

CHAPTER 8: FACULTY CONDUCT, DISCIPLINARY ACTIONS AND DISMISSALS*

SECTION 8.1 FACULTY CONDUCT

PREAMBLE

The University seeks to provide and sustain an environment conducive to the creation and sharing of knowledge. Effective performance of these central functions requires that faculty members be free within their respective fields of competence to pursue and teach in accord with appropriate standards of scholarly inquiry and artistic expression.

The faculty's privileges and protections, including that of tenure, rest on the mutually supportive relationships among the faculty's special professional competencies, its academic freedom, and the central functions of the University. These relationships are also the source of the professional responsibilities of faculty members. See Chapter 3, Section 3.2 Faculty Rights and Responsibilities which sets forth the responsibility of the University to maintain conditions and rights supportive of the faculty's pursuit of the University's central functions and enumerates standards of professional conduct and of appropriate faculty behavior shared across the academic profession. The faculty of the University views conduct that departs from these ethical standards as unacceptable because it is inconsistent with the mission of the University.

It is the right and responsibility of the faculty to foster academic freedom and to maintain the highest standards of teaching, scholarship, and artistic expression and to advance the mission of the University as an institution of higher learning.

This chapter deals with the enforcement process applicable to unacceptable faculty behavior. That process must meet basic standards of fairness and is primarily the responsibility of the faculty.

SECTION 8.1 PROCEDURES FOR DISCIPLINARY ACTIONS AND DISMISSALS

Section 8.1 Scope

This section applies to all corrective actions and dismissals for cause of faculty. This section does not apply to faculty on appointments of less than a year or on the first one-year appointment. Corrective actions and dismissals for cause should not be confused with non-reappointment or termination, as discussed in Chapter 4, "Faculty Appointments, Promotion and Tenure."

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Section 8.1.2 Types of Disciplinary Actions and Dismissals

- a. Disciplinary actions may include a written warning, written censure, or suspension without pay for adequate cause, including but not limited to misconduct, dereliction of duty or violations of the University's Equal Opportunity and Affirmative Action (EO) policies. See Chapter 6.
 - (1) A **written warning** is a communication that informs the faculty member of the nature of the misconduct, the method of correction, and the probable consequence of continued misconduct. A written warning is to be distinguished from an informal spoken warning. An informal spoken warning or a letter outlining performance expectations is not an official disciplinary action.
 - (2) A **written censure** is a formal written expression of institutional rebuke that contains a description of the misconduct. A written censure must be delivered to the recipient and a copy must be maintained in a designated file or files, or for the period of time specified in the censure.
 - (3) A **suspension** is removal without pay from appointment responsibilities for a stated period of time. Unless otherwise noted, the terms of a suspension will include loss of normal employee privileges such as access to University property and parking and library privileges.
- b. **Dismissal** is the termination of an appointment for adequate cause (unfitness as a teacher, researcher/artist or practitioner) initiated by the University prior to the ending date of appointment.

SECTION 8.2 PROCEDURES FOR DISCIPLINARY ACTIONS

Procedures against faculty may originate in an Equal Opportunity/Anti-Discrimination grievance, a research misconduct violation, or other grounds. Initial procedures pertaining to allegations of unlawful discrimination, harassment or retaliation against faculty are specified in Chapter 6, "Integrity of the Academic Environment." Initial procedures pertaining to allegations of research misconduct are outlined in Chapter 5. Initial procedures for other grievances are outlined below in 8.3.1-8.3.4.

8.2.1 Informal Resolution

Prior to instituting a disciplinary action or dismissal, efforts may be made to resolve the issue(s) informally. The relevant department chair, dean or academic director may invite the faculty member to meet with them in a personal conference to discuss the problem, possible resolutions, and the possibility of disciplinary actions if it is not resolved.

8.2.2 Making A Recommendation for Disciplinary Actions other than Dismissal (See Dismissal Procedures in Section 8.4)

Recommendations for disciplinary actions originate in a faculty body such as an academic department/school and are referred to a standing elected grievance committee of full-time faculty who do not hold positions as Associate Deans or Provosts. School grievance committee membership is determined by competitive elections, voted on by all voting members of the faculty. The faculty committee will review the case and forward its recommendations in writing to the dean/academic director. If, after reviewing the faculty committee's report, the dean/academic director elects to proceed, they will forward the recommendation for an official disciplinary action to the Senior Vice President for Academic Affairs and Provost, including a detailed statement of charges and recommended disciplinary actions (see 8.2.1).

