

**SECTION 9
TERMINATION OF EMPLOYMENT**

9.1 NON-RENEWAL OF APPOINTMENT

Non-renewal of appointment is a type of "no-fault" employment severance action that requires Mines to provide a specified advance notification to the affected employee. In general, Colorado law provides that all exempt Mines employees, except tenured and tenure-track faculty, are employees at-will, who may be terminated at any time for any lawful reason. Colorado law also permits term employment contracts for certain categories of non-tenure track faculty and higher education employees under conditions prescribed in Colorado Revised Statutes §24-19-104. Consistent with state law, only those categories of faculty members specified in sections 9.1 and 9.2 may be subject to non-renewal of appointment.

9.1.1 Tenure-Track Faculty

Mines may decide to non-renew the appointment of a tenure-track faculty member without cause. tenure-track faculty member whose contract will be non-renewed for the subsequent academic year by Mines shall be notified of that fact in a letter from the Provost delivered according to the timetable set forth below:

Years of Service

Notice Required

During first academic year of Mines appointment:

Not later than April 1.

During second academic year of Mines appointment:

Not later than December 15.

Third academic year and beyond:

Not later than September 1.

A tenure-track faculty member's employment contract may be rendered unenforceable and is subject to termination without advance notice if, during the term of the faculty member's appointment, Mines:

- (I) Ceases to be an enterprise, as defined in Section 20(2)(d) of Article X of the State Constitution;
and
- (II) Lacks present cash reserves sufficient to pledge irrevocably to satisfy the terms of the contract.

9.1.2 Tenured Faculty

Mines may decide to non-renew the appointment of a tenured faculty member only for reasons of financial exigency or academic program termination.

A. Definitions

1. Financial Exigency

A financial exigency may exist if Mines faces a critical and urgent need to reorder its fiscal priorities to relieve a state of emergency created by its inability to fund required monetary expenditures.

2. Academic Program Termination

An academic program at Mines may be terminated on account of a change in Mines' statutory role and mission, lack of sufficient student interest, failure to achieve required accreditation, or the operation of law. Any Mines academic program termination shall be accomplished in accordance with applicable regulations, policies, or guidelines promulgated by the Colorado Commission on Higher Education, or any other State regulatory body vested with rule-making authority over this subject.

B. Implementation Procedures

Before any tenured faculty members are non-renewed on account of any of the reasons listed in this paragraph, the applicable procedure listed below shall be followed. The Faculty Senate shall represent the faculty in administrative procedures relating to academic program curtailment or termination. The faculty shall not, however, be entitled to representation in individual personnel decisions.

1. Financial Exigency

If a precipitous decline occurs in the financial fortunes of Mines, the President, after appropriate consultation with the Board, may declare that a state of financial exigency exists at Mines. In such a case, the President shall take the following steps:

- a. Formulate a draft Financial Exigency Plan;
- b. Meet jointly with the Faculty Senate and appropriate administrators to review the data and discuss the plan;
- c. Provide the Faculty Senate with at least sixty days to address the problem and respond to the plan with agreement or constructive alternatives;
- d. Decide upon a final Financial Exigency Plan;
- e. Secure Board approval of the plan; and
- f. Implement the plan utilizing existing faculty or university committees, as appropriate.

2. Academic Program Termination

If the President, after appropriate consultations with the Board, the Provost and affected department heads, determines that an academic program at Mines should be terminated, the appointments of both tenured and tenure-track faculty members in the affected program may be non-renewed. Tenure-track faculty members shall be non-renewed prior to tenured faculty members within a given program. Decisions regarding non-renewal of individual faculty members shall be made by the Provost and the department head, after appropriate consultation with the Faculty Senate. Such decisions shall be primarily based upon the criteria of maintaining the integrity of retained programs and minimizing the overall disruption to the Mines curriculum. To the extent possible, Mines shall provide early warning of such non-renewal decisions, so that affected faculty members may seek other employment opportunities. Once a preliminary decision to terminate an academic program has been made, the President shall take the following steps:

- a. Formulate a draft Academic Program Termination Plan;

- b. Meet jointly with the Faculty Senate and appropriate administrators to review the data and discuss the plan;
- c. Provide the Faculty Senate with at least sixty days to address the problem and respond to the plan with agreement or constructive alternatives;
- d. Decide upon a final Academic Program Termination Plan;
- e. Secure Board approval of the plan; and
- f. Implement the plan utilizing existing faculty or university committees, as appropriate.
- g. Consider offering the options listed in paragraph 9.1.3 below to affected faculty members.

C. Time Limitations

A tenured faculty member whose contract will be non-renewed for the subsequent academic year by Mines for reasons of financial exigency or academic program termination shall be notified of that fact in a letter from the Provost not later than September 1.

