

Departmental Policy Title	Academic Remediation and Due Process Policy and Procedure- GME	Policy ID	11321
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Department	Graduate Medical Education		

I. Purpose of Policy and Procedure

The purpose of this policy and procedure is to outline academic remediation options and establish the due process policy and procedures for Dartmouth-Hitchcock (Mary Hitchcock Memorial Hospital-sponsored) Graduate Medical Education (“GME”) training programs accredited by the Accreditation Council for Graduate Medical Education (“ACGME”) to follow when a resident or fellow (collectively referred to herein as “Resident”) in such a program has demonstrated an Academic Deficiency.

A Resident is a learner and is expected to pursue acquisition of all ACGME-required competencies that allow them to meet specific milestones as they progress through their program. In addition, a Resident must adhere to standards of professional conduct expected by Dartmouth-Hitchcock. The procedure described herein is designed to ensure that those academic remediation actions identified below that might adversely affect a Resident’s status are taken only after appropriate, full, and fair process, while simultaneously ensuring patient safety, quality of care, and the orderly conduct of Dartmouth-Hitchcock’s GME training programs.

This policy and procedure address Academic Deficiency remediation and related due process only; a Resident’s conduct that meets the definition of Misconduct is addressed under the Disciplinary Action and Due Process Policy and Procedure– GME (Policy ID 11324). This policy also does not apply to general grievances, which are addressed in General Grievances Policy – GME (Policy ID 11307).

II. Policy Scope

This policy applies to all ACGME-accredited residency and fellowship programs at Dartmouth-Hitchcock.

III. Definitions

Academic Deficiency: A failure by the Resident to meet one or more of the ACGME Core Competencies, as revised from time to time, which include: patient care and procedural skills, medical knowledge, practice-based learning and improvement, interpersonal and communication skills, professionalism, and system-based practice.

Academic Remedial Action: Any of the following actions taken in response to an academic deficiency: Communication of Concern, Remediation Plan Probation, Suspension, Non-Promotion, Non-Renewal, Dismissal.

Administrative Leave: A period of time in which a Resident is placed on leave, with or without pay. This action is not disciplinary in nature and therefore is not subject to due process review.

Clinical Competency Committee (CCC): ACGME required committee that advises the Program Director and reviews the progress of all Residents in a training program.

Designated Institutional Official (DIO): The individual in a sponsoring institution who has the authority and responsibility for all of the ACGME-accredited GME programs.

Dismissal: A permanent separation of a Resident from the program resulting in termination of the Resident's employment with Dartmouth-Hitchcock.

Academic Remediation-based Extension: An extension of a Resident's training resulting from a delay in promoting a Resident to the next level of training or graduating the Resident from a program in order to provide additional time for the Resident to complete a Remediation Plan.

Documented Conversation: A conversation (sometimes referred to as a "documented awareness conversation") undertaken by the Program Director or their designee to address a Resident's Academic Deficiency. The purpose of a Documented Conversation is to describe the Academic Deficiency and to recommend actions to rectify the deficiency, which is set forth in a Notice of Concern.

Non-Promotion: Occurs when a Resident must repeat all or a portion of an academic year of training.

Non-Renewal: Occurs when a Resident's Agreement of Appointment for the next academic year is not renewed, resulting in permanent separation of the Resident from the program.

Notice of Concern: The written summary of a discussion between the Program Director and a Resident regarding an Academic Deficiency. The summary is provided to the Resident and should include a statement of the Academic Deficiency and the action recommended to rectify the deficiency.

Probation: A temporary modification of a Resident's participation in or responsibilities within the training program.

Program Director: The individual designated with authority and accountability for the operation of a residency/fellowship program, including compliance with all applicable ACGME program requirements.

Remediation Plan: A written plan for addressing one or more Academic Deficiencies.

Resident: Any resident or fellow physician in an accredited graduate medical education program at Dartmouth-Hitchcock.

Suspension: A time period in which a Resident is not allowed to participate in their training program.

IV. Policy Statements – Academic Remediation

Program Directors undertake Academic Remedial Action in response to a Resident's Academic Deficiency in accordance with this policy and procedure.

The Program Director in consultation with the program's CCC is responsible for identifying an Academic Deficiency and determining the appropriate course of action to help the Resident remediate the deficiency. The Program Director is encouraged to consult with the DIO prior to issuing an Academic Remedial Action for a Resident. (Certain professional conduct concerns such as, for example, those that involve allegations of discrimination or harassment may require involvement of Human Resources and/or Office of General Counsel.)