The Senior Vice President for Academic Affairs and Provost will inform the President of the process and review the charges to make their own determination of the appropriate corrective action. They may also seek the counsel of the Senate Committee of Faculty Tenure, Freedom and Responsibilities (FTFR) and the General Counsel's office.

8.2.3 Written Notice of Intent

Representing the University, the Senior Vice President for Academic Affairs and Provost shall provide a written Notice of Intent to the faculty member prior to initiating the disciplinary actions. The Notice shall state:

- (1) the intended action, including reasons for the action and the proposed effective date;
- (2) the basis of the charges, including copies of pertinent materials supporting the charges;
- (3) the faculty member's right to respond in writing within ten (10) working days of the date of issuance of the written Notice of Intent; and
- (4) The name of the person to whom the faculty member should respond.

A Notice of Intent is not required for a written warning.

8.2.4 Response to Written Notice of Intent

The faculty member who receives a written Notice of Intent shall be entitled to respond, in writing, within ten (10) working days of the date of issuance of the written Notice of Intent. The response, if any, shall be reviewed by the faculty committee that reviewed the case at the school level. That committee shall prepare its own response/recommendation and forward to the Dean and to the Senior Vice President for Academic Affairs and Provost within (15) calendar days.

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8.2.5 Written Notice of Action for all Grievances

If the University justifies disciplinary action following the review of all timely responses, if any, from the faculty member and the faculty review committee or the Senate Committee on Equal Opportunity Grievances or the Research Misconduct Grievance Committee, and within thirty (30) working days of the date of issuance of the written Notice of Intent, the designated representative of the President shall issue a written Notice of Action to the faculty member of the disciplinary action to be taken and its effective date. In cases of disciplinary actions due to alleged EO policy and/or research misconduct violations, the chair of the EO Grievance Committee or the Research Misconduct Grievance Committee shall also receive the notice of action. Based on this Notice of Action, the faculty member has the right to appeal all disciplinary actions to the University Senate Committee of Faculty, Tenure, Freedom, and Responsibility (FTFR). The Notice of Action may not include an action more severe than that described in the Notice of Intent.

8.2.6 Appeal Hearings of Disciplinary Actions

If the faculty member elects to proceed with an appeal to FTFR, a hearing committee shall be constituted as soon as practical and will proceed to hear the appeal of the case according to the normal procedural practices outlined in the Senate By-Laws and below.

8.2.6.1 Conflict of Interest

Members of FTFR shall be recused from the case, either at the request of the respondent, the complainant, or the designated representative of the President, or on their own initiative, if they deem themselves disqualified for reasons of bias or personal interest. The place of a member of the Committee shall remain vacant unless a substitute has been elected by the faculty of the division prior to the date fixed for the hearing. The final authority for resolving conflicts of interest rests with the chair of FTFR

8.2.6.2 Confidentiality

Appeal hearings shall be private

8.2.6.3 Burden of Proof

The burden of proof in challenging the disciplinary action shall rest upon the faculty member making the appeal.

8.2.6.4 Evidence

The FTFR Committee shall not be bound by strict rules of legal evidence. The Committee will offer all parties the opportunity to present witnesses, documents, or other evidence they consider relevant. FTFR has the discretion to determine what evidence or witnesses are relevant to the issues involved.

8.2.6.5 Representation

During the proceedings both the faculty member and the designated representative of the President shall be permitted to have legal counsel and should notify the Chair of their intention to be so accompanied. Faculty members may also bring a full-time faculty member of the University as an advisor to the appeal hearing. The advisor shall not receive any compensation from Tulane University for this service. The role of the advisor is to serve in a consulting capacity.

All sides shall have the opportunity to address FTFR and question witnesses (cross examination). In some circumstances when questions become harassing, redundant, or burdensome for example, FTFR may require during the hearing, in lieu of direct questioning, that questions be directed, in writing, to the FTFR chair, who will have the discretion to determine whether and how to pose such questions. A record of all questions submitted to the chair must be retained. When the witnesses cannot or will not appear, FTFR shall seek written statements from them.

