

ARTICLE 22

PROGRESSIVE REVIEW AND DISCIPLINE FOR CAUSE

PROFESSIONAL CONDUCT REVIEW AND DISCIPLINE FOR CAUSE

22. §1 BASIC PROVISIONS.

When reason arises to investigate a possible violation of Article 21, Professional Conduct, or other relevant articles in this Agreement, the procedures review process contained in this ~~present~~ article shall be followed. ~~A summary of the formal~~ The review process ~~follows: includes~~ a) investigatory determination meeting that ~~may progress to b) disciplinary hearing that may progress to c) disciplinary action that could include~~ result in discipline by documentation, dismissal for cause, suspension, or financial penalty. In the case of dismissal, suspension, or financial penalty, the process includes the opportunity for the faculty member to call for a peer review. The process also allows for a grievance to be filed. The progressive review may conclude at any point in the process when the concerns raised have been satisfactorily addressed.

22. §1.1

22. §1.1 Title VI and Title IX Investigations. Any charges originating from Title VI and Title IX related complaints (including sexual harassment policy violations) shall be investigated by the University, subject to the same time limits as other investigations (see 22. §2). If the investigation leads to a determination that there are sufficient grounds for further action, charges may be brought under Article 21, Professional Conduct, and other related articles, according to the procedures described in this Article.

22. §1.2 Matters Not Warranting Discipline. Not all concerns about the conduct and/or performance of a bargaining unit faculty member need result in formal discipline, and the provisions of this article shall not be construed so as to prohibit Western from informally meeting with, counseling, advising, or informing a bargaining unit faculty member orally of a problem or concern, without initiating disciplinary action.

22. §1.2.3 Time Limits. ~~In computing any time limits specified under this article, the~~ The specific time limits are provided. ~~Time limits may be extended by mutual agreement.~~

~~22. §1.3 Legal Counsel.~~ At all levels of the progressive review and discipline process, the parties shall have the right to have legal counsel present at their own expense. ~~A party who plans to bring legal counsel to a meeting or hearing shall so notify the other party.~~

22. §1.4 Extension of Time Limits. Unless extended by mutual consent, in writing, the time limits specified herein shall be the maximum time allowed. During those periods when classes are not in session, proceedings will be held in abeyance unless mutually determined otherwise by the Provost (or his/her/their designee) and the Chapter.

22. §1.4 Legal Counsel. At all levels of the disciplinary process, the parties shall have the right to have legal counsel present at their own expense. A party who plans to bring legal counsel to a meeting shall so notify the other party.

22. §2 INITIATION OF DISCIPLINARY PROCEEDINGS .

~~22. §2 PROGRESSIVE REVIEW.~~ When serious allegations concerns arise, ~~however,~~ which are related to the performance of, or conduct of, a bargaining unit faculty member, and said allegations concerns are brought to the attention of Western, Western shall under all circumstances, unless legal and/or compelling ~~ethical~~ considerations exist which provide justifiable cause for not doing so, arrange ~~an investigatory meeting~~ a notification conference with the bargaining unit faculty member and Chapter within thirty (30) calendar days of the date the allegations concerns are brought to the attention of Western ~~as the initial step in the review and discipline process.~~ The notification conference is pre-disciplinary. It is not to be construed to constitute a disciplinary action on the part of WMU.

22. §2.1 ~~Convening the Investigatory Meeting~~3 NOTIFICATION .

