

FSU-4.0335 Suspension and Dismissal of Faculty; Peer Panel.

(1) Purpose

The purpose of this regulation is to provide a prompt and equitable procedure for the peer hearing required by the University Constitution enacted as a university regulation in FSU-1.004(6)(b)3.

(2) Such disciplinary action shall be taken only for just cause which is defined as (a) Incompetence, or (b) Misconduct; as may be further defined by the disciplinary regulation or policies of the university applicable to faculty. It applies only when properly invoked, as provided herein below, by the faculty member against whom the disciplinary consideration is directed, by his/her attorney or, with the express consent of the faculty member, by another qualified representative(s).

(3) Peer Panel. In cases in which the University has under consideration disciplinary action to suspend, demote, or terminate the appointment of a tenured faculty member, or to terminate the appointment of an untenured tenure track faculty member prior to the expiration of the faculty member's current employment contract, the faculty member shall be provided with the opportunity for a review by an appropriate faculty committee as described in paragraph (e) below (hereinafter referred to as the "Peer Panel" or the "Panel") prior to issuance of the Notice of Discipline.

(a) The process provided hereby consists of the opportunity to submit written materials to the Peer Panel, whose members shall individually and independently consider the evidence and submit separate recommendations reflecting their individual points of view to the President or representative.

(b) This process shall not waive the right of a faculty member to file a grievance in accordance with the CBA, or any other adjudicatory due process proceeding following the issuance of a final Notice of Discipline, however, the failure of the University to invoke or abide by any procedures contained in this regulation shall not be grievable under the collective bargaining agreement.

(c) Alternatives. As an alternative to the peer review panel, the faculty member may elect to meet with the President or representative, in addition to submitting a written statement to the President or representative as. Such election must be made in writing and delivered to the Office of the President or representative within ten (10) calendar days of receipt of the notice of intent to suspend, demote, or terminate.

(d) The faculty member's failure to timely request the peer panel or, in the alternative, to follow through with a timely meeting with the President or representative, will constitute a waiver by the faculty member of further proceedings under this regulation. Failure of the faculty member to submit a timely written statement to the Peer Panel will constitute a waiver of the opportunity to submit a written statement. In that event, the Panel will offer its opinions based on the written material submitted by the President or representative.

(e) Peer Panel. Upon the timely request for a peer panel, the President or representative will immediately inform the Chairperson of the Faculty Senate Grievance Committee (hereinafter referred to as the "Chairperson"), who will within ten (10) calendar days of being informed establish, from among the members of that Committee, three (3) faculty members who will participate individually and independently as the Peer Panel. The Chairperson will notify the President or representative, the UFF Grievance Chair, and the faculty member of the establishment of the Peer Panel.

(f) Submission of Information. Upon establishment of the Panel, the President or representative will submit to the Chairperson written materials to be considered by the Panel, including the notice of the proposed action and the reasons therefore, with a copy to the faculty member and the UFF Grievance Chair. Within ten (10) calendar days thereafter, the faculty member may provide to the Chairperson, with a copy to the President or representative and the UFF Grievance Chair, a written statement or response to the President or representative's notice and reasons, and any additional written documentation to be considered by the Panel. The Chairperson will transmit copies of the foregoing information and/or documentation to the Panel immediately upon receipt thereof. The Peer Panel may seek additional information from either party as it deems necessary. The UFF Grievance Chair shall be provided with copies of any such additional information.

(g) Recommendations. The members of the Panel will individually evaluate and consider the notice of the proposed action and the reasons therefore and any additional documentation submitted by the President or representative and the faculty member and, within ten (10) calendar days of the deadline for submissions specified in (f) above, will submit to the President or representative individual written and signed recommendations, with copies thereof to the faculty member and the UFF Grievance Chair. The recommendation shall express the Panel members' individual opinions as to whether disciplinary action is warranted for the alleged offense and, if so, the penalty deemed appropriate under the circumstances.

(h) Consideration of Recommendations. The President or representative will review the Panel recommendations and take them into consideration in deciding whether the University should initiate discipline and issue the Notice of Discipline. If the President or representative does not issue a notice of disciplinary action, the notice of proposed disciplinary action shall not be retained in the faculty member's evaluation file.

