

NO. 5.24

ADMINISTRATIVE ACTION
ON MOTIONS OF THE MSU FACULTY SENATE
2015-16 ACADEMIC YEAR

I. MOTION: To approve revisions to PAC-22.

Attachments: Clean Copy of revised PAC-22.

Date Passed By the Senate: November 19, 2015

11/23/15
Date

[Signature]
Signature of Faculty Senate Chair

II. ACTION:

Provost Comments:

*Approve with stipulations
see attached. "Yellow" are changes made*

President

- A. ___ Motion under consideration – Date _____
- B. ___ I concur with the motion of the Senate and hereby direct the Faculty Senate or administrative personnel concerned to implement this motion.
- C. ___ I concur with the motion of the Senate. This motion, however, requires further approval through University channels. I will seek this approval.
- D. I concur with the motion of the Senate, with the attached stipulations.*
- E. ___ I do not concur with the motion of the Senate, for the reasons attached.

III. SIGNATURES:

[Signature] 12/4/16
Signature of President Date

*A motion accepted with stipulations is considered approved for implementation upon the Senate's acceptance of the stipulations.

Date of Senate's Acceptance
of Stipulations

Signature of Faculty Senate Chair

PLEASE RETURN ORIGINAL WITH SIGNATURE AND ATTACHMENTS TO THE FACULTY SENATE: UPO 1021

1 **Policy: PAc-22**

2
3 **Subject: Faculty Discipline and Removal for Cause**

4
5 Approval Date:
6 Revision Date:

7
8 **PURPOSE**

9
10 The purpose of this policy is to establish the procedures for the discipline of faculty and
11 librarians (henceforth referred to as faculty).

12
13 **GENERAL PRINCIPLES**

14
15 Faculty misconduct may be subject to disciplinary action. Disciplinary actions include oral or
16 written reprimand, written censure, suspension without pay, reassignment of duties, removal, or
17 an action appropriate to the conduct of the faculty member (henceforth, the accused). The length
18 of written censure, suspension without pay, reassignment of duties or other discipline will be in
19 accordance with the severity of the misconduct and in consideration of the accused's work
20 record.

21
22 Tenured faculty may be removed only for incompetence, neglect of or refusal to perform duties,
23 or immoral conduct as outlined in KRS 164.360 (henceforth, cause).

24
25 Disciplinary action for tenured faculty will be taken subject to the procedures set forth in this
26 policy. Disciplinary action for fixed term faculty will proceed under this policy if the fixed term
27 faculty member is to be disciplined or removed during the contract year. If a faculty member is
28 tenure track, this policy shall apply if the faculty member is to be disciplined or removed during
29 the academic period(s) for which he/she is guaranteed employment under PAc-27.

30
31 All individuals involved in the disciplinary process will exercise absolute discretion. Information
32 gathered during the disciplinary process by any individual will be disseminated by that
33 individual only as stipulated by university policy or by law.

34
35 All documents that need to be delivered from one party to another shall be by hand delivery or
36 priority mail with delivery confirmation.

37
38 **REPRESENTATION**

39
40 At any point in the disciplinary process, the accused may, at his or her expense, consult with or
41 retain legal counsel to provide representation.

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45

46 **RECONCILIATION**

47
48 At any point in the disciplinary process, the accused or representatives of the administration may
49 request a meeting with the other for the purpose of discussing a mutual settlement. A mutual
50 settlement must be in writing and signed by the accused and the President. A mutual settlement
51 will terminate the disciplinary process.

52
53 **ALLEGATIONS OF MISCONDUCT**

54
55 An allegation of misconduct brought to the attention of a supervisor within the accused's chain
56 of authority will be forwarded to the Dean of the accused's college and to the Provost/Vice
57 President for Academic Affairs (VPAA). If the allegation involves Sexual Misconduct or Sexual
58 Harassment as governed by PG-6 and relevant UARs, then the allegation will be handled in
59 accordance with same. Otherwise, the Provost/VPAA will determine if investigation of the
60 allegation is required.

