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**Faculty Misconduct and Discipline:
A US Perspective**

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Introduction

In business organizations, employee discipline is used for three purposes: to rehabilitate a potentially satisfactory employee, to deter similar misconduct by that employee or by other employees, and to protect the employer's ability to operate the business successfully.¹ Academic organizations sometimes use discipline for these purposes when nonfaculty employees engage in misconduct, but the discipline of a faculty member tends to be less visible. Regrettably, some faculty members occasionally engage in misconduct, and their peers and administrators may face the need to respond to conduct that negatively affects faculty, students, or staff.

In nonacademic organizations, particularly those whose employees are unionized, a system of "progressive discipline" has emerged that is standard practice in most traditional employers. The rationale for progressive discipline is that the organization's response to a first offense (unless it is a very serious one such as assault or theft) should be more moderate than the response to a second, third, or fourth offense, particularly if the employee repeats the same offense. Therefore, initial discipline for a moderately serious offense would typically be an oral reprimand or warning, the discipline for the second occurrence might be a written warning, the discipline for a third offense might be a suspension, and termination might follow a fourth offense.

Benefits to an organization of progressive discipline include providing a clear record of employer attempts to "rehabilitate" the employee by punishing each successive offense more severely, and giving the employee several chances to improve before imposing severe discipline or termination. The use of progressive discipline also enables an organization to show to the employee and to co-workers that misconduct which violates organizational rules will be responded to firmly.

¹ Roger I. Abrams and Dennis R. Nolan, "Toward a Theory of 'Just Cause' in Employee Discipline Cases," 1985 *Duke Law Journal* 594, 611-12 (1985).

Limitations of progressive discipline include less organizational flexibility to respond to employee misconduct (although, for the sake of organizational consistency, most lawyers would see this “problem” as a benefit). The use of progressive discipline may also lengthen the time that a problematic employee is employed, as the organization proceeds through all of the steps of the discipline process.

Given the realities of tenure, and the elaborate processes required to terminate the appointment of a tenured faculty member, institutions—administration and faculty--may wish to consider sanctions short of termination when faced with a faculty member who engages in misconduct. In addition, having sanctions that are less serious than termination may make faculty and administrators more willing to respond appropriately to problematic faculty behavior, whereas they might be hesitant to impose the ultimate sanction of dismissal for anything but the most serious misconduct.

Reasons for Faculty Discipline

Under what circumstances might an institution choose to discipline rather than to dismiss a faculty member? Although each situation would be fact-specific and thus difficult to generalize from, situations may exist where the institutional response will be something short of dismissal. On the one hand, certain forms of academic misconduct may be serious enough to warrant termination of an appointment, or the facts may suggest that a sanction short of dismissal such as suspension or not being allowed to work with student research assistants for a period of time, is more appropriate. On the other hand, sexual or racial harassment of students, faculty, or staff, or criminal misconduct, such as embezzlement or physical violence, might lead the institution to commence pre-termination proceedings.

Although an institution probably cannot anticipate every form of faculty misconduct that may occur, developing a policy to deal with such issues before they arise will help the institution respond promptly, provide guidelines for appropriate investigation and determination of whether misconduct occurred, and decisions as to what sanction, if any, is appropriate. The faculty should participate in the policy development process as well as the review and sanctioning process.

Policies for Faculty Discipline

The notion of “progressive discipline” is not a term that one sees in many faculty handbooks. *But see Trimble v. West Virginia Board of Directors*, 549 S.E. 2d 294 (W. Va. 2001) (college “should not have fired [tenured professor] before resorting to other progressive disciplinary measures” under West Virginia constitution). Nevertheless, sanctions less severe than dismissal exist that may be appropriate in dealing with particular faculty matters that do not rise to just cause.

In 1973 the Commission on Academic Tenure observed that it was

manifestly insufficient to have a disciplinary system which assumes that only those offenses which warrant dismissal should be considered seriously. Faculty members are from time to time guilty of offenses of lesser gravity. There should be a way of recognizing these and imposing appropriate sanctions. And it is equally insufficient to make do only with disciplinary procedures designed for capital offenses. Simpler procedures-though assuring due process in the particular context-are obviously required for offenses for which sanctions short of dismissal are contemplated.

Faculty Tenure: Commission on Academic Tenure 256 (Keast, ed., 1973) (“Faculty Tenure”) at 76. Accordingly, the commission recommended as follows:

[T]hat each institution develop and adopt an enumeration of sanctions short of dismissal that may be applied in cases of demonstrated irresponsibility or professional misconduct for which some penalty short of dismissal should be imposed. These sanctions and the due-process procedures for complaint, hearing, judgment, and appeal should be developed initially by joint faculty-administrative action.

Id. Some institutions have clear policies that cover sanctions other than dismissal.

- Michigan State University, “Policy and Procedure for Implementing Disciplinary Action Where Dismissal Is Not Sought” (“Disciplinary action may include but is not limited to reprimand, suspension with or without pay, reassignment of duties, foregoing salary increase and/or benefit improvements, and mandatory counseling and/or monitoring of behavior and performance. Suspension without pay may not exceed six months.”).
- University of New Mexico, Appendices II and III (incorporating AAUP’s procedural protections), <http://www.unm.edu/~handbook/>.
- Northwestern University (discussing suspensions and minor sanctions), <http://www.northwestern.edu/provost/faculty/handbook.pdf>.

Institutions should consider how the decision to discipline a faculty member will be made. What types of misconduct will be grounds for discipline? Who will be involved in making the determination that the misconduct occurred? Once that determination has been made, who will make the decision concerning what type of discipline to impose? What kind of appeals process should exist?

The AAUP’s *Statement on Professional Ethics* provides a starting place for a faculty discussion of the grounds for disciplining a faculty member for misconduct. The *Statement* says:

1. Professors, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognize the special responsibilities placed upon them. Their primary responsibility to their subject is to seek and to state the truth as they see it. To this end professors devote their energies to developing and improving their scholarly competence. They accept the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. They practice intellectual honesty. Although professors may follow subsidiary interests, these interests must never seriously hamper or compromise their freedom of inquiry.

2. As teachers, professors encourage the free pursuit of learning in their students. They hold before them the best scholarly and ethical standards of their discipline. Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to ensure that their evaluations of students reflect each student's true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students. They acknowledge significant academic or scholarly assistance from them. They protect their academic freedom.

3. As colleagues, professors have obligations that derive from common membership in the community of scholars. Professors do not discriminate against or harass colleagues. They respect and defend the free inquiry of associates. In the exchange of criticism and ideas professors show due respect for the opinions of others. Professors acknowledge academic debt and strive to be objective in their professional judgment of colleagues. Professors accept their share of faculty responsibilities for the governance of their institution.

4. As members of an academic institution, professors seek above all to be effective teachers and scholars. Although professors observe the stated regulations of the institution, provided the regulations do not contravene academic freedom, they maintain their right to criticize and seek revision. Professors give due regard to their paramount responsibilities within their institution in determining the amount and character of work done outside it. When considering the interruption or termination of their service, professors recognize the effect of their decision upon the program of the institution and give due notice of their intentions.

5. As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. When they speak or act as private persons, they avoid creating the impression of speaking or

acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

AAUP, *Policy Document and Reports* (9th Ed.) at 133-34 (hereafter “Redbook”), <http://www.aaup.org/statements/Redbook/Rbethics.htm>..

* * * *

Dismissals of tenured faculty members based upon the above-referenced AAUP *Statement* have been upheld by the courts (see, for example, *San Filippo v. Bongiovani*, 961 F.2d 1125 (3rd Cir. 1992) (upholding dismissal by Rutgers University of a tenured chemistry professor, relying in part on the university’s adoption of AAUP’s professional ethics statement to find the professor had “exploited, threatened and been abusive” to “visiting Chinese scholars brought to the University to work with him on research projects”)). In addition to the issues enumerated in the *Statement on Professional Ethics*, an institution might wish to deal with issues in more specific detail, such as harassment of students, faculty, and staff, and plagiarism, or to address additional issues, such as other forms of academic misconduct, failure to meet service or other obligations, and so on.

