

TENTATIVE AGREEMENT
between
Southern Oregon University
and
The Association of Professors, Southern Oregon University

November 18, 2013

Article 16. Just Cause, Progressive Discipline and Due Process

Note:

- Old Article 15 to be renumbered Article 20
- Old Article 16 to be renumbered Article 15
- Articles 17-19 keep current numbering
- Old Articles 20-25 to be renumbered Articles 21-26 (keeping current ordering)

New Language:

Section 1. Just Cause. Southern Oregon University recognizes the importance of the principle of just cause when considering the need to discipline a faculty member. When appropriate, the University shall adhere to the principles of progressive discipline and sanctions except when summary action is necessary or the severity of the alleged offense warrants more severe action. In determining whether or not to impose discipline and the severity of such discipline, the University shall consider the faculty member's prior conduct and disciplinary record and, whenever possible, take corrective action(s) that are positive and constructive. Any discipline, which is defined as a reprimand, suspension, demotion, or discharge shall be for just cause.

1. The University and the Association agree that, in accordance with OAR 580-021-0325, cause will be defined as:
 - a. Conviction of a felony or of a crime involving moral turpitude during the period of employment by the University (or prior thereto if the conviction was willfully concealed in applying to the University for employment);
 - b. Conduct proscribed by OAR 580-022-0045 (see below) or
 - c. Failure to perform the responsibilities of an academic staff member, arising out of a particular assignment, toward students, toward the faculty member's academic discipline, toward colleagues or toward the institution in its primary educational and scholarly functions and secondary administrative functions of maintaining property, disbursing funds, keeping records, providing living accommodations and other services, sponsoring activities and protecting the health and safety of persons in the institutional community.
2. Evidence to demonstrate cause under the standard set forth in subsection 1.c. of this definition of "cause" may include, but is not limited to, evidence of incompetence; gross inefficiency; default of academic integrity in teaching, research or scholarship; intentional or habitual neglect of duty and failure to perform adequately for medical reasons.
3. For just cause related to a faculty member's sexual harassment or discrimination, the parties acknowledge that specific legal rights of confidentiality for students will also have to be honored.
4. Proscribed Conduct 580-022-0045. Procedures to impose applicable sanctions may be instituted against any person engaging in any of the following proscribed conduct:
 - a. Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other institutional activities, including the institution's public service functions or other authorized activities on institutionally owned or controlled property;

- b. Obstruction or disruption interfering with freedom of movement, either pedestrian or vehicular, on institutionally owned or controlled property;
- c. Possession or use of explosives, dangerous chemicals, or other dangerous weapons or instrumentalities on institutionally owned or controlled property, unless authorized by law, Board, or institutional rules or policies;
- d. Detention or physical abuse of any person or conduct intended to threaten imminent bodily harm or endanger the health of any person on any institutionally owned or controlled property;
- e. Malicious damage, misuse or theft of institutional property, or the property of any other person where such property is located on institutionally owned or controlled property, or, regardless of location, is in the care, custody or control of an institution;
- f. Refusal by any person while on institutional property to comply with an order of the president or appropriate authorized official to leave such premises because of conduct proscribed by this rule when such conduct constitutes a danger to personal safety, property, educational, or other appropriate institutional activities on such premises;
- g. Unauthorized entry to or use of institutional facilities, including buildings and grounds;
- h. Illegal use, possession, or distribution of drugs on institutionally owned or controlled property;
- i. Inciting others to engage in any of the conduct or to perform any of the acts prohibited herein. Inciting means that advocacy of proscribed conduct that calls on the person or persons addressed for imminent action, and is coupled with a reasonable apprehension of imminent danger to the functions and purposes of the institution, including the safety of persons, and the protection of its property;
- j. Violating the Board's Policy for Intercollegiate Athletics as described in Section 8 of the Internal Management Directives, specifically including the subsection thereof entitled Code of Ethics.

Section 2. Exceptions. Some allegations against faculty members must be investigated in accordance with applicable laws and guidelines, and in those cases, the procedures of this Article will be preempted by those laws. These include discrimination and harassment as proscribed by Title VII of the Civil Rights Act of 1964, sexual assault, sexual discrimination or harassment as proscribed in Title IX of Education Amendments of 1972, and mandatory reporting of abuse of minors (ORS 419 B.010). This Article shall apply to all other situations which may require disciplinary action or sanctions.

Section 3. Progressive Discipline and Sanctions.

- 1. Progressive discipline may include oral and written instruction to the faculty member for actions or inactions whenever possible. When sanctions are warranted, possible sanctions shall include oral reprimand, written reprimand, suspension with pay, suspension without pay, temporary suspension from the assignment for which the faculty member is failing to meet professional obligations, and discharge.

While progressive discipline and sanctions shall be the core philosophy of the University, the actions above need not be sequential. Normally, corrective action will be progressive; however, sanctions may be initiated at any step in the process at the University's discretion, depending on the performance problem, the type of conduct, or the nature of the offense involved. Generally, more severe sanctions may be imposed in situations where there is immediate danger to the university community or an established history of disciplinary problems.

