

## Unacceptable Performance of Duty Warranting Termination

Approved by Faculty Senate, April 24, 2001

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### New Section. Section 10(1) C Termination of Tenured Faculty.

1. General rule. Because of the centrality of tenure to the university's mission, the appointment of a tenured member of the faculty may be terminated only for good cause and in accordance with the principles of academic freedom stated in the Statement on Tenure and Academic Vitality at The University of Iowa (Regents 2/14/74; Operations Manual III. 10.1 (a) 2.), which commits the university to the principle that "free inquiry and expression are essential to the maintenance of excellence; tenure is essential to free inquiry and expression." The procedures governing any termination must conform in all respects to the principles of due process. Thus, unless alternative procedures are specified in the Operations Manual, any termination proceedings shall be conducted under the Faculty Dispute Procedures (OM III. 29).
2. The appointment of a tenured faculty member may be terminated for:
  - A. Violations of University policies, including but without limitation (for convenience Operations Manual (O.M.) citations are to the year 2000 edition):
    - (1) Sexual Harassment and Consensual Relationships (II-4 & II-5.9b (9)(c)). O.M., p. 45.
    - (2) Violence (II-10). O.M., p. 51.
    - (3) Anti-Retaliation (II-11.4f). O.M., p. 53.
    - (4) Drug Free Environment (II-12.3b (1)). O.M., p. 56.
    - (5) Ethics in Research (II-27.6b (22) a). O.M., p. 95.
    - (6) Professional Ethics and Academic Responsibility (III-29.7 i (2) (e)). O.M., p. 221.
    - (7) Regents Rules (II-29. 14b (6)). O.M., p. 119
  - B. Demonstrated unacceptable performance of duty pursuant to Section 29.8
  - C. Financial exigency that is demonstrable and bona fide, defined as a financial crisis which exists or is imminent and which, if not corrected, threatens the survival of the University as a whole, but only if the crisis cannot be corrected by less drastic means than termination of tenured faculty.
  - D. Programmatic change or discontinuance for academic reasons (when approved by the President of the University and the Board of Regents) which cannot reasonably be accomplished without terminating the tenure of faculty in the particular program. No faculty member may be terminated because of programmatic change or discontinuance unless, following the good faith efforts of the University and the faculty member, the faculty member cannot be transferred to another college or department where the professional services of the faculty member can be used effectively.

### Operations Manual: III. Human Resources. Section 29.8. Unacceptable Performance of Duty Warranting Termination

#### A. Introduction.

1. Scope. This section establishes procedures to be followed by the University in initiating and conducting proceedings against a faculty member whose performance of duty is alleged to fall for a significant period of time, below the standard of performance required of an individual in the position occupied by the faculty member to such an extent that the person is unfit to serve on the faculty.
2. Alternative conclusions. The procedures set forth in this section are intended only in cases for which dismissal for unacceptable performance of duty is contemplated, although the proceedings under this section may result in a recommendation other than termination. For example, the procedures may result in a change of the faculty member's assigned duties, a reallocation of effort, or other adjustments in the terms and conditions of the faculty member's employment.

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3. Academic freedom. All proceedings under this section shall respect the principles of academic freedom stated in the Statement on Tenure and Academic Vitality at The University of Iowa (Regents 2/14/74; Operations Manual III: 10.1 (a) 2.), which commits the university to the principle that “free inquiry and expression are essential to the maintenance of excellence; tenure is essential to free inquiry and expression.”
4. Responsibility for lodging a complaint of unacceptable performance of duty warranting termination lies with the Collegiate Dean, according to the procedures set out in this section.
5. Responsibility for formal notice of a charge of unacceptable performance of duty warranting termination lies with the Academic Officer, according to the procedures set out in this section.

**B. Conditions.** A tenured faculty member may be subject to a complaint of unacceptable performance of duty warranting termination only under the following conditions:

1. When a faculty member's performance of duty is judged to have been, for a significant period of time, below the standard of performance required of an individual in the position occupied by the faculty member to such an extent that the person is unfit to serve on the faculty, for reasons that may include but are not limited to substantial and manifest neglect of faculty duties, or inability to perform those duties.
2. When reasonable efforts have been made by university, collegiate and departmental officers to resolve concerns about unacceptable faculty performance in accordance with the university's policies governing post-tenure performance, including but not limited to yearly evaluations for merit pay, and periodic post-tenure review, and through other remedies short of termination.

