Call to Order

Chairperson M. Dease called the meeting to order at 3:33 p.m.

Approval of Agenda

Keathley/Strader moved to approve the agenda as presented. Motion carried.

Approval of Minutes of September 16, 2015

Petty/Reifenberg moved to approve the minutes as amended. Motion carried.

Remarks

T. Curry distributed the Provost’s annual appointment, reappointment, tenure and promotion recommendation memorandum for review and discussion at the next meeting.

Revised Discipline and Dismissal Policy

K. Zayko provided an overview on the revised Discipline and Dismissal policy. Based upon the UCFT’s recommendation from last academic year, a joint working group convened throughout the summer to consider changes to the faculty discipline, dismissal, and grievance policies. The working group was composed of members from the University Committee on Faculty Affairs and the University Committee on Faculty Tenure. Changes made to the policies are outlined in the attachment. (See Attachment).

K. Zayko commented that the working group conducted a comprehensive review of discipline and dismissal policies from other CIC institutions. This review helped to inform the basis for the changes to the policy. In addition, Debra Nails served on the working group and provided invaluable knowledge in regards to academic policies and procedures within the context of the AAUP.

K. Zayko stated the UCFT previously recommended to change the word “incompetence,” which is cited as a reason for discipline and/or dismissal under the policy, to “failure to perform.”
working group recommended not to change the terminology. The term “incompetence” is a term used across other CIC policies and within the academic community. However, the policy was revised to make it clear the term “incompetence” refers to professional incompetence, as defined in the *Interpretation of the Term “Incompetence”* document by the University Committee on Faculty Tenure.

D. Keathley recommended that the written response from the faculty member be provided to the Dean and the Office of the Associate Provost in cases of both minor and serious discipline.

McCabe/Thomas moved to endorse the policy as discussed. Motion carried.

**Interpretation of Automatic Tenure Clock Extension**

T. Curry updated the committee on the Office of the Provost’s recent interpretation of the *Implementation Practices* policy regarding automatic extensions. If a faculty member receives an automatic extension and applies for reappointment at his/her normal time and is successful, the automatic extension does not carry over to the second probationary period. However, the faculty member may apply for an extension that would be considered by the UCFT so long as it meets the criteria, e.g., for reasons related to “childbirth, adoption, the care of an ill and/or disabled child, spouse, or parent; personal illness; to receive prestigious awards, fellowships, and/or special assignment opportunities; or other such serious constraints.”

There was general agreement to revise the *Implementation Practices* policy to make this interpretation clear within the policy. The Office of the Provost will prepare a draft to bring before the UCFT at an upcoming meeting.

**Individual Personnel Action** (no students were present)

T. Curry presented a request for a one-year extension of the tenure system probationary appointment for an Assistant Professor in the College of Natural Science.

Keathley/Aerni-Flessen moved to approve the request. Motion carried.

**Other**

There was no other business.

**Adjournment**

The meeting was adjourned at 4:38 p.m.
MEMORANDUM

TO: University Committee on Faculty Affairs (UCFA)
    University Committee on Faculty Tenure (UCFT)

FROM: UCFA/UCFT Joint Working Group

DATE: September 18, 2015

The joint working group of UCFA/UCFT convened throughout the summer to consider changes to the faculty discipline, dismissal, and grievance policies. The committee has completed its review of the relevant policies and submits the attached drafts for endorsement and submission to University Council for approval.

This memorandum provides a summary of the main substantive changes to the relevant policy documents.

**Summary of Main Substantive Changes: Discipline and Dismissal Policy**

1. Combines the discipline and dismissal for cause policy into one document, observing national standards.

2. Formalizes the requirement that the Department Chair meet with a faculty member to discuss concerns before discipline is imposed.

3. Reinforces the iterative character of discipline and the importance of attempting to resolve disputes early and informally.

4. Reinforces the ability of the faculty member to have an observer or advisor present at meetings.

5. Separates “discipline” into two primary categories and imposes new procedural protections before discipline can be imposed. These procedural protections supplement the current process, which permits a written response before imposition of discipline but no formal review unless and until the faculty grievance process:
   a. Minor discipline for cause: requires consultation, at the faculty member’s discretion, with the department advisory committee or chair of UCFA personnel subcommittee before the discipline process is initiated.
   b. Serious discipline for cause: creates a disciplinary review panel of UCFA members to hear and consider faculty matters involving serious discipline.
6. Requires the Office of the Provost to arrange training for the applicable panels.

7. Stipulates accommodations (such as alternate communication methods) and explicit deadlines to prevent intentional delays in the process.

8. Establishes an annual, standing 3-person review panel from UCFT to hear dismissal for cause cases rather than the current random selection.

**Summary of Main Substantive Changes: Faculty Grievance Policy**

1. Provides that appeals will be decided upon the written appeal, record of the grievance hearing, responses to the appeal, and the FGO recommendation in order to maintain the current policy directive that appeals are based on the record and not intended to be a second hearing on the merits.