After developing the types of misconduct for which discipline may be imposed, the institution needs to address the process that will be used to determine whether the faculty member’s conduct meets the definition of the misconduct with which he or she has been charged. Depending on the seriousness of the allegations, a chair or dean might refer the matter to an existing institution-wide faculty review committee to review the allegations and to make findings of whether or not the misconduct occurred, and to recommend what type of sanction to impose. If such a standing committee does not exist, a chair or dean might create an ad-hoc faculty committee to undertake such a charge. Although many sanctions (discussed below) might not involve the type of deprivation that would trigger legal due process protections in public institutions (or contractual protections in either private or public institutions), the institution should consider developing a grievance process for faculty challenges to sanctions, or using the institution’s existing grievance process for that purpose to ensure accepted notions of academic due process.

At a minimum, the institution should provide the following protections to an individual alleged to have engaged in misconduct that is subject to the institution’s discipline policy:

1. Notice of the alleged misconduct
2. Opportunity to respond to the charges

3. Review by a faculty body of both the factual allegations and the proposed discipline
4. Progressive discipline, if appropriate, to the seriousness of the misconduct
5. Opportunity for higher-level review of the factfinding and the proposed sanction
6. On unionized campuses, participation by an advocate for the faculty member in hearings or other meetings

Types of Faculty Discipline

In 1971, a special joint subcommittee of the AAUP considered the question of sanctions short of dismissal, and enumerated the following lesser sanctions:

- (1) oral reprimand, (2) written reprimand, (3) a recorded reprimand, (4) restitution (for instance, payment for damage due to individuals or to the institution), (5) loss of prospective benefits for a stated period (for instance, suspension of “regular” or “merit” increase in salary or suspension of promotion eligibility), (6) a fine, (7) reduction in salary for a stated period, (8) suspension from service for a stated period, without other prejudice.

Faculty Tenure at 75-77.

Under the AAUP’s *Recommended Institutional Regulations on Academic Freedom and Tenure* (RIR, at www.aaup.org), Recommendation 7 distinguishes between “major” and “minor” sanctions, categorizing suspension as major and reprimand as minor. AAUP regulations 5 and 7 provide that major sanctions should not be imposed until after a hearing in which the same procedures apply as in a dismissal case, which include written notice of the charges, a hearing before a faculty committee in which the administration bears the burden of proof, right to counsel, cross-examination of adverse witnesses, a record of the hearing, and a written decision. *Redbook* at 27. Immediate suspension with pay, pending a hearing, is appropriate under AAUP policy if an individual poses a threat of immediate harm to him or herself or others. RIR 5(c)(1), *Redbook* at 25. Moreover, Regulation 5(c) states that the administration, before suspending a faculty member, will consult with an appropriate faculty committee concerning the “propriety, the length, and other conditions of the suspension.” *Id.*

The AAUP further provides that an institution may impose a minor sanction after providing the individual notice, and that the individual professor has the right to seek review by a faculty committee if he or she feels that a sanction was unjustly imposed.

Judicial Review of Faculty Discipline

As noted above, like the legal claims of faculty threatened with dismissal, litigation arising from the imposition of sanctions flow from a number of legal sources, including constitutional law for public institutions, contractual obligations at private and public sector institutions (faculty handbooks, letters of appointment, collective bargaining agreements), and regulations and statutes (internal and external).

1. Warning or Reprimand. In *Hall v. Board of Trustees of State Institutions of Higher Learning*, 712 So.2d 312 (Miss. S.Ct. 1998), the University of Mississippi issued a written reprimand to a nontenured professor of medicine who, in responding to a student's question about interpreting mammograms, touched the student's breasts. The Mississippi Supreme Court ruled that the written reprimand did not violate the professor's due process rights, but required that the document be maintained in a separate file. *See also Powell v. Ross*, 2004 U.S. Dist. LEXIS 3601 (W.D. Wis., Feb. 27, 2004) (rejecting professor's defamation claim arising in part from recommendation of administrator that chancellor issue "a strong letter of reprimand" and place it in professor's personnel file); *Cuenca v. University of Kansas*, 265 F. Supp. 2d 1191 (D. Kan. 2003) (ruling that "letter of reprimand" to professor for his "'egregious' failure to meet his academic responsibilities, related to his cancellation of certain classes," did not constitute an adverse action because the letter failed to have "any negative effect on his employment"); *Butts v. Shepherd College*, 569 S.E.2d 456 (W. Va. 2002) (ruling that professor's refusal to obey supervisor's order to release student grades to supervisor was not grounds for reprimand); *Meyer v. University of Washington*, 719 P.2d 98 (Wash. 1986) (finding that reprimand imposed on tenured professor of chemistry by his departmental colleagues did not violate or "chill" the professor's First Amendment right to speak out on a matter of public concern because "the intent of the reprimand was only as a warning . . . and is not to be used to his detriment"). *See also* AAUP, "Academic Freedom and Tenure: Tulane University," *AAUP Bulletin* 424, 430 (1970) (acknowledging faculty committee's recommendation as proper for reprimand as opposed to dismissal for professor's interference with on-campus ROTC drill).

2. Public Censure. *See, e.g., Newman v. Burgin*, 930 F.2d 955 (1st Cir. 1991) (upholding the public censure of a faculty member for plagiarism by the University of Massachusetts, Boston administration after an investigation and hearing by a faculty committee). *But see Booher v. Northern Kentucky University*, 1998 U.S. Dist. LEXIS 11404 (E.D. Ky., July 22, 1998) (holding that departmental censure of faculty member in response to his comments to the media about a controversial university art exhibit provided a basis for professor's First Amendment retaliation claim, and noting that the censure could affect the professor's "ability to engage in the department's system of governance; [to] participat[e] in departmental decision-making; and [to select] . . . his teaching assignments"); *Meister v. Regents of the University of California*, 78 Cal.Rptr.2d 913 (Cal. App. 6 Dist. 1998) (finding by arbitrator that professor's reputation had

been injured by circulation of letter of censure, which was recommended by campus committee, for the professor's unauthorized circulation of a confidential planning document).

3. Departmental Reassignment. On occasion an institution decides to transfer a faculty member from one academic department to another where significant problems exist in the former department, and the faculty member has claimed that the transfer amounts to a sanction that should not have been affected without due process. *Huang v. Board of Governors of University of North Carolina*, 902 F.2d 1134 (4th Cir. 1990) (upholding transfer of tenured professor from one department to another, and finding no property interest in a particular position); *Maples v. Martin*, 858 F.2d 1546 (11th Cir. 1988) (Auburn University's professors' property interests not violated when engineering professors were transferred from mechanical engineering to other engineering departments with no reduction in salary or rank); *Johnson v. Southern University*, 803 So.2d 1140 (La. 2001) (upholding administrative directive limiting professor to multi-section classes only, after four students challenged his teaching, testing and grading methods). *But see Hulen v. Yates*, 322 F.3d 1229 (10th Cir. 2003) (ruling that professor "had a property interest in his departmental assignment based upon the terms and conditions of his appointment" and therefore basic due process attached to his transfer from one academic department to another).

4. Removal from Particular Committees and Programs. Sometimes faculty are removed from particular committees and programs as a form of discipline. In *Ganesan v. Northern Illinois University Board of Trustees*, 2003 U.S. Dist. LEXIS 21721 (D. Ill. 2003), a tenured professor of mechanical engineering was disciplined for "confrontations with colleagues." As part of the discipline, the professor was directed to attend human resource workshops and, after a "no confidence" vote by department faculty, he was removed from his positions as a member and chair of the College Council Personnel Committee. The professor challenged the discipline on various grounds, including due process and First Amendment, all of which the federal district court rejected: "While plaintiff may have a property interest in his employment as a tenured faculty member, his property interest does not extend to participation in personnel decisions, membership on committees, or avoiding workshop attendance." In other situations, especially during the pendency of a sexual harassment investigation, a faculty member might be denied permission to attend an out-of-state conference when the complainant is scheduled to attend such a gathering. *See, e.g., Simonson v. Iowa State University*, 603 N.W.2d 557 (Iowa 1999).

