

3344-11-06 Sanction and dismissal procedures (non-bargaining unit members only).

(A) Sanction procedures.

If the chief academic officer of the university believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficient to justify sanction short of dismissal, such as suspension of service for a stated period or a formal letter of reprimand in a permanent file, then the chief academic officer may initiate a procedure to impose such a sanction.

- (1) Sanction of a faculty member for just cause shall occur only because of:
 - (a) Demonstrated incompetence or dishonesty in teaching or scholarship; or
 - (b) Manifest neglect of duty; or
 - (c) Personal conduct that substantially impairs the individual's fulfillment of their institutional responsibilities (see rule 3344-11-14 of the Administrative Code), including but not limited to drug or alcohol abuse; trafficking in illegal drugs; and sexual, ethnic, racial, or religious harassment.
- (2) The procedure is to be initiated by the chief academic officer. The faculty member shall receive a written statement of cause and efforts shall be made toward informal resolution of the problem. Should informal efforts be unsuccessful, or should a sanction be sought, the university faculty affairs committee shall be consulted. The faculty member shall be provided an opportunity within ten days for an informal hearing before the university faculty affairs committee (see paragraph (G)(2)(g) of rule 3344-13-03 of the Administrative Code), following which the appropriateness of a sanction shall be determined by the chief academic officer with the advice and consent of the university faculty affairs committee.

- (3) At any time prior to the final resolution of the matter, the chief academic officer may temporarily relieve an accused faculty member of all academic responsibilities if the chief academic officer deems this action to be necessary in an emergency to prevent immediate harm to the faculty member or others at the university. However, the chief academic officer shall communicate this decision in writing to the university faculty affairs committee as soon as possible. The accused faculty member shall suffer no loss of pay or benefits during such a period of temporary suspension.
- (4) Sanctions involving suspensions, with or without pay, or a possible reduction of salary in succeeding academic contracts are subject to the same formal process as prescribed for cases of dismissal of a faculty member (see paragraph (C) of rule 3344-11-05 of the Administrative Code).

(B) Cause for dismissal based upon charges.

- (1) The following charges preferred against a faculty member shall ground a proceeding for dismissal:
 - (a) Professional incompetency;
 - (b) Substantial, willful, and persistent neglect, without justification or excuse, of an essential institutional duty, validly prescribed by the university;
 - (c) Conviction of a crime involving moral turpitude;
 - (d) Fraudulent credentials;
 - (e) Violation of proscribed behavior under rule 3344-11-14 of the Administrative Code.
- (2) In addition to the foregoing, the Revised Code lists offenses, which are grounds for automatic suspension and,

upon conviction, automatic dismissal (see rule 3344-11-16 of the Administrative Code.)

(C) Dismissal procedures.

Dismissal proceedings shall be conducted consistently with the 1958 statement of the (“AAUP”) American association of university professors and (“AAC”) association of American colleges. The preliminary proceedings described in the 1958 statement shall be conducted by an informal hearing committee provided for in the university bylaws and the formal proceedings, if necessary, shall be conducted as follows:

- (1) Dismissal procedures against a faculty member shall be initiated by personal service upon such faculty member, or by certified and regular mail, of a written statement of charges, framed with particularity, by the chief academic officer.
- (2) The affected faculty member shall have the right to an informal meeting with the chief academic officer within ten days of service of the statement of charges to provide the faculty member the opportunity to present to the chief academic officer facts and circumstances pertaining to the charges against the faculty member.
- (3) The chief academic officer shall have seven days within which to respond to such additional information and shall revoke, modify, or issue the dismissal as originally stated. The notice of dismissal shall be by personal service upon the faculty member, or by certified and regular mail. The president of the university senate shall be notified of the action being taken.
- (4) The faculty member may request a formal hearing by notifying the chief academic officer within ten days of personal service, or thirteen days of mailing, of the notice of dismissal, or the right to a hearing is waived. If the faculty member does request a hearing, the faculty member may submit a formal response to the charges in writing

within twenty days after the formal request for a hearing is made.

- (5) Upon receipt of the request for a formal hearing, the chief academic officer shall initiate the formal hearing process. Such process shall be as follows:
 - (a) The chief academic officer shall advise the president of the faculty senate of the request for a formal hearing.
 - (b) The faculty senate academic steering committee, pursuant to senate by-laws and rules, shall designate a member of the faculty senate to participate as a member of a tripartite hearing panel.
 - (c) The chief academic officer shall also appoint an administrator with tenured faculty status to the hearing panel to represent the office of academic affairs (hereinafter, "administration").
 - (d) The panel members designated by the faculty senate and the chief academic officer shall jointly contact the federal mediation and conciliation service, who shall appoint an impartial hearing officer who shall act as the chair of a tripartite hearing panel to hear the matter.
- (6) A hearing shall be commenced within thirty days of receipt of the request for a formal hearing. The hearing shall be conducted pursuant to the applicable provisions of the Revised Code and Administrative Code applicable to agency hearings. Notwithstanding any provision of law or rule, during the proceedings, the faculty member shall be permitted to have an academic adviser and counsel of the faculty member's choice.
- (7) A certified record of the hearing or hearings shall be taken by an official stenographer. A tape of the hearing or hearings shall be made available to the faculty member without cost to the faculty member, at the faculty member's

request. If a transcript is required, the cost of such a transcript shall be borne by the university.

