



BOISE STATE UNIVERSITY

University Policy 4720

Faculty Due Process and Appeal Procedures

Effective Date

January 18, 2024

Responsible Party

Provost and Vice President for Academic Affairs, (208) 426-1202
Human Resources and Workforce Strategy, (208) 426-1616

Scope and Audience

This policy applies to all faculty as defined in University Policy 7000 (Position Definitions), excluding adjunct faculty, affiliate faculty, and visiting faculty. A Faculty Member found to be in violation of University Policy 1065 (Sexual Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking) receives due process and appeal procedures under that policy.

Additional Authority

- University Policy 5060 (Misconduct in Research)
- Northwest Commission on Colleges and Universities (NWCCU) Standards 2.A.4, 2.B.1, 2.B.2, 2.D.2, 2.D.3, 2.F.1, 2.F.4
- Idaho State Board of Education Policy, Section I.T. (Title IX)
- Idaho State Board of Education Policy, Section II.G. (Policies Regarding Faculty (Institutional Faculty Only))
- Idaho State Board of Education Policy, Section II.L. (Discipline – Adequate Cause – All Employees)
- Idaho State Board of Education Policy, Section II.M. (Grievance and Appeal Procedures – All Employees)
- Idaho State Board of Education Policy, Section III.B. (Academic Freedom and Academic Responsibility)
- University Policy 1060 (Non-discrimination and Anti-harassment)

- University Policy 1065 (Sexual Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking)
 - University Policy 4380 (Periodic Review of Tenured Faculty)
 - University Policy 4000 (Faculty Code of Rights, Responsibilities, and Conduct)
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1. Policy Purpose

To establish due process and appeal procedures for Faculty Members when Disciplinary Action is being contemplated by the University. This policy does not apply to lesser actions (such as those covered in Policy 4480 - Faculty Grievance Policy) beyond those explicitly defined below.

2. Policy Statement

Faculty Members are entitled to due process before the University takes Disciplinary Action based on Adequate Cause. Due process requires the University to:

- Send written notice of the Disciplinary Action being contemplated to the Faculty Member,
- Provide an opportunity for the Faculty Member to respond before a decision is made, and
- Provide the opportunity to appeal that decision through the process below.

A Faculty Member who needs or desires assistance with this process should contact the University Faculty Ombuds Office and/or Human Resources and Workforce Strategy for information. With the exception of the appeal process, the notice, opportunity to respond, and decision must occur during the Faculty Member's contract period.

3. Definitions

3.1 Adequate Cause

As defined in Idaho State Board of Education policy II.L, "One (1) or more acts or omissions which singly or in the aggregate have directly and substantially affected or impaired a Faculty Member's performance of their professional or assigned duties or the interests of the State Board of Education, institution, or agency. In addition, any conduct seriously prejudicial to the Board, an institution or agency may constitute Adequate Cause for discipline, up to and including dismissal.

3.2 Administrative Faculty

A Faculty position in which the incumbent is qualified to hold academic rank and whose responsibilities are primarily administrative. As defined in the Faculty Constitution, Administrative Faculty include the President of the University; the Provost of the University; administrative Vice Presidents; executive Heads or Deans of Colleges, Schools, Units, Divisions, Supportive Services, and the Library; and all such permanent administrative officials so designated by the President of the University and the State Board of Education. This category includes department chairs and heads, program directors, and associate chairs.

3.3 Administrative Hearing Officer (AHO)

A person hired by Human Resources and Workforce Strategy to preside over the Faculty Due Process Committee (FDPC) hearing with knowledge and experience in due process to ensure proper procedures are followed during the hearing, to make determinations concerning any motions or petitions, if any, and to compile the record.

3.4 Disciplinary Action

Dismissal from employment with the University, suspension without pay, and/or involuntary demotion taken for Adequate Cause with regard to a Faculty Member. Disciplinary Action does not include administrative decisions, including without limitation, decisions in such matters as denial of tenure, denial of promotion, performance evaluation, salary determination, and/or to challenge the contents of the Faculty Member's personnel file.

3.5 Equity

The Network of Schools of Public Policy, Affairs and Administration uses the term equity to “establish systems and practices that are fair and just, based on a recognition of individual differences and sociopolitical contexts that disproportionately advantage or disadvantage some groups of people more than others. Equity is reflected in fair treatment, access, opportunity, and advancement for all people, while at the same time striving to identify and eliminate barriers that have prevented the full participation of some groups. Improving equity involves increasing justice and fairness within the procedures and processes of institutions or systems, as well as in their distribution of resources.”