(i) Status of Records. By invoking in writing the Peer Panel process, the faculty member will have consented to the disclosure to the Panel, for purposes of its process, evaluative information. Records maintained for the purposes of any such investigation of misconduct, including but not limited to a complaint against a faculty member and all information obtained pursuant to the investigation of such complaint, shall be confidential until the investigation ceases to be active or until the University provides written notice to the faculty member that the University has either concluded the investigation with a finding not to proceed with disciplinary action; concluded the investigation with a finding to proceed with disciplinary action; or issued a Notice of Intent Letter.

(1) Applicability. The provisions of this rule shall apply as follows:

(a) To all cases in which the University has under consideration action to suspend with or without pay, reduce the compensation or rank of, or terminate the annual appointment of a tenured faculty member for disciplinary reasons;

(b) To all cases in which the University has under consideration action to immediately suspend or to terminate the appointment of a non tenured faculty member prior to the expiration of the non tenured faculty member's current employment contract for disciplinary reasons;

(c) Only when invoked, as provided hereinbelow, by the faculty member against whom the disciplinary

~~consideration is directed, by his/her attorney or, with the express consent of the faculty member, by another qualified representative(s).~~

~~(d) The failure of the University to invoke or abide by any procedures contained in this rule shall not be grievable under the collective bargaining agreement between the Board of Regents and the United Faculty of Florida (BOR/UFF Agreement), but may be filed with the Grievance Committee of the Faculty Senate.~~

~~(2) Purpose.~~

~~(a) The purpose of this rule is to provide a method by which both the University and the faculty member who is subject to disciplinary consideration, of the type to which this rule applies, can have the benefits of faculty peer group participation in the disciplinary process prior to the disciplinary action.~~

~~(b) This rule is intended to implement and utilize a peer hearing process recognized by the FSU Constitution. See paragraph FSU 1.004(3)(d), F.A.C.~~

~~(3) Information Gathering. When information, which could result in disciplinary action of the type to which the rule applies, is brought to the attention of the Vice President for Academic Affairs (Vice President), he/she shall take those actions within his/her lawful authority to collect, or cause to be collected, additional information relevant to the matter. Normally this will include reasonable efforts to communicate directly with the subject faculty member.~~

~~(4) Notice of Pending Decision. When the Vice President deems that there is sufficient information available on which to decide whether to initiate the disciplinary process, he/she shall advise, in writing, the faculty member against whom the disciplinary consideration is directed (subject faculty member):~~

~~(a) That such a decision is pending;~~

~~(b) The nature of the alleged acts or omissions giving rise to the matter. This shall be stated in sufficient detail to inform the subject faculty member of the specific circumstances, as they are known at the time this notice is issued, which have given rise to the pending decision. This portion of the notice shall be supplemented as additional material information becomes known to the Vice President.~~

~~(c) That the subject faculty member is entitled to invoke the peer hearing process prescribed in this rule;~~

~~(d) The steps the subject faculty member must take to timely invoke the process; and~~

~~(e) That the University's failure to invoke or abide by any procedures contained in this rule shall not be grievable under the BOR/UFF Agreement.~~

~~(5) Invoking the Process. Within seven (7) work days of being so advised, the subject faculty member shall inform the Vice President in writing of the subject faculty member's election to invoke or not invoke the peer hearing process.~~

~~(6) Waiving the Process. If the subject faculty member does not timely invoke the peer hearing process, the Vice President shall determine, based upon the information available to him/her, whether to initiate the applicable disciplinary process.~~

~~(7) Peer Hearing Panel. When the peer hearing process is invoked, the Vice President shall promptly inform the Chairperson of the Faculty Grievance Committee (Grievance Chairperson). The Grievance Chairperson shall establish, from among the members of the Committee, in accord with the procedures of that Committee, a peer hearing panel of three (3) including a Panel Chairperson.~~

~~(8) Peer Hearing Process. When the peer hearing panel has been designated, the Panel Chairperson, upon consultation with the Vice President, shall decide upon a date, time, and place for conducting a peer hearing. Adequate time for preparation shall be provided and to that end, the Panel Chairperson may consult as needed with the Office of the University Attorney, the subject faculty member, and the faculty member's designated representative(s).~~

~~(9) Peer Hearing Preparation.~~

~~(a) In preparation for the peer hearing, the subject faculty member and the designated representative(s) thereof may examine and receive copies of all written materials which the University's legal representative(s) intends to present at the peer hearing, provided that if the materials are of the kind protected by Section 240.253, F.S., the University procures the signed permission of the protected faculty member prior to submission of the limited access materials to the other party. By invoking in writing the peer hearing process, the subject faculty member shall have consented in writing to the disclosure, to the peer hearing participants for purposes of the peer hearing process, of evaluatory materials subject to Section 240.253, F.S., pertaining to the subject faculty member;~~

