

## **DRAFT FACULTY DISMISSAL POLICY - 9/28/07**

### **16. DISMISSAL**

Termination of a tenured appointment shall be carried out by the University only for just cause and according to the procedures set forth in this statement. Just cause for dismissal of a tenured appointment shall be related, directly and substantially, to the fitness of faculty members to continue in their professional capacities as teachers, researchers, and/or outreach specialists.

Dismissal shall not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens. Rights of due process, as described in this statement, shall also apply to non-tenured faculty members dismissed before completion of his/her appointment. Public statements and publicity about the case by either the faculty member or the University administration shall be avoided as far as possible.

Just cause for dismissal of a tenured appointment may result from actions of misconduct or may be directly related to the academic and/or administrative performance of a faculty member as described in this statement.

#### **Just Cause Resulting from Misconduct**

Dismissal of a faculty member for just cause resulting from misconduct includes, but is not limited to, actions that bear a significant relationship to fitness to continue to serve as a faculty member, such as:

1. Conviction or admission of guilt in a court proceeding of a felony or of a crime involving moral turpitude during the period of employment, or prior thereto if the conviction or admission of guilt was willfully concealed. The most common elements of crimes of moral turpitude are: fraud; larceny; and intent to harm persons or property. Specific crimes that are generally considered to involve moral turpitude include, but are not limited to: murder, voluntary manslaughter, aggravated assault, rape, domestic violence, prostitution, fraud and crimes where fraud is an element, theft, blackmail, malicious destruction of property, arson, bribery, and perjury;
2. Conviction or admission of guilt in a court proceeding of a felony drug offense including, but not limited to: unlawful manufacture, distribution, sale, use or possession of a controlled substance, or other illegal or dangerous drugs as defined by Alabama Law;

3. Intentional false swearing on official documents filed with the institution;
4. Repeated convictions or admission of guilt in court proceedings of substantive misdemeanors;
5. Significant or repeated violations of substantive University policy, rules or regulations, other than violations of professional ethics.

#### Just Cause Resulting From Performance

Dismissal of a faculty member for just cause resulting from academic and/or administrative performance includes, but is not limited to, actions that bear a significant relationship to fitness to continue to serve as a faculty member, such as:

1. Serious or substantial violation of professional ethics in administrative, teaching, research, or outreach activities;
2. Demonstrated incompetence in teaching, research, and outreach activities;
3. Serious or substantial neglect of professional or academic responsibilities.

#### Initiation of Dismissal Proceedings

Dismissal proceedings against a faculty member shall be initiated by the Provost. To initiate a dismissal action, the Provost shall request an informal review of evidence in support of the charges brought against the involved faculty member and shall advise the faculty member of such actions. This request shall be made in writing to the members of the Faculty Dismissal Review Committee ("Review Committee") consisting of:

1. The Immediate Past Chair of the University Faculty and Senate unless the faculty member involved is in the same college or school, in which case the past chair immediately preceding that person shall serve instead; and
2. The most senior current member (in terms of years of service at Auburn University) of the University Post-Tenure Review Committee unless the faculty member involved is in the same college or school, in which case the second most senior member of the committee shall serve instead; and
3. The most senior immediate past member of the University Promotion and Tenure Committee unless the faculty member involved is in the same college or school, in which case the second most senior immediate past member of the committee shall serve instead.

The Review Committee shall elect a member to serve as Chair to conduct the review.

The extent of this informal review undertaken by the Review Committee shall be to determine whether sufficient credible evidence exists to serve as a reasonable basis for proceeding with the dismissal process. In doing so, the Review Committee may conduct

interviews and request documents and records. However, this review shall be undertaken expeditiously and is not intended to collect and examine all of the evidence that may exist or may become available during the course of an investigation. The Review Committee shall not seek to make a determination of guilt or to pre-determine the likelihood of a subsequent recommendation for dismissal to be made later in the dismissal process. This review shall not involve legal counsel on either side other than the providing of legal advice to the faculty member outside of the review process.

