



**SOUTHERN UTAH UNIVERSITY**  
**Policies and Procedures**

**Policy # 6.22**  
**Date Approved: 05/05/00**  
**Date Amended:**  
**Reviewed w/ No Changes:**  
**Office of Responsibility: Provost**  
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**SUBJECT: FACULTY DUE PROCESS**

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**APPLICABILITY:** These procedures apply to all disputes involving or regarding faculty at Southern Utah University (the “University”), except those alleging sexual harassment.

**BACKGROUND:** Due process is a system of rules and guidelines designed to achieve fair and reasonable resolution to a dispute. This policy provides for both formal and informal approaches to resolution. Except in issues of tenure and rank, the procedures will consider both substantive and procedural issues. Where tenure or rank is at issue, the procedures will evaluate the process by which the application was reviewed for conformity with institutional policy.

While a Petition may come from outside or within the University, the allegations will be processed for University purposes according to these procedures.

**I. DEFINITIONS:**

- A. Administrative Disposition is the final resolution of a Petition. An administrative disposition is made when a Responsible Administrator or the Chair of the Faculty Review Board dismisses the Petition or after appropriate proceedings are held which institute appropriate disciplinary action as contained in Section X.
- B. Administrative Officer is anyone (including a faculty member) designated by the President or the Provost and approved by their Faculty Senate Executive Committee to serve in a recommending or decision-making role. The Administrative Officer will serve in a quasi-judicial role as a neutral observer charged with ensuring that due process is afforded to all parties. (This same person need not serve in all cases.)
- C. Burden of Persuasion is the responsibility of the Petitioner and the Respondent to demonstrate to the Responsible Administrator and/or the Chair of the Faculty Review Board the merits of their allegations and/or defenses. The burden is met when one or the other demonstrates that it is “more likely than not” that there was or was not a violation of policy or breach of professional ethics.

Properly considered in the demonstration of merits is the concept of “Reasonable Care” as defined below.

- D. Chair of the Faculty Review Board (the “Chair”) presides over and conducts the formal hearing. This includes receiving the Petition, holding a pre-hearing conference, conducting the formal hearing, and forwarding or making the Board’s recommendations to the University President. The Chair is selected from among the tenured faculty by the Faculty Senate and will normally serve a term of three



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years. Should a Chair be unable to serve, the Faculty Senate will appoint a substitute or successor according to circumstances.

- E. Disciplinary Action is a sanction imposed by the University President upon recommendation from the Responsible Administrator or the Chair. The sanctions authorized by this policy are defined in Section X.
- F. Dismissal for Cause is the option of the Responsible Administrator if it can be determined from the allegations that the Petition is substantially without merit or is substantially similar to another Petition which is pending or which has been previously decided. Where various Petitions are received from different parties, the Responsible Administrator may elect to proceed on the one from the Petitioner most directly or seriously aggrieved and dismiss others. Where two or more Petitioners are similarly aggrieved, the Responsible Administrator may consolidate the Petitions into one process in the interest of both fairness and economy.
- G. Faculty Review Board (the "Board") is the quasi-judicial panel appointed by the Faculty Senate to make findings, conclusions, and/or recommendations on the information and arguments presented in a formal hearing to resolve the allegations of a Petition. The Board is composed of the Chair and one tenured faculty from each college/school. The Board's principal concerns are Petitions regarding tenure, promotion, retention, professional misconduct, faculty rights, and other alleged violations of University policy and procedure.

Where the Petitioner is a University student, two students will be added to the Board. These students will be named by the SUUSA Executive Officers, approved by the Faculty Senate Executive Committee, and will serve only for the case upon which their appointment was initiated.

A quorum of the Board will be constituted when the Chair (or substitute), all but one of the faculty representatives, and at least one student representative (where applicable) are present.

The Chair will select a secretary for the Board who will be responsible to obtain and operate a suitable system for making an audio tape recording of all open sessions of a Formal Hearing. This secretary should also be a Notary Public for the State of Utah who is trained and authorized in administering an "Oath of Truth" to any party or witness who will provide a statement for Board consideration. The secretary will be responsible for the audio tapes and accurate



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recording of the proceedings; the Chair will be responsible for any documentary or physical evidence to be kept and considered by the Board.

- H. Formal Hearing is conducted by the Faculty Review Board who will hear and evaluate evidence and make a recommendation for specific action to the University President.
- I. Informal Conciliatory Meeting is a meeting initiated and conducted between the Respondent and the Responsible Administrator. By its terms it is intended to be the initial informal step at resolving the Petition.
- J. Mediation brings a “neutral” third-party into the dispute to meet with the Petitioner and the Respondent, and possibly others, to understand and mediate (propose and invite areas of compromise) as a means of resolving or narrowing the dispute. Mediation is available as a means of informally resolving the Petition. It is normally recommended by the Responsible Administrator to the University President and Faculty Senate President.
- K. Petition is the document which initiates proceedings under this policy. The Petition must assert a violation of University policies or procedures or other breach of professional ethics which adversely affects the Petitioner.

The Petition must specifically summarize the facts and allegations, outline the conduct, report the circumstances which the Petitioner reasonably believes to constitute the violation, name witnesses whom the Petitioner will rely on to corroborate or support the substance of the allegations, and detail the steps taken, if any to this point, to resolve the issue(s). The Petition initiates the next appropriate procedural step upon receipt by a Responsible Administrator.

Reference to “the Petition” may also be understood as an abbreviated, collective reference to the Petition, the Response, or any partial resolution negotiated by the Responsible Administrator or a Mediator, particularly where the matter is presented for formal proceedings before the Faculty Review Board.

- L. Petitioner is an individual or group, with Standing (Item U), who files a Petition.
- M. Pre-hearing Conference is a meeting held with the parties by the Chair. At this meeting, initiated and conducted by the Chair, the issues to be examined at the formal hearing are delineated.



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- N. Preliminary Investigation is a fact-finding activity conducted by the Responsible Administrator following receipt of a Petition. The preliminary investigation will determine if a Petition merits further action or if it should be dismissed for cause.
- O. Procedural Due Process refers to the giving and receipt of adequate notice, the opportunity to attend and be heard at an impartial hearing, the choice and opportunity to receive assistance from an appropriate representative, the expectation that participating parties will meet deadlines, and the expectation that persons assigned to do so will reasonably and responsibly complete committee assignments and deliberations according to established procedures. In general, procedural due process will have been afforded when the available information shows reasonable care in following established procedures. Therefore, rehearings will be granted only in cases where prejudicial failure to meet procedural guidelines has occurred.
- P. Reasonable Care is the level of performance recognized as reasonable in light of obligations one has assumed; competing demands upon one's energy and time; the nature, quality, and expectations of one's work; exigencies and unanticipated problems; and all other circumstances which one's peers, after being fully informed, would properly take into account in determining whether all participants in the process were discharging their responsibilities at an acceptable level.
- Q. Representative is any individual, including an attorney, selected by a party to assist or advise that party in pursuit of available procedures. With proper notification to the Responsible Administrator or the Chair, the representative may attend the informal conciliatory meeting or the formal hearing with the party.
- R. Respondent is a faculty member or an administrator with a faculty appointment against whom a Petition has been initiated.
- S. Response is a written response to a Petition, which will address the specific facts and allegations of the Petition and either agree, disagree, explain the basis upon which the Respondent differs with the particulars of the Petition, or makes counter-allegations. The Response must also name witnesses whom the Respondent will rely on to corroborate or support the substance of the Response.
- T. Responsible Administrator is a Vice President, Provost, Dean, Department Chair, Program Director, Supervisor, or any other individual (who has been previously appointed by the Faculty Senate) ("the Administrator") who receives a Petition.



