Policy 5I: Faculty Dismissal for Cause Process [1]

I. Authority and Application

This policy is enacted under the authority provided by Article 5.C.1 and 2 of the Laws of the Regents. Article 5.C.1 provides that:

A faculty member may be dismissed when, in the judgment of the Board of Regents and subject to the Board of Regents constitutional and statutory authority, the good of the university requires such action. The grounds for dismissal shall be demonstrable professional incompetence, neglect of duty, insubordination, conviction of a felony or any offense involving moral turpitude upon a plea or verdict of guilty or following a plea of nolo contendere, or sexual harassment or other conduct which falls below minimum standards of professional integrity.

Article 5.C.2 provides:

(A) General Provisions

(1) No member of the faculty shall be dismissed except for cause and after being given an opportunity to be heard as provided in this section.
(2) Dismissal of a faculty member shall be construed to mean the revocation of an appointment for cause and may take place at any time during a tenured appointment or at any time during a period of a limited appointment.
(3) Nonrenewal of a limited appointment, termination of an indeterminate appointment according to its terms, or termination of an at-will appointment at any time, shall not be regarded as a dismissal.

(B) Notification of Dismissal

A faculty member whose dismissal for cause is contemplated shall be given written notification as far in advance as possible of the contemplated effective date of dismissal for cause and the reasons therefore. Such notice shall inform the faculty member of the right of review as provided in this subsection. A member of the faculty who receives such written notification may request, within 10 days of receipt of said notice, that the president or chancellor refer the matter to the Faculty Senate Committee on Privilege and Tenure. Upon receipt of said request the president or chancellor shall refer the matter to said committee

within 5 days. If the individual concerned does not request referral to the privilege and tenure committee within 10 days, the individual faculty member shall be deemed to have forfeited the right to such proceedings. The individual concerned shall be permitted to have counsel and the opportunity to question witnesses as provided in the rules of procedure governing faculty dismissal proceedings. In such proceedings, the burden of proof shall be on the university administration.

(C) Faculty Senate Committee on Privilege and Tenure

The Faculty Senate Committee on Privilege and Tenure shall function in dismissal proceedings as authorized by the Board of Regents and shall conduct its hearings consistent with its rules and procedures approved by the Board of Regents.

(D) President?s Recommendation

The president, upon receipt of the findings, conclusions, and/or recommendations of the Faculty Senate Committee on Privilege and Tenure and review thereof, shall recommend action deemed appropriate and forward the recommendation to the Board of Regents as required by regent policy for final action, if any.

II. General Definitions and Procedural Requirements

A. General Definitions

According to Article II.D. of the University of Colorado Faculty Senate Constitution ("Faculty Senate Constitution"), the Privilege and Tenure Committee ("Committee") is a committee of the Faculty Senate. The Committee is organized and its members are appointed as described in Article II.D.1. of the Faculty Senate Constitution and Section II.D.1. of the Bylaws of the Faculty Senate of the University of Colorado ("Faculty Senate Bylaws"). Members of the Committee shall be members of the Faculty Senate.

The chair of the Committee ("Committee Chair") shall be elected annually as an officer of the Committee and shall perform such functions as are required by these procedures and by the Committee's internal administrative rules. The Committee Chair shall not serve as a panel chair or vote on panel reports or recommendations. The Committee Chair shall be responsible for collecting official documents, audio recordings and transcripts related to Committee dismissal for cause cases and for ensuring that these are deposited in the permanent case file in the Committee archives. The Committee Chair may delegate any or all of her/his duties to the Committee vice chair in individual cases.

The dismissal for cause panel shall be a separate panel of the Committee and shall be appointed by the Committee Chair for the primary purpose of hearing dismissal for cause cases. The panel shall consist of five Committee members and a panel chair, who shall be the presiding officer of the panel. A quorum of the panel for the purpose of conducting business shall consist of three members and the panel chair. The panel chair shall vote only in case of a tie.

