

Faculty Handbook Committee

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CHAPTER FIFTEEN: DUE PROCESS & REVIEW OF FACULTY MISCONDUCT CASES

I. Preamble

The University of Northern Iowa is committed to academic freedom secured and maintained by shared governance, characterized by collaborative leadership and responsibility. This commitment necessarily requires an engaged faculty that contribute in good faith to maintaining excellence in the university's operations and reputation, including compliance with University policies and procedures. This procedure provides a remedy for violations of these expectations.

II. Introduction and Scope

- A. The procedures in this Chapter are intended to provide an appropriate level of academic due process to faculty subject to potential discipline or dismissal as a result of alleged misconduct.
- B. The faculty of the University of Northern Iowa expect the highest standard of professional conduct from ourselves and our peers. In the rare event that those expectations are violated, this chapter provides a means for faculty review of those cases.
- C. The procedures contained in this Chapter shall not apply where an applicable law, Board policy, or University policy provides alternative procedures for investigating and responding to specific types of alleged misconduct, including but not limited to UNI Policy 13.02 (Discrimination, Harassment, and Sexual Misconduct) or UNI Policy 13.13 (Research Misconduct). In those cases where these procedures do not apply and major sanctions are imposed, the faculty member may appeal the discipline pursuant to Chapter 12.
- D. These procedures shall not apply in cases where a faculty member's employment ends upon the conclusion of their term of appointment pursuant to Chapter 2.
- E. These procedures shall not apply to decisions to deny promotion, deny tenure, or terminate or not renew a probationary appointment that are made pursuant to the procedures contained in Chapter 3. Such decisions may be appealed only under the procedures provided for in Chapter 12.
- F. This is not a grievance procedure. Chapter 11 of the Faculty Handbook spells out the procedures for Faculty who are unsatisfied with administrative decisions about leaves of absence, modified duties assignment, salary increases, merit pay, overload pay, travel research or professional development funding, professional development assignments, summer employment, or post-tenure awards. Any review of these matters may be considered by the Faculty Petition Committee pursuant to Chapter 11 of the Faculty Handbook.

- G. These procedures shall not justify discipline of faculty for immaterial violations of policy. Faculty shall be disciplined only for acts that affect an important interest of the University (see paragraph V.A. in this chapter).
- H. These procedures also acknowledge a distinction between misconduct and evaluation processes. While evaluation processes may intersect with misconduct procedures, for most purposes the process of evaluation is a separate process unless a major sanction is proposed as a sanction for the post-tenure review process (paragraph 3.16f4).

III. Guiding Principles

- A. Academic Freedom: The establishment of a procedure for handling misconduct or dismissal cases is an attempt to provide a reasonable guarantee of compliance with standards of academic due process, especially as these are enunciated in the “1940 Statement of Principles of Academic Freedom and Tenure” by the American Association of University Professors and the Association of American Colleges, and promulgated in the [“Statement on Procedural Standards in Faculty Dismissal Proceedings,”](#) adopted by the Council of the American Association of University Professors in November, 1957, and by the Association of American Colleges at its annual meeting in January, 1958 and updated in 1990. As articulated in University Policy 6.10, Academic Freedom is recognized as a foundation of the University.
- B. Confidentiality: These procedures are designed to serve the best interest of, and to be fair to, both the individual concerned and the university. Within these procedures the importance of a reasonable balance between ensuring adequate process and available resources is acknowledged so as not to overly burden faculty or the institution. In addition, confidentiality is understood as of vital importance and thus, administrators--unless otherwise required by state or federal law--protect the identity of the faculty member accused of misconduct to those who need to know in order to carry out a thorough, competent, and objective proceeding.
- C. Conflict of Interest: A faculty member shall recuse themselves from any proceeding when they are a member of the respondent’s department or when there is a conflict of interest, in which case the Faculty Handbook Committee will identify a qualified substitute. If a party submits a written objection to any appointed member of the Faculty Hearing Board based on bias or conflict of interest within five working days of receipt of the proposed Faculty Hearing Board membership, the Faculty Handbook Committee will determine whether to replace the challenged member with a qualified substitute.
- D. Just Cause: These procedures assume “Just Cause” is the standard for termination for misconduct of a tenured faculty member before the expiration of a term appointment. Termination for faculty misconduct is only appropriate in cases of Just Cause. Just Cause must be established by the administration by a clear and convincing evidence standard.