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This Administrator is responsible to conduct a preliminary investigation of the Petition and confer with the parties in an informal conciliatory meeting. The Responsible Administrator may or may not have administrative jurisdiction over the respondent.

- U. Standing refers to the context which gives a Petitioner a recognizable basis to file a Petition. To have proper Standing a Petitioner generally must be a faculty member, administrator, or student, personally or directly prejudiced or aggrieved by a violation of University policy or procedure or a breach of pertinent professional ethics. In the event that there is more than one person so prejudiced or aggrieved, a single Petition may be filed, but each must demonstrate his/her Standing in the Petition.
- V. University Counsel is the attorney(s) assigned to the University by the Utah Attorney General's Office. The University Counsel will serve as a legal advisor to the Responsible Administrator, and if necessary, to the Chair of the Faculty Review Board in a formal hearing. All parties will recognize that the University Counsel's role is to strive for fairness and protect the interests of the University.

## II. PARTICIPANT RIGHTS

### A. Due process

Due process is generally regarded as the right to notice and an opportunity to be heard in a manner consistent with the nature of the allegation(s).

In its various roles of administration and enforcement of policy and potentially as a Respondent, the University is also a participant and reserves to itself circumstantially pertinent due process rights. The essence of due process is afforded to the Petitioner in the right to file a Petition and "be heard" by a Responsible Administrator reviewing it for merit or cause.

Upon initial review of the Petition, the Responsible Administrator may elect to pursue additional investigation into its allegation(s). Should the Responsible Administrator wish to forward notice to the Respondent and receive a Response before further investigating or evaluating the Petition for cause, that is within available discretion.

If upon investigating or evaluating the Petition (and the Response), the Responsible Administrator finds merit (reason not to dismiss the Petition for



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cause) the Responsible Administrator will take the Petition (and Response) forward to informal or formal proceedings.

Upon the Responsible Administrator's election to pursue informal or formal proceedings on the Petition or receive a Response for initial evaluation, due process rights are afforded to the Respondent. The Respondent has the right to receive a copy of the Petition and to submit a Response to the Responsible Administrator within twenty (20) days following receipt.

While all parties are entitled to due process under this policy, due process does not necessarily mean that a party is "entitled" to each or entitled to "exhaust" each. The Responsible Administrator or the Chair of the Faculty Review Board has the sole determination of the availability of proceedings.

These determinations along with factual conclusions and recommendations may be appealed to the University President within ten (10) days of the date of the recommendation or other conclusion of proceedings available under this policy. The University President will have ten (10) days to consider the appeal and make a decision. This decision will be final and cannot be appealed further or be the subject of a subsequent Petition (which must be dismissed for cause immediately upon its receipt by a Responsible Administrator).

**B. Representation**

All parties may elect to have a representative, including legal counsel, to assist or advise a party in pursuit of available procedures.

It will be the general procedural approach for parties to "speak" for and represent themselves at all proceedings. The representative may be present to advise, but he/she will not address the forum. This approach may be modified on a case-by-case basis if justification is found by the Responsible Administrator or the Chair, after conferring with University Counsel.

Generally, representatives will not attend the Informal Conciliatory Meeting. Where this is desired, it must be requested in advance of the meeting in order that the Responsible Administrator can arrange to have University Counsel present. However, representatives will be expected to attend mediation or formal proceedings.



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C. Documents/Copies

Parties generally have the right to receive copies of material or documents gathered during investigation of the Petition. However, the Responsible Administrator, in consultation with University Counsel, may withhold confidential information (e.g., the identity of witnesses and informants) throughout the duration of the informal procedures.

Upon the determination that the Petition will not be resolved by informal procedures, the Responsible Administrator will give one (1) set of documents to all parties and be paid for by the Provost's office. Any additional copies must be made from those provided or requested in writing from the Responsible Administrator and paid for personally by the requesting party at typical campus rates.

D. Witnesses

In many, if not all instances, there will be non-party individuals who have information pertinent to the investigation and resolution of a Petition. These individuals must be named in the Petition and the Response.

Witnesses may be contacted by the Responsible Administrator in an initial investigation of the Petition, and information provided may be utilized without personally involving the witnesses in informal efforts at resolution.

If formal proceedings are instituted, the Petitioner and Respondent will have the right to present evidence and to call witnesses to testify in their behalf. They may ask questions directly of their witnesses and "cross-examine" those called by an opposing party. This direct or cross-examination of witnesses will be governed by the Chair of the Faculty Review Board and may be limited by the potential for redundancy, time, or other appropriate considerations.

Alternatively, the Chair may conduct the "examination" of all witnesses and to assist this effort, may call for written questions from the parties or the members of the Board.

The number of witnesses and the alternative means of examination will be discussed and determined at the Pre-hearing Conference. Reasonable efforts will be made to obtain the most trustworthy and reliable evidence available; however,



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the Responsible Administrator and the Faculty Review Board are not bound by strict legal rules of evidence but may admit any evidence which is deemed useful in appropriately addressing the Petition or a related defense.

E. Other rights

1. Where the Responsible Administrator or Chair agrees that the information may be pertinent or relevant, Petitioner or Respondent may examine any University records which are retrievable in their own name, with the exception of legally controlled or protected documents, according to Utah law.
2. All parties have the right to attend the Informal Conciliatory Meeting, Mediation, or the Formal Hearing (except those sessions which are closed for the purpose of deliberations and voting). This right may be forfeited if a party fails to adhere to proper conduct and emotional restraint.
3. Any party will be granted reasonable time, including adjournment during formal hearings, to investigate evidence to which a valid claim of surprise is made.
4. Parties are entitled to expect that any finding, decision, or recommendation will be based upon the evidence gathered and heard during the utilized procedures.
5. The Respondent has the right to expect that the Petitioner will bear the burden of persuasion on the allegations of the Petition; the Petitioner has the right to expect that the Respondent will bear the burden of persuasion on the Response or any pertinent defense. A determination of whether the respective burden has been met may be determined from the record when considered as a whole.
6. An audio taped record of each formal hearing session will be kept by the secretary to the Board, and a copy will be provided to either party upon request. The Provost's office will provide the least costly copy without fee.
7. All parties will be cautioned regarding retaliation or other infringements on the civil or professional rights of any other party, witness, or other





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participant. Any proof of such will result in a recommendation for punitive disciplinary action.

