

**A. Preliminary Procedure**

1. Prior Approval by President Required. No Professional Personnel shall be demoted, suspended, or sanctioned as punishment (referred to jointly as “disciplinary action”) or discharged for cause without prior approval of the President. Supervisors’ verbal or written warnings, evaluations, and performance ratings for Professional Personnel are not “disciplinary actions” covered by this section. This policy does not change the fact that Exempt Employees and Temporary Faculty are employees-at-will and no cause is needed or must be given for termination, unless specifically provided otherwise in this Handbook. "Cause" is defined in Section XI, Termination, of the Handbook. Exempt employees and Temporary Faculty have no right to appeal a disciplinary action approved by the President. The President’s decision is final. Only Tenured Faculty may request a Hearing Officer review of disciplinary actions.
  
2. Investigation. The President, upon receipt of information indicating that any Professional Personnel has engaged in conduct that, if true, constitutes cause for discipline or discharge may investigate the circumstances. Where the alleged conduct, if true, is in violation of the Anti-discrimination Policy, the matter shall be promptly investigated. The investigation of any matter that is currently being grieved under the Grievance Policy may be postponed until that grievance process is completed. Further, the President may, in the President's discretion, initiate Termination proceeding under the Termination Policy for any Professional Employee entitled to that proceeding without following the investigation and other procedures provided in this Disciplinary Procedure Policy.
  - a. The President may personally investigate the circumstances or may appoint another individual or committee to investigate. Any employees appointed to investigate shall be Professional Personnel and shall be employees-in-good-standing. Outside investigators may be used who have expertise in such matters.
  
  - b. Where the alleged conduct, if true, is in violation of the Anti-discrimination Policy, the Affirmative Action Coordinator shall consult with the President and shall coordinate and oversee the investigation, unless the President delegates this responsibility to another qualified individual.
  
  - c. The investigation should include personal interviews of the complainant (if any), the Professional Personnel under investigation (the professional) and relevant witnesses, as well as review of any relevant documentary evidence.

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- d. Upon completion of the investigation, the President shall give the complainant and the professional written notice of whether further action will be taken. If the President believes that further investigation is not warranted and that discipline or discharge is not appropriate, the President may either dismiss or suggest appropriate non-disciplinary action to resolve the matter.

**B. Further Action.** If the President determines after the investigation that discipline or discharge may be appropriate, the President shall give written notice to the professional of the proposed discipline or discharge and the basis for the proposed action. The notice shall advise the professional that he or she may meet with the President at a specified time, date and place, which shall not be less than seven (7) calendar days from the date the notice is given unless the professional and the President mutually agree to meet at a different time. The professional may provide a written reply to the proposed action before or at the time of the meeting. The professional may choose to decline the meeting and provide a written reply to the President in lieu of the meeting.

1. Meeting with the President. The professional may have a representative at the meeting who is an employee other than a practicing attorney. The representative shall be present as an observer and not as a participant. Any statements made at the meeting, including the written response submitted by the professional (if any), shall be admissible in evidence in any subsequent proceeding.
2. Notice of Decision and Appeal Rights. Within fourteen (14) calendar days after the meeting with the President (or if the professional declines or fails to attend the meeting, within fourteen (14) calendar days after the scheduled date of the meeting or receipt of professional's written response in lieu of meeting), the President shall give the professional written notice of the President's decision, including reasons for the decision, and the professional's appeal rights, if any.
  - a. The appeal rights for Dismissal are set forth in Section XI, Termination, and no further proceedings are permitted under this Section.
  - b. There is no right to appeal "non-disciplinary actions" and the President's determination is final. "Non-disciplinary actions" include, but are not limited to, reassignment to another position of equal status, pay and benefits.
  - c. There is no right to appeal a written warning and the President's determination is final. The professional shall have the right to submit a written reply to the written warning within fourteen (14) calendar days of receiving the written warning. The reply shall be included in the personnel file along with the written warning.