5. Actions on Salary for Disciplinary Reasons.

a. One-time denial of a salary increase. Depending on the facts and circumstances, AAUP might view a one-time denial of a salary increase to be a minor sanction. *See, e.g., Harrington v. Harris*, 118 F.3d 359 (5th Cir. 1997), *cert. denied*, 522 US. 1016 (1997) (dean's denial of pay increases to white law

professors did not constitute adverse employment action); *Wirsing v. Board of Regents of University of Colorado*, 739 F. Supp. 551 (D. Colo. 1990), *aff'd*, 945 F.2d 412 (10th Cir. 1991) (table), *cert. denied*, 503 U.S. 906 (1992) (university did not violate tenured professor's rights by denying her a merit increase when she refused to distribute standardized teacher evaluation forms to her class on academic freedom grounds). *But see Power v. Summer*, 226 F.3d 815 (7th Cir. 2000) (ruling that administration violated the First Amendment rights of three professors by awarding them merit increases of only \$400 instead of \$1,000 because they were outspoken on issues of faculty salaries).

b. Long-term salary increase denial. *See, e.g., Vaughn v. Sibley*, 709 So.2d 482 (Ala. Civ. App. 1997) (finding that University of Alabama at Birmingham violated the rights of an associate professor of mathematics by denying him any salary increase from 1982 through at least 1994 [and maybe 1997, the date of the court decision], because the administration either had to follow its salary policy and pay the professor the minimum salary, or it had to file an exception to exclude him from the established salary range).

c. Salary Reduction. *See, e.g., Williams v. Texas Tech University Health Sciences Center*, 6 F.3d 290 (5th Cir. 1993), *cert. denied*, 510 U.S. 1194 (1994) (tenured professor sued, claiming that he should have been provided a hearing before the medical school reduced his compensation from \$68,000 to \$46,500 because he failed to generate as much grant money as had been expected; court ruled that the professor's interest in a specific salary level did not outweigh the administration's interest in making budgetary decisions for educational programs, and that the professor had received six months' notice and the opportunity to seek additional funding.) For a discussion of efforts to reduce salaries in medical schools, see Donna R. Euben, "Doctors in Court? Salary Reduction Litigation", 85 *Academe* 87 (Nov.-Dec. 1999), <http://www.aaup.org/publications/Academe/1999/99nd/ND99LgWa.htm>. State law may permit salary reduction. For example, a New Jersey statute provides that no tenured professor in a public college may be "subject to reduction of salary, except for inefficiency, incapacity, conduct unbecoming a teacher or other just cause." N.J.S.A. 18A:6-18.

6. Fines or Restitution. An administration might seek reimbursement, restitution or a fine from a faculty member. The Fair Labor Standards Act regulations provide that "deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applicable to all employees. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment" 29 CFR Sec. 541.602(b)(5).

7. Suspension. There are a variety of suspensions, including paid suspensions, unpaid suspensions, and immediate (paid and unpaid) suspensions.

a. Paid Suspensions. See, e.g., *Edwards v. California University of Pennsylvania*, 156 F.3d 488 (3rd Cir. 1998), *cert. denied*, 525 U.S. 1143 (1999) (while tenured professor was being investigated for the use of inappropriate language in the classroom, he was suspended with pay; court found that suspension did not violate his constitutional rights); *Roberts v. Board of Trustees of the Minnesota State Colleges and Universities*, 2004 Minn. App. LEXIS 306 (Minn. Ct. App., Apr. 6, 2004) (unpublished) (rejecting aviation professor's claim that his due process rights were violated by a 60-day paid suspension, which was imposed pending an auditor's report examining an allegation that he misappropriated funds, because "a suspension with pay does not invoke the protection of the due process clause") (internal citations omitted); *Simonson v. Iowa State University*, 603 N.W.2d 557 (Iowa 1999) (reasoning that placing tenured professor on "paid administrative leave" during sexual harassment investigation failed to constitute a sanction under university's policies).

b. Unpaid Suspensions. For the AAUP, a suspension pending a faculty hearing should be with pay. If an administration instead of moving to dismiss a faculty member, intends to suspend with or without pay, that action should be preceded by a hearing with the same procedural protections as afforded in a dismissal case. See, e.g., *Bonnell v. Lorenzo*, 241 F.3d 800 (6th Cir.), *cert. denied*, 534 U.S. 951 (2001) (Macomb Community College professor initially put on leave without pay while sexual harassment investigation pending; he was later put on indefinite leave with pay); *Silva v. University of New Hampshire*, 888 F. Supp. 293 (D.N.H. 1994) (involving professor who was suspended without pay for one year for violating institution's sexual harassment policy; the trial court ruled that professor was entitled to preliminary injunction on his First Amendment and due process claims); *Stephens v. Roane State Community College*, 2000 Tenn. App. LEXIS 100 (Tenn. App., Feb. 18, 2000) (remanding case for procedural and substantive review under state statute that involved tenured professor's 6-month unpaid suspension for violating institutional sexual harassment policies); *Hughes v. University of Maine*, 652 A.2d 97 (Maine 1994) (ruling that 6.5-day unpaid suspension of tenured professor, which the administration imposed for his refusal to return a portion of his claimed conference expenses and that was "equivalent to the amount Hughes allegedly owed to the University," was properly dismissed because the professor failed to exhaust his administrative remedies).

c. Immediate Suspensions. AAUP's RIR 5 provides that an institution may suspend a professor when immediate harm to the individual or others is threatened pending an ultimate determination of the individual's status. RIR 5 further provides that, before suspending a faculty member, the administration should consult with a faculty committee concerning the propriety, length, and other conditions of the suspension. The threat of physical harm can certainly warrant suspension, but so can harm to the educational process (e.g., a faculty

member who refuses to evaluate the work of most of her students). Such suspensions should be with pay, and they can remain in effect during an investigation and disciplinary proceedings.

In *Gilbert v. East Stroudsburg University*, 520 U.S. 924 (1997), the U.S. Supreme Court ruled that due process rights were not violated when an administration suspended a tenured public employee without pay and failed to provide a pre-suspension hearing. The Court's reasoning was based, in part, that drug-related felony charges were pending against the police officer. The employee's suspension was upheld on remand. 63 F. Supp. 2d 559 (M.D. Pa. 1999). See *McLaurin v. Clarke*, 1997 U.S. App. LEXIS 35694 (9th Cir., Dec. 17, 1997) (unpublished) (ruling in post-*Gilbert* case that Los Rios Community College District administration did not violate the due process of tenured faculty member who was removed as administrator due to violation of sexual harassment policy because his removal "did not include termination or pay demotion"; rather, the discipline included his transfer to a teaching position and a letter of reprimand being placed in his file).

The *Gilbert* decision is not generally applicable to the due process protections afforded suspended faculty members, "[u]nless a college could demonstrate that it needed to remove a tenured faculty member quickly because he or she was a potential threat to the health or safety of others, or because the faculty member had committed some act that rendered him or her unfit to continue teaching pending a disciplinary hearing." William Kaplin & Barbara Lee, *The Law of Higher Education* (3rd Ed.) 179-80 (Supp. 2000).

8. Demotion. The AAUP generally views reductions in faculty rank, such as from associate to assistant professor, as an inappropriate sanction, except in situations where the promotion is obtained by fraud or dishonesty. See *Kirschenbaum v. Northwestern University*, 728 N.E.2d 752 (Ill. App. Ct. 1999) (finding that administration did not breach medical professor's tenure contract when it changed his status from "full-time" to "contributed service"); *Hollister v. Tuttle*, 210 F.3d 1033 (9th Cir. 2000) (finding that reduction in the number of academic credits offered for a course and removal from a place on a college search committee is not "generally a demotion"). But see *Klinge v. Ithaca College*, 167 Misc. 2d 458 (N.Y. Sup. Ct. 1995), *aff'd as modified* by 652 N.Y.S.2d 377 (N.Y. App. Div. 1997) (ruling that factual issue for jury existed regarding whether tenure breached for professor who was found guilty of plagiarizing when he was demoted from full to associate professor, his salary reduced, and his academic duties restricted); *Moosa v. State Personnel Board*, 126 Cal. Rptr. 2d 321 (Cal. App. 2002) (finding that administration violated the collective bargaining agreement by demoting tenured faculty member from full to associate professor because of his failure to comply with a directive to develop and submit an improvement plan).

9. Modified Teaching Assignments. Some institutions modify teaching assignments as a form of discipline. *See, e.g., McCellan v. Board of Regents of the State University*, 921 S.W.2d 684 (Tenn. 1996) (barring professor for three years from teaching the only section of a required course after he made inappropriate sexual comments to female students about EKGs). *But see Levenstein v. Salafasky*, 164 F.3d 389 (7th Cir. 1998) (noting that professor was “effectively deprived of a property interest in a job” by university decision to forbid professor from seeing patients and an assignment of reviewing old medical files); *McCartney v. May*, 50 S.W.3d 599 (Tex. Ct. App. 2001) (ruling administrator was not immune from suit when he instructed faculty member to refrain from speaking to the faculty or staff of the ophthalmology department, which effectively suspended the faculty member from his clinical privileges).

