

SECTION: PERSONNEL

SUBJECT: Dismissal of Faculty and Other Exempt Employees for Cause

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**Background:** This policy describes the procedures used for the dismissal of faculty and other non-classified (“exempt/professional”) staff on contracts for cause.

(Note: For Non-reappointment or Termination of Faculty / Other Exempt Employees with Term Appointments based on factors other than “for cause”, see Policy 3.118)

**Point of Contact:** HRS

**Other LCSC offices directly involved with implementation of this policy, or significantly affected by the policy:** Office of the President, Provost, Vice President for Finance and Administration.

**Date of approval by LCSC authority** 4/1/10

**Date of State Board Approval** N/A

**Date of Most Recent Review:** March 2010

**Summary of Major Changes incorporated in this revision to the policy:** 1)The policy explicitly sets out the due process procedures; 2) Attorneys are allowed to fully represent the parties in those cases where there is a recommendation for dismissal or demotion; 3) Non-renewal and dismissal policy has been separated; 4) SBOE definition of “Adequate Cause” included in policy.

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**SUBJECT: DISCIPLINE OF FACULTY AND OTHER EXEMPT EMPLOYEES**

Non-reappointment or Termination of Faculty and Other Exempt Employees with Term Appointments based on factors other than “for cause” can be found in Policy 3.118

**A Authority.** Under the provisions of Idaho State Board of Education Section II.L. [http://www.boardofed.idaho.gov/policies/documents/policies/ii/ii\\_1\\_discipline\\_adequate\\_cause\\_all\\_employees\\_08-09.pdf](http://www.boardofed.idaho.gov/policies/documents/policies/ii/ii_1_discipline_adequate_cause_all_employees_08-09.pdf) all non-classified employees of LCSC (including faculty employees) are subject to discipline, up to and including dismissal, for “adequate cause”.

**B. Adequate Cause.** “Adequate cause” means one (1) or more acts or omissions which, singly or in the aggregate, have directly and substantially affected or impaired an employee’s performance of his/her professional or assigned duties or the interests of LCSC or the Board. In addition, any conduct seriously prejudicial to LCSC or the Board may constitute adequate cause for discipline, up to and including dismissal. Examples include, but are not limited to, one or more instances of sexual harassment or other form of harassment prohibited by law; immorality; criminality; dishonesty; unprofessional conduct, actions in violation of policies, directives, or orders of the

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Board or of LCSC; unsatisfactory or inadequate performance of duties, or failure to perform duties.

**C. Determination of Adequate Cause.** In each case, the issue of whether or not adequate cause exists shall be determined fairly by LCSC, recognizing and affording protection to the rights of the employee and the interests of LCSC and the Board, as determined by the appropriate administrative officers to whom his/her responsibility is delegated by the President of LCSC.

**D. Dismissal or Demotion.** The dismissal or demotion of an employee before the expiration of the period of his/her employment contract or appointment or of a faculty member who has been granted tenure will only be for "adequate cause". However, a non-classified employee may be laid off pursuant to a reduction in force resulting from a declaration of financial exigency (see Policy 3.122). The employment of non-classified employees who are not tenured faculty may also be terminated with or without cause at the end of the term of his/her appointment or employment contract (See Policy 3.118.)

**E. Administrative Leave.** The President may place an employee on administrative leave with pay until the employee has exercised the opportunity to respond or has declined to do so (either affirmatively or through inaction) and a recommendation to dismiss or demote has been acted on by the President.

**F. Procedure for Dismissal or Demotion** (*see paragraph G for procedures for discipline actions other than dismissal or demotion*). In the case of a proposed dismissal or demotion of a non-classified, non-tenured employee before the expiration of the stated period of appointment or employment contract or the dismissal or demotion of a tenured faculty employee, adequate cause for dismissal or demotion shall be determined using the procedures set out below:

1. The Provost & Academic Vice-President or his/her designee may recommend dismissal or demotion of a faculty or a non-faculty employee within the Provost's supervisory chain to the President and is hereafter sometimes referred to as the "Recommending Authority" with respect to these employees. The Vice President for Finance & Administration or his/her designee may recommend the dismissal or demotion of a non-classified, non-faculty employee within his/her supervisory chain to the President and is hereinafter sometimes referred to as the Recommending Authority with respect to these employees. The President need not utilize the support of a Recommending Authority for employees in LCSC units which report directly to the Office of the President, but, if desired, may designate the Provost or the Vice President for Finance & Administration to act as the Recommending Authority for an employee from a direct-reporting unit.

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2. Prior to making the recommendation, the Recommending Authority shall give the employee notice of his/her intention to make the recommendation of dismissal or demotion, and the reasons for his/her recommendation. The Recommending Authority shall also give the employee an opportunity to meet with the Recommending Authority to present any reasons, evidence or information in mitigation or opposition to the proposed recommendation.

3. If a recommendation for dismissal or demotion is made to the President, the President must notify the employee, in writing, of the recommendations in the following manner:

(a) The notice must be in writing, and may be personally served upon the employee or be sent to the employee by first class or certified mail, postage prepaid, at the last known address on file for the employee.

(b) The notice must contain a concise statement of the reasons for and the nature of the proposed discipline.

(c) The notice must also contain a statement of the employee's right to exercise the applicable LCSC grievance procedures as set forth below to challenge the recommendation.

(d) Notwithstanding the foregoing and except as otherwise provided in Board Policies and LCSC policies, the President may determine that discipline, up to and including dismissal, shall be effective prior to the initiation and completion by the employee of the applicable grievance procedures and may so state in the notice to the employee.

