

15.2 ACADEMIC DUE PROCESS: SANCTIONS AND HEARING PROCEDURES

15.2 INTRODUCTION

This policy describes allowable sanctions that may be imposed on faculty member and specifies procedures for the imposition of a sanction.

In all proceedings in this policy the rights of access to records are maintained.

(1) Nonpunitive Measures

Nonpunitive measures such as guidance, counseling, therapy, leave of absence, voluntary resignation, or early retirement should be considered and taken in lieu of a sanction when: (a) it is available; (b) it will provide reasonable assurance that the faculty member will not repeat his or her violation of the professional responsibility; (c) substantial institutional interest are not undermined; and (d) the faculty member consents thereto.

(2) Time Periods

In most proceedings in the policy, time to conclude each step shall be designated as "reasonable and prudent" The assumption is that this is not to exceed ten (10) faculty working days unless otherwise specified. If there are emergencies or compelling reasons to extend this general time period, the person or body requesting the extension is responsible to obtain the consent of all parties.

Time periods expressed as faculty working days means those day faculty are working according to the academic calendar or as agreed to by the parties involved.

15.2.2.1 SANCTIONS

Misconduct contrary to the standards of conduct set forth in Faculty Policy Number 1 may lead to sanction. Departures from responsible professional behavior are likely to be minor lapses, which can be corrected simply by calling the matter to the attention of the faculty member involved. Such minor lapses are handled within the faculty member's academic unit.

Apparent failures to comply with the standards of conduct are approached by positive attempts to improve faculty performance such as sustained attempts to inform, persuade, and improve. If appropriate, positive efforts to improve faculty performance shall precede or accompany all sanctions.

15.2.1.1 Authorized Sanction: Definitions

(1) Reprimand

A reprimand is a written statement detailing a violation of the standards of conduct in Faculty Policy Number 1. Such a reprimand will be placed in the faculty member's file in the office of the Vice President for Academic Affairs.

(2) Provisional Status

Provisional status is a period of time, not to exceed one year, during which faculty members who have violated the standards of conduct in Faculty Policy Number 1 are afforded the opportunity to demonstrate their ability to comply with the professional responsibilities. Failure to fulfill the terms of provisional status may result in the imposition of another sanction.

(3) Suspension

Suspension is the barring of the faculty member from the exercise of all or part of his or her duties for a period for time, not to exceed one year. Suspension may be imposed with full pay, partial pay, or without pay.

(4) Reduction in Rank

Reduction in rank is a one-step reduction in faculty rank as defined by the Snow College Advancement and Tenure document and may include appropriate reductions in salary for rank or provisions for no reductions in salary. The rank may be re-earned by the following the Advancement and Tenure guidelines with increase in salary if reduction occurred at the time of reduction in rank. If no reduction in salary occurred at the time of reduction in rank, no increase will be allowed in the rank restoration.

(5) Dismissal

Dismissal is the ending of employment.

Termination and nonrenewable are defined here to differentiate them from dismissal. Termination and nonrenewable are not sanctions. Termination means the ending of employment of a tenured faculty member for medical reasons, program discontinuance, financial crisis, or bona fide financial exigency or other non-punitive situations. Nonrenewable means the ending of employment of a faculty member without tenure by nonrenewable of his or her contract.

15.2.1.2 Purpose

The imposition of a sanction should serve one or more of the following purposes: (a) to induce self-improvement and reform by a faculty member whose conduct demonstrates the need; (b) to indicate to the faculty member the seriousness of his or her violation and thereby deter him or her from future violations; (c) to reassure the institutional community that violations for the standards of conduct will not be tolerated, thereby helping to maintain respect for and commitment to the

standards by other members of the institutional community; or (d) to dismiss from institutional employment faculty members who's violation of the standards of conduct makes them unsuitable to continue in beneficial service to the institution.

15.2.1.3 Imposing a Sanction

The decisions to impose a sanction should be guided by the reasonableness to restraint. A sanction shall be imposed when: (a) the purpose set forth in 15.2.1.2 cannot be adequately served by non-punitive measures; (b) the sanctions is not disproportionately severe in relation to the violation of the standards of conduct for which it is imposed; and c) the imposition of such sanction is fair and just to the faculty member involved, giving due considerations to the situation and to any relevant matters tending to mitigate the seriousness of the violation.

