


# PROCEDURE MANUAL

 <b>ARIZONA WESTERN COLLEGE</b>	<b>PROCEDURE 450.1</b>		
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	<b>Last Revision Date:</b>	02-26-13	
<b>Effective Date:</b>		01-11-99	
<b>Section:</b>	Human Resources	<b>Subject:</b>	Due Process Hearing

## PURPOSE

To set forth due process hearing procedures that may be used by a contractual employee to appeal a nonrenewal or dismissal in one of the following situations:

- a) The employee is a continuing full-time contractual employee who has received a notice of nonrenewal pursuant to Procedure 475.2;
- b) The employee is a continuing full-time contractual employee who has received a notice of separation of employment pursuant to Procedure 475.5;
- c) The employee is a continuing full-time contractual employee who has received a notice of nonrenewal/termination as a result of a reduction in force pursuant to Procedure 475.6;
- d) The employee is a continuing full-time contractual employee who has received a notice of termination pursuant to Procedure 475.3.

## PROCEDURE

### 1. Definitions

- 1.1. A *contractual employee* includes any employee who holds a Notice of Assignment for a defined length of time.
- 1.2. Probationary full-time contractual employees, continuing full-time contractual employees and administrators are examples of contractual employees.
- 1.3. Classified employees are at-will employees, not contractual employees.


### 2. A *continuing full-time contractual employee* is any employee who has been offered and accepted a full-time Notice of Assignment as a faculty member or professional/administrative employee for a fourth consecutive year.

### 3. Notification of Appeal

A continuing full-time contractual employee may appeal:

- 3.1. The College's decision made pursuant to Procedure 475.2 to non-renew within ten calendar days after receiving written notice of intent not to renew assignment;
- 3.2. The College's decision made pursuant to Procedure 475.5 to issue notice of separation from employment within ten calendar days after receiving written notice of such action; or
- 3.3. The College's decision made pursuant to Procedure 475.6 to issue a notice of nonrenewal/termination as a result of a reduction in force within ten calendar days after receiving written notice of such action.
- 3.4. Any contractual employee may appeal the College's decision made pursuant to Procedure 475.3 to terminate employment.
- 3.5. An employee begins the appeal process by submitting a written request for an appeal to the Director of Human Resources within the time allotted. Failure to provide written notice of appeal within the applicable time limit will result in forfeiture of any right to appeal.

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## 4. Formation of Hearing Panel

- 4.1. The Hearing Panel will consist of five members selected from the Hearing Panel Pool pursuant to Procedure 450.2. The Human Resources Director will exclude employees from the same division or department.
- 4.2. Within ten calendar days of receipt of notice of appeal, the Human Resources Director will select three faculty members and two professional/administrative employees pursuant to Procedure 450.2.
  - 4.2.1. Selected panel member may decline to serve.
  - 4.2.2. Selection will be repeated for replacement members, retaining the ratio of three faculty to two professional/administrative employees.
- 4.3. Prior to the hearing, each party may challenge one of the selected members of the panel.
- 4.4. Substitutes for the challenged members will be selected by the Director of Human Resources pursuant to Procedure 450.2.


## 5. Election and Authority of Chair

- 5.1. The Hearing Panel will elect a Chair at the first meeting. The Chair will be a voting member and is responsible for the following:
  - 5.1.1. Facilitating a hearing date no sooner than seven and no later than 14 calendar days after the first meeting.
  - 5.1.2. Presiding over and conducting the hearing.
  - 5.1.3. Facilitating all matters of procedure, subject to a vote of a majority.
  - 5.1.4. Requesting witnesses to appear.
  - 5.1.5. Granting a postponement of the hearing for good cause based upon written application by the College or the employee.

## 6. Presenting a Claim for Defense to the Hearing Panel


- 6.1. The employee will prepare and present to the Director of Human Resources a written position statement no less than five calendar days before the hearing date.
  - 6.1.1. Human Resources will act as the liaison for all documentation pertinent to the hearing.
- 6.2. The employee's position statement will include the following information:
  - 6.2.1. Name, position title, and duties of the employee.
  - 6.2.2. Comprehensive summary of all pertinent facts which are the basis for the appeal. These will be presented in numbered paragraphs with each paragraph being limited to a single set of circumstances.
  - 6.2.3. Any documents, materials, or exhibits that support the statement.
  - 6.2.4. List of witnesses that will be required at the hearing including full names, positions, and a brief summary of each person's testimony.
  - 6.2.5. The request for a specific decision or action by the Hearing Panel.