3.6 Faculty Due Process Committee (FDPC)

An *ad hoc* Faculty Senate committee, appointed by the Provost and the President of the Faculty Senate, for the term of the disciplinary hearings related to the individual case.

3.7 Notice of Contemplated Action (NOCA)

Written notification to the employee for whom Disciplinary Action is being considered (see Section 5).

3.8 Supervisor

The individual responsible for supervising the Faculty Member. In many cases, a department chair/head or a dean.

4. Relation to Other University Policies

- a. Disciplinary Action may not be taken against a Faculty Member for issues or allegations pending the outcome of a separate process required under other University policies, (for example, protected class discrimination or harassment, fiscal misconduct, or misconduct in research processed pursuant to University Policy 1060 (Non-discrimination and Anti-harassment, University Policy 5060 (Misconduct in Research), or University Policy 6000 (Fiscal Misconduct).
- b. For issues or allegations that do not require an investigatory process under university policy as described in Section 4.a., the Faculty Member's Supervisor must make a good faith effort to identify and resolve performance issues with the Faculty Member before contemplating Disciplinary Action.

5. Notice of the Contemplated Action

- a. If the University is contemplating Disciplinary Action (up to and including dismissal for Adequate Cause), the Dean or the Faculty Member's Supervisor, or designee, will consult with Human Resources and Workforce Strategy to develop a NOCA.
- b. Human Resources and Workforce Strategy and the Dean, or designee, will submit the NOCA to the Provost for approval and signature prior to its delivery to the Faculty Member. A NOCA may not be issued to a Faculty Member without the Provost's approval.

5.1 Notice of Contemplated Action Contents

At a minimum, any NOCA developed under this policy shall include:

- The Disciplinary Action contemplated (i.e., dismissal, suspension without pay, or involuntary demotion).
- The basis or reason for the contemplated action and an explanation of the evidence supporting the contemplated action.
- The time frames for submitting a response, including the opportunity to request a decision-making process (see Section 5.4).
- If applicable, information regarding placement on administrative leave. In general, administrative leave shall be with pay pending the outcome of the matter pursuant to these policies, or resignation of the Faculty Member, whichever occurs first.
- Notice of the Faculty Member's rights, including the right to request an appeal following a determination on the NOCA by the Provost.

5.2 Delivery of NOCA to Faculty Member

- a. Human Resources and Workforce Strategy will coordinate delivery of the NOCA to the Faculty Member via the Faculty Member's official Boise State email address, in person, or through both delivery methods. If in person delivery is not reasonable due to Faculty Member unavailability, and the University has reason to believe delivery via Boise State email will be ineffective, delivery may be completed through alternative methods. In situations where alternative delivery methods are necessary, the University has no obligation to ensure the Faculty Member receives the NOCA, but shall take reasonable steps to facilitate effective delivery.
- b. The Provost may elect to withdraw the NOCA at any time for any reason after it has been delivered to the Faculty Member. If the NOCA has already been delivered, all appropriate parties will be notified of the withdrawal and the process is closed. If the matter is closed via withdrawal of the original NOCA, a new NOCA may be issued only upon a showing of additional information supporting the issuance of a NOCA. In no case shall a new NOCA be issued based on the exact same factual basis as the withdrawn NOCA; however, a new NOCA may be issued on the same factual basis to correct a technical or procedural error.

5.3 Opportunity to Respond to NOCA

- a. A Faculty Member who receives a NOCA is entitled to an opportunity to provide a written response to the content of the NOCA and to present reasons why the contemplated action should not be taken.

- b. The Faculty Member must respond within the time period allowed under this policy and as indicated in the NOCA; otherwise, the opportunity to respond is deemed waived by the Faculty Member and the opportunity to appeal (see Section 7) is deemed waived. The Faculty Member must provide their response, if any, to the Provost, or designee, and to Human Resources and Workforce Strategy.

5.4 Time Allowed to Respond to NOCA

- a. The NOCA must provide a set time period of no less than five (5) University business days following delivery of the NOCA (or deemed delivery if alternative delivery methods are attempted under Section 5.2) within which the Faculty Member may respond under section 5.3.
- b. The Provost, or designee, may extend the time period for a response, but in no event may that time period exceed ten (10) University business days after delivery (or deemed delivery if alternative delivery methods are attempted under Section 5.2), unless both the Provost, or designee, and the Faculty Member agree to an extension in writing. Any agreement to extend the response period must also be sent to Human Resources and Workforce Strategy.

