

Appendix J

Suspension and Termination of Faculty Members

I. Introduction

From time to time, a faculty member may be accused of conduct that may warrant suspension or termination. This Appendix addresses such situations. Throughout any and all proceedings addressed herein, the charged faculty member may be represented by an advocate(s). The advocate(s) may be an attorney and may be a member of the faculty or of the administration of the university.

II. Action Within an Academic Unit

A. Introduction

When reason arises to question whether a faculty member possessing either tenure or an unexpired term of appointment has engaged in conduct that may warrant suspension or termination, the appropriate academic unit head is expected to make inquiry as to the circumstances involving such alleged conduct. The academic unit head may undertake an informal investigation; in any event, he or she ordinarily shall discuss the matter with the faculty member and seek to arrive at a mutually agreeable resolution, subject to subsections II.B. and II.C. below. If no such discussion is feasible, by virtue of subsection II.C. below, or if an agreement with the faculty member is not reached, the academic unit head shall consult with the Provost regarding further action.

B. Appointment of an Alternate for Academic Unit Head

Notwithstanding the foregoing, if the academic unit head is himself or herself an injured party in the matter at issue, he or she shall so advise the Provost, who shall appoint another academic officer to undertake any informal investigation, to discuss the matter with the faculty member, and/or to seek a mutually agreeable resolution.

C. Confidentiality of Complaint and Complainant's Identity

During this initial phase of the investigation and to the extent feasible, the academic unit head (or the alternate officer appointed by the Provost) shall not discuss the matter with the accused faculty member if such discussion may jeopardize the safety or position of another faculty member (the "complainant") who has requested that his or her complaint or statement be kept confidential (as, for example, in the case of a junior faculty member who accuses a senior member of sexual harassment, on condition that his or her accusation be kept confidential.)

III. Pre-hearing Procedures

A. Appointment and Recommendations of Ad Hoc Committee

If, following consultation by the academic unit head or an alternate designee with the Provost, in accordance with section II.A., the Provost determines that further action should be taken, an ad hoc committee may be appointed by the Provost from among the members of the University Faculty Council to make informal inquiry into the situation in order to reach an agreement among the affected parties, if

possible, or alternatively to determine whether formal proceedings should be initiated. Within 60 days of the referral of the matter to the ad hoc committee, the committee shall recommend to the Provost that the matter be dropped, that formal proceedings be initiated, or that adjustments be made that would resolve the matter. Within 30 days of receipt of a recommendation, the Provost will communicate to the parties his or her response to the recommendation.

B. Grounds for Suspension or Termination

If the Provost decides to initiate formal proceedings, he or she shall prepare a statement specifying the grounds for suspension or termination. For a faculty member's conduct to be deemed to constitute adequate cause for suspension or termination, such conduct shall be related, directly and substantially, to his or her fitness in his or her professional capacity as a teacher or researcher. Suspension or termination shall not be used to restrain a faculty member in the exercise of academic freedom.

C. Notice of Initiation of Formal Proceedings; Settlement Efforts

Formal proceedings shall be initiated by a written notice from the Provost to the faculty member specifying the grounds for the imposition of discipline and the proposed sanction. By this notice the Provost shall inform the faculty member that a hearing will be conducted as set forth below, unless the faculty member and the Provost are able to work out a satisfactory settlement, which solution may range from dismissal of the charge of wrongful conduct to separation of the faculty member from the university. In working out a settlement, the Provost shall consider the interests of the charged faculty member, the complainant (if any), the charged faculty member's academic unit head, and the university.

In addition to written notice provided to the faculty member, the Provost shall within 10 days of such notice inform the Chair of the University Faculty Council (UFC) in a written statement setting forth the charges against the faculty member, and requesting that a disciplinary hearing committee (DHC) be constituted within 30 days to review the facts and circumstances at issue and to recommend appropriate sanction(s), if any. The charged faculty member and the complainant (if any), shall be given a copy of the statement sent to the UFC Chair. However, so long as settlement negotiations are in process between the Provost and the faculty member, such notice need not be sent to the Chair or the complainant.

IV. The Disciplinary Hearing Committee

A. Composition of a Proposed Disciplinary Hearing Committee

All faculty members holding ranks defined in this Faculty Handbook as Category I and Category II ranks shall be members of the pool of potential members of disciplinary hearing committees (DHC). The officers of the UFC shall order by random selection potential DHC members from the general pool of eligible faculty. The UFC Chair, or his or her designee, shall contact pool members in the order selected. Each such potential DHC member who is contacted shall be told on condition of confidentiality the identities of the parties involved in the matter, and shall be informed of the general nature of the matter and the proposed sanction.