Remedial action to address an Academic Deficiency does not constitute disciplinary action as defined in the Disciplinary Action and Due Process Policy and Procedure– GME (Policy ID 11324).

The Resident has a right to a due process review of a recommendation for Suspension, Non-Promotion, Non-Renewal, or Dismissal action pursuant to the procedures set forth below. A Resident's performance evaluations, Notice of Concern, Documented Conversation, Remediation Plan, extension of a Remediation Plan, Probation or Academic Remediation-based Extension are *not* subject to due process review.

Dartmouth-Hitchcock prohibits retaliation against an individual who, in good faith, seeks a due process review of a recommended academic remediation action or participates in the review or resolution of an academic remediation plan or action under this policy and procedure.

- A. **Administrative Leave.** A Resident may be placed on immediate administrative leave when a Program Director and DIO or their designee determine that immediate action is required prior to completion of a review of an Academic Deficiency, in order to protect the health and safety of patients, staff or other persons, or the interests of Dartmouth-Hitchcock. In this event, the Office of General Counsel and Employee Relations should be alerted. This action is not disciplinary in nature and therefore is not subject to due process review. This type of leave is intended to be a short-term measure to allow for a review of the underlying concern and determination as to whether academic remediation is warranted. The Resident continues to be paid their stipend while on administrative leave under these circumstances.
- B. The Program Director should use the following measures to resolve Academic Deficiencies or, as necessary, take action when the Academic Deficiency is not satisfactorily addressed by the Resident. The Program Director has discretion to use any of the measures below based on evaluation of all facts and circumstances, and such measures need not be used in a particular order.

Communication of Concern

In the course of training, a Program Director may have conversations with their Resident regarding the need to address an Academic Deficiency. These may be in the form of an informal conversation for a minor concern, Documented Conversation, or may take place during the course of an evaluation (followed by a Notice of Concern or another documented summary, as appropriate).

Such communication of concern need not precede a Remediation Plan. Failure to achieve immediate and/or sustained improvement may lead to additional measures as set forth below, in the discretion of the Program Director exercising their professional and academic judgment.

Notices of Concern and any written summaries of informal conversations are maintained in the Resident's file in the Residency Management System (MedHub) by the program.

Remediation Plan

A Remediation Plan may be provided to a Resident who has demonstrated an Academic Deficiency, the underlying causes for which the Program Director, in their professional judgment and in consultation with their CCC, believes are amenable to remediation. The Remediation Plan is designed to give the Resident notice of the Academic Deficiency identified, set out specific requirements and expectations of the Resident, identify strategies to assist the Resident in addressing the deficiency(ies), and set forth the associated timeframe for completion of the plan.

The timeframe for a Remediation Plan may be extended in writing at the discretion of the Program Director. In the event that the Program Director determines that the Resident must satisfactorily complete a Remediation Plan (or extension thereof) before qualifying for promotion to the next level of training or graduation from the Program, and the timing of such action within the academic year results in delay in promotion of the Resident to the next training year, or delays graduation from the program, neither action affords the Resident due process review under the following procedure, unless the delay is expected to be of a duration exceeding three (3) months, as determined by the Program Director at the time of issuance of the Remediation Plan or Remediation Plan Extension.

Remediation Plans are maintained in the Resident's file in the Residency Management System (MedHub) by the program.

Probation

A Program Director may place a Resident on Probation. Probation is a temporary modification of a Resident's participation in or responsibilities within the training program. Generally, a Resident continues to fulfill training program requirements while on probation, subject to the specific terms of the probation. The Program Director has wide discretion based on their professional judgment to determine the terms of Probation.

Probation may include, but is not limited to, special requirements or alterations in scheduling a Resident's responsibilities, a reduction or limitation in clinical responsibilities, or enhanced supervision of a Resident's activities.

Suspension

A Program Director may issue a Suspension recommendation. Suspension is a time period in which a Resident is not allowed to participate in their training program. Time spent on Suspension does not count towards the completion of the program requirements.

During a Suspension, the Resident is placed on administrative leave, with or without pay, as deemed appropriate by the program depending on the circumstances.

Non-Promotion

A Program Director may issue a Non-Promotion recommendation. Non-promotion occurs when a Resident must repeat all or a portion of an academic year of training.

Non-Promotion as used herein does not include a circumstance in which a Resident does not promote to the next level of training or does not complete the program within the expected duration as a result of having requested and taken administrative leave for personal reasons.

