


PROCEDURE MANUAL

 ARIZONA WESTERN COLLEGE	PROCEDURE 450.1		
	Page 1 of 7		
	Last Revision Date:	11-9-10	
Effective Date:		01-11-99	
Section:	Personnel	Subject:	Due Process Hearing

PURPOSE

The purpose of this Procedure is to set forth due process hearing procedures that may be used by a contractual employee to appeal a possible nonrenewal or dismissal in one of the following situations:

- a) The employee is a continuing full-time contractual employee and has received a notice of nonrenewal pursuant to Procedure 475.2;
- b) The employee is a continuing full-time contractual employee and has received a notice of separation of employment pursuant to Procedure 475.5;
- c) The employee is a continuing full-time contractual employee and 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 contractual employee who receives a notice of termination pursuant to Procedure 475.3.

PROCEDURE

1. Definitions


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

A *continuing full-time contractual employee* is a faculty member, counselor, librarian or professional (non-administrative) employee who has been offered and accepted a full-time contract as a faculty member, counselor, librarian or professional (non-administrative) employee for a fourth consecutive year.

2. Selection of Hearing Panel Pool

- 2.1. Full-time faculty members, counselors, librarians, professional employees and administrators will be notified by the Human Resources Director by September 1 that a Hearing Panel Pool will be formed and that they may volunteer to serve for a term of one year.
- 2.2. The Human Resources Director will list on a ballot those employees who have indicated a willingness to serve and distribute the ballots to full-time contractual employees for an election.
- 2.3. The elected pool of members will be comprised of a maximum of the following:
 - 2.3.1. Faculty members and counselors: twelve (12)
 - 2.3.2. Professional employees and administrators: eight (8)

PROCEDURE MANUAL

 ARIZONA WESTERN COLLEGE	PROCEDURE 450.1		
	Page 2 of 7		
	Last Revision Date:	11-9-10	
Effective Date:		01-11-99	
Section:	Personnel	Subject:	Due Process Hearing

3. Notification of Appeal

A Continuing full-time employee may appeal:

- a) The College's decision made pursuant to Procedure 475.2 to non-renew within fourteen (14) calendar days after receiving written notice of intent not to renew;
- b) The College's decision made pursuant to Procedure 475.5 to issue notice of separation from employment within fourteen (14) calendar days after receiving written notice of such action or
- c) 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 fourteen (14) calendar days after receiving written notice of such action.


Any contractual employee may appeal the College's decision made pursuant to Procedure 475.3 to terminate the employee's employment.

An employee begins the appeal process by submitting a written request for an appeal to the Human Resources Office within the time allotted as set forth above. Failure to provide written notice of appeal within the applicable time limit results in a forfeiture of any appeal right.

4. Formation of Hearing Panel

- 4.1. The Hearing Panel will consist of five members selected from the Hearing Panel Pool as further described in 4.2 below. The Human Resources Director will exclude from the selection process employees from the same division or department, including chair, director, and supervisor.
- 4.2. Within seven (7) calendar days after the notice of appeal has been received, the Human Resources Director will randomly select three faculty members and/or counselors and two professional employees and/or administrators from the Pool to serve as the Hearing Panel.
- 4.3. If a selected panel member feels there is a conflict of interest or other pertinent reason that would preclude him or her from serving in the panel, the panel member may decline to serve. Random selection will be repeated for replacement provided that the ratio of three (3) faculty and/or counselors and two (2) professional employees and/or administrators is retained.
- 4.4. Prior to the commencement of the hearing, each party may challenge one of the selected members of the panel for any reason or no reason. Substitutes for the challenged members will be selected randomly from the remaining pool provided that the ratio of three (3) faculty and/or counselors and two (2) professional employees and/or administrators is retained.
- 4.5. Election and Authority of Chair

PROCEDURE MANUAL

 ARIZONA WESTERN COLLEGE	PROCEDURE 450.1		
	Page 3 of 7		
	Last Revision Date:	11-9-10	
Effective Date:		01-11-99	
Section:	Personnel	Subject:	Due Process Hearing


The Hearing Panel members will elect a chair at the first meeting who will also be a voting member. The chair is responsible for the following:

- 4.5.1. Designating, in consultation with the other members of the panel, a specific hearing date no sooner than seven (7) nor later than fourteen (14) calendar days after the chair is chosen, subject to subsection 4.5.5 below.
- 4.5.2. Presiding over and conducting the hearing.
- 4.5.3. Ruling on all matters of procedure including the admission of evidence, subject only to being overruled by a vote of a majority of the Hearing Panel.
- 4.5.4. Requesting witnesses to appear.
- 4.5.5. Granting a postponement of the hearing, on a written application of the College or the employee, for good cause.