8. It is impossible for complete confidentiality to be expected or guaranteed. Appropriate cautions will be given, and it is expected that all participants will conduct themselves professionally and with appropriate considerations for the privacy and reputation of colleagues.

### III. INITIATING A PETITION

- A. A Petition must be in writing and with the particulars set out in Paragraphs K and L above.
- B. Give the Petition to a Responsible Administrator. (To access the names of administrators who have been previously appointed by the Faculty Senate, call the Faculty Senate President.)

### IV. ACTION UPON RECEIPT OF A PETITION

- A. Upon receipt of a Petition, the Responsible Administrator will notify the Faculty Senate President, the University President, and University Counsel.

In the event the Respondent is charged with a serious offense affecting the public interest and pending the outcome of the due process proceedings, the University President in consultation with the Chair of the Faculty Review Board may suspend the respondent from professional duties upon written notification to the Respondent and to the Board of Trustees. This suspension shall remain in effect until such time as the respondent has resigned, the charges have been dismissed, or other disciplinary action has been imposed. The respondent shall draw a salary during suspension.

- B. The Responsible Administrator:
  1. The Responsible Administrator upon initial review of the Petition, may elect to pursue additional investigation. In that event, the Responsible Administrator will inform the Respondent that a Petition has been filed.

However, when a Respondent has allegedly committed a violation of Section 5 of the Academic Freedom, Professional Responsibility, and Tenure document, requiring confidential investigation to determine the



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merit or seriousness of the alleged infraction, the Responsible Administrator with the advice of University Counsel, may withhold disclosure of the Petition to the Respondent during the investigation.

2. The Responsible Administrator will conduct any confidential investigation within ten (10) working days after receipt of the Petition. If more time is necessary, the time frame will be adjusted with the approval of the University President and advice of University Counsel. All investigations shall be conducted in a fair and reasonable manner with care to protect the Respondent's privacy interests and to minimize the damage to the Respondent's or the institution's reputation.

**V. INFORMAL PROCEEDINGS**

The available informal proceedings are the Informal Conciliatory Meeting and Mediation. After the preliminary investigation is completed, as soon as the Responsible Administrator has determined that the Petition has merit and that sufficient information is available, the Responsible Administrator may recommend mediation to the Faculty Senate President and University President or elect to hold an informal conciliatory meeting with the Respondent.

**A. The Informal Conciliatory Meeting**

Prior to the informal conciliatory meeting, the Respondent has the right to a copy of the Petition and to receive copies of material or documents gathered during any preceding investigation. However, the Responsible Administrator, in consultation with University Counsel, may withhold confidential information (e.g., concerning the identity of witnesses and informants) throughout the duration of the informal procedures as mentioned in Section IV, Subsection B.

Attendance of the Administrative Officer and the Petitioner are optional, but either or both should be in attendance if requested by anyone involved. Others may attend with agreement of the Responsible Administrator, upon request by Petitioner or Respondent. However, if the Petitioner or the Respondent invoke their rights to have a representative present during the informal conciliatory meeting, the Responsible Administrator may opt not to have the meeting and forward the Petition to a mediator or to the Board.

The informal conciliatory meeting may result in:



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1. Dismissal of the petition, either by agreement of the parties, or by decision of the Responsible Administrator.
2. Determination that the Petition has merit and can be resolved by an administrative disposition. (Any disciplinary actions should conform to those enumerated in Section X. below.)

The administrative disposition should be drawn up by the Responsible Administrator and submitted for review by the Petitioner and Respondent. If no objection to the administrative disposition is raised by either within five (5) working days, it becomes final. Upon reaching administrative disposition, no further proceeding shall be necessary, and the Petition is resolved.

3. Resolution of some issues by agreement, leaving others unresolved for other proceedings. Such a partial resolution will be drawn up by the Responsible Administrator and signed by the Petitioner and Respondent.
4. Determination that the Petition may be better resolved by mediation or formal proceedings.

Any agreement or administrative disposition reached at the informal conciliatory meeting will resolve the Petition.

Failure to fully resolve the Petition through the informal conciliatory meeting will require the Responsible Administrator to recommend mediation to the Faculty Senate President and University President or present the Petition, Response, investigation file, and any partial resolution, to the Chair of the Faculty Review Board for formal proceedings. In either case, the matter must be forwarded by the Responsible Administrator within ten (10) working days following the meeting.

When an informal conciliatory meeting results in an administrative disposition other than dismissal of the petition, a record sufficient to support the decision shall be maintained by the Responsible Administrator. The records shall be kept on file until such time that the Responsible Administrator determines that no useful purpose would be served by their retention. The respondent may request a copy of letters or other documents for personal retention.



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**B. Mediation**

Mediation is available as a means of informally resolving the Petition. It is normally recommended by the Responsible Administrator to the Faculty Senate President and University President. Involvement of the University President is necessary because, in most cases, funding will need to be approved from the President's office to compensate the Mediator.

Because of case- or situation-specific needs, the Mediator will be chosen by the Faculty Senate President and University President, who will evaluate credentials, experience, fees, and related qualifications.

The Petition and Response, along with any investigation done by the Responsible Administrator, or any partial resolution, will form the basis of the dispute to be mediated.

The Mediator will establish procedures pertinent to the specific mediation, and all parties are expected to accommodate the Mediator's schedule and wishes. The Mediator will determine the need to interview any of the witnesses named in the Petition or Response.

All parties must negotiate in good faith. Any resolution or compromise proposed through or by the Mediator will be given honest and genuine consideration.

The Mediation is expected to result in an agreement which will resolve the Petition. Any disciplinary actions must conform to Section X. Failing a full agreement, the mediation may work to resolve some issues and narrow the dispute to those which remain. These will be documented by the Mediator and signed by the parties. Those issues remaining will be forwarded to the Chair of the Faculty Review Board for formal proceedings.

**VI. Pre-formal Hearing Procedures**

Where the Petition has not been fully resolved through informal proceedings, the Petition may be presented to the Chair of the Faculty Review Board for formal proceedings.

- A.** As a result of tenure review, if a faculty member is denied tenure, he/she may appeal this decision directly to the Chair of the Faculty Review Board on grounds outlined in Section 6.9.4. of the Academic Freedom, Professional Responsibility, and Tenure document.