2. Permits the appeal panel to make a decision regarding whether the appeal jurisdictional requirements have been met.

3. Permits the appeal panel to recommend that the grievance be reheard by a new grievance panel if there was a prejudicial violation of the procedures during the initial hearing.
DISCIPLINE AND DISMISSAL OF TENURED FACULTY FOR CAUSE

Preamble

The University is a community of scholars dedicated to the advancement of knowledge. Among the functions of a University is the establishment of a proper welfare of mankind through teaching, research, and public service. Intellectual integrity among the faculty and the students, and between the faculty and the national and international academic community. This intellectual integrity is fostered by the creation of an environment of personal interaction and mutual trust whereby its members are mindful of their rights and responsibilities. Essential to maintain standards of competence, and a proper attitude of objectivity, industry, and cooperation with their associates within and outside the University community. However, if the community is to be sustained it is necessary that actions be taken when commonly held standards of impartial investigation of alleged violations of policies related to faculty conduct are violated. Thus, due process; and, when necessary, disciplinary action up to and including dismissal may be undertaken for cause, with. Disciplinary action being reserved for the most serious of cases. Dismissal, or the threat of dismissal, may not be used to restrain faculty members in their exercise of academic freedom.

I. CONFIDENTIALITY

All proceedings and records with regard to disciplinary action or dismissal for cause proceedings shall be kept confidential to the degree permitted by the law. The Board of Trustees will decide on a case by case basis whether action taken by the Board pursuant to the dismissal portion of this Policy will identify the affected faculty member by name.

II. Mailing of Notices Under This Policy

In matters involving minor discipline, notices required by this Policy will be sent to the faculty member by email to the faculty member’s msu.edu account, with a courtesy copy sent to the faculty member by first class mail to the address of record. It is the faculty member’s responsibility to regularly review the msu.edu email account for departmental and other University communications.

In matters involving serious discipline or dismissal, the faculty member shall be sent the notices required by this Policy by certified mail to his/her address of record filed with the University. However, if delivery by certified mail is not possible or if the faculty member refuses or waives delivery of certified mail, mailing notices to the faculty member at his/her address of record by first class mail will be considered sufficient. An email will also be sent to the faculty member’s University email address notifying him/her of the fact that a notice required by this Policy has been sent by one of the methods described above.

Faculty Discipline
III. PARTICIPATION OF ADVISORS, OBSERVERS, OR COUNSEL

Faculty members are entitled to bring an advisor or observer to any meeting regarding disciplinary action referenced in this policy. The advisor or observer must be a member of the University community (faculty, staff, or administrator), including emeriti. The advisor or observer may be present during the meeting, but will have no voice or formal role in the meeting. Unless otherwise specified in this Policy, faculty members are entitled to bring an advisor of their choice, including legal counsel, to any meeting or hearing conducted during dismissal for cause proceedings. During those proceedings, the advisor has voice and is granted full participation.

IV. GROUNDS FOR DISCIPLINE AND DISMISSAL

A faculty member may be disciplined, or dismissed, for cause on grounds 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 substantially related to the fitness of faculty members to engage in teaching, research, service/outreach and/or administration; (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.

V. TYPES OF DISCIPLINE

Disciplinary action is normally iterative and falls into two general categories: minor discipline and serious discipline. Minor discipline includes but is not limited to: verbal reprimand, written reprimand, mandatory training, foregoing salary increase, reassignment of duties, restitution, monitoring of behavior and performance, and/or reassignment of duties; Serious discipline includes suspension with or without pay or temporary or permanent reduction in appointment.
full suspension without pay may not exceed six months. In egregious cases of wrongdoing, or where attempts at discipline have not successfully remedied performance concerns, a faculty member may be Dismissed for cause.

In matters where the Dean5 and the Office of the Associate Provost6 concur that a faculty member’s continued performance of faculty duties poses a significant risk of harm to persons or property, the faculty member may be relieved of duties and suspended with pay during the pendency of the review panel process.

In all faculty discipline, the University bears the burden of proof that adequate cause exists; it will be satisfied only by clear and convincing evidence unless a different standard is required by law.7 The faculty member’s record should be considered as a whole when contemplating imposition of disciplinary action short of dismissal for cause is sought.

In cases of both minor and serious discipline (1) faculty members retain the right to grieve disciplinary actions that have been implemented under the regular terms of the Faculty Grievance Procedure and (2) the faculty member may submit a letter of exception to the imposition of discipline, disputing the grounds for the unit administrator, after administrator’s decision, to be included in the faculty member’s personnel file.

VI. PROCESS TO INITIATE MINOR OR SERIOUS DISCIPLINE

A. MINOR DISCIPLINE

Where the unit administrator seeks to impose minor disciplinary action, the unit administrator shall first meet with the faculty member to discuss the administrator’s concern and the potential for discipline. The administrator will notify the faculty member during that meeting of the right and opportunity to request a consultation with the Dean or separately reporting Director and the Office of the Provost, department/school faculty advisory committee, its chair, or the chair of the UCFA personnel subcommittee8 before the administrator proceeds with any disciplinary action. The purpose of such informal consultation is to reconcile disputes early and informally, when that is appropriate, by clarifying the issues involved, resolving misunderstandings, considering alternatives, and noting applicable bylaws.

The unit administrator and faculty member, if requested by the faculty member, will consult with

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5 For purposes of this Policy, “Dean” refers to separately reporting Directors as well.

6 For purposes of this Policy, “Associate Provost” refers to the Associate Provost and Associate Vice President for Academic Human Resources.

