

# Mid-Contract Termination With Adequate Cause (MCTWAC)

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STUB midcontractterminationwithadequatecause

1 CATEGORY [Faculty Handbook](#) 4.600

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[Chapter 28B.40 RCW](#)

THE EVERGREEN STATE COLLEGE

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Definitions.

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ADMINISTRATIVE LAW

## PREAMBLE

Termination of a contract with a property-interest, or of a provisional contract before the end of the specified term, may be effected by the institution only for adequate cause. The burden of proof of adequate cause rests on the institution.

It is the policy of The Evergreen State College that no faculty member will be separated from the college because of his/her written or spoken views, according to the guarantees of the First Amendment to the Constitution of the United States. The Evergreen State College subscribes to the AAUP's Statement of Principles on Academic Freedom and Tenure as modified by the college's Faculty Reappointment Policy.

If termination takes the form of a dismissal for adequate cause, it shall be pursuant to the procedures specified in this policy. This policy allows the institution to terminate the contract of a faculty member for committing an action(s) which is grounds for termination even if the faculty member's action(s) can be ascribed to his/her medical condition. However, a faculty member's contract cannot be terminated **because** s/he has a particular medical condition. Termination of any faculty member's contract before the

end of the specified term for reasons of institutional financial exigency are not covered by this policy but by the college's Reduction in Force policy.

### **Adequate Cause for Initiating Hearings**

The trustees and their designees in consultation with the members of the college community are charged to monitor policies which define the role and mission of the college. Of necessity, actions which materially and substantially affect or impede the ability of the college to implement its role and mission concern them. When actions of a faculty member appear to interfere materially and substantially with the ability of the college to implement its role and mission, the provost, with authority designated to him or her from the president and the trustees, may initiate procedures which could result in the mid-contract termination of the faculty member or in some lesser sanction. It is not possible to make an exhaustive listing of the actions or conduct which might materially and substantially interfere with the implementation of the role and mission of the college. However, three classes of action or conduct are likely to trigger the hearing process of this policy. Those three classes are as follows:

1. Unfitness of the faculty member to continue in their professional capacities at the institution.
2. Serious violation of the published standards to which the college holds all faculty as set forth in the Faculty Handbook, as amended, and of the adopted institutional policies, particularly in the Social Contract, the Sexual Harassment Policy, the Human Subjects Review Policy, the Faculty Reappointment Policy, and the Affirmative Action Policy as it relates to discrimination. Such serious violations include but are not limited to the following:
  - a. presenting the work of another as one's own;
  - b. discriminating in the awarding of credit on the basis of race, sex, national origin, religious or political belief, marital status, sexual preference, age, handicap, or Vietnam-era or disabled veteran status (see Faculty Handbook, Social Contract 3.11, p. 3 and Affirmative Action Policy 3.300);
  - c. making or denying awards of credit or contents of evaluations of students or colleagues dependent on sexual favors (see Faculty Handbook, Sexual Harassment Policy 3.500, p. 1);
  - d. serious violation of the "informed consent" provisions of the Use of Human Subjects Policy (see Faculty Handbook, 7.700, p. 1);
  - e. flagrant neglect of one's responsibility to submit student evaluations in a timely manner.
3. Illegal acts which seriously affect the faculty member's ability to carry out his/her professional work at the institution or the college's ability to carry out its role and mission. The college shall not initiate termination procedures solely on the ground that a faculty member has been convicted, on or off campus, of violation of a state or federal law. However, violation by a member of the faculty of a criminal law is a legitimate interest of the college and shall constitute grounds for initiating termination procedures when the violation seriously affects the ability of the faculty member or college to carry out their professional or institutional roles.

In the case where college proceedings determine a violation by a member of the faculty, on or off the campus, the college may consider, but is not bound by, any action taken in regard to the conviction by city, state, or federal courts.

Neither dismissal nor lesser sanctions shall be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens. These rights exist in equal measure for each member of the faculty regardless of type of contract or acceptability of views or opinions advocated.

Cases involving discrimination, which includes sexual harassment, can be informally resolved according to

the options set out in the Affirmative Action and Sexual Harassment policies prior to the initial decision being issued. When the initial decision is forwarded to the faculty member, it will serve as the statement of charges and may contain recommended sanctions.

