

**UNIVERSITY POLICY FOR ACADEMIC AFFAIRS**  
**Policy No. UPAA-34**  
**FACULTY FITNESS FOR DUTY**

**1. Faculty Fitness for Duty**

- 1.1 Scope: The policy establishes a formal framework for determining whether a faculty member can perform essential job functions safely and effectively when concerns arise. It is limited to workplace functional-capacity determinations and is non-disciplinary in nature.
- 1.2 Authority: WV Code § 18B-1-6
- 1.3 Passage Date: June 1, 2026
- 1.4 Effective Date: June 1, 2026
- 1.5 Controlling over: Marshall University
- 1.6 History: original passage date June 1, 2026

**2. Purpose**

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Marshall University is committed to maintaining a safe, productive, and healthy educational and work environment for all faculty, staff, students, and visitors. Faculty members play a critical role in the University's mission of teaching, research, and service.

To fulfill these responsibilities, faculty must be able to perform their essential job functions safely and effectively. This policy establishes a comprehensive, fair, and legally compliant framework for determining whether a faculty member is able to safely and effectively perform the essential functions of their faculty appointment when credible concerns arise regarding functional capacity.

This policy is designed to:

- Protect students, patients, colleagues, and institutional operations when safety or performance risks are present;
- Preserve faculty due process, privacy, and dignity;
- Ensure compliance with the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), FERPA, and other applicable law;
- Maintain clear separation between capacity determinations and disciplinary proceedings;
- Align procedurally with the Faculty Conduct and Disciplinary Procedures Policy while preserving faculty-led governance review for employment-status actions;
- The Fitness-for-Duty policy, outlined below, shall not be used as a first-line response to performance concerns. Immediate supervisors and Deans are expected to explore reasonable supervisory supports, collegial consultation, and voluntary accommodations before initiating a formal referral, except where

objective evidence demonstrates imminent and serious risk to safety or operations.

A Fitness-for-Duty determination under this policy constitutes a workplace functional-capacity determination only and does not constitute a legal determination of disability status under federal, state, or retirement-system law. Eligibility for disability benefits, retirement disability, or other statutory benefits is governed exclusively by the applicable external benefit program and its independent standards.

Marshall University affirms its commitment to supporting faculty well-being and professional dignity. The Fitness-for-Duty policy is not intended to stigmatize health conditions or penalize temporary hardship. Rather, it exists to ensure that faculty are provided appropriate support, reasonable accommodations, and procedural protections when legitimate functional-capacity concerns arise. Formal referral is expected to occur only after good-faith efforts to resolve concerns through supportive and less restrictive means, unless immediate safety considerations require prompt intervention. Illustrative examples of impairment concerns are provided in Appendix A.

### **3. Scope & Authority**

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#### **Applicability**

This policy applies to all individuals holding faculty appointments at Marshall University, including adjunct, tenured, tenure-track, clinical-track, teaching-track, librarian-track, and research-track faculty, including faculty with administrative appointments. Staff and administrative personnel (without faculty appointments) are governed by separate Human Resources policies and procedures.

#### **A. Authority**

This policy is issued under the Marshall University Board of Governors' policymaking authority and applicable local, state, and federal regulations and laws.

#### **B. Relationship to Other Policies**

This policy operates in coordination with:

- Faculty Conduct Rules and Policies (faculty misconduct);
- ADA accommodations and accessibility policies;
- Medical leave, Personal leave, FMLA, and disability-related policies;
- Rules and Policies governing Title IX, discrimination/harassment, research misconduct, IRB/IACUC compliance, HIPAA/FERPA, and workplace violence.

When another controlling rule, policy, or procedure governs fact-finding for the underlying conduct (e.g., Title IX; research misconduct), that controlling rule, policy, or procedure supersedes this policy for fact-finding. This policy governs fitness determinations and workplace capacity actions unless disciplinary sanctions are pursued, in which case the faculty misconduct rule governs discipline.

### **4. Guiding Principles**

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### **A. Non-Disciplinary Nature**

Fitness-for-Duty (FFD) determinations are administrative capacity determinations and are not disciplinary findings.