61
62 If the Provost/VPAA determines that investigation of the allegation is not required, the
63 Provost/VPAA will refer the matter to the Dean of the accused's college. The Dean will
64 determine whether to issue an oral or written reprimand or to dismiss the allegation. The Dean's
65 action will terminate the disciplinary process.

66
67 If the Provost/VPAA determines that investigation of the allegation is required, the matter will
68 be referred by the President to the appropriate University offices for investigation. The period of
69 investigation will not exceed 40 business days. (A "business day" is a day in which the
70 University is open regardless of whether academic classes are in session.) If deemed necessary
71 by the President, the accused may, without prior notice, be placed on leave with pay or have his
72 or her duties reassigned. Leave with pay will not extend beyond completion of the disciplinary
73 process. Reassignment of duties will not extend beyond completion of the disciplinary process
74 except if reassignment of duties is the disciplinary action issued by the President at the
75 completion of the disciplinary process. The President may terminate leave with pay or
76 reassignment of duties prior to completion of the disciplinary process.

77
78 At the conclusion of an investigation, a written report will be produced and sent to the President,
79 the Provost/VPAA, and the Dean of the accused's college. After reviewing the report, the Dean
80 will inform the foregoing individuals in a signed, written statement that:

- 81
82 1. Facts have not been established to support the allegation and the matter should be dismissed;
83 or
84
85 2. Facts have been established that warrant an oral or written reprimand by the Dean; or
86
87 3. Facts have been established that warrant written censure, suspension without pay, or
88 reassignment of duties or other appropriate discipline; or
89
90 4. Facts have been established that warrant removal for cause.
91

92 **NOTICE OF INTENT**

93
94 After reviewing the Dean's statement, the President—in consultation with the Provost/VPAA, the
95 Dean of the accused's college, the Chair/Associate Dean of the accused's department, and the
96 Chair of the Faculty Rights and Responsibilities Committee—will determine whether:

- 97
98 1. To dismiss the matter altogether, thereby terminating the disciplinary process; or
99
100 2. To refer the matter to the Dean of the accused's college for issuance of an oral or written
101 reprimand, in which case the action will terminate the disciplinary process; or
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103 3. To proffer charges warranting written censure, suspension without pay, reassignment of duties
104 or other appropriate discipline, in which case the President will issue a signed, written Notice of
105 Intent to Discipline; or
106
107 4. To proffer charges warranting removal for cause, in which case the President will issue a
108 signed, written Notice of Intent to Remove for Cause.

109
110 A Notice of Intent will include (1) a detailed statement of the charges and their basis; (2) the
111 intended disciplinary action, (3) the proposed date of the action, and, if applicable, the proposed
112 duration of the action; (4) the accused's right to respond to the charges and intended disciplinary
113 action; (5) the accused's right to request a hearing before a board; (6) the accused's right to
114 request a meeting with representatives of the administration for the purpose of discussing a
115 mutual settlement, and (7) the relevant policies dealing with faculty discipline.

116
117 If a Notice of Intent is issued by the President, the Provost/VPAA will provide the accused with
118 a copy of the Notice of Intent.

119
120 **RESPONSE TO NOTICE OF INTENT**

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122 If the accused receives a Notice of Intent to Discipline, the accused may elect to:

- 123
124 1a. Exercise his or her right to an evidentiary hearing before a Faculty Hearing Board (FHB)
125 according to the procedures set forth below;
126
127 2a. Respond to the charges and intended disciplinary action, and decline a hearing; or
128
129 3a. Neither respond to the charges and intended disciplinary action nor exercise his or her right
130 to a hearing.

131
132 If the accused receives a Notice of Intent to Remove for Cause, the accused may elect to:

- 133
134 1b. Exercise his or her right to either (i) an evidentiary hearing before a FHB with a subsequent
135 hearing on the record (not evidentiary) before the Board of Regents (BOR) according to the
136 procedures set forth below, or (ii) an evidentiary hearing before the BOR with no hearing before
137 a FHB;

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2b. Respond to the charges and intended disciplinary action, and decline a hearing; or

3b. Neither respond to the charges and intended disciplinary action nor exercise his or her right to a hearing.