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- B. Within ten (10) working days following receipt of the Petition, the Board will meet to review the Petition. The Board, by majority vote of any quorum, may decide not to hold a formal hearing if they determine that the Petition is without merit, based on purely personal grounds, presents issues that are beyond those recognized in the statement of rights and responsibilities in Sections 4 and 5 of the Academic Freedom, Professional Responsibility, and Tenure document, or an abuse of due process.

The decision to dismiss the Petition, together with supporting reasons, will be submitted in writing to the Petitioner, the Respondent, and the Faculty Senate President. Any appeal on dismissal must be submitted to the University President within ten (10) working days of receipt of the decision. The President has ten (10) days to issue a final decision on the appeal.

- C. If the Board decides to proceed with a formal hearing, the Board will set dates for a pre-hearing conference and formal hearing. The pre-hearing conference will be held within ten (10) working days prior to the formal hearing, and the formal hearing will be held within twenty-five (25) working days from the date the Board receives the Petition, unless it is first dismissed. An extension of time for hearing preparation may be granted by the Chair if good cause is shown by any party.

**VII. Pre-hearing Conference**

- A. The following people should attend the pre-hearing conference:
1. The Chair of the Faculty Review Board who conducts the meeting,
  2. The Administrative Officer,
  3. The Respondent(s) and Representative(s),
  4. The Petitioner(s) and Representative(s), and
  5. University Counsel if deemed appropriate by the Chair.
- B. The following items will be covered:
1. Respondent and Petitioner will be informed of the parameters and issues to be examined at the formal hearing.
  2. Respondent and Petitioner will make available to each other and to the Chair upon request, a list of the documentary evidence expected to be introduced at the hearing and supplement the witness disclosures made in the Petition / Response. This does not limit the parties from utilizing



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additional evidence or witnesses during the hearing, subject to approval by the Board.

3. The Chair will advise the parties of the Board's position concerning the questioning of witnesses. In all cases, the parties shall be given a reasonable opportunity to appear, make statements, call witnesses, and present evidence.
4. Each party may, with stated cause, challenge the faculty or student representatives sitting on the Board. In the event of challenge, the Chair will decide and respond. In the event the sitting Chair is challenged, the Faculty Senate Executive Committee will decide and respond. Appointment of any replacements will be determined by the Faculty Senate Executive Committee.
5. Hearings will be open to the public unless the Respondent or Petitioner requests closure, and the Board, in consultation with University Counsel, determines that a closed hearing would be appropriate under the circumstances.

A request for a closed hearing must be made during the pre-hearing conference. The chair shall provide a written response to the request for a closed hearing to the Petitioner, the Respondent, and the Administrative Officer with reasons within ten (10) working days.

6. The pre-hearing conference may be continued or postponed by the Chair for needs of the Board or upon good cause shown by any party.
- C. The Faculty Review Board will meet after the pre-hearing conference to:
1. Discuss the information obtained at the pre-hearing conference.
  2. Determine what form of testimony presentation is appropriate. The Faculty Review Board may hear testimony in whatever form of presentation it deems appropriate (e.g., verbal, written, response to examination, cross-examination, etc.).
  3. After the Board's meeting the Chair will inform the Respondent, Petitioner, Administrative Officer, and University Counsel, in writing, of the decisions made at this meeting.



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VIII. Formal Hearing Procedures

The formal hearing is for the Board to make an informed judgment according to the generally accepted standard of the academic profession and to determine the significance of that judgment for the relationship between the respondent, the peers of the respondent, and the institution. Members of the Faculty Review Board serve in a quasi-judicial role as both jurors and judges.

As jurors, they determine the nature, quality, and weight of the evidence presented to them and react as they see fit to the arguments they hear.

As judges, they:

1. Determine whether the evidence is relevant or otherwise appropriate to the dispute;
2. Decide which institutional canons or regulations are applicable and how they should be interpreted and used in the specific case before them;
3. Examine the relationship between institutional policies and procedures and those of the profession in general; and,
4. Recommend appropriate sanctions or dispositions of the case.

Attendance at the formal hearing should, in addition to the Board, include those persons in attendance at the pre-hearing conference as specified in Section VIII. Subsection A., Pre-hearing Conference. A substitute or representative for any of the specified individuals may attend upon approval of the Chair. The Board may continue or postpone the hearing in the event that there is no quorum or where the absence of one or more individuals would jeopardize the fairness of the proceedings.

Publicity about the hearing is to be avoided by all involved in the proceedings, and the proceedings in all respects are regarded as "PROTECTED" for purposes of the Utah Government Records Access and Management Act (U.C.A. § 63-2-101, et.seq.)

Relevant records and/or documentary evidence pertaining to the case under review may be requested by either the Chair, the Petitioner, or the Respondent. Compliance with such a request is an obligation of University employment, except where there is significant risk of self-incrimination or breach of privileged or confidential communication or records, as recognized either by law or published University



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regulations.

The hearing will be conducted as expeditiously as possible in order to produce a fair and reasonable decision or recommendation. The number and duration of meetings required is at the discretion of the Board.

Formal Hearings shall be guided by the following considerations; however, mere failure to follow any of the guidelines without a showing of prejudice shall not be construed as sufficient grounds for a charge of procedural error.

- A. The Chair will call the hearing to order and:
1. Introduce all in attendance;
  2. Describe briefly the role of the formal hearing in the due process procedure;
  3. Remind all participants of the confidential nature of the proceedings;
  4. Inform those in attendance that the meeting is being electronically tape-recorded. Written minute notes will also be kept and, if necessary, the audio tape will be transcribed by a qualified faculty member. (It is not necessary for this person to be a certified court reporter, nor is it necessary for a verbatim record to be transcribed or typewritten. A verbatim record is deemed to have been kept by the electronic recording.);
  5. Inform the participants that each party may have a representative present. Remind all that the formal hearing is not bound by formal trial procedures or formal rules of evidence and that the representatives' role is advisory only and not that of a trial lawyer. The representatives' involvement is and remains subject to approval and limitation by the Faculty Review Board. The intent is to insure that the Petitioner and Respondent receive the benefit of some representation while facilitating the academic nature of the proceedings. (Exceptions may be made by the Board for good cause.);
  6. Inform the parties that the Board will meet in closed session to deliberate its decision and then briefly describe the general guidelines for how the closed session will be conducted.





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- B. The Petitioner will next be invited to present an opening statement which will summarize the allegations before the Board and give an overview of the evidence which he/she will present to support the allegations. It may also be appropriate to suggest the outcome or consequences sought in the proceedings. (The opening statement may be waived at the option of the Petitioner.)
- C. The Respondent will next be invited to present an opening statement which specifies the grounds and general evidence upon which the allegations will be refuted. Again, it may be appropriate to suggest the outcome or consequences sought in the proceedings. (The opening statement may be waived at the option of the Respondent.)
- D. Petitioner may present witnesses and evidence. Witnesses will be asked to give an "Oath of Truth." Witnesses will be limited to those approved at the Pre-hearing Conference.

