

**NYU GROSSMAN SCHOOL OF MEDICINE
AMENDMENT TO THE
NEW YORK UNIVERSITY FACULTY HANDBOOK**

Approved by the New York University Board of Trustees, December 9, 2020

DISCIPLINARY RULES AND PROCEEDINGS FOR TENURED AND TENURE TRACK FACULTY
FOR THE GROSSMAN SCHOOL OF MEDICINE

[The procedures outlined below are intended to supersede the procedures set forth in Titles I (VI), III and IV of the New York University Faculty Handbook establishing the disciplinary rules and proceedings applicable to tenured and tenure-track faculty members at the Grossman School of Medicine]

A. Tenured Faculty

I. Termination of a Tenured Appointment

A tenured faculty member's employment and faculty appointment in the Grossman School of Medicine may be terminated for "Adequate Cause" as defined in Title I.VI.2 of the New York University Faculty Handbook.

II. Proceedings for Termination of a Tenured Appointment

1. General Provisions

- a) [Rules; notice; record] Proceedings for termination of service for cause shall be conducted in accordance with the rules herein as may from time to time be amended by the Board of Trustees, and shall be initiated by service upon the person involved of a written notice setting forth clearly and directly all charges preferred against him or her and informing him or her of his or her rights under this section. The person charged shall be entitled to a hearing before a hearing panel of the Grossman School of Medicine Tenure and Tenure-Track Faculty Disciplinary Committee. A full stenographic record of the hearing shall be given to the parties concerned.
- b) [Appeal to the University President] Upon the request of either the faculty member charged or the charging party, the record, findings, conclusions, and proposed sanctions of the hearing panel of the Tenure and Tenure-Track Faculty Disciplinary Committee shall be forwarded to the University President for review and final determination. In the absence of such request, the findings, conclusions, and proposed sanctions of the hearing panel shall be final.
- c) [Rules bind all parties] The rules regulating proceedings to terminate service for cause shall be binding upon all parties.
- d) [Summary suspension] Summary suspension pending termination proceedings is an extraordinary remedy, but nothing in this statement shall be interpreted as precluding such action

by the Dean of the School, with the assent of the President whenever, in his or her judgment, continuance of the person in service threatens substantial harm to himself or herself, to others, or to the welfare or reputation of the University or the Grossman School of Medicine. During the period of such suspension, the faculty member's pay shall be adjusted to, and the faculty member shall be paid, the base salary commensurate with the faculty member's position, except in a case where the faculty member is incarcerated or under prosecution for a criminal act or is employed by another employer with equivalent compensation during the period of any such suspension, in which case the suspension shall be without salary or compensation. At any time during the pendency of termination proceedings, the President may lift or modify any suspension in the interest of substantial justice.

2. Initiation of Dismissal Proceedings

- a) Whenever the Dean or the Vice Dean for Education, Faculty, and Academic Affairs of the Grossman School of Medicine (the "charging party"), with the assent of the President, deems that such action is warranted, the charging party shall initiate proceedings to terminate for cause the service of a tenured faculty member. The charging party shall formulate, or cause to be formulated, the charges in writing. A copy of such charges, together with notice of proceedings for termination of his or her service for cause, shall be e-mailed or mailed by registered mail to the faculty member involved (the "respondent").
- b) The respondent shall serve a written answer upon the charging party within twenty (20) days after service of the charges and notice upon him or her admitting or denying each of the allegations contained in the charges and setting forth any defenses to the charges. The time for service of the answer may be extended by the charging party in the interests of substantial justice.
- c) Upon receipt of the answer of the respondent, unless the respondent resigns their tenured faculty appointment, the charging party shall convene the Tenured and Tenure-Track Faculty Disciplinary Committee. The Committee shall be composed of five members, each a tenured faculty member, consisting of President of the Faculty Council, the Chair of the Grossman School of Medicine Appointments, Promotion and Tenure Committee, the Chair of the Professional Conduct Committee of NYU Langone Hospitals, the School of Nursing's longest-serving Senator on the Tenured/Tenure Track Faculty Senators Council, and the School of Dentistry's longest-serving Senator on the Tenured/Tenure Track Faculty Senators Council. In the event any of the faculty members holding these designated positions are non-tenured, the Executive Committee of the Faculty Council shall select a tenured member of the body represented by such non-tenured faculty member (except that, in the case of the Faculty Council, it shall be the most recent past President of the Faculty Council who was tenured). After appointment, in the event of a Committee members' conflict of interest or inability to serve, the other Committee members will designate a tenured senior faculty member of the body represented by such Committee member to serve on the Committee in such member's place. No member of the Tenured and Tenure-Track Faculty Disciplinary Committee from the same department as the respondent may serve as a member of the Committee during tenure revocation proceedings.
- d) The charging party shall forward to the Tenured and Tenure-Track Faculty Disciplinary Committee copies of the written charges and of the answer to such charges. If the respondent fails to serve a written answer within twenty (20) days, or any extension of such time, the charging party shall nevertheless forward the charges to the Tenured and Tenure-Track Faculty