Each potential DHC member so contacted shall be afforded an opportunity to request excusal from service on the committee. If the UFC Chair, or his or her designee, assents, the faculty member shall be excused. If the UFC Chair, or his or her designee, does not assent, the faculty member shall not be excused. However, the faculty member's request to be excused shall be disclosed to the parties at the meeting held in accordance with the following paragraph, (i.e., section IV.B.). The UFC Chair, or his or

her designee, shall continue the selection process until 12 potential DHC members have been identified. Any potential DHC member who is a party or a witness to the conduct or event giving rise to the charge of wrongdoing shall be dismissed by the Chair.

B. Selection of Disciplinary Hearing Committee Faculty Members

The UFC Chair, or his or her designee, shall call and preside over a meeting of the parties and their advocates, if any, to select from the 12 previously selected potential DHC members the five who will serve. Each of the 12 individuals shall be called separately, in random order, to appear before the parties and their advocates. Each individual may be questioned by the parties or their advocates, as well as by the Chair, to determine bias, partiality, and/or knowledge regarding the matter. The UFC Chair, or his or her designee, may rule questions out of order if such questions are deemed irrelevant to the foregoing issues of bias, partiality, and/or knowledge. Each party shall be permitted three peremptory challenges; a challenged individual shall be required to withdraw. Once five acceptable faculty members are selected, the process shall end. However, no more than two faculty members selected for the DHC shall hold their primary appointments in the same college, school, or institute. Moreover, at least three of the faculty members shall be tenured.

C. Selection of Administration Members of the Disciplinary Hearing Committee

The Provost shall appoint to the DHC two members of administrative rank, neither of whom may be an individual who is a party to, or a witness regarding, the conduct or event giving rise to the charge of wrongdoing. One administrative member shall be an individual who is employed in the college, school, or institute, in which the charged faculty member holds her or his primary appointment. The other administrative member shall be an individual who is employed in a college or school other than the one in which the charged faculty member holds his or her primary appointment. In the event no administrator from the college or school, in which the charged faculty member holds his or her primary appointment is available, an administrator from another college or school shall be appointed.

The charged faculty member shall have the right to exercise one peremptory challenge to these administrative appointees. If such a challenge is made, the Provost shall appoint another administrative member, in accordance with the above guidelines.

D. Chair of the Disciplinary Hearing Committee

The DHC shall nominate a Chair from among its membership. Upon receipt of the nomination the Provost either shall appoint the individual nominated or shall request the committee to submit another nominee. The Provost shall state in writing the reason(s) for such request.

V. The Hearing

A. The Parties

The university shall be deemed the enforcing party in a disciplinary proceeding, and shall be represented by the General Counsel or a designee of the General Counsel. The General Counsel, or his or her designee, shall present the university's case, including the presentation of witnesses and evidence, and shall conduct the cross-examination of the charged party's witnesses. The charged faculty member shall be deemed the other party.

B. Burden of Proof

The university shall have the burden of proving by a preponderance of the evidence the validity of the charge leveled against the charged faculty member.

C. Establishing a Schedule and Procedural Ground Rules

In consultation with the parties, the Chair of the DHC shall establish a date and time when the hearing will be held. The Chair shall convene a meeting of the committee and the parties for the purposes of: (i) establishing procedures to be followed during the hearing; (ii) specifying the issues; (iii) securing a jointly-agreed stipulation of facts, if possible; (iv) securing a jointly-agreed statement of the issue(s), if possible; and (v) achieving other objectives that will make the hearing fair and expeditious.

D. Submission of Pre-Hearing Statements

The DHC may request the submission of written statements and/or other documents from the parties prior to the hearing.

E. Conduct of the Hearing

At the hearing the charged faculty member or his or her advocate(s) and the General Counsel, or his or her designee, shall be afforded an opportunity to make an opening statement as to the facts and circumstances surrounding the charged wrongdoing. Each party, as well as the committee itself, may present documents and call individuals to testify. Each party may question the other's witnesses. However, at its sole discretion the committee may require that such questioning be done through the Chair. Committee members may question participants directly.