The accused will have 10 business days from the date of receipt of the Notice of Intent to elect one option (1a, 2a, 3a, 1bi, 1bii, 2b, or 3b) and to inform the President, the Provost/VPAA, and the Dean of the accused's college, in writing, of the option elected. If the accused fails to inform the foregoing individuals of the option elected within the allotted time, then the accused will have passively elected option (3a) for a Notice of Intent to Discipline or option (3b) for a Notice of Intent to Remove for Cause.

If the accused elects option (3a), the President will proceed with the intended disciplinary action outlined in the Notice of Intent and so advise the accused in writing. A copy shall be sent to the Provost, Dean and OHR. If the accused elects (3b) the President shall proceed to an abbreviated hearing before the BOR.

If the accused elects option (2a) or (2b), the accused may file a detailed written response to the charges and/or intended disciplinary action within thirty (15) business days of receipt of the Notice of Intent. The accused will send his or her response to the President, the Provost/VPAA, and the Dean of the accused's college. The President will review the accused's response and may consult with the Provost/VPAA, the Dean of the accused's college, the Chair/Associate Dean of the accused's department, and/or the Chair of the Faculty Rights and Responsibilities Committee, among others. The President will determine whether to:

a) Dismiss the matter altogether, thereby terminating the disciplinary process;

b) Refer the matter to the Dean of the accused's college for issuance of an oral or written reprimand by the Dean, in which case the Dean's action will terminate the disciplinary process; or

c) Proceed with a disciplinary action no greater than the intended disciplinary action outlined in the Notice of Intent. If the disciplinary action that the President decides upon is not removal for cause, then the President will issue a signed, written Notice of Disciplinary Action to be sent to the accused. If the President determines that removal for cause should occur, he/she shall forward, to the BOR, the Notice of Intent to Remove for Cause and the accused's response to the charges and intended disciplinary action outlined in the Notice of Intent and proceed to an abbreviated hearing before the BOR.

If the accused elects option (1a) or (1bi), the President will convene a FHB.

If the accused elects option (1bii), the President will convene a hearing before the BOR.

183

184 **THE FACULTY HEARING BOARD (FHB)**

185

186 **Membership**

187

188 The FHB will consist of the following voting members:

189

190 1. One member of the Faculty Rights and Responsibilities Committee chosen by that
191 committee's chair. The member chosen from that committee will serve as Chair of the FHB; and

192

193 2. Four tenured faculty members holding an academic rank equal to or higher than that of the
194 accused and who will be selected and agreed upon by the President or his/her designee, the
195 Provost/VPAA, the Chair of the Faculty Rights and Responsibilities Committee, and the Chair of
196 the Faculty Senate.

197

198 The Provost/VPAA will select one individual to serve as a non-voting, ex officio member of the
199 FHB. That individual must be an Academic Dean not of the accused's college or a Department
200 Chair not of the accused's department. In addition, the Provost/VPAA and the Chair of the
201 Faculty Senate may serve as non-voting, ex officio members of the FHB.

202

203 No member of the FHB will be a member of the accused's department or school.

204

205 FHB members shall be excused due to conflict of interest and may be excused due to health or
206 unavoidable absence from campus. If a member is excused, a replacement will be selected as set
207 out above.

208

209 **Pre-Hearing Procedure**

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211 The Chair of the FHB will provide the accused with a signed, written Notice of Hearing. The
212 Notice of Hearing will state (1) the names of the FHB members; (2) the accused's right to
213 challenge the appointment of one or more FHB members on the grounds of conflict of interest;
214 and (3) the date of the hearing.

215

216 The accused will have 5 business days from the date of receipt of the Notice of Hearing to
217 challenge the appointment of one or more FHB members on the grounds of conflict of interest.

