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A RESOLUTION APPROVING AND ADOPTING THE RULES OF PROCEDURES IN CONTROVERSIES AND DISPUTES

Keywords

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**KEAN UNIVERSITY
UNION, NEW JERSEY**

**A RESOLUTION APPROVING AND ADOPTING THE RULES
OF PROCEDURES IN CONTROVERSIES AND DISPUTES**

WHEREAS: Pursuant to N.J.S.A. 18A:3B-6(f), the Board of Trustees shall "have final authority to determine controversies and disputes concerning tenure, personnel matters of employees not classified under Title 11A of the New Jersey Statutes, and other issues arising under Title 18A of the New Jersey Statutes involving higher education;" and

WHEREAS: University staff, in consultation with the Office of the Attorney General, drafted Rules of Procedures in Controversies and Disputes to establish formal procedures in adjudicating such controversies and disputes that may come before the Board; and

WHEREAS: The Kean University Board of Trustees has determined that the Rules of Procedures in Controversies and Disputes are necessary in carrying its statutory responsibilities; now, therefore, be it

RESOLVED: That the proposed Rules of Procedures in Controversies and Disputes dated May 2013, a copy of which is annexed hereto, incorporated herein and made a part of this Resolution, is hereby approved and adopted.

RESOLUTION
ADOPTED: May 20, 2013

DULY
CERTIFIED: May 20, 2013



Audrey M. Kelly
Executive Director to the Board of Trustees



RULES OF PROCEDURE IN CONTROVERSIES AND DISPUTES

1. JURISDICTION

Pursuant to N.J.S.A. 18A:3B-6(f), the Board of Trustees shall have jurisdiction over all “controversies and disputes concerning tenure, personnel matters of employees not classified under Title 11A of the New Jersey Statutes, and other issues arising under Title 18A of the New Jersey Statutes involving higher education.”

2. DEFINITIONS

For purposes of these Rules, the following terms shall have the following meanings:

- 2.1 “Administrative Procedure Act” shall mean the “Administrative Procedure Act of the State of New Jersey.” N.J.S.A. 52:14B-1 et seq.
- 2.2 “Advocate” shall mean the Deputy Attorney General assigned by the Attorney General or other legal counsel providing legal representation to the University, its officers and employees, in connection with any controversy or dispute.
- 2.3 “Attorney General” shall mean the Attorney General of the State of New Jersey or the Deputy Attorney General assigned by the Attorney General.
- 2.4 “Board” shall mean the Board of Trustees of Kean University.
- 2.5 “Board's counselor” shall mean the Deputy Attorney General assigned by the Attorney General or other legal counsel providing legal representation to the Board in its capacity as final agency decision maker.
- 2.6 “Complainant” shall mean an aggrieved party who files a complaint or the President who files charges with the Board.
- 2.7 “Contested case” shall have the same meaning as the term “contested case” under the Administrative Procedure Act and the rules of the Office of Administrative Law promulgated pursuant thereto.
- 2.8 “Final Decision” shall mean a decision by the Board that adopts, rejects or modifies an Initial Decision made by an administrative law judge.
- 2.9 “Initial Decision” shall mean the initial decision made by an administrative law judge rendered in accordance with the provisions of the Administrative Procedure Act and the rules of the Office of Administrative Law promulgated pursuant thereto.

- 2.10 "Legal Committee" shall mean the Legal and Personnel Committee designated by the Board in its by-laws. The Legal Committee shall have the authority to administer the procedures provided for herein and make recommendations to the Board regarding the determinations required by these rules on controversies and disputes or any matter relating thereto.
- 2.11 "Office of Administrative Law" shall mean the "Office of Administrative Law" created by the Administrative Procedure Act.
- 2.12 "President" shall mean the President of Kean University.
- 2.13 "Respondent" means the party who answers or responds to a complaint or charges.
- 2.14 "Secretary" shall mean the Secretary of the Board of Trustees, provided however that whenever, under these rules, a paper is required to be filed with or served on the Secretary it shall be deemed filed or served when received at the Office of the President.

