

FAC 490.2 Procedural Guidelines

The following procedure and timeline are designed to be timely and fair. While this process and timeline should generally be adhered to, deviations from the process and timeline that do not affect the fundamental fairness of the proceedings will not affect the validity of such proceedings. Since allegations that may call for faculty discipline create a cloud over both the institution and the affected faculty member, all parties should strive to complete such proceedings as expeditiously as possible, without sacrifice of the fundamental goal of fairness.

When problems in the performance or behavior of a faculty member arise, the chief academic officer, or CAO, is responsible for gathering information and for working with human resources, the president, or others as the CAO sees fit to determine one of two disciplinary paths: discipline not involving dismissal or discipline involving the possibility of dismissal.

490.2.1 Faculty Discipline Not Involving Dismissal: Seeking a Resolution

When the CAO chooses to pursue disciplinary actions not involving dismissal, the CAO is responsible for proposing the discipline. The CAO will discuss the matter with the faculty member in a personal conference in an attempt to reach a resolution. The faculty member may either accept the proposed discipline or reject the proposed discipline and appeal in writing to the Faculty Review Committee (FRC).

When the faculty member appeals the proposed discipline, FRC, working in consultation with the DHR, shall attempt to effect a mutually agreeable resolution. The faculty member, the CAO,

or FRC can request that this process include a meeting with FRC.

FRC may choose to uphold the decision of the CAO, offer a different disciplinary action, or find that disciplinary action is unwarranted. If FRC elects to modify or reject the recommendation of the CAO, FRC's proposed change must receive the approval of the president. If FRC upholds the CAO's proposed discipline, the faculty member may appeal FRC's decision in writing to the president of the college. The President may reject, uphold, or modify the decision of FRC, and the President's decision is final.

490.2.2. Faculty Discipline Involving Possible Dismissal: Seeking a Resolution.

When the CAO elects to pursue disciplinary actions that include the possibility of dismissal, the CAO, acting in consultation with the DHR, will discuss the matter with the faculty member in a personal conference. The matter may be concluded by mutual consent, e.g., a severance agreement.

If the faculty member and the CAO do not agree upon a solution, the CAO will forward the question of faculty dismissal to the Faculty Review Committee. FRC, working in consultation with the DHR, shall inquire into the situation and try to reach a solution. Faculty Review Committee shall consider the case based on the available information. At the request of either FRC or the affected faculty member, this process may include a meeting of FRC with the individual faculty member.

FRC shall choose one of the three findings below, submitting its recommendation in writing to the president. The recommendation shall specifically state the grounds for, and the reasoning behind, its finding. The recommendation shall be delivered within twenty (20) working days from the date the faculty member declined the CAO's proposed resolution.

The findings available to FRC include

- 1) that disciplinary action is not needed;
- 2) that the issue does not merit dismissal but that the faculty member should be disciplined by means designated by FRC; or
- 3) that there are grounds for formal dismissal proceedings.

The faculty member or the CAO may appeal FRC's decision in writing to the president of the college. The president may reject, uphold, or modify the decision of FRC. In the case of Finding 3), the college and the affected faculty member may agree either to pursue mediation (490.2.3) or to commence formal dismissal proceedings (490.2.4).

490.2.3. Third-Party Mediation

If the college finds and FRC confirms that grounds for dismissal proceedings exist, the college (through the President or CAO) and the affected faculty member may jointly choose mediation. If mediation is to be used, it must be chosen within five (5) working days of the college's decision. The college and the affected faculty member shall jointly choose a mediator at the college's expense. At any point, either party may unilaterally end mediation.

If no mutually agreed-upon resolution has been reached following the above procedures, formal dismissal proceedings will commence.

490.2.4. Commencement of Formal Dismissal Proceedings

Within five (5) working days after it is determined that formal dismissal proceedings are to take place, the President and Faculty Review Committee shall formulate a joint statement (the "Statement") of the grounds for dismissal; however, if the President and Faculty Review Committee disagree, the President (or the President's designee) shall formulate such

Statement.

Formal dismissal proceedings shall commence with a written communication from the President to the affected faculty member, containing a copy of the written Statement, described above. At the same time, the affected faculty member shall be informed in writing that he or she has five (5) days after receipt of the Statement to request a formal hearing concerning the proposed grounds for dismissal. The faculty member shall be provided with this handbook and reminded of the process outlined therein.

