

### III. H. Termination of an Appointment for Medical Reasons.

**Comment:** Formerly III.B.9—the present version has been expanded to make the procedures consistent with III.F., which it cross-references, and with AAUP

**1. Informal Inquiry.** A faculty member in a tenured or tenure-eligible position, or a faculty member in a specified term appointment who has not reached the end of his or her contract, may be dismissed for physical or mental disability only on the basis of clear and convincing medical evidence<sup>1</sup> that the faculty member, even with reasonable accommodation, is no longer able to perform the essential duties of the position. When a program director, department chair, or dean finds evidence that a faculty member under his or her supervision may be unable to perform the essential duties of his or her position, that administrative officer shall discuss the problem with the faculty member or with the faculty member's representative. The administrative officer shall provide the faculty member (if necessary, via the representative) an opportunity to respond; he or she shall seek a solution that is mutually satisfactory.

**Comment:** Do we need to cite ADA here? Question to Kiersten (still pending)

**Comment:** Change per AAUP

Should no settlement be reached, the administrative officer shall notify the Provost in writing and provide a copy of the notification to the faculty member; the faculty member will have 10 calendar days to respond. The Provost shall then submit the written statement describing the problem, framed with reasonable particularity, along with any response from the faculty member, to the Procedural Review Committee, which shall initiate an informal investigation. The PRC may, at its discretion, consult the College's Equal Opportunity Officer in order to determine whether the College has offered "reasonable accommodation." The Procedural Review Committee shall try to negotiate a settlement; should no settlement be reached, the Committee shall prepare a written report of its investigation, indicating whether in its opinion dismissal proceedings should be undertaken, without its opinion being binding upon the Provost. The faculty member shall receive a copy of the report and shall have 10 calendar days in which to submit a response to the Provost. If the Provost and the faculty member are still unable to reach a settlement and the faculty member requests a formal hearing, the Provost will initiate the formal investigation.

**Comment:** PRC asks at what point does the Provost introduce medical evidence and how does he get it? Geoff & I decided that couldn't be spelled out, esp. given the confidentiality of medical records

**Comment:** PRC suggests building in an opportunity for the faculty member to seek a settlement—we think that's given in the next sentence

**2. Formal Investigation.** The formal investigation shall be conducted by the Faculty Hearing Committee per the procedures outlined in III.F.4.c. The burden of proof that the faculty member is no longer able to perform the essential duties of the position, even with reasonable accommodation, rests with the College and shall be satisfied only by clear and convincing evidence<sup>1</sup> in the record considered as a whole. Should the proceedings result in dismissal, the faculty member may appeal to the Board of Visitors per the procedures outlined in III.F.5. The faculty member shall receive compensation and notice in accordance with the following schedule: at least three months, if the final decision is reached by March 1 (or

**Comment:** Change per AAUP

<sup>1</sup> Clear and convincing evidence does not require evidence that is beyond a reasonable doubt. Rather it is defined as that degree of proof which will produce a firm belief in the allegations sought to be established. Clear and convincing evidence thus is an intermediate standard requiring more than a preponderance of evidence, but less than the certainty required by evidence that is beyond a reasonable doubt. Clear and convincing evidence does not require that certainty.

three months prior to the expiration) of the first year of service; at least six months, if the decision is reached by December 15 of the second year (or after nine months but prior to eighteen months) of service; at least one year, if the decision is reached after eighteen months of service or if the faculty member has tenure. On the recommendation of the Faculty Hearing Committee and/or the President, the Board of Visitors, in determining what, if any, payments will be made beyond the effective day of dismissal, may take into account the length and quality of service by the faculty member.

**Comment:** FAFAC: very confusing.. Does "day of dismissal"="day of decision"? Why are compensation and notice date tied together? Suggest that one should link the various levels of compensation and notice to time in service, not to calendar date (people who start in contract in January, for example.)

**Comment:** Possibly substantive—changed from PRC in the original to keep consistent with III.F.

**Comment:** FAFAC: this "if any" seems to contradict the "shall receive" in sentence before. Should it read " what, if any, payments made in excess of those outlined in the sentence before"?