Disciplinary Committee with a statement showing that no answer has been served by the respondent.

- e) Within twenty (20) days after submission of the charges and answer, or of the charges alone, as the case may be, to the Tenured and Tenure-Track Faculty Disciplinary Committee, the committee shall set a time for the commencement of a hearing, which shall not be more than thirty (30) days thereafter unless further time is granted by the Committee upon request of either party. The Tenured and Tenure-Track Faculty Disciplinary Committee shall serve as the hearing panel.

3. Conduct of Hearings before the Hearing Panel

- a) A hearing officer who is an attorney shall preside over the hearing on the charges. The charging party and the respondent shall select a hearing officer from a list of 10 qualified attorneys compiled by the American Arbitration Association to conduct the proceedings. The charging party and respondent may each strike up to five names from the list and each shall rank, in order of preference, the names of those whom they have not stricken. The Association shall then designate as the hearing officer the available person with the highest degree of joint preference of the parties. Should more than one available person have an equally high joint preference, the Association shall select the hearing officer by lot from those with the highest joint preference.
- b) A calendar of hearing dates in a proceeding for dismissal shall be fixed by the hearing panel after consultation with the parties to the proceeding and the hearing officer; the calendar shall be read into the record on the opening day of the hearing; it shall be adhered to unless the hearing panel orders exceptions for due cause. Whenever the interests of substantial justice appear to so require, the hearing panel may direct either or both parties to submit a summary of the evidence, a first list of witnesses to be called, or both. If the statement of the charges, or the answer thereto, appears to the hearing panel to be indefinite or obscure, the hearing panel may require a more definite statement. Where the respondent has failed to serve an answer to the charges and where it further appears that the respondent is unable to understand the charges and to participate meaningfully in the proceeding, the panel shall obtain the services of a qualified person to represent the respondent, at the respondent's expense. In the absence of such circumstances or other good cause, upon the failure of the respondent to serve an answer prior to the commencement of a hearing or to appear at the hearing, the panel may, in its discretion, preclude the subsequent assertion of any defense or the introduction of evidence on behalf of the respondent.
- c) The hearing officer shall preside over the hearing and rule on all procedural matters, including the admissibility of evidence, subject to the right of each party to appeal to the hearing panel. Upon such appeal, the decision of a majority of the panel members shall control. The panel shall have the power to enlarge the time appointed in these procedures for doing any act or taking any proceedings, where the interests of substantial justice appear to so require.
- d) The hearings shall not be restricted by the rules of procedure or of the admissibility of evidence which prevail in the courts of law. Subject to the provisions of section (c) above, each member of the hearing panel may inquire into whatever is believed relevant to the inquiry. Whenever the proceedings originate from a finding of scientific or research misconduct in accordance with the separate rules governing such proceedings, the hearing panel shall deem the report of the earlier

committee to constitute the facts as to the existence of such misconduct.

