

Document XVIII

PROCEDURES FOR DISMISSAL FOR CAUSE AND IMPOSITION OF MAJOR SANCTIONS

Introduction

The University is a community of scholars dedicated to the advancement of knowledge. Among the functions of a University is the establishment of a proper intellectual integrity among the faculty, between the faculty and the students, and between the faculty and the national and international academic community. This intellectual integrity is fostered by the creation of an environment of personal interaction and mutual trust whereby its members are mindful of their responsibilities to maintain standards of competence, and a proper attitude of objectivity, industry, and cooperation with their associates within and without the University community. However, if the community is to be sustained, it is necessary for it to take action when commonly held standards of conduct are violated. Thus disciplinary action up to and including dismissal may be undertaken for cause, with dismissal being reserved for the most serious cases.

A close relationship exists between the excellence of American universities, the strength of their faculties, and the extent of faculty responsibility in determining faculty membership. In the effective university, a dismissal proceeding involving a faculty member on tenure, or one occurring during the term of an appointment, will be a rare exception, caused by individual human weakness and not by an unhealthful setting. When it does come, however, the procedures should provide that both institutional integrity and individual human rights may be preserved. The faculty must be willing to recommend the dismissal of a colleague when necessary. By the same token, presidents and governing boards must be willing to give full weight to a faculty judgment favorable to a colleague.

Adequacy of cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or their rights of American citizens or legal aliens. The same protections and procedures should be used when the university administration proposes a major sanction on a tenured faculty member. When the issue is the proposed imposition of a major sanction, the reader should substitute throughout the document where appropriate the words "a major sanction" (or similar phrases) for "dismissal for cause" (or similar phrases).

Non-tenured faculty members may be terminated by the University administration in accordance with the notification of non-reappointment standards specified in the *Faculty Handbook* (Section V). Should the University propose to dismiss an untenured faculty member earlier than the advance notice of non-reappointment (specified in the *Faculty Handbook*), the procedures delineated in this document will be followed. Should the University propose to dismiss an untenured faculty member who is on an appointment with a specified end-date (e.g., an "Emergency Temporary" one-year hire), these proceedings will not change the specified end-date of the appointment.

Preliminary Proceedings

1. Summary. The preliminary proceedings include (a) an attempt at resolution by academic administrators and the faculty member that includes notice of the availability of mediation; (b) an informal inquiry by the Faculty Grievance Committee; (c) an attempt by the Faculty Grievance Committee to arrange an adjustment between the parties; (d) failing an adjustment, a recommendation by the Faculty Grievance Committee either for or against going forward with formal charges against the faculty member; (e) if the recommendation is for a formal hearing, a joint effort by the Committee and the President's representative to formulate proposed grounds for dismissal.

Every effort should be made to expedite these preliminary proceedings. Although these procedures are complex and lengthy in written form, they need not be lengthy in operation. The two parts of the administrative and mediation effort are designed to operate nearly simultaneously. Parts 3a and 3b

of the informal inquiry below are designed to operate nearly simultaneously. Parts 5a and 5b (which involve decision making and cooperation between the Committee and the President's representative, rather than information gathering) have the potential for being completed expeditiously.

2. Administrative and Mediation Effort.

- a. When reasons arise to question the fitness of a faculty member who has tenure or whose term appointment has not expired, the appropriate administrative officers should ordinarily discuss the matter with the faculty member in personal conference. Suspension of the faculty member during the proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member's continuance. If the situation warrants a suspension, such suspension shall be with pay.
- b. Very early in the process, the appropriate vice-president shall inform the parties of the availability of the mediation process, provide a copy of the mediation document (*Faculty Handbook* APPENDIX A-XVII) to all parties, and encourage the parties to seek a resolution through mediation. Possible sanctions short of dismissal (such as reprimand, forfeiture of future pay raises, written agreement to cease certain behavior, or other sanctions) should be explored. The matter may be terminated by mutual consent at this point.