The results of the informal review by the Review Committee shall be forwarded in a report to the Provost within thirty (30) calendar days of the Provost's request for a review. The Review Committee may also forward any recommendations concerning an informal resolution that may develop during its review. All materials forwarded to the Provost by the Review Committee shall become part of the official record for the case.

Should the Provost decide to proceed with the dismissal process, he/she shall, in a meeting with the faculty member, present him/her with a written statement of the specific charges accompanied by a copy of this statement of procedures. After being presented with the charges by the Provost, the faculty member has the right to request a hearing on the charges. The request shall be made to the Provost in writing within five (5) working days after the meeting. The Provost shall set the tentative hearing date and notify the faculty member.

The faculty member also has the right to attempt to reach a resolution in meetings with the Provost at any time during the review or hearing process.

If the faculty member waives the right to a hearing, the matter shall be referred to the President. The President shall review the charges and evidence and provide the faculty member with an opportunity to rebut the charges, orally and/or in writing. The President will then make a final decision regarding the disposition of the case.

#### Hearing Panel

For purposes of conducting a dismissal hearing and immediately prior to the beginning of the hearing, the Faculty Dismissal Hearing Committee ("Hearing Committee") shall be reduced to a Hearing Panel consisting of five (5) sitting members. Any member of the Hearing Committee may be excused as a result of personal involvement in the case or for other justifiable reasons. The faculty member and the University administration shall have the option of challenging and having struck from the Hearing Committee up to two (2) members each, without stated cause. The challenges shall be in alternate order, with the faculty member being allowed the first challenge. Whatever further reduction is necessary to arrive at five (5) members shall be accomplished by lot. If the Chair of the Hearing Committee is removed, the remaining Hearing Panel members shall elect a Chair for the case under consideration. The Chair of the Hearing Committee shall not be subject to removal by lot.

## Dismissal Hearing

In addition to the written notice of charges, written notice of the names of known witnesses and the general nature of evidence expected to be presented shall be served to the faculty member by the Provost at least twenty (20) calendar days prior to the tentative hearing date. At this time, the Provost upon consultation with the Hearing Panel will also set the official hearing date. Any evidence or names of witnesses received after this notice has been served shall be communicated promptly to the faculty member. The faculty member shall respond to the notice by either waiving the right to be heard in writing, or by responding to the charges in writing no later than ten (10) calendar days prior to the hearing. If the faculty member submits a response, such response shall include an admission or denial of the factual allegations underlying the charges, as well as an explanation of any mitigating circumstances that may be related to the events which resulted in the charges. If the faculty member admits to the charges, the hearing before the Hearing Panel will be limited to the issue of whether dismissal or sanctions of the faculty member are warranted under the undisputed facts.

If the faculty member waives the right to be heard or otherwise fails to respond, the Hearing Panel shall proceed to evaluate all available evidence in the record and submit its recommendation to the President.

All Hearing Panel proceedings shall be private and closed to all persons other than those officially involved, unless the accused faculty member requests otherwise. Such a request shall constitute a waiver of any claim resulting from public disclosure of the information during the hearing. If the faculty member requests that the hearing not be closed, the Hearing Panel shall make the final determination on whether the hearing is closed after considering both the privacy interests of the accused and any witnesses involved.

The faculty member has the right to be accompanied by legal counsel, chosen by the faculty member, and shall also be permitted the assistance of an academic advisor during the hearing. The Provost, or his/her designee, shall also be permitted the assistance of an academic advisor, and if the faculty member is represented by counsel at the hearing, the Provost or designee shall also have the right to be accompanied by counsel at the hearing. However, if counsels are present, neither counsel may participate in the hearing other than through providing legal advice to their clients.

The Provost or designee shall direct the presentation of charges by such parties, other than legal counsel, as he/she may select. A verbatim record of the hearing shall be taken and a copy made available to the faculty member by the Provost without charge if requested. After all of the evidence has been presented, the Hearing Panel shall conduct its deliberation in closed session outside the presence of anyone other than Hearing Panel members. The burden of proof that just cause exists for dismissal shall rest upon the University and shall be satisfied only by clear and convincing evidence in the record considered as a whole. In a hearing on charges of incompetence, the testimony shall include that of qualified faculty members from this or other institutions of higher education.