**C. Complaint.**

1. The Collegiate Dean shall make a complaint of unacceptable performance of duty warranting termination only after formal consultation with faculty colleagues in the department or academic unit of the faculty member's principal and secondary appointments, according to the following procedures.
  - (a) *The Dean shall request an independent report from the departmental consulting group(s), consisting where possible of all faculty with primary appointments in the faculty member's unit of equal and higher rank and in no case fewer than four (as defined in policies governing tenure and promotion) or an ad hoc committee elected by the relevant consulting group(s) and charged with the function of rendering confidential advice in such situations. When making the request, the Dean shall state explicitly the basis for the request with reference to each of the conditions outlined in section B. At the time the request is made, the Dean shall inform the faculty member in writing that a request for a report has been made to the departmental consulting group(s), and shall provide the faculty member a copy of the request.*
  - (b) In the report, each departmental consulting group(s) or elected committee(s) shall make a judgment concerning whether the faculty member's performance of duties warrants termination. Qualified faculty peers (both internal and external) carry primary responsibility for assessing the acceptability of a faculty member's teaching, scholarship, and service.
  - (c) In Colleges with DEOs, the Dean also shall request an independent report from the faculty member's DEO.
  - (d) If the faculty member has a joint appointment within a college, the Dean shall request the reports described in this section (III 29.8 B.1. (a)-(c)) from each academic unit in the college.
  - (e) If the faculty member has a joint appointment in more than one college, the Dean initiating the investigation will inform the Dean(s) of the other appropriate college(s) and have each Dean request the reports described in this section (III 29.8 B.1. (a)-(c)) from each relevant academic unit in the college(s). When the reports from each unit in the college have been received, the Dean(s) will forward them with his/her own letter regarding the faculty member's performance to the Dean initiating the investigation.

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- (f) All evaluations and reports solicited by the Dean must include an explanation of the standards used to judge the faculty member's performance and the basis for determining any conclusions or recommendations.
  - (g) Before the reports prepared by the departmental consulting group(s) and DEO(s) are transmitted to the Dean, the DEO(s) of the faculty member's principal and secondary academic unit(s) will provide the faculty member with a complete redacted copy of all reports. The faculty member shall be given a reasonable opportunity (normally up to 30 days) to respond in writing to the reports before they are transmitted to the Dean.
2. The Collegiate Dean's complaint of unacceptable performance of duty warranting termination shall be based on a thorough evaluation of the written record concerning the faculty member's overall performance.
- (a) The evaluation shall consider whether or not the faculty member's performance of duty has been for a significant period of time, below the standard of performance required of an individual in the position occupied by the faculty member to such an extent that the person is unfit to serve on the faculty.
  - (b) The Collegiate Dean shall assemble a written record which shall include, but not be limited to, post-tenure reviews and other methods of peer evaluation, the findings and recommendations of the departmental consulting group(s) and the DEO(s), and any responses to those reports by the faculty member.
  - (c) The faculty member shall have the right to comment on a redacted copy of the entire written record prepared by the Dean, and a reasonable amount of time (normally up to 30 days) to respond in writing.
  - (d) Before the Dean notifies the Academic Officer of a complaint of unacceptable performance of duty warranting termination, the responsible departmental executive officer or the collegiate Dean shall fully inform the faculty member of the grounds for the complaint, and may explore with the faculty member possible settlements, which might preclude the necessity for formal University-level action charging the faculty member with unacceptable performance of duty warranting termination.
  - (e) The Dean may deviate from the findings of the departmental consulting groups on the acceptability of the faculty member's academic performance only to the extent that the Dean finds them to be clearly erroneous.
3. The Collegiate Dean shall notify the Academic Officer of a complaint of unacceptable performance of duty warranting termination by setting forth in writing the specific findings of unacceptable performance of duty warranting termination. The Dean's notification shall include the entire written record (including all responses from the faculty member), and a review of the efforts that have been made to resolve the matter within the established procedures of the college in question, addressing each of the conditions set out in section B.