IV. Sanctions

- A. Major Sanctions
 - 1. Only proposed discipline involving a major sanction is subject to a faculty hearing process, outlined below. Major sanctions consist of: termination, suspension without pay, reduction in salary, reparations or fines of more than \$2000, or an *involuntary* reassignment of duties outside of the standard portfolio (see Faculty Handbook Chapter 4) for a full semester or more, or paid suspension for a full semester or more.
- B. Minor Sanctions
 - 1. Minor sanctions are any sanctions not defined as a “Major Sanction,” and include such actions as a written or verbal reprimand, a reassignment of duties for less than one semester, mandatory training, reparations or fines of less than \$2000, removal of

distinguished titles, removal of graduate supervision privileges, or cancellation of graduate faculty status. Although paid administrative leave or reassignment of duties for less than one semester are considered minor sanctions, such sanctions will not be imposed prior to consultation by the Provost with the Chair of the Faculty and the Faculty Senate Chair. Faculty facing minor disciplinary sanctions may not elect a hearing under this Chapter, but they may be eligible to file a petition with the Faculty Petition Committee if provided for in Faculty Handbook Chapter 11.

V. Addressing Claims of Faculty Misconduct

- A. Any individual with a concern that a faculty member has engaged in misconduct shall report the concern to the appropriate administrator charged with responsibility for administering a specific university policy (e.g., Title IX officer or research integrity officer) or for an academic unit (e.g., department head, dean, or provost). That administrator is responsible for assessing the situation and, where appropriate, taking appropriate administrative action to resolve concerns (If the concern involves alleged conduct that could constitute a violation of the University's Sexual Misconduct, Discrimination, and Harassment policy, the administrator must promptly report the matter to the Office of Compliance & Equity Management).
- B. Upon receiving a report of alleged faculty misconduct, the administrator will conduct an initial assessment of the report. In the event that an administrator determines in the course of their initial assessment of the report that there is (1) a reasonable basis for investigating the allegations of misconduct and that (2) such allegations, if true, could constitute grounds for imposing disciplinary action, the administrator shall follow the following procedures:
 - 1. Provide the respondent faculty member with a written notice of the allegations of misconduct being investigated. Following such notification, the respondent shall be given the opportunity to admit that misconduct occurred and that they are responsible for such misconduct. In the event that a respondent admits responsibility for alleged misconduct, the administrator and the respondent will meet to discuss potential sanctions and will memorialize in writing any agreement as to responsibility and sanctions. If the faculty member admits to having engaged in misconduct but is unable to reach agreement as to the appropriate sanctions, sanctions will be determined as described below.
 - 2. In the event that the respondent does not admit to having engaged in any misconduct, the administrator or their designee shall conduct an investigation into the allegations of misconduct. During this investigation, the investigator shall provide the respondent with an opportunity to respond to the allegations, to provide relevant evidence, and to suggest potential witnesses.
 - 3. Upon conclusion of their investigation, the administrator or their designee shall provide the respondent with a written notice regarding the findings of the investigation. The respondent shall have the right to respond, in writing, to such investigation findings.
 - 4. If there is a finding of misconduct, the administrator or their designee shall provide the respondent with an opportunity to meet with the administrator or their designee prior to imposition of any disciplinary action.
 - 5. The administrator shall then consult with the faculty member's dean, who will decide what discipline, if any, shall be implemented.
 - 6. In the event the faculty member's dean determines that imposition of a major sanction is appropriate based upon a finding of misconduct, the matter shall be referred to the Provost for determination of the appropriate sanctions.
 - 7. The Provost shall review the matter, including the results of the investigation, and determine whether a major sanction is appropriate under the circumstances. In the event the Provost

determines that a faculty member shall be subject to a major sanction, the Provost shall provide the faculty member with a written statement with the major sanction(s) being imposed by the Provost, along with the basis for imposing such sanction(s), and a written notice of the right to request review by a Faculty Hearing Board, as provided in Section VII, before imposition of any major sanction(s). The Provost will also provide a copy of this written statement to the Chair of the Faculty and the Faculty Senate Chair.