The hearing officer shall be the panel chair of the panel to which a hearing is assigned and shall preside at the hearing and perform such functions as are required by procedures herein for a hearing.

The parties to a contemplated dismissal for cause case ("Parties" or individually a ?Party?) shall be the chancellor or the administrator authorized by the chancellor to issue the notice of intent to dismiss the faculty member and the faculty member to whom the notice is issued. If the chancellor issues the notice of intent to dismiss, the chancellor may designate another administrator to serve as the Party in her/his place.

As used in this policy, ?days? shall mean business days.

The record of the case for a dismissal for cause shall include:

a. all documents provided to the dismissal for cause panel;
b. a transcript of the hearing;
c. the dismissal for cause panel report(s) and the Parties responses to the report(s);
d. all formal post-hearing communications, including the president's response, if any, and the panel's reply, if any.

B. General Procedural Requirements

1. The Committee's review of dismissals for cause shall proceed as expeditiously as possible. Hearings should be concluded and recommendations made to the president within 80 days after referral to the dismissal for cause panel by the Committee Chair.

2. The time limit within which the faculty member must request referral from the president or chancellor may not be extended. Other time limits specified in Section III of these procedures shall be met unless the Committee Chair or panel chair, as appropriate, should determine that demonstrably extraordinary circumstances[1] justify an extension. Time limits not specified in these procedures shall be established by the Committee Chair or panel chair, as appropriate, with the goal of concluding the Committee's review in a timely manner and consistent with the time limits established herein.

3. Written notification, provided pursuant to these procedures, shall be deemed to have been received when any one of the following has occurred:

a. For notification of dismissal to the faculty member:

1. when delivered, if the notice is sent by personal delivery;
2. when acknowledged by signature on a receipt, if the notice is sent by certified or registered mail, return receipt requested, or by alternative delivery service, with signature required for delivery;
3. 5 days following the mailing date, if the notice is sent by United States Postal Service to the last address provided to the Committee Chair; or
4. 5 days following the shipping date, if the notice is sent by alternative delivery service to the last address provided to the Committee Chair

b. For subsequent notices in the dismissal for cause proceeding unless a Party should request otherwise, 5 days following delivery by electronic mail of the notice as an attached document file to the Party?s official designated electronic mail address.

c. For notice to a Party who requests that subsequent notices not be delivered by electronic mail, when delivered by one of the forms of delivery described in 3.a. above.

4. In order to provide for the expeditious review of dismissals for cause, faculty members and

administrators shall cooperate by providing current contact information, by making themselves available during hearings as requested by the Committee and by providing relevant documents as requested by the Committee and the other Party.

5. In accordance with the confidentiality expected of the dismissal for cause process and as permitted by law, the dismissal for cause panel members shall maintain the confidentiality of the proceeding.

6. Upon the request of the panel chair to the Committee Chair, the Committee advisory lawyer shall be made available to a panel for consultation at any point during the process.

III. Dismissal for Cause Proceedings

A. Commencement of Dismissal for Cause Proceedings

1. As provided in the Laws of the Regents, a dismissal for cause proceeding shall be initiated by the issuance to a faculty member of a written notice of intent to dismiss. The notice of intent to dismiss shall be issued by the chancellor or the administrator authorized by the chancellor to issue the notice.

2. A faculty member who has received written notification of intent to dismiss may request, within 10 days of receipt of said notice, that the president or chancellor refer the matter to the Committee.

3. The president or chancellor shall refer the matter to the Committee Chair within 5 days of a receipt of request for referral and shall provide the Committee Chair with a copy of the notice of the intent to dismiss, including its attached documentation. The Committee Chair shall notify the Parties and the chancellor that he/she has received the contemplated dismissal for cause case.

4. The faculty member may respond in writing to the notice of intent to dismiss, contesting the grounds for dismissal. If the faculty member elects to respond, the response shall be provided to the Committee Chair no later than 20 days after receipt of the notice of intent to dismiss.