9.1.3 Tenured Faculty Non-Renewal Options

The following options may be offered by Mines to tenured faculty members as alternatives to non-renewal of their appointments in appropriate situations.

A. Departmental Transfer

If Mines has terminated an academic program, or is contemplating such an action, Mines may offer a faculty member a transfer to another Mines department or academic program if the faculty member is qualified by teaching background and scholarship interests. Faculty member qualifications will be evaluated by the Provost, the appropriate Dean, the new department head, and the tenured members of the department to which the transfer is being contemplated. If the faculty member has requested a Retraining Support Plan, it shall be analyzed as part of the qualification evaluation process.

1. Retraining Support Plan

If a faculty member has transferred to another department or academic program on account of an academic program termination, he or she may submit a written request to the Provost for approval of a Retraining Support Plan in which he or she may request reasonable assistance from Mines to permit retraining or further development of his or her academic skills to a level necessary to permit a successful transfer to another department or a more viable academic program. A Retraining Support Plan shall not exceed one calendar year in duration and shall outline appropriate goals, milestones, and timetables. It may also contain requests for paid leave and/or financial support to acquire books or equipment, attend seminars or short courses, etc.

2. Trial Period

If a faculty member has transferred to another department or academic program on account of an academic program termination, he or she should not be non-renewed prior to the expiration of a three-year trial period, which shall include any period of leave requested and granted as part of a Retraining Support Plan.

3. Departmental Review

If a faculty member has transferred to another department or academic program on account of an academic program termination, he or she should not be non-renewed unless the new department head and a majority of the tenured faculty members of the new department agree that the transfer has not been successfully accomplished by the faculty member.

B. Financial Incentives for Resignation or Early Retirement

Financial incentives for voluntary resignation may be offered to affected faculty members. Alternatively, Mines may offer affected faculty members financial incentives for early retirement, if the faculty member is eligible for retirement pursuant to PERA criteria.

C. Temporary Leave

Mines may offer a faculty member temporary leave with or without pay and benefits.

9.1.4 Reemployment Assistance

During the final year of service tendered by a non-renewed faculty member, Mines may provide reasonable assistance in seeking alternative employment opportunities. Such assistance may be in the form of resume and application letter preparation assistance, resume and application letter printing service, and long-distance telephone use.

9.2 TERMINATION OF EXEMPT, NON-TENURE-TRACK FACULTY MEMBERS

9.2.1 Teaching Faculty

Mines may decide to non-renew the appointment of a teaching faculty member without cause. Subject to the limitations set forth in Colorado Revised Statutes §24-19-104, a teaching faculty member whose contract will be non-renewed for the subsequent academic year by Mines shall be notified of that fact in a letter from the Provost delivered according to the timetable set forth below:

Years of Service	Non-Renewal Notification Requirement
During first academic year of Mines appointment:	Annual contract with non-renewal notification for next academic year by April 1
During second academic year of Mines appointment;	Annual contract with non-renewal notification for next academic year by December 15
Third academic year and beyond:	Two-year contract, renewed annually, with non-renewal notification by August 1

A teaching faculty member's employment contract may be rendered unenforceable and is subject to termination without advance notice if, during the term of the faculty member's appointment, Mines:

- (I) Ceases to be an enterprise, as defined in Section 20(2)(d) of Article X of the State Constitution; and
- (II) Lacks present cash reserves sufficient to pledge irrevocably to satisfy the terms of the contract.

9.2.2 Other Non-Tenure-Track Faculty Members

All other exempt, non-tenure-track faculty members may be terminated by Mines at any time. While it is Mines' intention to treat these faculty members fairly and communicate performance deficiencies to them in a timely manner, it is not a requirement that communication of performance deficiencies must occur prior to termination. A decision to terminate an exempt, non-tenure-track faculty member may only be made by the President, Provost, or a vice president following appropriate consultations with an attorney from the Office of Legal Services and the Associate Vice President for Human Resources.

9.3 TERMINATION FOR JOB ABANDONMENT

Any employee who, without the permission of Mines, fails to report to work, or fails to return to work after the expiration of an approved absence, for a period of time exceeding thirty days shall be deemed to have constructively tendered his or her resignation. In such a case, the employee may be terminated by Mines under this subsection without initiating the termination for cause process set forth in subsection 9.5 below. In addition to the above-listed requirements, the following conditions must apply in order for Mines to terminate an employee on the ground of job abandonment: (1) the employee must have exhausted all of his or her available leave which is applicable to the absence, including family medical leave, or refused to utilize his or her available leave; (2) the absence must, in the judgment of Mines, be unreasonable or be otherwise unexcused; and (3) at least seven days prior to terminating an absent employee under this subsection, Mines must deliver to the employee written notice directing the employee to report to work by a specified date and clearly state the consequences of the employee's failure to do so.