Non-Renewal

A Program Director may issue a Non-Renewal recommendation. When a Resident's Agreement of Appointment for the next academic year is not renewed, the Resident is permanently separated from the program resulting in termination of the Resident's employment with Dartmouth-Hitchcock.

Dismissal

A Program Director may issue a Dismissal recommendation. Dismissal is a permanent separation of the Resident from the program resulting in termination of the Resident's employment with Dartmouth-Hitchcock.

C. Issuance of Academic Remedial Action Notice

1. When a Program Director determines that academic remediation is warranted, the Program Director should consult with the DIO and take into account input from the CCC. In making a determination of what type of academic remediation to recommend, the Program Director should consider the totality of circumstances as then known, including but not limited to, the severity of the Resident's Academic Deficiency, potential for patient harm, prior attempts at academic remediation and the results of these attempts, and the Program Director's experience and judgment. The Program Director and DIO should contact the Office of General Counsel and/or Human Resources Department for assistance as necessary or helpful.
2. Following a determination that a recommendation for academic remediation should be issued, the Program Director prepares a written notice of recommendation of academic remediation utilizing the GME Office's Remedial Action Notice template. This Remedial Action Notice is reviewed by the DIO or their designee, in consultation with the Office of General Counsel as helpful. Following acceptance of the Program Director's recommendation by the DIO or their designee, the Remedial Action is issued to the Resident. The Remedial Action Notice for the Resident should include the following items:
 - The specific academic remediation action to be taken
 - A description of the Academic Deficiency that is the basis for the Remedial Action
 - The specific improvement that is required, unless the Remedial Action is Non-Renewal or Dismissal
 - Notice of the right to due process (for Suspension, Non-Renewal, Non-Promotion (with impact >3 months), and Dismissal actions), along with a copy of this policy and procedure.
3. The Program Director should discuss Remedial Action Notice with the Resident in person if possible, and signed thereafter by the Program Director. The Resident should be requested to co-sign the notice to acknowledge receipt. If hand delivery is not possible, the Remedial Action Notice is emailed to the Resident. A copy of the signed Remedial Action Notice is forwarded to the GME Office. The GME Office uploads the document to the Resident's file in MedHub. A

copy of a Remedial Action Notice for Non-Renewal or Dismissal is sent to Employee Relations.

D. Administrative Leave Pending Completion of Due Process Proceeding

The Program Director may remove the Resident from participation in the program pending the Resident's expiration of the time frame to request due process and final resolution of the due process proceeding. In making a determination as to whether to remove the Resident from the program pending final resolution, the Program Director should consult with the DIO and take into account whether the Resident's continued participation could endanger the health or wellbeing of patients, staff, or others. The Program Director should also consider the nature of the underlying concern giving rise to the Remedial Action (i.e., a concern of a serious, ongoing Academic Deficiency tends to weigh in favor of removal from participation pending resolution). In this event, the Office of General Counsel and Employee Relations should be alerted. This action is not disciplinary in nature and therefore is not subject to due process review. This type of leave is intended to be a short-term measure until there is a final decision on the Remedial Action recommendation and the due process procedure (if invoked by the Resident) is completed. The Resident continues to be paid their stipend while on administrative leave until there is a final decision on the Remedial Action and the due process proceeding (if invoked by the Resident) is completed.

F. Academic Remediation Due Process Procedure

A Resident may request a due process hearing upon issuance of a recommendation for Suspension, Non-Renewal, Non-Promotion, or Dismissal. No report of any such Remedial Action to any outside entity, including but not limited to any certifying body, professional association, or other training program, may be made until the due process proceeding conclude or any due process rights expire, unless any such disclosure is authorized in writing by the Resident or disclosed pursuant to compulsory legal process, in which case the Office of General Counsel should be consulted prior to such disclosure. The foregoing does not prevent the Program Director or GME Office from notifying necessary persons or entities that the Resident is on leave for purposes of ensuring appropriate patient coverage.

The recommended Remedial Action becomes final at such time as: the time frame for request for a due process review expires and the Resident has not submitted a request for due process; the Resident withdraws a due process request; or the due process proceeding concludes and the hearing panel upholds or modifies the recommended Remedial Action.

