DISMISSAL AND DISCIPLINE OF FACULTY

PREAMBLE: This section outlines procedures for the dismissal of tenured faculty and of untenured faculty who are being dismissed before the end of their current term of appointment. It was a part of the 1979 Handbook, though in that document it included exempt employees as well. It was thoroughly revised in July of 1989 to reflect changes in regents’ policy and divided into faculty and exempt sections in July of 1996. The whole of the policy was substantially revised, and sections E and F rewritten, in July 1999 so as to conform the university’s policy with that of the Regents. Non-tenured faculty should also consult section 3900 “Non-Reappointment of Non-Tenured Faculty and Exempt Staff.” Again, in compliance with Regents policy changes, this section was extensively revised in 2003. In 2008 the committee composition previously in D-3 b was moved into FSH 1640 Committee Directory. Further information may be obtained from the Provost’s Office (208-885-6448) or the Office of the Faculty Secretary (208-885-6151). [rev. 7-99, 7-03, ed. 7-08]

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A. REGENTS’ AUTHORITY AND DEFINITION OF ADEQUATE CAUSE.

A-1. All employees of the regents or of the agencies, institutions, school, or office under its jurisdiction are subject to dismissal for adequate cause during the period of employment. “Adequate cause” means one (1) or more acts or omissions which, singly or in the aggregate, have directly and substantially affected or impaired an employee’s performance of his or her professional or assigned duties or the best interests of the regents, institution, agency, school, or office. In addition, any conduct seriously prejudicial to the regents, an institution, agency, school or office may constitute adequate cause for discipline up to and including dismissal. Examples include harassment prohibited by law, immorality, criminality, dishonesty, unprofessional conduct, actions in violation of policies, directives, or orders of the regents, an institution, agency, school or office, unsatisfactory or inadequate performance of duties, or failure to perform duties. [RGP IIL3] [add. 7-99, rev. 7-03]

A-2. Dismissal of faculty is as provided in the regents’ policy RGP III. [add. 7-99, ed. 7-03]

B. CAUSE FOR DISMISSAL.

B-1. Dismissal (as opposed to non-renewal of a non-tenured faculty member) by UI of the employment of a faculty member, except in the case of resignation or retirement, will be only for adequate cause as defined above in A-1. [rev. 7-99, 7-03]

B-2. As provided in 3970, any faculty member may be laid off in conjunction with a reduction in force approved by the regents and resulting from a declaration of financial exigency.

C. ADMINISTRATIVE LEAVE. A faculty member may be placed on administrative leave with pay pending the procedures set forth in this section. [rev. 7-03]

D. UI PROCEDURES RELATED TO DISMISSAL. In each case, the issue of whether or not adequate cause for termination or dismissal exists is to be determined by an equitable procedure, affording protection to the rights of the faculty member and to the interests of the state of Idaho and its system of higher education. The burden of proof that
adequate cause exists rests with the institution and its administrative officers, and will be satisfied only by clear and convincing evidence in the record considered as a whole. [ed. 7-99, rev. 7-03]

**D-1. Departmental, Division, and College Action.** When reason arises to question the fitness of a faculty member, the immediate supervisory officer discusses the matter with the employee in a confidential personal conference. It is the duty of the immediate supervisor and the faculty member to make a good faith effort to correct any and all deficiencies in the faculty member’s performance. Departments, divisions, or colleges are to establish policies and procedures for identifying problems, suggesting remedial actions, and assisting the faculty member in becoming a productive member of the university community. These procedures are to include peer input and are to be fully integrated with the annual evaluation process. A good faith effort must be made to identify and resolve performance problems at the lowest administrative level.