9.4 TENURE REVOCATION

In certain cases involving a lesser degree of cause than is required for immediate termination, Mines may revoke the tenure of a faculty member for cause without intending to terminate the individual, or with the intention of non-renewing the individual upon the provision of appropriate notice. Revocation of tenure for cause may be based upon one or more components of the definition of cause listed in paragraph 9.4.1 below. A revocation of tenure for consistently substandard performance shall be based, in whole or in part, upon an individual's failure to adequately complete a Performance Improvement Plan as set forth in paragraph 7.3.1 above. However, if a tenured faculty member willfully fails or refuses to cooperate in the preparation or execution of a Performance Improvement Plan, this requirement will be inapplicable.

9.4.1 Definition of "Cause"

The following shall constitute cause for revocation of tenure held by a Mines faculty member: (1) academic dishonesty; (2) a pattern of unfair or abusive treatment of Mines students; (3) consistently substandard performance; (4) a pattern of failure to carry out contractual responsibilities or reasonable, employment-related duties assigned by a supervisor; (5) a violation of Mines' Policy Prohibiting Gender-Based Discrimination, Sexual Harassment and Sexual Violence, Unlawful Discrimination Policy, Amorous Relationships Policy, or Research Misconduct Policy; (6) a criminal conviction involving immoral or unethical conduct; (7) a serious violation of one or more of the faculty behavioral obligations set forth in subsection 6.2 above; or (8) any other behavior or condition which significantly affects a faculty member's fitness to carry out his or her professional responsibilities.

9.4.2 Initiation of Tenure Revocation Process

The tenure revocation process is initiated by a written tenure revocation petition with supporting documentation. Such a petition may be formally lodged by: (1) the departmental tenure committee; (2) the department head; or (3) the Provost. The issue of initiation of a tenure revocation petition may be raised by any member of the departmental tenure committee at any time and shall be determined by a majority vote of the committee. The individual or group lodging the petition shall deliver copies thereof to the two other individuals or groups listed above as well as the affected faculty member. In response to the petition, the faculty member may submit a written statement with supporting documentation to all of the individuals or groups listed above.

9.4.3 Tenure Revocation Process

The following is a general outline of the tenure revocation process at Mines:

- A. The department head shall convene the departmental promotion and tenure committee and appoint a committee member to chair deliberations.
- B. The departmental promotion and tenure committee shall examine the tenure revocation petition with supporting documentation and the written statement with supporting documentation provided by the affected faculty member, prepare a written tenure revocation report containing a recommendation, and transmit same to the department head. A report prepared by members of the committee holding a minority point of view shall also be accepted for consideration.
- C. The entire tenure revocation package, including the tenure revocation petition with supporting documentation, the written statement with supporting documentation provided by the affected faculty member, recommendation(s) of the committee, and a recommendation from the department head, shall be forwarded to the Provost.
- D. Copies of the recommendation(s) of the committee and the recommendation of the department head shall be provided to the affected faculty member.
- E. The Provost may convene the Promotion and Tenure Committee to examine the tenure revocation package, engage in discussions of the issue, and submit recommendations on the tenure revocation.
- F. The Provost may request the Vice President for Research and Technology Transfer to examine the tenure revocation package and submit a written recommendation on the tenure revocation.
- G. The Provost shall review and consider all of the material provided in the tenure revocation package and make a final decision regarding the tenure revocation.
- H. The Provost shall provide written notification of his decision to the affected faculty member.
- I. In the case of an unfavorable decision, the affected faculty member may appeal the decision pursuant to the Termination and Non-renewal Appeal Procedure set forth in subsection 9.6 below.

9.4.4 Voluntary Relinquishment of Tenure

Tenured faculty members may voluntarily relinquish their tenure rights in exchange for consideration offered by Mines, which may include, but is not limited to, a sum of money and/or a term employment contract for a specified period. Faculty members who wish to pursue this option should initiate a discussion of the subject with the Provost. In order to be effective, all agreements to relinquish tenure must be reduced to writing and executed by the affected faculty member and the President.

9.5 TERMINATION FOR CAUSE

Subject to the requirements specified below, any tenured, tenure-track, or teaching faculty members may be subject to termination for cause by Mines under this section. Termination of the employment of a tenured faculty member for cause does not require a separate, formal revocation of tenure by Mines; rather, tenure revocation is implicit in the termination for cause process.