3. Informal Inquiry.

- a. If an adjustment does not result by mediation, the President of the University shall request in writing that the University Faculty Grievance Committee informally inquire into the situation to effect an adjustment, if possible, and, if none is effected, to determine whether in its view formal proceedings to consider the faculty member's dismissal should be initiated. The president shall caution the administrators involved to take care that no administrative pressure is brought to bear upon Committee members as they conduct their inquiry and come to their conclusions.
- b. The Faculty Grievance Committee should immediately ask the parties to provide documentary materials related to the problem within ten working days of the request.
- c. The Faculty Grievance Committee should select one or more from among its members to informally talk with the faculty member, involved administrators, and other faculty members who have knowledge of the situation, to gather as much relevant information as possible. The member or members gathering information shall inform those whom they approach that they are acting under the authority of the Faculty Grievance Committee and request that each person contacted keep the contact and discussion confidential. The member or members gathering information should also collect additional relevant documentary materials that come to their attention. The member or members who are gathering information will keep the Committee informed. Under normal circumstances, the Committee shall then proceed to 4 below.
- d. Because of the difficulty of assembling parties and witnesses in a room at the same time and the desirability of moving expeditiously through these preliminary and informal proceedings, utilizing the procedures in 3b and c above are preferred. But, in rare circumstances, the Committee may decide to conduct its inquiry by informal hearing. Notice of the hearing should be given to both parties no less than fifteen working days in advance of the hearing, at which time the Committee should ask the parties to provide documentary materials related to the problem and a list of witnesses (if any) to the Committee Chair no later than seven working days before the hearing. The Chairperson will notify the witnesses of the time and place of the hearing and request their attendance. The hearing shall be closed (assuming a closed hearing is in accordance with applicable State law).

With both parties and their advisors present, the Committee will hear the concerns of the administration and then provide an opportunity for the faculty member to present his or her concerns. Both the representative of the University administration and the faculty member may be accompanied throughout the hearing by an academic advisor and counsel of their choice (private counsel may be retained at the faculty member's expense), whose role will be limited strictly to privately advising the faculty member or representative of the administration.

All witnesses called shall be asked to speak the truth to the best of their knowledge and to keep the proceedings of the preliminary informal hearing confidential until all of the proceedings described in this document have been completed or an agreement satisfactory to all parties has been reached. The hearing will be informal, in like manner as University committee meetings, and legal rules of evidence shall not apply. There will be no recording or verbatim record. In addition to his or her responsibilities of presiding over meetings, the Chairperson shall exercise full voting privileges. If any member of the Committee has been a participant in the circumstances from which the matter arises, the Committee may decide that the member be excused from the hearing or that the member may participate in the inquiry but not vote. The Chairperson will normally decide matters of procedure. If the Chairperson or any member of the Committee wishes, the Committee may take a short recess to decide on procedures or to consult on other issues related to the matter at hand. The Committee shall then proceed to 4 below.

4. Attempt to Effect an Adjustment. After gathering as much information as the committee considers sufficient, the Faculty Grievance Committee should attempt to effect an adjustment, if possible.
5. Recommendation and Possible Formulation of Grounds for Proposed Dismissal.
 - a. If no adjustment is effected, the Committee should determine expeditiously whether in its view formal proceedings to consider the faculty member's dismissal should begin.
 - b. If, in the opinion of the Committee, either (1) insufficient evidence in support of the allegations has come to the Committee's attention or (2) none of the allegations, even if eventually proved to be true, rise to the level of adequate cause for dismissal, the Committee shall make a written recommendation to the President of the University that no hearing for dismissal for cause take place and that the administration cease efforts to dismiss the faculty member. The Committee may recommend at this time that a formal hearing for imposition of a major sanction be commenced. The Committee's recommendation shall include a rationale and/or preliminary finding of facts. The Chair of the Faculty Grievance Committee shall, at the same time, send a copy of the recommendation, including the rationale and/or preliminary finding of facts, to the faculty member.
 - c. If the Committee recommends that a formal hearing for dismissal for cause be commenced, a copy of the recommendation shall be sent to the President of the University and the faculty member, along with a request that the President or his/her representative join with the Faculty Grievance Committee to formulate a statement with reasonable particularity of the grounds for the proposed dismissal. Once the jointly formulated statement of the grounds for the proposed dismissal has been completed, the Chair of the Faculty Grievance Committee shall send promptly a copy of the grounds for the proposed dismissal to the faculty member, and action should be commenced under the procedures for a formal hearing described below.
 - d. If the President of the University, even after considering a recommendation of the Committee favorable to the faculty member, expresses the conviction that a proceeding nevertheless should be undertaken, the President or the President's representative should, within fifteen working days of receiving the Committee's recommendation, formulate a statement with reasonable particularity of the grounds for the proposed dismissal and send a copy to the faculty member and the Chair of the Faculty Grievance Committee. Action should then be commenced under the procedures for a formal hearing described below.

