

SUBJECT: DISMISSAL OF FACULTY AND OTHER EXEMPT EMPLOYEES

- 1.0 Under the provisions of the Idaho Code, 33-2306, 33-3006, 33-3100, or 33-4005, and the applicable provisions of the constitution of the state, the Board may dismiss for cause, any president, officer, faculty member, or other employee of any institution under its constitutional and statutory authority.
 - 1.1 Termination by LCSC of the employment of a faculty member who has been granted tenure, or of any other exempt employee before the expiration of the stated period of appointment, except in the case of retirement for age, will be only for good cause shown. As provided in 3.118, any exempt employee may be laid off in conjunction with a reduction in force approved by the Board and resulting from a declaration of financial exigency.
 - 1.2 Cause for dismissal or termination of an exempt employee is any conduct seriously prejudicial to LCSC, its students, or faculty; for example (but not by way of limitation), immorality, criminality, dishonesty, unprofessional conduct, actions in violation of policies, directives, or orders of the Board, or failure to perform, or incompetence in the performance of, his or her assigned or contractual duties.
 - 1.3 Violations of Idaho Code, 33-3715 and 33-3716, or violation of any law that results in a felony conviction of an exempt employee may be cause for suspension with pay or dismissal from LCSC. Dismissal must be preceded by the procedures described in this section. It is not necessary that such violations be committed on the campus of one of the institutions of the state of Idaho unless such location is a material element of such violation.
 - 1.4 If an exempt employee fails to meet teaching commitments or to fulfill assigned duties, except by reason of illness, college business, or other circumstances with the president's approval, the president may take appropriate action to suspend the employee, with pay, from his or her assigned duties and/or recommend the employee's dismissal.
 - 1.5 In each case, the issue of whether or not good cause for termination or dismissal exists is to be determined by an equitable procedure, affording protection to the rights of the individual employee and to the interests of the state of Idaho and its system of higher education.
 - a. The president may for good cause suspend, with pay, an exempt employee pending immediate investigation or speedy hearing as hereinafter provided.
 - b. The president notifies the Board in writing of his or her recommendation for dismissal of an exempt employee, concisely stating the reasons therefor. In arriving at the recommendation, the president may utilize whatever professional advice may be required to ascertain the facts in the case.

At the same time that the president makes the recommendation to the Board, the

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president notifies the employee of the recommendation and proceeds in the following manner:

- (1.) The notice from the president must be in writing and will be personally served on the employee or be sent by certified mail, return receipt requested, directed to the designated address of the employee. The notice must contain a concise statement of the right of the employee, in cases where offenses are charged other than those mentioned in 1.2, and in all cases where the facts are in dispute, to appeal to president's recommendation directly to the Board. The employee must notify the Board, in writing to the Office of the State Board of Education, that he or she so appeals within 30 days from the date of receipt of the notice given by the president.
 - (2.) The Board may constitute itself as the hearing tribunal, or may appoint a hearing committee of not fewer than three of its members, or may appoint a single hearing officer, not a member of the Board, who is an attorney duly licensed to practice law in Idaho, and who is not an employee of an institution of higher learning.
- c. If the employee timely exercises his or her right to appeal, the Board must give reasonable notice of the time, place, and nature of the hearing and the person or persons before whom the same shall be heard. In every such hearing, the employee will have the right to appeal on his or her own behalf or be represented by any other party who has not formally participated in the matter on behalf of the Board or any other party and cross-examine witnesses who may appear against the employee. Failure of the employee to appear at the time and place specified in the notice of hearing constitutes a waiver of further proceedings and the employee's appointment may be terminated forthwith by the Board.
 - d. The accused employee has the right to testify in his or her own behalf, but is not required to do so, and may introduce in his or her behalf evidence, oral or documentary, that may be relevant or material to his or her defense and the issue of whether good cause for dismissal exists.
 - e. With respect to the admissibility of evidence, the hearing tribunal, committee, or officer, as the case may be, is governed and controlled by the provisions of Idaho Code, 67-5210, or as the same may be hereafter amended.
 - f. A stenographic or electronic record of the proceedings is taken and filed with the Board, and such record is made accessible to the employee.
 - g. LCSC has the right to be represented by counsel of its selection at the hearing and is entitled to present witnesses and evidence against the employee.
 - h. The hearing tribunal by a majority of its membership, or the hearing committee by a majority of its membership, or the hearing officer will make written findings on the material facts presented and a recommendation for the continuance or

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termination of the employee's term of employment, or may make any supplementary suggestions it deems proper concerning the disposal of the case. The original of such findings and the recommendations, together with any supplementary suggestions, are delivered to the Board and a copy thereof to the employee. If minority findings, recommendations, or suggestions are made, they are similarly treated.