- (8) The university bears the burden of proof by a preponderance of the evidence that cause exists to dismiss the faculty member.
- (9) The hearing shall be held on a continuing basis. Adjournments shall be granted by the hearing panel for good cause.
- (10) The faculty member shall be afforded an opportunity to obtain necessary witnesses and documentary or other evidence, and the administration shall, insofar as it is possible for it to do so and with due regard for confidentiality and privileged information, secure the cooperation of such witnesses and make available necessary documents and other evidence within its control.
- (11) The faculty member and the administration shall have the right to confront and cross-examine all witnesses.
- (12) In the hearing of charges of professional incompetence, the testimony may include that of individuals deemed by the panel to be experts in the field. Such qualification shall be agreed to by the panel members unanimously.
- (13) The panel shall not be bound by formal rules of evidence and may admit any evidence which is of probative value in determining the issues involved. However, every possible effort shall be made to obtain the most reliable evidence available.
- (14) The panel's findings of fact and decision shall be based solely on the hearing record.
- (15) 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 is prohibited.

- (16) The panel shall issue its decision within thirty days of the close of the hearing. The panel may affirm, disaffirm, or modify the discharge. The panel shall forward its decision to the university president.
 - (17) Upon receipt of the decision, the university president shall:
 - (a) Make the final determination based on the report, pursuant to the powers delegated to the president by the board of trustees and shall
 - (b) Forward the determination to the board of trustees for its ratification.
- (D) Dismissal based upon financial exigency or academic reorganization.

Whenever the president has reason to believe that the university faces a situation of bona fide financial exigency requiring the dismissal of faculty or that justification exists for the discontinuance of a program or department of instruction necessitating the termination of regularly appointed faculty members, the president shall consult with the university personnel committee and obtain its advice and counsel before recommending such action to the board of trustees. The university personnel committee may, if it desires, take not more than ninety days to review any discontinuance, to formulate its advice and counsel, and to submit this advice and counsel to the president.

- (1) Affected faculty members shall be able to have the issues related to their cases reviewed by the formal hearing committee established in the bylaws of the faculty senate with ultimate review of all controverted issues by the board of trustees. In every case of financial exigency or discontinuance of a program or department of instruction, the faculty member concerned shall be given notice as soon as possible. Tenured faculty and non-tenured faculty not notified before the schedule of notice in paragraph (E)(2) of rule 3344-11-03 of the Administrative Code shall be given at least twelve months' notice. Before dismissal or termination under this rule, the university shall make a

good faith and verifiable effort to place affected faculty members in other suitable positions within the university. When a faculty member's dismissal is based upon financial exigency academic reorganization, the released faculty member's place shall not be filled by a replacement within a period of two years, unless the released faculty member has been offered reappointment and a reasonable time within which to accept or decline it.

- (2) Faculty members shall be kept informed of possible anticipated programmatic changes and staffing needs. Where possible, faculty members shall be provided ample opportunity to develop the mutually acceptable level of competence to fill another position agreeable to the individual and to the university. Preferential consideration shall be given tenured faculty in the relocation process.

(E) Separation for medical reasons.

- (1) A faculty member who is unable to perform usual and customary academic functions as described in rule 3344-16-02 of the Administrative Code may be involuntarily separated according to the following procedure:
 - (a) When the chief academic officer or designee has received substantial credible medical evidence of the faculty member's disability and determines that the faculty member is incapable of performing the essential functions as described in rule 3344-16-02 of the Administrative Code due to the disabling illness, injury or condition;
 - (b) The chief academic officer or designee shall request that the faculty member submit to a medical or psychological examination prior to the involuntary separation of the faculty member.
- (2) If the faculty member disagrees with the findings of the medical or psychological examination, the faculty member may seek a separate medical examination at the faculty member's own expense. If there is a disagreement between

the examinations secured by the administration and the faculty member, a third opinion shall be secured from an impartial medical professional who is independent of the other two examiners.

- (3) Pre-separation hearing. The chief academic officer or designee shall institute a hearing prior to involuntarily disability separating a faculty member. The faculty member shall be provided written notice at least ten university working days in advance of the hearing. If the faculty member does not waive the right to the hearing, then at the hearing the faculty member has the right to examine the university's evidence of disability, to rebut that evidence, and to present testimony and evidence on the faculty member's own behalf.
- (4) Based on the medical evaluations and the evidence presented at the pre-separation hearing, the chief academic officer shall then make a determination regarding the separation. If the chief academic officer or designee determines that the faculty member is capable of performing the essential functions, then the involuntary disability process shall cease and the faculty member shall be considered fit to perform the essential functions of the position. If the appointing authority determines that the faculty member is unable to perform the essential functions, then the chief academic officer shall issue an involuntary separation order. However, if a reasonable chance of recovery from illness exists for the faculty member in question, the faculty member shall be given an involuntary leave of absence for up to a period of nine months, based upon the recommendation of the medical professional assessing the faculty member's prospective time to recover. This involuntary leave is in addition to any FMLA or sick leave to which the faculty member is entitled and shall commence only after the faculty member has exhausted their FMLA and sick leave.
- (5) Nothing in these provisions affects a faculty member's eligibility for sick leave and FMLA.

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