Article 15- NTE
Termination of Appointment or Suspension without Pay
(University, January 19, 2018)

15.1 The University has and retains the right to terminate or to suspend without pay the employment of a Bargaining Unit Faculty Member. In addition to resignation or retirement, NTE faculty appointments may be terminated due to (1) retrenchment, pursuant to Article 17, (2) completion of a fixed-term appointment, (3) poor performance, (4) enrollment or curricular changes that eliminate the need for their services pursuant to Section 15.4, and (5) just cause pursuant to Section 15.5. The University may also suspend a Bargaining Unit Faculty Member without pay for just cause pursuant to Section 15.5.

15.2 Termination at the Completion of Fixed-term Appointments. Faculty on fixed-term appointments (Instructors, Visiting Professors, and those Lecturers and Clinical Faculty who are in their initial appointment periods) are automatically terminated at the conclusion of their appointments unless the University either offers them a succeeding appointment or fails to give notification, pursuant to Section 15.2.1, that the appointment will not be continued.

15.2.1 The University will make a good faith effort to notify Members by February 1 of the year their fixed-term appointment expires whether or not they will be offered a succeeding appointment.

15.2.2 Notice of termination is not required for faculty who complete fixed-term appointments. Even if succeeding appointments had been received in earlier years, faculty on fixed-term appointments should not expect that their employment will continue after the fixed-term unless they have received a written offer of continuation from their dean.

15.3 Termination for Poor Performance. Bargaining Unit Faculty in all ranks on fixed-term or continuing appointments may be terminated for poor performance. When notified in writing by February 1 of their first academic year of service, faculty will be terminated at the conclusion of that academic year. Following the first year, the University will provide written notice at least twelve months in advance of termination. Notice is not required; however, if the Member’s fixed term appointment expires before a termination for poor performance would have taken effect.

15.3.1 Fixed-term faculty may be terminated for poor performance if:

1. the performance was specified in a written evaluation,
2. the faculty member was given a reasonable amount of time (normally, at least one semester) to address the unsatisfactory performance, and
3. the unsatisfactory performance continued.

15.3.2 A Bargaining Unit Faculty Member with a continuing appointment may be terminated for persistent poor performance as specified in Section 15.3.2a below, or for deficiencies in teaching.
that are so severe that the Member is not minimally effective. Symptoms of poor teaching performance may include (but are not limited to)

- a pattern of classes that are missed without suitable reason (e.g., illness, approved professional travel) or of missed advising appointments
- persistent and justified complaints from students or peers
- persistently erratic classroom behavior
- persistent failure to be reasonably available to students and advisees
- persistent failure to communicate effectively with students
- a pattern of irresponsible or unprofessional conduct with or in the presence of students in a university setting
- persistent failure to comply with the established curriculum
- persistently outdated or inappropriate course content

15.3.2a Persistent poor performance pursuant to Section 15.3.2 must have been specified in a written evaluation, in which the department chair states that the performance is so substandard that it could be grounds for dismissal. The Member must then be provided a reasonable amount of time (normally, at least one semester) to correct the identified deficiencies. If the substandard performance continues, the department chair must specify, in writing, the basis for concluding that the Member’s performance is persistently poor.

15.3.2.1 If the Dean believes that a Bargaining Unit Faculty Member (hereinafter, "Member") with a continuing appointment should be dismissed due to poor performance according to the criteria in Section 15.3.2, then the Dean shall notify the Provost. The Dean’s notification shall specify whether the Member has persistent poor performance as specified in Section 15.3.2a above, or exhibits deficiencies in teaching that are so severe that the Member is not minimally effective.

15.3.2.2 Informal hearing. The Provost or designee shall call a meeting with the Dean, the Member, and a representative of the AAUP-WSU, and shall clearly inform the Member and AAUP-WSU that the meeting is the informal hearing stage of a process that might lead to dismissal. The purpose of this meeting shall be to reveal and clarify all related facts in the matter and to attempt resolution of it through informal discussion. One additional meeting will occur if either the Member or the Provost (or designee) wishes. Additional meetings may occur provided the Provost or designee and the Member believe that further meetings will serve a useful purpose.

15.3.2.3 Formal hearing: If after the informal hearing, the Provost or designee determines that termination due to poor performance should be considered, he or she shall call for the creation of a Hearing Board.

15.3.2.4 The Hearing Board shall consist of six members and four alternate members: three members and two alternates will be selected by the AAUP-WSU and also by the University. Each Hearing Board member must either have tenure, be a Senior Lecturer, or be a Clinical Assistant Professor with a continuing appointment, and all should be selected on the basis of
their objectivity and competence and of the regard in which they are held in the academic community.