10. Shadow Sections. “Shadow sections”—courses taught by other instructors to compensate for perceived problems in the teaching of the original professor—may violate a public university professor’s constitutionally protected interests. *See, e.g., Levin v. Harleston*, 770 F. Supp. 895 (S.D.N.Y. 1991), *aff’d in relevant part*, 966 F.2d 85 (2d Cir. 1992).

11. Class Monitoring. If periodic monitoring is deemed necessary discipline, primary responsibility should be in the hands of faculty. *See, e.g.,* Robert Post, “Academic Freedom and the ‘Intifada Curriculum,’” 89 *Academe: Bulletin of the American Association of University Professors* 16 (May-June 2003), <http://www.aaup.org/publications/Academe/2003/03mj/03mjpost.htm> (observing that English department took the “extraordinary step of requiring that a full tenured member of the faculty observe [a class on “The Politics and Poetics of Palestinian Resistance” taught by a graduate assistant which had originally been described as excluding those hostile to the Palestinian cause] to ensure that it would be taught in a way that was entirely consistent with applicable academic standards”).

11. Mandatory Counseling. Some administrations have required that faculty undergo counseling. Generally such discipline implicates a number of legal concerns, including free expression, academic freedom, and privacy. *See e.g., Bauer v. Sampson*, 261 F.3d 775 (9th Cir. 2001) (community college violated rights of outspoken professor by requiring him to meet with anger management counselor); *Cohen v. San Bernardino Valley College*, 92 F.3d 968 (9th Cir. 1996), *cert. denied*, 520 U.S. 1140 (1997) (English professor who used vivid sexual imagery in class ordered to attend sexual harassment seminar); *Silva v. University of New Hampshire*, 999 F. Supp. 293 (D.N.H. 1994) (English professor who was found guilty of sexual harassment was suspended from teaching for one year and required to obtain a “counseling evaluation” and, if prescribed, attend counseling); *Powell v. Ross*, 2004 U.S. Dist. LEXIS 3601 (W.D. Wis., Feb. 27, 2004) (rejecting professor’s defamation claim arising in part from recommendation that he attend sexual harassment training to identify his “problem areas”). *See generally* Jonathan Knight, “The Misuse of Mandatory Counseling,” *The Chronicle of Higher Education* (Nov. 17, 1995) (“No single

punishment is appropriate for all sexual-harassment cases, but it is the faculty member's misconduct, not his ideas, that should be punished . . . “).

Discipline as a Pre-termination Step

The institution may also consider using discipline short of termination when dealing with a faculty member with a long history of neglect of teaching, research, or service obligations, or inappropriate behavior with staff or students, as a way of establishing a record of the individual's misconduct and the institution's response in the event that a later decision is made to dismiss a tenured faculty member. Although each faculty termination case is *sui generis*, and faculty use a variety of legal theories to challenge the revocation of tenure, a claim that is difficult for an institution to defend is the claim of lack of notice of the infraction. Institutions that have tolerated the misconduct of a faculty member for years may find it difficult to persuade a court that the individual's due process rights were protected if misconduct that was tolerated for years suddenly becomes grounds for termination. Progressive discipline, and prompt attention to misconduct that interferes with the institution's ability to function effectively, may have the happy outcome of “rehabilitating” a problematic faculty member, or it may lay the ground work for eventual dismissal. In either case, intervention before the misconduct escalates into a serious problem for the institution is a wise course of action.

Some Practical Suggestions

- When faced with a "problem professor," consider a range of sanctions, not only dismissal.
- Focus on misconduct, not opinions or speech or popularity of faculty member.
- Explore informal resolutions if at all feasible; a negotiated settlement may serve all parties' interests.
- Follow institutional policies carefully to ensure the provision of adequate due process protections to faculty members designated for discipline or release.
- Advise faculty committees on their role in reviewing faculty discipline matters.

Sample Discipline Policies

Michigan State University

(<http://www.hr.msu.edu/HRsite/Documents/Faculty/Handbooks/Faculty/AcademicPersonnelPolicies/iv-disciplinary>)

Policy and Procedure for Implementing Disciplinary Action Where Dismissal is Not Sought

IV. ACADEMIC HUMAN RESOURCES POLICIES (Cont.) POLICY AND PROCEDURE FOR IMPLEMENTING DISCIPLINARY ACTION WHERE DISMISSAL IS NOT SOUGHT

The following policy was approved by the Board of Trustees on June 11, 1993.

A faculty member may be disciplined for cause including but not limited to (1) intellectual dishonesty; (2) acts of discrimination, including harassment, prohibited by law or University policy; (3) acts of moral turpitude; (4) theft or misuse of University property; (5) incompetence; (6) refusal to perform reasonable assigned duties; (7) use of professional authority to exploit others; (8) violation of University policy substantially related to performance of faculty responsibilities; and (9) violation of law(s) substantially related to the fitness of faculty members to engage in teaching, research, service/outreach and/or administration. Discipline or the threat of discipline may not be used to restrain faculty members in their exercise of academic freedom.

Where disciplinary action short of dismissal for cause is sought, the unit administrator, after consultation with the Dean or separately reporting Director and the Provost, shall provide the faculty member with written notice of the cause for disciplinary action and an opportunity to respond prior to the imposition of any disciplinary action.

After receiving the response, the unit administrator shall make a decision regarding the disciplinary action and notify the faculty member in writing. The faculty member may challenge the imposition of any disciplinary action by the unit administrator by filing a grievance under provisions of the [Faculty Grievance Procedure](#). The processing of such grievance shall be expedited. No disciplinary action, except temporary reassignment of duties or temporary suspension with pay, shall be implemented during the pendency of the grievance.

Disciplinary action may include but is not limited to reprimand, suspension with or without pay, reassignment of duties, foregoing salary increase and/or benefit improvements, and mandatory counseling and/or monitoring of behavior and performance. Suspension without pay may not exceed six months.

All proceedings and records with regard to disciplinary action shall be confidential insofar as the law permits.

RIGHTS AND RESPONSIBILITIES AT THE UNIVERSITY OF NEW MEXICO

<http://www.unm.edu/~handbook/>

(Adopted by the Regents, October 1965; revised August 1970, September 1975, November 1981, and July 1982)

Section 6 as follows is added to the Statement as an interim measure pending further study and the adoption of a permanent policy:

6. One of the important aspects of academic due process is a clear statement of the kinds of conduct that will lead to University disciplinary action. It is deemed important, therefore, to clarify the type of conduct which shall be considered to affect adversely the University's educational function, to disrupt community living on campus, or to interfere with the right of others to the pursuit of their education or to conduct their University duties and responsibilities. In an effort to accomplish this, but without intending the statement to be all-inclusive, the following is hereby set forth:

(a) Any member of the University community—student or member of the faculty or staff—who commits or attempts to commit any of the following acts of misconduct shall be subject to appropriate disciplinary procedures and sanctions:

- (i) Obstruction or disruption, by any means, of teaching, research, administration, disciplinary procedures, or other University or University-authorized functions, events, or activities.
- (ii) Unauthorized or prohibited entry into or onto, or unauthorized or prohibited occupation or use of, any University facility, building, vehicle, or other University property.
- (iii) Physical abuse, the threat of physical abuse, or intimidation of any person on campus or at any University-authorized function or event, or other conduct which threatens or endangers the health, freedom of action, or safety of any such person.
- (iv) Theft of, damage to, or defacement of property of the University or the property of any person on campus. (Any student or member of the faculty or staff who steals, damages, or defaces University property shall reimburse the University to the full extent of the University's loss.)
- (v) Denial of, or interference with, any person's lawful right of, access to, use of, or exit from any University facility or with any other lawful right of any person on the campus.
- (vi) The destruction of, or damage to, property of the University or of others on campus by setting a fire without proper authority.
- (vii) Use or possession on the campus of firearms, ammunition, or other dangerous weapons, substances, or materials, or of bombs, explosives, or incendiary devices, except as authorized.
- (viii) Aid to others in committing or inciting others to commit any act of misconduct set forth in 6(a)(i) through 6(a)(vii).
- (ix) Any act that demonstrates the probability that the person constitutes a physical danger to himself or others on campus.
- (x) Willfully refusing or failing to leave the property of, or any building or other facility owned, operated, or controlled by the Board of Regents upon being requested to do so by the

President, if the person is committing, threatening to commit, or inciting others to commit, any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of the University. As used herein, "President" means the President (or acting President) of the University or any person or persons designated by him to act on his behalf.