5. In contemplated dismissal for cause cases, the Committee process begins with a hearing, which can be formal or informal.

B. Committee Hearing Procedures

1. Election of an Informal or Formal Hearing

a. Upon receipt of the dismissal for cause case, the Committee Chair will ask the Parties to elect an informal or a formal hearing. The hearing shall be informal unless either Party elects a formal hearing in writing within 10 days of the request from the Committee Chair.

b. Following are the differences between informal and formal hearings:

1. Procedures applicable only to informal hearings:

i. Neither Party shall be represented by counsel or other spokesperson.
ii. Only the following persons may be present at the hearing:

1. the members of the panel;
2. the hearing officer;
3. the Parties;
4. the Committee advisory lawyer;
5. a witness, only during the time he/she is giving testimony.

2. Procedures applicable only to formal hearings:

a. Each Party may be represented by counsel, who may act on the Party's behalf throughout the formal hearing proceeding. To the extent that a Party is permitted to take, or prohibited from taking, an action, the Party's counsel is likewise permitted to take, or prohibited from taking, such action on the Party's behalf.

b. Only the following persons may be present at the hearing:

1. the members of the panel;
2. the hearing officer;
3. a registered professional reporter;
4. the Parties and their counsel;
5. the Committee advisory lawyer;
6. a witness, only during the time he/she is giving testimony.

c. The Committee Chair shall notify the Parties and university counsel whether the hearing will be informal or formal.

2. Conducting Dismissal for Cause Hearings Before the Committee

a. Within 3 days after the Committee Chair receives a dismissal for cause case, the Committee Chair shall provide a list of committee members, including the dismissal for cause panel members, to the faculty member. Within 5 days after receiving the list of committee members, the faculty member may request that specific committee member(s) be excluded from the dismissal for cause panel and shall provide a rationale for the request. The Committee Chair shall consider this information and may replace the dismissal for cause panel member(s).

b. Within 15 days after the Committee Chair receives a dismissal for cause case, the Committee Chair shall refer a contemplated dismissal for cause case to the dismissal for cause panel, convened to hear the case. If the dismissal for cause panel is not available for a timely hearing because of other cases, the Committee Chair shall refer the case to another panel, which shall sit as a dismissal for cause panel.

c. The Committee Chair shall send copies of the Committee's dismissal for cause procedures, if not already provided, to the Parties and the panel members.

d. The Committee Chair shall forward copies of the notice of intent to dismiss and any response by the faculty member to the panel chair and the panel members. The panel chair shall use this documentation to assist in the preparation of the hearing order.

e. The panel chair is the hearing officer and shall preside at the hearing.

f. The hearing officer, in consultation with the Parties, shall set all hearing dates and times and

shall notify the Parties. Once the date for the hearing has been set, the hearing shall not be continued or delayed except for demonstrably extraordinary circumstances. The hearing officer shall have the authority to change any hearing date or time previously set, and shall have all such other authority as is necessary and proper for the fair and expeditious conduct of the business of the panel.

g. In any case, the hearing shall be commenced within 30 days after the date that the case is referred to the dismissal for cause panel. The hearing shall be concluded within 40 days after the date that the case is referred to the panel.

h. Except in extraordinary circumstances, formal and informal hearings shall be limited to two consecutive days, ordinarily one day for each Party.

i. The hearing officer or any panel member may recuse her/himself at any time by notifying the Committee Chair as to the reason for the recusal. Upon motion of a panel member, the panel may decide that the hearing officer or a panel member should not participate in the hearing. In such an event, the Committee Chair shall designate a new hearing officer or, if there is less than a quorum of the panel, designate a new panel member, respectively.

j. There shall be no formal discovery as is ordinarily defined by judicial process for either an informal or formal hearing. Specifically, the hearing officer shall not compel depositions, interrogatories, requests for production of documents, or requests for admissions. There shall be an opportunity for exchange of relevant documentation, as reasonably requested by the Parties from each other.