6. Provost's Determination on NOCA

- a. The Provost shall have up to ten (10) business days after receipt of the response, or if no response is provided the expiration of the timeframe allowed for response, to deliver a written determination on the NOCA to the Faculty Member.
- b. In making a final determination on the NCOA, the Provost shall consider the response, if any, including any supportive documentation as to why the proposed Disciplinary Action should not be taken.
- c. The written determination on the NOCA shall, at a minimum, state whether or not the proposed or any lesser Disciplinary Action shall be implemented, including any conditions imposed on the continuance of employment, if employment is being continued.
- d. Human Resources and Workforce Strategy will coordinate processing of the Provost's determination on the NOCA. If the determination includes any Disciplinary Action, such action will be implemented after the Faculty Member has waived their right to appeal such determination (see Section 7), or if the Faculty Member appeals the Provost's determination, the proposed Disciplinary Action will be suspended pending the outcome of the appeal process.

7. Right to Appeal and Appeal Process

7.1 Right to Appeal Determination on NOCA and Processing of Notice of Appeal

- a. A Faculty Member who responded to the NOCA and disagrees with the Provost's determination on the NOCA has a right to appeal (see Section 5.3.b).
- b. If a Faculty Member chooses to appeal the Provost's determination, the Faculty Member shall submit a signed and dated Notice of Appeal (NOA) to Human Resources and Workforce Strategy within the time period indicated in the NOCA, which shall be set at a minimum of five (5) University business days from the delivery of the Provost's determination, but in no event may that time period exceed ten (10) University business days. The notice of appeal shall include a current non-University email address for the Faculty Member.
- c. Upon receipt of a Faculty Member's notice of appeal, Human Resources and Workforce Strategy shall forward the notice to the Faculty Senate President and the Provost.

7.2 Representation

The Faculty Member has the right to be represented, at their own cost, by persons of their choosing during the appeal process. If the Faculty Member chooses to be represented, the Faculty Member must notify the Provost, or designee, in writing through the written statement of appeal (see Sections 7.1 and 7.3).

7.3 Faculty Member's Responsibilities

- a. Within ten (10) University business days of the date the Faculty Member receives written notice that the Senate has formed an FDPC, the Faculty Member shall submit to the Senate President:
 - Their written Statement of Appeal containing the reasons why the Faculty Member is appealing the Provost's determination on the NOCA;
 - Any supporting documents which the Faculty Member wishes to have the FDPC consider; and
 - The names of any individuals representing the Faculty Member (see Section 7.2).

- b. The Faculty Member has the right to ask for and receive relevant documents from the University to support the appeal and present witnesses and exhibits. The request for documents must accompany the Faculty Member's Notice of Appeal.
 - The records response to each request will be examined in light of applicable state and federal laws, rules, and case law, as well as University and Idaho State Board of Education policies.
 - The University must provide those documents to the Faculty Member within five (5) University business days, unless due cause exists for an extension of this period as.

7.3.1 Adherence to Time Requirements

If the Faculty Member does not meet the time requirements during these procedures, the AHO will review the action of the Faculty Member and will recommend to the Provost whether the appeal procedures will continue.

7.4 Provost's Responsibilities

- a. The Provost will make decisions about requests for timeline extensions.
- b. The Provost will submit to the Faculty Senate President a list of three (3) administrators who are not in the Faculty Member's reporting line to be considered for the FDPC.
- c. The Office of the Provost will ensure there is a recording of the hearing.

7.5 Administrative Hearing Officer Responsibilities

- a. The AHO must be a person external to the University who is appointed to preside over contested cases on behalf of the University and the Faculty Member.
- b. The AHO must not have a conflict of interest with any persons involved in the hearing, must refrain from improper *ex parte* contact with any persons involved, and must adhere to their professional code of ethics.
- c. An AHO may be disqualified for cause in the event the presence of bias, prejudice, interest, substantial prior involvement, or lack of professional knowledge relating to the conduct of due process hearings is presented.
- d. The AHO must send a copy of the FDPC's final recommendation to the Provost.

7.6 Faculty Senate President's Responsibilities

The Faculty Senate President is responsible for:

- Maintaining a list of at least twelve (12) Faculty Members and three (3) administrators from which FDPC members will be chosen;
- Appointing Faculty Members to the FDPC based on the process in Section 7.8.;
- Providing the Provost with a copy of the Faculty Member's Statement of Appeal; and
- Notifying the Provost of the Faculty Member's choices for representation, if any.

7.7 Faculty Due Process Committee Composition

The FDPC will be composed of five (5) individuals: one administrator at the college level or above and four (4) Faculty Members appointed by the Faculty Senate President (see "Selection Process" below). In addition, the Senate President is an *ex officio* member of this committee.