22. §3.1 ~~If circumstances warrant, the appropriate administrator (an administrator~~ Letter of Notification. The Director of Academic Labor Relations, (or designee not party to the dispute), shall notify the bargaining unit faculty member, in writing, ~~of~~ with concurrent notice to the nature Chapter, of the allegations concerns and the ~~potential disciplinary actions to which the investigatory~~ relevant articles of the Agreement under which the concerns are being brought and the behavior which is the basis for the concern. The faculty member and the Chapter will be informed in writing five (5) business days prior to that meeting ~~might lead.~~ The faculty member shall be invited in the same communication to ~~an investigatory meeting~~ the notification conference to discuss the ~~circumstances~~ allegations with the ~~appropriatedesignated~~ administrator (an administrator selected by the Director of Academic Labor Relations who is not party to the dispute), and in the same letter shall specify two proposed times and dates, and the scheduled location for the ~~investigatory meeting~~ notification conference. If the faculty member finds it is impossible to meet on either of the proposed dates/times ~~he/she/they~~ shall immediately notify the designated administrator who sent notice of the meeting with an alternative time and date. The meeting may be rescheduled for a date no more than five (5) business days after the last of the two proposed dates. The faculty member may waive, in writing, the notification conference and receive the information in writing instead (see 22. §4.2). The faculty member shall have the right to bring up to two (2) Chapter representatives ~~from the WMU-AAUP to,~~ and have legal representation at, the ~~investigatory meeting~~ notification conference and shall be so advised in the letter. If the faculty member has already discussed the concerns and evidence through an Office of Institutional Equity Title VI or Title IX investigation (see 22. §1.1), then the notification conference may be held or waived at the discretion of the designated administrator.

~~22. §2.2 Notification. Whenever an investigatory meeting or any other hearing is scheduled under this article, the Chapter will be informed in writing five (5) business days prior to that meeting.~~

22. §3.2 Notification Conference. The notification conference is not a fact-finding evidentiary hearing, does not include witness testimony except in the form of existing documents, and does not result in any specific conclusion(s). The notification conference serves as a prelude to the determination meeting. The process may be discontinued after the notification conference at the designated administrator's discretion (see 22. §3.3). Alternatives to discipline as noted in 22. §3.2.3 may be deployed. The Director of Academic Labor Relations (or their designee) assists the designated administrator in ensuring that these and subsequent proceedings under this Article are conducted consistent with the procedures described in this Article.

~~22. §2.3.2.1~~ Conduct/Intent of the Investigatory Meeting/notification conference. The intent of the ~~investigatory meeting/notification conference~~ is threefold:

~~22. §2.3.1.3.2.1.1~~ To provide a meeting in which information and documentation about the source of the concern and discussion of the applicable article of the Western/WMU-AAUP Agreement, as well as the possible consequences are explained to the bargaining unit faculty member;

~~22. §2.3.2.3.2.1.2~~ To allow the bargaining unit faculty member to receive the information, to seek clarification of the issues, and to provide, if so desired, an explanation of the concerns. The information, evidence, and/or documentation of the concern and its source available to Western shall be presented at this time, although Western shall not be precluded from using additional evidence which becomes available subsequent to the ~~investigatory meeting/notification conference~~. Any subsequent evidence to be used by Western shall be made available to the bargaining unit faculty member;

~~22. §2.3.3.2.1.3~~ To allow the bargaining unit faculty member an opportunity to respond to the concerns and to provide an explanation concerning the issues. At the ~~investigatory meeting/notification conference~~, the bargaining unit faculty member may respond, stand silent and simply receive the information, or respond through an intermediary. The bargaining unit faculty member should be made aware that anything ~~he/she/they~~ says may be used in any subsequent disciplinary ~~hearings/proceedings~~.

~~22. §2.4 Conclusion of the Meeting.~~ The faculty member may be informed of the decision at the end of the meeting

22. §3.2.2 Supplemental Investigation and/or Clarification Conference. The designated administrator may, at their discretion, undertake further investigation and/or schedule a

subsequent clarification conference to review the situation again. The faculty member shall have the same rights as apply to the notification conference. Unless legal and/or compelling considerations provide justifiable cause for not doing so, the clarification conference and/or supplemental investigation shall be completed within fifteen (15) business days of the conclusion of the notification conference.