(xi) Any other acts or omissions which affect adversely the University's educational function, disrupt community living on campus, interfere with the rights of others to the pursuit of their education, or affect adversely the processes of the University.

(b) Sanctions:

(i) Any student who violates any of the rules set forth in 6(a)(i) through 6(a)(xi) shall be subject to censure, warning, disciplinary probation, suspension, or expulsion.

(ii) Any member of the faculty or staff who violates any of the rules set forth in 6(a)(i) through 6(a)(xi) shall be subject to censure, warning, disciplinary probation, or dismissal.

(iii) As used in 6(b)(i) and (ii),

a) "Censure" means a written reprimand or expression of disapproval.

b) "Warning" means an oral censure.

c) "Disciplinary probation" means the establishment of a time period during which further acts of misconduct may or will result in more severe disciplinary sanctions depending on the conditions of the probation.

d) "Suspension" means losing student status for a period of time specified in the terms of the suspension. A suspension may commence immediately upon a finding of a violation or it may be deferred to a later time.

e) "Expulsion" means losing student status for an indefinite period of time. Readmission may not be sought before the expiration of two years from the date of expulsion.

f) "Dismissal" means a termination of employment, either for a stated time period or indefinitely.

(c) If any of the acts of misconduct set forth in 6(a)(i) through 6(a)(xi) are committed by a person who is not a student or member of the faculty or staff, such person may be denied admission, readmission, or employment by the University.

Stanford University

<http://facultyhandbook.stanford.edu/ch4.html>

III. STATEMENT ON FACULTY DISCIPLINE

This Statement on Faculty Discipline was approved by the Senate of the Academic Council on December 2, 1999 and by the Board of Trustees on December 14, 1999. It replaces both the Statement on Faculty Discipline approved by the Senate of the Academic Council on May 18, 1972 and by the Board of Trustees on January 9, 1973, and the Rules for the Conduct of Hearings promulgated by the Advisory Board in 1973.

1. Definitions and Standards

1.1 In order to maintain the integrity of its teaching and research and to preserve academic freedom, Stanford University demands high standards of professional conduct from its faculty. In the case of a serious violation of these standards, a faculty member may face disciplinary charges under the following procedures.

1.2 These disciplinary procedures are invoked when the Provost formally charges a faculty member with professional misconduct that is serious enough to warrant a sanction ranging from censure to dismissal from the University. This procedure applies to members of the professoriate, as defined in Chapter 1, Section II (E) of the Faculty Handbook. The Statement on Academic Freedom applies.

1.3 The Provost may charge a faculty member with professional misconduct only for actions taken in association with the faculty member's academic duties and responsibilities. Such misconduct includes but is not limited to the following: dishonest or unethical behavior in the faculty member's own teaching or research; preventing or obstructing teaching or research or any other lawful function of the University; sexual harassment; and the neglect of University-related duties and responsibilities.

1.4 A faculty member charged under these procedures may be subject to sanctions including but not limited to the following: censure; a fine and/or a temporary reduction in pay; suspension from the University without pay for a specified period; indefinite reduction in pay; dismissal from the University.

2. Initiating the Process

2.1 Charges will be brought on behalf of the University by the Provost, following whatever factual investigation he or she deems appropriate. If a conflict of interest prevents the Provost from being involved, the President will act in the Provost's place. When charges are to be brought against a faculty member, he or she must be notified of the charges in confidence, and given an opportunity to reply. If the matter cannot be settled by agreement (which would require the President's approval), and if the faculty member charged wishes to contest the charges, the Provost shall prepare a written statement of the charges and of the proposed sanction, which will be given to the faculty member and the Advisory Board. Even after the written statement has been forwarded to the Board—and at any time in the proceedings—the Provost and the faculty member (with the approval of the President) may seek to resolve the matter by agreement. Throughout the proceedings, all those involved should keep in mind that the procedures here are those of a University and not a court of law, and therefore should seek to avoid an excessively legalistic approach.

2.2 The Advisory Board

If a member of the Advisory Board recuses himself or herself, the Board may, but need not, replace such member(s) with an alternate. Once the Board membership is set for purposes of considering a case, the members should continue with the case until its conclusion even if their terms have ended; if a member must withdraw during the process, he or she need not be replaced. For purposes of this Statement, "Advisory Board" shall refer to this group: that is, the Board sitting at the time the charges are filed, less any recusals and withdrawals, plus any alternates assigned.

2.3 Framing the Issues

2.3.1 Promptly, within such time as the Advisory Board determines, the faculty member must file with the Board a statement setting forth the defenses proposed, any factual allegations that are specifically disputed, and any additional factual matters to which the faculty member will draw attention. The University ordinarily has ten days to reply to this statement.

2.3.2 The statements of both parties should be specific enough to enable the Advisory Board to make a determination about what issues of historical fact (if any) are relevant to the charges and are in dispute. Either party may include in its statement an argument that certain facts

under discussion are irrelevant to the disposition of the case or are not properly classified as issues of historical fact.

2.3.3 If the Advisory Board determines that there is a dispute about material issues of historical fact, the Board will notify the parties of such issues(s) and will select a qualified Hearing Officer from outside the University to hold an Evidentiary Hearing at a date to be set by the Board. If the Board determines that there is no dispute about material issues of historical fact, the Board will proceed to schedule the Final Hearing.

3. The Evidentiary Hearing

3.1 At least five weeks prior to the commencement of the Evidentiary Hearing, each party must provide the Hearing Officer and the other party with copies of the exhibits it intends to introduce as evidence and with a list of the witnesses it expects to call, along with a detailed summary of the testimony expected from each witness.

3.2 Immediately following these submissions, the Hearing Officer will entertain any motions (including motions to exclude any such testimony or exhibits as outside the scope of the issues, unduly prejudicial, etc.). At least four weeks prior to the date of the Evidentiary Hearing, the Hearing Officer will rule on any such motions and will prepare a Pre-Hearing Order composed of the Advisory Board's determination of issues, the Hearing Officer's ruling on the motions, and the parties' lists of exhibits and witnesses and summaries of testimony (revised to reflect any rulings by the Hearing Officer).

3.3 Either party may add to its list of exhibits and witnesses for the purpose of giving rebuttal evidence. The Hearing Officer will set the time for submission of copies of rebuttal exhibits and of the list of rebuttal witnesses. In the event that a party later proposes to use a witness or exhibit that was not disclosed by the specified time, the Hearing Officer will rule on whether and/or under what circumstances the evidence may be introduced.

3.4 The purpose of the Evidentiary Hearing is to reach conclusions on the material issues of historical fact identified by the Advisory Board. At the Evidentiary Hearing, the Hearing Officer will hear evidence and will then make detailed findings of historical fact, which are submitted to the Board.

3.5 Any witness shall be guaranteed the right in the Evidentiary Hearing to invoke the privilege (a) not to incriminate himself or herself in answer to any question, and (b) not to divulge a confidential communication from a

University employee or student made with the understanding of all parties to the communication that it would be kept confidential.

4. The Final Hearing Before the Advisory Board

4.1 After the Hearing Officer has submitted the findings of fact to the Advisory Board, the Board will schedule a Final Hearing.

4.2 Each party has the opportunity to file a written brief, not later than one week before the scheduled start of the Final Hearing. This brief may include any or all of the following matters:

4.2.1 Challenges to rulings of the Hearing Officer or the Advisory Board, except that a ruling of the Hearing Officer during the Evidentiary Hearing can be challenged only if an objection was recorded at the time;

4.2.2 Whether the Hearing Officer's findings of fact are supported by substantial evidence;

4.2.3 Whether the faculty member has committed professional misconduct as charged; and

4.2.4 Whether the sanction proposed by the Provost is appropriate.

4.3 At the Final Hearing before the Advisory Board, the parties will be given an opportunity for oral argument, within time guidelines set by the Board.

4.4 As a result of the Final Hearing, the Advisory Board may ask the Hearing Officer to clarify the findings of fact or make additional findings on the basis of the evidence. The Board will give both parties an opportunity to comment on these clarifications or additional findings. The Board may also order the Hearing Officer to reopen the Evidentiary Hearing to hear evidence on specified issues. If necessary, the Board may reopen the Final Hearing.

4.5 Within one week after the Final Hearing before the Advisory Board, either party may file a written reply, which is limited to the issues raised by the opposing brief and the opposing party's oral argument.

