

**Regulation on Disciplinary Discharge, Suspension, or Demotion Under
Section 603 of *The Code***

I. Purpose

A. Section 603 of *The Code* provides a faculty member who is the beneficiary of institutional guarantees of academic tenure shall enjoy protection against unjust and arbitrary application of formal discharge, suspension, or demotion; specifies the reasons for imposition of formal discharge, suspension, or demotion; and establishes the procedures for the imposition of formal discharge, suspension, or demotion. The process of discharge or the imposition of formal discharge, suspension, or demotion must be fundamentally fair to the faculty member. Section 603 includes certain procedures to assure fairness, but there is no expectation that the process be attended by the formality or technicality which characterizes civil or criminal legal proceedings in a court of law. Rather, the process should be conducted by administrators and faculty in a manner designed to determine whether discharge, suspension, or demotion is warranted. These procedures shall not apply to Non-Reappointment, Denial of Tenure, or Denial of Promotion as provided in Section 604 of *The Code*, Separation Due to Financial Exigency or Program Curtailment as provided in Section 605 of *The Code*, grievances as provided in Section 607 of *The Code*, or any employment action that is not a formal discharge, suspension, or demotion.

B. The purpose of a disciplinary hearing by a disciplinary hearing committee is to make a recommendation about whether by clear and convincing evidence there are grounds for discharge, suspension, or demotion. The disciplinary hearing committee bases its written recommendations to the chancellor on the competent evidence presented to the disciplinary hearing committee. The decision as to whether to discharge, suspend, or demote the faculty member is the chancellor's.

C. The purpose of appellate review by the board of trustees is to determine whether (1) the campus-based process for making the decision was materially flawed; (2) the result reached by the chancellor was clearly erroneous; and/or (3) the decision was contrary to controlling law or policy.

II. Decision to Discharge, Suspend or Demote

A. Basis for Decision. A decision to impose discharge, suspension, or demotion, may only be made for one or more of the three defined permissible reasons in Section 603(1) of *The Code*:

1. Incompetence, including significant, sustained unsatisfactory performance after the faculty member has been given an opportunity to remedy such performance and fails to do so within a reasonable time;

2. Neglect of duty, including but not limited to, the sustained failure to: meet assigned classes, respond to communications from individuals within the faculty member's supervisory chain, report to the employment assignment and by continuing to

be absent for fourteen (14) consecutive calendar days without being excused by their supervisor, or to perform other essential duties of their position; and/or

3. Misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty, including violations of professional ethics or engaging in other unethical conduct; violation of university policy or law; mistreatment of students or employees; research misconduct; financial or other fraud; or criminal or other illegal or inappropriate conduct. To justify formal discharge, suspension, or demotion, such misconduct should be either (a) sufficiently related to a faculty member's responsibilities as to disqualify the individual from effective performance of job duties, or (b) sufficiently serious as to adversely reflect on the individual's honesty, trustworthiness, or fitness to be a faculty member.

The reasons for discharge, suspension, or demotion are not mutually exclusive. Certain facts presented to support a discharge, suspension, or demotion may fall under one or more of the reasons listed above. So long as there is sufficient evidence of the underlying facts to support a discharge, suspension, or demotion, an action shall not be invalid because the reason provided mislabeled or miscategorized the underlying facts.

The chancellor or chief academic officer of an institution has the discretion to place a faculty member on administrative leave with pay at any time if the chancellor or chief academic officer determines in his or her discretion that circumstances warrant it and may choose to do so at any time. The decision to place a faculty member on administrative leave with pay is not grievable under any process under *The Code*.

If the faculty member timely requests a disciplinary hearing, the disciplinary hearing will be on the written specification of reasons for the intended discharge, suspension, or demotion.