- e) The respondent and the charging party may be assisted by counsel of his or her choice throughout the proceedings. Counsel for both sides shall cooperate at all times with the panel and the hearing officer.
- f) A request by either party to present witnesses shall be made to the hearing panel, which may limit the hearing of witnesses at its discretion. If witnesses are called, each party shall have the right of cross-examination. Each party may introduce exhibits, which shall constitute part of the record of the case.
- g) A stenographic record shall be made of all proceedings at the hearing. On order of the hearing officer, procedural matters may be discussed in executive session, the minutes of which need not be included in the transcript of the record of the hearing. The transcript shall be available to all parties to the hearing.
- h) Each party shall have equal opportunity at the final session of the hearing for the summation of the case, either in person or by counsel, but no new evidence or testimony may be introduced during such summation.
- i) All five members of the hearing panel shall be present at the hearing. If, after the commencement of the hearing, a member of the panel becomes unable to continue to serve, he or she shall be excused from further service, and the member's designee (a tenured senior faculty member of the body they represent) shall serve in his or her place. Prior to serving on the panel, the member's designee must have read the hearing transcript and all charges and other pleadings filed in connection with the hearing and certify to having done so. Should a member of the panel repeatedly fail to carry out his or her obligations as a member of the panel, upon a unanimous vote of the remaining members of the panel, he or she may be discharged from further service and replaced by a tenured senior faculty member of the body represented by the replaced member, such replacement member to be elected by the remaining panel members.
- j) Upon completion of the hearing, the panel shall deliberate and issue its decision in a written report. The deliberations shall be conducted in executive session and shall be attended only by the members of the hearing panel. The decision of the panel must be based upon the evidence presented, and no recommendation of dismissal shall be made based solely upon the failure of the person involved to answer the charges or appear at the hearing. The decision of the panel must be supported by a majority of its members.
- k) [Hearing Immunity]. The members of the Board of Trustees, the President and Provost of the University and other officers of administration, the members of the Tenured and Tenure-Track Faculty Disciplinary Committee, the Vice Dean, the Dean and members of the faculty, and all witnesses and other participants in any hearing shall be absolutely privileged as to statements or publications made in connection with the hearings, and shall have complete immunity for any decision, statement of fact, or comment relating thereto.

4. Decision and Report of the Hearing Panel

- a) The hearing panel's decision shall resolve the matter, unless the matter is appealed, as set forth in section (d) below. The report containing the hearing panel's decision shall be in writing and shall consist of: (1) a transcript of the record of the hearing and the exhibits offered or introduced into evidence by the parties; (2) such findings, conclusions and any proposed sanctions as the panel shall make, including a statement of the facts deemed essential to the findings; (3) a memorandum setting forth the reasons for any recommendations; and (4) any memorandum submitted by any dissenting member of the panel, at his or her own discretion, with reference to his or her opinion as to the matters in controversy.
- b) Each finding, conclusion, and recommendation shall be reported with the numerical vote of the members of the panel but not with the names of the members who voted for or against the same.
- c) Complete copies of items (2), (3), and (4) in section (a) above shall be transmitted to the parties to the hearing and to the University President.

5. Appeal to the President

- a) Either party may appeal the hearing panel's decision in writing to the University President, who may seek consultation at his or her own discretion. The bases for appeal are limited to the following: (1) findings in support of one or more of the charges are not supported by substantial evidence in the record as a whole, or (2) hearing was not conducted fairly or was not conducted in substantial compliance with the governing rules, or (3) the sanction is disproportionate to the infraction. The appeal request should set forth the basis for the party's appeal, and any arguments in support of a reversal of the hearing panel's decision.
- b) Upon appeal, after reviewing the report and decision of the hearing panel, and any documentation submitted in support of the appeal, the President shall issue a written decision, which shall be considered final.
- c) [Appeal of Decision to Dismiss for Cause]. On appeal of the hearing panel's decision to dismiss the faculty member for cause, the President shall uphold the hearing panel's decision unless the President determines either: (i) that the findings against the faculty member on one or more of the charges are not supported by substantial evidence in the record as a whole; (ii) that the hearing was not conducted fairly and in substantial compliance with the rules set forth above for the conduct of such hearings; or (iii) that the sanction of dismissal is not appropriate. If the President determines either (i), (ii), or (iii), the President shall have the option to either: a) dismiss the charges; b) remand the case for a new hearing before the same or a new hearing panel; or c) reduce the sanction.
- d) [Appeal of Decision Not to Dismiss for Cause]. On appeal of the hearing panel's decision not to dismiss the faculty member for cause, the President shall make the final determination with respect to the appropriate sanction to be imposed, including any decision to dismiss the faculty member or increase any sanction recommended by the hearing panel. If the President determines either that the hearing panel's findings are not supported by substantial evidence in the record as a whole, that the hearing was not conducted fairly, or was not conducted in substantial compliance with the governing rules to the detriment of the charging party, the President shall have the option, but shall not be required, to remand the case for a new hearing before the same or a new hearing panel.

- e) If the President's decision is to terminate the service of the tenured faculty member, it shall be subject to approval by the Board of Trustees. The final disposition of the case shall be made public only after the faculty member has been officially informed of the decision of the President. Until that time no information concerning the hearings shall be disclosed to the public.