- e. Should the President propose imposition of a major sanction on any of the allegations the Committee has determined to be supported by sufficient evidence to warrant going forward with a formal hearing but that do not rise to the level of adequate cause for dismissal, the Committee Chair shall inform the faculty member and inquire of both parties whether an attempt to effect an adjustment should be made. If no adjustment can be agreed to and the President decides to pursue a major sanction, actions should be commenced under the procedures for a formal hearing described below.
6. If a decision is made to commence a formal hearing, documentary materials accumulated by the Faculty Grievance Committee during these preliminary proceedings shall be forwarded to the chair of the Ad Hoc Hearing Committee.

Formal Hearing before the Ad Hoc Hearing Committee

1. Summary: After the preliminary proceedings have been completed, in the best interests of all parties, as with the preliminary proceedings, every effort should be made to expedite the work of the ad hoc hearing committee. The following document details the process and procedures involved in selecting the membership of the ad hoc hearing committee and the process and procedures involved in conducting the formal hearing.
 - a. The chair of the Faculty Grievance Committee shall charge the Executive Officer of the Faculty Senate to initiate immediately the process for the selection of an ad hoc hearing committee as soon as the Faculty Grievance Committee and the President of the University have agreed on a statement with reasonable particularity of the grounds for the proposed dismissal; or if the President of the University, even after considering a recommendation of the committee favorable to the faculty member, expresses the conviction that a proceeding should nevertheless be undertaken and has provided the chair of the Faculty Grievance Committee with a statement of reasonable particularity of the grounds for the proposed dismissal.
 - b. At least fifteen (15) working days prior to the hearing, the Executive Officer of the Faculty Senate shall provide to all parties, including the President of the University and the faculty member, a written statement of specific charges and a copy of the present Dismissal for Cause policy document.
2.
 - a. Pending a final decision by the ad hoc hearing committee, the faculty member will be suspended or assigned to other duties in lieu of suspension, only if immediate harm to the faculty member or others is threatened by continuance. Before suspending a faculty member, pending an ultimate determination of the faculty member's status through the University's hearing procedures, the University administration will consult with the Faculty Grievance Committee concerning the propriety, the length, and the other conditions of the suspension. A suspension that is intended to be final is a dismissal, and will be treated as such.
 - b. Salary will continue during the period of the suspension, until these informal and formal proceedings have been completed or a written settlement between the administration and the faculty member is agreed to or the faculty member returns to his or her regular responsibilities and duties, in the classroom, library, or other regular capacity. Should the faculty member agree and sick pay is appropriate under state regulations, sick pay may replace salary for part or all of the period.
3. The faculty member may waive a hearing or may respond to the charges in writing at any time before the hearing. If the faculty member waives a hearing, but denies the charges or asserts that the charges do not support a finding of adequate cause, the ad hoc hearing committee will evaluate all available evidence and rest its recommendation upon the evidence in the record. The right of the faculty member to waive a hearing in no way limits the right of the administration to present its case at a hearing.