All participants involved in the processes outlined below are expected to act in good faith. The Fitness-for-Duty policy shall not be used for strategic, retaliatory, reputational, or political purposes.

### **B. Job-Related and Business Necessity Standard**

FFD evaluations shall be required only when job-related and consistent with business necessity, including where there is:

- Observable difficulty performing essential functions safely; and/or
- A credible, imminent, and serious safety or operational risk.

### **C. Confidentiality and Health-related Privacy**

Health-related diagnoses and private health information remain confidential and are maintained separately from personnel files. Decision-makers shall receive only functional work-capacity information necessary to implement operational decisions and accommodation. Faculty self-disclosure of health information to any person(s) involved in this policy shall not be construed as waiver of this privacy.

### **D. Shared Governance**

When a capacity determination may lead to an employment-status action equivalent to a serious or grave sanction (e.g., suspension, demotion, revocation of tenure, dismissal) (as outlined in the Faculty Misconduct Rule), the Faculty Senate's Faculty Personnel Committee review shall occur consistent with shared governance protections and will issue a formal recommendation in which they may concur with the employment action taken, disagree with the recommendation, or indicate that the recommendation should be reconsidered. The purpose of their review is to ensure oversight and that this policy is not being applied in abstract or problematic ways.

### **E. Separation from Misconduct**

Where conduct potentially violates rules, policies, or procedures, misconduct procedures may proceed separately. Fitness determinations do not substitute for, nor pre-judge, misconduct proceedings.

### **F. Proportionality and Least Restrictive Measures**

Interim measures and resulting actions should be the least restrictive option that adequately protects safety and operations.

### **G. Academic Freedom Protection**

This policy shall not be used to address disagreement over academic content, pedagogical approach, governance participation, protected speech, or matters appropriately addressed through performance evaluation or misconduct procedures.

### **H. Anti-Weaponization**

Fitness-for-Duty processes, outlined below, shall not be initiated in retaliation for protected activity, including participation in shared governance, grievance processes, whistleblowing, or protected speech.

## 5. Definitions

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**Direct Threat:** A significant risk of substantial harm to the health or safety of the faculty member or others that cannot be eliminated or reduced by reasonable accommodation, as defined under applicable federal disability law.

**Effectiveness Determinations:** Effectiveness determinations under this policy are limited to functional capacity concerns and do not replace or duplicate ordinary faculty performance evaluation processes.

**Essential Functions:** The fundamental duties of the faculty appointment, including instruction, supervision, clinical duties (if applicable), research obligations, service requirements, and professional responsibilities as defined by appointment letters, position descriptions, and institutional expectations.

**Fitness for Duty:** The ability to perform essential functions safely and effectively, with or without reasonable accommodation.

**Impairment Concern:** Credible information indicating possible cognitive, physical, psychological, behavioral, or substance-related limitations that may impair safe or effective job performance.

**Functional Capacity Determination:** The evaluator's findings regarding the faculty member's work-related capacities, limitations, restrictions, anticipated duration, and any recommended workplace modifications or accommodations.

**Independent Evaluator:** A qualified professional (e.g., physician, psychologist, neuropsychologist, occupational medicine specialist) selected by the University to conduct an objective evaluation of functional capacity.

**Interim Administrative Measure:** A temporary, non-disciplinary action (typically with pay) used to protect safety, prevent disruption, or preserve process integrity while evaluation is pending.

**ADA Interactive Process:** The structured process coordinated by Human Resources to evaluate reasonable accommodation options in collaboration with the faculty member and Academic Affairs.

**Safety:** The ability to perform essential functions without posing a significant risk of substantial harm to the faculty member, students, patients, colleagues, or university operations, consistent with the "direct threat" standard under applicable disability law.

**Effectiveness:** The sustained ability to perform the essential functions of the faculty appointment at a minimally competent professional level as defined by the faculty member's appointment letter, position description, and institutional performance expectations. Effectiveness does not include subjective disagreement over pedagogy, academic viewpoint, governance participation, or protected speech.