9.5.1 Definition of "Cause"

The following shall constitute cause for termination of a tenured, tenure track, or non-tenure track teaching faculty member: (1) academic dishonesty; (2) a pattern of unfair or abusive treatment of Mines students; (3) consistently substandard performance; (4) a pattern of failure to carry out contractual responsibilities or reasonable, employment-related duties assigned by a supervisor; (5) a violation of Mines' Policy Prohibiting Gender-Based Discrimination, Sexual Harassment and Sexual Violence, Unlawful Discrimination Policy, Amorous Relationships Policy, or Research Misconduct Policy; (6) a criminal conviction involving immoral or unethical conduct; (7) a serious violation of one or more of the faculty behavioral obligations set forth in subsection 6.2 above; or (8) any other behavior or condition which significantly affects an employee's fitness to carry out his or her professional responsibilities.

9.5.2 Decision Making Standards

A termination for cause may be based upon one or more components of the definition of cause listed in paragraph 9.5.1 above. Termination of a tenured faculty member for cause for professional incompetence and/or significant substandard performance shall be based, in whole or in part, upon that individual's failure to complete a Performance Improvement Plan pursuant to paragraph 7.3.1 above in an adequate manner. However, if the individual willfully fails or refuses to cooperate in the preparation or execution of a Performance Improvement Plan, this requirement will be inapplicable. In deciding whether to grant or deny a request to terminate an employee for cause, the decision making official shall utilize the "preponderance of the evidence" standard as it is generally applied in civil cases to resolve disputed factual issues.

9.5.3 Initiation of Termination for Cause Process

A termination for cause may be initiated by the faculty member's immediate supervisor, or any higher-level supervisor within the applicable chain of authority including the President or Provost. If the affected faculty member reports directly to the President, the President shall be the initiating party. Once a termination for cause has been initiated, the affected faculty member shall receive written notification setting forth the applicable reason(s) for termination.. If the termination for cause proceeding has been initiated by the Provost, the notification function specified above shall be performed by an uninvolved vice president selected by the President, who shall also preside over the remainder of the process specified in this subsection. If the termination for cause proceeding has been initiated by the President, the notification function specified above shall be performed by an uninvolved vice president selected by the Chairman of the Board, who shall also preside over the remainder of the process specified in this subsection. The affected faculty member may be suspended with pay for the duration of the process specified in paragraph 9.5.4 below if, in the judgment of the President or Provost, the best interests of Mines would be served thereby.

9.5.4 Termination for Cause Process

Prior to rendering a decision on the matter, the presiding official shall provide the affected faculty member with an opportunity to reply in writing to the request for termination and to participate in a conference with the presiding official and the requesting supervisor. During this conference, the faculty member may be accompanied by a representative of his or her choosing in order to effectively present his or her position in the matter to the presiding official. After hearing a presentation from each side during the conference and examining all submitted written material, the presiding official shall render a written decision on the request for termination within a reasonable time and provide copies of the decision to the affected faculty member and the requesting supervisor. A faculty member who has been terminated for cause may appeal the decision pursuant to the Termination and Non-renewal Appeal Procedure set forth in subsection 9.6 below.

9.6 TERMINATION AND NON-RENEWAL APPEAL PROCEDURE

9.6.1 Persons Eligible to File an Appeal

An appeal hereunder may be filed by any individual described in one of the categories below, hereinafter referred to in this appeal procedure as the "Appellant."

- A. Any tenured, tenure track, or teaching faculty member who has been terminated for cause or whose employment contract has been non-renewed, as long as his or her employment contract does not specifically render this procedure inapplicable; or
- B. Any tenured employee whose tenure has been revoked by Mines.

9.6.2 Notice of Appeal

A Notice of Appeal is a written document in letter or memorandum form, which is prepared by the Appellant and filed with the appropriate Mines official to initiate an appeal hereunder. The Notice of Appeal must contain, at a minimum, a concise statement of the matter being appealed as well as the specific grounds for the appeal set forth in sufficient detail to provide Mines with reasonable notice of the substance of the appeal. In all non-renewals of tenured faculty and all terminations for cause, the Notice of Appeal shall address the matters asserted by Mines as grounds for the decision. If the Appellant believes the asserted grounds are pretextuous, the Appellant shall state such belief and address all other issues, including any constitutional right violations, which the Appellant believes constitute the actual reasons for termination or non-renewal. In all non-renewal appeals by tenure-track and teaching faculty members, the Notice of Appeal must allege violation by Mines of a specific, constitutionally protected right of the Appellant.