The Hearing Panel shall not be bound by strict rules of legal evidence, however, it shall make every effort to obtain the most complete and reliable evidence available which is relevant and material to the charges. Accordingly character testimony will ordinarily not be admissible on the question of the charges but may be admissible on the issue of sanctions. The Hearing Panel shall grant adjournments to enable either party to investigate evidence if a valid claim of surprise is made.

The faculty member shall be afforded opportunity to obtain necessary witnesses and documentary evidence, and the administration of the University shall, insofar as it is possible for it to do so, secure the cooperation of such witnesses and make available necessary documents, communications, and other evidence within its control. The faculty member and the administration shall have the right to confront and cross-examine all witnesses. Witnesses may be accompanied by legal counsel, but such counsel may not participate in the hearing other than through providing legal advice to the witness. Where witnesses cannot or will not appear, but the interests of either party justify the admission of written statements, such statements by identified individuals may be considered by the Hearing Panel. The findings of fact and the decision will be based solely on the hearing record.

#### Hearing Panel Recommendation

The written majority recommendation of the Hearing Panel shall be presented to both the President and the faculty member within sixty (60) calendar days of referral of the matter. For good cause shown, the Provost, at the request of the Hearing Panel, can extend the period for an additional thirty (30) calendar days where factors warrant. If the Hearing Panel recommends dismissal and the President sustains their recommendation, the President's decision will be final. The President shall so notify the Hearing Panel and the faculty member, and the case shall be considered closed.

If the Hearing Panel concludes that just cause for dismissal has not been established but other sanctions may be appropriate, the Hearing Panel can recommend such sanctions in its report to the President. These sanctions may include, but are not limited to: a written warning, a summary of the charges and results being included in the faculty member's annual performance review, financial penalties, and/or reassignment of work responsibilities. If a faculty member demonstrates repeated behavior that the Hearing Panel concludes still does not warrant dismissal, sanctions of a progressive nature can be recommended to the President.

If the President rejects the recommendations of the Hearing Panel regarding dismissal and/or sanctions, he/she shall state such objections in writing to the Hearing Panel and to the faculty member. The Hearing Panel shall reconsider the case, taking into account the stated objections of the President to the original recommendations and receiving new evidence if available. This reconsideration is not intended to conduct another full hearing with witnesses, only to consider the President's objections and any new evidence which may have become available. The Hearing Panel will provide a written statement on this reconsideration to the President and the faculty member within fifteen (15) working days of receiving the President's request for reconsideration. The

President shall make a final decision only after studying the Hearing Panel's reconsideration statement and officially notify the faculty member of this decision to complete the official hearing process.

#### Suspension Pending the Outcome of the Dismissal Process

##### Suspension With Pay:

Suspension of the faculty member with pay prior to, or during the dismissal process, is justified if harm to students, faculty, or the University could result unless immediate removal of the faculty member is effected, or if the faculty member has been charged with, or indicted for, a felony. Suspension under these circumstances will be the decision of the Provost upon consultation with the Review Committee. If immediate suspension is determined by the Provost to be necessary, the faculty member's salary will be continued during the period of suspension until the conclusion of the normal dismissal process or until the faculty member pleads guilty to, or is convicted of the felony or other serious crime.

##### Suspension Without Pay:

Suspension of the faculty member without pay will be the decision of the Provost upon consultation with the Review Committee in cases where a faculty member pleads guilty to, or is convicted of a felony or other serious crime. The action of suspension without pay shall be taken pending the outcome of the normal dismissal process and will only take place after completion of the following procedure:

1. The faculty member will be provided notice of the charges and the basis of those charges;
2. The faculty member will be provided an explanation of the evidence; and;
3. The faculty member will be provided an opportunity to refute the charges in an informal meeting with the Provost.

#### Terminal Salary

A terminal salary shall not be provided to a faculty member who is dismissed as a result of misconduct as described in this statement. However, terminal salary shall be provided to a faculty member who is dismissed as a result of performance issues. In no event shall the period of pay exceed twelve months and the actual amount shall be determined by the President upon recommendation of the Provost considering the totality of the circumstances.