

**MICHIGAN STATE
UNIVERSITY**

September 6, 2019

MEMORANDUM

To: Committee on Academic Affairs

From: June Pierce Youatt
Executive Vice President and Provost

Subject: Revisions to Policy 03-17-09 (Dismissal of Tenured Faculty)

APPROVED

SEPTEMBER 6, 2019

**BOARD OF TRUSTEES
MICHIGAN STATE UNIVERSITY**

RECOMMENDATION

The Trustee Committee on Academic Affairs recommends that the Board of Trustees approve revisions to Policy 03-17-09 (Dismissal of Tenured Faculty).

RESOLUTION

BE IT RESOLVED, that the Board of Trustees of Michigan State University hereby approves revisions to Policy 03-17-09 (Dismissal of Tenured Faculty), as shown in Attachment A.

BACKGROUND

During the summer of 2018, the Board of Trustees made significant alterations to Policy 03-17-09 (Dismissal of Tenured Faculty) without faculty input. The Faculty Senate and University Council voiced concerns to the Board of Trustees in Fall of 2018 regarding the changes.



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The faculty is concerned that the changes to the Policy were made without meaningful faculty consultation and are not an exemplar of shared governance; the determination to withhold pay from a faculty member should not be made at the sole discretion of the President without consultation with others; and the changes might unduly encourage faculty at risk of dismissal to retire without the opportunity for due process. In addition, a review of other policies across the Big Ten revealed that the changed policy resulted in MSU being the sole outlier in allowing unpaid suspension without specific criteria having to be met.

In response to the Board of Trustee's changes, a working group of members from the University Committee on Faculty Affairs and the University Committee on Faculty Tenure initiated the proposed changes to the Policy shown in Attachment A. These changes have been fully endorsed through faculty governance. The faculty acknowledged that there can be situations where the University needs to

move swiftly to address issues that cannot be addressed in a timely manner. As such, the faculty recommend the following changes to the Policy:

1. A standard of "egregious conduct" for denial of pay decisions made during the Dismissal for Cause proceedings, and a broad definition of such.
2. A process for creation of a three-person review panel and the procedures whereby the panel makes the decision as to whether or not the individual should be relieved of duties without pay.
3. A process by which the President makes a recommendation to the review panel as to whether or not the individual at risk of dismissal for cause should be relieved of duties without pay.

Upon a careful review of the policy, the revisions were initiated by the University Committee on Faculty Affairs and the University Committee on Faculty Tenure and approved by the Faculty Senate at its meeting on April 16, 2019.

cc: Board of Trustees, S. Stanley, K. Wilbur, N. Barr, B. Quinn, M. Zeig, G. Hoppenstand, T. Curry

DISCIPLINE AND DISMISSAL OF TENURED FACULTY FOR CAUSE 03-17-09

Preamble

The University's commitment "to promote the welfare of mankind through teaching, research, and public service" is furthered by the intellectual integrity and professional honesty of faculty members mindful of their rights and responsibilities. Essential to sustaining an environment of mutual trust and respect is the need for impartial investigation of alleged violations of policies related to faculty conduct; due process; and, when necessary, disciplinary action up to and including dismissal for cause. Discipline, dismissal, or the threat of either action, may not be used to restrain faculty members in their exercise of academic freedom.

I. CONFIDENTIALITY

All proceedings and records with regard to disciplinary action or dismissal for cause proceedings shall be kept confidential to the degree permitted by the law. The Board of Trustees will decide on a case by case basis whether action taken by the Board pursuant to the dismissal portion of this Policy will identify the affected faculty member by name.

II. MAILING OF NOTICES UNDER THIS POLICY

In matters involving minor discipline, notices required by this Policy will be sent to the faculty member by email to the faculty member's msu.edu account, with a courtesy copy sent to the faculty member by first class mail to the address of record. Faculty member are responsible to regularly review the msu.edu email account for departmental and other University communications.

In matters involving serious discipline or dismissal, the faculty member shall be sent the notices required by this Policy by certified mail to his/her address of record filed with the University. However, if delivery by certified mail is not possible or if the faculty member refuses or waives delivery of certified mail, mailing notices to the faculty member at his/her address of record by first class mail will be considered sufficient. An email will also be sent to the faculty member's University email address notifying him/her of the fact that a notice required by this Policy has been sent by one of the methods described above.

III. PARTICIPATION OF ADVISORS, OBSERVERS, OR COUNSEL

Faculty members are entitled to bring an advisor or observer to any meeting regarding disciplinary action referenced in this policy. The advisor or observer must be a member of the University community (faculty, staff, or administrator), including *emeriti*. The advisor or observer may be present during the meeting, but will have no voice or formal role in the meeting. Unless otherwise specified in this Policy, faculty members are entitled to bring an advisor of their choice, including legal counsel, to any meeting or hearing conducted during dismissal for cause proceedings. During those proceedings, the advisor has voice and is granted full participation.

