

Policy Title:	Model Rules of Procedure Applicable to Contested Cases
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Governing Body:	Southern Oregon University	Policy Number:	FAD.066 (573-030)
Policy Contact:	Vice President for Finance & Administration	Date Revised:	August 2016
Custodial Office:	Finance & Administration	Date Approved:	August 2016
Approved By:	President	Next Review:	August 2019
Related Policy:			

Revision History

Revision Number:	Change:	Date:
-	Initial version	December 1976
1	Revision	August 2016

A. Policy Statement

A. Division 30, 573-030-0005 Contested Case Defined

1. A contested case exists whenever:
 - (a) A constitutional provision or institutional enabling act requires a hearing upon the action; or
 - (b) The institution has discretion to suspend or revoke a right or privilege of a person; or
 - (c) There is a proceeding in which the institution by rule or order provides for a hearing, in accordance with contested case requirements.

2. "Contested case" does not include proceedings in which an institution decision rests solely on the results of a test.

B. Division 30, 573-030-0015 Entitlement to Contested Case Hearing

1. A person is entitled to a contested case hearing whenever a contested case exists as defined in 573-030-0005 above.

2. A person is not entitled to a contested case hearing when:
 - (a) Any optional hearing method defined by institution policy has been selected as the method of resolving the conflict;

(b) In any case involving collection of fees or fines for parking, improper parking, or traffic fines or penalties.

C. Division 30, 573-030-0025 Notice of Hearing

1. Within ten days after receipt of request for a hearing, the institution shall give notice to all parties in a contested case. The notice shall include:

- (a) A statement of the time and place of the hearing, name of the hearing officer and name and title of the person who is authorized by the institution to issue a final order after the hearing;
- (b) A statement of the authority and jurisdiction under which the hearing is to be held;
- (c) A reference to the particular sections of the statutes and rules which the institution deems to be involved;
- (d) A short and plain statement of the matters asserted or charged;
- (e) A statement that the party may be represented by counsel at the hearing;
- (f) A statement that the contested case hearing is being held at the request of the grievant.

2. The notice shall be served personally or by registered or certified mail sent to the address of the grievant as shown on the records of this institution.

D. Division 30, 573-030-0026 Rights of Parties in Contested Cases

1. The written or oral information required to be given under ORS 183.413(2) before commencement of a contested case hearing shall include:

- (a) If a party is not represented by an attorney, a general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence;
- (b) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties;
- (c) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the agency;
- (d) Whether an attorney will represent the institution in matters to be heard and whether the parties ordinarily and customarily are represented by an attorney;
- (e) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the institution, whether the person presiding at the hearing is or is not an employee, officer or other representative of the institution and whether that person has the authority to make a final independent determination;
- (f) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights;
- (g) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the institution and the hearing reopened;

- (h) Whether there exists an opportunity after the hearing and prior to the final determination or order of the institution to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing;
- (i) A description of the appeal process from the determination or order of the agency.

2. The information required in subsection D1 above may be given in writing or orally before the commencement of the hearing.

E. Division 30, 573-030-0030 Order When Party Fails to Appear

- 1. When the party fails to appear at the specified time and place, or at the time to which the hearing may have been continued by mutual consent or by order of the hearing officer, this institution shall issue an order based on the information available to it.
- 2. The order supporting the action of this institution shall set forth the material on which the action is based or the material shall be attached to and made a part of the order.

F. Division 30, 573-030-0035 Subpoena, Deposition

- 1. The hearing officer shall issue subpoenas upon request by any party to a contested case upon a showing of general relevance and reasonable scope of the evidence sought.
- 2. Witnesses appearing pursuant to subpoena, other than parties or officers or employees of the institution, shall be tendered fees and mileage as prescribed by law for witnesses in civil actions. The party requesting the subpoena shall be responsible for service of the subpoena and tendering the witness and mileage fees to the witness.
- 3. On petition of any party to a contested case, the institution may order the testimony of any material witness be taken by deposition in the manner prescribed by law for depositions in civil actions (ORS Chapter 45). Depositions may also be taken by the use of audio or audiovisual recordings. The petition shall set forth:
 - (a) The name and address of the witness whose testimony is desired;
 - (b) A showing of materiality of the testimony;
 - (c) A request for an order that the testimony of the witness be taken before an officer named in the petition for that purpose.
- 4. If the institution issues an order for the taking of a deposition and the witness resides in this state and is unwilling to appear, the institution may issue a subpoena as provided in subsection 1 above requiring his or her appearance before the officer taking the deposition.

G. Division 30, 573-030-0040 Hearing

- 1. The hearing shall be conducted by and shall be under the control of the hearing officer. The hearing officer may be the President of the institution or the President's designee.

2. Subject to the discretion of the hearing officer, the hearing shall be conducted in the following manner:
 - (a) Statement and evidence of this institution in support of its action;
 - (b) Statement and evidence of affected persons disputing the institution's action;
 - (c) Rebuttal testimony.
3. The hearing officer and the affected parties and this institution or their attorneys shall have the right to question or examine or cross-examine any witness.
4. The hearing may be continued with recesses as determined by the hearing officer.
5. The hearing officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial matter.
6. Exhibits shall be marked and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by this institution as part of the record of the proceedings.
7. The burden of presenting evidence to support a fact or position rests on the proponent of the fact or position.