The members of the Board may question (cross-examine) the Petitioner and the witnesses at the completion of their statement. The Respondent may do likewise, if it was so decided at the pre-hearing conference, or if unanticipated testimony or evidence is presented that would justify cross-examination, upon request to and decision by the Chair.

The Board may limit both the nature and duration of such statements or cross-examination when it is deemed inappropriate, irrelevant, repetitious, or otherwise of undue encumbrance upon the proceedings.

- E. At the conclusion of the Petitioner's presentation, the Respondent may then present witnesses and other evidence. As with the Petitioner's presentation, witnesses will be limited to those approved at the pre-hearing conference and asked to give an "Oath of Truth." They may be subject to cross-examination and the presentation may be limited where it is deemed appropriate or necessary as stated above.
- F. Either the Petitioner or Respondent may request that other witnesses be called beyond those approved at the Pre-hearing Conference. The Board may, however, in its sole discretion, limit the number of witnesses called if they determine that no new or useful information will be provided.
- G. The Petitioner and then the Respondent may present a brief summary or closing statement. The Petitioner may also reserve the right for final rebuttal.



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- H. After hearing the parties and other witnesses, and determining that it has sufficient evidence upon which to base a decision, the Board will adjourn to meet in closed session to deliberate and formulate its recommendation(s) to the University President. This deliberative session will be closed to all except the members of the Board, not including the secretary. No written or other record of this closed session will be kept.
- I. A majority vote of the Board, sitting in quorum, shall control the decision(s), recommendation(s), and any other action of the Board. The Chair will vote only in the case of a tie. All such voting and deliberation leading to a vote shall be conducted in closed session.

IX. Disciplinary Actions

- A. Disciplinary action will be employed when it has been determined that a violation has occurred and its imposition may serve to:
  - 1. Assure self-improvement and reform,
  - 2. Deter further or future violations, and
  - 3. Reinforce academic freedom, ethics, and the rights and responsibilities of faculty members by demonstrating that violations of Section 5. of the Academic Freedom, Professional Responsibility, and Tenure document will be judiciously prosecuted within the academic community.
- B. Any recommended disciplinary action will reflect the seriousness of the violation. Where the Board finds a violation sufficient to warrant disciplinary action, the Board may recommend any of the following actions. University Counsel should be consulted before the Board makes any such recommendation to the University President for consideration and implementation.
  - 1. Verbal censure,
  - 2. Written reprimand,
  - 3. Probation (not exceeding one year) to which reasonable provisions may be attached,
  - 4. Suspension with pay (not exceeding one semester),
  - 5. Reassignment of duties,
  - 6. Suspension without pay (not exceeding one year),
  - 7. Acceptance of resignation,



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8. Dismissal of respondent.

Dismissal may be imposed only on the finding that a Respondent is incompetent or professionally unfit or that the Respondent's action or behavior has seriously violated the responsibilities as set forth in Sections 4 and 5 of the Academic Freedom, Professional Responsibility, and Tenure document.

- C. Where the Responsible Administrator, Mediator, or the Board determines that the allegations do not call for disciplinary action and that subsequent violations would not occur, non-punitive actions such as guidance, counseling, therapy, leaves, voluntary resignation, or early retirement may be implemented or recommended.
- D. A combination of any of the above may be imposed, providing the action is less than dismissal. Generally, where applicable, the Respondent will be required to make restitution (payment for property damages, service lost, etc.) or remedy a situation created by the Respondent's violation of University policy.
- E. The Respondent may be subject to disciplinary action under these provisions, independent of any action filed or concluded in a court of law, if the same allegations raise serious concern about the Respondent's ethics or compliance with the professional responsibilities outlined in Sections 4. and 5. of the Academic Freedom, Professional Responsibility, and Tenure document.

X. Conclusion of Formal Hearing

When the Faculty Review Board has concluded its deliberations, the Chair shall prepare a written statement containing:

- A. Any decision(s) or conclusion(s) reached,
- B. Reasons or specific factors supporting the decision(s) or conclusion(s), and
- C. Recommendation to the University President for any disciplinary or other action to resolve the Petition.
- D. The original of the written statement ("the Recommendations") will be given to the University President within three (3) days following the formal hearing. Copies of the written statement will also be given to the Faculty Senate President.

XI. Presidential Decision



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The University President will make a decision on the recommendations of the Faculty Review Board. Upon receipt of the recommendations, the University President will have ten (10) days to consider the recommendations; determine whether or not to implement them at all, in whole or in part; or to refer the Petition back to the Faculty Review Board for further action or deliberation.

If referred back for further action or deliberation, the Petition will be regarded as not having been concluded by the Faculty Review Board, and it will be taken up again to consider the President's request.

Upon the University President retaining the recommendations and issuing a decision, copies of the recommendations will be given to the Respondent, the Petitioner, and the Faculty Senate President only. A copy will be retained in the minutes of the formal hearing.

**XII. Appeal**

Upon receipt of the University President's decision, the Respondent or Petitioner may appeal for re-consideration to the University President. Such an appeal must be in writing and made within (10) working days from the receipt of the President's decision.

The written appeal is limited to five (5) type-written pages. The appeal may argue the recommendation of the Faculty Review Board, the Board's decisions to include or exclude witnesses or physical evidence, and other issues or merits. A copy of the appeal will be provided by the University President to the non-appealing party in order to receive any counter-argument, which will also be limited to five type-written pages and must be received by the University President within ten (10) working days following its mailing to the non-appealing party.

The University President will have ten (10) working days to consider the appeal and issue a final decision. The President will not necessarily be bound by the recommendation of the Faculty Review Board or the initial decision.

After reviewing the appeal, the University President may implement the recommendations of the Faculty Review Board, decrease the disciplinary action, offer a substitute action consistent with Section X., or remand the petition back to the Faculty Review Board for further consideration.

There shall be no appeal or review of the recommendation beyond that provided here;



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and upon issuing a decision on the recommendation or on the appeal, all administrative remedies will have been exhausted.