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- 6.3. The President will designate an administrator to represent the College (hereafter designated *Administrator*). The *Administrator* will prepare and file with the Human Resources Director a written position statement which will include the following information:
    - 6.3.1. Name, position title, and duties of the *Administrator*.
    - 6.3.2. Comprehensive summary of all pertinent facts which the *Administrator* relied upon as justification for its action. These will be provided in numbered paragraphs with each paragraph being limited to a single set of circumstances.
    - 6.3.3. Any documents, materials, or exhibits that support the statement.
    - 6.3.4. List of witnesses that will be required at the hearing including full names, positions, and a brief summary of each person's testimony.
    - 6.3.5. The request for a specific decision or action by the Hearing Panel.
  - 6.4. Human Resources will simultaneously provide a copy of each party's statement to both parties and the Hearing Panel.
7. Non-compliance with Section 6
    - 7.1. The following are examples, but not limited to, non-compliance:
      - 7.1.1. Interference with the testimony of a witness.
      - 7.1.2. Interference with the introduction of a document or exhibit.
      - 7.1.3. Disregarding the position statement.
    - 7.2. If either party is non-compliant with any provisions of Section 6, the opposing party may request the Hearing Panel Chair take appropriate action.
8. Hearing Panel Process
    - 8.1. The hearing will be conducted in an equitable manner without unjustifiable expense or delay.
    - 8.2. The hearing will be conducted as a closed hearing.
    - 8.3. A record of the hearing will be made by the College, and a copy will be made available for either party upon request at the expense of the requestor. All records must remain with Human Resources in accordance with regulations of the Records Management Division of the Department of Library, Archives and Public Records.
    - 8.4. The Hearing Panel may use any reasonable process to identify documents or exhibits for the hearing.
    - 8.5. Brief introductory statements will be made by both the Administrator and the employee.
    - 8.6. The employee and the Administrator may call their witnesses for testimony.
    - 8.7. The Hearing Panel may call additional witnesses for testimony.
    - 8.8. Each party will have the right to question all witnesses.
    - 8.9. A brief summary of positions will be made by the employee and the Administrator.
    - 8.10. The Hearing Panel will retire and deliberate at the end of the concluding summary.
    - 8.11. Recommendations will be provided to the President pursuant to Section 12.1.

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## 9. Conduct During the Hearing

- 9.1. No repercussion will occur from employee participation or testimony related to a hearing unless an employee:
  - 9.1.1. Knowingly makes false statements.
  - 9.1.2. Asks questions or makes statements which are not pertinent and are primarily intended to degrade, embarrass or harass.
  - 9.1.3. Engages in undignified or discourteous conduct.
  - 9.1.4. Knowingly violates any ruling of the Hearing Panel.
- 9.2. The Hearing Panel may, upon majority vote, adjourn the hearing to allow the parties to obtain additional evidence provided that the information is indispensable to a fair decision and the need for the information could not have been anticipated prior to the hearing.
- 9.3. To the extent permitted by the process or laws, the Hearing Panel will maintain confidentiality.
- 9.4. Rulings on admissibility of evidence will be made by the Chair and are subject to being overruled by a majority of the Hearing Panel.

## 10. Rules of Evidence

- 10.1. The hearing will be conducted in a professional manner.
- 10.2. The burden of proof will be on the Administrator to show that the administrative recommendation to dismiss is appropriate.
- 10.3. The Hearing Panel will receive evidence offered only if the evidence will assist the Panel in making its recommendation and the evidence is not repetitive, unduly prejudicial or otherwise objectionable.
- 10.4. The examination of any witness may be restricted or testimony stricken if not pertinent or is redundant.


## 11. Witnesses

- 11.1. Identified witnesses will be requested to appear at a hearing when the majority of the Hearing Panel decides that the employee's testimony is necessary to resolve a question of fact.
- 11.2. All witnesses will testify in accordance with Section 9.1.1.
- 11.3. Witnesses will be included in the hearing process only during their testimony. Witnesses will keep the details of the hearing confidential.
- 11.4. Either party may be called as a witness by the opposing party.

## 12. Decision of the Hearing Panel

- 12.1. The Hearing Panel will simultaneously provide a written recommendation to the President, the employee, Administrator, and the Director of Human Resources within five calendar days (excluding Friday, Saturday, Sunday and College holidays) after the completion of the hearing.
- 12.2. The written recommendation will include a summary of facts, a determination of the issues, conclusions, and recommendation for action, pursuant only to this grievance.

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- 12.3. After the receipt of the written recommendation, the President will issue a written decision within five calendar days (excluding Friday, Saturday, Sunday, and College holidays) and provide a copy of the decision to both parties.
    - 12.3.1. The President is not bound by the recommendations of the Hearing Panel.
    - 12.3.2. The President will provide written rationale if the decision differs from the Hearing Panel.
  - 12.4. Should the President's decision be to reinstate a terminated employee, the employee will be reinstated effective on the date the decision was rendered and will be paid retroactively from the date of termination.
  - 12.5. Should the President's decision be to reverse the notification of non-renewal, the employee will be offered a Notice of Assignment for the next contractual period.
13. Expense of the Hearing
- 13.1. The College will pay for all institutional expenses for the hearing.
  - 13.2. Upon request of either party, a record of the hearing may be obtained at the requestor's expense.
  - 13.3. Expenses incurred by the employee requesting the Due Process Hearing are not reimbursable by the College.