k. In order to provide guidance for both informal and formal hearings, the hearing officer, in consultation with the Parties, shall develop a hearing order at the earliest practicable time. In order to assist in the development of the hearing order, the hearing officer may call for a meeting with the Parties. The hearing order shall be distributed to the Parties and the panel members no less than 10 days prior to the commencement of a hearing. The hearing order should contain the following:

1. the notice of intent to dismiss, with its supporting documentation, and the faculty member's response, if any;
2. a brief statement of the issues to be considered at the hearing;
3. a list of the documentary and demonstrative evidence that each Party intends to present;
4. a list of the witnesses to be presented by each Party;
5. a statement of the order in which witnesses shall be presented at the hearing; and
6. such additional information as the hearing officer may deem appropriate.

l. Guidelines for evidence:

1. Affidavits may be introduced in lieu of witness testimony if the hearing officer concludes that the witness is not otherwise available to testify, either in person or by videoconference or teleconference. It is understood that affidavits may be given less weight than witness testimony because there is no opportunity for questioning by the Parties or members of the panel.

2. The hearing officer shall determine the admissibility of evidence. Evidence not ordinarily admissible in court may be admitted, at the discretion of the hearing officer, if he/she

determines the evidence to be of such reliability and relevance that a reasonable person would base weighty decisions upon it.

m. The hearing officer shall appoint a registered professional reporter to record the hearing. At the conclusion of the hearing, copies of the recordings shall be made available to the hearing panel as requested by panel members for their deliberations; they shall also be made available to a Party upon the Party's request to the hearing officer. A transcript of the hearing shall be prepared and shall be included with the record of the case.

n. In cases of contemplated dismissal for cause, the dismissal for cause panel shall evaluate the allegations underlying the notice of intent to dismiss.

o. The administration shall bear the burden of proof by clear and convincing evidence and shall present its case first.

p. Each Party shall have the right to present witnesses, including expert witnesses, and to be present throughout the hearing. If, after proper notification of the hearing dates, either Party fails to be present during all or any part of a hearing, the hearing may go forward in the absence of that Party.

q. The Parties and the members of the panel shall have the opportunity to question witnesses, subject to such reasonable limitations as the hearing officer may impose. Witness testimony may be presented by videoconferencing or teleconferencing so long as both Parties and the panel members are able to participate concurrently.

r. Neither Party shall discuss the case, except for matters relating to the coordination of the proceedings, with the hearing officer, other members of the panel or the Committee advisory lawyer unless both Parties are present. Neither Party shall communicate in writing concerning the case with the hearing officer, other panel members, or the Committee's advisory lawyer unless a copy of said communication is sent to the other Party.

s. The hearing officer may permit opening, closing, and other oral arguments to be made to the panel. Each Party may submit a written argument to the panel within 5 days after the end of the hearing, provided that the Party indicates his/her intentions to do so at the time of the hearing. The hearing officer may impose limitations on the length of the written argument. The submitting Party shall serve the other Party with a copy of written arguments.

t. The hearing officer may seek the advice of the panel with respect to any ruling or decision the hearing officer makes.

u. At the request of the hearing officer, the Committee advisory lawyer shall be present for the duration of the hearing for purposes of providing legal advice as needed to the hearing officer and panel.

v. By agreement of both Parties and the panel, the hearing procedures may be modified or waived in part. Such agreement shall be made, whenever reasonably possible, after consultation with the Committee Chair.

C. Post-hearing Procedures

1. After the hearing has been completed, the members of the panel shall meet and deliberate.

No person other than members of the panel may be present at this meeting, except that, upon the request of the majority of the panel members, the Committee advisory lawyer may be present to be consulted concerning questions of law. Within 10 days after the conclusion of the hearing, the dismissal for cause panel shall issue an initial written report containing findings of fact, conclusions, and recommendations consistent with the laws and policies of the Board of Regents. Service of the Committee advisory lawyer may be utilized in the preparation of the panel report. Copies of the initial dismissal for cause panel report(s) shall be sent to the Parties.