IV. GROUNDS FOR DISCIPLINE AND DISMISSAL¹

A faculty member² may be disciplined, or dismissed, for cause on grounds including but not limited to (1) intellectual dishonesty; (2) acts of discrimination, including harassment, prohibited by law or University policy; (3) acts of moral turpitude substantially related to the fitness of faculty members to engage in teaching, research, service/outreach and/or administration; (4) theft or misuse of University property; (5) incompetence;³ (6) refusal to perform reasonable assigned duties; (7) use of professional authority to exploit others; (8) violation of University policy substantially related to performance of faculty responsibilities; and (9) violation of law(s) substantially related to the fitness of faculty members to engage in teaching, research, service/outreach, and/or administration.⁴

V. TYPES OF DISCIPLINE

Disciplinary action is normally iterative and falls into two general categories: minor discipline and serious discipline. *Minor discipline* includes but is not limited to: verbal reprimand, written reprimand, mandatory training, foregoing salary increase, reassignment of duties, restitution, monitoring of behavior and performance, and/or reassignment of duties. *Serious discipline* includes suspension with or without pay or temporary or permanent reduction in appointment. A full suspension without pay may not exceed six months. In egregious cases of wrongdoing, or where attempts at discipline have not successfully remedied performance concerns, a faculty member may be *Dismissed* for cause.

In matters where the Dean⁵ and the Office of the Associate Provost⁶ concur that a faculty member's continued performance of faculty duties poses a significant risk of harm to persons or property, the faculty member may be relieved of duties and suspended with pay during the pendency of the review panel process.

¹ Limitations of this Policy: (1) A faculty member who fails to return to the University within a reasonable time after a term break, sabbatical, or other leave of absence shall forfeit rights to further employment and shall be considered to have resigned; in such cases, the faculty Leaves of Absence policy shall be followed. (2) A tenure-system faculty member's material misrepresentation made to the University in obtaining employment shall be addressed by the Policy and Procedure for Rescission.

² This Policy also applies to the discipline and dismissal of untenured faculty appointed in the tenure system prior to the expiration of the term of appointment.

³ The term "incompetence" refers to professional incompetence, as defined in the "Interpretation of the Term Incompetence" by the University Committee on Faculty Tenure.

⁴ This would include violations of criminal or civil (e.g., anti-harassment or discrimination) laws that have a nexus with the faculty member's professional responsibilities.

⁵ For purposes of this Policy, "Dean" refers to separately reporting Directors as well.

⁶ For purposes of this Policy, "Associate Provost" refers to the Associate Provost and Associate Vice President for Academic Human Resources.

In all faculty discipline, the University bears the burden of proof that adequate cause exists; it will be satisfied only by clear and convincing evidence unless a different standard is required by law.⁷ The faculty member's record should be considered as a whole when contemplating imposition of disciplinary action.

In cases of both minor and serious discipline (1) faculty members retain the right to grieve disciplinary actions that have been implemented under the regular terms of the Faculty Grievance Procedure; and (2) the faculty member may submit a letter of exception to the imposition of discipline, disputing the grounds for the unit administrator's decision, to be included in the faculty member's personnel file.

VI. PROCESS TO INITIATE MINOR OR SERIOUS DISCIPLINE

A. MINOR DISCIPLINE

Where the unit administrator seeks to impose minor disciplinary action, the unit administrator shall first meet with the faculty member to discuss the administrator's concern and the potential for discipline. The administrator will notify the faculty member during that meeting of the right and opportunity to request a consultation with the department/school faculty advisory committee, its chair, or the chair of the University Committee on Faculty Affairs (UCFA) personnel subcommittee⁸ before the administrator proceeds with any disciplinary action. The purpose of such informal consultation is to reconcile disputes early and informally, when that is appropriate, by clarifying the issues involved, resolving misunderstandings, considering alternatives, and noting applicable bylaws.

The unit administrator and faculty member, if requested by the faculty member, will consult with the department/school faculty advisory committee, its chair, or with the chair of the UCFA personnel subcommittee promptly to discuss the administrator's concern and the potential for discipline.