9.6.3 Procedure for Initiation of Appeals

A. Place to File Notice of Appeal

A Notice of Appeal shall be addressed to and filed with the office of the Mines official who issued the notification of the action constituting the subject matter of the appeal, hereinafter referred to in this appeal procedure as the "Respondent," who shall be presumed to be acting on behalf of Mines throughout the case. At the time the Notice of Appeal is filed with the Respondent, a copy thereof shall also be filed with the Office of Legal Services.

B. Time Limitations

All appeals filed pursuant to this procedure must be filed with the Respondent and the Office of Legal Services no later than thirty days following receipt by the Appellant of notification of the action constituting the subject matter of the appeal. If the last day to file a Notice of Appeal, or any other document pursuant to this procedure, happens to fall on a weekend, a holiday, or any day on which Mines is closed, the Notice of Appeal or other document shall be due on the next Mines business day. If a Notice of Appeal is not filed in a timely manner, the Appellant shall forfeit all rights of appeal conferred hereunder. The Respondent shall notify the Appellant in writing if a Notice of Appeal is not received in a timely manner.

C. Extension of Time Limitations

For good cause, the Appellant may request in writing from the Respondent an additional amount of time within which to file a Notice of Appeal. However, in order to be considered, a Request for Additional Time must be filed within the time limit for filing the Notice of Appeal. The Respondent shall possess the authority to issue a final ruling on such a request.

D. Fulfillment of Notice of Appeal Requirements

An attorney from the Office of Legal Services shall examine the Notice of Appeal to determine if the requirements set forth above have been met. If the attorney determines that the Notice of Appeal has not fulfilled the requirements, he or she shall inform the Appellant of the deficiencies in writing within ten business days. The Appellant shall then have the right to correct and re-file the Notice of Appeal. If the Notice of Appeal was filed in good faith, the Appellant shall have the remainder of the time limit for filing the appeal, if any, plus five additional business days to correct the deficiencies and re-file the Notice of Appeal. If the attorney concludes that the re-filed version of the Notice of Appeal is still deficient, the Appellant may: (1) correct and re-file the Notice of Appeal; or (2) request that the re-filed version along with a written recommendation of the attorney be forwarded to the hearing panel for a decision. If option #1 above is chosen, the Appellant shall have the remainder of the original time limit for filing the appeal, if any, plus five additional business days to correct the deficiencies and re-file the Notice of Appeal. If option #2 above is chosen, the hearing panel must examine the Notice of Appeal and decide that: (1) the Notice of Appeal is not deficient, and the appeal may proceed to hearing; (2) the deficiencies contained in the Notice of Appeal are not fatal, and the appeal may proceed to hearing; or (3) the deficiencies contained in the Notice of Appeal are fatal, and the complaint must be "dismissed with prejudice." If the Notice of Appeal is dismissed with prejudice, it may not be re-filed.

9.6.4 Appeal Standards

A. Reviewable Issues

In all termination for cause appeals, tenure revocation appeals, and non-renewal appeals filed by tenured faculty, the reviewable issues shall be limited to the matters asserted by Mines as grounds for the termination, tenure revocation, or non-renewal. If the Appellant believes the asserted grounds are pretextuous, the Appellant may introduce other issues that are believed to constitute the actual reason for termination. In all non-renewal appeals, an alleged violation of a constitutionally protected right of the Appellant shall be the only issue considered on appeal.

However, this appeal procedure is not designed to resolve allegations of unlawful discrimination made by terminated employees. Any appeal that contains such allegations must be filed as a complaint under the Board of Trustees' Unlawful Discrimination Policy and Complaint Procedure.

B. Burden of Proof

The Respondent shall bear the burden of proof in all termination for cause appeals, tenure revocation appeals, and non-renewal appeals filed by tenured faculty. The Appellant shall bear the burden of proof in all non-renewal and not-for-cause termination appeals filed by tenure-track and teaching faculty members.

C. Standard of Proof

The standard of proof for all appeals heard pursuant to this procedure shall be the "preponderance of the evidence" standard, as it is generally applied in civil cases. This standard shall be deemed met if the panel believes that it is more likely than not that the facts at issue occurred. The "facts at issue" shall include all facts that are required to be proven by the party bearing the burden of proof in order for such party to prevail.

9.6.5 Hearing Panel

All appeals filed hereunder shall be heard by a hearing panel chosen under the supervision of the Associate Vice President for Human Resources pursuant to the method set forth in subparagraph A immediately below.

A. Initial Hearing Panel Selection Criteria

An initial hearing panel of ten individuals shall be selected at random from the employee group of which the Appellant is a member, i.e., academic faculty, administrative faculty, academic faculty of the whole. If the Appellant is an academic faculty member, the initial hearing panel shall be selected from the pool of academic faculty holding an rank equal to or higher than the Appellant. If a particular employee group is too small to contain ten individuals who are available to serve on the hearing panel, a sufficient number of other exempt Mines employees shall be selected on a random basis to serve on the panel. Committee members may be excused on account of conflict of interest, health, or unavoidable absence from campus.

