

## **7.14 DISCIPLINARY POLICIES AND PROCEDURES**

### **7.14.1 General Policy**

The University, acting pursuant to constitutional and statutory authority, has the right to impose disciplinary sanctions upon a faculty member. Such sanctions may only be imposed, however, for adequate cause and in accordance with established procedures, all as set forth more fully in these sections. Sanctions will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens.

The dismissal of a faculty member or imposition of a major sanction on a faculty member is not purely an administrative decision. Rather, as set forth in the procedures below, it is an action that results from due deliberation of colleagues in the academic community.

In the formal proceedings provided below in which dismissal or other major sanction is sought, the burden of establishing adequate cause for applying such sanction will be on the academic administrator.

University personnel involved in a disciplinary proceeding are to maintain the confidentiality of information regarding the conduct of the faculty member who is the subject of the proceeding and related matters, disclosing such information to others only on a need-to-know basis.

### **7.14.2 Dismissal**

Adequate cause for dismissal of a tenured faculty member or for dismissal of a faculty member during the term of an appointment must relate, directly and substantially, to the fitness of the faculty member to function in the role of teacher, researcher, and colleague in an academic community. Adequate cause for dismissal might include serious professional or personal misconduct; serious failure, without adequate justification and whether due to incompetence or refusal, to perform academic duties in accordance with generally accepted norms; conviction of a crime; serious violations of other law or of University policy; etc.

If the basis for seeking dismissal or suspension involves conduct by the faculty member that is known to the department chair or dean and that has occurred over a period of time, there should normally be a record of progressive discipline evidencing an attempt to allow correction of such conduct prior to the initiation of proceedings under this section.

### **7.14.2.1 Preliminary Procedures**

The decision to initiate dismissal proceedings may be made by the faculty member's department chair or dean, with the concurrence of the Provost, or by the Provost. Prior to initiating formal proceedings, however, the department chair or dean shall confer with the faculty member in an effort to achieve, by means of thorough discussions, a mutually agreeable resolution. If such a resolution is achieved, no further proceedings under this policy will occur and no documents relating to dismissal will be retained in the faculty member's personnel records. If these efforts are not successful, a brief, nonprejudicial statement reciting that these informal measures were utilized but were not successful will be placed by the Provost in the disciplinary file.

Formal dismissal proceedings are initiated by furnishing to the faculty member a statement of the charges. The charges must relate to one or more of the recognized grounds for dismissal (as set forth in the discussion of "adequate cause" above) and must be framed with reasonable particularity, indicating in at least general terms the factual basis for the charges. The statement must further inform the faculty member that dismissal is being sought and that the faculty member is entitled to a hearing on the charges, if he/she desires and if the matter proceeds to that stage. If any interim suspension is being imposed, the faculty member should be so informed in the statement. The statement is to be prepared by the department chair or the dean and approved by the Provost, and it should be served upon the faculty member by personal delivery or by registered mail.

The Provost next appoints one or more faculty members to serve as preliminary action officers (PAOs), providing a copy of the statement of charges with the written notice of appointment. The PAO is to carry out the following duties:

a. Conduct a preliminary investigation of the charges, meeting with the academic administrator bringing the charges and with the faculty member to obtain further information. The PAO may interview other individuals and review documents as deemed helpful in gathering the facts relating to the charges. A written report is then made by the PAO to the Provost setting forth a summary of findings concerning the factual basis for the charges and a recommendation for action to be taken. Two actions may be recommended:

1. Referral of the case for a formal hearing. Such a recommendation is appropriate where, based on credible information acquired during the preliminary investigation and though there may be some doubt, the PAO believes that there is a reasonable basis for concluding that the charges are true and that they constitute adequate cause to warrant consideration of dismissal or other major sanction.

2. Dismissal of the case. Such a recommendation is appropriate in the absence of a "reasonable basis" conclusion, as stated above.

b. The PAO may attempt to facilitate resolution of the charges through informal consultation with the principal parties, mediation, or other voluntary means. If the principal parties agree to a settlement in this manner, the PAO summarizes the settlement in writing and informs the Provost. The case is then deemed closed.