## **6. Roles & Responsibilities**

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### **A. Department Chair/Director/Immediate Supervisor**

- Identifies and documents observable job-performance or safety concerns.
- Consults with the Dean (or Head of that College or School), Academic Affairs, and Human Resources regarding whether concerns meet the threshold for an FFD referral.
- Implements local, non-disciplinary support as appropriate (e.g., schedule adjustments) until a formal referral is made.

### **B. Dean**

- Reviews Chair, Director, or Immediate Supervisor documentation and determines whether to recommend an FFD review to the Provost.
- Ensures referral documentation is complete and focuses on observed functional concerns and essential functions, not health-related diagnoses.

### **C. Provost (or Designee)**

- Authorizes Fitness-for-Duty evaluations and interim administrative measures.
- Serves as the final institutional decision-maker regarding fitness status based on functional findings and ADA analysis.
- Refers matters to the Faculty Personnel Committee when an employment-status action comparable to a serious or grave sanction may result.

### **D. Human Resources (HR) – Compliance and Process Administration**

HR serves in a compliance and administrative capacity only and does not exercise faculty sanction authority.

HR responsibilities include:

- Advising on ADA, FMLA, and employment-law compliance;
- Confirming the “job-related and consistent with business necessity” threshold;
- Coordinating evaluator procurement and logistics;
- Administering the ADA interactive process;
- Maintaining confidential medical records;
- Processing leave, benefits, and documentation.

### **E. University Faculty Senate’s Faculty Personnel Committee (FPC)**

- a. Provides shared-governance review when a capacity determination may lead to employment-status actions comparable to serious sanctions.
- b. Reviews whether the institutional action is supported by the functional record, whether due process occurred, and whether the proposed action is proportionate and consistent with faculty-governance standards.

### **F. University Faculty Senate Executive Committee**

- a. Serves as the faculty-level appellate body for governance review decisions when provided by institutional policies and consistent with applicable grievance procedures.

## **7. Threshold & Routing**

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### **A. Threshold for Referral**

An FFD referral must be supported by objective, articulable facts demonstrating observable difficulty performing essential functions safely and effectively, or credible evidence of a direct threat.

“Credible evidence” means documented, specific, and verifiable information from identifiable sources describing observed behaviors or incidents. Anonymous complaints, uncorroborated hearsay, disagreement over academic judgment, or protected expressive activity shall not alone constitute sufficient basis for referral.

Disagreement with academic content, pedagogical strategies, grading standards, research conclusions, governance participation, or protected expressive activity shall not constitute evidence of functional impairment.

### **B. Fitness vs. Misconduct Routing**

1. If the primary concern is functional capacity (possible impairment), route to FFD.
2. If the primary concern is a policy violation unrelated to capacity, route to Misconduct.
3. If both are present, processes may proceed concurrently but independently.

### **C. Prohibition on Diagnostic Assumptions**

Referral documentation must describe observed behaviors and essential-function impacts; it must not speculate about diagnoses.

### **D. Coordination and non-duplication**

Where another controlling policy governs fact-finding (e.g., Title IX; research misconduct), that process controls investigative determinations. FFD may proceed to address capacity and safety pending or after fact-finding, but disciplinary sanctions must follow the misconduct policy when applicable.

### **E. Voluntary Self-Disclosure and Accommodation Requests**

A faculty member's voluntary disclosure of health condition, functional limitation, or request for accommodation shall not, by itself, trigger a Fitness-for-Duty referral. Such disclosures shall ordinarily be addressed through the ADA interactive process coordinated by Human Resources or through other processes such as FMLA and/or other leave policies as applicable. However, a Fitness-for-Duty evaluation may be required following self-disclosure only when objective, job-related evidence indicates that the faculty member may be unable to perform essential functions safely and effectively, or when a direct threat concern exists that cannot be adequately assessed through the interactive accommodation process alone.

This policy does not penalize self-disclosure. Voluntary health disclosures are addressed through accommodation pathways. The Fitness-for-Duty process is

reserved for situations where documented functional capacity concerns require independent assessment.

#### **F. Initiation of Concern**

Concerns regarding potential functional impairment may be raised by supervisors, faculty colleagues, students, staff, or other members of the university community. Concerns from individuals unaffiliated with the University (e.g., donors, legislators, parents) may be considered only if accompanied by documented, objective information.