8.2.6.6 Process

- a) The Chair of FTFR shall be responsible for conducting the hearing and shall rule on all evidentiary questions. The chair will establish the guidelines for the hearing, establish its pace, determine when people are heard, and ensure that all participants remain within the bounds of what the panel believes is appropriate in a hearing conducted by faculty colleagues in the efficient pursuit of truth.
- b) The Chair of FTFR shall not have a vote in the outcome of the proceedings.
- c) The Committee's recommendations must be in accordance with established University policies including those contained in the Faculty Handbook and the faculty member's appointment letter.
- d) A full written or audiovisual record of the hearing shall be maintained and made available upon request only to the parties, FTFR members, to the President of the University or his/her designee. The record shall be kept for at least one year after the conclusion of the appeal process.

8.2.7 Outcomes

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At the conclusion of the hearing, as promptly as is consistent with due deliberation and, in any event, not later than fifteen (15) working days thereafter, the Committee shall make its recommendation. The findings of fact and recommendation of the Committee shall be based solely on the record of the hearing. The recommendations shall be in writing, shall state the basis for the decision, and shall recommend any proposed action. The written recommendation shall be provided to the appellant, the Senior Vice President for Academic Affairs, the President or the President's representative, and/or any other relevant parties.

The Provost will review these findings and recommendations and will make his/her own recommendations within fifteen (15) working days to the President and Board of Administrators. The President and Board of Administrators shall take final action within fifteen (15) working days of receipt of the Provost's recommendations.

SECTION 8.3 ADEQUATE CAUSE FOR DISMISSAL

The term adequate cause shall refer to gross violations of responsibilities as teacher, researcher, artist, or clinical practitioner, including gross negligence of professional duty, gross incompetence, violations of academic freedom, gross personal misconduct, violations of the University's conflict of interest policy, or violations of the University's Equal Opportunity and Anti-Discrimination policies. Dismissal shall not be used to restrain faculty members in their exercise of academic freedom or other rights as faculty.

SECTION 8.4 DISMISSAL PROCEDURES

Procedures against faculty may originate in an Equal Opportunity/Anti-Discrimination grievance, a research misconduct violation or other grounds. Initial procedures pertaining to allegations of unlawful discrimination, harassment or retaliation against faculty, are specified in Chapter 6, "Integrity of the Academic Environment." Initial procedures pertaining to allegations of research misconduct are outlined in Chapter 5. Initial procedures for other grievances are outlined below in 8.5.1

Every action to dismiss a faculty member then follows the hearing procedures described in 8.5.2 The full set of faculty rights enumerated herein must be observed.

8.4.1 Preliminary Inquiry

(skip to Step 2 for EO/Anti-Discrimination Violations and Research Misconduct cases)

Step 1:

- A. When reason arises to consider whether cause exists to dismiss a faculty member who has tenure or whose term of appointment or contract has not expired, the relevant dean or academic director shall invite the faculty member to meet with him or her in a

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personal conference to discuss the problem, its possible resolution, and the possibility of dismissal proceedings if it is not resolved. The dean's consideration of recommending dismissal for cause shall be based on a thorough inquiry into the circumstances.

- B. At the level of the school, the elected faculty grievance committee shall conduct its own inquiry into the case which may, failing to reach an acceptable settlement, determine whether in its opinion dismissal procedures should be undertaken. The committee's recommendations are not binding on the dean; should the dean disagree with the recommendation; they shall justify the reasons for the decision to the committee. The committee's written report of its assessment is to be included in the dossier if the action is to proceed.
- C. During Step 1, the dean may write a preliminary statement of charges with reasonable particularity of the grounds pertinent to the dismissal action under consideration. If the dean does so, a copy of the preliminary statement shall be given to the faculty member for the faculty member's written comments. The dean may also elect to provide evidence in writing to the faculty member and invite comment on that as well, and if the dean does so, the faculty member shall be allowed fifteen (15) working days from the date on which the charges were sent to them to provide in writing their comments on the evidence to the dean. If the dean receives such comments on the preliminary statement, the evidence or both, and has not yet consulted with a faculty committee as provided above, the dean will share the comments with the committee as part of the consultation.
- D. If the dean continues to believe that there is probable cause for dismissal, the dean shall forward their recommendation to the Senior Vice President for Academic Affairs and Provost, together with any preliminary statement or evidence (which has been shared with the faculty member), comments submitted by the faculty member, and the faculty committee's report. The Provost will inform the President of the University of the process.