1. Hearing Panel Selection Process

The Appellant and the Respondent shall each disqualify two of the initial panel members. The disqualifications exercised by the parties shall proceed in an alternate fashion beginning with the Appellant. Of the remaining initial panel members, the one chosen last shall serve as an alternate hearing panel member. The other five initial panel members shall constitute the hearing panel for the appeal. An excused initial panel member shall be replaced by another initial panel member chosen in a random drawing prior to the exercise of any disqualifications by either party.

2. Selection of Chief Panel Member

After the hearing panel has been chosen, the panel members shall elect a chief panel member from their number to preside throughout the case.

3. Authority of Chief Panel Member

The chief panel member shall have the authority to (a) issue orders to compel discovery; (b) make rulings on evidentiary objections; and (c) issue any other orders necessary to control the conduct of the hearing and prohibit abusive treatment of witnesses, including removal of disruptive individuals from the hearing room.

4. Role of Alternate Hearing Panel Member

The alternate hearing panel member shall observe, but not actively participate in, all of the proceedings in the case and be prepared to substitute for a panel member who becomes unavailable during any stage of the case due to death, illness, or emergency.

9.6.6 Legal Representation

A. The Appellant

The Appellant may consult with or retain legal counsel at his or her own expense to provide the degree of legal representation desired during the case.

B. The Respondent

The Respondent may consult with or retain legal counsel to provide the degree of legal representation desired during the case.

C. The Hearing Panel

The hearing panel shall be represented by a "conflicts counsel" provided by the Office of the Colorado Attorney General.

D. Peer Counsel

As an alternative to retaining an attorney, the Appellant may, through an appropriate written document, designate a fellow employee to serve as peer counsel to provide moral support or actual representation during the hearing. If so designated and to the extent authorized, the peer counsel may speak on behalf of the Appellant, examine witnesses, deliver opening statement and closing argument, etc.

9.6.7 Pre-Hearing Procedures

A. Acknowledgment of Notice of Appeal

As soon as practicable after receipt of the Notice of Appeal and completion of the examination of legal sufficiency, the Respondent shall send a letter to the Appellant acknowledging timely receipt and the legal sufficiency of the Notice of Appeal. This subsection shall not apply if the Notice of Appeal was untimely or legally insufficient.

B. Setting of Hearing Date

After a chief panel member has been chosen, a hearing date shall be set with reasonable consideration given to the schedules of the individuals concerned. The chief panel member shall set a date for the hearing, which shall occur no more than ninety days after the date upon which the hearing panel was selected. Once set, the hearing date may be rescheduled only with the concurrence of the Appellant, the Respondent, and the chief panel member.

C. Pre-Hearing Discovery

Informal discovery, or the voluntary exchange between the parties of information relevant to the case, is encouraged. If the parties cannot resolve such issues informally, either party may move the chief panel member up to fifteen days prior to the hearing date to enter an order compelling discovery upon a showing of the relevance of the requested information and the necessity of such information to case preparation. The other party may oppose such request by showing that the requested information is irrelevant, unnecessary to the moving party's case preparation, or privileged according to law.

D. List of Hearing Issues

After examining the pre-hearing statements of both parties, the hearing panel shall prepare a list of issues to be resolved through the hearing and distribute such list to the parties no later than two business days prior to the hearing date. The panel may list issues contained in the pre-hearing statement of either party. The list of issues generated pursuant to this subparagraph shall be binding upon the subsequent hearing and shall form the standard against which all relevancy arguments shall be weighed.

9.6.8 Pre-Hearing Statements

A. Contents of Pre-Hearing Statements

Each party shall file a pre-hearing statement containing the following components:

- 1. Summary of the Argument:** A concise statement summarizing the case from the position of the submitting party;
- 2. List of Issues:** A list of the issues that the submitting party wishes the hearing panel to resolve;

3. List of Witnesses: A list of witnesses to be presented at the hearing along with a summary of the anticipated testimony of each witness; and

4. Photocopies of Exhibits: Photocopies of each exhibit to be presented at the hearing.

B. Deadlines for Pre-Hearing Statements

The Appellant shall file a pre-hearing statement with the hearing panel and provide a copy to the opposing party no later than ten business days prior to the hearing date. The Respondent shall file a pre-hearing statement with the hearing panel and provide a copy to the opposing party no later than eight business days prior to the hearing date. If the hearing date is rescheduled, these time limits shall apply to the rescheduled hearing date.