5. The Decision of the Advisory Board

5.1 The Advisory Board will affirm those of the Hearing Officer's findings of historical fact that it concludes are supported by substantial

evidence, and such findings will thereafter be final and binding upon the President and Board of Trustees.

5.2 A finding of professional misconduct requires that a majority of the members of the Advisory Board concludes that the faculty member has committed professional misconduct in the respect or respects charged.

5.3 If a majority of the Advisory Board concludes that the faculty member has committed professional misconduct, the Board will decide upon the appropriate sanction and will notify the President of its decision.

5.4 If there is no majority of the Advisory Board concluding that the faculty member has committed professional misconduct in the respect or respects charged, the Board will so notify the President.

6. The Decision of the President

6.1 If the President does not accept the decision of the Advisory Board, he or she will resubmit the case to the Board for reconsideration with a statement of questions or objections. The Board will then reconsider the case in the light of such questions or objections, hold (if necessary) further hearings and receive new evidence, and either render a new decision or state the reasons for its decision to reaffirm its original decision. After study of the Board's reconsidered decision, the President may make a final decision different from that of the Board only if the President determines: that the faculty member or the University was denied a fair hearing; or that the Board's decision (as to whether there has been professional misconduct and/or as to the sanction) was not one which a decision-making body in the position of the Board might reasonably have made.

6.2 If the President makes a final decision different from that of the Advisory Board, the reasons for that different decision shall be given to the Board and the faculty member.

6.3 If the President's decision requires dismissal, such decision is not effective until it has been approved by the Board of Trustees.

7. Rules of General Application

7.1 The Advisory Board may delegate to a subcommittee of its members any of its functions except deciding if there should be an Evidentiary Hearing, what material issues of historical fact are in dispute, whether the Hearing Officer's findings of historical fact are supported by substantial evidence, whether professional misconduct has occurred, and, if so, what sanctions are appropriate.

7.2 The burden of proof by clear and convincing evidence is upon the University in hearings before the Hearing Officer to prove the factual elements of the charge. The faculty member has the burden of proof by a preponderance of the evidence on any affirmative defenses raised by the faculty member.

7.3 The faculty member has the right to have an advisor of his or her choice accompany him or her during the hearings, the rights of confrontation and cross-examination, and the right to refuse to testify in the hearings.

7.4 The faculty member may choose either private or public hearings. Both the Advisory Board and the Hearing Officer, however, may entertain motions (from either party) that all or part of the hearings be held in private.

7.5 Formal rules of evidence do not apply.

7.6 The faculty member may request from the University, in writing, information regarding any matter, not privileged, which is relevant to the material issues of historical fact, or which appears reasonably calculated to help the faculty member learn of admissible evidence. The University will provide this information or will inform the Hearing Officer as to its reasons for not providing the information. After consideration of those reasons, the Hearing Officer may order the University to provide such information. The University shall not be required to disclose information prepared for the purpose of litigating the case. Even in the absence of a request by the faculty member, the University must disclose any information it believes to be exculpatory of the faculty member.

7.7 The University may request disclosure of any non-privileged tangible evidence from the faculty member. Upon application by the University describing such evidence, the Hearing Officer may order the faculty member to produce it.

7.8 The proceedings of the Hearing Officer and the Advisory Board will be as expeditious as possible.

7.9 A record will be maintained of all hearings under this Statement.

7.10 Once charges are forwarded to the Advisory Board, both the Provost and the faculty member are to provide copies to each other of all written communications to the Board or the Hearing Officer.

7.11 At the request of the faculty member, and if he or she can demonstrate that his or her own financial resources have been exhausted,

the Advisory Board may recommend to the Provost that the University provide funds to pay for what the Board regards as essential for an adequate defense.

7.12 The time guidelines contained in these procedures may be modified by the Hearing Officer or the Advisory Board if warranted by the circumstances.

Amherst College Faculty Handbook

<http://www.amherst.edu/~deanfac/handbook/termination.html>

2. Dismissal, suspension, demotion in rank, or deprivation of pay for cause (Voted by the Faculty May 1995).

a. *Adequate Cause.* Since the fundamental purpose of academic tenure is to preserve academic freedom, only the most serious violations of a faculty member's responsibilities as teacher, scholar, and colleague, especially the flagrant interference with the efforts of colleagues and students to exercise their rights of free inquiry and expression, can be considered adequate cause for dismissal, suspension, demotion in rank, or deprivation of pay.

A crime against the larger society is punishable according to the laws of the state and should not be cause for these severe sanctions unless such incrimination prevents the fulfillment of teaching obligations or otherwise seriously impairs the possibility of establishing classroom relations that are free of extraordinary constraint.

Any charge that might, for cause, lead to dismissal, suspension, demotion in rank, or deprivation of pay is a matter of utmost gravity, not only for the complainant and the faculty member being charged, but also the the College, and the decision to press charges must be weighed with a careful regard for the academic freedom of all parties directly concerned. The Amherst College Chapter of the American Association of University Professors may intervene in favor of the withdrawal of charges if it deems it likely that such proceedings might lead to an even greater impairment of academic freedom than the actions which led to the pressing of charges.

b. *Procedure.* Proceedings seeking, for cause, the dismissal, suspension from service for a stated period, demotion in rank, or deprivation of pay of a faculty member who has tenure or whose term appointment has not expired shall be initiated and prosecuted by the Dean of the Faculty (or the President who shall assume the responsibilities of the Dean as hereafter described if the Dean is directly involved or incapacitated for any reason).

(1) Such procedure must be preceded by discussions between the faculty member and the Dean looking toward a mutual settlement, and by an informal inquiry by the Committee on Adjudication which may, failing to effect an informal resolution, recommend whether in its opinion such a proceeding should go forward, without its opinion being binding upon the Dean.

(2) The faculty member charged will be provided with a formal communication prepared by the Dean setting forth the charges with reasonable particularity, and advising him or her of the rights enumerated below.

(3) Within fifteen days after the charges have been communicated to the faculty member charged, a Hearing Board shall be formed consisting of three faculty selected by the Committee of Six from among the Faculty elected to the Committee on Adjudication; the Hearing Board will select its own chair.

(4) A member of the Hearing Board may be disqualified for bias or a conflict of interest in response to a challenge brought by one of the parties (or may deem himself or herself disqualified for either of the same reasons); in addition, the faculty member charged and the Dean will each have one challenge without stated cause. The Chair of the Committee

on Adjudication shall decide any such challenge, and the Committee of Six will appoint replacements for each member so excused from among the faculty members of the Committee on Adjudication. Prior acquaintance or knowledge of the facts of the matter does not, necessarily, constitute a conflict in interest absent a showing of an actual conflict of interest.

(5) Service of notice of the commencement of the hearing shall be made at least twenty days prior thereto, or a reasonable period in which to prepare a defense, whichever is greater. The faculty member charged may waive a hearing, with or without making a written response to the charges, in which case the Hearing Board will base its decision upon the record available to it.

(6) The Hearing Board may, with the consent of the parties concerned, hold joint pre-hearing meetings with them in order to (i) simplify the issues, (ii) effect stipulations of facts, (iii) provide for the exchange of documentary or other information, and (iv) achieve such other objectives as will make the hearing more fair, effective and expeditious.

(7) The Hearing Board, after consultation with the Dean of the Faculty and with the faculty member charged, will determine whether the hearing should be private or public.

(8) During the proceedings, the faculty member and the Dean will have the right to be represented by legal counsel of their choosing, and the faculty member will have the right to have an academic advisor of his or her choice; the right of the faculty member to legal counsel and an academic advisor does not obligate the College to bear the expense of either. Legal counsel, but not academic advisors, shall have the right to address the Hearing Board and to examine witnesses.

(9) A verbatim record of the hearing or hearings will be taken and a typewritten copy will be made available to the faculty member, without cost, at the faculty member's request.

(10) The burden of proof that adequate cause exists for the imposition of the penalties imposed rests with the Dean and will be satisfied only by a clear and convincing evidence in the record as a whole.

(11) The Hearing Board will grant reasonable adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.

(12) The faculty member will be afforded an opportunity to present witnesses and other evidence relevant to his or her defense.

(13) The faculty member and the Dean will have the right to confront and cross-examine all witnesses.

(14) In considering charges of incompetence, the testimony will include that of qualified faculty members from the College or other institutions of higher education.