Step 2:

The Senior Vice President for Academic Affairs and Provost receives recommendations for dismissal from the dean and/or the Senate Committee on Equal Opportunity and Anti-Discrimination Grievances Against Faculty. If the Senior Vice President for Academic Affairs and Provost does not believe there is cause for dismissal, he or she shall dismiss the case within fourteen (15) working days after receipt of the dean's or the Senate Committee's recommendation. The Senior Vice President for Academic Affairs and Provost may elect an alternative disciplinary action in lieu of dismissal. If they believe there is adequate cause for a dismissal, they shall formulate a preliminary statement of charges with reasonable particularity of the grounds pertinent to the dismissal action under consideration within fifteen (15) working days after receipt of the recommendations of the dean or the Senate

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Committee on Equal Opportunity and Anti-Discrimination Grievances Against Faculty. A copy of the charges and grounds shall be given to the faculty member for the faculty member's comment to the Provost. The faculty member shall have fifteen (15) working days to respond to the Provost.

Step 3:

The faculty member concerned, upon written request made within twenty (20) working days following delivery of such statement of charges, shall have the right to be heard by a Committee composed of the members of the Senate Committee on Faculty, Tenure, Freedom and Responsibility (FTFR). If the faculty member waives their right to a hearing in writing or does not deny the charges in writing within said twenty (20) day period, the case moves to Section 8.7 below.

8.4.2 Hearing Proceedings

- A. Members of FTFR shall be recused from the case, either at the request of the respondent, the complainant, or the designated representative of the President, or on their own initiative, if they deem themselves disqualified for reasons of bias or personal interest. The place of a member of the Committee shall remain vacant unless a substitute has been elected by the faculty of the division prior to the date fixed for the hearing. The final authority for resolving conflicts of interest rests with the chair of FTFR.
- B. As soon as practicable after receipt of a written request for a hearing and in any event within twenty (20) working days, FTFR shall provide the faculty member and the President or the President's designated representative a copy of the statement of charges and written notice of the place and date of the hearing/appeal. In cases for dismissal due to alleged research misconduct and/or EO policy violations, the chair of the EO Grievance Committee or the Research Misconduct Grievance Committee shall also be notified and will be parties to the hearing. The hearing shall be fixed for a date not sooner than twenty (20) working days nor later than forty (40) working days after the delivery of the notice.
- C. The hearing shall be private.
- D. In a hearing involving charges of incompetence, the testimony shall include that of qualified faculty members from Tulane or other institutions of higher education.
- E. The designated representative of the President (and, if applicable, the chair of the Senate Committee on Equal Opportunity and Anti-Discrimination Grievances Against Faculty and/or the Research Misconduct Grievance Committee) shall speak directly to FTFR and present necessary witnesses and documentary or other evidence. The faculty

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member shall have the opportunity to do the same. The designated representative of the President shall, insofar as it is possible, secure the cooperation of such witnesses and make available necessary documents and other evidence within their control.

- F. During the proceedings both the faculty member and the designated representative of the President shall be permitted to have legal counsel and should notify the Chair of their intention to be so accompanied. Faculty members may also bring a full-time faculty member of the University as an advisor to the appeal hearing. The advisor shall not receive any compensation from Tulane University for this service. The role of the advisor is to serve in a consulting capacity.

All sides shall have the opportunity to address FTFR and question witnesses (cross examination). In some circumstances, when questions become harassing, redundant or burdensome for example, FTFR may require during the hearing, in lieu of direct questioning, that questions be directed, in writing, to the FTFR chair, who will have the discretion to determine whether and how to pose such questions. A record of all questions submitted to the chair must be retained. When the witnesses cannot or will not appear, FTFR shall seek written statements from them.

The chair will establish the guidelines for the hearing, establish its pace, determine when people are heard, and ensure that all participants remain within the bounds of what the panel believes is appropriate in a hearing conducted by faculty colleagues in the efficient pursuit of truth.

- G. The chair of FTFR shall not have a vote in the outcome of the hearings.
- H. At the request of any party or FTFR, a representative of a responsible educational association shall be permitted to attend the proceedings as an observer. Other representatives may be admitted or excluded at the discretion of the chair of FTFR.
- I. A verbatim written and/or audiovisual record of the hearing or hearings shall be taken, and a copy shall be made available to the parties without cost.
- J. 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. A different standard of proof shall be applied if required by law.
- K. FTFR shall grant adjournments of reasonable periods of time, not to exceed ten (10) working days, to enable any of the parties to investigate evidence about which a valid claim of surprise is made.
- L. FTFR shall not be bound by strict rules of legal evidence and may admit any evidence which is of relevant value in determining the issues involved. Every possible effort shall

be made to obtain the most reliable evidence available.