15.3.2.5 The Provost or designee shall provide written notice to the Member and the Dean, stating that a formal hearing will be held and listing the members of the Hearing Board, including alternate members. Within ten calendar days after receiving notice of the intended hearing, the Member is entitled to remove at most two members of the Hearing Board selected by AAUP-WSU and at most two selected by the University. Any Member removed from the Hearing Board shall be replaced by the AAUP-WSU or the University as appropriate. After the Member has been given the opportunity to exercise his or her right to remove members or alternate member of the Hearing Board as specified above, the AAUP-WSU and the University will respectively add alternates to the Hearing Board, as needed, so that the Hearing Board consists of three members named by the University and three members named by the AAUP-WSU.

15.3.2.6 The President of AAUP-WSU (or designee) and the Provost (or designee) will convene the Hearing Board, and at this time the Hearing Board will elect a Chair or Co-Chairs and determine the rules governing the hearing. The Hearing Board shall communicate in writing the scheduled date, place, and time of the hearing and provide to all parties concerned an explanation of the rules under which the hearing shall be conducted.

15.3.2.7 The parties University will provide access to all available evidence and give the names of all potential witnesses to the Member and AAUP-WSU to representatives of the parties in a timely manner.

15.3.2.8 Both the Member and the Dean or designee may present, confront and cross-examine witnesses, present and summon witnesses, and be present to hear all evidence and arguments given at all meetings of the Hearing Board. The Member may be accompanied, advised, and/or represented by any fulltime WSU faculty member. Both the AAUP-WSU and the University are entitled to have representatives present at any hearing. Members of the Hearing Board may question all witnesses appearing before the Board. The Dean or designee has the burden of demonstrating to the Hearing Board that, on the basis of clear and convincing evidence, the assertion of poor performance according to the criteria in Section 15.3.2 is true. The hearing shall be conducted in private with only the AAUP-WSU and the University representatives, and those summoned as witnesses or directly involved in the matter present. Subject to the approval of the Member, the Dean or designee, and the Hearing Board, observers can be present at the hearing.

15.3.2.9 When all witnesses summoned and able to appear have presented testimony and when cross-examination has been conducted, the Board shall retire to make its evaluation as to whether or not, on the basis of clear and convincing evidence, the assertion of poor performance according to the criteria in Section 15.3.2 is true. This evaluation of the Hearing Board shall be made by a majority vote of all its members and immediately shall be communicated in writing to the University President, the Member, the AAUP-WSU, and the Dean. If the Hearing Board is evenly split, both groups from the Hearing Board shall prepare written recommendations and findings. A verbatim, written record of the hearing shall be sent to the University President, the Member, the AAUP-WSU and the Dean as soon as possible following the conclusion of the
hearing. (This verbatim record may be taken by a stenographer or transcribed from electronic recording equipment.)

15.3.2.10 Within twenty (20) working days after receiving the evaluation of the Hearing Board, the President will (a) recommend to the Board of Trustees that the Member be terminated, or (b) dismiss the assertion that the Member's performance warrants termination. Both the Member and AAUP-WSU will be promptly notified, as will the Dean.

15.3.2.11 Should the final decision be for termination, it shall not become effective until the end of the academic or fiscal year, except where otherwise ordered by the University Board of Trustees, which can require severance of the Bargaining Unit Faculty Member's relationship with students and the University prior to the end of the academic or fiscal year when it finds the situation to be of extreme gravity.

15.3.2.12 At the sole discretion of the AAUP-WSU, the final decision may be taken directly to binding arbitration. A Bargaining Unit Faculty Member who wants his or her case taken to binding arbitration must file a request in writing with AAUP-WSU within 15 business days of receiving the decision. The timelines, procedures and the costs of arbitration will be governed by the provisions concerning arbitration in Section 16.6.

15.4 A Bargaining Unit Faculty Member with a continuing appointment may be terminated for lack of need if enrollment declines, extending over at least three academic semesters, or curricular or class-size changes, or adjusted teaching assignments of other faculty with more seniority have resulted in reduced demand that eliminates the need for more than half or more of the Member's annual teaching load (which load shall include "alternate classes that the Member is qualified to teach" pursuant to Section 15.4.1).

15.4.1 Before terminating a Member for lack of need, the University will make a good faith effort to find alternate classes that the Member is fully qualified to teach. In particular, the University shall assign classes to the Member that would otherwise be taught by persons who are in neither the TET or the NTE Bargaining Unit faculty, if those classes are similarly or less qualified.

15.4.2 In the case of two or more Members who are qualified to teach the same courses, terminations for lack of need will be done by inverse order of seniority pursuant to Sections 17.6.2-17.6.4.3. If only one of them is fully qualified to teach a specific course that is needed by the university, however, then seniority will not apply.