1. Initiating Due Process

a. Filing of Due Process Request with Graduate Medical Education Office:

- To initiate due process, the Resident must submit a written request for due process to the DIO within ten (10) days of receipt of the notice of recommendation of Suspension, Non-Promotion, Non-Renewal, or Dismissal.
- Notice of request for due process may be submitted by the Resident utilizing internal Dartmouth-Hitchcock electronic mail. After this time period, the Resident's right to request due process is forfeited and the recommended action shall become final.

- b. Convening and Constitution of Ad Hoc Review Panel: Within ten (10) days of receipt of the request for due process by the DIO, the DIO or their designee appoints an ad hoc review panel to conduct the due process hearing. The DIO or their designee selects and forms a panel consisting of the DIO or their designee, the Chief Medical Officer or their designee, a resident or fellow (not from the clinical department of the program in which the Resident participates), and two Program Directors (not from the clinical department of the program in which the Resident participates) or one Program Director and one physician faculty member (not from the clinical department or program in which the Resident participates) (hereafter called the “Panel”).
- c. Panel Chair: The Panel is chaired by the DIO or their designee (the “Panel Chair”). No person who has actively participated in the initiation or recommendation of the remedial action or who has personal direct knowledge of the facts underlying the basis for the proposed Suspension, Non-Promotion, Non-Renewal, or Dismissal may be appointed to the Panel. Personal direct knowledge means that the person has either witnessed the facts in question underlying the proposed remedial action, or has first-hand knowledge of the Resident’s performance (e.g., participated in evaluation of the Resident and such evaluation is a basis for the proposed Suspension, Non-Promotion, Non-Renewal, or Dismissal).
- d. Scheduling of Hearing: The GME Office schedules the hearing and notifies the Panel of the hearing date. The hearing should occur within fifteen (15) days of appointment of the Panel. The Panel Chair may, upon written request of either the Resident or the Program Director, for good cause shown, or on their own for other reasonable reasons, extend or reschedule the hearing date. Any extension of the hearing date requires the generation of a new hearing notice.
- e. Notice of Hearing: The GME Office sends a hearing notice to the Resident and Program Director. The hearing notice contains the names of the Panel members; the date, time, and location of the hearing; and the deadline to submit evidence. The GME Office sends the notice at least ten (10) days prior to the hearing date. This notice requirement to the Resident may be met by regular US Postal Service with a copy to the Resident’s Dartmouth-Hitchcock e-mail address. Notice to the Program Director may be accomplished via Dartmouth-Hitchcock email.
- f. Withdrawal of Due Process Request: The Resident may, at any time, withdraw the request for due process review by informing the DIO in writing of their decision to withdraw the request. The withdrawal of the due process review request shall become binding immediately upon receipt of a withdrawal of the request by the DIO. Once withdrawn, a request for due process review may not be reinstated.

2. Evidence

- a. Any written evidence that the Resident or the Program Director wishes the Panel to consider must be submitted to the GME Office at least five (5) days prior to the hearing date. Failure to submit evidence in the time and manner required by the GME Office may result, at the discretion of the Panel Chair, in the material not being considered by the Panel.
- b. The GME Office facilitates the exchange of evidence between the Resident and the Program Director and provides copies of all evidence to the Panel.
- c. Witnesses: The Resident and the Program Director may invite up to three (3) witnesses each to present before the Panel. The Resident and Program Director may also ask others not invited to speak to submit written statements which must be submitted to the GME Office at least five (5) days prior to the hearing date. Failure to submit written statements in the time and manner set

- d. forth herein may result, at the discretion of the Panel Chair, in the material not being considered by the Panel.