- At least one Faculty Member must be of the same rank and title of the Faculty Member requesting a hearing on appeal;
- Members of the committee must not have a supervisory relationship with one another or the Faculty Member (see "Bias or Conflict of Interest" below);
- Members of the committee must not communicate about the subject matter of the hearing on appeal with the Faculty Member or the Faculty Member's representative outside of the hearing process, except as expressly authorized by the AHO.

7.8 Faculty Due Process Committee Selection

Members of the FDPC will be chosen from an existing pool of Faculty Members and administrators who are willing to serve on the FDPC. The selection process must conclude no later than ten (10) University business days after the NOA has been filed by the Faculty Member.

7.8.1 Initial Pool

- a. The Faculty Senate President will maintain a list of at least twelve (12) Faculty Members and three (3) administrators (a total of 15 people) who are willing to serve on the FDPC ("initial

pool”). In assembling this list, the Senate President will make a good faith effort to include in the initial pool of potential committee members the following:

- Faculty Members from different positions and different ranks,
 - Faculty Members from each academic college,
 - Administrative Faculty Members
- b. The Senate President will make a good faith effort to reflect the diversity of the Boise State faculty.
- c. The Faculty Member and the Provost will have the opportunity to strike up to two (2) names each from the initial pool of available committee members.
- d. From this remaining pool, one administrator and an alternate, as well as four (4) Faculty Members and two (2) alternates, will be randomly selected by the AHO. At this time, the Faculty Member may make a request to the Senate President for diverse representation from the initial pool in place of one of the randomly selected members. The AHO will make the final decision on this request. These members will serve on the FDPC for a hearing on appeal under this policy.
- e. Within three (3) University business days after the Faculty Senate President has formed the FDPC, the Faculty Senate President shall notify the Faculty Member that the FDPC has been formed.

7.8.2 Bias or Conflict of Interest

- a. Members of the FDPC shall recuse themselves for bias or conflict of interest. If there is a dispute regarding the participation of any FDPC member, the remaining committee members shall hear that dispute and make a final decision about the participation of that member in the hearing.
- b. In order to provide an objective and fair hearing, each panel shall take precautions against real, perceived, or apparent conflicts of interest on the part of panel members. Panel members shall decline to participate in the hearing of any case in which they have a personal bias or conflict of interest that would preclude their making a fair and objective decision, and may not communicate with the Faculty Member, a party, or witnesses about the subject matter of the hearing.

- c. No panel member shall participate in any case from a department with which they are associated as a Faculty Member or any case in which they have been involved in the sequence of review.

7.8.3 Equity Advisor

In addition to the Faculty Members and administrator selected from the initial pool, the FDPC must have an Equity Advisor, who is academically trained in, certified with, or has demonstrated expertise in inclusive, culturally-responsive, and equitable practices (examples include, but are not limited to, being a Title IX officer, a member of the Equity Advocates Program, a Dialogue Facilitator, or a recipient of an external certification). This Equity Advisor is a non-voting advisory member and will assist the committee with issues of Equity and inclusion.

7.9 Recording

A recorder for the proceedings will be provided by the Office of the Provost. A verbatim transcript of the hearing, or hearings, shall be made by the Provost's office and, upon request, a copy shall be made available to the Faculty Member without cost to the Faculty Member. The committee deliberations will not be recorded.

7.10 Committee Meetings

- a. Once the FDPC has been formed, within five (5) University business days, the FDPC will meet at the direction of the Faculty Senate President, who will also direct the FDPC to elect a chair. In selecting a chair, a tenured Faculty Member will receive priority consideration. Once formed, the FDPC will establish a time and place for the hearing, which shall take place within ten (10) University business days after receipt of the Faculty Member's statement of appeal and any supporting documents, unless due cause exists for an extension of this period as determined in writing by the Faculty Senate President.
- b. Service on the FDPC shall be a high priority University responsibility for the duration of the hearing. Accordingly, administrators of units shall take all reasonable measures to reduce the FDPC members' other responsibilities, if reasonably possible. Unit administrators are encouraged to provide additional support as appropriate to FDPC members for the duration of their service.

7.11 Hearing Process

- a. No later than five (5) University business days prior to the hearing, the FDPC will consider

- The NOCA, and any records or evidence supporting the NOCA and the Disciplinary Action being contemplated, and
 - The Faculty Member's initial written or verbal response to the NOCA, their Statement of Appeal, and any supporting documents.
 - The Faculty Member's Statement of Appeal and any documents supporting the appeal.
- b. Hearings should be conducted in accordance with the Idaho Administrative Code, specifically IDAPA 04.11.01 sections 410, 423, 413, 414, 417, 510, 511-514, 550-565, 600-606 and 650-651.