218 The challenge must be submitted in writing to the Chair of the FHB who will rule on the
219 challenge within 5 business days of receipt of the challenge. If the challenge is to the FHB Chair,
220 the Chair of the Faculty Rights and Responsibilities Committee shall rule in that instance. The
221 Chair will inform the accused in writing of the ruling and the reasons for the ruling. The ruling
222 will be final and may not be challenged by the accused.

223

224 The date of the hearing will be no less than 15 business days and no more than 30 business days
225 from the date that the accused received the Notice of Hearing. The accused may file a written
226 response to the charges and/or intended disciplinary action outlined in the Notice of Intent with
227 the FHB chair prior to the hearing with a copy to the administrator proffering the charge
228 (henceforth, plaintiff).

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Hearing Procedure

The accused will have the option of having a hearing that is open or closed to the public, except as may be required by law.

The accused may consult with or retain legal counsel at his or her own expense to provide representation during the hearing. The FHB shall be advised by Morehead State University's Office of the General Counsel or its designee. The plaintiff may consult with or be represented by separate legal counsel contracted by the University to provide representation during the hearing.

The hearing proceedings will not be governed by formal, legal rules of procedure and evidence. The FHB may consider any information that has probative value.

Statements to the FHB, documentary evidence, and testimony by witnesses will be subject to requirements of civility and relevance.

The plaintiff or his/her counsel will have the right to call and cross-examine witnesses and to present documents and other evidence supporting the charges in the Notice of Intent to Discipline or the Notice of Intent to Remove for Cause.

The accused or his/her counsel will have the right to call and cross-examine witnesses and to present documents and other evidence disputing the charges in the Notice of Intent to Discipline or the Notice of Intent to Remove for Cause.

The plaintiff, or his/her counsel, and the accused, or his/her counsel, will have the right to confront and cross-examine each other's witnesses.

The Chair of the FHB may restrict redundant testimony in the interest of ensuring an efficient hearing process.

Any individual scheduled to appear as a witness, with the exception of the accused and the plaintiff, will not be present in the hearing room except when testifying.

A written record of appearances and sworn testimony of the concerned parties and witnesses will be maintained.

The written record will include the Notice of Intent to Discipline or the Notice of Intent to Remove for Cause and if applicable the accused's response to the charges and/or intended disciplinary action outlined in the Notice of Intent.

A verbatim record of the hearing will be recorded by a court reporter and may be transcribed as requested. The recording and transcription will be provided at no cost to the accused upon request.

275 The burden of establishing a preponderance of the evidence for the charges rests at all times with
276 the plaintiff.

277
278 The following hearing agenda will apply:

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280 1. A reading, by the Chair of the FHB, of the charges proffered by the plaintiff and the response
281 to the charges by the accused;
- 282
283 2. Presentation of evidence by the plaintiff or his/her counsel supporting the charges;
- 284
285 3. Presentation of evidence by the accused or his/her counsel refuting the charges;
- 286
287 4. Presentation of rebuttal evidence as may be appropriate;
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289 5. Summation or statement not to exceed 30 minutes by the accused or his/her counsel; and
- 290
291 6. Summation or statement not to exceed 30 minutes by the plaintiff or his/her counsel.

292
293 At the conclusion of the hearing, the FHB will go into closed session to discuss the evidence
294 presented at the hearing and to vote on whether there is a preponderance of the evidence for the
295 charges proffered by the plaintiff. The FHB may request the presence of the General Counsel at
296 any time during the deliberations.

297
298 The FHB will produce a written report of the board's "findings of fact" (evidence that the FHB
299 believes to be true) and "conclusions of law" (application of facts to the legal standard) based
300 upon the record considered as a whole, and recommendations regarding disciplinary action. The
301 report will also include the vote count regarding the charges. Dissenting minority opinions shall
302 be included in the report.

303
304 Copies of the FHB's report will be sent to the President, the Provost/VPAA, the Dean of the
305 accused's college, the plaintiff, and the accused.

306
307 The accused may elect to respond in writing to the FHB's decision and shall file such response
308 with the President within 10 business days of the FHB's decision. Copies shall be sent to the
309 Provost/VPAA and to the plaintiff.

