



Idaho State University

POLICIES AND PROCEDURES

Faculty Suspension or Dismissal for Adequate Cause

ISUPP 4039

POLICY INFORMATION

Policy Section: *Academic Affairs*

Policy Title: *Faculty Suspension or Dismissal for Adequate Cause*

Responsible Executive (RE): *Vice President for Academic Affairs and Provost*

Sponsoring Organization (SO): *Office of Academic Affairs*

Dates: Effective Date: *April 7, 2014*

Revised: *February 2, 2023*

Review Date: *February 2026*

I. POLICY STATEMENT

This policy and the procedures set forth herein apply to faculty and all employees of equivalent faculty rank and delineates the appeals procedures in the case of Suspension or Dismissal for Adequate Cause.

This policy satisfies two objectives:

- A. to affirm a faculty member's right to be informed of and question personnel recommendations, and
- B. to provide a mechanism for appealing an institutional decision to Suspend or Dismiss a faculty member for Adequate Cause. (The procedures provided herein shall also be used for faculty grievances of other matters under ISUPP 4041 *Grievance Procedures for Institutional Faculty*.)

This policy does not apply to cases of non-tenured faculty members who are notified that they will not be reappointed (SBOE II.G.5), or to the case of a reduction in force approved by the State Board of Education and resulting from a declaration of financial exigency (SBOE II.N.1).

Allegations involving sexual harassment which qualify under Title IX regulations are not subject to this policy, but should be fully administered through ISUPP 1120 *Title IX Sexual Harassment and Gender Discrimination*.

Alternatively, in the event a faculty member alleges that an action was taken for illegally discriminatory reasons other than sexual harassment and gender discrimination, the matter should be grieved under the procedures as set forth in ISUPP 1110 *Protected Class Discrimination and Harassment* and ISUPP 3080 *Equal Opportunity and Affirmative Action*.

Administrative Note:

ISUPP 1120 and ISUPP 1110 are pending approval. Allegations regarding the previously listed violations shall be administered through ISUPP 3100 Equal Opportunity, Harassment and Non-discrimination. Upon the approval of the new policies, ISUPP 3100 shall be retired.

In accordance with SBOE policy (II.M.2.a), an Appellant will be provided opportunities for informal resolution.

II. DEFINITIONS

- A. **Adequate Cause:** One (1) or more acts or omissions which, singly or in the aggregate, have directly and substantially affected or impaired an employee's performance of their professional or assigned duties or the interests of the Idaho State Board of Education or Idaho State University. A full definition is available in SBOE policy (II.L.3).
- B. **Appeals Committee:** Five (5) members and three (3) alternates of the Standing Appeals Panel chosen to hear and make a recommendation for a specific appeal.
- C. **Appellant:** A faculty member who files an appeal of recommended disciplinary action.
- D. **Discipline:** An adverse employment action taken against an employee when Adequate Cause exists, which may include but is not limited to, Dismissal from employment with the University, Suspension without pay, or involuntary demotion in pay. Disciplinary Action does not include non-renewal of an employment contract or a change in job duties/assignments with no reduction in pay.
- E. **Dismissal:** The separation of a faculty member from University employment with cause assigned by the appointing authority.
- F. **Respondent:** The administrative officer recommending disciplinary action for an employee.
- G. **Standing Appeals Panel:** A panel of elected faculty members trained and prepared to hear cases and make recommendations when called upon to serve on a specific Appeals Committee. Panel members are chosen and serve in accordance with section IV.C.8 of this policy.
- H. **Suspension:** An enforced period of absence from the workplace, without pay, for disciplinary purposes.
- I. **Working Days:** The regular business days of operation for the University.