2. Procedures for the Imposition of Progressive Discipline and Sanctions.

In many situations, an issue may arise for which the best course of action is simply an informal meeting between the faculty member and their administrative supervisor where problems may be discussed and plans made to improve performance issues. Regular dialogue between faculty and their administrative supervisor is key in this process. Should an issue not be resolved in an informal meeting or the severity of the issue necessitates, the administrative supervisor may proceed with disciplinary action.

Faculty members have the right to be accompanied by a union representative at any meeting they feel would lead to sanction or disciplinary action.

a. Oral Reprimand

An oral reprimand may be issued to a faculty member and should be considered corrective in nature. Every effort should be made as to follow an oral reprimand with a written letter of instruction to the faculty member outlining steps to correct behavior or improve performance. This will not become part of a faculty member's personnel file but a record that the oral reprimand was issued may be noted by the supervisor. Failure by the faculty member to address concerns raised by such a meeting or letter of instruction may form the basis of a subsequent sanction.

Any form of discipline or sanction beyond an oral reprimand requires the review of the Director of Human Resources before issuance.

b. Written Reprimand

The sanction of written reprimand may be imposed by the appropriate administrative supervisor if he/she believes there is cause to warrant the sanction. This sanction, when possible, shall be imposed within (45) university days of the administrative supervisor's knowledge of the act, failure to perform, or condition on which the sanction is based. The written reprimand will outline the behavior or performance that has been found to be unacceptable or unsatisfactory. If University rules or policies have been violated, those should be cited. It will also include expectations for future behavior or work performance or any suggested or required remedial activities that the faculty member must undertake or should consider undertaking and a description of any further disciplinary processes and sanctions that may be pursued if the employee does not improve or repeats the unacceptable behavior.

A written reprimand becomes part of a faculty member's personnel record and a copy is kept in their regular personnel file. After thirty-six (36) calendar months from the date of a written reprimand, if no further sanction has been imposed against a faculty member related to this cause for sanction, the faculty member may request in writing that the notation be removed from his or her file according to Article 10, Section F.

Any form of discipline that is delivered in writing shall include the following statement: "If you choose to contest this action you have the right to be represented by APSOU and you must file an appeal in accordance with Article 17 Grievance Procedure and Arbitration."

c. Sanctions More Severe than Written Reprimand.

A sanction beyond written reprimand may constitute any of the following: suspension with pay, suspension without pay, temporary suspension from the assignment for which the faculty member is failing to meet professional obligations, and discharge.

Procedures for the initiating sanctions more severe than oral or written reprimand are outlined in Oregon Administrative Rules, 580-021-0330, as follows:

If the university president, hereafter “president,” determines that there is probable cause to impose a sanction or sanctions more severe than an oral or written warning or reprimand on an academic staff member, the president shall attempt to reach a satisfactory resolution of the matter. If no satisfactory resolution is reached within a reasonable time, the president shall authorize the preparation of formal charges in accordance with institutional procedure.

Charges against a faculty member shall specifically state the facts believed to constitute grounds for imposition of a sanction or sanctions. The person authorized to prepare the charges shall not participate in evaluating the charges. Charges shall be filed with the president, and a copy personally delivered, or sent by certified mail, to the academic staff member within ten (10) days after the authorization of preparation of charges. The charges or a notice accompanying the charges shall inform the academic staff member of the right to a formal hearing on the charges and of the academic staff member's duty to notify the president within ten days after the charges have been delivered or sent whether such hearing is desired. Hearing procedures are also outlined in the Oregon Administrative Rules 580-021 and Faculty Bylaws, section 6.2.

After thirty-six (36) calendar months from the date of the imposition of a sanction more severe than written reprimand, if no further sanction has been imposed against a faculty member related to this cause for sanction, the faculty member may request in writing that the notation be removed from his or her file according to Article 10, Section F.

d. Investigatory Suspension

Suspension of a faculty member, with pay, during the investigation of a potential sanction is based on the severity of the allegation or if immediate harm to the member or others is threatened by the member's continuance. Notice of this action shall be provided to the faculty member in writing at the time of the suspension outlining the reasons for the suspension and proposed length.

Section 4. Due Process. Due process for the purpose of this article will constitute notice to the faculty member of the discipline to be imposed as outlined above and an opportunity for the faculty member to respond.

1. In the case of oral and written reprimands the faculty member shall be given five (5) university days to respond to the discipline issued. For oral reprimands, the faculty member's response shall be included with the supervisor's notations. For written reprimands the faculty member's response shall be kept in the personnel file attached to the written reprimand or letter outlining the imposed sanction(s).
2. For sanctions more severe than oral and written reprimands, the University will follow the hearing process outlined in the Oregon Administrative Rules 580-021.

FOR THE UNIVERSITY:

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FOR THE ASSOCIATION:

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