All concerns must be routed to the Department Chair, Director, or Dean, who is responsible for determining whether documentation meets the threshold described in Section VI.A. of this policy. No Fitness-for-Duty referral may proceed without supervisory review and documentation.

### **8. Procedures & Timelines**

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All time periods are business days unless otherwise stated. Timelines are procedural goals and may be extended for good cause with written notice to the faculty member. Routing procedures are outlined in Appendix B of this policy.

#### **Step 1 – Intake and Preliminary Assessment (≤ 5 days)**

- Immediate Supervisor/Chair/Dean documents concern, observable behaviors indicating functional capacity limitations, dates, and essential-function impacts.
- HR consults for ADA/FMLA and business-necessity threshold review.
- Dean prepares referral recommendation for the Provost.

#### **Step 2 – Authorization and Notice (≤ 5 days from referral)**

- Provost issues written Notice of Fitness Review including:
  - Summary of observed concerns and essential functions implicated;
  - Statement that this is non-disciplinary;
  - Description of rights (representation/advisor; confidentiality; ability to submit information);
  - Interim measures (if any) and rationale.
- Evaluation scheduling and process description.

#### **Step 3 – Faculty Response Window (≤ 15 days)**

- Faculty member may submit:
  - Written response or contextual explanation;
  - Documentation relevant to functional capacity (optional);
  - Requests for interim measure modification;
  - Preferred accommodation ideas (if applicable).
- Extensions may be granted for good cause.
- If the faculty member agrees with the summary of observed concerns and incapacity, they may work directly with Academic Affairs and their immediate

supervisor to resolve and/or accommodate the capacity concerns and determine a resolution that is in the best interest of the University and faculty member. Once a resolution is reached and agreed upon, no further procedural steps as outlined below will be executed.

#### **Step 4 – Informed Consent**

- Prior to conducting any evaluation, the University shall provide written notice describing:
  - The specific components of the evaluation;
  - The functional concerns to be assessed;
  - The essential functions implicated;
  - The faculty member's rights to review results;
  - The right to request a second opinion;
  - The voluntary nature of consent except as provided below.
- The University must obtain informed written consent prior to evaluation. Should the faculty member refuse consent, the processes outlined below may proceed, and the Provost may make a functional capacity determination based on observed behaviors.
- Consent shall not be construed as agreement with interim measures or any future institutional determination.

Exception: Where documented behavior demonstrates an immediate and serious risk of substantial harm to self or others, and delay would materially increase risk, the University may require evaluation without prior consent to the extent permitted by law. The faculty member shall receive written notice of the basis for such action.

#### **Step 5 – Independent Evaluation (target ≤ 15 days after response window)**

- The University shall maintain a list of qualified, licensed health-care professionals with expertise relevant to functional capacity evaluations. Evaluators must be independent and may not:
  - Be current employees of Marshall University;
  - Hold adjunct, affiliate, or contractual appointments with the University;
  - Have a financial relationship with the University that could reasonably raise questions of impartiality;
  - Have prior involvement in the matter.
- The faculty member shall select the evaluator from the approved list.
- If the faculty member objects to all evaluators on the list for cause, the Provost and University Senate Faculty Personnel Committee Chair shall jointly select an alternative evaluator.

#### **Step 6 – Review of Report and ADA Interactive Process (≤ 10 days)**

- HR and Academic Affairs review functional findings.
- If restrictions are identified, HR initiates ADA interactive process, including:
  - Identification of reasonable accommodations;
  - Consideration of modified duties or reassignment where appropriate;

- Determination of whether accommodations enable performance of essential functions.

### **Step 7 – Institutional Fitness Determination (≤ 10 days after Step 5)**

- Provost issues written Fitness Determination:
  - Fit for full duty; or
  - Fit with restrictions/accommodations; or
  - Temporarily unfit (leave/modified duties); or
  - Permanently unable to perform essential functions.

### **Step 8 – Governance Review Trigger (as needed)**

- If the Provost determines that an employment-status action may be required (e.g., suspension, demotion, tenure action, dismissal), the matter is referred to the FPC for shared governance review prior to final action.