**XIII. Reports and Records of the Formal Hearing**

- A. Accurate and complete records will be maintained by the Chair of the Faculty Review Board for all formal hearings. With the exception of the Respondent's copy, all records pertaining to the Petition, including those created in any preliminary investigation, conciliatory meeting, or mediation, will be sealed and filed in the University President's Office as a "PROTECTED" record. Other than upon administrative or court subpoena/order, these records may only be made available with permission of the University President and the Chair of the current Faculty Review Board, and, where applicable, after duly notifying the Respondent as to the purpose for such release. The Respondent shall have the right, with a representative, to offer arguments to the University President and Chair as to why such release should not take place.
- B. When the Respondent resigns or is voluntarily terminated during due process proceedings, the Responsible Administrator, Mediator, or Chair shall provide the file created on the Petition to the University President's Office for storage. The Chair shall notify the Respondent of his/her right to make a written statement to be included in the file.
- C. The University President will keep on file the records of formal hearings for five (5) years from the date of final disposition. At the end of five (5) years the records may be retained at the discretion of the University President or be disposed of by shredding or other means designed to render them illegible. If the University President in consultation with University Counsel and the Chair of the current Faculty Review Board determine that a useful purpose would be served by retaining the records, their retention shall be reviewed no later than five (5) additional years.
- D. Any faculty member may examine a file naming him/her as a Respondent according to the laws of the State of Utah, with the exception of legally privileged documents or other documents classified as "PROTECTED."

**XIV. Due Process Procedure for Medical or Mental Incapacity**

As stated in Section 6.10.1.4, a faculty member may be terminated or given a position with reduced status for substantially impaired performance for medical reasons. Such



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medical incapacity must preclude the faculty member from competently performing the duties and responsibilities of a teacher or faculty member as determined by medical and/or psychological examination.

- A. Proceedings to dismiss a faculty member for medical/psychological reasons will commence by Petition which may come from either the Faculty Senate President, the Provost, or both. Such a Petition will be regarded as being brought by the University and should be regarded by all as brought in good faith out of the greater concern for all faculty and students. (However, there will be no student members of the Board on such a Petition.)

This Petition will come before the Board as if all informal procedures had been exhausted.

In such cases, however, as a preliminary measure, the Respondent should be examined, at institutional expense by two physicians. One physician will be chosen by the Respondent and the other by the University.

- B. Should both physicians concur as to the absence of medical and/or psychological incapacity, the Petition will be dismissed. If one or both offer the opinion of medical and/or psychological incapacity, or if the respondent refuses to submit to medical examination, the Board will proceed with a Formal Hearing on the Petition, utilizing the opinion of one physician as if it were conclusive, being unrebutted by a similarly qualified professional.
- C. Where the issue is psychological or one of mental incapacity, the University may mandate that the Respondent be examined/evaluated by a psychiatrist or Ph.D. psychologist (an "Evaluator") chosen by the University President. If the findings of this Evaluator do not support further proceedings, the Petition will be dismissed. If the Evaluator's findings support further proceedings, the Respondent will select a second Evaluator.

Where there is any concern that the Respondent lacks capacity to represent himself/herself or competently select an Evaluator, the University President, through University Counsel may institute formal Probate Proceedings in a court of competent jurisdiction, on a Petition to have a Guardian or Guardian ad litem appointed to assist the Respondent. The opinion of the University's Evaluator may be used to support the Probate Petition. Any Court-appointed Guardian will be regarded as the Respondent's Representative and will be allowed to act as if



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he/she were the Respondent in any further proceeding — contrary to common procedure as outlined above.

- D. The Formal Hearings will proceed to conclusion as outlined above. However, the decision and recommendation of the Faculty Review Board shall not be limited to the sanctions listed in Section X. Disciplinary Actions. If supported by medical/psychological opinion, the Board may recommend that the Respondent be regarded as permanently disabled in order that any available Disability Insurance could be utilized. Alternatively, the Board may recommend extended suspension without pay or involuntary early retirement. The Board may also recommend, in those cases where the duration of medical incapacity is expected to be relatively short, that the Respondent be temporarily replaced, or given priority of rehire in the event a position for which the Respondent is qualified becomes available.

**XV. Dismissal of a Faculty Member for Reasons Other Than Cause**

- A. A faculty member may be dismissed, or given an appointment with substantially reduced status, for reasons other than cause as a result of:
1. Bona fide financial exigency as provided in the State Board of Higher Education Policy and Procedures R482, Bona Fide Financial Exigency and Personnel Reduction (“USBHE Policy”), and SUU Policy and Procedures on Major Financial Crisis and Bona Fide Financial Exigency.
  2. Bona fide program discontinuance as provided below.
- B. Bona fide program discontinuance means the termination of a program, center, institute, laboratory, department, or college for reasons based upon educational and academic considerations.

Educational and academic considerations will include, but are not limited to, the program analysis considerations in the USBHE Policy R401, R402, and R411. For purpose of this section, educational and academic considerations do not include cyclical or temporary variations in enrollment, but must be based on evidence and reflect judgments that in the long term the basic educational mission of the institution will be strengthened by the discontinuance of the program, center, institute, laboratory, department, or college. This does not preclude the reallocation of resources to other academic programs within the institution.



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- C. The faculty, through the academic departments and the Faculty Senate, shall participate in key decisions regarding the future of specific academic programs within the institution and the status of individual faculty members in those programs. The Faculty Senate shall exercise primary responsibility in recommending the criteria and the weighing of the criteria for identifying the programs which might be considered for discontinuance. In turn, these criteria will be reviewed and recommended by the Deans' Council, and approved by the President and the Board of Trustees. At any stage in the processing of a proposed discontinuance of a program, consideration shall be given to its quality, essentiality, productivity, and cost effectiveness. However, these criteria, either singularly or in combination, shall not be used in an arbitrary and capricious manner. Rather, compelling educational and academic reasons must exist to justify the discontinuance of a program.
- D. Program Defined: A "program" is a unit within the University with an identifiable teaching, research, or other academic mission. For the purpose of these procedures, "program" is to be determined by existing academic standards, and "programs" are never to be defined with the aim of singling out individual faculty members for adverse treatment. For a unit to be designated as a "program," it shall have an identified group of faculty and shall fulfill one or more of these criteria:
1. Whether the unit has "program," "center," "institute," "laboratory," "department," or "college," in its title or has otherwise been designated as a program;
  2. Whether the unit offers or administers a degree, major, emphasis, diploma, minor, certificate, or some other credential;
  3. Whether the unit has an identifiable curriculum or is formally described in current institutional catalogs or other publications;
  4. Whether the unit has a separate budget as listed in official SUU documents.
- E. Notification of program discontinuance must be given to the Board of Higher Education under USBHE Policy R402. This allows the Board of Higher Education to review such proposals, to disapprove the discontinuance of a program if it concludes the program should be retained at the institution, and to coordinate the retention or discontinuance of programs in the various institutions of the System.