III. AUTHORITY AND RESPONSIBILITY

- A. The Office of Academic Affairs has the authority and responsibility to update and review this policy as necessary in consultation with the Office of Human Resources and the faculty as represented by the Faculty Senate in accordance with ISUPP 1010 *Policy Development and Administration*.
- B. The Provost, or their designee, will administer the processes for notification of Suspension or Dismissal for Adequate Cause according to the procedures outlined in this policy.
- C. The Chair of the Faculty Senate will administer the appeal process according to the procedures outlined in this policy.
- D. The Provost and the AVP for Human Resources may provide support and advice to the Chair of the Faculty Senate on the administration of the appeal process. The Provost and the AVP for Human Resources shall not influence the outcome of a specific appeal, nor are they to be involved in any deliberations regarding the final recommendation to be made to the President.
- E. The members of the Appeals Committee are responsible for administering the hearing portion of these appeal policies and procedures and for making recommendations to the University administration concerning individual appeal processes.
- F. The Office of Human Resources is responsible for providing training at the beginning of each academic year in an open meeting to the Standing Appeals Panel ensuring that existing laws, as well as University policies, procedures, and practices are clearly understood and applied fairly and appropriately. The Provost and the AVP for Human Resources shall, at the request of the Chair of Faculty Senate or the Chair of the Appeals Committee, provide material support and resources during a specific appeal process. The Chair of the Faculty Senate and/or the Chair of the Appeals Committee have the right to seek advice, support, and/or clarification from the Provost or the AVP for Human Resources regarding existing laws, as well as University policy, procedures, and practices at any point of the appeal process.
- G. Records Retention

A single records repository detailing Suspension or Dismissal for Adequate Cause processes, including any resulting appeal processes, will be maintained by the Office of Academic Affairs and the Office of Human Resources, in accordance with federal and state record retention laws, Idaho State Board of Education policy (II.M.2.e), and ISUPP 1030

University Records, Archives, and Publications and further record compilation references as detailed in IV.C.12.a of this policy.

IV. PROCEDURES TO IMPLEMENT

A. Notification of Recommended Action

To assure a faculty member of their right to be informed of and question any personnel recommendations regarding Suspension or Dismissal for Adequate Cause, a faculty member must be notified of any contemplated recommendation to the President or their designee that the faculty member be Suspended or Dismissed for Adequate Cause. The President has designated the Provost to act on such recommendations. Notification must be given in writing by the faculty member's Dean or unit Director prior to the informal review provided for in section IV.A.1. Notification must include the reasons for the recommended action and a statement of the evidence supporting it.

1. Informal Review

Before a recommendation of Suspension or Dismissal for Adequate Cause can be made to the Provost, the faculty member must be notified of the reasons for the recommended action and provided a statement of the evidence supporting it, and given an opportunity to meet with the person(s) making the recommendation so that the faculty member may present any information or evidence in mitigation or opposition to the recommendation. This meeting is deemed to be an informal review and is intended to facilitate the resolution of disputed matters at the earliest possible point in time. The meeting will be scheduled by the office of the Dean or unit Director and must occur prior to the recommendation to the Provost.

2. Exceptions to Informal Review

In the event the faculty member declines to participate in the meeting or fails to attend a scheduled meeting, the requirement of an informal review under IV.A.1 will be deemed to have been satisfied and the recommendation may be made to the Provost.

The University may opt to proceed directly to the processes outlined in section IV.B., forgoing notification of recommended action if the recommendation of Suspension or Dismissal for Adequate Cause is due to a particularly egregious action(s) not performance related, including but not limited to criminal acts.