~~(b) The subject faculty member and the designated representative(s) shall be entitled to the names of all persons whom the University's legal representative(s) intends to call upon to provide information in the course of the peer hearing; and~~

~~(c) The University's legal representative(s) may examine and receive copies of all written materials which the subject faculty member or representative(s) intends to present at the peer hearing and shall be entitled to the names of all persons whom the subject faculty member or representative(s) intends to call upon to provide information in the course of the peer hearing.~~

~~(10) Peer Hearing Procedures. The peer hearing shall be conducted as follows:~~

~~(a) The Panel Chairperson shall preside and shall conduct the proceeding in the manner directed at eliciting sufficient information on which to base a reasoned decision.~~

~~(b) The peer hearing panel shall be present at all times and shall participate as hereinafter prescribed. Others entitled to be present and to participate as hereinafter prescribed are representatives of the Office of the University Attorney, the subject faculty member, and the subject faculty member's designated representative(s). The Vice President may attend as an observer all or any part of the proceedings, except the panel deliberations.~~

~~(c) The Panel Chairperson shall call the proceeding to order, make introductory or preliminary remarks as appropriate, and resolve preliminary matters as needed. Thereupon, he/she shall call on the University's legal representative(s) to give a presentation of the relevant information tending to show that there are grounds to initiate the applicable disciplinary process. The University's legal representative(s) shall be a member of the legal staff of the Office of the University Attorney.~~

~~(d) When the University's legal representative(s) has concluded his presentation, the Panel Chairperson shall invite the subject faculty member or his/her designated representative(s) to give a responsive presentation. The faculty member or his/her designated representative(s) shall have no obligation to make a presentation.~~

~~(e) The respective presentations may include:~~

- ~~1. The submission of written material and physical evidence.~~

~~2. The appearance of witnesses who can provide information having a rational bearing on the matters in question.~~

~~3. Proffers of additional information which can be made available to the peer panel or which will allegedly be available in connection with a subsequent disciplinary proceeding.~~

~~4. Discussions and arguments, which may be made in a closing summation, addressing the reliability, weight, interpretation, and applicability of the information presented, the standards of conduct reasonably expected of University faculty or any other matter having a rational bearing on the pending decision.~~

~~(f) All information may be presented of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs and shall be evaluated on that basis by the peer panel. The Panel Chairperson may limit the presentation of information which is unduly repetitious or does not have a rational bearing on the pending decision.~~

~~(g) The proceeding is not adjudicatory in nature, and no cross examination nor other practice common to administrative or judicial adjudication hearings shall be permitted. The University's legal representative(s) and the subject faculty member or his/her representative(s) may request the Panel Chairperson to propound questions on their behalf. The Chairperson shall propound the questions unless he/she deems them to be repetitious, cumulative, or not pertinent.~~

~~(h) The Panel Chairperson may, at any time, ask questions of any participant in the proceeding and shall liberally recognize the members of the peer panel for the same purpose. The peer panel, in the discretion of the Panel Chairperson, may invite individuals to appear and present information and may request the submission of written materials. The Panel Chairperson, in his/her discretion, may continue the proceeding from time to time for the purpose of enabling the panel to receive additional information. The University's legal representative(s), the subject faculty member or his/her designated representative(s), and the members of the peer panel may each request such continuances. Such continuances may include the opportunity for either party to present additional witnesses or documents for the purpose of addressing information already made a part of the other party's presentation.~~

~~(i) The Panel Chairperson shall arrange for the proceedings, except for panel deliberations, to be recorded for the University's use by mechanical or stenographic means. The subject faculty member also may, at his/her own expense, arrange for the proceeding to be recorded by mechanical or stenographic means. The subject faculty member may receive a transcript of the University's recordation upon payment of the costs of transcription and reproduction. Neither the recordings nor transcripts shall be admissible in any subsequent proceeding, of whatever nature, brought pursuant to the BOR/UFF Agreement.~~

~~(j) In consideration of the limitations on access to evaluatory materials as established by Section 240.253, F.S., the proceeding shall be closed to the public unless the subject faculty member, or his/her designated representative(s), requests that the proceeding be open. This request shall be made to the Panel Chairperson in writing prior to the commencement of the proceeding. In this regard, the entire proceeding, except for peer panel deliberations, shall be either open or closed.~~