15.4.3 For two years following a termination for lack of need, the University will provide the terminated Member the opportunity to teach classes he or she is qualified to teach before assigning the classes to a non-bargaining unit faculty member. For each credit hour of such teaching, the terminated Member will be paid 1/24th of her or his full-time salary at the time of termination, a rate proportionate to the number of credit hours she would have received for teaching the class on a full-time basis. Thus, a Member who teaches a 3-hour course would be paid an annual teaching load of seven classes would be employed as an adjunct and paid at rate equal to one-seventh the annual salary of her or his full-time salary at the time of termination for each class taught.
15.4.4 If, within two years of a Member’s termination for lack of need, the University opens a full-time teaching position for which the terminated faculty member is fully qualified, the terminated Member shall be offered that position.

15.4.5 When a dean anticipates terminating a Member(s) for lack of need, he or she shall notify the Provost and the AAUP-WSU.

15.4.6 The Provost or designee shall call a meeting with the Dean, the Member(s), and a representative of the AAUP-WSU. The purpose of this meeting shall be to reveal and clarify all related facts in the matter and to explore whether there are reasonable alternatives to termination. Additional meetings may occur provided the Provost or designee and either the Member or the AAUP-WSU believe that further meetings will serve a useful purpose.

15.4.7 If, following the meeting, the Provost believes that termination is necessary, he or she will provide a written statement to the Member(s) and to the AAUP-WSU explaining the basis for the termination(s).

15.4.8 Within twenty working days after receiving the Provost’s written statement, the Member may submit a written rebuttal to the President, as may AAUP-WSU.

15.4.9 Within twenty working days after receiving a written rebuttal from the Member and/or AAUP-WSU, the President will send a written statement to the Member and the AAUP-WSU confirming or reversing the termination(s). If the final decision is for termination, the Member will not be terminated any sooner than one year following the date of the written statement confirming the termination. Alternatively, the University may pay salary and provide full benefits for all or part of the one year.

15.4.10 At the sole discretion of the AAUP-WSU, the final decision may be taken directly to binding arbitration. A Bargaining Unit Faculty Member who wants his or her case taken to binding arbitration must file a request in writing with AAUP-WSU within 15 business days of receiving the decision. The timelines, procedures and the costs of arbitration will be governed by the provisions concerning arbitration in Section 16.6.

15.5 Termination or suspension without pay for Just Cause:

15.5.1 Just cause terminations or suspensions without pay may be based on, including but not limited to, (a) fraudulent credentials pertaining to employment at WSU; (b) demonstrated incompetence or dishonesty in teaching, scholarship, or professional service; (c) substantial and manifest neglect of duty, (d) personal conduct which presents a serious threat to health or safety of any person in the University community, or manifests severe or continuing harassment or discrimination, or other behavior that otherwise substantially impairs the Bargaining Unit Faculty Member’s fulfillment of the institutional responsibilities; (e) malicious conduct that directly obstructs the performance of instructional or scholarly programs authorized or permitted by the university; or (f) conviction of a crime involving an offense of violence as defined in division (A)(9)(a) of Section 2901.01 of the Ohio Revised Code as of January 1, 2008 or a
substantially equivalent offense under federal law or a municipal ordinance; or (g) revocation of required professional licensure. Suspension without pay or termination for reasons not enumerated in (a) - (g) must be commensurate with the nature and gravity of the offenses listed above. The effective date of a termination or a suspension without pay for just cause shall be effective on a date selected pursuant to Section 15.5.13.

Upon determining that a Bargaining Unit Faculty Member has been unavailable for service without authorization from the University for a period of more than one month, the University may suspend all pay and benefits for that Member once it has formally charged the Member with substantial and manifest neglect of duty pursuant to Section 15.5.1. At the discretion of the University the Member's pay will continue to be suspended pending the outcome of the process described in this Section.

15.5.2 Charges may be initiated against a Member of the Bargaining Unit by the University, an administrator who is a tenured faculty member, or an administrator who is a Bargaining Unit Faculty Member. Such charges shall be made in writing with reasonable particularity of the grounds for termination or suspension without pay based on one or more of the categories in Section 15.5.1 and shall be presented to the President of the University.

15.5.3 The University President shall, as soon as possible, inform the accused Bargaining Unit Faculty Member and the AAUP-WSU in writing of the charges, specifying which one or combination of the categories in Section 15.5.1 comprise the basis of the charges.

15.5.4 Informal hearing: Before a formal hearing is conducted the University President or designee shall call a meeting with the charging party, the accused Bargaining Unit Faculty Member, and a representative of the AAUP-WSU. The purpose of this meeting shall be to reveal and clarify all related facts in the case and to attempt resolution of the matter through informal discussion. Additional meetings may occur provided the University President or designee and the Bargaining Unit Faculty Member being charged believe that further meetings will serve a useful purpose.

15.5.5 Formal hearing: If after the informal hearing, the University President or designee determines that charges are warranted, he or she shall call for the creation of a Hearing Board of six members.