B. Notification by the Provost

1. If a recommendation of Suspension or Dismissal for Adequate Cause is made to the Provost, the Provost must consider the recommendation and act on it within ten (10) Working Days. The Provost may:
 - a. find that there is no cause for Discipline and notify the faculty member accordingly;
 - b. accept the recommendation and order the Suspension or Dismissal for Adequate Cause of the faculty member, providing notice as provided below; or
 - c. find that cause exists for some Discipline short of Suspension or Dismissal, and notify the faculty member of the finding.
2. The Provost shall notify the faculty member of any Discipline for Adequate Cause in the following manner:
 - a. The notice must be in writing and delivered to the faculty member by personally serving the notice upon the faculty member or by sending it by certified mail to the last known address of the faculty member.
 - b. The notice must contain the following information:
 - i. a concise statement of the assertions about the faculty member and the evidence of those assertions;
 - ii. the Provost's finding as to whether Adequate Cause exists for Suspension or Dismissal, or some lesser degree of Discipline, and whether Discipline is ordered; and
 - iii. a statement of the faculty member's right to exercise the applicable Idaho State University appeal procedures as set forth herein.

Except as otherwise provided in these or State Board of Education policies, the recommended action may be effective prior to the faculty member's initiation of the formal appeal process under SBOE policy (II.L.4.a.iii). In the event of a recommendation to Dismiss a faculty member for Adequate Cause, the faculty member will be Suspended with pay until they have had the opportunity to exercise their Appellant rights within the University.

C. Formal Appeals Process

1. The formal appeals process defined herein must be used by the faculty member who wishes to appeal a recommendation made by the Provost to Suspend or Dismiss that faculty member for Adequate Cause. Any recommended Discipline from the Provost, with the exception of Suspension or Dismissal, can be grieved through the grievance process outlined in ISUPP 4041 *Grievance Procedures for Institutional Faculty*.

2. The scope of permissible appeals is limited to those assertions set forth in the notification of finding by the Provost given pursuant to IV.B.
3. The formal appeal process is an internal administrative procedure; it is not a judicial proceeding.
4. In accordance with SBOE policy (II.M.2), an Appellant must exhaust their remedies under this policy prior to seeking judicial review. Any Appellant who files a legal complaint regarding a Suspension or Dismissal thereby forfeits their right to any further hearing of that appeal under this policy
5. The faculty member must initiate their appeal within ten (10) Working Days of the date of receipt of the notice given by the Provost under IV.B.
6. The Office for Human Resources shall provide administrative support throughout the appeals process and ensure that all due process rights are respected.
7. Notice of Appeal
 - a. The Appellant initiates the formal appeals process by submitting a written notice of appeal to the Provost. The notice of appeal must include the following:
 - i. if applicable, all correspondence and materials relating to the informal review required under IV.A.1.
 - ii. if applicable, a summary of the informal review prepared by the Appellant that includes the date on which the meeting was held, the names of the persons present, the nature of the discussion, and the outcome of the meeting.
 - iii. any other information the Appellant deems relevant to the appeal.
 - b. Upon the Provost's receipt of the written notice of appeal, the Provost will notify the President and the Appellant in writing of the appeal. The Provost shall also notify the Faculty Senate Chair of the appeal and the need to initiate an appeals process.
8. Formation and Composition of Standing Appeals Panel
 - a. Panel Composition

The Standing Appeals Panel is comprised of sixteen (16) faculty members. Faculty eligibility for service on the Standing Appeals Panel includes all faculty as defined in accordance with ISUPP 4050 *Academic Rank and Other Appointments*, excluding department chairs and college deans.
 - b. Appointment Process

Panelists will be elected, according to established election procedures used to elect Faculty Senators within each college, in conjunction with the annual Faculty Senate election process. Any vacancies will be automatically filled by the Faculty Senate Chair with a random Faculty Senator from the respective college/division. In the case that a Faculty Senator from the college/division is not available, the Faculty Senate Chair will randomly select a sitting member of the Faculty Senate to fill the vacancy. The replacement panelist will remain in the position until the position is filled via an election or the elected panelist is able to resume their position. The Faculty Senate Chair shall notify the Provost and the AVP for Human Resources of the composition of the Panel and will keep both apprised of any changes.

c. Representation

Each College and the Libraries will be allotted representatives proportionally. The Colleges of Arts and Letters and Science and Engineering will each have three (3) representatives. The Colleges of Business, Education, Health, and Technology will each have two (2) representatives. The College of Pharmacy and the University Libraries will each have one (1) representative.

d. Length of Service

Panelists will serve in three (3) year staggered terms. Panelists can serve no more than two (2) consecutive terms.

e. Training

The Office of Human Resources will prepare and provide training to inform panelists of applicable laws and policies. Training shall be approved by the Faculty Senate. The panelists must complete training annually.