~~(k) When the panel is satisfied that the proceeding has produced sufficient information on which to base reasoned deliberations and advice to the Vice President, or that the proceeding will produce no further significant information, the panel chairperson shall conclude and adjourn the proceeding.~~

~~(11) Peer Panel Deliberations. Upon the adjournment of the proceeding, or as soon thereafter as they can reasonably assemble, the members of peer panel shall meet at a time and place designated by the Panel Chairperson to engage in deliberations. Only the peer panel, including the Panel Chairperson, shall be permitted to be present or to participate in the deliberations. The peer panel shall base its deliberations on the information reflected in the record of the proceeding. If, in the course of deliberation, the peer panel wishes to obtain additional information, the Panel Chairperson may reopen the proceeding for this purpose and may impose limitations on the participants as needed to confine the reopened proceeding to the matters of interest to the peer panel. Subject to such limitations, the subject faculty member or his/her representative(s) and the University's legal representative(s) shall be entitled to fully participate in the reopened proceeding.~~

~~(12) Peer Panel Issues. The peer panel shall not attempt to make findings of fact or reach conclusions of law as these terms are used in administrative or judicial adjudicatory hearings. The peer panel shall provide advice and comments to the Vice President with respect to the following points:~~

~~(a) Whether the alleged acts or omissions of the subject faculty member evince conduct by the subject faculty member which would warrant disciplinary action.~~

~~(b) Whether there is available to the University sufficient information of a reasonably reliable character to provide a basis for the commencement of the applicable disciplinary process, wherein genuine issues of law and fact can be raised and determined.~~

~~(c) The type of disciplinary action, if any, deemed appropriate.~~

~~(d) The peer panel may also offer its advice and comments regarding aggravating and mitigating circumstances, including whether or to what extent these circumstances should be taken into account.~~

~~(13) Peer Panel Report. Within ten (10) work days of the conclusion of deliberations, the Panel Chairperson shall prepare and submit to the Vice President a written report reflecting the views of the peer panel on these points. The Panel Chairperson shall permit there to be attached to the report additional written statements by the individual members of the panel, including the Chairperson, reflecting minority, dissenting, or individual points of view. A copy of the report, including attachments, shall be provided to the subject faculty member and to the University's legal representative(s) who shall each have ten (10) work days to submit written comments to the Vice President.~~

~~(14) Consideration of Report. The Vice President shall take the peer panel report, including attached additional written statements and the comments on the report, into consideration in deciding whether to initiate the applicable disciplinary process.~~

~~(a) Nothing herein shall prevent the Vice President from also consulting with or seeking the advice of the University President, the Office of the University Attorney, and other appropriate officials.~~

~~(b) If the Vice President determines that disciplinary action should be taken, he/she shall cause the applicable disciplinary process to be commenced, and, if not, he/she shall give the subject faculty member notice that disciplinary action will not be taken.~~

~~(15) Special Provisions; Immediate Dismissal. The following additional provisions apply only when the disciplinary action under consideration is immediate dismissal.~~

~~(a) In cases involving immediate dismissal, the directions of the University President shall be followed. In all~~

other cases, the Vice President shall determine the type of intended disciplinary action and shall cause the applicable disciplinary process to commence.

(b) If the peer panel report deems immediate dismissal appropriate, the Vice President shall forthwith transmit a copy of the report to the University President and shall consult with him. If the University President concurs with the panel report and deems immediate dismissal appropriate, the Vice President shall cause the commencement of the applicable disciplinary process to that end. If the University President does not deem immediate dismissal appropriate, the Vice President shall determine, pursuant to paragraph (14)(b), hereof, what disciplinary action other than immediate dismissal should be taken and shall proceed accordingly.

(c) If the Vice President determines that immediate dismissal is warranted, notwithstanding contrary advice in the peer panel report, he shall transmit a copy of the report to the University President and shall consult with him. If the President concurs with the Vice President, he shall state the reasons for such concurrence in writing. A copy of the written reasons shall be provided to the subject faculty member or designated representative(s), the Vice President, the University's legal representative(s), and the hearing panel. These persons shall have ten (10) work days to submit written comments to the President. After the conclusion of the comment period, if the President continues to concur that immediate dismissal is warranted, the Vice President shall proceed accordingly.