Should the unit administrator still wish to proceed with disciplinary action after that consultation, the administrator must consult with the Dean and the Office of the Associate Provost to discuss the proposed disciplinary action. If the proposed discipline is authorized by those offices, the unit administrator shall provide the faculty member with written notice of the cause for disciplinary action in sufficient detail for the faculty member to address the specifics of the charges, and an opportunity to respond in writing within seven (7) days⁹ of receipt of the unit administrator's written notice, prior to the imposition of any disciplinary action. The written response, if any, will be provided to the Dean and the Office of the Associate Provost for further comment.

⁷ "Clear and convincing" means the standard of proof that is beyond a mere preponderance (i.e., more probable than not) but below that of "beyond a reasonable doubt." The "clear and convincing" standard would be met when those making the determination have a firm belief that the facts in issue have been established.

⁸ If the chair is not tenured, the chair may request that a tenured member of the personnel subcommittee fill this role.

⁹ Unless otherwise noted, references to "days" in this Policy refer to calendar days.

The unit administrator, after considering the written response and further comments, if any, shall make a decision regarding the disciplinary action and notify the faculty member in writing. The discipline will then take effect.

B. SERIOUS DISCIPLINE

Where the unit administrator seeks to impose serious disciplinary action, the unit administrator shall first meet with the faculty member to discuss the administrator's concern and the potential for discipline. Because early and informal resolution of serious disciplinary issues is in the interest of the University, the unit, and the faculty member, the unit administrator and faculty member are encouraged to meet with the chair of the UCFA¹⁰ to discuss the matter.

If that meeting does not resolve the issue, the unit administrator shall consult with the Dean and the Office of the Associate Provost to discuss the proposed disciplinary action. If the proposed discipline is authorized by those offices, the unit administrator shall provide the faculty member with written notice of the proposed disciplinary action in sufficient detail for the faculty member to address the specifics of the charges.

The faculty member shall have seven (7) days after receiving the notice of proposed disciplinary action to (1) file a written statement with the unit administrator regarding the proposed discipline,¹¹ or (2) request a meeting with a disciplinary review panel of the UCFA. A request to meet with the review panel should be made to the unit administrator, who will forward it promptly to the Chair of the UCFA. If the faculty member does not submit a written response or request a meeting with the disciplinary review panel within the seven-day period, the discipline will take effect.

1. Review Panel Selection and Composition

The Chair of the UCFA, in consultation with the Office of the Provost, shall annually establish a three-person review panel made up of current members of the UCFA to meet with unit administrators and faculty members regarding potential serious disciplinary action. The members of the review panel will serve until their replacements are selected the following academic year. A list of three alternates will also be maintained in the event that a panel member is unavailable. The Office of the Provost will arrange training about academic personnel actions and policies for the review panel and alternates.

2. Meeting with the Review Panel

Upon receipt of a request to meet, the Chair of the UCFA will schedule a meeting with the unit

¹⁰ If the chair is not tenured, a tenured member of UCFA may fill this role at the request of the chair, the unit administrator, or the faculty member.

¹¹ The unit administrator shall consider the written statement of the faculty member and confer with the Dean and the Office of the Associate Provost, after providing copies of the faculty member's statement to both, before proceeding with disciplinary action.

administrator, faculty member, and disciplinary review panel. That meeting will take place no later than the second regularly scheduled meeting after the request is received, but not to exceed 21 days during those periods when the UCFA is not regularly meeting. Except in unusual circumstances, meetings of the disciplinary review panel will take place before, during, or after the regularly scheduled meeting time of the UCFA and both the unit administrator and the faculty member will be expected to adjust their schedules to attend the meeting. If either party cannot personally attend for good cause, as determined by the Chair of UCFA, that individual may participate through alternate communication methods (e.g., telephone, video conference) or send a representative to the meeting.

No member of the review panel shall participate in a meeting involving a faculty member from the same college in which the panel member is appointed. The faculty member may also request that any member of the panel recuse himself/herself if a conflict of interest exists. If the panel member refuses to recuse himself/herself, the Chair of the UCFA will determine whether, in light of the challenged person's knowledge of the case or personal or professional relationships with a party, the challenged person would be able to participate fairly and impartially in the meeting and make a fair and impartial recommendation.

3. Recommendation of the Review Panel

Following its meeting, the review panel will provide its recommendation to the unit administrator, with a copy to the faculty member, within seven (7) days about whether the proposed serious discipline should be imposed, lesser discipline should be substituted, or no discipline should be imposed. The recommendation is not binding on the unit administrator but shall be given all due consideration. If the unit administrator does not take the advice of the review panel, he/she will provide a detailed reply to its recommendation for consideration and possible amendment by the panel within seven (7) days, copying the faculty member. If the panel decides to amend its original recommendation, it must do so within seven (7) days, copying the faculty member. This documentation will form a part of the permanent record of the discipline process.