9. Appeals Committee

The Appeals Committee for an individual faculty appeal will consist of five (5) members selected from the Standing Appeals Panel provided for in IV.C.8. Upon the Provost's receipt of the notice of appeal, the Provost will refer the appeal to the Faculty Senate Chair and the Faculty Senate Executive Committee, who will randomly draw five (5) names to serve and provide names of the five (5) eligible committee members and three (3) alternates to all parties within ten (10) Working Days. A faculty member may not be selected to serve on an Appeals Committee if the Faculty Senate Chair, in consultation with the Faculty Senate Executive Committee, determines a potential Committee member meets any one of the following criteria:

a. Is a member of the Appellant's department or program;

- b. Has any special relationship to either party, whose decision is the subject of the appeal, in which the relationship might reasonably be said to raise a claim of conflict of interest or biases;
- c. Has received notice of layoff or nonrenewal as a result of financial exigency or has received notice of termination or appointment nonrenewal for any other reason;
- d. Has any grievance, appeal, or litigation pending against any officer of the University; and/or
- e. Has made recommendations, offered comment, or otherwise participated in the deliberations leading to the institutional decision being appealed.

Prospective Committee members will be given an opportunity to recuse themselves, within five (5) Working Days, for reasons that may reasonably be considered to impact their ability to be fair and impartial. Upon receiving the Committee member's request for recusal, the Chair of the Faculty Senate will remove them prior to disclosing the proposed members to the parties. If a Committee member is recused, a previously designated alternate will be appointed within five (5) Working Days.

10. Procedures for Challenging the Appeals Committee

Within five (5) Working Days of the date the parties receive the Committee names from the Chair of the Faculty Senate, both parties may submit a one-time request that one member be removed from the Committee without showing cause for removal. The Faculty Senate Chair will inform both parties of requests for removal. Any further challenge to Committee members may be for-cause only. All requests must be made in writing and must describe the specific reason why the party believes the individual should be removed for-cause. Challenges must be made in writing and delivered to the Faculty Senate Chair within three (3) Working Days of the date the Appellant received the list of Committee member names. Upon receipt of a challenge for cause, the Faculty Senate Chair will contact the Faculty Senate Executive Committee and request they be convened to hear the challenge. The Chair of the Faculty Senate who may consult with the Faculty Senate Executive Committee, will rule on all for-cause requests for removal and will respond in writing to both parties within ten (10) Working Days of receipt of any challenge for-cause. The Chair of the Faculty Senate must state the reasons for the decision in the written correspondence and provide the names of any replacement Committee members to both parties if a challenge is upheld. The Chair of the Faculty Senate may, at their discretion, choose to consider further challenges to the impartiality of any replacement Committee members.