3. COMMENCEMENT OF A CASE

- 3.1 Complaint or Charges. An action, controversy or dispute before the Board is initiated when the President files charges or an aggrieved party files a complaint with the Secretary.
- 3.2 Format of Complaint or Charges. A complaint or charges shall include the following information set forth in separately numbered paragraphs:
 - 3.2.1 name and address of the Complainant who may be the President;
 - 3.2.2 name and affiliation of each party Respondent;
 - 3.2.3 statement of the essential facts giving rise to the dispute over which the Board has jurisdiction (each essential fact shall be set forth in separately numbered subparagraphs); and
 - 3.2.4 the citations, if known by the Complainant, of the section or sections of the higher education laws under which the controversy has arisen.
- 3.3 Filing. Charges or a complaint shall be deemed filed with the Board when they or it has been received by the Secretary, at the Office of the President, as indicated either by the date of receipt of certified mail or by the date stamp applied at the Office of the President on the date of receipt.
- 3.4 Service. Within 10 days of filing, a complaint shall be served by personal delivery, courier or certified mail with return receipt requested, upon (a) the President, (b) any party Respondent and (c) the Attorney General.

4. ANSWER

- 4.1 Filing and Service. Within 20 days of service of charges or a complaint, the Respondent(s) shall file with the Secretary an answer together with proof of service of a copy thereof upon the Complainant. Service may be effected by personal delivery,

courier or certified mail with return receipt requested, addressed to the Complainant at the address stated in the charges or complaint.

4.2 Format of Answer.

4.2.1 The answer shall specifically respond to the charges or complaint paragraph by paragraph. Each paragraph shall either be admitted, denied or contain a statement that the Respondent lacks knowledge or information sufficient to form a belief as to such allegation. Allegations which are not denied shall be deemed to be admitted.

4.2.2 The answer shall also set forth separate defenses claimed by the Respondent.

4.3 Extensions of Time.

4.3.1 Prior to the time for the filing of the answer, the parties may mutually agree to extend the time for the filing of the answer for a period not to exceed 30 days. Upon such an agreement, the Respondent shall notify the Secretary, by means of written correspondence or electronic communication, of such agreement including the length of the extension.

4.3.2 If such an agreement is not possible, the Legal Committee, upon written application of the Respondent for good cause shown, may extend the time to answer for a period not to exceed 30 days provided that a request for such extension has been filed with the Secretary at least three (3) days before the time for answer would have otherwise expired.

4.4 Failure to Answer. Upon failure of Respondent(s) to answer within the answering period, the Legal Committee may recommend and the Board may determine, upon application by the Complainant or on its own initiative, that the allegations contained in the charges or complaint are admitted and render an appropriate order disposing of the matter.

5. AMENDMENTS

5.1 Charges or Complaint. Charges or a complaint may be amended only with approval of the Legal Committee.

5.2 Answer. An answer may be amended only with approval of the Legal Committee except when filed in response to amended charges or an amended complaint.

6. INITIAL REVIEW OF FILING BY THE LEGAL COMMITTEE

6.1 Initial Review. Within 20 days of the filing of all pleadings, the Legal Committee shall meet and determine (a) whether the Board has jurisdiction of the matter and (b) whether the pleadings present a contested case. If the Legal Committee recommends that the Board has jurisdiction and that a contested case is presented, the matter shall be referred to the Board for a determination. In the event the Board determines that the matter is a contested case, it shall refer the matter to the Office of Administrative Law in accordance with Rule 7. If the Legal Committee determines that the Board lacks jurisdiction or that a contested case has not been presented, the Legal Committee shall refer the matter to

the Board for appropriate action and may, in connection therewith, make a recommendation as to such action.