4. Imposition of Disciplinary Action

After receiving the response (and amendment, if any), the unit administrator shall make a decision regarding the disciplinary action and notify the faculty member in writing. If the review panel recommended against imposition of serious discipline, or recommended lesser discipline, the unit administrator must meet with the Dean and the Office of the Associate Provost before proceeding with disciplinary action.

VII. DISMISSAL FOR CAUSE PROCESS

A. INFORMAL RESOLUTION/PRELIMINARY CONFERENCE STAGE

1. Dismissal for Cause Review Officer's Recommendation

A Dean ("charging party") proposing to initiate dismissal for cause proceedings against a faculty

member must file a written request with the Provost that provides the reasons for considering dismissal in sufficient detail for the faculty member to address the specifics of the charges, if necessary, and includes copies of all relevant documentation, including copies of any past disciplinary action or warnings to the faculty member that his/her conduct might lead to dismissal.

Upon receipt of such a request, the Provost shall notify the faculty member of the request and ask the Dismissal for Cause Review Officer (see Appendix III) to review the matter and to provide a confidential report and recommendation to the Provost as to whether dismissal for cause proceedings should be initiated.

The review process is intended to provide an opportunity for informal resolution of the matter. Accordingly, meetings between the faculty member and the Review Officer and between the faculty member and the Provost during the review process are informal, confidential, and will proceed without counsel present.¹² At any stage during the review process, the faculty member may elect to forgo meeting or talking with the Review Officer or the Provost.

The Review Officer shall review the reasons for considering dismissal and the evidence in support of dismissal with the charging party. The Review Officer shall also talk with the charging party, faculty member, and the faculty member's department chair or school director, prior to making a recommendation to the Provost.

In reaching his/her recommendation, the Review Officer should consider what steps have been taken to achieve informal resolution of the matter; whether, in cases involving a pattern of conduct, the faculty member had any warning that the conduct might lead to dismissal; and whether any measures might be taken to resolve the matter short of instituting dismissal for cause proceedings. The Review Officer's report and recommendation should be forwarded to the Provost within thirty (30) days of the Review Officer's selection by the President, unless an extension of time is approved by the Provost.

2. Determination by the Provost

The Provost shall review the report and recommendation of the Review Officer and determine whether the matter is of sufficient seriousness to warrant the initiation of dismissal for cause proceedings.¹³ In reaching his/her decision, the Provost may discuss the matter with the Review Officer, charging party, and/or faculty member. The confidential report and recommendation of the Review Officer is advisory to the Provost¹⁴ and shall not be available to either party or become part of the record if dismissal for cause proceedings are instituted.

¹² The faculty member retains the right to have an observer present.

¹³ The decision of the Provost as to whether the matter is serious enough to warrant initiation of dismissal for cause proceedings is not a determination regarding the merits of the charges against the faculty member and shall not be viewed as the Provost's agreement or disagreement with the charges against the faculty member.

¹⁴ The Provost shall not comment on any information contained in the confidential report of the Review Officer at any stage of the dismissal for cause proceedings unless that information is also contained in the record of those proceedings. The report will be kept confidential to the maximum extent permitted by law.

3. Conference with the Faculty Member

If the Provost determines that dismissal for cause proceedings are warranted, he/she shall notify the faculty member and the charging party (the “parties”) of that decision in writing, providing a copy of all documentation provided by the dean to the Review Officer, and offer the faculty member an opportunity for a personal meeting. No formal charges shall be filed until 30 days after this notification; a further extension of time may be approved by the Provost. The matter may be resolved informally during this time, including by the faculty member’s resignation. If the faculty member is not available for a personal meeting during the 30-day period, the Provost may communicate with the faculty member electronically or by correspondence that provides the faculty member with a reasonable opportunity to confer informally with the Provost.

B. INITIATION OF FORMAL PROCEEDINGS

If the Provost determines that the matter is serious enough to warrant initiation of dismissal for cause proceedings, the Provost shall provide written notice of that determination to the President.