310
311 The President will review the FHB's report and, if any, the accused's response, and will
312 determine whether to:

- 313
314 1. Dismiss the matter altogether, thereby terminating the disciplinary process;
- 315
316 2. Refer the matter to the Dean of the accused's college for issuance of an oral or written
317 reprimand by the Dean, in which case the Dean's action will terminate the disciplinary process;
- 318 or

319

320 3. Proceed with a disciplinary action no greater than the intended disciplinary action outlined in
321 the Notice of Intent. If the disciplinary action that the President decides upon is not removal for
322 cause, then the President will issue a signed, written Final Determination of Disciplinary Action
323 to be sent to the accused. A copy shall be sent to the Provost, Dean and OHR. If the President
324 determines that removal for cause should occur, he/she shall proceed as outlined below for a
325 hearing at the BOR on the record.

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327 **HEARINGS BEFORE THE BOARD OF REGENTS (BOR)**

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329 A hearing before the BOR may be an evidentiary hearing or a hearing on the record from the
330 FHB hearing. An abbreviated hearing before the BOR shall occur (1) if the accused has
331 responded to the charges for removal and not requested a hearing or (2) if the accused has failed
332 to respond to the removal charges and failed to ask for a hearing.

333

334 If the accused requested an evidentiary removal hearing before the Board of Regents, rather than
335 the FHB, the President shall notify the Chair of the Board of Regents of the request for an
336 evidentiary hearing. The President shall proceed as outlined above in the Response to Notice of
337 Intent to begin the process of the evidentiary hearing.

338

339 If the disciplinary action is removal for cause, and the evidentiary hearing has been held before
340 the FHB, the President will forward, to the BOR, the complete record of the FHB including the
341 FHB's Findings of Fact and Conclusions of Law, any additional response filed by the accused,
342 the transcript of the FHB hearing, and the President's decision.

343

344 If the accused has (1) responded to the charges but declined a hearing, the President will forward
345 to the BOR the Notice of Intent to Remove for Cause and intended disciplinary action and the
346 accused's response to the BOR for abbreviated hearing; if (2) the accused has failed to respond
347 and failed to request a hearing, the President shall forward to the BOR the Notice or Intent to
348 Remove for Cause and intended disciplinary action.

349

350 **A. PROCEDURE FOR AN EVIDENTIARY HEARING AT THE BOR**

351

352 The Board Chair shall provide the accused with a written, signed notice of either a special
353 meeting called for the purpose of providing an evidentiary hearing on removal or of the next
354 regularly scheduled meeting of the Board of Regents at which time the evidentiary hearing shall
355 take place. The hearing shall be not less than twenty (20) business days from the date that notice
356 is delivered to the accused. nor more than forty (40) business days was omitted

357

358 No later than ten (10) business days prior to the scheduled hearing date, the accused may file a
359 written response to the charges and/or intended disciplinary action outlined in the Notice of
360 Intent to Remove for Cause with the Board Chair at the President's Office. A copy shall also be
361 provided to the plaintiff.

362

363 The hearing shall be conducted in accordance with the Hearing Procedures set forth in this
364 Policy as used by the evidentiary hearing before the FHB.

365

366 At the conclusion of the hearing, the Board of Regents may go into closed session to discuss the
367 evidence presented at the hearing and review the President's Recommendation for Removal and
368 the accused's response. The Board may consult with its legal counsel as it deems appropriate
369 during the process. The Board may (1) find in favor of removal, (2) reject removal and remand
370 the matter to the President for recommended disciplinary action as determined by the Board, or
371 (3) reject the matter in its entirety. The Board will issue written findings of fact and conclusions
372 of law in support of its decision and take final action on the decision in open session.

373
374 The President shall inform the accused in writing of the final action of the Board of Regents. A
375 copy shall be sent to the Provost, Dean and OHR. The informing shall occur within 10 business
376 days of the BOR's decision.