7 “Clear and convincing” means the standard of proof that is beyond a mere preponderance (i.e. more probable than not) but below that of “beyond a reasonable doubt.” The “clear and convincing” standard would be met when those making the determination have a firm belief that the facts in issue have been established.

8 If the chair is not tenured, the chair may request that a tenured member of the personnel subcommittee fill this role.
the department/school faculty advisory committee, its chair, or with the chair of the UCFA personnel subcommittee in a prompt fashion to discuss the administrator’s concern and the potential for discipline.

Should the unit administrator still wish to proceed with disciplinary action after that consultation, the administrator must consult with the Dean and the Office of the Associate Provost to discuss the proposed disciplinary action. If the proposed discipline is authorized by those offices, the unit administrator shall provide the faculty member with written notice of the cause for disciplinary action in sufficient detail for the faculty member to address the specifics of the charges, and an opportunity to respond in writing prior to the imposition of any disciplinary action, within seven (7) days of receipt of the unit administrator’s written notice. The written response, if any, will be provided to the Dean and the Office of the Associate Provost for further comment. After receiving the response, the unit administrator, in consideration of the written response and further comments, if any, 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. The discipline will then take effect.

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.

B. SERIOUS DISCIPLINE

Where the unit administrator seeks to impose serious disciplinary action, the unit administrator shall first meet with the faculty member to discuss the administrator’s concern and the potential for discipline. Because it is in the interest of the University, the unit, and the faculty member that attempts be made to resolve serious disciplinary issues early and informally, the unit administrator and faculty member are encouraged to meet with the chair of University Committee on Faculty Affairs (UCFA) to discuss the matter.

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

Grounds for Dismissal

* Unless otherwise noted, references to “days” in this Policy refer to calendar days.

10 If the chair is not tenured, a tenured member of UCFA may fill this role at the request of the chair, the unit administrator, or the faculty member.
A tenured faculty member may be dismissed 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) conviction of violation(s) of law(s) which are substantially related to the fitness of faculty members to engage in teaching, research, service/outreach, and/or administration.

If dismissal proceedings are initiated against a tenured faculty member and result in a finding of cause, dismissal or other than dismissal may be recommended and imposed. The faculty member shall have seven (7) days after receiving the notice of proposed disciplinary action other than dismissal may include, but is not limited to: (1) file a written statement with the unit administrator regarding the proposed discipline; (2) request a meeting with a disciplinary review panel of the UCFA. A request to reprimand, suspension with or without pay, reassignment meet with the review panel should be made to the unit administrator, who will forward it promptly to the Chair of the UCFA. If the faculty member does not submit a written response or request a meeting with the disciplinary review panel within the seven-day period, the discipline will take effect.

1. Review Panel Selection and Composition

The Chair of the UCFA, in consultation with the Office of the Provost, shall annually establish a three-person review panel made up of current members of the UCFA to meet with unit administrators and faculty members regarding potential serious disciplinary action. The members of duties, reduction in appointment, denial of salary increase, mandatory counseling three alternates will also be maintained in the event that a panel member is unavailable. The Office of the Provost will arrange training about academic personnel actions and policies for the review panel and alternates.

11 This Policy does not apply with respect to: (1) a tenure system faculty member's material misrepresentation made to the University in obtaining employment, or (2) cases where disciplinary action other than dismissal is sought. In such cases, the Policy and Procedure for Rescission and the Policy and Procedure for Implementing Disciplinary Action where Dismissal is not Sought, respectively, shall be followed.

12 This Dismissal of Tenured Faculty for Cause Policy (the “Policy”) also applies to the dismissal of non-tenured faculty appointed in the tenure system prior to the expiration of the term of appointment.

13 The unit administrator shall consider the written statement of the faculty member and confer with the Dean and the Office of the Associate Provost, after providing copies of the faculty member’s statement to both, before proceeding with disciplinary action.
2. Meeting with the Review Panel

Upon receipt of a request to meet, the Chair of the UCFA will schedule a meeting with the unit administrator, faculty member, and/or monitoring of behavior disciplinary review panel. That meeting will take place no later than the second regularly scheduled meeting after the request is received, but not to exceed 21 days during those periods when the UCFA is not regularly meeting. Except in unusual circumstances, meetings of the disciplinary review panel will take place before, during, or after the regularly scheduled meeting time of the UCFA and performance, both the unit administrator and the faculty member will be expected to adjust their schedules to attend the meeting. If either party cannot personally attend for good cause, as determined by the Chair of UCFA, that individual may participate through alternate communication methods (e.g., telephone, video conference) or send a representative to the meeting.

I. INFORMAL RESOLUTION/PRELIMINARY CONFERENCE STAGE.

No member of the review panel shall participate in a meeting involving a faculty member from the same college in which the panel member is appointed. The faculty member may also request that any member of the panel recuse himself/herself if a conflict of interest exists. If the panel member refuses to recuse himself/herself, the Chair of the UCFA will determine whether, in light of the challenged person’s knowledge of the case or personal or professional relationships with a party, the challenged person would be able to fairly and impartially participate in the meeting and make a fair and impartial recommendation.