After consulting with the Special Assistant for Civil Rights and the complainant regarding sanctions, the Provost will notify the faculty member if any sanctions will be imposed, as well as the right to proceed directly to a formal hearing. **In discrimination cases, the conciliation processes set out below do not apply. If the faculty member chooses to waive the right to a hearing, then the initial decision and the sanctions determined by the Provost become the final decision of the college.**

## **Informal Procedures**

### **Conciliation**

When the provost has received information suggesting that a faculty member has taken action(s) which are grounds for termination, s/he shall attempt to reach a mutual settlement of the matter through discussion with the faculty member and other appropriate persons of either party's choosing who might contribute to a mutual settlement. If the origins of the alleged conduct appear to be due to developing physical or mental incapacibilities, appropriate responses involving sick leave or medical help should be explored.

If a mutual settlement cannot be reached, the provost may request an informal hearing (pursuant to RCW 34.05.431 (1)>, as amended or superseded) before a Faculty Inquiry Committee. If the provost wants such a hearing, the provost shall issue a Statement of Charges and simultaneously request the president to constitute a Faculty Inquiry Committee.

### **Statement of Charges**

Upon deciding that efforts at a mutual settlement between his/her office and the faculty member are futile, the provost may issue a Statement of Charges. This statement shall specify the standards of performance and conduct which the faculty member has allegedly violated, referencing the particular institutional rules involved, and shall describe the alleged violation. In accordance with RCW 34.05.434(3), if the matters cannot be stated in detail at the time the Statement of Charges is served, the initial Statement of Charges may be limited to a statement of the issues involved. Thereafter, upon request of the Faculty Inquiry Committee or the hearing officer, a more explicit and detailed Statement of Charges shall be furnished by the provost.

The Statement of Charges shall be served personally on the faculty member.

### **Faculty Inquiry Committee**

A pool of 25 regular faculty members who have taught at least three years at Evergreen shall be appointed by the Faculty Agenda Committee at the beginning of each academic year and confirmed by the faculty in its first meeting each academic year to serve on Faculty Inquiry Committees for that year. Upon the request of the provost, simultaneous with the issuance of a Statement of Charges, the president shall choose five members of this pool to serve on such a committee. (As far as is possible, a faculty member shall not be asked to serve on more than one such committee each year.) Members deeming themselves disqualified for bias or interest, shall remove themselves from the committee. Both the faculty member involved in the issue and the provost shall have a maximum of two challenges without stated cause and additional challenges for cause satisfactory to the Faculty Agenda Committee. It is the responsibility of the Chair of the Faculty to facilitate the constitution of a full committee in a reasonable time period which should not exceed eight working days from receipt of the request from the provost for a committee.

### **Informal Conciliation and Hearings**

The Faculty Inquiry Committee shall attempt to reach a satisfactory resolution of matter through

conciliation.

Serving a Statement of Charges initiates an informal "contested case," and procedures contained in the Higher Education Administrative Procedures Act governing contested cases shall apply (RCW 34.05.010, as amended). Statements, testimony, and all other evidence given at an informal proceeding shall be confidential and shall not be subject to discovery or released to anyone unless required by law or otherwise specified in this policy.

The Committee's work is intended to be an informal process and certainly not a trial. The Committee's procedures may well include direct discussion between the parties involved concerning the alleged misconduct.

Both the faculty member and the provost have the right to secure legal counsel, and their attorneys may accompany them to meetings with the Faculty Inquiry Committee. To enhance the prospects for informal resolution, the role of legal authorities, if present, may be limited to speaking to the party they represent in order to provide the party with advice. Should the faculty member obtain legal counsel, payment of all attorney fees shall be the responsibility of the faculty member.

If satisfactory resolution is attained through the Faculty Inquiry Committee's work, there shall be no further action. Such informal resolution may include the sanctions defined in this policy in the section titled "Findings of Fact, Decisions, and Sanctions" or other sanctions but no sanctions shall be part of the resolution unless they have been agreed to by the faculty member.

If the informal hearings result in a sanction, the provost's letter explaining the charge and the sanctions shall be included in the faculty member's portfolio. If the informal hearings result in a mutually satisfactory settlement without sanctions, a brief statement written by the Faculty Inquiry Committee describing the issue in dispute and the resolution achieved shall, at the request of the faculty member, be included in the faculty member's portfolio required by the college's reappointment policy.

### **Moving to a Formal Hearing**

(A formal hearing herein embraces a "formal hearing" and a "formal procedure" as denoted in RCW 34.05.010 as amended or superseded.)