15.5.6 The Hearing Board shall be created in the following manner: the AAUP-WSU and the University shall form a Hearing Board consisting of three persons, each of whom shall either be a Bargaining Unit Faculty Member with a continuing appointment or a tenured member of the TET Bargaining Unit, selected by the AAUP-WSU and three department chairs, assistant or associate deans who are tenured faculty selected by the University. In addition, the AAUP-WSU and the University will each appoint two alternate members to the Board who must satisfy the conditions above. The AAUP-WSU and the University shall select the members of this Board on the basis of their objectivity and competence and of the regard in which they are held in the academic community.
15.5.7 The President or designee shall notify in writing the accused Bargaining Unit Faculty Member and the administrator initiating charges of the intended hearing and of the composition of the Hearing Board, including alternate members. Within ten calendar days after receiving notice of the intended hearing, the accused Member is entitled to remove at most two members of the Hearing Board selected by AAUP-WSU and at most two selected by the University. Any Member removed from the Hearing Board shall be replaced by the AAUP-WSU or the University as appropriate. After the Member has been given the opportunity to exercise his or her right to remove members or alternate members of the Hearing Board as specified above. The Hearing Board will be convened by the President of AAUP-WSU (or designee) and the Provost (or designee). At this time the Committee will elect a Chair or Co-Chairs and determine the rules governing the hearing. The Hearing Board shall communicate in writing the scheduled date, place, and time of the hearing and provide to all parties concerned an explanation of the rules under which the hearing shall be conducted.

15.5.8 The parties University will provide access to all available evidence and give the names of all potential witnesses to the accused Member, the Member's counsel (who, here and elsewhere in the Article, shall be at the Member's expense), and AAUP-WSU representatives in a timely manner.

15.5.9 Both the accused Bargaining Unit Faculty Member and the administrator initiating charges may be represented by counsel, present, confront and cross-examine witnesses, present and summon witnesses, and be present to hear all evidence and arguments given at all meetings of the Hearing Board. Both the AAUP-WSU and the University are entitled to have representatives present at any hearing. The accused Bargaining Unit Faculty Member may choose not to testify or answer questions at this hearing. However, such failure may be taken into consideration by the Hearing Board. Members of the Hearing Board may question all witnesses appearing before the Board. The charging party has the burden of proving to the Hearing Board that, on the basis of clear and convincing evidence, the charge(s) has been established as true. The hearing shall be conducted in private with only the AAUP-WSU and the University representatives, the Member's counsel (if the Member chooses to be represented by counsel) and those summoned as witnesses or directly involved in the dispute present. Subject to the approval of the accused, the charging party, and the Hearing Board, observers can be present at the hearing.

15.5.10 When all witnesses summoned and able to appear have presented testimony and when cross-examination has been conducted, the Board shall retire to make its recommendation. If it finds against the accused, the Hearing Board may recommend such penalty as it deems fair and appropriate, including termination, or suspension without pay, or lesser penalties. All decisions of the Hearing Board shall be made by a majority vote of all its members, and its recommendation immediately shall be communicated in writing to the University President, the accused Bargaining Unit Faculty Member, the AAUP-WSU, and the charging party. If the Hearing Board is evenly split, both groups from the Hearing Board shall prepare written recommendations and findings. A verbatim, written record of the hearing, including all findings and recommendations, shall be sent to the University President, the accused, the AAUP-WSU and the charging party as soon as possible following the conclusion of the hearing. (This
verbatim record may be taken by a stenographer or transcribed from electronic recording equipment.)

15.5.11 Within twenty (20) working days after receiving the recommendation of the Hearing Board, the President will (a) recommend to the Board of Trustees that the accused be either suspended without pay for an identified period of time or terminated, (b) dismiss the charges, or (c) impose a specified lesser or greater or other penalty. Both the accused Member and AAUP-WSU will be promptly notified of the Board of Trustees' decision.

15.5.12 Before the Board of Trustees approves either suspension without pay or termination, the accused shall have the right to appear before the Board with counsel and a representative of the AAUP-WSU.

15.5.13 Should the final decision be for termination or for suspension without pay, it shall not become effective until the end of the academic or fiscal year, except where otherwise ordered by the University Board of Trustees, which can require severance of the Bargaining Unit Faculty Member's relationship with students and the University prior to the end of the academic or fiscal appointment when it finds the conduct or situation to be of extreme gravity. A penalty of suspension without pay shall not exceed three (3) one-year, and during this year a suspended Bargaining Unit Faculty Member may purchase benefits from the University at his or her own expense.

15.5.14 At the sole discretion of the AAUP-WSU, the final decision may be taken directly to binding arbitration. A Bargaining Unit Faculty Member who wants his or her case taken to binding arbitration must file a request in writing with AAUP-WSU within 15 business days of receiving the decision. The timelines, procedures and the costs of arbitration will be governed by the provisions concerning arbitration in Section 16.6.