377 378 **B. PROCEDURE FOR A HEARING ON THE RECORD AT THE BOR**

379
380 If the accused has had an evidentiary hearing before the FHB, the BOR shall provide a de novo
381 hearing on the record produced at the FHB level, including all exhibits, all charges, and all
382 responses. The Board Chair shall provide the accused with written, signed notice of either a
383 special meeting or of the next regularly scheduled meeting of the Board of Regents when the
384 issue of removal shall be brought before the Board. The hearing shall not be less than twenty
385 (20) business days from the date of notice.

386
387 The Board may retire into Executive Session to consider the case and review all the materials.
388 The BOR may consult with its legal counsel as it deems appropriate during the process. The
389 BOR shall take final action upon the issue of removal only in open session.

390
391 The BOR may:

- 392
393 1. Dismiss the matter altogether, thereby terminating the disciplinary process;
394
395 2. Refer the matter to the Dean of the accused's college for issuance of an oral or written
396 reprimand, in which case the action will terminate the disciplinary process;
397
398 3. Proceed with disciplinary action other than removal for cause, in which case the President will
399 issue a signed, written Notice of Disciplinary Action to be sent to the accused; or
400
401 4. Proceed with removal for cause, thereby terminating the disciplinary process.

402
403 The President shall inform the accused of the final action of the Board of Regents in writing. A
404 copy shall be sent to the Provost, Dean and OHR.

405 406 **C. ABBRIEVIATED HEARING AT THE BOR**

407
408 If the accused responds to the President's Notice of Intent to Remove and Recommendation for
409 Removal for cause, but declines a hearing on the matter, the President shall forward to the Chair
410 of the Board of Regents the President's Notice of Intent to Remove and Recommendation for
411 Removal with cause as well as the accused's response for consideration and action by the Board.

412
413 If the accused has neither filed a response nor requested a hearing, the President shall forward to
414 Chair of the Board of Regents the President Notice of Intent to Remove and Recommendation
415 for Removal.

416
417 In both such cases, the Board Chair shall provide the accused with written, signed notice of
418 either a special meeting or of the next regularly scheduled meeting of the Board of Regents when
419 the issue of removal shall be brought before the Board. The hearing shall not be less than twenty
420 (20) business days from the date of notice.

421
422 At a special or regular meeting of the Board of Regents, the Board may go into executive session
423 to discuss and review the President's Notice of Intent to Remove and Recommendation for
424 Removal and the response of the accused, if any. The Board may consult with its legal counsel
425 as it deems appropriate during the process. The BOR shall take final action upon the issue of
426 removal only in open session.

427
428 The BOR may:

- 429
430 1. Dismiss the matter altogether, thereby terminating the disciplinary process;
431
432 2. Refer the matter to the Dean of the accused's college for issuance of an oral or written
433 reprimand, in which case the action will terminate the disciplinary process;
434
435 3. Proceed with disciplinary action other than removal for cause, in which case the President will
436 issue a signed, written Notice of Disciplinary Action to be sent to the accused; or
437
438 4. Proceed with removal for cause, thereby terminating the disciplinary process.

439
440 In all cases, the President shall inform the accused of the final action of the Board of Regents in
441 writing within ten (10) days of the Board's decision. A copy shall be sent to the Provost, Dean
442 and OHR.

443
444 **RESIGNATION**

445
446 At any point in the disciplinary process, the accused may submit his or her resignation, thereby
447 terminating the disciplinary process.

448
449 **EXTENSION OF TIME**

450
451 Prior to the expiration of any time limit stated in this policy, an extension may be requested of
452 and granted by the President.

453
454 **EXCEPTIONAL CIRCUMSTANCES**

455
456 If a situation arises during the disciplinary process that is not covered in this policy, then the
457 Provost/VPAA or his/her designee and the Chair of the Faculty Rights and Responsibilities

458 Committee or his/her designee will meet to discuss a mutually acceptable solution. If the
459 situation arises during a hearing, then the chair of the board hearing the case will rule.

Morehead State University
Fall 2014 UG Courses by Faculty Status (Dual Credit Excluded)

Faculty Status	%
Full Time	81.7%
Part Time or Adjunct	18.3%
Grand Total	100.0%