11. Appeals Committee Proceedings

- a. Initial Committee Meeting

- i. The Chair of the Faculty Senate will convene the Committee and hold an initial meeting of the Committee within ten (10) Working Days of the final formation of the Committee to discuss the appeal procedure and provide the Committee members with the Appellant's written request for a formal hearing.
- ii. In its initial meeting, the Committee will elect a Chair, determine if all proper channels for informal review have been pursued, and if the Suspension or Dismissal falls within the purview of this policy. The role of Chair shall be restricted to faculty at the associate level or higher. If the Committee determines proper channels for informal resolution have not been pursued or the disputed action is not subject to appeal under this policy, the Appellant will be notified immediately and the Appellant may within two (2) Working Days file an appeal in writing to the President, who shall decide whether the matter is appealable within ten (10) Working Days. If the Committee determines that an appeal shall go forward, the Committee Chair will, within ten (10) Working Days, notify both parties that the appeal shall go forward and request copies of all relevant documents and a preliminary list of witnesses from both parties.
- iii. In this notification, the Committee will request that both the Appellant and Respondent submit copies of all relevant documents and preliminary lists of witnesses within ten (10) Working Days. At this time either party may also request that the Committee collect specific University records necessary to demonstrate the facts of the appeal/grievance. The Committee will determine which requests are reasonable, and will forward these requests to the relevant administrators and to General Counsel. In the event that requested documents include legally restricted information, they may be withheld, redacted, and/or shared with the parties under restrictions set forth by the Committee and General Counsel.
- iv. Upon receipt of all appeal documents, the Committee will provide both parties with all materials collected and the list of witnesses for the appeals hearing. Additional materials and witnesses may be introduced at the Committee's discretion as the hearing proceeds. Both the Appellant and the Provost may request that the Appeals Committee summon other parties who participated in the deliberations leading to the recommendation that is the subject of the appeal. The Chair of the Appeals Committee will communicate its determinations in writing to the parties regarding IV.C.11.b.i and IV.C.11.b.ii below, within five (5) Working Days following this meeting. The Appeals Committee Chair will rule on all disputed matters concerning this subsection.

b. Pre-Hearing Procedures

- i. The Committee will meet before the hearing to consider the nature of the parties' expected presentations, to make decisions about the procedures that will be followed in the hearing, and to set mutually acceptable dates for the hearing, including the time and duration of the presentations. As a general rule, the Committee admits rather than excludes presentations that either party desires to make. The Committee Chair communicates the Committee's decisions in writing to the parties and allows each of them five (5) Working Days in which to respond. The Committee negotiates any disputed matters.
- ii. The Committee summons the Appellant and the Provost or their designee. The Committee also summons other witnesses to appear at the request of either party or the Committee itself. The summons must set a reasonable time and place to appear and must give due notice. Those asked to appear have the responsibility to respond as though summoned by the President of the University. Upon request of the witness, and for good cause, the Committee may make reasonable accommodations for the witness, including permitting the witness to testify outside of the presence of the Appellant or Respondent.

c. Hearing Procedures

- i. The Chair of the Committee conducts the hearing. During the hearing, the Appellant's case will be presented first, in whatever manner they desire, including, but not limited to, the testimony of witnesses, submission of documents, or oral statements. Both parties may pose relevant questions to witnesses and respond to another party's version of events. The Chair of the Committee may rule against inclusion of evidence, questions, or presentations that are clearly irrelevant or repetitive. The Committee may also pose questions to any witness. The Committee may then question the Appellant. The Respondent then presents their case, followed by questions from the Committee. The Appellant is then given an opportunity to reply and summarize their case.
- ii. Unless extenuating circumstances can be shown to the Appeals Committee, failure of the Appellant to appear at the time and place set for the hearing constitutes a waiver of further proceedings.

d. Committee Recommendation

- i. The Committee will arrive at an advisory opinion as to whether or not information presented during a hearing, or otherwise available as part of the

appeal record, supports the recommended action. The Committee may consider whether the University has recommended Suspension or Dismissal in accordance with the policies and procedures of the State Board of Education and Idaho State University. The University has the burden to produce sufficient information to demonstrate Adequate Cause as defined by SBOE II.L.3 for Suspension or Dismissal for Adequate Cause of the faculty member for the reasons set forth in the Provost's notice to the Appellant required by IV.B.2.