SECTION 8.5 OUTCOMES

- A. As soon as practicable and in any event not later than ten (10) working days following receipt of a transcript of the hearing, FTFR will make explicit findings of fact and arrive at conclusions based solely on the hearing record with respect to each of the charges contained in the statement of charges and shall give a concise statement of its reasons for so finding and concluding. The findings, conclusions and statement of its reasons shall be promptly delivered to all parties.
- B. As soon as practicable and in any event within ten (10) working days following receipt of FTFR's findings, conclusions, and statement of reasons, the President shall either accept or reject FTFR's report. If the President rejects all or any portion of the report, the President shall promptly notify the committee and all parties stating the reasons for such rejection in writing and allow ten (10) working days for response FTFR before transmitting the case to the Board of Administrators.
- C. Should questions involving procedure relating to the hearing arise before or during the hearing which are not covered by this statement, FTFR shall decide such questions.
- D. 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 any of the parties (and their legal counsel and/or advisers) members of FTFR, administrative officers of the University, or members of the Board of Administrators, shall be avoided as far as possible until the proceedings, including consideration by the Board of Administrators of Tulane University, and appeal action, as provided in Section 8.7 below, if any, shall have been completed and communicated to the parties.
- E. Statements of charges, notices of hearings and all other notices or communications required or permitted by this policy shall have been correctly served if delivered by hand or sent certified mail to all the parties and the President or the University's counsel.

SECTION 8.6 Actions by the Board of Administrators of Tulane University

8.6.1

The faculty member who is dismissed shall have the right to a review of the finding for dismissal by the Board of Administrators or a committee appointed by it for this purpose. In

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the event that the faculty member desires the Board to review the matter, they shall within ten (10) working days of receipt of the final action by the President request such review in writing and send or deliver a copy of such request to the President. The President shall thereupon transmit the complete record of the proceedings, including the findings, conclusions and statement of reasons by FTFR and the resulting action of the President with relation thereto, to the Board of Administrators. On or before thirty (30) working days following the date on which the faculty member filed a request for a review by the Board of Administrators, the faculty member may submit a brief or memorandum in support of the faculty member's position setting forth reasons why the dismissal or other recommended penalty should not be imposed.

8.6.1.1

The Board of Administrators will set a time and place for argument by the faculty member and by the President's designated representative. The Board's review will be based solely on the record of the proceeding before FTFR.

8.6.2

In the event that, after the hearing, the Board disagrees with the findings and conclusions of FTFR, it will return the proceedings to the committee with its findings and conclusions. FTFR shall within twenty (20) working days thereafter reconsider its findings and conclusions and may receive new evidence if the receipt of evidence is necessary and thereafter return the proceedings to the Board together with its report on the results of its reconsideration and such additional findings and conclusions as may be required by any new evidence received. The Board of Administrators shall make a final decision contrary to FTFR's report on reconsideration only after a conference between the President or the President's designated representative, three members of the Board, and three members of FTFR convened for the purpose of attempting to reconcile the conflicting opinions.

SECTION 8.7 PROTECTIONS DURING THE APPEALS PROCESS

8.7.1 Administrative Leave

The Senior Vice President for Academic Affairs and Provost may temporarily separate a faculty member from their duties before a hearing process is finalized or an unlawful discrimination, harassment, or retaliation investigation is initiated under Chapter 6.3 without loss of pay and usual faculty privileges, if it is the Provost's judgment that immediate harm to the faculty member or others is threatened by their continuance and that extraordinary circumstances warrant the action.

The faculty member retains the right to file a grievance seeking an end to the temporary

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separation. During the separation period, the faculty member may consult with members of the University community, except those persons or categories of persons with whom the Provost expressly prohibits or restricts contact. The University shall make reasonable efforts to protect the continuity of the academic work of students, faculty and staff who are adversely affected. The Provost shall consult with the dean of the relevant school during the temporary separation and indicate the reasons underlying any prohibited or restricted contact between the faculty member and other members of the University community.

8.7.2 Other Protections in Connection with Dismissal Proceedings

A faculty member may not be dismissed nor, except as specified above, may their compensation be cut off or withheld before the dismissal procedure has been completed and the President and the Board of Administrators have made a final decision.

8.7.3 Implementation of Dismissals

Dismissal decisions will be implemented after the hearing and, if applicable, after all the appellate processes have been exhausted.