## **9. Interim Administrative Measures**

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### **A. Standard**

Interim measures may be imposed only when continued performance of duties presents an immediate and serious risk to the safety of the campus community or the faculty member, or university operations, or would seriously impede the integrity of the evaluation process. Interim measures under this section shall not constitute disciplinary sanctions and shall not include unpaid suspension absent independent authority under applicable leave policies or faculty conduct policies and procedures.

### **B. Types of Interim Measures**

- Temporary removal from teaching/clinical/lab duties (with pay);
- Reassignment to alternative duties;
- Restricted access to specific sites or systems as necessary;
- Administrative leave with pay.

### **C. Review of Interim Measures**

Within five (5) business days of implementation, the Provost (or designee) shall review interim measures in consultation with HR and the Dean and shall affirm, modify, or lift the measure in writing.

## **10. Evaluation Standards & Contents**

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### **A. Scope**

Evaluations shall be limited to the functional capacity necessary to assess whether the faculty member can perform essential functions safely and effectively.

### **B. Required Contents of Functional Capacity Determination**

The evaluator's report shall address, as applicable:

- Functional capacities and limitations related to essential functions;

- Work restrictions (if any) and anticipated duration;
- Recommended workplace modifications or accommodations;
- Whether a "direct threat" safety risk exists absent restrictions;
- Return-to-work conditions and follow-up evaluation timelines (if needed).

### **C. University Decision Authority**

The evaluator provides functional findings; the University makes the final institutional fitness determination.

## **11. Ada Accommodation And Return-To-Work**

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### **A. ADA Interactive Process**

When limitations are identified, HR shall coordinate an ADA interactive process with the faculty member and Academic Affairs to identify reasonable accommodations.

### **B. Accommodation Outcomes**

Accommodations may include (non-exhaustive):

- Modified teaching modality or schedule;
- Temporary workload adjustments;
- Adjusted clinical assignments;
- Remote work components where feasible;
- Assistive technology or support services;
- Temporary reassignment of non-essential tasks.

### **C. Return-to-Work Certification**

When a faculty member has been placed on leave or removed from duties, return-to-work certification may be required from the evaluator or a treating provider, limited to functional capacity and restrictions.

### **D. Follow-Up Reviews**

Where temporary restrictions are imposed, the University may require follow-up functional reviews at reasonable intervals.

## **12. Dispute And Second-Opinion Procedures**

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### **A. Request for Second Evaluation**

Within ten (10) business days of receipt of the functional report, a faculty member may request a second independent evaluation.

The faculty member may select the second evaluator from the approved list or propose an alternative qualified evaluator subject to mutual agreement.

If the first and second evaluations materially conflict, a third evaluator shall be jointly selected by the Provost (or designee) and the University Faculty Senate Faculty Personnel Committee Chair. The third evaluation shall address only disputed functional findings.

### **B. Cost**

The University will bear the cost of evaluations it requires. If a faculty member elects to obtain additional independent evaluations beyond those described above, the faculty member bears that cost unless otherwise required by law or agreement.

### **13. Interaction With Misconduct Proceedings**

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#### **A. Concurrent Processes**

When conduct may involve policy violations, the University may pursue the misconduct process concurrently with FFD. Neither process pre-judges the other.

#### **B. Use of Information**

Health-related information obtained through the Fitness-for-Duty process shall not be introduced into misconduct proceedings except in functional, non-diagnostic terms strictly necessary to implement interim safety measures or accommodations, and only in compliance with applicable confidentiality law.

#### **C. Discipline Requires Misconduct Procedures**

Any disciplinary sanction (reprimand, pay reduction, suspension without pay, demotion, tenure revocation, dismissal for cause) must proceed under the Faculty Conduct and Disciplinary Procedures Policy, including faculty governance hearing protections.