2. The Parties may respond in writing to the initial dismissal for cause panel report(s), setting forth any objections to either the findings or recommendations contained in the report(s). A Party's response must be received by the hearing officer within 5 days after the Party's receipt of the dismissal for cause panel report(s). Copies of the Party's response shall be sent to the other Parties; however, the Parties shall not have an opportunity to reply to each other's responses. Upon receiving these responses, the panel may choose to modify or supplement its report(s). Within 5 days after receiving both Parties? responses, or 5 days after the deadline for receipt of both Parties? responses, the Panel shall prepare its final report, and the hearing officer shall forward a copy of the record of the case to the president. Any member of the panel not in agreement with any aspect of this panel report may indicate disagreement, along with the reasons therefore, in a minority report, which shall be appended to the Panel report. The hearing officer shall send a copy of the Panel report, with the minority report, if any, to the Committee Chair who shall forward copies to the Parties.

3. The president shall review the case and decide whether to recommend dismissal to the Board of Regents.

4. If the president decides not to recommend dismissal, the case shall be closed.

5. If the president decides to recommend dismissal, that decision and all supporting documentation, including copies of the record of the case, shall be forwarded to the Board of Regents (?Board?) by the president. The president?s recommendation shall include the president?s rationale. If the president and the Panel do not concur, the president?s recommendation to the Board shall include the reasons for the president?s disagreement with the Panel.

6. Within 10 days after the president?s receipt of the record of the case from the hearing officer, the president shall forward to the Parties, the hearing officer, and the Committee Chair the president?s recommendation for dismissal or decision to close the case. If the president recommends dismissal, the president?s notification of the Parties, the hearing officer and the Committee Chair shall occur concurrently with the president?s transmittal of the president?s recommendation to the Board.

IV. Action by the Board of Regents

The chair of the Board shall notify the faculty member and the hearing officer when the Board receives a presidential recommendation to dismiss the faculty member. The faculty member shall be given an opportunity, of no less than 20 days after receipt of notice from the Board chair, to respond in writing to the president's recommendation. The faculty member shall indicate, in the response, if the faculty member requests a hearing before the Board.. If the faculty member requests a hearing before the Board, the hearing shall be held in executive session. The faculty member shall be provided an opportunity to present her/his case to the

Board during the hearing. The administration shall have an opportunity, as directed by the Board, to respond to the faculty member's presentation. The Panel hearing officer or designee shall be the spokesperson for the Panel's report before the Board. All presentations shall be based upon the record of the case, including the transcript of the proceedings before the Panel. The members of the Board shall have an opportunity to ask questions of the faculty member, the administration, and the hearing officer but, ordinarily, the Board will not receive additional evidence.

Upon conclusion of the hearing before the Board and after consideration of all of the information provided to it, the Board shall take action, which may include adoption or modification of the president's recommendation or dismissal of the action against the faculty member. The Board's action, which must be taken in a public meeting, is final.

V. Changes to Dismissal for Cause Procedures

Changes to these procedures require:

1. notice of motion to the Faculty Senate;
2. approval by a two-thirds majority of those voting at the Faculty Senate meeting following the notice of motion; and
3. approval by the Board of Regents.

Supersedes: Rules of the Faculty Senate (1978); "Panel Procedures for Processing Cases--University Committee on Privilege and Tenure" (RA 12/16/76 and subsequent amendments

[1] ?Demonstrably extraordinary circumstances? include, but are not limited to, for a Party, verified circumstances which would support a non-discretionary leave, e.g. funeral, military, or sick leave, or circumstances which result in the closure of the campus facility in which the Party works. Under such circumstances, the extension granted shall not exceed the duration of the leave or other event on which the extension is based. ?Demonstrably extraordinary circumstances? shall not include the unavailability of counsel for either Party due to counsel?s other caseload.

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Groups audience:
Board of Regents
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