(15) The Hearing Board will not be bound by strict rules of legal evidence, and, in determining the issues involved, may admit any evidence which is of a probative value not outweighed by unfair prejudice. The Hearing Board will also have final responsibility for establishing the procedures for obtaining witnesses and evidence which will protect the personal rights and dignity of all those who might be asked to provide the same as well as of the parties to the most reliable evidence available.

(16) The findings of fact and its recommendations will be based solely on the hearing record.

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 either the faculty member or the Dean will be avoided so far as possible until the proceedings have been completed, including consideration by the Trustees.

After all parties have been heard and all of the relevant evidence has been gathered, the Hearing Board will make explicit findings with respect to the charges and its recommendation, if any, for an appropriate sanction, including but not limited to dismissal, suspension from service for a stated period, demotion in rank, or deprivation of pay. Unanimous agreement of all members of the Hearing Board is required for the recommendation of dismissal, suspension from service for a stated period, demotion in rank, or deprivation of pay; the concurrence of a majority of the members is required for all other findings and recommendations. Any member of the Hearing Board who disagrees with the majority must make his or her own explicit findings and recommendations. The Dean and the faculty member will be notified in writing of the Hearing Board's findings and recommendations (and those of any minority member), and each will be given a copy of the transcript of the proceedings on which the Hearing Board's recommendation for a penalty is based.

The President shall transmit to the Board of Trustees the full report of the Hearing Board (and any minority report), stating its recommendations. Normally the Board of Trustees will decide the case on the basis of the Hearing Board's recommendation. If the Board of Trustees chooses to review the case, its review shall be based on the record of the previous hearing, accompanied by opportunity for argument, oral or written or both, by the principals at the hearing or their representatives. The recommendation of the Hearing Board shall either be sustained or returned to the Hearing Board with objections specified. In the latter case the Hearing Board shall reconsider its recommendation, taking account of the stated objections and receiving new evidence if necessary. The Hearing Board shall form its decision and communicate it in the manner as before. Only after study of the Hearing Board's reconsideration may the Trustees make a final decision over-ruling the Hearing Board.

A faculty member facing charges that might lead to dismissal, suspension, demotion in rank, or deprivation of pay should not be suspended by the President of the College during the proceedings involving him or her unless immediate harm to the rights of others is threatened by continued exercise of his or her teaching duties. Furthermore, a faculty member facing charges should have the right to request a leave from teaching duties, which ordinarily will be granted, in order to prepare his or her defense. However it originates, a suspension during the hearing proceedings shall be with pay.

3. Grievance Procedures for Members of the Faculty (Voted by the Faculty, October 1986)

Committed to the ideal of resolving grievances collegially, Amherst College makes no attempt to codify a distinction between grievances that might require a formal hearing and lesser disputes or disappointments that should be resolved informally. In every case, it is expected that an informal resolution will be attempted, typically beginning with a frank and open discussion with the appropriate person or persons, whether that be a faculty colleague or a member of the Administration.

a. *Petition of Grievance.* At Amherst there are numerous persons who may be expected to play a role in settling controversies or resolving disputes before they become grievances, among them, the President, the Dean of the Faculty, the Affirmative Action Officer; and the Chairs of the several departments. Moreover, any member on any matter of concern or complaint.

A member of the faculty who has been unable to achieve by informal means what he or she regards as a fair and reasonable resolution of a complaint may file a petition of grievance with the Chair of the Committee on Adjudication.

The filing of a petition of grievance does not automatically entail that the full case or any particular part will be submitted to a Hearing Board for formal hearing. In every case, the Committee on Adjudication shall, by reference to the petition alone, determine whether any of the allegations, if substantiated, would warrant or require any remedial action or relief and, if so, whether the petitioner has cited credible evidence in support of his or her allegations or complaint. The complainant's petition should be sufficiently specific and extensive to inform the Committee on Adjudication adequately on these points. A petition deemed by the Committee on Adjudication not to warrant a formal hearing shall not be heard. The committee may also decide not to hear a petition that is premature or unduly late. The decision not to hear a case shall be communicated in writing to the President of the College and to the immediate parties to the case. The Committee on Adjudication may request clarification or additional information or evidence before ruling on the sufficiency of a petition, but this decision, whether affirmative or negative shall be final and unreviewable.

b. *The Committee on Adjudication and Hearing Boards.*

(1) *The Committee on Adjudication* (Selection, term of office, and function). The Committee on Adjudication consists of eight members of the faculty, serving three year terms, staggered to ensure continuity. Nominations are made by the Committee of Six, but additional nominations may be made from the floor during the faculty meeting at which the members of this Committee are elected by a majority of those present and voting. The Committee on Adjudication annually chooses its own chair.

Upon receipt of a petition of grievance, the entire Committee of Adjudication shall determine whether the petition merits a formal hearing, though Committee members who have a substantial or conflicting interest in the case shall neither vote on this question nor serve on the Hearing Board should one be named. Where it is determined that a petition should be heard, the Committee on Adjudication shall name three of its members to a Hearing Board to hear the case. In special circumstances, particularly where considerations of caseload or conflict of interest are involved, the Committee on Adjudication may make substitute appointments to a Hearing Board from the Faculty at large. Each Hearing Board shall choose its own chair.

(2) *General Procedures of the Hearing Boards.* Every effort shall be made to conclude hearings in a timely manner. Proceedings shall not be governed by strict rules of evidence. Parties shall be allowed a reasonable period to prepare and state their case and to present evidence and testimony, subject to the authority of the Chair to bar testimony that is dilatory or not germane to the case. Parties named in a complaint shall have a reasonable opportunity to respond to all charges brought against them. Any party to a grievance hearing may be accompanied by a colleague from the Amherst Faculty or administration as an advisor, but participation in such proceedings is restricted to the parties, witnesses, and members of the Hearing Board, subject to exceptions explicitly authorized by the Chair. To protect confidentiality and to promote free and open

discussion, hearings shall be closed unless the parties agree in writing to some other arrangement, subject to approval by the Chair. The Board is authorized to request the appearance and testimony of any member of the Amherst community. Though the Board has no power to compel compliance, it is expected that any such request will be honored.

Where the subject of a complaint is some official or institutional (including departmental or committee) finding, decision, recommendation or action, the Hearing Board's review is limited to determining whether that body was authorized to act on the matter in question, whether it acted in accordance with procedures of the College and only after due consideration, and whether the decisions, recommendation or action was consonant with the acknowledged requirements of academic freedom or other substantial rights of the complainant. In no such case shall a Hearing Board enter into an assessment of the substantive merits of the finding, decision, recommendation or action complained of, and a finding of error shall result only in a recommendation to retract or reconsider the offending outcome. Where the Board discovers only harmless error it need not recommend any remedial action. At the conclusion of a case, the Hearing Board shall prepare a written summary of what it judges to be the central issues involved and a statement of its recommendations. This document shall be sent to the President of the College and to all of the principal parties to the case, modified as necessary to protect confidentiality or to reflect the varying ways in which parties may have been involved in the case. The President shall receive a complete statement of the Board's summary and recommendations.

The President shall respond in a timely manner to the Hearing Board's recommendations, informing the Board and all of the principal parties to the case of his or her intended actions, if any.

Where the President is named as a party to a case that has been heard by a Hearing Board, that Board shall transmit its summary and recommendations to the Board of Trustees, whose actions shall be final.

(3) *Access to Information.* Almost every grievance whether addressed informally or formally, presents a tension between a complainant's right to know and the institution's need to protect the confidentiality of certain information and deliberations. Blanket provisions flatly favoring one side or the other appear to be both unnecessary and ill-advised. Rather, questions of access should be resolved by attending to the conflicting interests in specific cases. As a general rule, however, a complainant has no right to the confidential communications of colleagues whether as individuals or as members of a department or a College committee. On the other hand, if a Hearing Board is to make an informed decision and recommendation in a disputed matter, it must have access to all pertinent information including, for example, a department's minutes or other records in connection with a disputed reappointment or tenure recommendation, and where germane, the confidential minutes of the Committee of Six. Where the Hearing Board, as a result of its greater access to confidential information, discovers grounds for remedial action that may not appear in the complainant's petition, the Board shall make findings and recommendations that appropriately take into account those discoveries.