C. Limitations Imposed by Pre-Hearing Statements

Neither party shall make an argument during the hearing that is inconsistent with the arguments set forth in the summary of the argument section of his or her pre-hearing statement. Neither party shall introduce any witnesses or exhibits at the hearing that are not listed in his or her pre-hearing statement. All exhibits listed in the pre-hearing statements shall be deemed genuine and admissible unless successfully challenged prior to the hearing.

D. Amendments to Pre-Hearing Statements

Up to five business days prior to the hearing date, either party may request the chief panel member to permit amendments to his or her pre-hearing statement upon a showing of good cause and lack of prejudice to the opposing party. Any party filing an amended pre-hearing statement shall provide a copy thereof to the opposing party no later than the filing deadline imposed by the order permitting the amendment.

9.6.9 Hearing Procedures

A. Presumption of Open Hearing

Subject to limitations imposed by the capacity of the hearing room, the hearing shall be open to the public. For good cause, either party may request that the hearing be closed to the public. The chief panel member may grant such a request only if the non-requesting party does not object.

B. Sequestration of Witnesses

Upon the request of either party, the chief panel member shall direct that all individuals scheduled to appear as witnesses in the hearing may not be present in the hearing room except when testifying.

C. Order of Presentation

The party bearing the burden of proof, hereinafter referred to in this appeal procedure as the "Initial Party, shall present his or her case-in-chief first. After this case has been presented, the

party who does not bear the burden of proof, hereinafter referred to in this appeal procedure as the "Other Party," shall present his or her case-in-chief.

D. Outline of Hearing

The hearing shall proceed according to the following general outline:

1. Initial Party's Opening Statement
2. Other Party's Opening Statement (unless reserved)
3. Initial Party's Case-in-Chief
4. Other Party's Opening Statement (if reserved)
5. Other Party's Case-in-Chief
6. Initial Party's Rebuttal Case (unless waived)
7. Other Party's Rebuttal Case (only if Initial Party presents a rebuttal case and unless waived)
8. Initial Party's Closing Argument
9. Other Party's Closing Argument
10. Initial Party's Rebuttal Argument (unless waived)

E. Case-in-Chief Procedure

During a party's case-in-chief, that party may testify, examine other witnesses, or introduce documents as evidence to the hearing panel. Arguments shall not be made by a party or a representative of a party during the case-in-chief, but shall instead be reserved for the closing argument. Hearing panel members may interject questions at any time.

F. Witness Examination Procedure

Each witness shall be directly examined by the party on whose behalf the witness has appeared to testify. Upon the conclusion of the direct examination of each witness, the opposing party shall be permitted the right of cross-examination. The chief panel member may permit re-direct and re-cross examination. However, an identical examination procedure shall be utilized for all witnesses testifying during the same hearing.

G. Inapplicability of Strict Evidentiary Rules

Strict legal evidentiary rules shall not apply during the hearing. The chief panel member shall rule on the admissibility of disputed evidence with primary consideration given to the relevance, reliability, and probative value of proffered evidence.

9.6.10 Post-Hearing Procedures

A. Recommendation of the Hearing Panel

After the conclusion of the hearing, the hearing panel shall confer among themselves and vote upon a recommended course of action. The panel members holding a majority point of view shall designate a member of their group to write a recommendation reflecting their opinion. Panel members holding a minority point of view may issue a dissenting recommendation in a similar fashion.

B. Contents of Recommendation

The recommendation of the hearing panel shall include the following components:

- 1. Statement Regarding Burden of Proof:** A statement regarding whether or not the hearing panel believes that the burden of proof borne by the Initial Party has been sustained;
- 2. Findings of Fact:** A list of the relevant facts found by the hearing panel upon which the recommendation is based;
- 3. Legal Conclusions:** A list of the legal conclusions of the hearing panel upon which the recommendation is based; and
- 4. Recommended Course of Action:** A statement regarding the action that is being recommended by the hearing panel.

C. Issuance of Recommendation

The recommendation of the hearing panel shall be issued to the parties and delivered to the President of Mines along with the panel's case file within ten business days after the conclusion of the hearing. If the President is the Respondent or the initiating party of a termination for cause, the Chairman of the Board shall substitute for the President throughout the remainder of this appeal procedure.

D. Issuance of Presidential Decision

The President shall examine the case file, consider the recommendation of the hearing panel, and issue a final written decision in the matter. The President shall possess the authority to affirm, reverse, or modify the recommendation of the hearing panel, or to remand the matter to the panel for further proceedings or consideration. The decision of the President shall be delivered to the parties and the hearing panel within fifteen days from the date of the President's receipt of the case file and recommendation from the hearing panel, unless the President is unavailable for a significant amount of time during this period.