### **14. Governance Review, Appeals, And Grievance Routing**

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#### **A. Governance Review Trigger**

If the institutional fitness determination may lead to an employment-status action equivalent to a serious sanction (e.g., suspension, demotion, revocation of tenure, dismissal as defined in the Faculty Misconduct Rule), the matter shall be referred to the Faculty Senate's Faculty Personnel Committee for review prior to final action. The University Faculty Senate's Faculty Personnel Committee does not re-determine capacity but reviews the proportionality and procedural integrity of proposed employment-status actions resulting from the fitness determination.

#### **B. Scope of FPC Review**

The FPC review focuses on whether:

- The functional record supports the institutional determination;
- Procedures and timelines provided adequate due process;
- Proposed institutional action is proportionate and consistent with faculty governance standards;
- Reasonable accommodation was appropriately considered.

#### **C. Appeals and Grievance**

A faculty member may seek review through applicable faculty grievance procedures for employment-status actions, consistent with governing rules, policies, procedures, and West Virginia law. Nothing in this policy limits rights under external law.

## **15. Confidentiality, Records, And Retention**

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### **A. Confidential Health-related Files**

Human Resources shall maintain evaluation and health-related documentation as confidential health-related records separate from personnel files for legitimate institutional needs. "Legitimate institutional need" means access required to implement accommodations, ensure operational safety, comply with legal obligations, or carry out responsibilities under this policy. It does not include general supervisory curiosity, reputational concerns, or unrelated employment decision-making. The records must be available to the faculty member upon request.

### **B. Limited Disclosure**

Decision-makers and supervisors receive only the minimum functional information necessary to implement restrictions, accommodations, or operational changes.

### **C. Retention**

Records shall be retained consistent with institutional record retention requirements and applicable law.

## **16. Non-Retaliation**

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Marshall University prohibits retaliation against any person who makes a good-faith report of impairment concerns, participates in the FFD process, or requests reasonable accommodation. Retaliation concerns may be routed under the misconduct policy when appropriate.

## **17. Training & Implementation**

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Annual training on this policy is required for:

- Immediate Supervisors/Department Chairs/Directors
- Deans/Associate Deans
- Provost leadership, designees, HR staff administering ADA/FMLA
- FPC members and relevant Faculty Senate Leadership

Training includes:

- Business-necessity threshold and documentation
- Confidentiality and records handling
- ADA interactive process coordination
- Interim measures and least restrictive practice
- Coordination with misconduct procedures

## **18. Review & Revision**

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This policy will be reviewed at least every five (5) years by the University Faculty Senate's Faculty Personnel Committee, Faculty Senate, Academic Affairs, and Human Resources to ensure alignment with law, best practice, and institutional needs.

## **19. Conflicts Of Interest And Impartiality**

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All individuals participating in the administration, evaluation coordination, accommodation determination, governance review, or appeal processes under this policy must be impartial and free from actual or perceived conflicts of interest. Routine supervisory involvement in documenting observed concerns does not, by itself, constitute a conflict of interest. However, any administrator who is a direct complainant or whose impartiality could reasonably be questioned must recuse from decision-making stages beyond initial documentation.

A conflict requiring recusal exists when an individual has:

- A familial, domestic, or close personal relationship with the faculty member or reporting party;
- A supervisory or evaluative relationship that would reasonably call impartiality into question;
- Prior involvement in investigative or disciplinary proceedings concerning the same matter;
- A financial or professional interest in the outcome.

Any party may raise a written request for recusal for cause. The Provost (or designee) shall rule on administrative recusal requests. Governance-review recusals shall be determined under Faculty Personnel Committee procedures.

## **20. Records, Reporting, And Expungement**

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Human Resources and Academic Affairs shall maintain official records of Fitness-for-Duty referrals, evaluations, determinations, and accommodation outcomes consistent with institutional confidentiality requirements and applicable law.

### **A. Confidential Health-related Records**

All health-related and evaluation documentation obtained through the Fitness-for-Duty process shall be maintained by Human Resources as confidential health-related records separate from personnel files and accessible only to individuals with a legitimate institutional need consistent with law and institutional policy.

### **B. Administrative Documentation**

Operational determinations, accommodation implementation records, governance-review determinations, and other non-health-related administrative documentation generated through this process shall be retained in institutional administrative files with access restricted to authorized officials with a legitimate institutional need. Nothing in this section limits the University's authority to maintain independently created documentation of job performance, conduct, or operational matters in personnel or evaluation records in accordance with applicable institutional record-retention requirements.

