, such decision shall not affect the validity of the remaining portions of the policy. If any provision of this policy contains an ambiguity, which may be construed as either valid or invalid, the valid construction shall prevail.

O. Prior Status

1. Adoption of these Conditions of Professional Service (6-301) as a policy of the Board shall not divest a person of any tenured faculty status or continuing professional status acquired prior to adoption.
2. A professional employee who, prior to adoption of these Conditions of Professional Service (6-301), held non-tenured faculty status and who was eligible for tenure review shall be provided the option of remaining employed under the terms of the Conditions of Faculty Service (6-201).
3. Prior service within a position designated as professional service shall be considered in determining the type of appointment tendered.