22. §3.2.3 Alternatives to Discipline. After the notification and/or clarification conference, which is the designated administrator's prerogative, but may decide that an outcome other than discipline is warranted. In such situations, the faculty member shall be notified, in writing, of the action no later than five (5) business days from the end of the investigatory meeting or clarification conference. After the investigatory meeting, the administrator alternative outcome no later than five (5) business days from the end of the notification conference (or supplemental investigation/clarification conference if applicable), which may decide on include:

22. §2.4.1 3.2.3.1 Informal Resolution. If the allegation concern is unsubstantiated, the faculty member shall be notified verbally or by means of an informal letter stating that a meeting occurred on a given date to discuss mutual concerns. This letter does not become part of the personnel file;

22. §2.4.2 Letter of Notice. Document the meeting through a "letter of notice" (see definition below) to the faculty member;

22. §2.4.3

22. §3.2.3.2 EAP. Arrange for employee assistance. Western and the faculty member may agree that the problem may best be resolved through the EAP;

22. §2.4.4 Clarification Conference. If the evidence and/or circumstance is unclear after the investigatory meeting, the administrator may schedule a subsequent clarification conference and review the situation again, and the faculty member shall have the same rights as apply to the investigatory meeting; or

22. §2.4.5 Disciplinary Hearing. Schedule a formal disciplinary hearing based upon the extent of the evidence and the seriousness of the alleged transgression.

22. §2.5

22. §3.2.3.3 Letter of Notice. In situations where the University has decided there is no basis for faculty discipline but where the University wishes to inform a faculty member that a complaint of alleged misconduct has been received by the University, or to document an investigatory meeting notification or clarification conference, the University may document the meeting through a "letter of notice" to the faculty member. The parties University and Chapter agree that:

22. ~~§2-5-13.2.3.3.1~~ The letter does not constitute discipline or the first step in the progressive ~~disciplinedisciplinary~~ process;

22. ~~§2-5-23.2.3.3.2~~ The letter shall not be placed in the faculty record except as noted in 22. ~~§2-5-31.3.3.3~~;

22. ~~§2-5-33.2.3.3.3~~ The letter may be placed in a confidential file for such letters maintained by the Director of Academic ~~Collective Bargaining and Contract Administration~~ Labor Relations;

22. ~~§2-5-43.2.3.3.4~~ The letter neither substantiates occurrences of misconduct, nor contains unsubstantiated complaints or material of any kind, but verifies only the ~~conference~~ meeting, the discussion of facts and evidence, and nature of the complaints, and may include reference to the alleged misconduct or other circumstance;

22. ~~§2-5-53.2.3.3.5~~ The letter may be used ~~in the future~~ only for purposes of documenting that the University put the bargaining unit faculty member on notice that a complaint had been received by the University and to document the meeting and the nature of the complaint as well as any conclusions the University made regarding the complaint.

22. ~~§2-5-63.2.3.3.6~~ The bargaining unit faculty member may respond, in writing, to the content of the letter of notice, and may document any disagreement about the ~~investigatory meeting~~ notification conference and/or the content of the letter. The faculty member's written response, if any, is attached to and filed with the letter of notice.

22. ~~§2-5-73.2.3.3.7~~ The letter of notice may be grieved based on a violation of any of the above six points.

22. ~~§34~~ DISCIPLINARY HEARING-DETERMINATION

~~22. §3.1 Letter of Charge. When reason arises out of the investigatory meeting or the clarification conference to consider the formal discipline for cause of a bargaining unit faculty member, the appropriate administrator (an administrator~~
22. §4.1 Determination Meeting Procedure. No later than five (5) business days from the end of the notification conference, or the supplemental investigation/clarification conference if applicable and WMU's investigation, and assuming that no alternative outcome has been used (see 22. §3.2), a Letter of Charge shall be sent as described in 22. §4.4.1.

22. §4.1.1 Letter of Charge. The Director of Academic Labor Relations, (or designee not party to the dispute), shall notify the bargaining unit faculty member, in writing, with concurrent notice to the Chapter, of the preliminary charges and the relevant articles of the Agreement Agreement under which the charges are being brought, including witnesses identified to date, the evidence and/or the behavior which is the basis for the allegation.