A three-person, randomly selected, review panel made up of Dismissal for Cause Review Officers (see Appendix III) shall then decide, in consultation with the President, whether the faculty member’s conduct is egregious.¹⁵ If the review panel unanimously decides that the conduct is egregious, the faculty member will be relieved from all duties during the dismissal for cause proceedings without pay.¹⁶ If the review panel does not unanimously decide that the conduct is egregious, the unit administrator, in consultation with the Dean, shall decide whether the faculty should be relieved from some or all of his/her duties (with pay) during the dismissal for cause proceedings. The parties should receive notice of the review panel’s and unit administrator’s decisions, along with a recommendation as to whether the faculty member should be relieved from some or all of his/her duties during the dismissal for cause proceedings. The parties should receive a copy of this notice. If the President decides to relieve the faculty member from all of his/her duties, the faculty member shall be placed on a leave of absence (with or without pay at the discretion of the President) during the pendency of the dismissal for cause proceedings.¹⁷

Following written notification by the Provost to the President, and the above determinations, the

¹⁵ Egregious conduct includes, but is not limited to (1) causing or attempting to cause substantial damage to the University’s physical or intellectual property; (2) committing or attempting to commit violence against University community members; or (3) violating or attempting to violate fiscal norms (i.e., fraud or theft) or scholarly norms (i.e., falsification or fabrication of research).

¹⁶ If the Hearing Committee determines there is no cause for dismissal, the faculty member shall receive back pay for the period of time during which the faculty member was on an unpaid leave of absence.

¹⁷ If the Hearing Committee determines there is no cause for dismissal, the faculty member shall receive back pay for the period of time during which the faculty member was on an unpaid leave of absence.

charging party may initiate dismissal for cause proceedings against a faculty member by filing written charges with the President and Chair of the University Committee on Faculty Tenure (UCFT). The charges must contain: (1) the allegations; (2) the names of the witnesses, insofar as then known, who will testify in support of the allegations; and (3) the nature of the testimony likely to be presented by each of these witnesses. The Chair of the UCFT shall promptly send a copy of the written charges to the faculty member.

If the review panel has unanimously determined that the faculty member's conduct is egregious, as outlined above, a faculty member may not obtain official retiree status from the University during the pendency of the dismissal for cause proceedings after Onee written charges have been filed with the President and Chair of UCFT.¹⁸~~, a faculty member may not obtain official retiree status from the University during the pendency of the dismissal for cause proceedings.~~ A faculty member who is dismissed for cause at the conclusion of the dismissal for cause process is not eligible for official retiree status.¹⁹
~~The Chair of the UCFT shall promptly send a copy of the written charges to the faculty member~~

1. Meetings between the Presiding Officer and the Parties

As soon as practicable following the filing of formal charges, the Chair of the UCFT shall meet with the parties. The purposes of such meetings include:

- a. Challenges to any members of the Hearing Committee for conflict of interest (see Appendix I).
- b. Exchange of documents and witness lists between the parties.
- c. Stipulations by the parties on any relevant matters of fact. Any stipulation shall be reduced to writing and signed by both parties and the Presiding Officer.
- d. Rulings by the Presiding Officer on any proposed revisions to the charges that might be offered or requested.

The Chair of the UCFT may ask legal counsel to attend these meetings. The Chair of the UCFT shall arrange that recordings of these meetings are made and included in the complete case record. These meetings will take place during regularly scheduled meeting times for the UCFT and the relevant administrator and faculty member will be expected to adjust their schedules to attend.

2. The Hearing

- a. Service on the Hearing Committee shall be a high priority University responsibility for

¹⁸ The term "official retiree status" refers to the minimum retirement requirements as listed in the Retiring from the University Policy and the applicable university contribution to retiree health care and dental coverage as listed in the Retiree Benefits Policy, and does not include a faculty member's 403(b) Base Retirement Program account balance.

¹⁹ The term "official retiree status" refers to the minimum retirement requirements as listed in the Retiring from the University Policy and the applicable university contribution to retiree health care and dental coverage as listed in the Retiree Benefits Policy, and does not include a faculty member's 403(b) Base Retirement Program account balance.

the duration of the hearing. Accordingly, administrators of units shall take all reasonable measures to reduce the Hearing Committee members' other responsibilities. Unit administrators are encouraged to provide additional support (such as graders and graduate assistants) to Hearing Committee members for the duration of their service.

