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4.4 President's Decision

The President's decision shall be stated in writing and forwarded, together with a copy of the UGC's recommendation, to the affected faculty member, the University Provost, and the University Grievance Committee.

5. Grievances on Matters Other Than Faculty Status

A faculty member who claims to have been improperly deprived of substantive or due process rights under the procedures and policies detailed in this Handbook, other than in a faculty status matter, shall discuss the issue with the appropriate Department Chair. If no resolution is achieved, the matter may be appealed to the College Dean or School Dean/Director and thence, if necessary, to the University Provost. If this process does not lead to a resolution and the faculty member claims a significant violation of substantive or procedural rights, the faculty member may seek assistance in resolving the issue through the University Grievance Committee. If the UGC agrees that a substantial issue exists, it shall assign one member of the UGC to facilitate resolution with the parties involved. Failing resolution of the issue, the UGC member shall make a recommendation to the University Provost, with a copy to the faculty member. This activity shall be concluded within thirty (30) days of the University Provost's initial decision on the grievance.

XI. Dismissal for Cause

1. Adequate Cause

"Adequate cause" for dismissal of a faculty member on continuous tenure, or on a special or probationary appointment before the end of the specified term, shall be predicated upon charges which are grave and extraordinary, and which are limited to the following:

1.1 Professional Responsibilities

Failure to perform professional responsibilities, either through gross incompetence, gross negligence, or willful disregard for scholarly and professional standards, or as the result of severe long-term physical or mental disability.

1.2 Conviction

Conviction of a felony or high misdemeanor.

1.3 Willful Acts

Willful acts which directly and seriously subvert the rights and welfare of members of the University community.

1.4 Falsification

Falsification of credentials.

However, it is understood particularly that "adequate cause" shall be limited to consideration of factors directly related to the alleged unfitness of the affected faculty member to discharge their professional responsibilities. Dismissal shall not be used to restrain faculty members in the exercise of academic freedom or other rights of American citizens.

2. Action Prior to Final Decision

Prior to a final decision by the University Review Committee and the Board of Trustees, the faculty member may be placed on leave of absence or assigned to other duties in lieu of such leave, only if WKH DUHXQEOHW RGLVFKDUJH WKHLUIDFXOWUHVSRLLELOLWLHVLILPPHGLDWHKDUPWRWKHIDFXOWPHPE or others is threatened by continuance in their duties, or if continuance in their duties would cast grave doubt upon the academic competence or integrity of the University, College or School, or Department. The process of placing a faculty member on leave of absence, pending ultimate

determination of their status through the hearing procedures, shall involve consultation with the University Grievance Committee concerning the propriety, the length, and other conditions of the leave. Salary will continue during the period of such leave.

3. Preliminary Steps

A dismissal, as defined in Section XI.1, shall be preceded by the following steps:

3.1 Confidential Notice

Confidential notification to the faculty member by the President or the President's designee of the probable commencement of dismissal proceedings, including a statement of the specific charges and of the faculty member's rights.

3.2 Informal Discussion

Discussion between the faculty member and appropriate administrative officers, looking toward a mutually acceptable resolution.

3.3 UGC Inquiry

If the discussions in XI.3.2 above do not lead to a resolution, the matter shall be referred by the University President or delegate to the University Grievance Committee for an informal inquiry. In cases where the dismissal proceeding is based on severe long-term physical or mental disability, the President may choose to omit this step.. The University Grievance Committee will review the existing record referred to the Committee by the University President or delegate and based on that record may make recommendations to the President or the President's designee on whether and how the matter might be resolved (whether through dismissal proceedings or otherwise). The University Grievance Committee's recommendations will not be binding upon the President.

3.4 Formal Charges and URC Hearing

If, after conclusion of the above steps, no settlement has been achieved and the Administration wishes to undertake formal dismissal proceedings, the faculty member shall receive a written statement of charges, framed with reasonable particularity by the President or the President's delegate, and the faculty member shall have the right to be heard by the University Review Committee, following the procedures set forth below.

4. The University Review Committee

The University Review Committee (or URC) shall consist of fourteen (14) tenured faculty members, two elected from and by each College Faculty, one from each independent School and one from each campus (Florham, Metro and Vancouver) without restriction as to academic unit, under the supervision of the University Provost, no later than the 15th of May in each academic year. These numbers shall be adjusted as necessary to reflect additional colleges or schools. Seven (7) members shall serve on any case. In the event that a regular member of the Committee removes themselves from a case, is unable to serve, or is challenged by the faculty member under review or the Administration, and the Committee number drops below seven (7), members of the FRW shall be asked to volunteer, bringing Committee membership to 7. If more than seven (7) members of the URC are available to serve, the Committee members will decide on the seven (7) who shall serve on any one case. Members of the University Grievance Committee shall not be eligible to serve on the URC. Members of the URC shall serve for three-year terms.