The bargaining unit member shall also be informed of the names of any witnesses scheduled to testify at the disciplinary hearing concern(s). The bargaining unit member shall be invited, in the same communication, to attend a disciplinary hearing to review the charges and circumstances with the appropriate administrator. In the same letter, the bargaining unit member faculty member and the Chapter shall be advised in the letter of two proposed times, and dates, and the scheduled location for the hearing meeting. The bargaining unit faculty member shall confirm one of the scheduled meetings or, if the bargaining unit faculty member finds it impossible to attend the conference as scheduled, on either occasion, he/she/they shall immediately notify the designated administrator who sent the letter of charge with a proposed alternative date and time so that the hearing meeting may be rescheduled for a date no more than ten (10) business days later than the last of the two proposed dates. Failure to confirm the meeting within ten (10) business days of the faculty member's receipt of the letter of charge shall be considered as a declaration of intent to waive the hearing meeting. The faculty member shall have the right to bring up to two (2) Chapter representatives from the WMU-AAUP to the hearing meeting and may be represented by counsel.

22. §3-24.1.2 *Conduct of the Disciplinary Hearing Determination Meeting.* The hearing meeting shall not be open to the public and shall be conducted by the appropriate designated administrator who shall determine the order of review of the evidence and circumstances pertaining to issues cited in the letter of charge. The faculty member shall have the right to have legal representation at the hearing meeting, not at Western's expense, and to confer with counsel when needed. The faculty member shall have the opportunity to enter evidence and testimony in response to arguments, and rebut the evidence and testimony presented. The hearing meeting shall be limited to the specific charges and articles noted in the Letter of Charge. Unless there is mutual consent, no new evidence or witness testimony may be introduced at the hearing meeting (except for rebuttal) without notice of at least five (5) business days before the hearing meeting is held. The hearing meeting may be rescheduled to comply with the five (5) business day notification requirement. The

~~22. §4.1.2.1 *Recordings.* Except by mutual consent, proceedings of the hearing shall under this Article may not be duly audio recorded by Western and, at its option, by the WMU-AAUP, and a copy of the record shall be given to the bargaining unit member and the WMU-AAUP, video recorded, or stenographically recorded.~~

22. §4.1.2.1 *Recordings.* Except by mutual consent, proceedings under this Article may not be audio recorded, video recorded, or stenographically recorded except as otherwise specified in this Article. The proceedings of the hearing determination meeting shall be duly recorded by Western and, at its option, by the WMU-AAUP, and a copy of the recording shall be given to the bargaining unit faculty member and the WMU-AAUP.

22. §3-34.1.3 *Hearing Determination Meeting Conclusion.* After the hearing meeting or after the hearing meeting is waived by written request or by failure to attend, the

appropriatedesignated administrator shall either: (a) dismiss the charges; or (b) confirm (or modify) the charges and state the formal disciplinary action to be taken which may range from a formal discipline by documentation (see 22.§5 below) to dismissal for cause, although nothing prevents the writing of a letter of notice at this time. The bargaining unit faculty member shall be notified in writing of the action, including the findings of facts and conclusions, within five (5) business days of the hearingmeeting.

22.§45 HANDLING OF EVIDENCE.

22.§~~4.15.1~~ *Existing Evidence*. In cases where documentary evidence, not in the faculty record (see Appendix C, Location of Personally-Identifiable Information), exists at the time of the initiation of discipline proceedings, including meetings, conferences, and hearingsother proceedings, the material shall be handled as follows:

22.§~~4.1.15.1.1~~ A copy of the material shall be presented to the faculty member with the written notice of charges;

22.§~~4.1.25.1.2~~ Any conference or hearingmeeting to discuss the documentary evidence shall be set for a date at least ten (10) business days from the investigatory-meetingnotification conference, in order to give the faculty member the opportunity to review and prepare a response to the material;

22.§~~4.1.35.1.3~~ The faculty member may respond to the material prior to the conference or hearingmeeting, at the conference or hearingmeeting, after the conference or hearingmeeting, or not at all;

22.§~~4.1.45.1.4~~ At the conclusion of the proceedings, the material shall be handled in the following way:

22.§~~4.1.4.15.1.4.1~~ If the charges are dismissed, all documentary evidence shall be delivered to the faculty member for his/herttheir disposition;

22.§4.1.4.2

22.§5.1.4.1.1 Anonymous materials and communications from any source of any kind, as well as references to such materials or communications, may not be included in faculty records (see 11.§4). This applies when charges are dismissed, as well as in situations where the disciplinary process was not initiated within the time limits for such charges.