3. Recommendation of the Review Panel

Following its meeting, the review panel will provide its recommendation to the unit administrator, with a copy to the faculty member, within seven (7) days about whether the proposed serious discipline should be imposed, lesser discipline should be substituted, or no discipline should be imposed. The recommendation is not binding on the unit administrator but shall be given all due consideration. If the unit administrator does not take the advice of the review panel, he/she will provide a detailed reply to its recommendation for consideration and possible amendment by the panel within seven (7) days, copying the faculty member. If the panel decides to amend its original recommendation, it must do so within seven (7) days, copying the faculty member. This documentation will form a part of the permanent record of the discipline process.

4. Imposition of Disciplinary Action

After receiving the response (and amendment, if any), the unit administrator shall make a decision regarding the disciplinary action and notify the faculty member in writing. If the review panel recommended against imposition of serious discipline, or recommended lesser discipline, the unit administrator must meet with the Dean and the Office of the Associate Provost before proceeding with disciplinary action.
VII. DISMISSAL FOR CAUSE PROCESS

A. INFORMAL RESOLUTION/PRELIMINARY CONFERENCE STAGE

1. Dismissal for Cause Review Officer’s Recommendation

A dean or separately reporting director proposing to initiate dismissal for cause proceedings against a faculty member must file a written request with the Provost that outlines the reasons for considering dismissal in sufficient detail for the faculty member to address the specifics of the charges, if necessary, and provides copies of all relevant documentation, including copies of any past disciplinary action or warnings to the faculty member that his/her conduct might lead to dismissal.

Upon receipt of such a request, the Provost shall notify the faculty member of the request and ask the Dismissal for Cause Review Officer (see Appendix III) to review the matter and to provide a confidential report and recommendation to the Provost as to whether dismissal for cause proceedings should be initiated and, if so, whether the faculty member should be relieved from any or all duties during the proceedings.

The review process is intended to provide an opportunity for informal resolution of the matter. Accordingly, meetings between the faculty member and the Review Officer and between the faculty member and the Provost during the review process are informal, confidential, and will proceed without counsel present. At any stage during the review process, the faculty member may elect to forgo meeting or talking with the Review Officer or the Provost.

The Review Officer shall review the reasons for considering dismissal and the evidence in support of dismissal with the charging party. The Review Officer shall also talk with the charging party, faculty member, and the faculty member’s department chairperson, prior to making a recommendation to the Provost.

In reaching his/her recommendation, the Review Officer should consider what steps have been taken to achieve informal resolution of the matter; whether, in cases involving a pattern of conduct, the faculty member had any warning that the conduct might lead to dismissal; and whether any measures might be taken to resolve the matter short of instituting dismissal for cause proceedings. The Review Officer’s report and recommendation should be forwarded to the Provost within thirty (30) days of the Review Officer’s selection by the President, unless an extension of time is approved by the Provost.

2. Determination by the Provost

14 The faculty member retains the right to have an observer present.

15 Unless otherwise noted, references to “days” in this Policy refer to calendar days.
The Provost shall review the report and recommendation of the Review Officer and determine whether the matter is of sufficient seriousness to warrant the initiation of dismissal for cause proceedings. In reaching his/her decision, the Provost may discuss the matter with the Review Officer, charging party, and/or faculty member.

The confidential report and recommendation of the Review Officer is advisory to the Provost and shall not be available to either party or become part of the record if dismissal for cause proceedings are instituted.

3. Conference with the Faculty Member

If the Provost determines that dismissal for cause proceedings are warranted, he/she shall notify the faculty member and the charging party (the "parties") of that decision in writing, providing a copy of all documentation provided by the dean to the Review Officer, and offer the faculty member an opportunity for a personal meeting. No formal charges shall be filed until 30 days after this notification, unless an extension of time is approved by the Provost. The matter may be resolved informally during this time, including by the faculty member’s resignation. If the faculty member is not available for a personal meeting during the 30-day period, the Provost may communicate with the faculty member by telephone and electronically or by correspondence that provides the faculty member with a reasonable opportunity to confer informally with the Provost.

II. MAILING OF NOTICES UNDER THIS POLICY.

Whenever possible, the faculty member shall be sent the notices required by this Policy by certified mail to his/her address of record filed with the University. However, if delivery by certified mail is not possible or if the faculty member refuses or waives delivery of certified mail, mailing notices to the faculty member at his/her address of record by first class mail will be considered sufficient. An email will also be sent to the faculty member's University email address notifying him/her of the fact that a notice required by this Policy has been sent by one of the methods described above.

III. INITIATION OF FORMAL PROCEEDINGS.

B. INITIATION OF FORMAL PROCEEDINGS

If the Provost determines that the matter is serious enough to warrant initiation of: dismissal for cause proceedings, the Provost shall provide written notice of that determination to the President, along with a recommendation as to whether the faculty member should be relieved from some or all of the duties and responsibilities.

16 The decision of the Provost as to whether the matter is serious enough to warrant initiation of dismissal for cause proceedings is not a determination regarding the merits of the charges against the faculty member and shall not be viewed as the Provost’s agreement or disagreement with the charges against the faculty member.

17 The Provost shall not comment on any information contained in the confidential report of the Review Officer at any stage of the dismissal for cause proceedings unless that information is also contained in the record of those proceedings.