5. Presenting a Claim for Defense to the Hearing Panel


- 5.1. The employee will prepare and file a written position statement with the Hearing Panel not less than five (5) calendar days before the hearing date.
- 5.2. The employee's position statement will include the following information:
 - 5.2.1. Name, position title, and duties of the employee.
 - 5.2.2. Comprehensive summary of all pertinent facts which are the basis for the appeal and which are set forth in numbered paragraphs with each paragraph being limited to a single set of circumstances.
 - 5.2.3. Any documents, materials, or exhibits that support the statement.
 - 5.2.4. List of witnesses that will be required at the hearing including full names, positions, and a brief summary of each person's testimony.
 - 5.2.5. The request for a specific decision or action by the Hearing Panel in favor of the employee.
- 5.3. Within the same time line, an administrator designated by the President (hereafter "designated administrator") will prepare a file and written position statement with the Hearing Panel which will include the following information:
 - 5.3.1. Comprehensive summary of all pertinent facts which the College Administration relied upon as justification for its action and which are set forth in numbered paragraphs with each paragraph being limited to a single set of circumstances.
 - 5.3.2. Any documents, materials, or exhibits that support the statement.
 - 5.3.3. List of witnesses that will be required at the hearing including full names, positions, and a brief summary of each person's testimony.
 - 5.3.4. The request for a specific decision or action by the Hearing Panel in favor of the College.
- 5.4. A copy of a party's statement will be given to the adverse party at the same time it is given to the Hearing Panel.

PROCEDURE MANUAL

 ARIZONA WESTERN COLLEGE	PROCEDURE 450.1		
	Page 4 of 7		
	Last Revision Date:	11-9-10	
Effective Date:		01-11-99	
Section:	Personnel	Subject:	Due Process Hearing


- 5.5. The employee and/or the College Administration may submit an additional written statement of any new, pertinent information not contained in the original statement up to two days prior to the start of the hearing.
6. Noncompliance with Section 5
 - 6.1. If either party fails to comply with any of the requirements of section 5 of the Hearing Panel procedure, the opposing party may request the Hearing Panel chair to take appropriate action to enforce the rules or impose an appropriate sanction.
 - 6.2. After giving both parties an opportunity to be heard, the Hearing Panel chair may order such compliance with the rule or impose such sanctions as appropriate under the circumstances as follows:
 - 6.2.1. Not allowing the party to offer the testimony of a witness.
 - 6.2.2. Not allowing the party to introduce a document or exhibit.
 - 6.2.3. Denying the action requested.
 - 6.2.4. Disregarding the position statement.
7. Hearing Panel Procedure
 - 7.1. The hearing will be a closed hearing unless the Hearing Panel and the employee mutually agree that it should be conducted as an open hearing. Persons who have a right to attend the hearing include the members of the Hearing Panel, legal counsel for the Hearing Panel, the employee subject to the hearing and the employee's legal counsel, and the designated administrator and legal counsel for the designated administrator. A record of the hearing will be made by the College (usually an audio or video tape), and a copy will be made available for either party upon request. All records will be kept in accordance with regulations of the Records Management Division of the Department of Library, Archives and Public Records.
 - 7.2. The Hearing Panel chair will make rulings as necessary to expedite the hearing process, including rulings on the necessity for specific witness testimony which the chair may deem repetitive, irrelevant, or otherwise unnecessary.
 - 7.3. The Hearing Panel may use any reasonable mechanism to identify documents or exhibits for the hearing. Copies of original documents will be submitted to each panel member unless the Hearing Panel, by majority vote, determines that this will be unduly burdensome.
 - 7.4. Brief introductory statements will be made by both the designated administrator and the employee or their respective legal counsel.
 - 7.5. The employee and the College Administration of their legal counsel may call, in turn, their witnesses for testimony.
 - 7.6. The Hearing Panel may call additional witnesses for testimony.

PROCEDURE MANUAL

 ARIZONA WESTERN COLLEGE	PROCEDURE 450.1		
	Page 5 of 7		
	Last Revision Date:	11-9-10	
	Effective Date:	01-11-99	
Section:	Personnel	Subject:	Due Process Hearing