22.§5.1.4.2 If the charges are confirmed in modified or original form, the material shall be placed in the faculty record.

22.§~~4.25.2~~ *New Evidence*. When new documentary evidence comes into existence or into Western's possession in the course of the disciplinary or dismissal proceedings, Western shall immediately provide copies of the documentary evidence to the faculty member. The faculty member shall have ten (10) business days from the time of receipt to review and respond to

the documentary evidence. If Western fails to provide copies of any such documentary evidence to the faculty member, it shall not be used.

22. ~~§4.35.3~~ *Testimony*. Testimony may be presented by either party and it shall not be necessary to follow formal rules of evidence. All evidence need not be documentary, but shall be judged for its relevance and accuracy.

22. ~~§56~~ PROGRESSIVE DISCIPLINE BY DOCUMENTATION. In situations where progressive discipline by documentation is deemed appropriate, the following progression is recommended and normally shall be followed:

22. ~~§5-16.1~~ *Letter of Warning (Step One)*. The "letter of warning" shall ~~include a summary of the disciplinary hearing. The letter shall~~ contain a summary of the incident and its substantiation which gave rise to the meeting/~~conference and hearing~~, a citation of the appropriate article within the Agreement allegedly violated, and an indication of future anticipated action should the behavior continue. The letter shall state that the warning will be placed in the faculty record.

22. ~~§5-26.2~~ *Letter of Discipline (Step Two)*. The "letter of discipline" is written only after the ~~disciplinary hearing determination meeting~~ of a second substantiated incident of misconduct similar to the incident cited in the first letter. The requirements of content are the same as in Step One (22. ~~§5-16.1~~): a summary and substantiation of the incident which gave rise to the discipline; citation of the section in the Agreement allegedly violated; and a clear description of the potential consequences should the behavior continue. This letter, as with the preceding letter of warning, if one exists concerning the same issue, is placed in the faculty record.

22. ~~§5-36.3~~ *Letter of Reprimand (Step Three)*. The requirements of the content are the same as in Steps One (22. §5.1) and Two (22. §5.2): a summary and substantiation of the section in the Agreement allegedly violated, and is intended to include a summary of the incident, reference to previous letters, and clear indication of the serious consequences which would result if the behavior continues. This letter, as with the preceding letter concerning the same issue, is placed in the faculty member's record. Normally, this letter would be preliminary to a ~~severe reprimand up to and including~~ suspension or dismissal should ~~the same type of similar~~ behavior occur on a fourth occasion.

22. ~~§5-46.4~~ The disciplinary decision shall be considered final after each letter is given, but may be pursued by the bargaining unit ~~faculty member~~ as a Type C grievance for alleged violation of the procedures or other requirements as stipulated in this Agreement.

22. ~~§67~~ DISMISSAL/SUSPENSION FOR CAUSE. If the discipline resulting from a ~~disciplinary hearing determination meeting~~ is dismissal for cause, suspension, or other financial penalty (does not apply to Article 9, Agency Shop) the decision may be pursued by a request for a peer review ~~panel~~ as provided below. If a faculty member does not request review of this judgment in accordance with the following provisions, the judgment as stated in the ~~post-hearing~~ written notice shall be considered final; when a review is requested and conducted, the ~~University President~~ Provost shall make the final decision. The faculty member's employment

status shall continue at the same compensation level until the internal grievance process, up to and including the final decision by the [University President/Provost](#) (see 22.§7.4) has been completed.

22.§78 PEER REVIEW.

22.§~~7-18.1~~ *Request for Review.* Within ten (10) business days of the receipt of notice of dismissal, suspension, or financial penalty, the faculty member may [demand/request](#) by letter to the Chapter and the notifying signatory, a review by the committee of [his/her/their](#) peers of the alleged facts resulting in the charges, ~~at~~the evidence presented at the [hearing/determination meeting](#), and the findings of fact and conclusions, with rationale, by the [hearing/designated](#) administrator.