The report will be maintained confidentially to the maximum extent permitted by law.
all of his/her duties during the dismissal for cause proceedings. The parties should receive a copy of this notice. If the President decides to relieve the faculty member from all of his/her duties, the faculty member shall be placed on a leave of absence with pay during the pendency of the dismissal for cause proceedings.

Following written notification by the Provost to the President, the charging party may initiate dismissal for cause proceedings against a faculty member by filing written charges with the President and ChairpersonChair of the University Committee on Faculty Tenure (“UCFT”). The charges must contain: (1) the allegations; (2) the names of the witnesses, insofar as then known, who will testify in support of the allegations; and (3) the nature of the testimony likely to be presented by each of these witnesses.

The ChairpersonChair of the UCFT shall promptly send a copy of the written charges to the faculty member.

IV.

1. Meetings between the PRESIDING OFFICERPresiding Officer and THEthe Parties.

As soon as practicable following the filing of formal charges, the Presiding OfficerChair of the UCFT shall meet with the parties. The purposes of such meetings include:

A.a. The empanelingChallenges to any members of the Hearing Committee for conflict of interest (see Appendix I).

B.b. Exchange of documents and witness lists between the parties.

C.c. Stipulations by the parties on any relevant matters of fact. Any stipulation shall be reduced to writing and signed by both parties and the Presiding Officer.

D.d. Rulings by the Presiding Officer on any proposed revisions to the charges that might be offered or requested.

The Presiding OfficerChair of the UCFT may ask legal counsel to attend these meetings. The Presiding OfficerChair of the UCFT shall arrange that minutesrecordings of these meetings are made and included in the complete case record. These meetings will take place during regularly scheduled meeting times for the UCFT and the relevant administrator and faculty member will be expected to adjust their schedules to attend.

V.

2. The Hearing.

A.a. Service on the Hearing Committee shall be a high priority University
responsibility for the duration of the hearing. Accordingly, administrators of units shall take all reasonable measures to reduce the Hearing Committee members’ other responsibilities. Unit administrators are encouraged to provide additional support (such as graders and graduate assistants) to Hearing Committee members for the duration of their service.

B.b. The Secretary for Academic Governance shall make available to the Chairperson of the Hearing Committee any necessary secretarial and clerical assistance.

C.c. Legal counsel to the Hearing Committee shall arrange for a full stenographic record to be made of the hearing. If any party requests additional copies of the record or an expedited copy of the record, the additional costs of that request shall be paid by the requesting party.

D.d. The Chairperson of the Hearing Committee shall request the presence of any witness or the delivery of any University document germane to the hearing. University administrators are expected to cooperate with such requests.

E.e. The Chairperson of the Hearing Committee shall schedule the hearing within a reasonable time (usually not to exceed 21 days) after the faculty member is provided notice of the charges against him/her, due consideration being given to the faculty member’s opportunity for the preparation of a defense.

F.f. The hearing shall be closed, except that the Hearing Committee may consider a request from the faculty member to open the hearing. If such a request is made, the Hearing Committee shall hear the views of both parties on the question and shall determine whether the hearing sessions are to be open or closed. Regardless of the faculty member’s request, the Chairperson of the Hearing Committee may, in the interest of orderly and equitable proceedings, rule that a given session or portion of a session be closed. Sessions or portions of sessions that will involve student testimony or testimony that includes personally identifiable student information must be closed. Sessions that will involve non-student witness testimony may also be closed at the discretion of the Chairperson of the Hearing Committee.

G.g. The Chairperson of the Hearing Committee shall conduct the hearing in accordance with the procedures stipulated in Appendix II.

H.h. The charging party or his/her representative shall be present at all sessions of the Hearing Committee at which evidence is presented or arguments are heard, and may (1) present evidence, (2) call, examine, and cross-examine witnesses, and (3) examine all documentary evidence received by the Hearing Committee. The charging party’s advisor or legal counsel (if any) may also be present at the request of the charging party.

i. The faculty member and/or his/her representative may be present at all sessions of the Hearing Committee at which evidence is presented or arguments are heard, and may (1)
present evidence, (2) call, examine, and cross-examine witnesses, and (3) examine all documentary evidence received by the Hearing Committee. The faculty member’s advisor or legal counsel (if any) may also be present at the request of the faculty member. If the faculty member cannot be present at a hearing session due to circumstances beyond the faculty member’s control, the Chairperson may either grant permission for the faculty member to participate through alternate communication methods, reschedule the hearing session, or choose to conduct the hearing session in the absence of the faculty member.

I.j. If the faculty member chooses not to be present, the Chairperson shall conduct the hearing sessions in the absence of the faculty member.

J.k. The Provost (or his/her designee) shall be available to the Hearing Committee to provide guidance on policy or procedural questions. In the event that a policy or procedural question is at issue in the dismissal for cause proceedings, the Provost may choose to file a position statement with the Hearing Committee regarding the policy or procedural issue. In those cases, the Provost (or his/her designee) will not serve in an advisory capacity to the Hearing Committee regarding policy or procedural questions.

K. The burden of proof shall rest with the charging party. (See Section VI.A.2 of this Policy.)

L.l. Except as provided below, only those members of the Hearing Committee who have been present at all sessions in which evidence has been presented or arguments have been heard shall have the right to vote. An exception to this attendance requirement shall be made by the Chairperson of the Hearing Committee for a member who has missed, for good cause, no more than one session and who has informed the Chairperson in writing that he/she has read the official transcript of that session. This attendance requirement may also be waived by unanimous consent of the parties.