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XVI. Process of Program Discontinuation

- A. Formal consideration of possible discontinuation of an academic program may be initiated by a committee of faculty from the department or college of which the program is a part, a department chair, an academic dean, the Provost, or University President.
- B. The faculty committee, or other initiating administrator other than the Provost, shall prepare and submit to the Provost a written proposal which
  - 1. Specifically identifies the program and the faculty affected;
  - 2. States the reasons for recommending discontinuation;
  - 3. Assesses the probable consequences for faculty, related programs, and the University in general; and
  - 4. Suggests a time table for accomplishing the discontinuation.
- C. The Provost shall distribute copies of the proposal along with any comments of his/her own to each of the following for input and recommendation:
  - 1. Faculty members directly affected by the proposed discontinuation;
  - 2. All faculty in the affected department;
  - 3. Faculty in related programs or programs that might be affected by a discontinuation;
  - 4. Relevant department chairs and deans;
  - 5. Faculty Senate President; and
  - 6. Student Body Academic Vice President.
- D. Comments, data and recommendations from any of the above are appropriate and should be written and given in timely fashion to the appropriate academic dean.
- E. After considering any comments, data, and recommendations received, the academic dean shall forward copies of this input together with his/her recommendation to the Deans' Council and Faculty Senate.
- F. After considering all relevant information from individuals and appropriate committees, analyzing circumstances that support or oppose the proposal, and considering possible alternatives, the Deans' Council and Faculty Senate will formulate their recommendations.



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- G. If both favor a proposed discontinuance, then their written recommendations will be forwarded to the President for consideration. In addition to communicating the action of the Faculty Senate and the Deans' Council, the Provost will also provide his/her personal recommendation.
- H. If one body recommends discontinuance and the other recommends continuance, the Deans' Council and the Faculty Senate Executive Committee will meet together to investigate the possibilities of reaching a consensus.
- I. If the final disposition of both bodies is not to favor discontinuance, or if there is not consensus between the Deans' Council and the Faculty Senate, the proposed discontinuance fails before the academic body of the University. Such shall defeat the proposal unless it is overridden by the President, the Board of Trustees, and the State Board of Higher Education.

A letter detailing this negative recommendation for the proposed discontinuance shall be prepared by the Provost, reviewed by the Deans' Council and Faculty Senate Executive Committee, and forwarded to the President for his/her consideration. In addition to communicating the action of the Faculty Senate and the Deans' Council, the Provost will also provide his/her personal recommendation.

- J. Communications detailing the recommendations of the academic body regarding proposed discontinuances shall accompany subsequent recommendations made by the President to the Board of Trustees or State Board of Higher Education.
- XVII. Standards Relating to Possible Dismissal, or Substantial Change In Status, Because of Program Discontinuation
- A. In any discontinuation of an academic program, the institution shall plan to bear certain responsibilities and costs relative to tenured or non-tenured faculty members adversely affected. Standards defining the limits for this process are described in Section 6.13.5.
  - B. After the State Board of Higher Education has approved a proposal by the University to discontinue a program, department, or college, the cognizant Department Chair or Dean shall give written notice of that discontinuation to all persons in the program, department or college.

If faculty members are involved with multiple programs within a given academic



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discipline, and if the discontinuance requires selection from among various faculty for dismissal or reduction, such shall follow the spirit of Section 8, Personnel Reductions within the policy on Major Financial Crisis and Bona Fide Financial Exigency at SUU, related to "serious distortion" of academic programs.

On the other hand, if faculty members are involved with multiple programs in various disciplines, and if discontinuance of at least one program occurs thereby eliminating a specific discipline, faculty positions associated with that discontinued program will be reduced in status by their FTE commitment to the discontinued program. A minimum of one full calendar year, beginning July 1 following a final decision to discontinue an academic program, shall pass before the actual discontinuation takes effect. After that time, a further phase-out period may be required in order not to cause undue hardship for students already in the program. This time frame can be reduced, however, only if all of the following criteria are met:

1. If fewer than ten students are enrolled in the program,
2. If other arrangements can be made for students in the program, and
3. If the discontinuance coincides with the natural attrition of faculty.

**XVIII. Placement in Another Suitable Position**

- A. Before dismissing a tenured faculty member because of bona fide discontinuance of a program, the University will make a reasonable effort to place the faculty member in another existing, vacant, and suitable position within the institution for which the faculty member is qualified. While the administration facilitates such action, the decision to accept tenured faculty rests with the faculty in the department which would be receiving such a faculty member. These tenured and tenure-track faculty must decide by simple majority vote (of those attending a called faculty meeting) whether the tenured faculty member in question is qualified for any vacant position, or would be after a reasonable period of training. If the vote is in favor, particularly where the placement would be facilitated by a reasonable period of training, financial support not to exceed a one academic-year (nine month) sabbatical leave will be recommended to the President and the Board of Trustees by the Dean and Department Chair of the recipient department.
- B. A tenured faculty member to be dismissed has no right to displace another faculty or staff member from a position nor to expect that a new position will be created



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in order to maintain employment. The tenured and tenure-track faculty of a receiving department, however, shall maintain the right to displace a non-tenured or non-tenure track faculty member in order to install a tenured faculty member in a position for which he or she is qualified, if this does not compromise the integrity of the program, and is deemed to be in the best interest of the program.

- C. Non-tenured and non-tenure track faculty members displaced by this process will be notified of the non-renewal of their appointment in accordance with the time frames defined in Section 6.8. and 6.13.5.5., and the principles of section 6.9.

**XIX. Notice of Nonreappointment or Reduction in Status of Non-Tenured Faculty**

As a result of a bona fide program discontinuance, notice of non-reappointment or reduction in status of a non-tenured faculty, or of intention not to recommend reappointment to the Board of Trustees, should be given in writing in accordance with the time standards in Section 6.8., and the principles of Section 6.9. Lecturers, part-time, special, term, visiting, or other such non-tenure track faculty shall be notified

- A. Not less than sixty (60) days before the effective day of the dismissal if they have been employed for five or more years, or
- B. Not less than thirty (30) days before the effective date of dismissal if they have been employed for less than five years.

**XX. Notice of Dismissal or Reduction in Status of Tenured Faculty**

Notice of dismissal, or diminished in FTE, of tenured faculty shall be given not later than June 30 if the dismissal or reduction in status is to occur at the end of the following academic year.

**XXI. Severance Pay in Lieu of Notice**

In lieu of adequate notice as stipulated in Sections 6.13.5.5., 6.8., and 6.13.5.6., a tenured or non-tenured faculty member who is dismissed, or diminished in FTE for bona fide program discontinuance is entitled to severance pay for three months (if the faculty member has a March 15 deadline), six months (December 15 deadline), or nine months (June 30 deadline). Severance pay will be equivalent to present, academic year salary in case of dismissal, or the difference between his/her present salary and the salary of the diminished FTE or the reduced status. All salary amounts are based on a nine-month



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academic year base, and represent 1/3, 2/3, or 3/3 of that salary, respectively, for three, six, or nine months.

**XXII. Salary Settlement for Dismissed Faculty**

For tenured or non-tenured faculty facing non-reappointment or dismissal because of program discontinuance, the University may offer a salary settlement in lieu of the faculty member's continued employment during the time stipulated for notice of non-reappointment or dismissal as per Sections 6.13.5.5., 6.8., and 6.13.5.6. If salary settlement is accepted, it shall be unqualified and unconditional, with the understanding that the University has no further responsibility to the individual, and the individual has no further claim or recourse upon the institution. A faculty member is not eligible for both severance pay and salary settlement.