**D-2. Administrative Action.**

a. If remedial performance adjustments do not result, the provost shall determine whether formal dismissal proceedings should be initiated. [rev. 7-99]

b. If the provost determines that formal proceedings should be initiated, he or she should formulate a written statement with reasonable particularity of the grounds proposed for the dismissal. [rev. and ren. 7-99]

c. Nothing in these procedures prevents the provost from withdrawing the fitness complaint from the process, at any time for any reason. However, the provost must either withdraw the complaint or proceed with the dismissal process within a reasonable period of time. [rev. and ren. 7-99]

d. The statement of particularity is communicated, in writing, to the faculty member by the provost and delivered personally or sent first-class mail, postage pre-paid to the employee at the last known address on file for the employee. [rev. and ren. 7-99, rev. 7-03]

**D-3. Dismissal Hearings Committee Process.** [ren. 7-99]

a. If the faculty member requests a hearing to determine whether the termination is properly based on the grounds stated, one will be conducted by a Dismissal Hearings Committee (DHC) at a specified time and place. See FSH 1640.36 for the function and structure of the DHC. The faculty member must file a written request with the provost for a hearing within seven working days of receipt of the provost’s communication of particulars. If the faculty member has not requested a hearing, the statement of particulars constitutes the dismissal recommendation, which the provost may communicate to the president without further delay. [rev. and ren. 7-99, 7-08]

b. The DHC proceeds by considering the provost’s recommendation and statement of grounds for dismissal already formulated, the evidence supplied to support the dismissal recommendation, and the employee’s response written before the time of the hearing. If any facts are in dispute, the testimony of witnesses and other evidence concerning the matter set forth in the letter of particulars to the faculty member become part of the hearing record. [rev. and ren. 7-99, ren. 7-08]

c. The DHC determines the order of proof, conducts the questioning of witnesses, and, if necessary, secures the presentation of evidence important to the case. [rev. and ren. 7-99, ren. 7-08]

d. The faculty member has the option of assistance by counsel or an advisor; the faculty member, the provost, and their counsels have the right, within reasonable limits, to question all witnesses who testify orally. The faculty member has the opportunity to confront all adverse witnesses. All evidence is duly recorded. [rev. and ren. 7-99, ren. 7-08]
e. If a question of timeliness arises during these procedures, the DHC will review the action of the delinquent party and determine whether the dismissal procedures will continue, as outlined above. [rev. and ren. 7-99, ren. 7-08]

f. The DHC reaches its decision in conference within five working days of the formal hearing’s close, solely on the basis of the record of the hearing. It makes explicit findings with respect to each of the grounds for removal presented or remedial actions, and renders a reasoned opinion. The provost, the president and faculty member are notified of the decision in writing and given a copy of the record of the hearing; the college and department or division concerned are notified of the recommendation. [rev. and ren. 7-99, 7-03, ren. 7-08]

D-4. Presidential Decision. [rev. and ren. 7-99, 7-03]

a. The president, after due consideration of the DHC’s recommendation, shall initially determine whether he or she agrees or disagrees with the DHC’s recommendation. In the event of disagreement, the president shall meet with the DHC to discuss the reasons for the president’s disagreement prior to reaching a final decision. Upon reaching a final decision the president forwards his or her decision to the faculty member and to the college and department or division. If the president’s decision differs from the committee’s, the reasons for the disagreement are also communicated to the faculty member, the college and department or division, and to the DHC. [rev. and ren. 7-99, rev. 7-03]

b. The notice from the president must be in writing and will be personally served on the employee or be sent by first-class mail postage pre-paid to the faculty member at the last known address on file for the faculty member. The notice must contain a concise statement of the charges against the employee, the findings of fact that are the basis for the president’s decision for dismissal or continuance, and any conditions imposed on the continuance of employment. If the president’s decision is for dismissal, the faculty member receives a statement of all rights and procedures for appeals of the president’s decision to the Faculty Appeals Hearing Board or directly to the regents. [rev. and ren. 7-99, rev. 7-03]

D-5. Appeal to the Faculty Appeals Hearing Board. The faculty member may appeal a presidential decision to dismiss to the Faculty Appeals Hearing Board (FAHB), see section 3840, or to the regents, see F below. [add. 7-99, rev. 7-03]

a. If the faculty member appeals to the FAHB he or she must notify the president in writing within fifteen (15) calendar days of the receipt of the notice given by the president. [add. 7-99, ed. 7-03]

b. If the charges against the employee, or the contentions of fact on which the charges are based, materially change after the determination of the DHC or appropriate appeals hearing body, the faculty member may obtain an additional review before the president makes a decision. Unless specifically provided by the regents in RGP IIM\ (see text below), discipline up to and including dismissal may be effective prior to the initiation by the employee of the internal grievance procedure. [ren. 7-99, rev. 7-03]

