

Appendix D

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A. Termination of Tenure for Reason of Financial Exigency

The employment of a tenured faculty member may be terminated as a result of financial exigency at a college subject to TBR declaration that such financial conditions exist. See TBR Policy [5:02:06:00 Financial Exigency](#).

B. Termination of Tenure for Curricular Reasons

- 1) The employment of a tenured faculty member may be terminated because:
 - a) An academic program is deleted from the curriculum; or
 - b) Because of substantial and continued reduction of student enrollment in a field or discipline.
- 2) Before declaring that curricular reasons exist, the president will ensure meaningful participation by the college's representative faculty body in identifying the specific curricular reasons, evaluating the long-term effect on the college's curriculum and its strategic planning goals, and judging the advisability of initiating further action.
- 3) Prior to initiating the process described below, the president will present—either verbally or in writing—a description of curricular reasons that may warrant the termination of a tenured faculty member's employment.
- 4) Each of these reasons for termination of tenure for curricular reasons must denote shifts in staffing needs that warrant greater reductions than those which are accommodated annually in light of shifting positions from one department to another or among campuses to handle changing enrollment patterns (see [Definitions](#), below).

C. Process for Termination of Tenure

- 1) Upon determining that termination of employment of one or more tenured faculty members is required for one or more of the two reasons cited above, the President shall furnish each faculty member whose employment is to be terminated a written statement of the reasons for the termination.
 - a) Those reasons shall address fully the curricular circumstances that warranted the termination and shall indicate the manner and the information upon which the decision was reached regarding which faculty members' employment would be terminated.
 - b) The president's written statement shall also indicate that the faculty member has the opportunity to respond in writing stating any objections to the decision.
- 2) If the faculty member(s) whose employment is to be terminated indicate(s) objections to the president's written statement(s) and request(s) a review, the president will appoint a faculty committee consisting of a minimum of five tenured faculty members from a slate of ten tenured faculty members proposed by the representative faculty body.

- a) The committee shall conduct a hearing on the proposed termination(s).
 - b) The committee shall report its findings and recommendations to the president, who shall in a reasonable time inform the faculty member(s) whose employment is proposed for termination in writing either that the decision for termination stands or that it has been altered.
- 3) The president's decision to terminate a tenured faculty member's employment for curricular reasons is subject to appeal to the Chancellor and TBR as provided in TBR Policy [1:02:11:00 Appeals and Appearances Before the Board](#).
 - 4) When a tenured faculty member's employment is terminated for curricular reasons, the position will not be filled by a new appointee with the same areas of specialization as the terminated faculty member within a period of three years unless the terminated faculty member has been offered, in writing, reappointment to the position at his/her previous rank, tenure, and salary (with the addition of an appropriate increase which, in the opinion of the president, would constitute the raise(s) that would have been awarded during the period that he/she was not employed).
 - 5) Upon determining that termination of employment of one or more tenured faculty members is warranted for curricular reasons, the president shall base his/her decision about which faculty member(s) employment should be terminated upon his/her assessment as to what action would least seriously compromise the educational programs in a department or division.
 - 6) Termination for curricular reasons presumes a staffing pattern in a department or academic program unit that cannot be warranted either by comparison with general load practices within the college or by comparison with faculty loads in comparable departments or academic program units at similar colleges. In that light, the president shall also, at his/her discretion, base his/her decision on a careful assessment of the impact of the curricular reason on staffing requirements in the department or academic program unit as compared to overall patterns in the college and to comparable departments or academic program units.
 - 7) Unless the president demonstrates that an exception should be made to minimize qualitative compromise of an educational program, the following considerations should guide the president in determining the order of faculty reductions in a department or academic program unit where termination of tenured faculty is proposed for curricular reasons. These considerations should not be construed as being mandatory:
 - a) Part-time faculty appointments should not be renewed if tenured faculty positions are terminated.
 - b) Temporary faculty or tenure-track faculty appointments in the probationary period should not be renewed if tenured faculty positions are terminated.
 - c) Among tenured faculty, those with higher rank should have priority over those with a lower rank.