Upon receipt of the PAO report, the Provost may accept and act on the recommendation (dismissing the charges or referring them for a formal hearing, as recommended), or the Provost may decide not to concur with the recommendation and dismiss the charges or refer them for a hearing as the Provost deems appropriate.

Referral of a case for dismissal proceedings may also be made pursuant to special University procedures established to address claims of discrimination, violation of ethical standards in research and other scholarly activity, and violation of conflict of interest policies.

#### **7.14.2.2 Pre-Hearing Procedures**

If a case is to be referred for formal proceedings, the faculty member is so informed and asked to respond to the charges. The faculty member should, in a written response to the Provost, answer the charges and indicate whether a hearing is desired. A statement that a hearing is not desired will be regarded as a waiver of any right to a hearing, and the matter will proceed without a hearing. The faculty member's response should be timely and in any event should be provided within two weeks after receipt of the statement of the charges. The alternative responses of the faculty member and a summary of subsequent proceedings in each case are as follows:

a. The faculty member may admit or acknowledge the truthfulness of the charges and waive a hearing. The decision regarding dismissal will then be made by the Provost. The faculty member and the department chair or dean may, prior to such decision, confer with the Provost and/or submit to the Provost materials that they respectively contend should bear upon the Provost's decision. A decision by the Provost to dismiss the faculty member may be appealed by the faculty member, within forty-five days, to the President, whose decision will be final.

b. The faculty member may deny the charges and/or deny that the charges support a finding of adequate cause but waive a hearing. The decision regarding dismissal will be made by the Provost, with right of appeal to the President, in accordance with the general procedure outlined in a. above.

c. The faculty member may deny the charges and/or deny that the charges support a finding of adequate cause and request a hearing. A hearing will then be held before a faculty panel constituted as set forth below.

d. A failure to respond will be regarded as a general denial and a request for a hearing.

### **7.14.2.3 Hearing Procedures**

If the faculty member has requested a hearing in a dismissal proceeding, the following procedures will be followed:

a. The Provost will appoint an individual to act as proponent of the charges. The proponent is to be responsible for developing and presenting the case against the faculty member and handling other appropriate duties. The proponent may be any University employee, including the department chair or dean, who is not an attorney.

b. The faculty member may select an advisor to assist and represent the faculty member during the dismissal proceedings. The advisor may be any University employee who is not an attorney. The faculty member may also consult with an attorney. Such attorney may be present during the dismissal proceedings but may not participate as a representative of the faculty member before the faculty panel. An attorney who disrupts the flow of the proceedings may be excluded by the Hearing Panel.

c. The dismissal hearing will be conducted by a specially appointed Hearing Panel. The Hearing Panel will include five faculty members selected from among the members, regular or alternate, of the Faculty Appeals Committee (FAC). FAC members with bona fide reason for disqualification, such as bias, conflict of interest, or other cause, may remove themselves from the list of potential Hearing Panel members. A roster of remaining regular FAC members will be presented by the FAC chair to the faculty member and the proponent, each of whom may request the chair to remove any FAC member for cause and each of whom may strike up to two FAC members from the list without stated cause. The FAC chair will then select, by lot, five faculty from the remaining FAC members, and these five faculty will constitute the Hearing Panel. Alternate FAC members may be included on the roster if necessary to allow the operation of the foregoing selection process. The Hearing Panel will elect a chair from its members.

d. Notice of the date set for the hearing must be given to the parties at least twenty-one (21) days in advance of the hearing date.

e. The hearing will ordinarily be private, except that the faculty member will have the right, upon request to the Hearing Panel chair and absent compelling considerations involving privacy interests of other parties, to a hearing that is open to the public (barring only witnesses during periods when they are not testifying).

f. The burden of proof is on the party bringing the charges against the faculty member. This burden will be satisfied only by clear and convincing proof of the charges in the record of evidence, considered as a whole, presented to and received by the Hearing Panel. "Clear and convincing proof" refers to evidence of sufficient quantity and quality as would show that the truth of the charges is highly probable.