Sanctions are mutually exclusive and are imposed by the authority of the President. However, provisional status and another sanction contingent on the failure to fulfill the terms for provisional *status* cannot be imposed simultaneously. Sanctions are not cumulative; the sanctions are progressive in severity, but do not have to be imposed progressively.

15.2.1.4 Restitution

When a sanction less than dismissal is imposed, the terms of the imposition may include the requirement that the faculty member take reasonable actions to make restitution or to remedy a situation created by a violation of the standards of conduct.

15.2.1.5 Double Jeopardy

No faculty member shall be twice subject to proceedings under this policy for the same instance of a violation of a standard of conduct.

Where a faculty member has been subject to proceedings in a court of law, a sanction shall not be imposed on the faculty member for the same act unless the act constitutes a violation of the standards of conduct in Faculty Policy Number 1.

15.2.2.3 PROCEDURES FOR REPRIMANDS

If a faculty member's department head (or supervisor) and/or dean believe that a faculty member has violated the standards of conduct if Faculty Policy Number 1, and such violation warrants a reprimand, he or she shall give the faculty member a written notice of the basis of the proposed reprimand. The faculty member then shall have the opportunity to speak in his or her own defense in conference with that supervisor. If the supervisor still determines to issue a reprimand, it must be issued in writing within five (5) working days of the meeting with a copy sent to the faculty member. The original goes to the personnel faculty file in the office of the vice president for Academic Affairs.

15.2.3.1

Upon receiving a copy of the proposed reprimand, if the faculty member believes that the reprimand has been unjustly imposed he or she may request a review of the Vice President for Academic Affairs. Request for such review must be made in writing. The Vice President for Academic Affairs may review the matter and bring about a settlement either alone or after assembling an ad hoc committee of deans other than those involved in the case. The committee shall review the proposed reprimand and may seek such information as will clarify the circumstances under which it was issued.

The *review* should seek to bring about a settlement of the matter with the consent of all parties involved. Such settlement may result in (a) the acceptance of the Vice President for Academic Affairs' reprimand or modified reprimand (b) a reversal and removal of the reprimand from the Vice President for Academic Affairs file, or (c) reference of the case to a hearing.

15.2.3.2 Reprimand Hearing

The reprimand hearing will be informal but will provide the faculty member and those imposing the reprimand with the rights to be present, to be heard, and present the evidence.

The hearing will be conducted by a panel of three members of the Faculty Senate assigned by the Senate President who shall also designate one member as Chair. Care should be taken to compose the committee as to ensure an unbiased hearing.

Within five (5) working days after the hearing, the panel will report its findings and recommendation in writing to the faculty member and to those imposing reprimand. If the panel determines that the written reprimand is unjust or otherwise inappropriate, such sanction shall be rescinded by those who imposed it and the letter removed from the faculty member's file in the office of the Vice President for Academic Affairs. If the reprimand appears warranted, the reprimand will remain in that faculty member's file. The matter will be considered officially closed.

15.2.4 PROCEDURES FOR SANCTIONS OTHER THAN REPRIMANDS

Provisional status, suspension with other than full pay, reduction in rank and dismissal may be imposed on a faculty member only after it has been determined that he or she was violated the standards of conduct in Faculty Policy Number 1 or displayed other egregious conduct. The College President may suspend the faculty member with full pay pending completion of the proceedings. In all proceedings to impose a sanction, information received in these proceedings is confidential and shall not be discussed beyond those officially involved. If a faculty member subject to sanction chooses to discuss proceedings, which are otherwise confidential under this policy, and in so doing misrepresents any matter; other parties of the proceedings may make such statements limited for the purpose of clarification. The following procedures shall also govern:

15.2.4.1 Initiation

Whenever there are grounds to believe that a faculty member has failed to comply with the standards of conduct in Faculty Policy Number 1, the Vice President for Academic Affairs, upon his or her own initiative, upon a recommendation from the department head, dean, or other administrative officer upon request of the Board of Trustees, or upon the receipt of complaints from any person, may initiate proceedings for provisional status, suspension, reduction in rank or dismissal of faculty member.

15.2.4.2 Notice of Intent to Impose a Sanction

The Vice President of Academic Affairs shall cause written notice to be delivered personally or by certified mail, return receipt requested, to the faculty member under investigation. A copy of this notice shall be sent to the President of the Faculty Senate, along with a statement confirming the date the faculty member received it. Copies will also be sent the faculty member's department head and dean where appropriate.