c. For the purpose of dismissal-for-cause procedures only, the FAHB hearing procedures have an expanded scope. Specifically, in accord with its current procedures, the FAHB may also hear and decide on the regularity and appropriateness of process, procedures, factual basis, and timeliness in the dismissal decision or the decision for continuance of employment, with the stated conditions. [ed. 7-99, rev. 7-03]

d. The president, after due consideration of the FAHB’s recommendation, shall initially determine whether he or she agrees or disagrees with the FAHB’s recommendation. In the event of disagreement, the president shall meet with the FAHB to discuss the reasons for the president’s disagreement prior to reaching a final decision. The president shall give substantial weight to the recommendation of the FAHB. If the president does not follow the recommendation of the FAHB, he or she shall send to the FAHB and to the appellant a written report of the basis for the president’s determination. [add. 7-99, ren. and rev. 7-03]
E. UI PROCEDURES RELATED TO DISCIPLINE OTHER THAN DISMISSAL. [add. 7-03]

E-1. The regents provide the following relative to discipline other than dismissal:

In each case the issue of whether or not adequate cause exists should be determined fairly by the institution, agency, school, or office recognizing and affording protection to the rights of the employee and to the interests of the Board and its institutions, agencies, school, or office.

a. Discipline, up to and including dismissal, of employees before the expiration of the stated period of appointment or employment contract will be only for adequate cause, as determined by the appropriate administrative officers to whom this responsibility is delegated by the chief executive officer of the institution. Each institution, agency, school or office shall have a process that provides employees with written notice of contemplated discipline and an opportunity to be heard. The employee may be placed on administrative leave with pay until he or she has exercised the opportunity to respond, or declined, either affirmatively or through inaction, to do so, and the recommendation has been acted upon by the chief executive officer or designee. The chief executive officer or designee must notify the employee of the recommendation and proceed in the following manner:

1. The notice must be in writing, and may be personally served upon the employee, or be sent by first-class mail, postage pre-paid, to the employee at the last known address on file for the employee.
2. The notice must contain a concise statement of the reasons and nature of the discipline.

E-2. UI Process. The provost has authority to determine if adequate cause has been established and if discipline other than dismissal should be taken. The provost may place the faculty member on administrative leave pending the final decision by the provost. Before final decision, the provost will provide the faculty member with a written statement setting forth with particularity the basis for the contemplated discipline and any information or material used to formulate the determination of adequate cause. The faculty member must be notified that he or she has fifteen (15) calendar days, or more in the discretion of the provost, in which to respond or decline to respond affirmatively or through inaction. After the period to respond expires the provost must notify the faculty member of his or her decision as required in the regents’ policy quoted above.

E-3. Following the imposition of discipline, the faculty member may use the FAHB (FSH 3840) to appeal the decision.

F. APPEALS TO THE REGENTS. Upon receipt of the final findings and recommendations, including those resulting from an internal grievance, a faculty member may file an appeal with the regents as set forth in RGP IIM (see below). The regents may if they choose to hear an appeal, by a majority of the total membership, approve, reject, or amend such findings, recommendations, or suggestions, if any, or may remand the matter for additional evidence, recommendations, or suggestions, if any. Reasons for suggestions will be stated in writing and communicated to the employee. The Board may employ a hearing officer for carrying out the Board’s duties under this paragraph. (RGP L4) [rev. 7-03, ed. 7-08]

RGP IIM provides: A nonclassified employee may elect to petition the Board to review any final personnel related decision of the chief executive officer. Any written petition must be filed in the Office of the State Board of Education within fifteen (15) calendar days after the employee receives written notice of final action under the internal procedures of the institution, agency, school, or office. The Board may agree to review the final action, setting out whatever procedure and conditions for review it deems appropriate, or it may choose not to review the final action. The fact that a written petition has been filed does not stay the effectiveness of the final decision nor does it grant a petition for review unless specifically provided by the Board. Board review is not a matter of right. An employee need not petition the Board for review in order to have exhausted administrative remedies for the purposes of judicial review. [rev. 7-03]