Carlton College Faculty Handbook

http://webapps.acs.carleton.edu/campus/doc/faculty_resources/faculty_handbook/fh_policies_and_procedures/fh_disciplinary_procedures/

Disciplinary Procedures (Vote)

V. Disciplinary Procedures

- A. Disciplinary Procedures disciplinary action against a faculty member should be primarily concerned with violations of the essential rights, freedoms, and responsibilities of teaching and inquiry. The following shall be adequate causes for disciplinary action: the failure to fulfill academic obligations; the physical interference with members of the academic community exercising their rights of free inquiry and expression; disruption of teaching, research or other legitimate college business; violation of the college's statement on consensual relations; and/or any other unprofessional behavior that renders a faculty member unfit in his or her professional capacity as a Carleton faculty member.

Sexual Harassment or sexual assault will also be cause for disciplinary action in accordance with the administration of the College's Policies Against Sexual Misconduct.

- B. The preparation of charges regarding disciplinary action:
1. Any charge that could lead to disciplinary action against a faculty member is a matter of utmost gravity and the decision to press charges must be weighed with a jealous regard for the academic freedom of all parties directly concerned and, indeed, for the entire academic community.
 2. All charges regarding disciplinary action against a faculty member who has tenure or whose term appointment has not expired, wherever they may originate, should be prepared by the President of the College or by his or her designated representative and set forth with a proposed sanction in a formal communication to the faculty member being charged. All cases involving a severe sanction (see section D, below) will be heard by the Faculty Judiciary Committee. The President or the Dean should proceed with all reasonable dispatch in the handling of cases involving possible disciplinary action.
 3. If the President thinks that a minor sanction (see section D, below) should be imposed on a faculty member, the President will notify the faculty member of the reasons for the proposed sanction and provide an opportunity for the faculty member to contest the sanction. If a faculty member believes he or she has not been treated fairly, the faculty member may appeal the matter on substantive or procedural grounds to the Faculty Affairs Committee for final adjudication of the matter.
- C. Hearing Procedures:
1. In hearing a case involving possible severe sanctions, the Faculty Judiciary Committee will follow the procedures set forth for such hearings in the AAUP 1982 "Recommended Institutional Regulations on Academic Freedom and Tenure," section 5 and 6.* This hearing will

deal with the substantive issues of the case and the appropriateness of the proposed sanction. In all such cases the burden of proof shall rest with the College, as stated in 5 (c) 8* of that document.

2. After all parties have been heard and all relevant evidence has been gathered, the hearing committee shall make explicit its decision with respect to the charges brought against the faculty member in a written report to the President. The faculty member shall also be notified in writing of the Faculty Judiciary Committee's findings, and both parties shall be given a transcript of the proceedings on which the Faculty Judiciary Committee's recommendation is based. Should the Faculty Judiciary Committee determine that the sanction proposed by the President in the initial communication of charges brought against a faculty member is inappropriate but that disciplinary action is warranted, it should include in its decision an alternative sanction with a statement of reasons for that finding.
3. If the President rejects the decision of the Faculty Judiciary Committee, he or she will state the reasons for doing so, in writing, to both the faculty member and the Faculty Judiciary Committee. The President will provide an opportunity for response before transmitting the case to the Board of Trustees.
4. If the faculty member disagrees with the decision of the Faculty Judiciary Committee the President will, on request of the faculty member, transmit the record of the case to the Board of Trustees.
5. In the event that a disciplinary case is referred to the Board of Trustees by action taken under C.3 or C.4, the Board's review will be based on the record of the Faculty Judiciary Committee hearing, and the Board will provide opportunity for argument, oral or written or both, by the principals at the hearings or by their representatives. The decision of the Faculty Judiciary Committee will either be sustained or the proceeding returned to the Committee with specific objections. The Committee will then reconsider, taking into account the stated objections and receiving new evidence if necessary. The Board of Trustees will make a final decision only after study of the Committee's reconsideration.
6. A faculty member facing disciplinary action shall not be suspended by the President of the College during the proceedings involving him or her unless the continued service of the faculty member poses an immediate and serious danger to the College or any member of the College community. Furthermore, a faculty member facing charges shall have the right to request a suspension of some or all of his or her teaching duties for a reasonable time in order to prepare his or her defense. However it originates, suspension during the hearing procedures shall be with pay.

D. SANCTIONS

A faculty member found guilty of the charges brought against him or her will be so notified in writing. The following are examples of the range of appropriate sanctions:

1. Minor Disciplinary Sanctions:
 - a. Oral reprimand
 - b. Written reprimand
2. Severe Disciplinary Sanctions:
 - a. Suspension without pay for a specified period of time
 - b. Dismissal

E. COMPOSITION OF THE FACULTY JUDICIARY COMMITTEE

- This committee shall consist of five members of the faculty and five faculty to serve as alternates, each group of five to include at least two women, two men, one non-tenured, one minority (minority to mean African American, Hispanic, Asian, or Native American). All faculty members regardless of other elective or appointive committee positions, with the exception of membership on the Faculty Affairs Committee, are eligible to serve. Selection of the committee is by nomination and election by a majority of those present and voting at the faculty's annual elections meeting. Members shall serve for a term of three years.
- F. The proceedings of all disciplinary procedures will be treated as confidential by the College.

Adopted by the Board of Trustees June 20, 2002.

*AAUP 1982 "Recommended Institutional Regulations on Academic Freedom and Tenure," AAUP Policy Documents and Reports (Redbook), 1995 edition, pp. 21-30. The committee cited in 5 (b) 2 is the Faculty Affairs Committee. The committee cited in 5 (c) is the Faculty Judiciary Committee.

Williams College

<http://www.williams.edu/admin/deanfac/fachandbook/II/U.html#U1>

II. FACULTY POLICIES AND PROGRAMS

U. Procedures for Imposition of Sanctions Other Than Dismissal*

These procedures are modeled on Regulation 6, "Recommended Institutional Regulations" of the AAUP (AAUP Policy Documents and Reports, 1995 ed., pp. 27-28).

1. Major Sanctions

If the administration believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficiently grave to justify the imposition of a major sanction such as suspension from service for a stated period, the administration may institute a proceeding to impose such a major sanction. The procedures for holding a formal hearing for a proposed major sanction and for constituting the hearing committee are described in [section II.T.](#) and [Appendix C.](#)

2. Minor Sanctions

If the administration believes that the conduct of a faculty member may justify the imposition of a minor sanction, such as a reprimand, warning, or restriction for a limited period of time on the kinds of teaching and advising roles in which the faculty member may serve, the Dean of the Faculty will undertake an inquiry into the allegations giving rise to such a belief, unless the allegations involve discriminatory behavior. In the latter case, the Discrimination Grievance Procedures as described in [Appendix B](#) apply. In all other cases, should the Dean of the Faculty decide to proceed to the imposition of such a minor sanction, he or she will provide the faculty member with an opportunity to present a case against its imposition. The Dean of the Faculty will consider the matter further and report his or her finding and proposed sanction(s), if any, to the faculty member in writing and within one week of hearing the faculty member's case.

3. Appeal of Sanction

Should the faculty member believe that the finding is unwarranted or that the sanction is unjust or that the sanction is major, and therefore should not be imposed without benefit

of the type of procedures referred to in paragraph 1 above, he or she may appeal the Dean of the Faculty's* decision to a hearing committee.

*In cases involving discrimination, the phrase "the Dean of the Faculty," both here and in the paragraphs that follow, should be taken to mean "the executive officers."

- o The hearing committee shall be appointed by the Faculty Steering Committee and shall consist of three members drawn from the Steering Committee or, in the case that fewer than three members of the Steering Committee are eligible, from the Faculty Review Panel. ** Any member of the Steering Committee or the Faculty Review Panel potentially affected by bias or conflict of interest will be deemed ineligible for the hearing committee, either by the member's own initiative or at the request of either party to the case.

**In cases involving discrimination, members of the Faculty Review Panel who served on the grievance committee are not eligible to serve on the hearing committee.

- o Prior to the hearing, the committee will receive from the Dean of the Faculty a copy of the report of his or her finding(s) and proposed sanction(s). It will also receive, from the faculty member, a written statement of the grounds for the appeal.
- o The committee will proceed with its hearing informally and in private, keeping its proceedings confidential and resolving by majority vote, if necessary, any issues relating to procedural matters or to its ultimate findings.
- o The hearing committee shall report its decision within two weeks of the termination of its hearings. Should it reject the grounds for the appeal it will so inform the faculty member in writing, with a copy forwarded to the Dean of the Faculty. Should it find the grounds for the appeal compelling, it will make a formal recommendation to the President.

The President's resolution of the case shall be final, and he or she shall report the final resolution, in writing, to the hearing committee, the Dean of the Faculty, and the faculty member.