- b. The Secretary for Academic Governance shall make available to the Chair of the Hearing Committee any necessary secretarial and clerical assistance.
- c. Legal counsel to the Hearing Committee shall arrange for a full stenographic record to be made of the hearing. If any party requests additional copies of the record or an expedited copy of the record, the additional costs of that request shall be paid by the requesting party.
- d. The Chair of the Hearing Committee shall request the presence of any witness or the delivery of any University document germane to the hearing. University administrators are expected to cooperate with such requests.
- e. The Chair of the Hearing Committee shall schedule the hearing within a reasonable time (usually not to exceed 21 days) after the faculty member is provided notice of the charges against him/her, due consideration being given to the faculty member's opportunity for the preparation of a defense.
- f. The hearing shall be closed, except that the Hearing Committee may consider a request from the faculty member to open the hearing. If such a request is made, the Hearing Committee shall hear the views of both parties on the question and shall determine whether the hearing sessions are to be open or closed. Regardless of the faculty member's request, the Chair of the Hearing Committee may, in the interest of orderly and equitable proceedings, rule that a given session or portion of a session be closed. Sessions or portions of sessions that will involve student testimony or testimony that includes personally identifiable student information must be closed. Sessions that will involve non-student witness testimony may also be closed at the discretion of the Chair of the Hearing Committee.
- g. The Chair of the Hearing Committee shall conduct the hearing in accordance with the procedures stipulated in Appendix II.
- h. The charging party or his/her representative shall be present at all sessions of the Hearing Committee at which evidence is presented or arguments are heard, and may (1) present evidence, (2) call, examine, and cross-examine witnesses, and (3) examine all documentary evidence received by the Hearing Committee. The charging party's advisor or legal counsel (if any) may also be present at the request of the charging party.
- i. The faculty member and/or his/her representative may be present at all sessions of the Hearing Committee at which evidence is presented or arguments are heard, and may (1) present evidence, (2) call, examine, and cross-examine witnesses, and (3) examine all documentary evidence received by the Hearing Committee. The faculty member's

advisor or legal counsel (if any) may also be present at the request of the faculty member. If the faculty member cannot be present at a hearing session due to circumstances beyond the faculty member's control, the Chair may grant permission for the faculty member to participate through alternate communication methods, reschedule the hearing session, or choose to conduct the hearing session in the absence of the faculty member.

- j. If the faculty member chooses not to be present, the Chair shall conduct the hearing sessions in the absence of the faculty member.
- k. The Provost (or his/her designee) shall be available to the Hearing Committee to provide guidance on policy or procedural questions. In the event that a policy or procedural question is at issue in the dismissal for cause proceedings, the Provost may choose to file a position statement with the Hearing Committee regarding the policy or procedural issue. In those cases, the Provost (or his/her designee) will not serve in an advisory capacity to the Hearing Committee regarding policy or procedural questions.
- l. Except as provided below, only those members of the Hearing Committee who have been present at all sessions in which evidence has been presented or arguments have been heard shall have the right to vote. An exception to this attendance requirement shall be made by the Chair of the Hearing Committee for a member who has missed, for good cause, no more than one session and who has informed the Chair in writing that he/she has read the official transcript of that session. This attendance requirement may also be waived by unanimous consent of both parties.
- m. Within a reasonable time following final arguments (usually not to exceed 14 days), the members of the Hearing Committee will vote to determine whether cause has been established. If they determine that cause has been established, they shall recommend either dismissal or other disciplinary action(s). If a majority of the Hearing Committee determines that cause has not been established, the matter is closed.

3. Processing the Record and Rendering Judgment

- a. Hearing Committee Report.
 - 1. Within 30 days following the final arguments, the Hearing Committee shall submit its written report to the parties. If additional time is needed, the Chair of the Hearing Committee shall request an extension of time from the Chair of the UCFT.
 - 2. The Hearing Committee report must include an explanation of its determination as to whether cause has been established. If the Hearing Committee determines that cause has been established, the report must also include an explanation of its recommendation for either dismissal or some other disciplinary action(s). A report which recommends dismissal for cause or other discipline must state that at least one of the charges made against the faculty member has been proven by clear and convincing evidence.

3. Subject to subsection 4 below, all members of the Hearing Committee shall sign the report attesting that they have read it and that it constitutes the findings and recommendations of a majority of the Hearing Committee.
4. Any member(s) of the Hearing Committee may file and sign a minority report, which shall become part of the Hearing Committee report.

b. Appeals.

1. Grounds for appeal are limited to whether the Hearing Committee committed a prejudicial violation of the required procedures (see Appendix II) during the hearing process.
2. Either party may appeal the decision of the Hearing Committee to the then-current members of the UCFT, excluding the Presiding Officer and any members of the UCFT who served on the Hearing Committee. The remaining UCFT members shall constitute an appellate body (“the Appeal Panel”) and shall select a Chair by majority vote.
3. A party wishing to appeal (“appellant”) must submit a written appeal to the Chair of UCFT within 15 days after the date that the Hearing Committee report was mailed. The Chair of UCFT will transmit the appeal and a copy of the Hearing Committee report to the Appeal Panel and the appellee.²⁰
4. The appeal must be in writing and must specify the claimed procedural violation(s) on which the appeal is based.
5. The appellee may submit a written response to the appeal. The response must be sent to the Chair of the UCFT and the appellant no later than 15 days after the date the appeal was mailed to the appellee.
6. The Appeal Panel will convene to decide the appeal. The Appeal Panel will usually decide the appeal based on the written materials presented and in the absence of the parties. If necessary, the Appeal Panel may request that both parties present oral argument and/or respond to questions regarding the appeal. The Appeal Panel may impose reasonable limits on the time allotted for oral arguments.
7. The Appeal Panel shall render a decision on the appeal within ten days of receiving all arguments. A decision will be made by a simple majority vote. In rendering a decision, the Appeal Panel may not amend the findings or the recommendations of the Hearing Committee. The Appeal Panel may reach one of the following determinations:
 - i. No violation found. The Hearing Committee did not commit a prejudicial violation of the required procedures during the hearing process.

