

SECTION 231

APPEAL PROCEDURE FOR DISCIPLINARY AND REDUCTION IN FORCE ACTIONS

SOURCE: NDUS Human Resource Policy Manual, Section 27

1. A Staff Personnel Board shall be appointed by the President to hear employee appeals and employee grievances pursuant to NDSU policy 230. This Board shall consist of three appointed members. The three members shall appoint a chairperson who shall conduct the hearing, unless the Staff Personnel Board appoints a hearing officer pursuant to Section 231.3.
 - 1.1 The Staff Senate Executive Committee shall recommend to the President, on an annual basis, a pool of nine employees for potential appointment to the Board for a specific hearing. Members must have a minimum of 5 years of employment at NDSU and should be generally representative of different banded categories. Pool members can serve a maximum of three consecutive years. Vacancies in the 9 member pool do not have to be filled during the year, but may be at the discretion of the Executive Committee.
 - 1.2 The President shall assign three members from the pool to be on the Staff Personnel Board for a specific grievance hearing. If a conflict arises and less than three members of the pool are available for a grievance hearing, the Executive Committee shall recommend a replacement for that hearing to the President for approval.
2. Any regular staff employee who has been suspended without pay, dismissed for cause, changed to a lower pay rate, or dismissed due to a reduction in force may request a hearing with the Staff Personnel by filing a written notice, accompanied by a specification of the reasons or the grounds upon which the appeal is based *and the remedy being sought* with the Director of Human Resources/Payroll. Such appeal must be filed with the Director of Human Resources/Payroll within five (5) working days following such action. The Staff Personnel Board shall hear both sides of the appeal and, after weighing all evidence presented to the Board, consider whether adequate cause for the institution's action existed, reporting its decision to the President.
3. The Staff Personnel Board may appoint a *qualified, institutionally recognized* person as a hearing officer with authority to conduct pre-hearing meetings, supervise discovery, advise the Staff Personnel Board or preside over the hearing.
 - 3.1 The Staff Personnel Board may hold joint pre-hearing meetings with the parties in order to (a) simplify issues, (b) effect stipulations of facts, (c) provide for the exchange of documentary or other information, or (d) achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective and expeditious. The employee, NDSU and their representatives shall participate in pre-hearing meetings upon request and comply with the directives of the Staff Personnel Board or its representative.
 - 3.2 The Staff Personnel Board shall serve written notice of hearing on the employee, *the department head* and the President, or their representatives, at least twenty calendar days prior to the hearing.

- 3.3 The employee and NDSU may stipulate to a decision on the basis of the written statements, in which case the Staff Personnel Board shall make its decision on that basis.
 - 3.4 During the proceedings, NDSU is entitled to have counsel or a representative and the employee is entitled to have counsel or a representative of their choice at their own expense. Proceedings concerning the appointment or removal of an employee shall be closed, unless the employee requests that the proceedings be open. Either party or the Staff Personnel Board may invite up to two observers each to attend the proceedings.
 - 3.5 A record of the hearing or hearings shall be made at NDSU's expense and shall be accessible to both parties. The record shall be made by a reporter or a stenographer, or by the use of an electronic recording device. The Office of Human Resources/Payroll shall maintain the official hearing record and the hearing file. A party shall be provided a copy of the record, or part of the record, at the requesting party's expense.
 - 3.6 The findings of fact, conclusions and the decision shall be based solely on the evidence received by the Staff Personnel Board. The burden of proof that grounds for NDSU's actions exist shall rest with NDSU and be satisfied by a preponderance of the evidence in the record considered as a whole.
 - 3.7 The Staff Personnel Board may admit any evidence which is of probative value in determining the issues or if the interests of justice will best be served by admitting the evidence. Every reasonable effort shall be made to obtain the most reliable evidence available. The Staff Personnel Board shall grant adjournments to enable either party to investigate evidence as to which valid claim of surprise is made.
 - 3.8 The employee shall be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The institution shall cooperate with the Staff Personnel Board in securing witnesses and making available documentary and other evidence. The employee and the institution shall have the right to confront and cross-examine all witnesses. Testimony may be taken by deposition, including deposition by telephone or witnesses may testify by telephone, facsimile, video or other electronic means, as long as such use does not substantially prejudice the rights of any party. Affidavits may be received into evidence upon stipulation of the parties.
 - 3.9 The Staff Personnel Board's findings of fact, conclusions, and recommendations with supporting reasons, shall be reported, in writing, to the President, *the department head*, the employee or their representative. The Office of Human Resources/Payroll shall transmit the official hearing record and file to the President. If the institution's action was a notice of dismissal and if the Staff Personnel Board concludes that adequate cause for dismissal has been established, but that a lesser penalty would be more appropriate, it may be recommended with supporting reasons. The President shall make a final decision and provide written notice of the decision to the Staff Personnel Board, *the department head* and the employee within fifteen calendar days of receiving the report.
4. This Policy shall not apply to conduct by an NDSU employee which is alleged to constitute sexual harassment under Title IX of the Education Amendments of 1972, which is governed by NDSU Policy 156.1.
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HISTORY:

New	April 1992
Amended	September 1994
Amended	August 1997
Amended	February 1998
Amended	October 1999
Amended	May 2005
Amended	December 2005
Housekeeping	June 15, 2018
Amended	August 14, 2020
Amended	December 14, 2020