22.§~~7-28.2~~ *Review Committee.* If so [demanded/requested](#), a committee of five (5) members shall be appointed by the University President from a list of ten (10) persons holding academic rank and tenure, nominated by the Chapter, from a list of such persons developed and maintained by the WMU-AAUP Chapter for this purpose. [The individuals nominated may not be a party to the dispute, a colleague within the same unit as the charged faculty, a current or prior professional collaborator with the charged faculty, or otherwise personally or professionally connected to the case or charged faculty. In order to expedite the process of identifying members of the committee available to serve, the University President may select more than five \(5\) members from the list, with any members in excess of five \(5\) serving as alternates.](#) The committee shall be named within five (5) business days of the faculty member's request and shall meet for the first time no later than five (5) business days from the date it is named. The faculty member may submit to the committee a written response to the charges against [him/her/them](#). The committee shall proceed by considering the charges and the faculty member's written response, if any. ~~The committee, in consultation with the president or his/her designee and the faculty member, shall exercise its judgment as proceedings shall not be open to whether the hearing should be public or private. The testimony of witnesses and other evidence.~~ [Non-confidential documentation from the notification conference, clarification conference \(if any\), and the determination meeting concerning the matters in dispute shall be received \(excluding privileged information, such as communications from legal counsel\).](#) Conduct of the ~~hearing, the order of proof, the questioning and testimony of witnesses, and participation of other parties before the committee are solely the responsibility of the committee. Where necessary, the committee shall have the authority to secure all evidence it deems important to the case~~[proceedings will be informal and shall not be recorded.](#) The committee shall select its own chair and shall serve with autonomy without influence of others, either the University or the Chapter. The committee shall schedule and complete the [hearing/proceedings](#) within ten (10) business days of the first meeting, if feasible.

22.§~~7-2-18.2.1~~ The faculty member shall have the option of assistance by another faculty member, except a member of the committee, and/or by legal counsel of [his/her/their](#) choice. The faculty member shall have the aid of the committee and University, when needed, in securing the attendance of witnesses. Testimony may be presented by

Western, the Chapter and the faculty member, and each shall have the right to question. ~~All of the proceedings shall be recorded by the committee, with copies sent to Western and the WMU-AAUP~~