- 1.6 Upon receipt of the findings and recommendations, the Board, by a majority of the total membership, shall approve, reject, or amend such findings, recommendations, and suggestions, if any, or may remand the report to the same tribunal for hearing additional evidence in reconsideration of its findings, recommendations, and suggestions, if any. Reasons for approval, rejection, or amendment of such findings, recommendations, or suggestions are stated in writing and communicated to the employee.
- 1.7 If, under extraordinary circumstances, the board itself initiates dismissal proceedings against an employee it must be by majority vote, direct the president, or such other administrator as may be appropriate, to follow proceedings for removal of said employee as outlined in 1.1. However, should the proceedings be started by directive of the Board, the Board will appoint a single hearing officer as provided in 1.5.
- 1.8 Nontenured faculty members who are notified that they will not be reappointed or that the succeeding academic year will be the terminal year of appointment, in accordance with the provisions of 2.111 C, are not entitled to a statement of the reasons upon which the decision for such action is based. No hearing to review such a decision will be held unless the affected faculty member submits in writing to the Board factual allegations that the decision to terminate was made for legally impermissible reasons, and requests a hearing to review these allegations. Such allegations must be heard under the same procedures as in the case of dismissal for cause, with the following exceptions:
 - a. The burden of proof is upon the affected faculty member to establish at such hearing that the decision in question was based on his or her exercise of rights guaranteed by the laws or constitution of this state or the United States; and
 - b. The Board need not state the reasons for the questioned decision or offer evidence in support thereof unless the affected faculty member presents a prima facie case in support of his or her allegations.
- 1.9 The awarding of tenure to an eligible faculty member is made only by a positive action of approval by the Board upon the recommendation of the president of the institution. The president must give notice in writing to the faculty member of the Board's approval or denial of tenure status no later than one week following the meeting of the Board at which the action was taken. Notwithstanding any provisions in these policies to the contrary, no person will be deemed to have been awarded tenure because notice is not given or received by the times prescribed in any sections of these policies. No faculty member may construe lack of notice of denial of tenure as the awarding of

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tenure. If the president has not given notice to the faculty member as provided for in these policies, it is the duty of the faculty member to make inquiry to ascertain the decision of the Board and the president.

- 2.0 Dismissal or demotion of administrators, or non-teaching personnel before the expiration of the stated period of appointment or employment will be only for good cause shown, as determined by appropriate administrative officers to whom this responsibility is delegated by the president of the institution and in case of such dismissal or demotion any appeal shall be reviewed by the president.

2.1 Interpretations Relating to Tenure

- a. The prior service in the institution of a nontenured faculty member holding academic rank who has left the institution and is subsequently reappointed after a lapse of not more than three years may be counted toward eligibility for the award of tenure, except that the faculty member may be required to serve additional years before being reviewed for tenure status. Eligibility for the award of tenure must be clarified in writing before reappointment.
- b. A tenured faculty member who has left the institution and is subsequently reappointed after a lapse of not more than three years must have tenure status clarified in writing by the president or his or her designee before appointment. The faculty member may be reappointed with tenure, or may be required to serve additional years before being reviewed for tenure status.
- c. Before a nontenured faculty member holding academic rank is moved from one position in the institution to another, the member must be informed in writing by the academic vice president, after consultation with the receiving department, as to the extent to which prior service may count toward eligibility for tenure status.
- d. No faculty member's tenure in a discipline may be adversely affected by the reorganization of the administrative structure. A faculty member's tenure is not affected by reassignment of academic responsibilities.
- e. When a tenured faculty member is serving as department chairman, college dean, or in some other administrative or service capacity, retention of membership, academic rank, and tenure in the subject-matter department or similar unit is maintained. Should the administrative or service responsibilities terminate, the member takes up regular duties in the discipline within which membership, academic rank, and tenure was retained.