B. Role of the Disciplinary Hearing Committee. The primary role of the disciplinary hearing committee is to provide the opportunity for a hearing on the intent to discharge, suspend, or demote the faculty member. The disciplinary hearing committee provides an opportunity for the faculty member and the chief academic officer (or designee(s)) to present relevant evidence. The disciplinary hearing committee shall create a clear, permanent written record of the evidence presented at the hearing and make a recommendation to the chancellor of whether or not to impose a discharge, suspension, or demotion, based on a finding that the chief academic officer (or designee(s)) showed by a standard of clear and convincing evidence that there is a permissible basis for the discharge, suspension, or demotion (e.g. – incompetence, neglect of duty, or misconduct (as defined by Section 603 of *The Code* and Section II.A of this Regulation)). The disciplinary hearing committee does not have authority to render a decision or any part of a decision. The chancellor has the authority to render the final decision.

1. Training. Because disciplinary hearings in matters of the imposition discharge, suspension, or demotion present complex and difficult questions of fact, policy, and law, and because of the central role of the disciplinary hearing committee in gathering and preserving the evidence upon which a decision related to the matter will be based, chancellors, in consultation with campus counsel, should ensure that disciplinary hearing committee members have access to appropriate training materials and that relevant administrators and aggrieved faculty members have access to information regarding the disciplinary hearing process.

2. Election Procedures. The faculty council or senate of each constituent institution should consider whether to establish election procedures for the disciplinary hearing committee to extend the length of service of appropriately trained committee chairs, in order to make it more likely that each hearing has an experienced member to oversee a disciplinary hearing committee. Election procedures may permit the establishment of a pool of trained hearing committee members from which hearing committee members and a chair may be drawn for each hearing.

3. Counsel. Each constituent institution must allow the faculty member the opportunity to have counsel who is able to represent the faculty member's interests before the disciplinary hearing committee if the faculty member so chooses. If an attorney will be representing the faculty member during the hearing, then the campus should provide legal counsel for the institution. Legal counsel for the institution may be provided by in-house campus counsel, counsel from another constituent institution, a member of the Attorney General's Office, counsel from the System Office, or outside counsel.

C. Preservation of Evidence. It is essential that all testimony and other evidence received by a disciplinary hearing committee be preserved for review by the parties to the proceeding, the chancellor, and, if applicable, the board of trustees. Both the chancellor, in making the final decision, and the board of trustees in reviewing any appeal, must have access to a complete record of the evidence received at the hearing. The chancellor is responsible for determining whether the competent evidence in the record supports the proposed discharge, suspension, or demotion. Similarly, the board of trustees, when considering an appeal of the chancellor's decision, must be able to determine whether the competent evidence in the record supports the chancellor's decision.

A professional court reporter, or a similarly reliable means, should be used to enable the production of a verbatim written transcript of the disciplinary hearing and to maintain a record of the documents received by the disciplinary hearing committee. Any such record shall be considered part of the faculty member's personnel file and is confidential. Access to such materials is only allowable as provided by law.

D. The Chancellor's Decision. Following receipt of the hearing committee's written recommendations, the decision whether to discharge, suspend, or demote the faculty member is the chancellor's. The chancellor shall notify the faculty member and relevant administrators of the chancellor's decision in writing. Notice of the decision is to be conveyed to the faculty member by a method which produces adequate evidence of delivery.

E. Notice of Appeal Rights. The chancellor's notice to the faculty member of the decision must inform the faculty member: (1) of the permissible grounds for appeal pursuant to Section 603 of *The Code*; (2) that the faculty member has 14 calendar days to file a notice of appeal through the chancellor requesting review by the board of trustees as provided in Section 603(2)(b) of *The Code*; (3) that a written notice of appeal with a brief statement of the basis for the appeal is all that is required within the 14-day period provided in Section 603(2)(b) of *The Code*; and (4) that, thereafter, a detailed schedule for the submission of relevant documents will be established if such notice of appeal is received in a timely manner.

F. Time Limits for Appeal. Requests for an appeal of the imposition of discharge, suspension, or demotion shall be made within 14 calendar days from the faculty member's receipt of the chancellor's decision in accordance with Section 603(2)(g) of *The Code*.