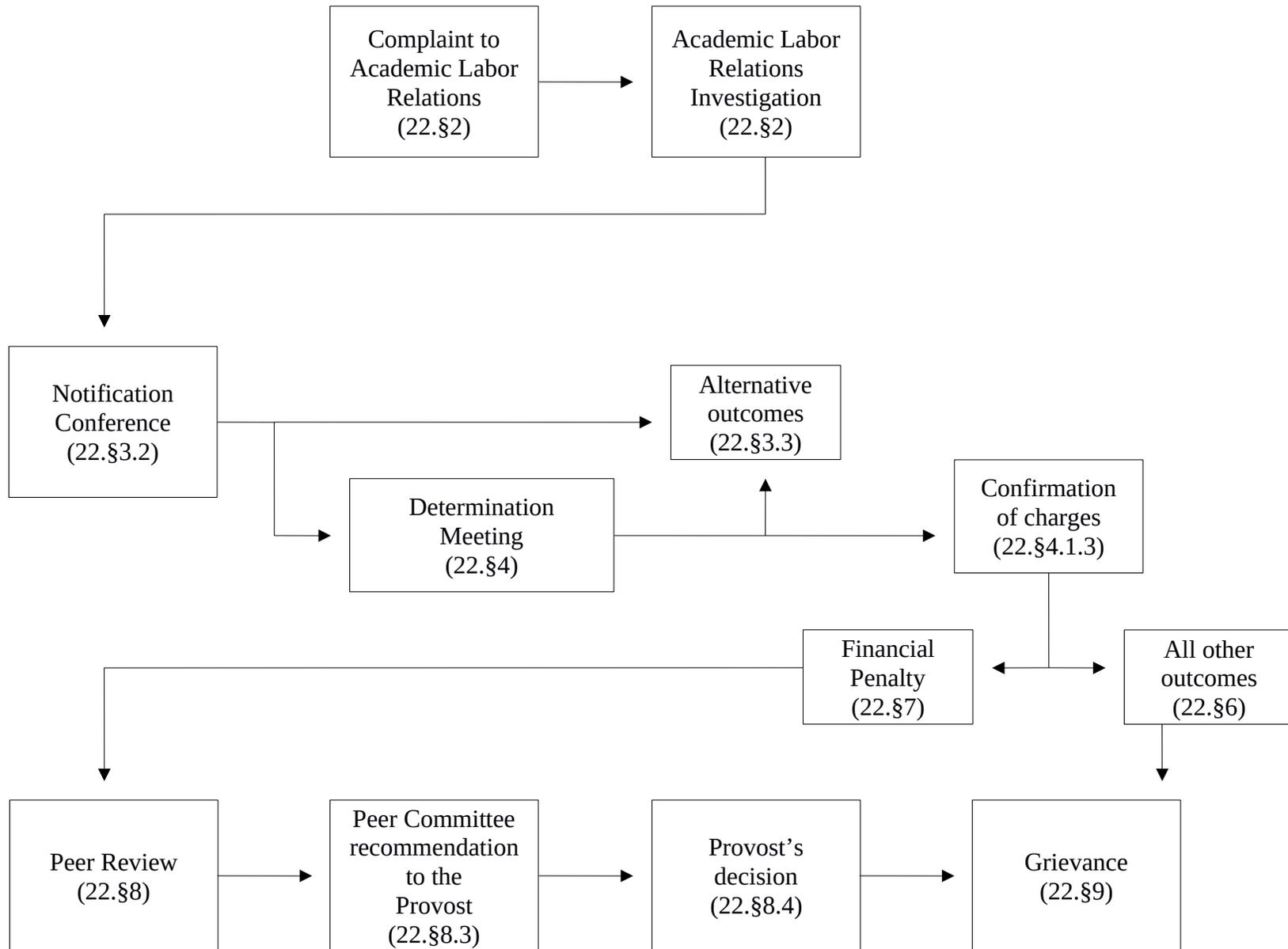
22. §8.2.2 If the charges originate from a Title VI or Title IX related complaint, the peer review committee may meet with the Title IX coordinator and/or the ombuds~~person~~ to discuss procedures, legal considerations, or other matters pertinent to the case; and shall meet with the Title IX coordinator and/or the ombuds~~person~~ upon request by the Title IX coordinator and/or the ombuds~~person~~. ~~Non-confidential information in cases arising from a Title VI or Title IX related complaint may, at the discretion of the designated administrator and if allowable by law, be provided to the committee. Documentation from the notification conference, clarification conference (if any), and the determination meeting concerning the matters in dispute shall be received (excluding privileged information, such as communications from legal counsel) unless prohibited by law. The designated administrator may, when reasonable, partially redacted documents to protect identities or sensitive details. The committee may request clarification and/or make follow-up inquiries, but cannot call witnesses for live testimony. If individuals appear before the peer review committee, the faculty member (and Chapter and legal representation if applicable) shall have the right to be present.~~

22. §7.38.3 *Committee Recommendation.* The committee shall reach its recommendation in private on the basis of evidence adduced in the ~~hearing proceedings~~. ~~In the event that the committee cannot reach consensus on a recommendation, its decision shall be by majority vote.~~ Its recommendation shall be presented, in writing, to the ~~University President~~Provost, the faculty member, and the Chapter no later than ten (10) business days after the close of the ~~hearing proceedings~~.

22. §7.48.4 *President/Provost's Decision.* The ~~University President~~Provost, after first considering the committee's recommendation, shall within twenty (20) business days decide upon which disciplinary measures, if any, shall be taken. ~~He/she~~The Provost shall set forth in writing this final decision and reasons for it. The committee, the faculty member, and the Chapter shall receive copies.

22. §89 **GRIEVANCE.** Final discipline decisions made by Western under this article shall be subject to the grievance procedure in this Agreement as stipulated in Article 12, Grievance Procedure.

Disciplinary Process Professional Conduct Review and Discipline for Cause



Tentative Agreement

WMU: *Nancy Meyer*

WMU-AAUP: *Whitney DeLeon*

Date: August 27, 2021

Date: August 27, 2021