Failing to reach a mutual settlement through informal conciliation procedures, the Faculty Inquiry Committee may recommend to the provost whether or not a formal hearing as set forth below should be undertaken. If its recommendation is that no formal hearing be held, and if the provost agrees with this recommendation, there shall be no further proceedings. If the recommendation is for a formal hearing, and if the provost agrees, the formal hearing procedures described below shall be instituted.

If the provost does not agree with the Faculty Inquiry Committee's recommendations, s/he shall discuss the recommendations with the Committee before deciding whether to hold a formal hearing.

If the provost decides to hold a formal hearing, s/he shall promptly notify the faculty member, the Faculty Inquiry Committee, and the president, and this notice shall be accompanied by a Statement of Charges.

### **Formal Hearing Procedures**

#### **Hearing by an Administrative Law Judge**

The hearing shall be conducted by and the case heard by an Administrative Law Judge. The college will pay all of the costs/fees of the Administrative Law Judge. It shall be the judge's decision whether the faculty member has violated the college's standards of performance and conduct as spelled out in the Faculty Handbook and the college's Policies and Procedures Manual such as to warrant sanction and his/her decision as to what sanction(s) to impose. The standard of judgement shall be that of clear and

convincing proof, except in case of discrimination, for which the standard of judgement shall be that of a preponderance of evidence. The severity of sanctions imposed shall correspond to the seriousness of the violation(s) established in the hearing.

Upon receiving a request for a formal hearing from the provost, the president shall promptly initiate procedures for the appointment of an administrative law judge to the case.

### **Notice of Hearing**

Notice of hearing with specific charges in writing shall be served by the administrative law judge on the faculty member and on the provost not less than 20 days prior to the hearing. Upon request, the faculty member shall be granted one additional ten-day period in which to prepare a defense. The notice shall include the following, paraphrased to comply with RCW 34.05.434(1), (2), (3), and (4):

1. A statement of the time, place and nature of the hearing.
2. A statement that the hearing is to be conducted under the authority of the Higher Educational Administrative Procedures Act of the State of Washington, Chapter 34.05 RCW the statuses pertaining to the powers and authority of The Evergreen State College, Chapter 28B.40 RCW and college rules Chapter 174-108 WAC under the jurisdiction of The Evergreen State College.
3. A statement of the specific standards of performance and conduct, as they appear in this policy and the Faculty Handbook which the faculty member has allegedly violated.
4. A short and plain statement of the matters asserted. If the matters cannot be stated in detail at the time the statement is served, the initial statement may be limited to a statement of the issues involved. Thereafter, upon request, a more definite and detailed statement shall be furnished.

### **Faculty Member Response to Hearing Notice**

The faculty member may waive his/her right to a formal hearing. The faculty member must waive this right in writing to the president no more than seven (7) working days after receipt of the Notice of Hearing.

After receipt of a waiver, the provost shall consult with the Faculty Inquiry Committee, if it has been convened, about the sanction(s) s/he intends to impose on the faculty member. The provost shall also consult with this committee in preparing a statement (1) which specifies the standards of performance and conduct which the faculty member has violated, referencing the particular institutional rules involved, (2) describes the violation(s), and (3) which reports the sanction(s) imposed. This statement shall be included in the faculty member's portfolio.

After receiving a waiver, in the case of a discrimination suit, the provost shall consult with the Special Assistant for Civil Rights and the complainant regarding recommended sanctions.

### **Conduct of the Formal Hearing**

1. The hearing officer may, with the consent of the parties concerned, hold joint pre-hearing meetings with the parties concerned in order to (1) clarify the issues, (2) effect stipulations of fact, (3) provide for the exchange of documentary or other information, and (4) achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious.
2. The hearing shall be conducted with as much dispatch as possible while recognizing the need for the parties to have sufficient opportunity to prepare their cases. Normally, hearings should not exceed 60 days after the faculty member has received a statement of charges.
3. The administrative law judge shall make the judgment as to whether the hearing should be open to the

public. (RCW 34.05.449 (5)).

4. During the proceedings all concerned parties shall have the right to have the advice and presence of any third party including legal counsel, at their own expense.

5. A hearing record, which shall be a verbatim typewritten transcript and/or a tape, and exhibits and other material used during the hearing shall be maintained at the expense of the institution.