8. The respondent faculty member may request review by a Faculty Hearing Board by filing a request for Faculty Hearing Board review with the Chair of the Faculty, Faculty Senate Chair, and the Provost within 10 calendar days of receiving a written statement of imposition of major sanctions. In the event such a request is timely filed, the Chair of the Faculty will empanel a Faculty Hearing Board in accordance with Section VII. In the event the respondent faculty member fails to make a request for review within 10 calendar days of receipt of the written statement of imposition of major sanctions, the Provost may implement the major sanction(s) described in the written statement. Reasonable extensions to the timeline above can be granted by the Provost when classes are not in session or other extenuating circumstances.
- C. Administrators will attempt to resolve any charge of misconduct with the faculty member as early in this process as possible.
- D. During all meetings with the administrator or their designee as part of this process, the respondent shall have the right to bring an advisor of their choice, including a lawyer or a representative of United Faculty.

VI. Interim Action

- A. There may be instances in which a faculty member may need to be placed on a paid administrative leave or have their duties temporarily reassigned on an interim basis pending investigation of a complaint of misconduct. The Provost may take such interim action only after consulting the Chair of the Faculty and Faculty Senate Chair to confirm that one or more of the following conditions exist:
 1. There is immediate physical danger to persons or property;
 2. There is reasonable indication of serious criminal violation;
 3. There is an immediate health hazard;
 4. There is immediate need to protect equipment or funds, including federal funds or federal financial assistance;
 5. There is immediate need to protect the safety or interests of the person(s) making the allegations, of witnesses, or of the subject(s) of the allegations or their collaborators and associates;
 6. There is a need to preserve evidence or to prevent improper influence of witness testimony;
 7. There is a need to protect the working or educational environment of affected co-workers or students; or
 8. There is a need to protect against liability of the University and its employees.
- B. Any such interim action taken must be appropriate to the interests protected, and reasonably limited so as not to have an undue damaging effect on the respondent. Any interim action shall not be considered in and of itself a sanction. The faculty member will remain in paid status for the duration of such interim action unless otherwise required by law. The Provost will assist the dean and department head in ensuring that the interim action will have as little effect as possible on the faculty member's reputation and the student learning experience.
- C. When any interim action is imposed, the investigation/review process shall be completed as quickly as possible. In the event there is a need to extend the interim action beyond the end of

the semester in which the interim action was first implemented, the Provost will consult with the Chair of the Faculty and Faculty Senate Chair to update them on the status of the investigation/review process and to determine whether there is a good basis for extending the interim action.

VII. Voluntary Mediation Conference Prior to Faculty Hearing Board Review

- A. The Provost or designee will attempt to resolve any charge of misconduct with the faculty member as early in this process as possible.
- B. In cases where a faculty member has requested review by a Faculty Hearing Board, the Provost will review the matter and schedule an informal meeting for the involved parties to discuss the alleged charge of misconduct.
- C. The faculty member alleged to have committed a violation of university policy will be invited to a voluntary meeting with the Provost. Included in the informal meeting will be the Dean of the college, head of the department, and, when requested by the faculty member, a representative of the United Faculty or other advisor of their choice. The Associate Provost for Faculty and University Counsel may also be present. At the meeting the parties will discuss the issue(s) and work toward resolving the matter through a good faith effort.
- D. If an agreeable resolution is reached by the parties, all parties shall sign and memorialize the informal agreement which will be maintained in the faculty member's Personnel file, but not in their Faculty Evaluation File. If the informal resolution is not reached, the faculty member may request the Faculty Hearing Process, or the proposed discipline will be enacted.