- d) Among tenured faculty with comparable rank and comparable degrees, those with greater seniority in rank should normally have priority over those with less seniority.
- 8) The president of each college will have the discretion to deviate from this policy if he/she can demonstrate that the quality of the college's programs will be negatively impacted by strict adherence to this seniority preference.
- 9) When a tenured faculty member's employment is to be terminated for curricular reasons, the president will make every possible effort to relocate the tenured faculty member to another existing vacant position for which he/she is qualified. In instances where, in the opinion of the president, relocation within the college is a viable alternative, the college has an obligation to make a significant effort to relocate the faculty member, including the bearing of reasonable retraining costs. The final decision on relocation is within the discretion of the president.

D. Definitions

- 1) "Program is deleted from the curriculum" means that TBR takes formal action to terminate a degree major, concentration, or other curricular component and that such termination eliminates or reduces the need for faculty qualified in that discipline or area of specialization.
- 2) "Substantive and continued reduction of student enrollment in a field" means that over a period of at least three (3) years, student enrollment in a field has decreased at a rate in considerable excess of that of the college as a whole and that such reduction has resulted in faculty-student ratios that, in the opinion of the president, cannot be warranted either by comparison with equivalent faculty load practices within the college or by comparisons with faculty loads in comparable departments or academic program units at similar colleges which the president would deem to be appropriate for comparison.

E. Termination for Adequate Cause

- 1) Reasons for Termination: A faculty member with tenure or a faculty member on a tenure-track appointment or temporary appointment prior to the end of the term of appointment may be terminated for adequate cause, which includes the following:
 - a) Incompetence or dishonesty in teaching or research.
 - b) Willful failure to perform the duties and responsibilities for which the faculty member was employed; or refusal or continued failure to comply with the policies of the Board of Regents, the college, or the department; or to carry out specific assignments, when such policies or assignments are reasonable and non-discriminatory.
 - c) Conviction of a felony or a crime involving moral turpitude.

- d) Improper use of narcotics or intoxicants, which substantially impairs the faculty member's fulfillment of his/her departmental and college duties and responsibilities.
- e) Capricious disregard of accepted standards of professional conduct.
- f) Falsification of information on an employment application or other information concerning qualifications for a position.
- g) Failure to maintain the level of professional excellence and ability demonstrated by other members of the faculty in the department or academic program unit of the college.

2) Suspension Pending Termination Proceedings

- a) A faculty member may not be suspended unless it is determined by the college that the faculty member's presence poses a danger to persons or property or a threat of destruction to the academic or operational processes of the college. Reassignment of responsibilities is not considered suspension; however, the faculty member must be reassigned responsibilities for which he/she is qualified.
- b) In any case of suspension, the faculty member shall be given an opportunity at the time of the decision or immediately thereafter to contest the suspension; and, if there are disputed issues of fact or cause and effect, the faculty member shall be provided the opportunity for a hearing on the suspension as soon as possible, at which time the faculty member may cross-examine his/her accuser, present witnesses on his/her behalf, and be represented by an attorney. Thereafter, whether the suspension is upheld or revoked, the matter shall proceed pursuant to these procedures.

3) Procedures for Termination

- a) Termination of a faculty member with a tenure appointment, or with a tenure-track or temporary appointment prior to the annual specified term of the appointment, shall be subject to the following procedures.
- b) No termination shall be effective until the following steps have been completed:
 - i) Except for such simple announcements as may be required concerning the time of proceedings and similar matters, public statements and publicity about these proceedings by either the faculty member or administrative officers will be avoided so far as possible until the proceedings have been completed, including consideration by the Board of Regents.
 - ii) Upon a recommendation by the chief academic officer of the college to the president or upon a decision by the president that these procedures should be undertaken in consideration of the termination of a tenured faculty member, one or more appropriate administrators shall meet privately with the faculty member for purposes of attempting to reach a mutually acceptable resolution of the problems giving rise to the proposed termination proceedings.