III. Appeals to the Board of Trustees

A. Schedule. If the board, or committee of the board, determines that the faculty member has set forth appropriate grounds for an appeal, the board will notify the parties of a schedule for perfecting and processing the appeal. If the faculty member fails to comply with the schedule established for perfecting and processing the appeal, the board may extend the period for complying with the schedule for good cause shown or it may dismiss the appeal. The board of trustees will issue its decision on appeal as expeditiously as is practical.

B. Review on Appeal by the Board of Trustees. Consistent with *The Code*, deference is given to the chancellor's decision; the board of trustees will exercise jurisdiction under Section 603 of *The Code* in a manner that assures the integrity of campus procedures.

The first step in any appeal to the board of trustees will be an evaluation by the board of trustees of the written grounds for appeal to determine whether the issues raised on appeal fall within one of the grounds for appeal as set out in this regulation and Section 603 of *The Code*. If the appeal does not present issues that fall within the established grounds for appeal, the board of trustees shall dismiss the appeal without further proceedings.

The grounds for appeal to the board of trustees are as follows:

1. Material procedural error. A faculty member may allege on appeal that the hearing conducted by the disciplinary hearing committee, or the process followed by the institution included a material procedural error that, but for the error, could have resulted in a different decision. The board may review allegations that the disciplinary hearing committee and/or the institution did not follow its own procedures and such failure materially affected the credibility, reliability, and fairness of the process. A faculty member must demonstrate that, because of a material procedural error, he or she did not receive a fair hearing or fair review by the chancellor such that, but for such error, a different decision may have been reached.

2. Clearly erroneous. A faculty member may allege on appeal that the competent evidence in the record established that the decision to discharge, suspend, or demote was not based on a permissible reason. A clearly erroneous decision is one that a reasonable person could not have reached, based on the competent evidence in the record taken as a whole and the relevant controlling laws or policies. To demonstrate that a decision was clearly erroneous, the faculty member must show that a reasonable person could not have reached the conclusion that the decision maker reached. Such an appeal constitutes a request that the board of trustees review the entire record of evidence to determine whether a reasonable person could have arrived at the decision in question. The issue is not whether the board of trustees would have evaluated the evidence the same way and reached the same conclusion as did the hearing committee or the chancellor; rather, the question is whether the decision reached was a reasonable one, in light of the competent evidence in the record.

3. Contrary to law or policy. A faculty member may allege on appeal that, during the disciplinary hearing process, controlling law or University policy was disregarded, misinterpreted, or misapplied to the facts of the case.

During its review, the board of trustees considers whether the procedures or decision had material procedural errors, was clearly erroneous, or was contrary to controlling law or policy, such that but for the error(s), the outcome would have been different.

In reviewing whether a decision was clearly erroneous, the board of trustees considers whether the evidence introduced at the hearing and reviewed by the chancellor is such that a reasonable fact finder could find the applicable burden of proof, clear and convincing, was met. When conducting its review, the board of trustees does not reweigh the evidence, express its independent judgment on the factual issues, determine credibility of witnesses, or otherwise conduct the same review that would be conducted by the chancellor. Instead, the board of trustees views the record in the light most favorable to the judgment below and decides if the evidence in support of that decision is reasonable, credible, and of solid value, such that a reasonable fact finder could find that discharge or serious sanction is appropriate based on clear and convincing evidence. The appeal to the board of trustees shall be decided by the full board of trustees.

After review on appeal, the board of trustees may affirm the chancellor's decision; or, if the board finds that the procedures or decision had material procedural errors, was clearly erroneous, or was contrary to controlling law or policy, such that but for the error(s), the outcome would have been different, the board may, in its sole discretion, remand the matter to provide for a new hearing or a supplemental review inquiry.

IV. Other Matters

A. Effective Date. The requirements of this regulation shall be effective for any discharge or serious sanction proposed on or after August 1, 2023.

B. Relation to State Laws. The foregoing regulations as adopted by the president are meant to supplement, and do not purport to supplant or modify, applicable state law or administrative regulations.