g. In the event the faculty member, after requesting a hearing, does not participate in the hearing process or withdraws in writing the request for a hearing, the Hearing Panel will nevertheless be convened without the faculty member to make findings of fact and provide recommendations regarding dismissal, if necessary or appropriate under the circumstances. The Panel may solicit and receive evidence from any source to assist it in developing its findings and recommendations.

h. The Hearing Panel will submit its findings and recommendations in a written report through the Provost to the President. It may conclude that adequate cause for dismissal does not exist, in which case it may recommend no sanctions or a sanction less than dismissal. The Provost will indicate concurrence or nonconcurrence with the report.

i. The final decision will be made by the President. If the President does not accept the recommendations of the Hearing Panel, the President will, within twenty-five (25) working days after receipt of the report, convey in writing to the Hearing Panel his/her position and allow the Hearing Panel an opportunity to respond in writing within five (5) working days. After receipt of any further report from the Hearing Panel, the President will render a final decision. No further right of appeal within the University, such as by use of the faculty General Grievance Procedure (see Appendix E) will be available to the faculty member.

j. The President will notify the faculty member of the decision in writing, to be hand delivered or sent by registered mail. Copies are to be sent to the Hearing Panel, the academic administrators involved in the case, the proponent, and the adviser. These parties will also be provided a copy of the Hearing Panel's report and any written communications between the President and the Panel. If the President decides on dismissal of the faculty member, an effective date (which may be the date of the notice) must be stated.

k. Except as modified above, the additional procedures set forth in Appendix E, section D.1-5, relating to grievance hearings by the Faculty Appeals Committee, are also to be used for dismissal proceedings, as appropriate and as adapted (e.g., the charged party generally relates to the "petitioner" in Appendix E).

All documents related to a disciplinary proceeding, from the preliminary action phase through a hearing, if any, become part of a disciplinary file that is maintained, after the conclusion of the proceeding, in the Provost's office.

#### **7.14.2.4 Interim Suspension**

A faculty member may be suspended or assigned to other duties in lieu of suspension pending the final outcome of the dismissal proceedings if, and only if, such action is deemed necessary to protect the faculty member, other members of the University community, or institutional property or processes from immediate harm. A decision regarding such interim suspension is to be made by the Provost. The faculty member may appeal an interim suspension to the President, whose decision will be final. Ordinarily, salary will continue during such an interim suspension.

### **7.14.3 Sanctions Other Than Dismissal**

#### **7.14.3.1 Other Major Sanctions**

If a department chair or dean believes that the conduct of a faculty member may not justify dismissal under the standards set forth above but is sufficiently grave to warrant suspension from employment without pay for a period of one month or more or reduction in salary, formal proceedings may be instituted seeking such action. The procedures set forth in Section 7.14.2 will govern such a proceeding. In the statement of charges, the faculty member should be informed that the proceedings may result in major sanctions, including dismissal.

#### **7.14.3.2 Minor Sanctions**

Disciplinary action involving sanctions less severe than dismissal, suspension without pay for one month or more, or reduction in salary may also be imposed. Such minor sanctions may include, without limitation, an oral warning, a letter of reprimand, a revised work assignment, a suspension with pay or a suspension without pay for less than one month, the denial of a merit salary increase, etc. Such actions are within the authority of a department chair and/or dean, except that any suspension may only be imposed by the Provost.

Imposition of a minor disciplinary sanction will occur only for adequate cause, which may include any conduct or performance problem adversely affecting the fitness of the faculty member to function in the role of teacher, researcher, or colleague in an academic community, such as professional or personal misconduct; failure, without adequate justification and whether

due to incompetence or refusal, to perform academic duties in accordance with generally accepted norms; conviction of a crime; violations of other law or of University policy; etc.

Procedurally, the faculty member will be given notice of the charge and the intent of the administrator to impose a minor sanction and thereafter will be allowed an opportunity to present a defense to the administrator. The administrator will conduct an investigation and review of the relevant circumstances as may be necessary to determine the validity and assess the seriousness of the charge.

In any instance in which a minor sanction is imposed under these procedures, the faculty member shall have full access to those avenues of appeal and redress afforded by the faculty General Grievance Procedure set forth in Appendix E.

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