At least five (5) working days before the scheduled hearing, the affected faculty member shall inform the President and the Hearing Committee in writing of his or her position with respect to a formal hearing. If it is the faculty member's desire to proceed with a hearing, a time and date that allows the faculty member sufficient time to prepare his or her defense shall be set. Reasonable requests for rescheduling should be granted, subject to the need for the proceedings to take place in a timely fashion.

490.2.5. Hearing Procedures

(a) Hearing Committee Composition

The formal hearing shall be conducted by a Hearing Committee of three (3) full-time faculty members. This Hearing Committee will be responsible for making a final recommendation to the President. One member of the Hearing Committee shall be chosen by the affected faculty member; another shall be chosen by the President. The third member of the Hearing Committee shall be jointly chosen by the other two Hearing Committee members. If the two members cannot agree upon a third member in a timely fashion, the CAO or the President can ask Faculty Review Committee to appoint the third person. The faculty recommends that the choice of members of the hearing committee be on the basis of their objectivity and competence, and the regard in

which they are held in the academic community. If a member refuses to serve, resigns, or becomes unable to serve, he or she shall be replaced by the party or parties appointing him or her. The Hearing Committee will elect its own chair. The affected faculty member and the President shall make their selections for the Hearing Committee not later than ten (10) working days after the delivery of the Statement of Grounds for Discipline to the affected faculty member.

(b) Hearing Committee Proceedings

Faculty disciplinary hearings are not open to the public. However, the Hearing Committee may invite whoever is required to ensure that the hearing is fair and that all relevant facts are presented. If any material facts are in dispute, the testimony of witnesses and other evidence related to the Statement of Grounds for Discipline should be received. The legal rules of evidence will not be applicable, but the Hearing Committee should conduct its proceedings to ensure that evidence is reliable and received in an orderly way. The statements of witnesses may be received under oath or affirmation. Unsworn statements may be received if the Hearing Committee deems this appropriate.

The Hearing Committee shall determine the order of proof and shall, within reason, assist each party in obtaining the attendance of witnesses or securing evidence. The Hearing Committee may question witnesses, but shall also permit the parties and/or their counsel or other representatives to question witnesses.

The President will have the option of attending the formal hearing and may designate appropriate representatives or legal counsel to assist in the proceedings. The affected faculty member shall have the same rights. The faculty member will have the opportunity to hear and question all witnesses; however, the Hearing Committee will have the right to receive into evidence written statements made outside the hearing and

to give them what weight it deems appropriate. The identities of all persons providing statements, and the contents of such statements, shall be disclosed to the affected faculty member, who will have a reasonable time to respond to them, such as by the presentation of responsive evidence. All of the evidence should be recorded by a court reporter.

(c) Consideration by Hearing Committee

After all the evidence has been presented, the parties shall have the opportunity to present oral arguments and, if the Hearing Committee chooses to receive them, written briefs. The Committee may choose to make its recommendation without waiting for a transcript of the hearing if it believes that a just decision may be reached without a transcript, or it may choose to await the preparation of a transcript. The Hearing Committee shall address each of the grounds of discipline presented in the Statement, and shall state the reasons for its recommendation. The Hearing Committee shall prepare its recommendation through private deliberations on the basis of the evidence and arguments presented or received in the hearing. The President and the faculty member shall be notified of the recommendation in writing. If a transcript of the hearing is prepared, a copy of such transcript shall be made available for examination and use by the President and the affected faculty member (or their designees).

(d) Consideration by the President of Hearing Committee's Recommendation

The President shall consider the recommendation made by the Hearing Committee. In so doing, the President shall consider the evidence and arguments, whether oral or written, presented to the Hearing Committee. The President may also consider other evidence, but only after the affected faculty member has been apprised in detail of such evidence and given reasonable opportunity to respond to it.

The recommendation of the Hearing Committee shall be sustained, or the President shall, in writing, specify his or her objections to the recommendation. In the latter case, the Hearing Committee shall reconsider its recommendation, taking account of the President's objections, and shall, if necessary, receive new evidence, convoking if necessary a supplemental formal hearing. The Hearing Committee should frame its decision and communicate it to the President in the same manner as before. Only after studying the Hearing Committee's reconsidered recommendation shall the President make a final decision that overrules the Hearing Committee's recommendation.