**D. Formal Notice by Academic Officer.** On receipt of the Dean's notification of a complaint of unacceptable performance of duty warranting termination, the Academic Officer shall:

1. Determine whether there is a reasonable basis for the complaint that the faculty member's performance of duty has been for a significant period of time, below the standard of performance required of an individual in the position occupied by the faculty member to such an extent that the person is unfit to serve on the faculty.
2. Ascertain whether good faith efforts have been made by collegiate and departmental officers to resolve concerns in a manner mutually acceptable to all parties.
3. Decide whether further action is warranted.
4. Upon a determination that further action is warranted, the Academic Officer shall:

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- (a) Send to the Presiding Officer a copy of the Collegiate Dean's notification, a statement providing the Academic Officer's reasons for deciding that further action is warranted, and a request that the Presiding Officer appoint a mediator from the Faculty Judicial Commission;
- (b) File a formal charge of unacceptable performance of duty warranting termination against the faculty member and send it and a copy of the Collegiate Dean's notification, and a copy of the Academic Officer's statement, to the faculty member, together with a notice that the matter will proceed to mediation, pursuant to the procedures set forth in III-29.8d.

### **E. Mediation.**

1. Proceedings will be suspended for twenty days from the date of the Academic Officer's Formal Notice. During this time, the Presiding Officer shall select a mediator from the list of mediators then serving on the Faculty Judicial Commission. The Presiding Officer shall remove from this list any mediator against whose service the Academic Officer or the faculty member shows cause to the satisfaction of the Presiding Officer. Then the faculty member may indicate the order of preference for mediation by each of the mediators remaining on the Presiding Officer's list. The Presiding Officer will make necessary arrangements with the mediator for whom the faculty member indicated first preference. If this individual declines to serve as mediator, the Presiding Officer will contact the person next in the order of the faculty member's stated preference, and so on until a mediator is selected. If none of the mediators can serve, then the mediator shall be selected by agreement of the faculty member and the Academic Officer. If the Presiding Officer determines that no agreement can be reached, then the Presiding Officer shall select randomly three members of the Faculty Judicial Commission who qualify and are available for such service, placing them on the list of potential mediators. The faculty member and the Academic Officer each may make one peremptory challenge, after which the Presiding Officer shall appoint as mediator that individual remaining on the list, or, if more than one individual remains on the list, the Presiding Officer shall select the mediator randomly from those remaining.
2. Parties. The Academic Officer and the faculty member shall be the parties to the mediation.
3. Mediation shall begin at any time after twenty days after the date of the Academic Officer's Formal Notice. Mediation must be completed or declared unsuccessful by the mediator within thirty days after mediation begins.
4. Preliminary matters. The Mediator shall meet with the parties at the outset of the mediation to establish the procedures under which the mediation will be conducted.
5. At the conclusion of the mediation, the mediator shall submit a report to the Academic Officer and the Presiding Officer, with copies to the parties involved. Such report shall state only whether the matter was settled or not settled, and if settled, the mediator shall attach to the report a copy of the settlement agreement which shall be signed by the parties.
  - (a) The appropriate administrative officers shall implement any settlement achieved through the mediation, and the case will then be closed. Such settlement shall remain confidential unless the faculty member and the Academic Officer agree otherwise.
  - (b) If the mediator reports that no settlement was achieved, the Academic Officer may, at his or her discretion, dismiss the case or notify the Presiding Officer that a faculty panel will have to be appointed to investigate and decide the case. This notification shall include a summary of actions in the case that occurred since the date of the Formal Notice.

**F. Faculty Judicial Panel Appointment.** If a faculty judicial panel is needed to review and decide the case, the Presiding Officer is responsible for the appointment. In its discretion, the faculty judicial panel may seek the assistance of the Investigating Officer in investigating the Formal Notice prior to holding a hearing.

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### G. Hearing.

1. The Investigating Officer shall assist the faculty judicial panel as necessary in obtaining, with notice to the faculty member and the Academic Officer, any non-testimonial evidence the panel may desire before proceeding to hearing. The Investigating Officer also shall assist the panel in making arrangements for the hearing and shall have other duties as described below.
2. Open hearing. The hearing shall be open unless:
  - (a) both the Academic Officer and the accused faculty member request that it be closed, in which case it shall be closed; or
  - (b) it is necessary to close the hearing temporarily to preserve the confidentiality of documents or other matters or to protect witnesses who fear reprisals.