5. Hearing Procedures

5.1 Disqualification and Challenges

Members of the University Review Committee deeming themselves disqualified for bias or interest shall remove themselves from the case. If a party believes that any member of the URC should be removed from the case for bias or interest, the party will bring the issue to the other members of URC assigned for the case for decision. Each party shall have a maximum of two (2)

challenges without stated cause. When the charges are based upon severe long-term physical or mental disability, the URC may seek consultation by one (1) or more independent experts. The consultants' report(s) shall be in writing and shall be made available to the faculty member and the Administration for examination and, if necessary, response.

5.2 Prehearing Meetings

The URC may, with the consent of the parties concerned, hold joint pre-hearing meetings with the parties in order to

- (a) Simplify the issues,
- (b) Effect stipulations of fact,
- (c) Provide for the exchange of documentary or other information, and
- (d) Achieve such other appropriate pre-hearing objectives as will seek to make the hearing fair, effective, and expeditious.

5.3 Notice and Waiver of Hearing

Service of notice of the hearing with specific charges in writing shall be made at least twenty (20) days prior to the hearing. The faculty member may elect to submit a written response to the charges at any time before the hearing. The faculty member may waive a hearing, in which event the faculty member may elect to respond to the charges in writing in lieu of the hearing. If the faculty member waives a hearing, but denies the charges or asserts that the charges do not support a finding of "adequate cause," the URC will evaluate all available evidence and rest its recommendation upon the evidence in the record.

5.4 Public or Private Hearing

The URC, in consultation with the President or the President's delegate and the faculty member, shall exercise its judgment as to whether the hearing should be public or private.

5.5 Academic Advisors and Counsel

The faculty member shall be entitled to have an academic advisor (internal or external) and/or legal counsel of their own choice attend and participate in the proceedings. If the faculty member's legal counsel participates in the proceedings, the Administration may also have its legal counsel attend and participate.

5.6 Hearing Record

A verbatim record of the hearing or hearings shall be taken, and a copy shall be made available to the faculty member, at the faculty member's request.

5.7 Burden of Proof

The burden of proof that "adequate cause" exists rests with the University and shall be satisfied only by clear and convincing evidence in the record considered as a whole.

5.8 Adjournments

The URC shall grant reasonable adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.

5.9 Witnesses and Evidence

The faculty member shall be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The Administration shall cooperate with the URC in securing witnesses and making available documentary and other evidence.

5.10 Examination of Witnesses

The faculty member and the Administration shall have the right to confront and cross-examine all witnesses. Where the witnesses cannot or will not appear, but the Committee determines that the interests of justice require admission of their statements, the Committee will identify the witnesses, disclose their statements, and if possible provide for interrogatories.

5.11 Testimony on Competence

In the hearing of charges of gross incompetence, the testimony shall include that of qualified faculty members from the University or from other institutions of higher learning.

5.12 Rules of Evidence

The URC shall not be bound by strict rules of legal evidence and may admit any evidence which is of probative value in determining the issues involved. Every possible effort shall be made to obtain the most reliable evidence available. . If a provision of this Article conflicts with applicable law, the process under this Article will be deemed amended to the extent required to comply with law, and only with respect to that particular proceeding. This can arise, for example, if the faculty member who is the subject of a dismissal proceeding is ordinarily a resident outside the United States and the laws of that jurisdiction require different measures or with respect to a proceeding under the University's Title IX Sexual Harassment Policy and Procedures which has been adopted to comply with law.

5.13 Decision Basis

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

5.14 Public Statements, Publicity and Notice of Decision

Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements and publicity about the case by either the faculty member or administrative officers shall be avoided as far as possible until the proceedings have been completed, including consideration by the Board of Trustees. The President and the faculty member shall be notified of the decision of the URC in writing and shall be given a copy of the record of the hearing.

5.15 Report of Decision

Decisions of the URC will be made by a majority vote of all members designated to hear the case present and voting. If the URC does not conclude that "adequate cause" for dismissal has been established by the evidence in the record, it shall so report to the President. If the URC concludes that "adequate cause" for a dismissal has been established, but that an academic penalty less than dismissal would be more appropriate, it shall so recommend, with supporting reasons. In either case, the report should state the vote of the URC and the reasons behind all votes. The President may accept or reject the URC report, and if the President rejects the report, the President shall state in writing, to the URC and the affected faculty member, and provide an opportunity for response before transmitting the case to the Board of Trustees.

5.16 Rules of Procedure

In other respects, the URC shall determine its own rules of procedure, including the question of permitting outside observers.

6. Final Decision

If the URC concludes that "adequate cause" for dismissal or other severe sanction has been established by the evidence in the record, it shall so report to the President. If dismissal or other severe sanction is recommended, the President will, on request of the faculty member, transmit to the Board of Trustees the record of the case. The Board of Trustees' review will be based on the record of the committee hearing, and it will provide an opportunity for argument by the parties to the hearings or by their representatives. At the Board's discretion, such argument may be written or oral or both. If the Board finds that it cannot concur with the recommendation of the URC, or if it requires clarification of the recommendation, it may return the matter to the Committee for reconsideration. In the event of

such reconsideration, the Committee shall take into account any objections or questions raised by the Board, and it may receive new evidence, if necessary. The Board's final decision shall be communicated to the faculty member and the URC.