- iii) If a mutual resolution is not reached, the president shall appoint a faculty committee consisting of tenured faculty members, whose appointments should be, but are not required to be, agreed to by the faculty member. The faculty committee shall conduct an informal inquiry of the facts giving rise to the proposed termination and seek a mutually acceptable resolution. Should no such resolution be reached, the committee shall recommend to the president whether in its opinion further proceedings should be taken in pursuit of the termination. The recommendation shall be in writing and shall be accompanied by reasons for the recommendation. The committee's recommendation shall not be binding on the president.
- iv) If no mutually acceptable resolution is reached and/or if, after consideration of the faculty committee's recommendation the president determines that further proceedings are warranted to consider termination, the following steps shall be taken:
 - (1) The faculty member shall be provided with a written statement of the specific charges alleged by the college which constitute grounds for termination and a notice of hearing specifying the time, date, and place of the hearing. The statement and notice must be provided at least twenty (20) days prior to the hearing. The faculty member shall respond to the charges in writing at least five (5) days prior to the hearing. The faculty member may waive the hearing by execution of a written waiver.
 - (2) A committee consisting of members of faculty or faculty and administration shall be appointed to hear the case and to determine if an adequate cause for termination exists according to the procedure hereinafter described. The committee shall be appointed by the president and the officially recognized faculty senate, assembly, or advisory committee, with each appointing three (3) members. The committee may not include any member of the faculty committee referred to in e above. Members deeming themselves disqualified for bias or interest shall remove themselves from the case, either at the request of a party or on their own initiative. Members of the committee shall not discuss the case outside committee deliberations and shall report any ex parte communication pertaining to the hearing to the committee chairman, who shall notify all parties of the communication.
- v) The hearing committee shall elect a chairperson who shall direct the proceedings and rule on procedural matters, including the granting of reasonable extensions of time at the request of any party and upon the showing of good cause for the extension.
- vi) The chairperson of the hearing committee may in his/her discretion require a joint pre-hearing conference with the parties that may be held in person or by a conference telephone call. A written memorandum of the pre-hearing conference should be prepared and provided to each party. The purpose of the

pre-hearing conference should include but is not limited to one or more of the following:

- (1) Notification as to the procedure for the conduct of the hearing.
 - (2) Exchange of witness lists, documentary evidence, and affidavits.
 - (3) Define and clarify issues.
 - (4) Effect stipulations of fact.
- vii) A hearing shall be conducted by the hearing committee to determine whether an adequate cause for termination of the faculty member exists. The hearing shall be conducted according to the procedures below.
- (1) During the hearing, the faculty member will be permitted to have an academic advisor present and may be represented by legal counsel of his/her choice.
 - (2) A verbatim record of the hearing will be taken and a copy will be made available to the faculty member, upon request, at the faculty member's expense.
 - (3) The burden of proof that adequate cause exists rests with the college and shall be satisfied only by clear and convincing evidence in the record considered as a whole.
 - (4) The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The administration will cooperate with the committee in securing witnesses and making available documentaries and other evidence.
 - (5) The faculty member and the administration will have the right to confront and cross-examine all witnesses. Where the witnesses cannot or will not appear, but the committee determines that the interests of justice require admission of their statements, the committee will identify the witnesses, disclose their statements, and, if possible, provide for interrogatories. An affidavit may be submitted in lieu of the personal appearance of a witness if the party offering the affidavit has provided a copy to the opposing party at least ten (10) days prior to the hearing and the opposing party has not objected to the admission of the affidavit in writing within (7) seven days after delivery of the affidavit, or if the committee chairperson determines that the admission of the affidavit is necessary to ensure a just and fair decision.
 - (6) In a hearing on charges of incompetence, the testimony shall include that of qualified faculty members from the college or other colleges of higher education.
 - (7) The hearing committee will not be bound by strict rules of legal evidence and may admit any evidence which is of probative value in determining the

issues involved. Every possible effort will be made to obtain the most reliable evidence available.

(8) The findings of fact and the report will be based solely on the hearing record.

(9) The president and the faculty member will be provided a copy of the written committee report. The committee's written report shall specify findings of fact and shall state whether the committee has determined that adequate cause for termination exists and, if so, the specific grounds for termination found. In addition, the committee may recommend action less than dismissal. The report shall also specify any applicable policy the committee considered.

viii) After consideration of the committee's report and the record, the president may in his/her discretion consult with the faculty member prior to reaching a final decision regarding termination. Following his/her review, the president shall notify the faculty member of his/her decision, which, if contrary to the committee's recommendation shall be accompanied by a statement of the reasons. If the faculty member is terminated or suspended as a result of the president's decision, the faculty member may appeal the president's action to the chancellor pursuant to TBR Policy [1:02:11:00 Appeals and Appearances Before the Board](#).

c) The review of the appeal shall be based upon the record of the hearing. If upon review of the record, the chancellor notes objections regarding the termination and/or its proceedings, the matter will be returned to the president for reconsideration, taking into account the stated objections, and, at the discretion of the president, the case may be returned to the hearing committee for further proceedings.