### **C. Annual Anonymized Reporting**

An anonymized annual summary of the number of Fitness-for-Duty referrals, evaluation outcomes, accommodation determinations, and average resolution timelines shall be provided to the Faculty Personnel Committee for oversight and policy-review purposes. Reports shall contain no personally identifying information.

**D. Expungement of Non-Substantiated Capacity Concerns**

Where a Fitness-for-Duty referral results in a determination that no functional impairment exists and no accommodation or employment-status action is required, documentation reflecting the administrative referral for the capacity concern shall be removed from personnel-related administrative records after three (3) years of satisfactory service unless retention is required by law.

Expungement under this subsection applies only to documentation reflecting the expression, routing, or administrative handling of a capacity concern that was ultimately unsubstantiated and shall not require removal of independently maintained documentation of job performance, conduct, or operational concerns that existed apart from the capacity determination or that may otherwise be retained under applicable personnel or evaluation record-retention requirements.

Where a record contains both referral-related documentation subject to expungement and independently maintainable performance or operational documentation, expungement shall occur through targeted redaction of the referral-specific material rather than removal of the entire record.

Nothing in this subsection shall be construed to require removal, alteration, or suppression of independently created documentation of job performance, professional conduct, supervisory observations, or operational decisions that were created and maintained separate from the capacity referral and that may be relied upon in future employment determinations consistent with applicable law and policy.

Approved by:



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Brad Smith, President

Date:

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JUNE 1, 2026

## **APPENDIX A – ILLUSTRATIVE EXAMPLES OF IMPAIRMENT CONCERNS**

### **1. Physical Fitness for Duty**

This category concerns the faculty member's ability to safely perform the physical requirements of their position.

#### **Examples:**

- A laboratory faculty member who is unable to safely supervise students while handling hazardous materials or equipment.
- An art or studio faculty member who is unable to safely operate or oversee the use of tools (e.g., kilns, saws, presses).

#### **Standard:**

The relevant question is whether the individual can perform essential job functions in a safe and reliable manner.

### **2. Psychological / Mental Fitness for Duty**

This category concerns conditions that materially impair judgment, reliability, or the ability to carry out essential academic responsibilities.

#### **Examples:**

- A faculty member exhibiting sustained impairment in judgment, classroom management, or evaluation practices that compromises fairness or instructional effectiveness.
- A faculty member engaging in behavior that is erratic, threatening, or inconsistent with maintaining a safe learning or working environment.
- A faculty member demonstrating psychological impairment that interferes with the performance of essential job functions.

#### **Standard:**

The relevant question is whether the individual can exercise professional judgment, maintain appropriate boundaries, and fulfill core instructional and institutional responsibilities.

### **3. Behavioral / Conduct-Related Fitness**

This category concerns patterns of behavior that interfere with the performance of professional responsibilities, regardless of underlying cause.

#### **Examples:**

- Repeated, uncontrolled emotional outbursts in instructional or professional settings.
- Inability to maintain appropriate professional boundaries with students, staff, or colleagues.
- Substance use that materially impairs the ability to perform essential job functions.
- Repeated failure to follow required safety protocols in laboratory, clinical, or instructional settings.

#### **Standard:**

The relevant question is whether the faculty member's conduct materially interferes with their ability to perform essential job functions or maintain a safe and professional environment.

#### **4. Cognitive / Competency-Based Fitness**

This category concerns the faculty member's ability to meet the intellectual, organizational, and compliance-related demands of their role.

##### **Examples:**

- Observable cognitive decline that materially affects teaching, evaluation, or other essential job functions.
- Inability to understand, apply, or comply with required institutional policies (e.g., FERPA, safety, accreditation requirements) in a manner that affects job performance.

##### **Standard:**

The relevant question is whether the faculty member can reliably perform the core intellectual and administrative functions required of the position.