VIII. Faculty Hearing Process

- A. Composition of the Faculty Hearing Board
 1. The Provost will hire an external legal professional to act as Hearing Officer during proceedings. The Hearing Officer will facilitate proceedings according to these provisions and advise the members of the Faculty Hearing Board in carrying out their responsibilities.
 2. The Provost will make necessary arrangements for a recording or verbatim transcript of proceedings.
 3. The Faculty Hearing Board will consist of three members. All members of the Faculty Hearing Board will be tenured faculty members. Members will be selected via a majority vote of the Faculty Handbook Committee. It is advisable when selecting faculty members to begin with those who are current or prior members of the Faculty Handbook Committee, have served in some other capacity as an elected faculty officer, or have disciplinary or other expertise as appropriate.
 4. A faculty member shall recuse themselves from the proceedings when they are a member of the respondent's department or when there is a conflict of interest, in which case the Faculty Handbook Committee will identify a qualified substitute. If a party submits a written objection to any appointed member of the Faculty Hearing Board based on bias or conflict of interest within five working days of receipt of the proposed Faculty Hearing Board membership, the Faculty Handbook Committee will determine whether to replace the challenged member with a qualified substitute.
 5. The parties may each have the option of one peremptory challenge to strike one selection from the Faculty Hearing Board within five days after receiving the list. The Faculty Handbook Committee will make additional selections when necessary.
 6. A hearing date will be set after a Hearing Officer and all members of the Faculty Hearing Board are identified. The hearing shall ordinarily occur within 60 calendar days after the Faculty Hearing Board selection is finalized. An extension of the hearing date may be

requested by any party and may be granted with the agreement of the Hearing Officer and the Faculty Hearing Board.

B. Pre-hearing Submission of Evidence

1. The purpose of a pre-hearing exchange of evidence is to collect available evidence to inform the Faculty Hearing Board's consideration of the case and for the parties to be adequately informed of all evidence to be presented during the hearing, fostering an expeditious hearing.
2. The parties in a hearing are the respondent faculty member and the Provost, or their designee.
3. At least 14 calendar days prior to the hearing date, the parties will provide a list of witnesses and electronic copies of their evidence to the Hearing Officer via email.
4. The Hearing Officer will provide all evidence to opposing parties, who will have one week to make any objections to the introduction of such evidence.
5. Objections to evidence may be made via a written argument if it is considered irrelevant or unfairly prejudicial.
6. The Hearing Officer will make a determination regarding the admissibility of evidence and provide such evidence to the members of the Faculty Hearing Board at least two business days before the hearing.

C. Hearing Procedures

1. The parties to be heard are the respondent faculty member and the Provost, on behalf of the institution. Both parties may have a representative of their choice to present their case.
2. Hearings are private and confidential, and will be conducted in a manner that provides fair treatment to the respondent and Provost, and confidentiality to the extent possible without compromising public health and safety. No participants in a hearing will confer with members of the Faculty Hearing Board outside the hearing regarding the proceedings until they are finished. Members of the Faculty Hearing Board will likewise abstain from discussing the proceedings outside the hearing while proceedings are in progress.
3. The Provost bears the burden of proof to establish by clear and convincing evidence that the faculty member engaged in misconduct.
4. Unless otherwise directed by the Hearing Officer, the order of the presentation of the case shall be:
 - a) Opening statement of Provost or their representative
 - b) Opening statement of the respondent or their representative
 - c) Witnesses and evidence of the Provost
 - d) Witnesses and evidence of the respondent
 - e) Rebuttal witnesses and other evidence of the Provost
 - f) Rebuttal witnesses and other evidence of the respondent
 - g) Closing statement of the Provost or their representative
 - h) Closing statement of the respondent or their representative
5. Formal rules of evidence shall not apply to the hearing and the Faculty Hearing Board may give evidence the appropriate weight based upon its relevance and probative value. The Faculty Hearing Board will not consider evidence that the Hearing Officer deems is irrelevant or unfairly prejudicial or evidence covered by a legally recognized privilege (e.g., attorney-client privilege or physician-patient privilege) unless the person who has the right to assert the privilege waives the privilege.
6. Any witness may be questioned by the other party or their representative.