M.m. Within a reasonable time following final arguments, (usually not to exceed 14 days), the members of the Hearing Committee will vote to determine whether cause has been established. If they determine that cause has been established, they shall recommend either dismissal or other disciplinary action(s). -If a majority of the Hearing Committee determines that cause has not been established, the matter is closed.\footnote{If membership on the Hearing Committee has been reduced to four members (see Appendix I, part 11) and there is a tie vote on the issue of whether cause has been established, the Hearing Committee shall issue a split report as its decision to the parties and the matter will proceed.}

3. VI. Processing the Record and Rendering Judgment.


1. Within 30 days following the final arguments, the Hearing Committee shall submit its written report to the parties. If additional time is needed, the Chairperson of the
Hearing Committee shall request an extension of time from the Chairperson of the UCFT.

2. The Hearing Committee report must include an explanation of its determination as to whether cause has been established. If the Hearing Committee determines that cause has been established, the report must also include an explanation of its recommendation for either dismissal or some other disciplinary action(s). A report which recommends dismissal for cause or other discipline must state that at least one of the charges made against the faculty member has been proven by clear and convincing evidence. A report which recommends discipline other than dismissal must state that at least one of the charges made against the faculty member has been proven by a preponderance of the evidence.

3. Subject to subsection 4 below, all members of the Hearing Committee shall sign the report attesting that they have read it and that it constitutes the findings and recommendations of a majority of the Hearing Committee.

4. Any member(s) of the Hearing Committee may file and sign a minority report, which shall become part of the Hearing Committee report.

B. b. Appeals.

1. Grounds for appeal are limited to whether the Hearing Committee committed a prejudicial violation of the required procedures (see Appendix II) during the hearing process.

2. Either party may appeal the decision of the Hearing Committee to the then-current members of the UCFT, excluding the Presiding Officer and any members of the UCFT who served on the Hearing Committee. The remaining UCFT members shall constitute an appellate body (“the Appeal Panel”) and shall select a chairperson by majority vote.

3. A party wishing to appeal (“appellant”) must submit a written appeal to the Chairperson of the UCFT within 15 days after the date that the Hearing Committee report was mailed. The Chairperson will transmit the appeal and a copy of the Hearing Committee report to the Appeal Panel and the appellee.

4. The appeal must be in writing and must specify the claimed procedural violation(s)

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Footnotes:

20 “Clear and convincing” means the standard of proof that is beyond a mere preponderance but below that of “beyond a reasonable doubt.” The “clear and convincing” standard would be met where the members of the Hearing Committee have a firm belief that the facts in issue have been established.

21 “Preponderance of the evidence” means that the existence of the fact in issue is more probable than not. The “preponderance of the evidence” standard would be met where the members of the Hearing Committee find that the evidence supporting one of the charges is more convincing than the opposing evidence.

22 The “appellee” is the party of the original dispute who did not file the appeal.
on which the appeal is based.

5. The appellee may submit a written response to the appeal. The response must be sent to the ChairpersonChair of the UCFT and the party who initiated the appeal no later than 15 days after the date the appeal was mailed to the appellee.

6. The Appeal Panel will convene to decide the appeal. The Appeal Panel will usually decide the appeal based on the written materials presented and in the absence of the parties. If necessary, the Appeal Panel may request that both parties present oral argument and/or respond to questions regarding the appeal. The Appeal Panel may impose reasonable limits on the time allotted for oral arguments.

7. The Appeal Panel shall render a decision on the appeal within ten days of receiving all arguments. A decision will be made by a simple majority vote. In rendering a decision, the Appeal Panel may not amend the findings or the recommendations of the Hearing Committee. The Appeal Panel may reach one of the following determinations:

   i. No violation found. The Hearing Committee did not commit a prejudicial violation of the required procedures during the hearing process.

   ii. Harmless Error. Although a violation of the procedures occurred, it did not materially harm the appellant’s ability to present his/her case fully.

   iii. Rehearing. The Hearing Committee committed a prejudicial violation of the procedures during the hearing process which can and should be corrected by the original Hearing Committee.

   iv. Rehearing/New Hearing Committee. The Hearing Committee committed a prejudicial violation of the procedures during the hearing process which has tainted the hearing to an extent that correction by the original Hearing Committee is impossible. A new Hearing Committee must be established to re hear the case.

C.c. Final Hearing Committee Report.

1. After appeals and rehearings, if any, are concluded, the Hearing Committee’s report shall be considered final and shall be sent to the President, the Provost, and the parties.

2. A copy of the complete transcript of the hearing shall be sent to the faculty member.

3. The ChairpersonChair of the Hearing Committee shall file the complete record of the case with the Office of the Provost. The complete record shall contain: (i) the final Hearing Committee report, (ii) any Appeal Panel decision, (iii) meeting minutes (see Section IV above), (iv) the record required by part 11 of Appendix I, and (v) the
transcript of the hearing. The complete record shall be held for review in the Provost’s Office and shall be available to the President, the Provost, the Board of Trustees, and the parties, for their review, in a place designated by the Provost.