**XXIII. Right to Reinstatement**

If a position, terminated because of program discontinuance, is reinstated within three years, then the tenured or non-tenured faculty member dismissed shall have the right of immediate reinstatement, unless that individual previously accepted a salary settlement. See SUU's Policy for Financial Crisis and Bona Fide Financial Exigency, section 8.9.

**XXIV. Due Process in Case of Appeal Resulting From Bona Fide Program or Unit Discontinuance**

- A. Bona fide program discontinuance (Sections 6.13.1 through 6.13.5.) requires that such action be based on evidence related to educational and academic considerations; and that the basic educational mission of the University will be strengthened by such discontinuances in the collective judgment of the University (section 6.13.1.1.). Since such review requires recommendations from departmental and college curricular committees, the Faculty Senate, the Deans' Council, and other University Administrators, and since program decisions can be appealed, the due process or appeal procedure for a faculty member affected by program or unit discontinuances is different than that for one being dismissed for cause.

If, as a result of a bona fide program discontinuance, a faculty member will be dismissed or reduced by forty (40) percent or more in FTE, by this decision, the faculty member may appeal the decision to the Faculty Review Board only on the grounds listed below.



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**B. Grounds for Appeal**

1. The decision for program discontinuance was arbitrary, capricious or pretextual relative to the faculty member.
2. The decision for program discontinuance was in accordance with established policy and procedures in Sections 6.13.1. to 6.13.5. relative to the faculty member.
3. The decision resulted from discriminatory or prejudicial treatment during the program review process in violation of specific Constitutional or statutory rights, including academic freedom.

**C. The faculty member must file a Petition with the Chair alleging pertinent grounds, and supporting them with specific facts. The Provost, or an appointee, will be the Respondent, submitting an appropriate Response. Within ten (10) working days following receipt of the Response, the Board will decide whether or not to hold a Formal Hearing. The Board has the discretion to forego a Formal Hearing and dismiss the Petition if it views the assertions to be beyond the scope of the issues set forth above, or if it is determined to be an abuse of due process.**

The decision to dismiss the Petition, together with supporting reasons, must be written and a copy given to both the Petitioner and the Respondent. Any appeal must be submitted by the Petitioner to the University President within ten working days of receipt of the decision.

**D. If the Petition is not dismissed, the Board will conduct a Formal Hearing. The hearing shall be strictly limited to resolving the following issues**

1. Whether the decision was arbitrary, capricious, or pretextual. In this regard, it is not necessary that the recommendations of the various departmental or college curricular committees, the Faculty Senate, and Deans' Council or other administrators all be unanimous. The standard of review is whether the evidence preponderates in favor of the ultimate decision, and that it was based upon legitimate, reasonable grounds related to program discontinuance.
2. Whether the decision was free from discrimination or prejudice in violation of specific constitutional or statutory rights, including academic freedom.



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3. Whether the procedural guidelines and criteria for the evaluation of programs for discontinuance were followed. If reasonable care is found, then failure to follow the guidelines or criteria exactly shall not be sufficient grounds for a to support assertions of procedural error.
- E. The Board shall not attempt to determine the merit of decisions and recommendations made by departmental or college curricular committees, the Faculty Senate, the Deans' Council or other administrators. The procedure outlined in Section 6.13. permits multiple inputs and provides for comprehensive review by faculty and administrators of program evaluation, as well as for related appeal.
- F. The faculty member has the burden persuasion and must introduce sufficient evidence to support the Petition's assertions, leading to a reasonable conclusion that one or more of the rights set forth above were violated during the review process for program discontinuance.
- G. The conclusions and recommendations of the Board following the Formal Hearing shall be guided by the provisions in Section IX, Formal Hearing, do not apply to a Petition brought under this section.

Upon a Petition heard under this section, the Board may recommend to the President that:

1. The Petition be dismissed; or
2. That the recommendation for discontinuance of a faculty member's program be reevaluated by the appropriate departmental or college curricular review committee(s), the Faculty Senate, Deans' Council, or other administrator(s) because academic due process appears not to have been afforded the Petitioner with respect to whether or not the decision was free from discrimination or prejudice in violation of specific constitutional or statutory rights; or whether the procedural guidelines or criteria for the evaluation of programs for discontinuance were followed; or whether the decision was arbitrary, capricious, or pretextual.

In the event that the recommendation is for reevaluation, the Board will also recommend to the President any corrections in the program discontinuance process (including specifying the addition or deletion of specific individuals in the review process) and the precise point in the program discontinuance process at



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which the reevaluation should start.

The reevaluation process shall be completed in a timely manner, no later than December 1 of the calendar year in which the recommendation for dismissal or reduction in status was made in the terminal year of employment.

- H. If the Board recommends dismissal of the Petition, the University President need not take any further action. Such a decision will be understood if no other written decision is issued within ten (10) working days

If the Board recommends reevaluation of the discontinued program,

1. The University President may in his/her discretion elect not to follow the recommendation with a written decision and supporting reasons provided to the Petitioner within ten (10) working days following receipt of them.
2. Where the University President elects to follow the Board's recommendations, s/he will so state in writing to the Petitioner within ten (10) working days and within the same time will refer the recommendations to appropriate level of program review.

**XXV. Resignations and Applicability**

- A. During the course of proceedings on a Petition, a Respondent may voluntarily terminate employment at the University by submitting a written resignation. Where such is intended to effective immediately it may be accepted by the University President. However, acceptance will not be unconditional and may not foreclose preliminary investigation or further proceedings upon the Petition. The Board of Trustees (the "Trustees") must ratify the President's acceptance; however, once accepted the resignation may not be withdrawn unless the Trustees fails to ratify the President's action. Ratification will not be open for "hearing" before the Trustees.

In the normal course (absent proceedings of any kind), should a faculty member wish to resign immediately, the same may be accepted by the Department Chair, Director, Dean, Provost or University President. Such acceptance must be ratified by the Trustees as stated above.

- B. Decisions to resign at the end of the current employment period shall be submitted in writing to the Department Chair, Dean or Director three (3) months





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prior to the end of the current appointment, and in no case later than thirty (30) days after receiving an appointment for the coming academic year. The administrator receiving such a resignation should immediately forward it to the University President for acceptance.

Upon Trustee ratification, the President may make whatever announcements may be necessary and desirable.

- C. Voluntary termination before the end of the employment period results in forfeiture of benefits, such as accumulated leave and all rights and privileges as a faculty member. Faculty members who resign at the end of their appointment also terminate all rights and privileges, such as rank and tenure, which they enjoyed as a faculty member.