²⁰ The “appellee” is the party to the original dispute who did not file the appeal.

- ii. Harmless Error. Although a violation of the procedures occurred, it did not materially harm the appellant's ability to present his/her case fully.
 - iii. Rehearing. The Hearing Committee committed a prejudicial violation of the procedures during the hearing process which can and should be corrected by the original Hearing Committee.
 - iv. Rehearing/New Hearing Committee. The Hearing Committee committed a prejudicial violation of the procedures during the hearing process which has tainted the hearing to an extent that correction by the original Hearing Committee is impossible. A new Hearing Committee must be established to rehear the case.
- c. Final Hearing Committee Report.
- 1. After appeals and rehearings, if any, are concluded, the Hearing Committee's report shall be considered final and shall be sent to the President, the Provost, and the parties.
 - 2. A copy of the complete transcript of the hearing shall be sent to the faculty member.
 - 3. The Chair of the Hearing Committee shall file the complete record of the case with the Office of the Provost. The complete record shall contain: (i) the final Hearing Committee report, (ii) any Appeal Panel decision, (iii) meeting minutes, (iv) the record required by part 11 of Appendix I, and (v) the transcript of the hearing. The complete record shall be held for review in the Provost's Office and shall be available to the President, the Provost, the Board of Trustees, and the parties, for their review, in a place designated by the Provost.
 - 4. If the Hearing Committee finds cause, the Provost and the parties may, within 15 days of the date of the mailing of the Hearing Committee's report, review the record and file written comments with the Chair of the Hearing Committee and the President.²¹
- d. The President, within 15 days of the date of receipt, unless an extension of time has been granted by the Chair of the Hearing Committee, will review the Hearing Committee's report and provide his/her preliminary response in writing, accompanied by supporting rationale, to the Chair of the Hearing Committee, the Provost, and the parties.
- e. The Provost, the parties, and the Hearing Committee, through its Chair, may, within 15 days of the date that the President's preliminary response was mailed, submit written comments to the President about his/her preliminary response.

²¹ When provided an opportunity to comment, the Provost and parties are expected to confine their comments to the record and not introduce new information. However, the Provost may comment on procedural or policy issues at any time.

- f. Following the 15 day period for submitting written responses, the President will, within 15 days, issue a final report on the charges against the faculty member. Copies of the President's final report will be provided to the Chair of the Hearing Committee, the Provost, and the parties. If the Hearing Committee and the President both determine that there is cause for disciplinary action but not dismissal, the President's final report will conclude the matter and the disciplinary action recommended by the President will be imposed.²²
- g. If either the Hearing Committee (by majority vote) or the President recommends dismissal, the President shall submit the following materials to the Board of Trustees: the final Hearing Committee report (along with any written comments), the preliminary response of the President, and the final report of the President. Any Trustee may have access to the complete record of the case.
- h. The Office of the Provost shall provide notice to the parties of the date and time that the Board of Trustees is expected to take action on the matter.
- i. After reviewing the relevant materials, the Board of Trustees may: (1) dismiss the faculty member for cause, (2) impose discipline other than dismissal, or (3) determine that cause has not been established and close the matter.

VIII. POLICY HISTORY

This policy was approved by the Board of Trustees on December 18, 2015, with an effective date of January 1, 2016. It replaces the Policy and Procedure for Implementing Disciplinary Action Where Dismissal is Not Sought²³ and the Dismissal of Tenured Faculty for Cause policy.²⁴

²² Disciplinary action implemented under this Policy may not be challenged through the Faculty Grievance Procedure.

²³ Approved by the Board of Trustees on June 11, 1993.

²⁴ Approved by the Board of Trustees on March 16, 1967 and revised on May 5, 2006.