4. If the Hearing Committee finds cause, the Provost and the parties may, within 15 days of the date of the mailing of the Hearing Committee’s report, review the record and file written comments with the Chairperson of the Hearing Committee and the President.23

**D.** The President, within a reasonable 15 days of the date of receipt, unless an extension of time has been granted by the Chair of the Hearing Committee, will review the Hearing Committee’s report and provide his/her preliminary response in writing, accompanied by supporting rationale, to the Chairperson of the Hearing Committee, the Provost, and the parties.

**E.** The Provost, the parties, and the Hearing Committee, through its Chairperson, may, within 15 days of the date that the President’s preliminary response was mailed, submit written comments to the President about his/her preliminary response.

**F.** Following the 15 day period for submitting written responses, the President will, within 15 days, issue a final report on the charges against the faculty member. Copies of the President’s final report will be provided to the Chairperson of the Hearing Committee, the Provost, and the parties.

**G.** If the Hearing Committee and the President both determine that there is cause for disciplinary action but not dismissal, the President’s final report will conclude the matter and the disciplinary action recommended by the President will be imposed.24

**H.** If either the Hearing Committee (by majority vote) or the President recommends dismissal, the President shall submit the following materials to the Board of Trustees: the final Hearing Committee report (along with any written comments), the preliminary response of the President, and the final report of the President. Any Trustee may have access to the complete record of the case.

**I.** The Office of the Provost shall provide notice to the parties of the date and time that the Board of Trustees is expected to take action on the matter.

**j.** After reviewing the relevant materials, the Board of Trustees may: (1) dismiss the faculty

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23 When provided an opportunity to comment, the Provost and parties are expected to confine their comments to the record and not introduce new information. However, the Provost may comment on procedural or policy issues at any time.

24 Disciplinary action implemented under this Policy may not be challenged through the Faculty Grievance Procedure.
member for cause, (2) impose discipline other than dismissal, or (3) determine that cause
has not been established and close the matter.

VII. CONFIDENTIALITY.

All proceedings and records of dismissal for cause proceedings shall be kept confidential to the
degree permitted by the law. The Board of Trustees will decide on a case by case basis whether
action taken by the Board pursuant to this Policy will identify the affected faculty member by
name.
Appendix I  
Procedure for Empaneling a Hearing Committee

1. Except as noted in part 8 below, The Chair of the UCFT, in consultation with the Office of the Provost, shall annually establish a three-person standing Hearing Committee shall consist of five tenured faculty. The members of the Hearing Committee will serve until their replacements are selected the following academic year. A list of three alternates will also be maintained in the event that a panel member is unavailable. The Office of the Provost will arrange training about academic personnel policies and the dismissal for cause process for the review panel and alternates.

2. Members of the Hearing Committee shall be tenured full professors who are currently serving as UCFT members or who have served on the UCFT within the last five academic years. Three alternates will also be selected in the event a conflict of interest or other exceptional circumstance precludes a member of the Hearing Committee from serving.

3. No on the date of the filing of charges under member of a Hearing Committee may serve on a hearing involving a faculty member from the same college in which the hearing member is appointed.

4. During the meeting referenced in Section II. VII B 2 a of the Policy, One alternate will also be selected for potential membership on the Hearing Committee. The expiration of a member's term on the UCFT shall not affect continued service on a Hearing Committee.

5. In the presence of at least one other member of the UCFT, the Presiding Officer shall conduct a random drawing of the names of all tenured members of the UCFT, placing the names on a roster in order of drawing. This shall be the order in which members will be selected for service on the Hearing Committee. The Presiding Officer shall circulate the ordered roster promptly to the parties and to the members of UCFT. The Presiding Officer shall notify the parties of the date of the meeting at which the roster is drawn and the parties and/or their counsel may, if they choose, attend this meeting.

6. No sooner than two weeks after the circulation of the ordered roster, the UCFT shall meet in the presence of all members on the roster and elect the Hearing Committee. All eligible members on the roster are expected to attend. The Presiding Officer shall convene and preside over this meeting. If either party does not attend this meeting, the Presiding Officer may choose to conduct the meeting in the party’s absence.

7. No later than five days before the selection meeting, any potential may challenge a member of the Hearing Committee member or potential alternate may make a written request to the Presiding Officer that he/she be excused for an appropriate reason. Requests to be excused shall be the first order of business during the Hearing Committee selection meeting. The Presiding Officer shall, if necessary, question members seeking to be excused and then decide whether to excuse any of them.
5. The Presiding Officer shall question each potential Hearing Committee member/alternate about his/her personal or professional relationships, if any, with either party, and ask whether there is any reason he/she would be unable to hear the case and render a fair and impartial judgment. The parties may submit additional questions to the Chairperson. The Chairperson may disallow any questions on grounds of lack of relevance.

6.4. Each party shall have an unlimited number of challenges for cause and one peremptory challenge. The Presiding Officer shall preside over the challenge process. If a party challenges a potential member/alternate of the Hearing Committee for cause, the party shall state the grounds for the challenge that the member has a conflict of interest. The standard the Presiding Officer/Chair of the UCFT shall follow in ruling on for cause challenges is whether, in light of the challenged person’s knowledge of the case, or personal or professional relationships with a party, and statements made during the selection and challenge process, the challenged person would be and be seen to be able to fairly and impartially hear the case and render a fair and impartial judgment. The Presiding Officer/Chair of the UCFT shall rule on any challenge for cause.