4. The employee wishing to challenge the recommendation for dismissal or demotion (or the President's preliminary decision that the discipline is to be effective before initiation and completion by employee of the applicable grievance procedure) must give written notice of his/her intention to grieve the recommendation or preliminary decision to the appropriate Hearing Board, the Recommending Official (if applicable) and to the President within fifteen (15) calendar days after the President's notice of the recommendation (or of the President's preliminary decision that the dismissal or demotion is to be effective before completion of the grievance process) is given to employee. In the absence of extenuating circumstances as determined by the appropriate Hearing Board, the failure to file a timely notice of intention to grieve shall constitute a waiver by the employee of his/her right to grieve the recommendation of the Recommending Authority (or the preliminary decision of the President if the dismissal or demotion is to be effective before completion of the grievance process) and the President may proceed to make a final decision on the recommendation.

5. After receipt of the findings and recommendations from the appropriate hearing board, the President or his/her designee will review the hearing board's findings and recommendations and the record of the grievance hearing and will issue a written notice of final

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decision to the employee, setting forth the President's reasons for his/her final decision. Notice of decision shall be given in the same manner the notice of a recommendation for dismissal or demotion was given by President under F.3 (a) - (d), above.

6. The employee may elect to petition the Board to review the final decision of the President. A written petition must be filed in the Office of the State board of Education within fifteen (15) calendar days after the employee receives written notice of the President's final decision. The fact that a written petition is filed or that the Board accepts the petition for review does not stay the effectiveness of the final decision unless otherwise provided by the Board. The Board may agree to review the final action setting out whatever procedure and conditions for review it deems appropriate, as provided in Section II, Subsection L. Board Policies. The Board is not required to review the final action. An employee need not petition the Board for review in order to have exhausted administrative remedies for the purposes of judicial review.

[http://www.boardofed.idaho.gov/policies/documents/policies/ii/ii\\_1\\_discipline\\_adequate\\_cause\\_all\\_employees\\_08-09.pdf](http://www.boardofed.idaho.gov/policies/documents/policies/ii/ii_1_discipline_adequate_cause_all_employees_08-09.pdf)

7. If, under extraordinary circumstances, the Board itself initiates discipline, up to and including dismissal proceedings against an employee, it must, by majority vote, direct the President, or such other administrator as may be appropriate, to follow established procedures for removal of the employee.

8. Internal Grievance Procedures:

(a) Subject to modifications set out below in 8(c) and subject to any contrary provisions of Policy 3.117, a non-classified non-faculty employee shall use the Grievance Procedures for Professional Staff Policy 3.128 to challenge a recommendation for dismissal or demotion and the employee may grieve directly to the Professional Staff Hearing Board, without complying with Section 2.A. of Policy No. 3.128.

(b) Subject to modifications set out below in 8(c) and subject to any contrary provisions of Policy 3.117, a faculty employee shall use the Faculty Grievance Policy 2.115 to challenge a recommendation for dismissal or demotion, and the employee may grieve directly to the Faculty Hearing Board, without complying with Section II.A. of Policy 2.115.

(c) The provision of both the Professional Staff Grievance Policy and the Faculty Grievance Policy which prohibit representation of the employee by an attorney and prohibit the attorney from fully participating in the grievance proceeding shall not apply to the grievance of a recommendation to dismiss or demote the employee. Both the employee and the college may be represented by attorneys who may present evidence, cross-examine witnesses called by the other side, make arguments to the Hearing Board and otherwise fully represent those parties during the grievance proceeding. In the event either side is represented by an

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attorney, LCSC may, at its expense, engage an attorney, an active or retired judge, or other person having experience acting as a judge or administrative hearing officer, who is acceptable to both parties, to act as the procedural observer and as a legal advisor to the Hearing Board. Such attorney-procedural observer may act as the presiding officer during the grievance hearing at the request of the majority of the hearing board who are hearing the grievance.

**G. Discipline other than Dismissal or Demotion.**

1. The Provost & Academic Vice-President or his/her designee shall have the authority to make the decision regarding the existence of adequate cause to impose discipline other than dismissal or demotion on a faculty employee or non-faculty employee within his/her supervisory chain and shall be the "Determining Authority" with respect to these employees. The Vice President for Finance & Administration or his/her designee shall have the authority to make those decisions with respect to non-classified, non-faculty employees within his/her supervisory chain and shall be the Determining Authority as to non-classified, non-faculty employees. The President shall normally be the Determining Authority for employees in units reporting directly to the Office of the President, or may, if desired, appoint the Provost or Vice President for Finance & Administration to act as the Determining Authority in such cases.

2. Before making a final decision, the Determining Authority shall give the employee a written statement setting out the contemplated discipline, the basis for the contemplated discipline and generally describing any information used to formulate the preliminary determination of adequate cause. The employee shall be notified that he or she has fifteen (15) calendar days, or more, in the discretion of the Determining Authority, in which to respond to the notice given him by the Determining Official or to decline to respond, either affirmatively or through inaction. The written notice shall be given by the Determining Authority to the employee in the manner provided in F.3 (a) - (d), above.

3. After the employee's period to respond expires, the Determining Authority considers any response by the employee and shall notify the employee in writing of his/her decision which shall be effective immediately.

4. The employee may appeal the decision of the Determining Authority by filing an appeal with the applicable Hearing Board as set out in the case of dismissal (see Sections 8(a) and 8(b)) within fifteen (15) calendar days after receipt of the Determining Authority's written notice of decision. Except as modified in Section 8 regarding time for appeal, the rules contained in Sections 2.115 and 3.128 shall apply without the modification permitting attorney participation contained in Section F.8.(c), above.

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5. Either party may appeal the recommendation of the Hearing Board to the President as provided in the applicable grievance policy and the decision of the President shall be the final institutional decision.

6. The employee may also elect to petition the State Board to review the final institutional decision to impose discipline other than dismissal in the manner and within the time period set out in State Board Policy Section II L.