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- d. Administrators and Temporary Faculty have no right to appeal the President's decision to take disciplinary action and the President's determination is final. The Administrator or Temporary Faculty member shall have the right to submit a written reply to the notice of disciplinary action within fourteen (14) calendar days after receipt of the notice, which reply shall be included in the personnel file along with the notice of disciplinary action.
  - e. The following actions are appealable to a hearing officer when they are imposed as disciplinary action against Tenured Faculty:
    - 1) Suspension;
    - 2) Demotion;
    - 3) Reduction in salary;
    - 4) Denial of salary increase;
    - 5) Ineligibility to serve on official University bodies.
  - f. The effective date of the disciplinary action may precede the date on which the action becomes final.
  - g. Final Action. If a Tenured Faculty chooses not to appeal notice of an appealable action, the action shall become final without further proceedings or notice to the Tenured Faculty. An appeal shall not stay or delay the effective date of the action specified in the notice of the disciplinary action.
3. Appeal to Hearing Officer. Tenured Faculty may give notice to the President of intent to appeal and request a hearing officer review within fourteen (14) calendar days of receipt of the notice of decision imposing appealable actions, as defined in Section X, paragraph B.2.e. The notice of intent to appeal to a hearing officer shall be accompanied by a short and specific statement giving the reason for the appeal. If a notice of intent to appeal is untimely, the appeal shall be dismissed and the action shall become final without further proceedings or notice to the Tenured Faculty. If timely notice of appeal is received, the following procedure shall apply:

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- a. Within fourteen (14) calendar days after receipt of the Tenured Faculty's request for hearing, the President shall give to the Tenured Faculty a list of three members of the University's hearing officer panel.
- b. The Tenured Faculty shall give notice to the President within seven (7) calendar days after receipt of this hearing panel list as to which panel member the Tenured Faculty strikes from the list.
- c. Within seven (7) calendar days after receipt of the Tenured Faculty's strike choice, the President shall strike one name from the list and give the Tenured Faculty notice of the remaining person, who will serve as hearing officer.
- d. Costs for the hearing officer procedure, including the recording of the hearing, shall be borne by the University except that the Tenured Faculty and the University shall each be responsible for expenses incurred at their individual requests during the appeal process, such as the expenses for transcripts, witnesses, and attorneys.
- e. The Tenured Faculty is entitled to the active participation of legal counsel of his or her own choosing and at his or her own expense during the hearing process. The President is entitled to legal counsel by the Attorney General or designee.
- f. The hearing officer shall convene the hearing as soon as reasonably practicable at a time mutually agreed upon by the Tenured Faculty and the University. The hearing officer shall give notice of the date, place, and time of the hearing to all parties and to the chair of the Board of Trustees.
  - 1) The notice of disciplinary action and the Tenured Faculty's statement of the reason for the appeal shall be deemed to be the pleadings for purposes of the hearing
  - 2) Either party may submit exhibits and/or witness testimony or sworn affidavits at the hearing. The Hearing Officer does not have the authority to issue subpoenas to witnesses or mandate attendance or testimony at a hearing. Therefore, it is the duty of the parties to arrange voluntary participation by their witnesses.
- g. At the hearing the burden is on the Tenured Faculty to establish by a preponderance of evidence that the President did not have sufficient cause for the discipline imposed. The burden of going forward with the evidence and the burden of persuasion also rest upon the Faculty member

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with regard to any assertion contained in the reply, mitigating circumstances, or affirmative defenses. No evidence may be admitted at the hearing which is not relevant either to the bases for the disciplinary action and/or sanction set forth in the notice or to an assertion in the Tenured Faculty's statement of the reason for the appeal.

- h. The hearing shall be recorded by a court reporter or electronically recorded. The choice of recording method shall be at the President's discretion.
- i. The hearing officer shall deliver the initial decision to the Tenured Faculty and to the President within fourteen (14) calendar days following the hearing.

4. Trustees' Review.

- a. The hearing officer shall within fourteen (14) calendar days of the hearing transmit his/her initial decision, along with the record of the hearing (including the electronic recording) to the Chair of the Board of Trustees.
- b. Either party may appeal the hearing officer's initial decision to the Trustees. The notice of appeal together with a statement of the party's specific exceptions to the hearing officer's initial decision and a designation of the relevant parts of the record to be considered must be received by the Chair of the Board of Trustees within twenty (20) calendar days after the date on which notice of the decision was given to the parties by the hearing officer unless the Chair extends the filing deadline for good cause shown.
- c. The party appealing shall serve a copy of this notice of appeal on the other parties. The other parties shall have ten (10) calendar days thereafter to designate additional parts of the record to be considered. If the parties choose not to appeal or if the notice(s) of appeal is/are not timely filed, the initial decision of the hearing officer shall become the final decision of the Trustees without further proceedings or notice to the parties.
- d. If either or both parties file timely notices of appeal, the Trustees shall, at their convenience, review and take action on the hearing officer's initial decision.
- e. If appealed to the Trustees, the disciplinary action and sanction (or any modification(s) thereof) shall become final if and when it is adopted in the final decision of the Trustees.