The decision to close the hearing for any of the reasons specified in this paragraph shall be made by the Investigating Officer in consultation with the panel.

3. Recording. The hearing shall be recorded by videotape and may also be recorded by a stenographic reporter, as the panel may decide. The record of the hearing may, at the discretion of the panel, exclude the discussion of procedural matters. The Investigating Officer shall ensure that the recording process maintains the confidentiality of the proceedings, and that the resulting videotape is maintained in a secure manner, protecting its confidentiality. If either party requests a transcript, that party shall bear its cost. If the panel requests a transcript, the office of the Investigating Officer shall bear its cost.
4. Refusal to testify. A faculty member against whom a charge has been brought has the right to refuse to testify or even to appear at a hearing on the case. No adverse inferences shall be drawn from the faculty member's failure to testify and such failure shall not prejudice the faculty member's case in any way.
5. Sequestration of witnesses. Any witness, other than the faculty member or the Academic Officer, shall be sequestered from the hearing until such witness has completed testifying unless the panel, in the interests of justice, objects to such sequestration.
6. Rights of the parties. Subject to the Investigating Officer's power to control the hearing, described in paragraph (7) below, the accused faculty member may be accompanied by another faculty member of his or her choice, subject to paragraph (5) above, regarding sequestration of witnesses. In addition, the Academic Officer and the accused faculty member shall have the following rights:
  - (a) to decide which witnesses to call to testify on behalf of that party;
  - (b) to present evidence through the testimony of a party's own witnesses;
  - (c) to present any other relevant evidence;
  - (d) to cross-examine any witness called by the other party;
  - (e) to make an opening statement before and a closing statement after the presentation of evidence;
  - (f) to submit a written argument at the conclusion of the presentation of evidence; and
  - (g) to be consulted and to present oral and/or written argument for the purpose of influencing any decision made by the Investigating Officer in the exercise of the Investigating Officer's power to control the hearing.
7. Investigating Officer. The Investigating Officer shall have the power to control the hearing, in consultation with the panel, including but not limited to the power:

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- (a) to ask questions of any witness called by either party;
  - (b) to limit the presentation of evidence on grounds of irrelevancy or redundancy when necessary to avoid an excessively long hearing, but the Investigating Officer shall not exclude evidence on the basis of formal rules of evidence which would govern a judicial proceeding;
  - (c) to limit the length of opening and closing statements;
  - (d) to limit the length of any written arguments submitted;
  - (e) to limit the time after the conclusion of the presentation of evidence for submission of written arguments;
  - (f) to set the date, time, and place for conducting the hearing, including the beginning, ending, adjournments, and any reopenings, in the interest of achieving an expeditious proceeding and accommodating the convenience of the parties;
  - (g) to take such action as seems appropriate to preserve the confidentiality of marked documents or other confidential matters to the maximum extent possible consistent with a full opportunity of each party to present and hear relevant evidence; and
  - (h) to sequester witnesses, pursuant to paragraph (5) above.
8. The panel. The panel shall have the power:
- (a) to ask questions of any witness; and
  - (b) to make the findings and recommendations and to write the report described below.

**H. Burden of Proof and Standards of Judgment.** In all cases brought under this section seeking dismissal or termination, the Academic Officer, on behalf of the University, shall bear the burden of proving, by clear and convincing evidence in the record as a whole, the findings of unacceptable performance of duty warranting termination set forth in the Dean's notification, and shall bear the burden of proving, by clear and convincing evidence in the record as a whole, that the determination of unacceptable performance of duty warranting termination involves no violation of the academic freedom of the faculty member, if the faculty member has alleged such a violation.

**I. Report.** The panel shall state its findings and make its recommendations in a written report which shall be prepared and sent to the Presiding Officer as soon as possible after the conclusion of the hearing.