6. The hearing officer shall grant postponements to enable either party to investigate evidence concerning which a valid claim of surprise is made. S/he may grant postponements whenever in his/her judgement such postponement will contribute to his/her deliberations.

7. The contesting parties in the case shall be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The administration of the institution and the administrative law judge shall, insofar as it is possible for it to do so, secure the cooperation of such witnesses and make available necessary documents and other evidence within its control.

8. The faculty member and representatives of the institution shall have the right to confront and cross-examine all witnesses. Subpoena power may be exercised in accordance with RCW 34.05.446.

9. The hearing officer shall not be bound by strict rules of legal evidence but shall consider all evidence that is of probative value in determining the issues involved. (RCW 34.05.452.)

10. Except for such simple announcements as may be required covering the time of the hearing and similar matters, public statements and publicity about the case by the faculty member, administrative officers of the institution, or other participants in the formal hearing shall be avoided as far as possible, until the proceedings have been completed.

### **Findings of Fact, Decisions, and Sanctions**

1. The burden of proof that the faculty member has violated the standards of performance as defined in this policy rests with the institution and shall be satisfied only by clear and convincing proof in the record considered as a whole, except in case of discrimination, for which a preponderance of evidence shall be sufficient.

2. The findings of fact and the decision shall be based solely on the hearing record.

3. Sanctions shall be imposed only for adequate cause as previously defined in this policy. Adequate cause must be related, directly and substantially, to the standards of performance and conduct for faculty members as defined in this policy. Sanctions or the threat thereof shall not be used to restrain faculty members in their exercise of academic freedom or other rights.

4. Sanctions available once adequate cause is established are limited to one of the following:

a. A written reprimand from the provost which specifies the standards of performance and conduct which the faculty member has violated and describes the violation shortly and plainly. This reprimand shall be included in the faculty member's portfolio required in the college's reappointment policy;

b. Suspension-- any one of, or combination of, the following: temporary release of a faculty member from assigned responsibilities, reduction of assigned responsibilities, reduction or suspension of pay, suspension of an opportunity for a salary increase, or denial or postponement of an opportunity for professional leave;

c. Dismissal-- termination, for adequate cause, of the employment of any faculty member before the end of the specified term of contract.

5. The president, provost, the faculty member, and the complainant (subject to limitations of the Family

Education Records and Privacy Act) shall be notified in writing of the hearing officer's findings of fact, conclusions as to the alleged violation, decision as to sanctions, and supporting arguments within 30 days of the completion of the hearing. The conclusions as to guilt and the decision as to sanctions, made by the hearing officer, are binding on the college. This report by the hearing officer concludes the proceedings.

6. If the hearing officer concludes that adequate cause for sanction has not been established, a statement clearing the faculty member will be prepared by the hearing officer, counter-signed by the provost, and given to the faculty member. It is the decision of the faculty member whether to include the hearing officer's record in his/her portfolio required by the college's reappointment policy.

If the hearing officer concludes that adequate cause for sanction has been established, the provost shall impose the sanctions decided upon by the hearing officer, and the hearing officer's findings shall be included in the faculty member's portfolio required by the college's reappointment policy.

7. In the event of dismissal for adequate cause, the hearing officer shall decide after consideration of the provost's suggestions, the dismissal date and compensation, if any, to be paid. The hearing officer's decisions are binding on the college and shall be implemented by the provost.

### **Summary Suspension**

Summary suspension is the responsibility of the provost. S/he shall suspend a faculty member or assign him/her to other duties in lieu of suspension **only if** immediate harm to the faculty member or others of the campus community is threatened. Salary shall continue during such summary suspensions.

The notice of summary suspension shall be served on the faculty member in person. The notice shall indicate that the suspension is for an emergency purpose in accordance with this policy. If personal service is not feasible, the notice shall be sent by certified mail. If there is to be a restriction on the faculty member's privilege to be present on college property, the faculty member shall be notified of that constraint, such notice not necessarily to be simultaneous with the notice of summary suspension.

In all such emergency cases, the faculty member is thereafter entitled to the same due process as provided in this policy. There shall be the same need for a Statement of Charges, with the provost as the initiating party. Informal procedures to be conducted by the Faculty Inquiry Committee (in cases not involving discrimination) shall begin within five working days from a summary suspension. The faculty member has the right to waive the informal procedures and to request a formal hearing.