7. Any member of the Faculty Hearing Board may also question anyone who is presenting evidence at any time during the proceeding, including a witness. They may also question the parties after both have finished making their cases and have presented their final summary arguments.
8. If new evidence is presented, the Hearing Officer, subject to agreement of the Faculty Hearing Board, may grant adjournments in the event a party would be unfairly prejudiced by the inability to investigate the new evidence.
9. When the hearing has concluded, the Faculty Hearing Board may proceed to decision promptly, without having the record of the hearing transcribed, where it feels that a just decision can be reached by this means; or it may await the availability of a recording or transcript of the hearing if its decision would be aided thereby. A recording or verbatim transcript will be made available to the Faculty Hearing Board and the parties, on request.
10. The Faculty Hearing Board may permit or request the parties to submit a brief written argument in support of their position to the Faculty Hearing Board within five business days of the hearing.
11. Only the hearing record will inform the Faculty Hearing Board's deliberations.
12. The Faculty Hearing Board's recommendation will be determined by majority and will be conveyed in a written report by the Faculty Hearing Board, signed and attested by each member, to the Hearing Officer as soon as practicable but not later than 30 calendar days of the conclusion of the hearing. Any minority letters will be signed and attested by the member(s) and will be included in the Faculty Hearing Board's written report when presented to the Hearing Officer.
13. The Faculty Hearing Board's recommendation will specify first whether a majority agrees that misconduct occurred in the manner(s) indicated in the Provost's written statement proposing major sanction(s).
14. In addition, the Faculty Hearing Board's recommendation will specify whether a majority agrees that the proposed sanction is appropriate, or will propose an alternative sanction, accompanied by adequate reasoning for the recommendation.

IX. Decision of the President

- A. The Faculty Hearing Board will then submit their final report and recommendation to the President, along with the record, with a copy to the Provost and the Respondent.
- B. There will be no oral argument before the President, but either party may submit a brief in support of the party's position. Such brief shall be submitted within fourteen (14) calendar days of the receipt of the Faculty Hearing Board's report by the parties.
- C. After reviewing the Faculty Hearing Board's report and recommendation and the record in the case, the President will determine what administrative response, if any, shall be taken. In making such a decision, the President will give great weight to the report and recommendation of the Faculty Hearing Board. The decision of the President shall be issued within sixty (60) calendar days following receipt of the parties' briefs (or the expiration of time to submit such briefs).
- D. If the President accepts the recommendation of the Faculty Hearing Board, the President will notify the parties in writing of their final decision. If the President rejects the recommendation of the Faculty Hearing Board, the President will issue a written decision explaining the reasons for doing so, which shall constitute the final decision of the president.
- E. If the President's decision is to dismiss a tenured faculty member, the faculty member may request to have their appeal heard in binding arbitration pursuant to Chapter 12 of the Faculty Handbook. In all other cases, the final decision of the President represents the final institutional

action and may be appealed to the Board of Regents pursuant to the relevant provisions of the Board of Regents policy manual.

X. Further Appeal

- A. The grievance process provided in Faculty Handbook Chapter 12 is available as recourse to a tenured faculty member who faces dismissal as a result of the faculty hearing process, including review by an external arbitrator, whose decision shall be binding upon the University.
- B. In all other cases of major sanctions, the faculty hearing process provided for in this Chapter will substitute for the Faculty Handbook Chapter 12 grievance procedure, and an external arbitrator will not be appointed.
- C. In cases of minor discipline, faculty may pursue recourse using the faculty petition process provided in Faculty Handbook Chapter 11.
- D. For purposes of the 2022-2023 academic year, in the case of any conflict between chapters 11, 12, and 15 of this Handbook, Chapter 15 will govern.

CHAPTER TWELVE: GRIEVANCE/APPEAL PROCEDURES

Subdivision 12.3b Request for Faculty Hearing Board Review

In appeals of a major sanction that has been imposed without prior review by a Faculty Hearing Board pursuant to the procedures provided for in Chapter 15, upon request by the faculty member, the Provost will designate that the Faculty Hearing Board will hear the appeal pursuant to the procedures provided for in Chapter 15. The Faculty Hearing Board will make a recommendation regarding disposition of the appeal to the President, who shall be responsible for making the final disposition of the appeal. Except in any appeal involving dismissal of a tenured faculty member, the disposition of the appeal by the President shall represent the final institutional action, which may be appealed to the Board of Regents pursuant to the relevant provisions of the Board of Regents Policy Manual.

NOTE: The current 12.3b Conference will become 12.3c and the current 12.3c Disposition of Appeal will become 12.3d.