- 7.7. Each party will have the right to cross-examine all witnesses.
 - 7.8. A brief summation of positions will be made by the employee and the designated administrator or their respective legal counsel.
 - 7.9. The Hearing Panel will then retire and deliberate.
8. Conduct During the Hearing
- 8.1. The hearing will be conducted in a manner so as to assure fairness to both parties and avoid unjustifiable expense and delay.
 - 8.2. No action will be taken against an employee related to the hearing unless the employee
 - 8.2.1. Knowingly makes false statements.
 - 8.2.2. Asks questions or makes statements which are not pertinent and are primarily intended to degrade, embarrass or harass.
 - 8.2.3. Engage in undignified or discourteous conduct.
 - 8.2.4. Knowingly violates any ruling of the Hearing Panel.
 - 8.3. The Hearing Panel may, at its discretion and 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.
 - 8.4. To the extent permitted by law, or except as otherwise mutually agreed by the Hearing Panel and both parties to the hearing, the Hearing Panel will maintain strict confidentiality other than the information required for the final recommendation to the President. The hearing will be closed unless the Hearing Panel and both parties agree that the hearing is to be open.
 - 8.5. Rulings on admissibility of evidence (including both testimony and documentary evidence) will be made initially by the chair, subject to being overruled by a majority of the Hearing Panel.
9. Rules of Evidence
- 9.1. The hearing will be conducted in an informal manner without any requirements to adhere to the formal rules of evidence used in courts. The burden of proof will be on the College Administration to show by a preponderance of the evidence that the administrative recommendation to dismiss is appropriate.
 - 9.2. The hearing panel will receive evidence offered if the evidence will assist the Panel in making its recommendation and the evidence is not repetitive, unduly prejudicial or otherwise objectionable.
 - 9.3. The examination of any witness may be restricted if the testimony is not pertinent or is redundant.

PROCEDURE MANUAL

 ARIZONA WESTERN COLLEGE	PROCEDURE 450.1		
	Page 6 of 7		
	Last Revision Date:	11-9-10	
	Effective Date:	01-11-99	
Section:	Personnel	Subject:	Due Process Hearing

10. Witnesses

- 10.1. A college employee 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.
- 10.2. All witnesses will testify under oath or affirmation.
- 10.3. Except for the employee that is the subject of the hearing and the designated administrator, all witnesses will be excluded from the hearing except when testifying. Witnesses will keep the details of the hearing strictly confidential.
- 10.4. Either party may be called as a witness by the opposing party of the Hearing Panel.


11. Decision of the Hearing Panel

- 11.1. The Hearing Panel will render a written recommendation and provide a copy of its written recommendation to the employee, the designated administrator, and the College President within five (5) calendar days (excluding Friday, Saturday, Sunday and College holidays) after the completion of the hearing.
- 11.2. The written recommendation of the Hearing Panel will include a summary of the facts relied upon by the Hearing Panel, a determination of the issues, together with its conclusions and a recommendation for action.
- 11.3. After the receipt of the written recommendation from the Hearing Panel, the President of the college will issue a written decision within two (2) working days (excluding Friday, Saturday, Sunday, and College holidays) and provide a copy of the decision to both parties. If the President's recommendation differs, the President will explain the reasons why his or her decision is different from that of the Hearing Panel. The President will not be bound by the ultimate findings of fact, conclusions, or recommendations of the Hearing Panel.
- 11.4. If the employee has been terminated and the President's decision is to reinstate the employee, the employee will be reinstated effective on the date the decision was rendered and will be paid retroactively from the date of termination.
- 11.5. If the employee was notified of nonrenewal of contract and the President's decision is to renew the contract, the employee will be offered a contract for the next contractual period.

12. Expense of the Hearing

- 12.1. The College will pay for all institutional expenses for the hearing.
- 12.2. Upon request of either party, a copy of the audio or video tape of the hearing, or at the discretion of the College, a typed transcript, may be obtained at the requestor's expense.

PROCEDURE MANUAL

 ARIZONA WESTERN COLLEGE	PROCEDURE 450.1		
	Page 7 of 7		
	Last Revision Date:	11-9-10	
Effective Date:		01-11-99	
Section:	Personnel	Subject:	Due Process Hearing

13. Appeal to the District Governing Board
 - 13.1. The employee may appeal the President's decision by providing the President with written notice of intent to appeal. The President shall inform the District Governing Board of the appeal, and the District Governing Board shall schedule a hearing on the appeal between fourteen (14) and forty (40) days after the notice of appeal is submitted.
 - 13.2. Not less than one week prior to the scheduled hearing, the employee shall submit a memorandum setting forth the reasons the employee believes the decision was inappropriate or in error. The President or designated administrator may also submit a memorandum explaining why the decision was appropriate.
 - 13.3. At the hearing, each side will be permitted fifteen (15) minutes to address the District Governing Board.
 - 13.4. The District Governing Board shall issue its decision on the appeal within fourteen (14) calendar days of the hearing. The District Governing Board's decision shall be final and not subject to further appeal.
 - 13.5. If the District Governing Board reverses the President's decision to terminate or non-renew, the employee shall have the rights set in paragraphs 11.4 or 11.5 above.