The DHC is not bound by legal rules of evidence and may consider any evidence it deems relevant to the issues in dispute. Committee members may solicit and/or receive statements, and/or obtain and review documents or other information in addition to that which is submitted by the parties, provided that such information is disclosed to the parties and the parties are given at least seven days to respond to such information.

F. Waiver of Right to Participate in the Hearing

The charged faculty member may waive his or her right to participate in the hearing. Refusal to participate shall constitute a waiver of his or her right to participate. Even if the charged party waives the right to participate in the hearing, he or she may submit to the committee a written denial of the charge; an admission to the charge; an assertion that the charge does not constitute adequate cause for discipline; a suggested alternative to the proposed sanction; and/or relevant documentation in support of his or her position(s).

G. Committee Conclusions

Within a reasonable time after the hearing, the DHC shall consider all the evidence presented to it, including written submissions received in accordance with the foregoing provisions. Within 30 days of the close of the hearing, the committee shall submit a written report to the Provost summarizing its activities, setting forth its findings of fact and conclusion(s) as to the charge(s), and providing its recommendation(s), if any, regarding sanctions. A copy of the report simultaneously shall be provided to

the charged faculty member, the complainant (if any), and to the university General Counsel, or his or her designee.

VI. Action by the Provost

The Provost may request a meeting with the DHC to discuss its report. This meeting may be held outside the presence of the parties and/or their advocates. Whether or not such a meeting is held, the Provost shall consider the committee's report, as well as such additional documents and statements as he or she deems relevant, provided the charged party and the university General Counsel, or his or her designee, are apprised of such additional documents and statements, and provided further that each is afforded an opportunity to submit to the Provost relevant supplementary and/or rebuttal material regarding these additional documents and statements. The Provost then shall determine the disposition of the matter. His or her decision, with the reason(s) for it set forth, shall be in writing and shall be communicated to the parties, the complainant, the DHC, the UFC, and appropriate officers of the university within six weeks after the committee submitted its report.

VII. Appeal of the Provost's Decision

The charged faculty member may appeal the Provost's decision on the merits and/or the sanction imposed within seven days of receipt of the decision, not counting the day of receipt, to the President. The President shall render a final decision in the matter within six weeks after the date of the appeal.

VIII. General Rules

A. Expenses

The university shall not be responsible for any expenses incurred by a charged faculty member.

B. Time Limitations

The time limitations established herein are binding on all parties and shall not be altered without the written consent of all parties.

C. Confidentiality and Privacy

Hearings shall be closed to the public. All investigations by the academic unit head, deliberations of the DHC, activities of the university General Counsel, and determinations by the Provost shall be confidential and these individuals are expected to maintain and protect the confidentiality of their activities and decisions. However, if the charged faculty member chooses to make public the existence of the hearing and/or its disposition, the confidentiality requirement shall be deemed to be waived for all parties. In any event, the Provost may make public a sanitized report (i.e., a report excluding identifying details, such as names), as to the disposition of a charge of wrongdoing.

D. Recording of Hearing

An audio recording of all hearing sessions shall be made and a copy thereof shall be provided at no expense to a charged faculty member if he or she so requests. The charged faculty member may at his or her own expense arrange for the presence of a court reporter to record and transcribe the DHC proceedings.

E. Stay of Other Proceedings

All administrative claims or grievances arising out of the same facts and circumstances that form the basis for a disciplinary proceeding shall be held in abeyance until the conclusion of that proceeding.

F. Indemnification

A DHC member acting within the scope of his or duties shall be indemnified if any lawsuit is brought against the member relating to his or her service on the committee.

IX. Status of Charged Faculty Member Pending Resolution of Disciplinary Proceeding

While the disciplinary process is being pursued, efforts shall be made to minimize any harm to the charged faculty member, to his or her reputation, and to the university. It is expected that the process will be concluded expeditiously, while at the time assuring the faculty member a full and fair hearing. Pending the final outcome of the hearing, the faculty member shall continue to perform assigned duties unless the faculty member or others are at risk of harm¹ by such continuation, in which case the faculty member may be suspended with pay or assigned to other duties. The Provost shall determine, after consultation with the Chair of the UFC, whether the faculty member should continue in assigned duties or whether he or she should be suspended with pay or assigned other duties. The decision to suspend with pay is not subject to grievance or appeal.

¹ Harm includes both physical and non-physical manifestations or effects.