- 6.2 Consultation. The Legal Committee and/or the Board may seek legal assistance from the Board's counselor in making determinations under Rule 6.1 and, in such event, the time for a determination by the Legal Committee/Board shall be extended for a period, not to exceed seven (7) days, for the purpose of allowing such advice.
- 6.3 Notice of Filing. The Secretary shall give notice of any such Legal Committee findings under Rule 6.1 to the Board, the aggrieved party, the Respondent(s), the President and the Attorney General.
- 6.4 Opposition. Any party aggrieved by a finding of the Legal Committee that the Board does not have jurisdiction or that a contested case has not been presented, shall have the right, within 10 days of notice of such finding, to file with the Secretary a notice of opposition and brief or supporting documentation for consideration by the Board.
- 6.5 Board Review. Within 60 days of a notice that the Legal Committee has recommended that the Board does not have jurisdiction or that a contested case has not been presented, the Board shall determine the action to be taken. If any person has filed a notice of opposition and brief under Rule 6.4, all parties to the matter shall have the right to reasonable notice of the date upon which the matter will be acted on by the Board.

7. REFERRAL TO OFFICE OF ADMINISTRATIVE LAW

- 7.1 Certification by Secretary. Upon a determination by the Board that a matter is a contested case, the Secretary shall make the transmission to the Office of Administrative Law.
- 7.2 Proceedings. After such transmission and certification, the matter shall proceed thereafter in accordance with the Rules of the Office of Administrative Law.

8. APPEAL OF INTERLOCUTORY RULINGS

- 8.1 Application for Interlocutory Review. Subsequent to transmittal to the Office of Administrative Law, if any party makes an application for interlocutory review, the application shall be filed with the Secretary, who shall transmit all papers thereon to the Legal Committee immediately following such request.
- 8.2 Legal Committee Review of Application. Within 10 days of the request for interlocutory review, the Legal Committee shall determine whether the matter will be reviewed and if so, make a recommendation to the Board on whether to accept the request for interlocutory review.
- 8.3 Failure of the Legal Committee to Act. If the Legal Committee does not review a matter and make a recommendation to the Board within 10 days of the request for interlocutory review, the request shall be deemed denied.
- 8.4 Notice. After 10 days of the request for interlocutory review, the Secretary shall give notice to the parties, the President, the Board and the Clerk of the Office of Administrative Law as to the recommendation of the Legal Committee or the Legal

Committee's failure to act. Informal communication by telephone or in person to the parties or their representatives and to the Clerk of the Office of Administrative Law will satisfy this notice requirement, provided that a written communication or order shall promptly follow.

8.5 Proceedings when Interlocutory Review is Granted

8.5.1 Within three (3) days of receiving notice that interlocutory review has been granted, the party opposing interlocutory review may file with the Secretary written arguments in support of the order or ruling being reviewed. A copy shall be served upon the party requesting review.

8.5.2 Within 20 days of receipt of the request for interlocutory review, the Legal Committee, if it has elected to review the matter, shall issue a recommendation to the Board in the form of: a) a decision b) an order or c) other disposition. The Board will make a final determination regarding the recommendation of the Legal Committee.

8.5.3 The time period for such decision, order or other disposition may be extended only if approved by the Board and the Director of the Office of Administrative Law.

8.6 Effect. Except for those rulings which, by the Rules of the Office of Administrative Law are mandatory subjects of an application for interlocutory review, any recommendation/ruling made by the Legal Committee/Board on any application to it for interlocutory review may be reviewed further by the Board after the Initial Decision of the Administrative Law Judge even if the Legal Committee/Board declined to review it or an application for interlocutory review was made but not considered by the Legal Committee/Board in a timely manner.

9. FINAL DECISIONS

9.1 Transmission of Initial Decision. Upon receipt of an Initial Decision from the Office of Administrative Law, the Secretary shall send a copy of the decision to all members of the Board and shall, in addition, send a copy of the record to the Legal Committee.

9.2 Exceptions and Replies. If exceptions or replies are filed pursuant to N.J.A.C. 1:1-18.4, the Secretary shall promptly forward a copy of all such exceptions and replies to the Board.