4. The ad hoc hearing committee will be selected from the ranks of the tenured faculty of the University in the following manner:
 - a. Independent of each other, the President of the University, the faculty member, and the Executive Officer of the Faculty Senate each will nominate, from among the full-time faculty, four (4) potential ad hoc committee members and five alternates (which they shall identify as first alternate, second alternate, etc.) to the chair of the Faculty Grievance Committee.
 - b. Should two or more of these parties nominate the same potential member, the Chair of the Faculty Grievance Committee shall strike the duplicated nominee(s) and choose a replacement or replacements in the following manner:
 - (1) if one name appears on the lists provided by both the faculty member and the administration, strike the name from the list of the faculty member and replace it with the first alternate from the faculty member's list; if a second name appears on the lists provided by both the faculty member and the administration, strike the name from the list of the administration and replace it with the first alternate from the administration's list; if three or more names appear on the lists provided by both the faculty member and the administration, continue alternating;
 - (2) if one or more names appear on the lists provided by both the faculty member and the Senate Executive Officer, strike the name from the list of the faculty member and replace it with the first alternate from the faculty member's list, and so on, alternating between the Senate Executive Officer and the faculty member as in (1) above;
 - (3) if one or more names appears on the lists provided by both the administration and Senate Executive Officer, strike the name from the list of the administration and replace it with the first alternate from the administration's list, and so on, alternating between the Senate Executive Officer and the administration as in (1) above;
 - (4) if a name appears on all three lists, retain the nominee of the Senate Executive Officer, strike the name from the faculty member's and administration's lists and replace it with the next name on the list of alternates for each.
 - (5) The Faculty Grievance Committee Chair should then request that the appropriate persons provide additional names to fill the vacancies on their lists of alternates.
 - c. The President of the University and the faculty member each must remove two (2) of the potential members from the list of twelve potential members provided to them by the chair of the Faculty Grievance Committee.
 - d. The remaining eight (8) members will constitute the ad hoc hearing committee.
 - e. If either the faculty member or the President of the University or his representative objects to any of the eight committee members and can show cause for the objection (as determined by a majority vote of the committee) the member shall be removed and replaced by the alternate of the party who had nominated the potential committee member that was thus removed in order of first alternate, second alternate, etc.
 - f. After the membership of the ad hoc hearing committee has been determined, the President of the University will name one (1) member of that group to serve as chair. If at any time objections are made to the University President's choice of chair, the committee will select a temporary chair, hear cause why the President's choice should not serve as chair, and determine by majority vote whether the chair shall continue in that position. If cause is found that the chair should not continue to serve in that capacity, the President will be notified, and the President will name a new chair from the remaining members of the ad hoc hearing committee. The person rejected as chair may continue to serve on the ad hoc hearing committee as a regular member.

5. As soon as the final eight (8) members (including the chair) have been selected, the entire ad hoc hearing committee will be charged with its duties by the chair of the Faculty Grievance Committee. The committee shall hold its first meeting no fewer than ten (10) working days after it has been charged. Ad hoc committee members shall avoid discussing the case at hand with anyone other than fellow committee members until all of the proceedings described in this document have been completed or an agreement satisfactory to all parties has been reached.
6. The ad hoc hearing committee may, with the consent of the parties concerned, hold joint pre-hearing meetings with the parties to (a) simplify the issues; (b) effect stipulations of facts; (c) provide for the exchange of documentary or other information; and (d) achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious.
7. The goal of the formal hearing is for the ad hoc committee to determine whether or not adequate cause for dismissal exists after it hears the case in support of the charges against the faculty member as presented by the University administration and its counsel, as well as the faculty member's defense against the charges as presented by him/her and his/her counsel.
8. The University will provide a stenographer to make a verbatim record of the hearing and will furnish the University administration, the ad hoc committee, and the faculty member with copies.
9. The committee, in consultation with the president and the faculty member (or their representatives), will exercise its judgment as to whether the hearing or portions of the hearing should be open or closed. Any witness may elect to give his or her testimony in closed hearing, assuming that such a practice is in accordance with current State law.
10. a. Closed hearing.

In a closed hearing, only the following persons may be present at the sessions:

- (1) The members of the ad hoc hearing committee.
- (2) The Vice President (or his or her designate) representing the University administration and his or her counsel and/or assistant(s). (The number of persons present assisting the administration may not exceed the number of persons present assisting the faculty member).
- (3) The faculty member and his or her counsel and, if requested, academic advisor;
- (4) The witness under examination and his or her counsel;
- (5) The person responsible for recording the proceedings of, and the testimony given, before the committee;
- (6) If necessary, the University will provide an interpreter to translate the testimony of a witness who is unable to speak the English language.
- (7) If requested by the faculty member, the University administration, or the chair of the ad hoc hearing committee, a representative of a responsible educational association as an observer.
- (8) In the case of a closed hearing, members of the ad hoc hearing committee, all other persons present at any committee hearing session, and all persons having confidential access to information concerning these committee sessions, shall pledge to keep secret the testimony of witnesses and all other matters occurring at, or directly connected with, this hearing until all of the proceedings described in this document have been completed or an agreement satisfactory to all parties has been reached.

b. Open hearing.