7.11.1 Closed Hearings

- a. Hearings will be closed to the public.
- b. In any closed hearing, the Faculty Member and the Provost, or administrative representative, will each have the right to the presence of not more than three (3) persons each, designated by them as observers. Confidentiality is encouraged in all personnel matters.

7.11.2 Adjudicating the Process

The AHO determines the order of proof, manages the questioning of witnesses, and, if necessary, secures the presentation of evidence.

7.11.3 Burden of Proof

The burden of proof that Adequate Cause exists for the Disciplinary Action rests with the University and must be satisfied only by showing, through a preponderance of evidence, the justification for the Disciplinary Action in the record considered as a whole.

7.11.4 Right to Examine Witnesses

- a. The Faculty Member has the option of assistance by counsel or advisors at the sole cost of the Faculty Member.
- b. The Faculty Member, the Provost, and their counsel/advisors have the right, within reasonable limits, to question all witnesses who testify orally. Questions must be directly relevant to the case.

7.12 Hearing Committee Recommendation

- a. Upon conclusion of the hearing, the FDPC must reach its recommendation in closed discussion within five (5) University business days and as set by the AHO. The written recommendation must be sent to the President and Provost within two (2) University business days, unless due cause exists for an extension of this period as determined in writing by the Faculty Senate President.
- b. The FDPC will determine if the acts or omissions constituting the basis for contemplated action in the NOCA occurred and whether the acts or omissions constitute Adequate Cause. If the acts or omissions at issue in the appeal are the result of a finding made pursuant to University Policy 1060 (Non-discrimination and Anti-harassment), the FDPC recommendation will be limited to the severity of the sanction imposed and based solely on the finding(s) as documented by the investigation report and outcome letter. In this case, a live hearing would not be held.
- c. If the Faculty Member asserts a violation of statutory or constitutional civil rights in any of the protected categories of race, color, religion, sex, national origin, age, disability, marital or parental status, or veteran's status, in the Faculty Member's written or verbal response to the alleged violation, or at any time during the course of the proceeding, such claims shall be immediately referred in writing to the Office of Title IX and Institutional Equity (see University Policy 1060 - Non-discrimination and Anti-harassment; University Policy 1065 - Sexual Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking; and University Policy 1075 - Non-discrimination on the Basis of Disability). In such cases, the Faculty Member is still entitled to due process under this policy.
- d. The FDPC's recommendation will be reached solely on the basis of the record of the hearing.
- e. The President will consider the FDPC's final recommendation and will make a final decision on the appeal.

7.13 Final Decision on Appeal

- a. The President, after due consideration of the FDPC's recommendation, will determine whether they agree or disagree with the FDPC's recommendation. In the event of disagreement, the President will meet with the FDPC to discuss the reasons for the disagreement prior to reaching a final decision. Upon reaching a final decision, the President will forward their written decision to the Faculty Member and to the college and department or division, with a copy to the Provost. If the President's decision differs from the FDPC's

recommendation, the reasons for the disagreement, including the basis for the differing decisions, will also be communicated in writing to the Faculty Member and to the FDPC.

- b. The President's final decision on appeal must be in writing and delivered to the Faculty Member within ten (10) University business days after the FDPC's recommendation is delivered to the President. The written decision will be delivered via the Faculty Member's official Boise State email address, in person, or through both delivery methods. If in person delivery is not reasonable due to Faculty Member unavailability, and the University has reason to believe delivery via Boise State email will be ineffective, delivery may be completed through alternative methods. The notice must contain a concise statement of the charges against the Faculty Member, the findings of fact that are the basis for the President's decision for Disciplinary Action, and any conditions imposed on the continuance of employment, if employment is being continued.
- c. Human Resources and Workforce Strategy will coordinate processing of the University's decision. If Disciplinary Action is determined, it will be implemented immediately.

8. Appeals to the Idaho State Board of Education

In accordance with Idaho State Board of Education Policy, Section II.L.4.b, Disciplinary Action, up to and including dismissal, of a Faculty Member is not appealable to the Idaho State Board of Education.

9. Prohibition of Retaliation

Retaliation against any employee who exercises any right afforded to them under this policy or who serves as a witness or representative in good faith, or who serves as a committee member on a Faculty Due Process Committee is prohibited. Any such retaliation is expressly prohibited and may constitute grounds for Disciplinary Action up to and including dismissal from employment.

10. Related Information

Faculty may refer to University Policy 4480 (Faculty Grievance Policy) for more details on how to explore employment-related matters not related to the Due Process Procedure as outlined in this policy.

Revision History