- ii. The Committee will render its advisory opinion and recommend a course of action simultaneously to the Appellant, the Faculty Senate Chair, and the Provost in a written report within ten (10) Working Days from the last day of the hearing. The Committee's report should include the rationale for this opinion and may include dissenting opinions, but no Committee member shall submit any report independent of the Committee.

e. Failure to Follow Policy

If either party considers the Committee not to have followed this policy in conducting the appeals hearing, it will have five (5) Working Days following the receipt of the Committee's opinion to submit a statement to the Faculty Senate Chair and the Provost to be included in the Committee's report to the President. On the sixth (6) working day after receiving the Committee report, the Faculty Senate Chair will forward the Committee report and any responses to the President, Appellant, and Provost.

f. Presidential Decision

The President, following receipt of the Committee report, shall within fifteen (15) Working Days submit to the Committee, the Appellant, the Faculty Senate Chair, and the Provost a written description of any intended actions, and the rationale for that decision.

12. Procedural Standards for Appeals Committee Hearings

The procedural requirements of a formal judicial hearing do not govern hearings conducted by the Appeals Committee. The following minimal standards of procedure are required:

a. Compiling and Maintaining an Official Record

- i. Recordings will be made of each hearing session. Upon written request, an Appellant and/or the Provost may obtain copies with the cost to be borne by

the requesting party. The recordings will be kept in the Office of Academic Affairs, and requests for copies should be addressed to this office.

- ii. The written appeal and subsequent information presented by the Appellant and Provost will be made a part of the record.
 - iii. Any votes taken during the Appeals Committee proceedings must be made by written anonymous ballot to be kept on file for the record.
 - iv. The Chair of the Appeals Committee will have the responsibility for polling Committee members for their opinion, for drafting the report based upon the majority opinion, and for giving all members an opportunity to read and sign the report prior to submission to the Appellant and the President.
 - v. A minority report may accompany the report submitted by the Chair of the Appeals Committee.
 - vi. A copy of all Appeals Committee reports must be included with the summary notes and recordings at the end of the hearing.
- b. The Appellant will be afforded the opportunity to appear before the Appeals Committee and discuss the issues contained in the written appeal.
- c. Witnesses may be asked to appear before the Appeals Committee by the Appellant, the Provost, or the Appeals Committee Chair to give testimony that is material and directly relevant to the decision being appealed. Upon request of the witness, and for good cause, the Committee may make reasonable accommodations for the witness, including permitting the witness to testify outside of the presence of the Appellant. In the event a witness refuses to appear and give testimony after being requested to do so, the Appeals Committee, at its discretion, may recommend that the witness be subject to the same Discipline as if the witness had refused to respond to a request of the President. Each party may request the Chair to ask specific questions of an adverse witness, and the Chair will comply if the questions posed appear to be probative, relevant, and fair. The Chair will allow a party to directly question an adverse witness only if the questions are asked without antagonism and are not argumentative.
- d. Appellant Advisor

The Appellant may choose to have present an advisor of their choice during the appeal hearing(s). This advisor will act only in an advisory capacity to the Appellant and may not present or speak on behalf of the Appellant during the hearing(s). Although this is not a judicial hearing, either party may elect to have an attorney serve as their advisor.

- e. The Appeals Committee and the Appellant will be afforded access to any documentation and evidence that was considered by the Dean or Provost in reaching the decision being appealed.
- f. The Appeals Committee has the power to establish its own procedural rules subject to the limitations imposed in III.D and V.

13. Board Initiated Discipline

In accordance with SBOE policy (II.L.4.c) if, under extraordinary circumstances, the Board itself initiates Discipline, up to and including Dismissal, against a faculty member, the Board policy will govern.

V. RELATED LAWS, RULES, AND POLICIES

- A. Idaho State Board of Education Governing Policies and Procedures Section II – Human Resources Policies and Procedures
- B. ISUPP 1110 *Protected Class Discrimination and Harassment*
- C. ISUPP 1120 *Title IX Sexual Harassment and Gender Discrimination*
- D. ISUPP 3080 *Equal Opportunity and Affirmative Action*
- E. ISUPP 4041 *Grievance Procedures for Institutional Faculty*
- F. ISUPP 4050 *Academic Rank and Other Appointments*