- (1) In addition to the participants stipulated for a closed hearing [10.a.(1-7) above], members of the public may also attend an open hearing, subject to the authority and discretion of the ad hoc hearing committee, which is responsible for keeping order.

(2) With the exception of the testimony presented in public during the ad hoc committee's hearings, the same procedures for confidentiality cited in 10.a.(8) above shall apply.

11. The ad hoc hearing committee shall meet for hearing sessions as directed by the ad hoc committee chair. Five ad hoc hearing committee members shall constitute a quorum. The chair of the ad hoc hearing committee shall preside over all hearings and shall have full voting privileges. The chair may delegate duties to other committee members and may determine rules of procedure in consultation with the committee members.
12. The burden of proof that adequate cause exists rests with the University administration and will be satisfied only by clear and convincing evidence in the record considered as a whole.
13. Procedures employed by the ad hoc hearing committee shall be such as to allow as fair a hearing as possible. The guiding principle for procedures is "what is reasonable to reasonable men and women."
14. The ad hoc hearing committee will grant adjournments to enable either party to investigate evidence to which a valid claim of surprise is made.
15. Both the faculty member and University Administration will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The Academic VP will cooperate with the ad hoc hearing committee in securing witnesses and making available documentary and other evidence.
16. Both the faculty member and the University administration (or their counsels) will have the right to confront and question all witnesses. Where the witnesses cannot or will not appear, but the ad hoc hearing committee determines that the interests of justice require admission of their statements, the committee shall identify the witnesses, disclose their written statements, and if necessary, provide for interrogatories for clarification.
17. In the hearing of charges of incompetence, testimony will include that of qualified faculty members of this or other institutions of higher education.
18. The ad hoc 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.
19. The Committee shall take whatever time and employ whatever resources it feels are necessary and practicable to reach an understanding of the truth in the matter at hand.
20. At least five members of the ad hoc hearing committee must concur in the recommendation for dismissal or imposition of a major sanction.
21. The findings of fact and the decision of the ad hoc hearing committee will be based solely on the evidence presented in the stenographic record of the hearing.
22. When the ad hoc hearing committee decides that it has enough information about the case to reach a fair and impartial finding, it shall return one of the following recommendations to the President and furnish a written rationale for the finding:
 - a. Adequate cause for dismissal has been established and the faculty member's employment should be terminated.
 - (1) If the tenured faculty member is to be terminated because of moral turpitude, upon the university's final determination to dismiss the faculty member, the faculty member will be notified of his/her dismissal in writing, effective on the last day of the month of notification.

- (2) If a tenured faculty is to be terminated but moral turpitude is not a factor, upon the university's final determination to dismiss the faculty member, the faculty member will be notified of his/her dismissal in writing. The faculty member shall be provided his/her regular monthly salary for five months following the notification (exclusive of the summer session).
- b. Adequate cause for dismissal has not been established, but in the committee's opinion disciplinary sanctions would be more appropriate. In this case the committee may recommend to the President lesser penalties, such as demotion, suspension, censure, or forfeiture of pay raises.
 - c. Adequate cause for dismissal has not been established by the evidence in the record. Under normal circumstances, the President will accept the report and cease efforts to dismiss the faculty member for cause. If, however, the President rejects the report, the President will state the reasons for doing so, in writing, to the ad hoc hearing committee and the faculty member within fifteen (15) working days, and provide an opportunity for the committee to prepare a written response before transmitting the case to the Board of Supervisors.
23. After the ad hoc hearing committee chair has reported its recommendation in writing to the President of the University, the President shall act upon this recommendation within fifteen (15) working days of receiving it, and shall confirm this action in writing to the Academic Vice-President, to the faculty member, and to the chairs of the Faculty Grievance Committee and the ad hoc hearing committee.
24. If the faculty member disagrees with the President's decision, he or she may appeal to the Board of Supervisors of the University of Louisiana System.
25. Except for such simple announcements as may be required, covering the time of the hearing and similar matters, including consideration by the Board of Supervisors of the University of Louisiana System, public statements and publicity about the case by either the faculty member or the University administration will be avoided so far as possible until all proceedings have been completed.