9.3 Recommendation of the Legal Committee. Within 30 days of receipt of the Initial Decision, or sooner if mandated by Federal or State law, the Legal Committee shall recommend to the Board whether an order or a final decision should be entered adopting, rejecting or modifying the Initial Decision. If the Legal Committee determines that issues or arguments were not previously raised or were incompletely considered, the Legal Committee may recommend that the Board remand the matter to the Office of Administrative Law.

9.4 Motions to Reopen the Hearing. If, after the Initial Decision, a motion is made by any party to reopen the hearing, the matter shall be referred to the Legal Committee for a recommendation to be made within 30 days of receipt of the Initial Decision.

- 9.5 Full Board Action. Within 45 days after the receipt of an Initial Decision, or sooner if mandated by Federal or State law, the Board may enter an order or Final Decision adopting, rejecting or modifying the Initial Decision. Any order or Final Decision rejecting or modifying the Initial Decision shall specify in clear and sufficient detail the nature of the rejection or modification, the reasons for it, the specific evidence in the record and/or interpretation of law on which it is based and the resulting changes or modifications to the disposition. An order or Final Decision rejecting or modifying the findings of fact in the Initial Decision shall be based upon substantial evidence in the record.
- 9.6 Effect of Failure of Board to Act. If the Board does not reject or modify the Initial Decision within 45 days of receipt thereof and, unless the period is extended pursuant to N.J.A.C. 1:1-18.8, the Initial Decision shall become the Final Decision of the Board.
- 9.7 Application for a Stay of the Final Decision. Any application by a party for a stay of the Final Decision shall be filed with the Secretary with copies served on all other parties and, within 10 days of the filing thereof, shall be determined by the Board. Any party opposing an application for a stay shall file any opposing papers prior to the determination of the Board. The determination shall be deemed to be the final action of the Board.
- 9.8 Extensions of Time.
- 9.8.1 For Exceptions or Replies. Requests to extend the time limit for exceptions and replies shall be submitted in writing with a proposed form of extension order to the Secretary who shall transmit the same to the Board which shall make a determination thereon within 10 days of filing. The action of the Board on any such request shall be deemed to be final and the Secretary shall sign and issue an order and cause it to be served upon all parties and the Director of the Office of Administrative Law. If the extended time limit necessitates an extension of the deadline for Final Decision, the Board shall submit an application therefore in accordance with these Rules and N.J.A.C. 1:1-18.8.
- 9.8.2 For the Final Decision. For good cause, the Legal Committee or the Board may request an extension of the time for issuing the Final Decision. Such request shall be made to the Office of Administrative Law no later than the day on which the time period for the Final Decision is to expire.
10. SETTLEMENT
- 10.1 Proposals for Settlement. When the parties wish to settle a matter, the Advocate shall report the full settlement terms to the Legal Committee and the Legal Committee may consult with the Advocate with respect to the desirability thereof. In the event the Legal Committee recommends a settlement, such recommendation shall not be binding upon the Board until the full Board has approved the settlement.
- 10.2 Action on Settlement. All settlements agreed to by the parties shall be incorporated into an Initial Decision by the Office of Administrative Law, if required.

11. MISCELLANEOUS

- 11.1 Construction. These Rules shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.
- 11.2 Relaxation. Except for rules relating to the burden of proof, statutory procedural requirements, or requirements of the Office of Administrative Law that may not, by their terms, be relaxed or disregarded, the Legal Committee or the Board may relax or disregard any provision of these Rules if the Legal Committee or the Board determines that adherence would result in unfairness or injustice.
- 11.3 Computation of Time. In computing any period of time fixed by these Rules, the day of the act or event from which the designated period begins to run is not to be included. The last day of a period so computed is to be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday. In computing a period of time less than seven (7) days, Saturday, Sunday and legal holidays shall be excluded.
- 11.4 Conflict with Statutes or Rules of the Office of Administrative Law. If any provision of these Rules conflicts with any statute or rule of the Office of Administrative Law, such statute or rule shall control and these Rules shall be construed as nearly as may be practicable to comply with such statute or rules.