Such notice shall contain the following:

- (1) A concise and clear statement of the facts, conduct, or circumstances alleged to constitute failure to comply with the standards in the Faculty Policy Number 1 including a statement of the standard or standards the faculty member is alleged to have violated.
- (2) A statement of the sanction proposed
- (3) A statement that (a) the faculty member has the right to be heard in a conference with the Vice President of Academic Affairs or administrative representative, (b) the faculty member may have an adviser of his or her own choosing present at such a conference; (c) this conference must be requested in writing with in five (5) working days after receipt of the notice by the faculty member; and (d) this conference must be held within a reasonable time, not to exceed ten (10) working days.
- (4) A statement (a) that the faculty member may be heard at a formal hearing whether or not he/she requests a conference with the Vice President for Academic affairs or administrative representative, (b) of the schedule of events which lead to a formal hearing, (c) that a faculty member may be accompanied at such hearing by and advisor of his or her own choosing.

15.2.4.3 Schedule of Events

The proceedings shall commence with the receipt by the faculty member of the written notice as described in Policy 15.2.4.2. The faculty member bears the responsibility to initiate the procedures for conference of formal hearing. Failure to do so as outlined below will result in entry of the faculty member's default in the premises, and the imposition of the proposed sanction.

15.2.4.3.1 Conference with the Vice President for Academic Affairs or Administrative Representative

The Vice President for Academic Affairs shall be the administration's representative unless circumstances make such a choice impossible, unwise, or inappropriate. In this case the President shall designate a representative for the administration.

If the faculty member desires a conference with the Vice President for Academic Affairs or administrative representative to discuss the alleged violation and proposed sanction he or she must request such a conference within five (5) working days of receipt of notice described in 15.2.4.2. The conference should be held within ten (10) working days of the request. The faculty member and the Vice President for Academic Affairs or administrative representative may each have an adviser of his or her choosing present at the conference. The purpose of the conference is to attempt to reach an agreement of settlement. In the event that the matter is resolved by mutual agreement or negotiation at the conference, no hearing need be held.

The right to a conference with the Vice President for Academic Affairs or administrative representative is discretionary with the faculty member; requesting or rejecting such a conference does not abrogate the faculty member's right to a formal hearing.

15.2.4.3.2 Notice of Intent to Contest Through Formal Hearing

If after the above conference or in lieu of it, the faculty member wishes to contest the alleged violation and proposed sanctions through a formal hearing, within five (5) working days of the receipt of the notice of intent to impose a sanction or the above conference if chosen, he or she must present to the Faculty Senate President a statement of intent to contest. The Senate President must notify the Vice President for Academic Affairs or administrative representative of the faculty member's intent to contest the alleged violation through formal hearing within five (5) working days of receiving such statement of intent.

Upon receiving the request for formal hearing, the Senate President shall appoint three or five (3/5) senate members of a hearing panel, designating one member as chair. If by reason of his or her involvement with the formal hearing, the Senate President cannot fairly appoint the panel, he or she shall designate a Senate member to perform those duties.

15.2.4.3.3 Response to the Alleged Violation

The faculty member must file a written response which answers the alleged violation contained in the original notice with the chair of the hearing panel within ten (10) working days of the filing of the written statement of intent to contest. Any appropriate, substantiating documentation shall be submitted with the response. The panel chair is responsible to deliver copies of the written response to panel members and any other parties deemed necessary by the chair.

15.2.4.3.4 Formal Hearing to consider Imposition of a Sanction

(1) Date

The formal hearing will be held within 30 working days of receipt of the response to the alleged violation as outlined in 15.2.3.3. The chair of the hearing panel will schedule the hearing date. The panel will grant adjournment to enable either party to investigate evidence to which the valid claim of surprise is made.