3. Due Process Hearing

- a. The Resident must be physically present at the hearing. Failure by the Resident to be present in person shall be deemed a withdrawal of the due process review request by the Resident.
- b. The Panel Chair has wide discretion with respect to conducting the hearing. In general, due process hearings proceed according to the following format:
 - The Program Director may make a presentation to the Panel up to twenty (20) minutes. The Program Director then has an opportunity to present witnesses.
 - The Resident may make a presentation to the Panel up to twenty (20) minutes. The Resident then has an opportunity to present witnesses.
 - The Program Director and the Resident each have the opportunity to ask questions of the other's witnesses.
 - The Program Director and the Resident each have up to ten (10) minutes to respond to the statements made by the other.
 - At any time during the hearing, the Panel may ask questions of witnesses, the Resident and/or the Program Director.
 - The Panel may also, at its sole discretion and without special notice, recess the hearing and reconvene later in order to study new evidence presented during the hearing.
- c. Neither the Resident nor the Program Director may be assisted or represented during the hearing by counsel. Nothing in this policy is construed as prohibiting either the Program Director or the Resident from soliciting the advice of counsel at any time before or after the hearing. No inference may be drawn against an individual as a result of that individual's having sought the advice of counsel.
- d. Due process hearings are confidential. Only participants as outlined in this policy and Panel members may attend. The hearing may not be audio or video recorded, though general minutes should be maintained by the Panel Chair or its designee. To the greatest extent permitted by law, hearing minutes shall be confidential and protected under New Hampshire Quality Assurance statutes or other state and federal confidentiality laws.
- e. The hearing is not controlled by legal rules of evidence or procedure. The Panel considers such evidence as reasonable persons are accustomed to rely on in the conduct of serious affairs. The Panel decides all other procedural matters not specified in this policy. The Panel and Dartmouth-Hitchcock may rely on and accept as true, any finding of fact contained in a final decision by the applicable licensing, certifying, or regulatory authority.

4. Deliberation and Decision

- a. Following the hearing, the Panel deliberates privately.
- b. If the Panel determines that additional meetings are required after the initial hearing above, a final determination by the Panel must be made within twenty (20) days of the initial hearing meeting.
- c. The final decision as to whether to uphold, modify, or reverse the remedial action is made by a majority vote of the Panel members. A decision to uphold a recommended Suspension, Non-

Promotion, Non-Renewal, or Dismissal may be made by the Panel upon a finding that the recommended remedial action is reasonable under the circumstances.

- d. The Panel prepares a written decision setting forth its conclusions and reasoning in support of those conclusions.
- e. The Panel's decision is sent to the Resident, the Program Director and the DIO within ten (10) days after final determination of the Panel.
- f. The decision of the Panel shall be final and binding.
- g. The Panel's decision must be documented in the Resident's file in MedHub.

5. Legal Action

- a. No legal action concerning remediation may be brought by a Resident unless and until:
 - The Resident has filed a written request for a due process review of the remedial action recommendation following the procedure and within the time prescribed above; and
 - The Resident was notified in writing of the decision of the Panel, or the Panel failed to take any action on the Resident's written request for due process within the time prescribed.

6. Time Limits and Computation of Time

- a. Time Limit: Time limits set forth in this policy must be adhered to by both the Resident and Dartmouth-Hitchcock unless extended for good cause at the discretion of the DIO or their designee. A Resident who fails to meet the time limits for submitting a request for due process shall forfeit their right to due process. A Resident who fails to appear at a hearing is deemed to have withdrawn the due process request. In either case (failure to file a request or failure to appear) further legal action is precluded.
- b. Computing Time: The following rules apply in computing any time period specified in this policy:
 - When the period is stated in days or a longer unit of time
 - Exclude the day of the event that triggers the period.
 - Count every day, excluding intermediate Saturday, Sunday, and legal holidays.
 - Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday
 - If the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.
 - Legal holidays are those designated by Dartmouth-Hitchcock policy.

Summary of Events and Timing for a Due Process Proceeding

Event	Related Time Frame Requirement
Initiating Due Process Review	Resident must submit request for due process review within 10 days after receipt of notice of recommendation of Remedial Action
Appointment of Hearing Panel	Within 10 days of receipt of the due process request, DIO appoints the Hearing Panel
Due Process Hearing	Occurs generally within 15 days after the appointment of the Hearing Panel
Notice of Hearing	GME Office sends Notice to Resident and Program Director at least 10 days prior to the due process hearing date
Submission of Evidence	Resident and Program Director submit evidence at least 5 days prior to the due process hearing date
Final Decision	Made by the Panel within twenty (20) days of the initial hearing meeting
Notice of Decision	Panel's decision sent to the Resident, the Program Director, and the DIO within 10 days after final determination of the Panel

Reporting to the New Hampshire Board of Medicine

Under New Hampshire law, certain actions involving trainees experiencing Academic Deficiencies must be reported to the Board of Medicine. Required reports shall be made by Dartmouth-Hitchcock following the conclusion of the due process proceeding, if invoked by the Resident, or following conclusion of the time period for the Resident to request due process.

The DIO is designated as the Dartmouth-Hitchcock representative who makes required reports to the New Hampshire Board of Medicine. The DIO is encouraged to consult with the Office of General Counsel in instances where a report may be required.

V. References N/A

Responsible Owner:	Graduate Medical Education (GME)	Contact(s):	Karen Miller
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