7. If a potential member/alternate is removed from the Hearing Committee roster, the next name on the ordered roster will be advanced to keep the potential membership of the Hearing Committee at six (five members, one alternate). All such replacements are subject to the selection procedures described above.

8. Should the roster of candidates for membership on the Hearing Committee be reduced to less than six, the roster of candidates shall be replenished by randomly selecting available former tenured members of the UCFT in order of most recent service on the UCFT. (All available former tenured members who served during the previous academic year will provide the first supplement, then those who served two academic years ago, and so on.) Should replenishment of the roster be necessary, the Presiding Officer shall identify supplementary candidates in a number sufficient, in the judgment of the Presiding Officer, to fill the Hearing Committee and provide one alternate. Ordering and selection of Hearing Committee members from the supplementary panel shall proceed in the manner described above.

9. The Hearing Committee shall be composed of the first five present or former UCFT members remaining on the ordered rosters after the completion of the process described above. The next remaining member on the ordered roster will be designated as an alternate.

10. If, prior to the hearing of evidence, any Hearing Committee member is unable to continue service on the Committee, the UCFT shall appoint the alternate as the replacement member. If, due to attrition, the Hearing Committee membership is reduced to four after hearing evidence has begun, the hearing process shall continue. Further attrition shall result in reinitiation of the process.
11. The Presiding Officer shall arrange that a record of the Hearing Committee selection process be made and become part of the official case record. Upon request, a copy will be provided to the parties.

12.5 After the selection of the Hearing Committee, the Hearing Committee shall elect its Chairperson from its membership by majority vote. The Hearing Committee Chairperson shall be in charge of the hearing process from this point until the Hearing Committee has submitted its report and recommendations.

13.6 The University shall provide legal counsel for the Presiding Officer Chair of the UCFT and for the Hearing Committee.
Appendix II
Procedure for the Hearing

1. The Chairperson of the Hearing Committee shall be in charge of the hearing.

2.1. Legal counsel for the Hearing Committee may be present at all hearings and deliberations.

2.2. Hearing sessions may be scheduled, at the discretion of the Chairperson, on any weekday, weekends during the hours from 8:00 a.m. to 10:00 p.m. or, by unanimous consent of the parties and Hearing Committee members, on University holidays. Reasonable efforts shall be made to accommodate the scheduling requests of the parties and Hearing Committee members.

4. All discussions and votes by the Hearing Committee shall be in executive session. Minutes will not be taken of such sessions and any notes taken during such sessions will not become part of the record of the case.

5.3. The hearing shall be conducted in an informal manner to the greatest extent possible. Formal rules of evidence do not apply.

6.4. The Chairperson of the Hearing Committee may, in his/her discretion, exclude evidence, including witness testimony, if the Chairperson determines that such evidence is not relevant to the charges at issue.

7.5. The Chairperson of the Hearing Committee shall read the charges against the faculty member.

8.6. The Chairperson of the Hearing Committee shall request an initial statement summarizing the faculty member’s responses, which may be presented by the faculty member or his/her advisor or legal counsel.

9.7. The charging party (or his/her representative, advisor, or legal counsel) shall present documents/testimony to support the charges. The faculty member and his/her advisor or legal counsel have the right to cross-examine all witnesses. The Hearing Committee will normally withhold questions until the cross-examination of the witness has been completed.

10.8. The faculty member (or his/her representative, advisor, or legal counsel) shall present documents/testimony to refute the charges. The charging party and his/her legal counsel have the right to cross-examine witnesses. The Hearing Committee will normally withhold questions until the cross-examination of the witness has been completed.

11.9. After the faculty member’s witnesses have completed their testimony, including any cross-examination, the charging party may present rebuttal evidence. Rebuttal evidence shall be limited to new matters introduced in the faculty member’s case. Surrebuttal evidence (limited to evidence rebutting the charging party’s rebuttal evidence) shall also be allowed.
| 12.10. | The charging party (or his/her representative, advisor, or legal counsel) shall present his/her closing argument. |
| 13.11. | The faculty member (or his/her representative, advisor, or legal counsel) shall present his/her closing argument. |
| 14.12. | The Hearing Committee shall deliberate to prepare its report and recommendations. |

### Appendix III

#### Procedures for Selecting Dismissal for Cause Review Officer

1. A panel of ten tenured faculty members shall be established from which one shall be selected by the Provost of the University to advise the Provost when a dean or separately reporting director proposes to initiate dismissal for cause proceedings against a faculty member under Section I of the Policy. The reviewer, called the Dismissal for Cause Review Officer, or the Review Officer, may not be from the same college as the faculty member against whom charges may be filed or the dean/separately reporting director filing the charges.

2. The panel shall be composed of tenured faculty members selected by the Provost in consultation with the Chairpersons of the UCFT and University Committee on Faculty Affairs. It is preferable for panel members to be tenured full professors who have (a) experience in chairing grievance panels, standing or ad hoc committees, (b) training or experience in grievances, arbitration, and/or mediation, or (c) legal training.

3. Panel members shall serve at the pleasure of the Provost, with vacancies filled in accordance with the procedure stated above.