E. Presidential Unavailability

The term "unavailable," as utilized in this subparagraph and subparagraph D immediately above, shall be defined to mean out of town, medically incapacitated, or engaged in important Mines business to the extent that sufficient time cannot be devoted to decision making hereunder. If the President is unavailable for a significant period of time during the decision-making period, a letter shall be sent to the parties advising them of that fact as well as the anticipated date of presidential availability. In such event, the decision shall be due fifteen days from the date upon which the President becomes available. The President shall be the sole judge of unavailability hereunder.

F. Appeal of Final Decision of Mines

The decision issued by the President shall constitute the final decision of Mines regarding the matter being appealed. There shall be no further appeal from the final decision of Mines. If the Appellant is aggrieved by the final decision of Mines, he or she may pursue other available legal remedies.

9.7 RESIGNATION

Resignation is an action by which an exempt employee voluntarily severs his or her employment relationship with Mines.

9.7.1 Resignation Procedure

In order to constitute formal notice to Mines, an exempt employee's resignation shall be in the form of a letter or other written document submitted to his or her immediate supervisor. The supervisor shall provide the employee a written acceptance of the resignation. The resignation of a faculty member shall be effective on the date specified in the letter of resignation, or such other date as may be mutually agreed upon by the faculty member and Mines in writing.

9.7.2 Requested Notice

Because of the extreme hardship that may be caused by an untimely resignation, it is requested that an exempt employee provide notice of his or her intention to resign to his or her supervisor as early as possible. For tenured, tenure-track, and teaching faculty, it is expected that, except in unusual circumstances, a resignation will be effective at the end of an academic year, i.e., the date of spring commencement.

9.8 RETIREMENT

An exempt employee may retire at any time if he or she qualifies pursuant to PERA or other retirement plan criteria. In order to constitute formal notice to Mines, a faculty member's retirement announcement shall be in the form of a letter or other written document addressed to the President or a vice president within the applicable chain of authority. The retirement of an exempt employee shall be effective on the date specified in the retirement announcement, or such other date as may be mutually agreed upon by the employee and Mines in writing.

9.8.1 Human Resources Office Consultation

All exempt employees considering retirement are encouraged to discuss their retirement plans and strategies with the Mines Human Resources Office at the earliest appropriate time in order to maximize their retirement opportunities by familiarizing themselves with applicable State Federal, and retirement requirements and deadlines. This paragraph shall not be construed to require Mines to offer a transitional retirement agreement to a faculty member or to require a certain level of minimum content, compensation, or period of transition appointment.

9.8.2 Transitional Appointments

At the discretion of the appropriate vice president or Provost and subject to the approval of the President, this type of appointment is available to exempt employees who are eligible for retirement under PERA guidelines. An individual interested in a transitional appointment should contact his or her supervisor to determine the availability of a transitional appointment and any specific conditions for his or her situation. Any questions regarding PERA eligibility should be directed to the Mines Human Resources Office. The following guidelines shall apply to the granting of transitional appointments at Mines.

- A. Transitional appointments will be considered by Mines for a period of up to three years, unless special circumstances exist.
- B. An exempt employee who desires a transitional appointment must work out an acceptable plan for the transitional appointment with his or her supervisor and the appropriate vice president. A Transitional Appointment Agreement will be prepared which shall include all essential details of the appointment.
- C. Mines employment during the transitional appointment shall be limited by applicable PERA rules.
- D. A transitional appointee shall be evaluated on the same basis as full-time faculty in proportion to the scope of his or her appointment, unless specified otherwise in the Transitional Appointment Agreement.
- E. A transitional appointee will be considered benefits-eligible (as defined in Section 5.2 of the Faculty Handbook) during the period his or her Transitional Appointment Agreement is in effect and is eligible for health, dental, life, and other non-PERA benefits the same as other benefits-eligible faculty who meet the eligibility provisions of the insurances or benefits plan.
- F. Individuals on transitional appointments are considered to be retirees.
- G. This section shall not be construed to require Mines to offer a transitional retirement agreement to a faculty member or to require a minimum level of course assignments or compensation, or a minimal appointment term or effective period under the transitional appointment agreement.

9.8.3 Voluntary Early Retirement Plans

Voluntary early retirement plans may be offered by Mines from time to time.

9.8.4 Disability Retirement

An employee who sustains a permanent injury, or who suffers from a permanent and debilitating physical or mental condition, may be eligible for disability retirement under PERA criteria. Exempt employees desiring additional information on this subject should contact the Mines Human Resources Office.