Appendix I

The Hearing Committee

1. The Chair of the UCFT, in consultation with the Office of the Provost, shall establish three-person Hearing Committees for each proceeding. The members of the Hearing Committees will serve throughout the duration of the hearing and any appeal processes, if applicable. A list of three alternates will also be maintained for each proceeding in the event that a panel member is unavailable. The Office of the Provost will arrange training about academic personnel policies and the dismissal for cause process for the review panel and alternates.
2. Members of the Hearing Committee shall be tenured full professors who are currently serving as UCFT members or who have served on the UCFT within the last five academic years. Three alternates will also be selected in the event a conflict of interest or other exceptional circumstance precludes a member of the Hearing Committee from serving.
3. No member of a Hearing Committee may serve on a hearing involving a faculty member from the same college in which the hearing member is appointed.
4. During the meeting referenced in Section VII.B.1.a of the Policy, either party may challenge a member of the Hearing Committee on the grounds that the member has a conflict of interest. The standard the Chair of the UCFT shall follow in ruling on the challenge is whether, in light of the challenged person's knowledge of the case or personal or professional relationships with a party, the challenged person would be and be seen to be able to hear the case fairly and impartially and render a fair and impartial judgment. The Chair of the UCFT shall rule on any challenges.
5. After the selection of the Hearing Committee, the Hearing Committee shall elect its Chair from its membership. The Hearing Committee Chair shall be in charge of the hearing process from this point until the Hearing Committee has submitted its report and recommendations.
6. The University shall provide legal counsel for the Chair of the UCFT and for the Hearing Committee.

Appendix II

Procedure for the Hearing

The Chair of the Hearing Committee shall be in charge of the hearing.

1. Legal counsel for the Hearing Committee may be present at all hearings and deliberations.
2. Hearing sessions may be scheduled, at the discretion of the Chair, on any weekday; weekends during the hours 8:00 a.m.–10:00 p.m.; or, by unanimous consent of the parties and Hearing Committee members, on University holidays. Reasonable efforts shall be made to accommodate the scheduling requests of the parties and Hearing Committee members.
3. The hearing shall be conducted in an informal manner to the greatest extent possible. Formal rules of evidence do not apply.
4. The Chair of the Hearing Committee may, in his/her discretion, exclude evidence, including witness testimony, if the Chair determines that such evidence is not relevant to the charges at issue.
5. The Chair of the Hearing Committee shall read the charges against the faculty member.
6. The Chair of the Hearing Committee shall request an initial statement summarizing the faculty member's responses, which may be presented by the faculty member or his/her advisor or legal counsel.
7. The charging party (or his/her representative, advisor, or legal counsel) shall present documents/testimony to support the charges. The faculty member and his/her advisor or legal counsel have the right to cross-examine all witnesses. The Hearing Committee will normally withhold questions until the cross-examination of the witness has been completed.
8. The faculty member (or his/her representative, advisor, or legal counsel) shall present documents/testimony to refute the charges. The charging party and his/her legal counsel have the right to cross-examine witnesses. The Hearing Committee will normally withhold questions until the cross-examination of the witness has been completed.
9. After the faculty member's witnesses have completed their testimony, including any cross-examination, the charging party may present rebuttal evidence. Rebuttal evidence shall be limited to new matters introduced in the faculty member's case. Surrebuttal evidence (limited to evidence rebutting the charging party's rebuttal evidence) shall also be allowed.
10. The charging party (or his/her representative, advisor, or legal counsel) shall present his/her closing argument.
11. The faculty member (or his/her representative, advisor, or legal counsel) shall present his/her closing argument.

12. The Hearing Committee shall deliberate to prepare its report and recommendations.

Appendix III

Procedures for Selecting Dismissal for Cause Review Officer

- ~~1.~~ A panel of ten tenured faculty members shall be established. ~~The from which one shall be selected by the~~ Provost of the University shall select one from the panel to advise the Provost when a Dean proposes to initiate dismissal for cause proceedings against a faculty member under Section I of the Policy. ~~The reviewer, called the Dismissal for Cause Review Officer, or the Review Officer, may not be from the same college as the faculty member against whom charges may be filed or the Dean filing the charges. The~~ Provost shall randomly select three from the panel to consider whether the faculty member's conduct is egregious and will be relieved from all duties without pay during the dismissal for cause proceedings, as outlined in Section VII(B) of the Policy. The faculty members selected under Section I or Section VII(B) may not be from the same college as the faculty member against whom charges may be or are filed, or the Dean filing the charges.
- 2.1. The panel shall be composed of tenured faculty members selected by the Provost in consultation with the Chairs of the UCFT and UCFA. It is preferable for panel members to be tenured full professors who have (a) experience in chairing grievance panels, standing or ad hoc committees, (b) training or experience in grievances, arbitration, and/or mediation, or (c) legal training.
- 3.2. Panel members shall serve at the pleasure of the Provost, with vacancies filled in accordance with the procedure stated above.