H. Division 30, 573-030-0045 Evidentiary Rules

1. Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.
2. All offered evidence, not objected to, will be received by the hearing officer subject to his or her power to exclude irrelevant, immaterial or unduly repetitious matter.
3. Evidence objected to may be received by the hearing officer with rulings on its admissibility to be made when offered, at a later time during the hearing or at the time a final order is issued.
4. Any time ten days or more before a hearing, any party may serve on an opposing party a copy of any affidavit, certificate or other document the party proposes to introduce in evidence. Unless the opposing party requests cross-examination of the affiant, certificate preparer, or other document preparer or custodian, more than 5 days prior to the hearing, the affidavit or certificate may be offered and received with the same effect as oral testimony.
5. If the opposing party requests cross-examination of the affiant, certificate preparer, or other document preparer or custodian as provided in subsection 4 above and the opposing party is informed more than five days prior to the hearing, that the person will not be able to appear for cross-examination, the affidavit, certificate or other document may be received in evidence, provided the agency or hearings officer determines that:
 - (a) The contents of the affidavit, certificate or other document is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs; and

(b) The party requesting cross-examination would not be unduly prejudiced or injured by lack of cross-examination.

I. Division 30, 573-030-0050 Proposed Orders on Contested Cases; Filing of Exceptions and Arguments

1. If the official who is to render the final order was not present at the hearing or has not reviewed and considered the record, and the order is adverse to a party (excluding this institution), a proposed order including findings of fact and conclusions of law shall be served upon the parties.
2. The parties shall be given the opportunity to file exceptions and present argument to the official who renders the final order prior to its issuance.

J. Division 30, 573-030-0051 Ex Parte Communications to the Institution

1. The institution shall place on record a statement of the substances of any written or oral ex parte communications on a fact in issue made to the institution during its review of a contested case.
2. The institution shall give notice to all parties of ex parte communications. The notice shall include:
 - (a) The substance of the communication if oral; if in writing, a copy of the communication;
 - (b) Whether or not the institution will consider the ex parte communication in considering the case.
3. If the institution gives notice that the ex parte communication will be considered in deciding the case, the institution at its discretion shall:
 - (a) Set a date when the other parties may rebut the substance of the ex parte communication in writing; or
 - (b) Schedule a hearing for the limited purposes of receiving evidence relating to the ex parte communication.
4. If an agency schedules a hearing, it may remand the matter to a hearing officer.

K. Division 30, 573-030-0052 Ex Parte Communications

1. The officer presiding at the hearing shall place on the record a statement of the substances of any written or oral ex parte communications or a fact in issue made to the officer during the pendency of the proceeding.
2. The presiding officer shall give notice to all parties of ex parte communications. The notice shall include:
 - (a) The substance of the communication if oral; if in writing, a copy of the communication;
 - (b) Whether or not the officer will consider the ex parte communication in making a recommendation to the institution or in deciding the case.
3. If the presiding officer gives notice that the ex parte communication will be considered in making a recommendation to the institution or in deciding the case, the officer shall either:
 - (a) Set a date when the other parties may rebut the substance of the ex parte communication in writing; or

(b) Schedule a hearing for the limited purposes of receiving evidence relating to the ex parte communication.

L. Division 30, 573-030-0053 Ex Parte Communication Record

If an ex parte communication is made to the institution or a presiding officer as described in sections 573-030-0051 and 573-030-0052 above the record shall include:

1. The ex parte communication if in writing;
2. A statement of the substance of the ex parte communication if oral;
3. The institution's or presiding officer's notice to the parties of the ex parte communication;
4. Rebuttal documents; and
5. If a hearing is held, the evidence, exhibits and transcripts of the proceedings.

M. Division 30, 573-030-0055 Final Orders on Contested Cases: Notification

1. Final orders on contested cases shall be in writing and include the following:
 - (a) Rulings on admissibility of offered evidence if the ruling was deferred to that time;
 - (b) Findings of fact - Those matters which are either agreed as fact or which, when disputed, are determined by the fact-finder, on substantial evidence, to be facts even though there are contentions to the contrary;
 - (c) Conclusion(s) of law - Applications of the controlling law and rules to the facts found and the legal results arising therefrom;
 - (d) Order - The action taken by this institution as the result of the findings of fact and conclusions of law.
2. The final order may include an opinion explaining the reasons and rationale adopted by the institution in arriving at the conclusions supporting its action.
3. Parties to contested cases and their attorneys of record shall be served a copy of the final order and any accompanying findings and conclusions.
4. The final order shall include a citation of the statute under which the order may be appealed.

N. Division 30, 573-030-0060 When Sections 573-030-0005 Through 573-030-0055 Do Not Apply

Sections 573-030-0005 through 573-030-0055 above do not apply to procedures for imposition of sanctions on an academic staff member.

O. Division 30, 573-030-0065 Petitions for Reconsideration, Rehearing

1. A party may file a petition for reconsideration or rehearing on a final order with the institution within 30 days after the order is served.
2. The petition shall set forth the specific ground or grounds for requesting the reconsideration or rehearing. The petition may be supported by a written argument.
3. The institution may grant a reconsideration petition if sufficient reason therefor is made to appear. If the petition is granted, an amended order shall be entered.
4. The institution may grant a rehearing petition if sufficient reason therefor is made to appear. The rehearing may be limited by the institution to specific matters. If a rehearing is held, an amended order shall be entered.
5. If the institution does not act on the petition within the 60th day following the date the petition was filed, the petition shall be deemed denied.

This policy may be revised at any time without notice. All revisions supersede prior policy and are effective immediately upon approval.

B. Policy Consultation

Revisions to the text of the policy were posted for campus comment on August 24, 2016.

C. Other Information

The Policy Contact, defined above, will write and maintain the procedures related to this policy and these procedures will be made available within the Custodial Office.