~~(16) Immediate Suspension; Notice and Predetermination (Non Unit Position). This subsection (16) shall not apply to subject faculty members holding appointments to positions within the general faculty bargaining unit. Where grounds exist to immediately suspend a member of the faculty, the President shall give the faculty member actual notice of the action by the most prompt, convenient means available. The notice shall include a statement of the grounds for the action to the extent known or understood at the time of the notice, and shall inform the faculty member of his/her opportunity to appear personally and be heard before the President or representative(s). This opportunity:~~

~~(a) Shall occur at or prior to the time that the suspension takes effect, when circumstances permit. For example, the faculty member may be invited to meet with the President immediately or at the time that the faculty member would be next due at his/her University work station. In cases where the faculty member is physically in the custody of the law enforcement or mental health authorities, or where the faculty member is similarly constrained with respect to freedom of movement or ability to rationally discuss the matter, the opportunity shall be provided as soon as the circumstances permit it to be arranged; and~~

~~(b) Shall allow the faculty member to address and discuss the issue of whether the immediate suspension pending further action is warranted by the circumstances. The President may limit the discussion to this issue.~~

~~(c) If the President imposes immediate suspension, he/she shall, within two (2) work days following the effective date of suspension, cause a written notice of the suspension, including a statement of the reasons, to be served upon the subject faculty member.~~

~~(17) Immediate Suspension; Peer Participation (Non Unit Positions). This subsection (17) shall not apply to subject faculty members holding appointments to positions within the general faculty bargaining unit except as stated in subsection (18) of this rule. When a faculty member is placed on immediate suspension, in accordance with the provisions of the FSU Constitution, the University shall expedite its consideration of appropriate further action.~~

~~For purposes hereof, immediate suspension refers to those cases wherein a subject faculty member is relieved of professional responsibilities with pay while the possibility of disciplinary action is under review.~~

~~(a) If the University is considering action to which this rule otherwise applies, the Vice President shall transmit the written notice prescribed in subsection (4) with the addition of a provision advising the faculty member that the peer hearing may include the issue of whether the faculty member shall be permitted to return to work status pending further proceedings.~~

~~(b) If the faculty member invokes the peer hearing process and indicates in writing that he/she wishes the peer panel to address the additional issue, the Panel Chairperson shall exercise his/her discretion as to scheduling and continuing sessions of the peer hearing so that the issue of whether the faculty member should be permitted to return to work status pending further proceedings is addressed by the peer panel as promptly as essential fairness allows. With respect to this issue, the peer panel may engage in preliminary or interim deliberations and report its views and advice to the Vice President as it deems appropriate throughout the peer hearing process.~~

~~(c) When the Vice President receives the written report expressing the views and advice of the peer panel on the issue of returning the subject faculty member to work status pending completion of pending proceedings, the Vice President shall forthwith transmit the report to the University President and shall consult with him on the issue. If the President does not follow the advice of the peer panel, he shall state his reasons in writing. A copy of the written reasons shall be provided to the subject faculty member or designated representative(s), the Vice President, the University's legal representative(s), and to the Panel Chairperson.~~

~~(18) Leaving Pending Investigation; Peer Participation (In Unit Positions). This subsection (17) shall apply only to subject faculty members holding appointments to positions within the general faculty bargaining unit and to Non-Unit Positions if a person holding such appointment has been placed on leave pending investigation. The placing of a subject faculty member on leave pending investigation pursuant to Article 16.4 of the BOR/UFF Agreement requires the concurrence of the University President. If a subject faculty member who is placed on such leave invokes the peer hearing process provided in this rule:~~

~~(a) The period of time needed to complete the peer hearing process provided in this rule shall be part of the investigation stage of the applicable disciplinary process and the subject faculty member shall remain on leave pending investigation until such time as:~~

- ~~1. Disciplinary action is taken pursuant to Article 16 of the BOR/UFF Agreement; or,~~
- ~~2. The University gives written notice that no disciplinary action will be taken; or,~~
- ~~3. The University President permits the subject faculty member to return to work status; and,~~

~~(b) The issue of whether the subject faculty member shall be permitted to return to work status shall be included in the peer hearing process in the manner provided in subsection (17) of this rule for consideration of the issue of permitting a non unit faculty member who is under immediate suspension to return to work status.~~

Specific Authority BOG Regulation 1.001(3)(j), (5)(b) , BOG Reg. Procedure July 21, 2005 . Law Implemented 240.132, 240.209(3)(e), 240.227(5), 240.253, 240.261 FS.-History-New 11-13-86., Amended _____