#### **5. Temporary vs. Ongoing Concerns**

It's important to distinguish:

- **Temporary fitness issues** (e.g., post-surgery recovery, acute mental health episode) → Often handled with leave or accommodations.
- **Ongoing impairment concerns** → May require formal evaluation, HR involvement, ADA accommodations, or structured return-to-work plans.

## **APPENDIX B – FITNESS VS. MISCONDUCT ROUTING FRAMEWORK**

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### **CONCERN IDENTIFIED**

→ Determine primary concern:

- A) Capacity / Impairment
- B) Misconduct / Policy Violation
- C) Both

### **A. Capacity / Impairment Routing**

Immediate Supervisor/Chair/Director documents observed difficulties and sends their report and findings to their Academic Dean → Academic Dean reviews documents related to observable difficulty and makes formal recommendation to the Provost → Provost authorizes Fitness Review → Independent Functional Evaluation → University Fitness Determination → Return to Duty / Accommodation / Leave / Governance Review if employment action required.

### **B. Misconduct Routing**

Immediate Supervisor/Chair/ Director preliminary classification → Dean confirmation → Tier 1 corrective action OR Tier 2/3 investigation → FPC Hearing → Senate Appeal → Presidential Final Action.

### **C. Combined Concerns**

Fitness determines work capacity; misconduct determines policy violations. Processes may run concurrently with coordinated outcomes.

## APPENDIX C – MISCONDUCT VS. FITNESS AUTHORITY CROSSWALK

<b>Process Stage</b>	<b>Fitness for Duty (Capacity) – Authority</b>	<b>Misconduct (Policy Violation) – Authority</b>
<b>1. Initial concern</b>	Chair/Dean/Provost/HR identify capacity concerns; document essential-function impacts.	Chair/Dean identify alleged policy violation; document and classify tier.
<b>2. Threshold decision</b>	Provost determines evaluation is job-related/business necessity (with HR compliance consult).	Chair proposes tier; Dean confirms; disputes routed per misconduct policy gatekeeping.
<b>3. Fact-finding</b>	Independent evaluator provides functional capacity findings.	Investigator and/or FPC panel establishes findings of fact for serious cases.
<b>4. Interim measures</b>	Provost implements non-disciplinary interim measures (typically with pay).	Provost/Dean implements interim measures per misconduct policy (non-punitive).
<b>5. Primary decision</b>	Provost issues institutional fitness determination based on functional record + ADA analysis.	FPC hearing panel recommends findings/sanctions; Senate appeal; President issues final action.
<b>6. Accommodation</b>	HR coordinates ADA interactive process with Academic Affairs.	Not a misconduct function (unless accommodation issues are implicated separately).
<b>7. Employment-status actions</b>	FPC review required before serious employment-status actions based on capacity.	FPC hearing required for serious sanctions under misconduct policy.
<b>8. Records</b>	Confidential health-related records maintained by HR separate from personnel files.	Disciplinary records maintained in personnel files per policy; access controlled.
<b>9. Appeal / grievance</b>	Grievance routing for employment-status actions per governing procedures.	Senate Executive Committee appeal (as applicable) + Presidential review; grievance rights per law.

## **APPENDIX D – REQUIRED FORMS / TEMPLATES (ILLUSTRATIVE)**

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### **C-1. Referral Memorandum Template (Chair/Dean → Provost)**

- Summary of observed behaviors and dates
- Essential functions affected
- Safety/operational risk description
- Prior supports attempted (if any)
- Requested interim measures (if any)
- Confirmation that documentation avoids diagnostic speculation

### **C-2. Notice of Fitness Review Template (Provost → Faculty)**

- Non-disciplinary statement
- Concerns and essential functions implicated
- Rights and response window
- Interim measures (if any)
- Evaluation logistics and confidentiality statement

### **C-3. Evaluator Instruction Sheet**

- Essential function description attached
- Required report elements
- Limits on disclosure and diagnosis handling

## **APPENDIX E – RETURN-TO-WORK AND ACCOMMODATION PLAN TEMPLATE (ILLUSTRATIVE)**

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- Work restrictions and duration
- Approved accommodations and responsible parties
- Follow-up review schedule
- Conditions for reinstatement of full duties
- Documentation and confidentiality statement