(2) Participants

Those present at the formal hearing shall be the three or five (3-5) member hearing panel designated by the Faculty Senate President or designee, the faculty member, and the Vice President for Academic Affairs or designated administrative representative. In addition, the faculty member and the Vice President for Academic Affairs or administrative representative have the right to have present any one person of their choice as an adviser (i.e., association representative, attorney, etc.) at all stages of the hearing. The faculty member and the Vice President for academic affairs or administrative representative shall also have the right to confront and cross-examine witnesses, to present evidence and call witnesses in their own behalf, to testify, and to be present with their adviser to all meetings and proceedings of the panel except sessions which are closed for deliberations and vote. The faculty member's and Vice President for Academic Affairs' or administrative representative's advisers are permitted to advise and counsel their respective parties but are not permitted to argue the case or interrogate witnesses. Members of the hearing panel may question witnesses and parties to the hearing.

(3) Closed hearing/Open hearing

Hearing shall be closed to the public unless the faculty member request that they be open and the panel determines, following such request, that an open hearing will not prejudice the interests of either the institution, the faculty member, or the witnesses. When an open hearing is requested by the faculty member but such request is denied, the specific reasons for denial shall be stated in record. In any closed hearing the faculty member and the Vice President for Academic affairs or administrative representative shall have the right to the presence of not more that three (3) persons each designated by them as observers. The observers shall not participate in the hearing.

(4) Hearing record

A verbatim record of the hearing or hearings shall be made by the President's office and, upon request, a copy of tapes shall be made available to the faculty member without cost. Original tapes will be maintained in the office of the Vice President for Academic Affairs.

(5) Burden of proof

The burden of proof that adequate cause exists to impose a sanction rests with the Vice President for Academic Affairs or administrative representative and shall be satisfied only by a preponderance of the evidence in the record considered as a whole. The panel will not be bound by rules of evidence, and will admit any evidence which is of probative value in determining the

issues involved. Every possible effort will be made to obtain the most reliable evidence available. The panel will make written findings of fact and a recommendation which will be based solely on the hearing record.

(6) Publicity

Except for such simple announcements as may be required covering the time of the hearing and similar matters, public statements and publicity about the case by all parties and persons involved or present will be avoided as far as possible until the proceedings have been completed.

(7) Deliberations; standards of review

Hearing panel deliberations and voting shall be conducted in the closed sessions from which all other persons are excluded. Upon request of any member of the panel, votes shall be taken by secret written ballot. A simple majority of members shall be required for recommendations by the hearing panel. The panel chair shall be entitled to vote on all questions. The hearing panel may recommend the sanction proposed by the Vice President for Academic Affairs or a less severe sanction, including no sanction.

The standard of review by the hearing panel shall be whether the imposition of the proposed sanction (a) is supported by the preponderance of the evidence, (b) fails to accord the faculty member the academic due process established by these policies, (c) violates the academic freedom of the faculty member, or (d) violates the legal, statutory, or constitutional civil rights in any of the protected categories of race, color, religion, sex, nation origin, age, disability, marital or parental status, or veteran's status, in the faculty member's written response to the alleged violation or at anytime during the course of the proceeding, such claims shall be immediately referred in writing to the Office of Human Resources by the chair of the hearing panel. All such statutory and constitutional civil rights claims shall be handled as by that office according to their procedures.

The hearing panel must report its recommendation to the President, the Vice President of Academic Affairs, and to the faculty member within ten (10) working days of the hearing.

15.2.4.4 Decision by the President

The President shall review the report and recommendation of the hearing panel and notify the faculty member, the Vice President for Academic Affairs, and the Faculty Senate President of his or her decision within five (5) working days.

Prior to making his or her decision, the President may remand the matter to the hearing panel for review and further hearing, if necessary. The President shall state in writing to the chair of the hearing panel the specific purposes or reasons for the remand. The further review and hearing shall be limited to those purposes or reasons. The hearing panel shall complete its review and report its conclusions to the President within ten (10) working days. The President shall review the report and notify the faculty member, the Vice President for Academic Affairs, and the Faculty Senate President within five (5) working days.

The decision of the President is final

15.2.4.5 TEMPORARY SUSPENSION WITH FULL PAY PENDING LEGAL ACTION

In the event that a faculty member is being investigated for a felony that affects the institutional interest, the President may temporarily suspend the faculty member with or without full pay without the following procedures above upon written notice to the faculty member. This suspension shall remain in effect until such time as the faculty member has resigned, been acquitted of the felony charges, or been sanctioned according to the procedures above. Pending felony charges will not prevent the institution from proceeding with a proposed sanction at its discretion.

15.2.4.6 This policy does not preclude the right to appeal (within 30 days) the President's decision to a State District Court.