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- f. An order by the Trustees remanding an appeal to the hearing officer for such further proceedings as the Trustees may direct is not final action by the Trustees and is not subject to judicial review.
- g. A final decision by the Trustees affirming, setting aside or modifying the hearing officer's initial decision is subject to such judicial review as may be provided by law. Judicial review shall not delay or stay the enforcement of any disciplinary sanction unless the court orders otherwise.
- h. The President may at any time before a final decision is issued by the Trustees rescind any disciplinary action by notifying the Tenured Faculty in writing that the action has been rescinded. In such event, any hearing or review proceedings pending with respect to that disciplinary action shall cease.

**C. Request for Hearing for the Purposes of Name Clearing.** Exempt professionals, non-tenured faculty, and tenured faculty who elect not to appeal disciplinary action or dismissal under this Section X or Section XI may give notice to the President of intent to request a hearing for the purposes of name clearing.

- 1. The request for hearing before a hearing officer shall be accompanied by a short and specific statement giving the reason for the name clearing hearing. Because a name clearing hearing is available only (1) when the cause of discipline or termination is stigmatizing and (2) published by the University, the appeal must state the grounds upon which the requesting party believes both requirements are satisfied.
  - a. “Stigmatizing” statements are false statements that impugn the employee's good name, reputation, honor, or integrity and that occur in the course of terminating the employee or foreclosing other employment opportunities.
  - b. The requesting party must include, in his or her request for hearing, the forum, method, and extent of the publication of the false stigmatizing information.
- 2. In lieu of an in-person name clearing hearing, the requesting party may elect to proceed by relying on written submissions to the President that may include, but are not limited to, the “pleadings” as defined in this Section X, paragraph C. 9.a below and any other written materials or exhibits that the requesting party wishes to submit within the limits set forth in this Section X, paragraph C.9.b. below.

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Any submission will be included in the personnel file along with the notice of disciplinary action or dismissal.

3. If the requesting party instead requests an in-person hearing, within fourteen (14) calendar days after receipt of the requesting party's request for hearing, the President or the President's designee shall give to the requesting party a list of three members of the University's hearing officer panel.
4. The requesting party shall give notice to the President or designee within seven (7) calendar days after receipt of this hearing panel list as to which panel member the requesting party strikes from the list.
5. Within seven (7) calendar days after receipt of the requesting party's strike choice, the President or designee shall strike one name from the list and give the requesting party notice of the remaining person, who will serve as hearing officer.
6. Costs for the hearing officer procedure, including the recording of the hearing, shall be borne by the University except that the requesting party and the University shall each be responsible for expenses incurred at their individual requests during the appeal process, such as the expenses for transcripts, witnesses, and attorneys.
7. The hearing shall be recorded by a court reporter or electronically recorded at the President's discretion. Should the President choose electronic recording, the requesting party may elect to use a court reporter at the requesting party's expense.
8. The requesting party is entitled to the active participation of legal counsel of his or her own choosing and at his or her own expense during the hearing process. The President is entitled to legal counsel by the Attorney General or designee.
9. The hearing officer shall hold the name clearing hearing as soon as reasonably practicable at a time mutually agreed upon by the parties. The hearing officer shall give notice of the date, place, and time of the hearing to all parties and to the chair of the Board of Trustees as soon as practicable.
  - a. The notice of disciplinary action and the requesting party's statement of the reason for the request for a name clearing hearing shall be deemed to be the pleadings for purposes of the hearing.

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- b. Either party may submit exhibits and/or witness testimony or sworn affidavits at the hearing. The Hearing Officer does not have the authority to issue subpoenas to witnesses or mandate attendance at the hearing. Therefore, it is the duty of the parties to arrange voluntary participation by their witnesses.
- 10 No evidence may be admitted at the hearing that is not relevant to an assertion in the requesting party's statement of the reason for the appeal.
- 11 The hearing officer shall deliver a finding that a name clearing hearing has been held in accordance with this Section to the requesting party and to the President within fourteen (14) calendar days following the hearing. The hearing officer's finding that a name clearing hearing has been held will be placed in the appellant's personnel file.