XII. Procedures for Imposition of Sanctions Other Than Dismissal

1. Procedures

If the Administration believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficiently grave to justify imposition of a severe sanction, such as suspension from service for a stated period, the Administration may institute a proceeding to impose such a severe sanction. The procedures used in effecting Dismissal for Cause shall govern such a proceeding.

2. Minor Sanctions

If the Administration believes that the conduct of a faculty member justifies imposition of a minor sanction, such as a reprimand, it shall notify the faculty member of the basis of the proposed sanction and provide the faculty member with an opportunity to persuade the Administration that the proposed sanction should not be imposed.

3. Right to Appeal

If a sanction is imposed under Section XII.1 above, the faculty member shall have the right to appeal the matter to the University Grievance Committee, which shall seek to bring about a resolution. If the Grievance Committee concludes that a major sanction was incorrectly imposed under this paragraph, it shall recommend to the President that the matter be resolved in an alternative manner or that it be referred to the University Review Committee for a full hearing in accordance with the procedures established for effecting Dismissal for Cause. If the matter is referred to the University Review Committee, imposition of the sanction shall be suspended pending a final determination on the matter through the hearing process. If the University Grievance Committee concludes that the sanction was minor in nature, but that it is unable to achieve a mutually agreeable resolution with the faculty member, the Committee's recommendation on the propriety of the sanction shall be made to the President in accordance with the normal grievance procedure. Minor sanctions are not appealable.

XIII. Termination due to Discontinuance of an Academic Program or Department

Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur as the result of *bona fide* formal discontinuance of an academic program or department of instruction. The following standards and procedures shall apply:

1. Discontinuance of an Academic Program or Department

The decision to discontinue an academic program or department of instruction shall be based on educational considerations, which shall not include cyclical or temporary variations in enrollment. Such a decision shall reflect long-range judgments that the educational mission of the University as a whole will be enhanced by the discontinuance. The committees and administrators considering formal discontinuance of a program or department, should take into account the cost of relocation, retraining, or termination of faculty in the program or department.

2. Consultation with Faculty

In considering formal discontinuance of an academic program or department of instruction, the Administration shall first consult with the faculty of the affected program or department. The faculty's recommendation and other evidence bearing on the issue shall be reviewed by the appropriate faculty committee at the next higher level of governance. That committee shall report to its faculty constituency before making a final recommendation on the matter to the appropriate administrator. The committee's recommendation shall be given great weight by the Administration. In the event the Administration disagrees with that recommendation, the University Provost shall meet with the committee to discuss the reasons for such disagreement, before making a final decision on the matter. The University Provost shall communicate the University Provost's final decision and the reasons therefore in writing to the appropriate faculty constituency.

3. Placement or Reassignment of Affected Faculty

Before the Administration issues notice to a tenured faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department, it will make every reasonable effort to place the faculty member concerned in another suitable position. If a full teaching load in the faculty member's discipline is regularly carried by part-time or by untenured full-time faculty elsewhere at the University, the faculty member shall be entitled to reassignment to that department, College, or School, unless it is determined, through the normal governance processes, that such reassignment would have a serious adverse impact on the academic program in the receiving unit. If a probationary faculty member is displaced as a result of such reassignment, the notice provisions of this Section shall apply to that faculty member.

4. Retraining

If consultation with the receiving unit (including, where appropriate, the department, EPC, and Dean/Director) can establish that a limited period of additional training would lead to acceptance of the faculty member in a position outside their department or discipline, the University shall, upon request by the faculty member, provide a reasonable amount of financial and/or other support for such training.

5. Notice of Termination and Terminal Leave

If termination of a probationary or tenured faculty member becomes necessary because of formal discontinuance of a program or department, the faculty member shall receive notice of such termination as follows:

5.1 Notice of Termination

- 5.1.1 First and Second Year Faculty.** A probationary faculty member in the first or second year of service at the University, shall receive notice at least six (6) months or one (1) semester, whichever is greater, prior to the date of termination.
- 5.1.2 Other Probationary Faculty.** A probationary faculty member in his third (3rd) year of service at the University or later shall receive notice at least twelve (12) months or two (2) full semesters, whichever is less, prior to the date of termination.
- 5.1.3 Tenured Faculty.** A tenured faculty member shall receive notice at least twelve (12) months or two (2) full semesters, whichever is greater, prior to the date of termination.

5.2 Terminal Leave

At the University's option, the faculty member may be placed on terminal leave at full pay, in lieu of notice, for all or part of the required notice period. Full pension and health benefits shall continue during this notice period. Termination occurs at the end of the notice period.

5.3 Terminal Pay

A tenured faculty member who has been terminated because of formal discontinuance of a program or department shall also receive an award for past service in an amount equal to one (1) month's salary for each full year of tenured service at the University, with a minimum of three (3) and a maximum of twelve (12) such additional months. The award will be paid at the rate of one-twelfth (1/12) of the regular annual salary for each month.

5.4 Terminal Benefits