1. The report shall be written in a manner that satisfies the requirement of protecting confidentiality to the maximum extent possible as provided in III-29.4i.
2. The report shall contain findings of fact and conclusions drawn from those findings. The report shall specify any sanctions that the panel recommends, including termination of appointment, change in the faculty member's assigned duties, or other adjustments in the terms of the faculty member's employment.
3. In preparing its report, the panel in its discretion may seek the assistance of the Investigating Officer.
4. The panel shall send its report and recommendations, if any, to the Presiding Officer. The Presiding Officer then shall send copies of the report to the faculty member, the President, the Academic Officer, and the Investigating Officer.

**J. President's Review.** The President shall determine what action, if any, the University shall take, based on the panel's findings and recommendations. The President may seek advice of counsel concerning the decision, but the Office of General Counsel shall not provide that advice if it had previously advised the Academic Officer or the University Representative concerning the matter.

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1. **Basis for President's Decision.** The President's decision shall be based on all documents, testimony, and other matters presented to the panel. The President shall not hold a hearing, but may meet with the panel. Furthermore, either party may submit a brief to the President within ten business days of receiving notice that the Presiding Officer has transmitted the panel's report to the President. In making the decision, the President shall be bound by the burden of proof and standard of judgment stated in paragraph g above.
2. **President Accepts All Findings and/or Recommendations.** If the President accepts all of the panel's findings and/or recommendations for sanctions, the President shall direct that the panel's recommendations be implemented. The President shall so inform the Presiding Officer in writing, and shall send a copy thereof to the panel members. The Presiding Officer shall send copies of the President's final decision to the faculty member, the departmental executive officer, the collegiate dean, the Academic Officer, the University Representative, each of the members of the panel, and the Investigating Officer. The case will then be closed.
3. **President Does Not Accept the Panel's Findings and/or Recommendations.** If the President does not accept one or more of the findings and/or recommendations of the panel, the President shall inform the panel members in writing of the reasons for not accepting such finding(s) and/or recommendation(s) and shall send a copy thereof to the faculty member, the Academic Officer, the Presiding Officer and the Investigating Officer. Within five days of receiving the President's decision, the faculty member and the Academic Officer each may submit a brief to the Investigating Officer for the panel's consideration. The Investigating Officer shall send copies of any brief so submitted to the opposing party, each member of the judicial panel and the Presiding Officer. The panel then shall reconsider its findings and recommendations and shall report the result of its reconsideration to the President in a supplementary written report. The panel shall send copies of its report to the parties, the Presiding Officer and the Investigating Officer. The panel shall respond within ten business days of the date on which the panel's chair receives the President's letter or the parties' briefs, whichever is later. Within five days of receiving the panel's report, the faculty member and the Academic Officer each may submit a brief to the President, with copies to the opposing party, the Presiding Officer and the Investigating Officer. The President then shall make a final decision on the matter. In making this final decision, the President shall give great weight to the views of the panel.
  - (a) **President Rejects all Findings and/or Recommendations.** If, after panel reconsideration, the President rejects all of the panel's findings and/or recommendations for sanctions, the President shall inform the panel members in writing of the final decision and of any additional reasons supporting the decision and shall send a copy thereof to the Presiding Officer. The Presiding Officer shall send copies of the President's final decision and reasons to the faculty member, the departmental executive officer, the collegiate dean, the Academic Officer, the University Representative, each of the members of the panel, and the Investigating Officer. The case will then be closed, subject only to further review by the Board of Regents.
  - (b) **After Panel Reconsideration, President Accepts At Least One, But Not All, Findings and/or Recommendations.** If, after panel reconsideration, the President accepts at least one, but not all, of the panel's findings and/or recommendations for sanctions, the President shall direct that those recommendations that the President accepts be implemented. The President shall inform the panel members in writing of those findings and/or recommendations that the President accepts, and of those that the President does not accept, and of any additional reasons supporting the decision. The President shall send a copy of the decision to the Presiding Officer. The Presiding Officer shall send copies of the President's final decision to the faculty member, the departmental executive officer, the collegiate dean, the Academic Officer, the University Representative, and the Investigating Officer. The case will then be closed, subject only to a decision by the Board.

**K. Appeal to the Board of Regents.** Any tenured faculty member terminated for unacceptable performance of duty shall have the right of appeal to the Board of Regents.