B. Tenure-Track Faculty

Notwithstanding provisions set forth in Title II, Section XI of the Faculty Handbook by which a non-tenured tenure track faculty member may be removed upon sufficient notice where it is unlikely that tenure will be achieved, a tenure-track faculty member may be removed for "Adequate Cause" (as defined in Title I.VI.2 of the University Handbook), in which case the proceedings set forth below shall apply.

I. Proceedings to Terminate for Cause a Non-Tenured Tenure-Track Appointment

- a. Whenever the faculty member's Department Chair (the "charging party") deems that such action is warranted, the charging party shall initiate proceedings to terminate for cause the service of a non-tenured tenure track faculty member.
- b. The charging party shall draft a memorandum setting forth the basis for removing the faculty member and forwards to the Vice Dean for Education, Faculty, and Academic Affairs of the Grossman School of Medicine (the "responsible administrator"). Upon authorization by the responsible administrator, a copy of such memorandum, together with notice of proceedings for termination of his or her service for cause, shall be e-mailed or mailed by registered mail to the faculty member involved (the "respondent").
- c. The respondent shall serve a written response to the charging party and to the responsible administrator within twenty (20) days after receipt of the charging party's memorandum. The time for service of the answer may be extended by the responsible administrator in the interests of substantial justice.
- d. The responsible administrator shall forward to the Tenured and Tenure-Track Faculty Disciplinary Committee (as described in Section II.2(d) above) a copy of the memoranda from each party. If the respondent fails to serve a written response within twenty (20) days, or any extension of such time, the responsible administrator shall nevertheless forward the charging party's memorandum to the Committee with a statement showing that no response has been served by the respondent.
- e. Both the charging party and the respondent will have the opportunity to appear before the Committee to present an oral summary of the arguments in support of their position. The respondent and the charging party may be assisted by counsel of his or her choice. Counsel for each party shall cooperate at all times with the panel.
- f. A request by either party to present witnesses shall be made to the hearing panel, which may limit the hearing of witnesses at its discretion. If witnesses are called, each party shall have the right of cross-examination. Each party may introduce exhibits, which shall constitute part

of the record of the case.

- g. Each member of the Committee may inquire into whatever is believed relevant to the inquiry. Following the oral summaries, the Committee shall deliberate and deliver its decision, in writing, to both parties and to the responsible administrator. The Committee's decision shall consist of: (1) such findings, conclusions and any proposed sanctions as the panel shall make, including a statement of the facts deemed essential to the findings; (2) a memorandum submitted by any dissenting member of the panel, at his or her own discretion, with reference to his or her opinion as to the findings, conclusions, and any proposed sanctions.
- h. Either party can appeal the Committee's decision to the Dean. The bases for appeal are limited to the following: (1) findings are not supported by substantial evidence in the record as a whole, or (2) the sanction is disproportionate to the infraction.
- i. After reviewing the report of the Committee, the Dean shall issue a written decision to the parties, which shall be considered final. If "cause" is found, the faculty member shall no longer be eligible for tenure at the School and may be terminated without further notice.

C. Other Disciplinary Proceedings for Tenured or Tenure-Track Faculty

. The following procedure is applicable where a question arises concerning an alleged violation by any member of the faculty of a rule or regulation of the University or the Grossman School of Medicine, with the exception of the proceedings brought by the appropriate official to terminate the services of a faculty member with tenure.

- a. After an internal investigation confirms evidence of a basis for such action, the Chair of the faculty member's department shall make a recommendation to the Vice Dean for Education, Faculty, and Academic Affairs of the Grossman School of Medicine for disciplinary action. Disciplinary action under this section shall include, but is not limited to, the following:
 - 1) Reprimand
 - 2) Censure
 - 3) Removal of Privileges
 - 4) Suspension
 - 5) Monetary fine
- b. If the Vice Dean approves disciplinary action, the Vice Dean will notify the Chair, who will notify the faculty member in writing.
- c. The faculty member has the right to appeal the decision in writing to the Dean on the following grounds: (1) the decision was not supported by substantial evidence on the record, or (2) the investigation was not conducted fairly or in accordance with the applicable policy and/or procedures; or (3) the sanction is disproportionate to the infraction.
- d. Upon review of the record and the appeal request, the Dean shall issue a decision, which shall be considered final.