

**NUMBER:** 1463

**TITLE:** Dismissal of Faculty from Employment Due to Financial Exigency, as Declared by the Board of Visitors, or Discontinuance of a Program of Study or a Department of Instruction

**APPROVED:** March 11, 1991; Revised June 16, 2023

**SCHEDULED REVIEW DATE:** June 2028

A. General

This policy provides for the dismissal of tenured and non-tenured faculty members. Only the Board of Visitors has the authority to dismiss faculty from employment due to financial exigency or the discontinuance of a program of study or department of instruction. Dismissal of faculty shall be conducted according to the procedures provided in this policy.

B. Procedures for the Dismissal of Faculty

1. Upon the completion of the university procedures for a determination of financial exigency, or discontinuance of a program of study or department/school, the appropriate executive vice president in consultation with the relevant dean(s) and chair(s) shall determine which faculty members, if any, in the affected programs or departments will be considered for dismissal.
  - a. The faculty considered for dismissal will be notified that they are under review for possible dismissal.
2. The appropriate executive vice president shall give due consideration to the following.
  - a. Reduction of nonfaculty staff and administrators
  - b. Faculty reassignment and dismissal decisions will be made in alignment with the mission of the specific program.
  - c. Priority for reassignment will be given to faculty with training/expertise in another program.
3. In considering which faculty members will receive notices of dismissal, the appropriate executive vice president shall dismiss tenured faculty last.

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4. The ~~appropriate executive~~ vice president in consultation with the relevant college/school dean, and department/school chair/director will evaluate faculty considered for dismissal on the quality and productivity for teaching, scholarship/research, clinical activities, and professional service in accord with the previously established departmental written standards. The evaluation will include productivity for three or more years.

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5. In determining which tenured faculty members will receive notices of dismissal, the ~~appropriate executive~~ vice president shall give due consideration to any recommendation made by the tenured faculty members of the department involved.

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#### C. Notice of Dismissal

1. For this policy, the academic year shall commence on the first day of classes of the fall semester and end on the date of spring commencement at the end of the second semester.

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2. The notice of dismissal provided to a faculty member shall be in writing and shall include (1) the terms and effective date of dismissal, (2) the substantive reason(s) for the decision, (3) the procedures followed in arriving at the decision, and (4) the procedures through which a faculty member may appeal the decision.

3. The effective date for dismissal of a nontenured faculty member shall be on the expiration date of their academic year contract. Notice of dismissal shall be provided to the faculty member as soon as possible following the decision of the ~~appropriate executive~~ vice president to dismiss and not later than December 15 of the same academic year.

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4. The effective date for the dismissal of a tenured faculty member shall be on the expiration date of their academic year contract. Notice of dismissal shall be provided to the faculty member as soon as possible following the decision of the provost and ~~executive~~ vice president for academic affairs to dismiss. In no case shall the notice be less than a full academic year.

#### D. Appeals

1. A notice of dismissal to a faculty member may be appealed upon the grounds that the decision was arbitrary, capricious, or upon the grounds that, in making the decision, the ~~appropriate executive~~ vice president deviated materially from university policies and procedures. The burden of proof shall be on the faculty member.

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2. If a dismissed faculty member ~~appeals and~~ requests a review of the decision, the faculty member shall provide a written request to the ~~appropriate executive~~ vice president within fifteen (15) calendar days of the faculty member's receipt of the notice of dismissal. The written request shall describe, with reasonable specificity, the grounds for ~~appeal and~~ review.

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3. Within seven (7) calendar days after receiving the faculty member's request for review, the ~~appropriate executive~~ vice president shall forward a copy of the request and a copy of the notice of dismissal and any supporting documents to the chair of the Faculty Grievance Committee with a request that the chair initiate the applicable procedures of the committee.
4. The Faculty Grievance Committee must review the appeal and documents and decide ~~within five calendar days~~ if a hearing is warranted. If a hearing is merited, the ~~Hearing Panel~~ must be formed and briefed within 10 calendar days of receipt of the appeal request ~~by~~ the chair of the ~~committee~~.
  - a. The Hearing Panel must convene and hold the hearing within seven calendar days after being briefed and ~~communicate their decision~~ to the chair of the ~~Faculty Grievance Committee~~ within three days of the conclusion of the hearing.
  - b. The chair of the grievance committee will notify the ~~appropriate executive vice president~~ and the faculty member of the Hearing Panel's decision within two days of receiving the decision.
5. Upon the conclusion of the procedures of the Faculty Grievance Committee and upon the ~~appropriate executive~~ vice president's receipt of the committee's recommendation and report, the ~~executive vice president~~ shall submit the materials to the president with a recommendation to accept, reject, or modify the committee's decision. The president may decide to accept, reject, or modify the recommendation of the ~~executive~~ vice president as the president sees fit. If the president decides to reject or modify the recommendation of the committee, the president must provide reasons in writing, within ~~15~~ days of receipt of the materials from the ~~appropriate executive~~ vice president for that decision, both to the faculty member and the ~~Faculty Grievance Committee~~. Failure to do so within the time provided (unless for good cause) shall be deemed as assent to the committee's decision.
6. If, after receiving the committee's recommendation, the ~~appropriate executive~~ vice president decides to withdraw the notice of dismissal issued to the faculty member, the notice shall be rescinded in writing and the proceedings closed.
7. If, after receiving the ~~appropriate executive~~ vice president's recommendation and the materials, the president affirms the notice of dismissal ~~or if the faculty member does not make a timely request for review by the president and/ or Board of Visitors~~, the president shall forward to the Board of Visitors a recommendation that the faculty member be dismissed from university employment in accordance with the terms of the notice.

## **E. Procedures Governing Review of a Matter Involving the Dismissal of Faculty from Employment Due to Financial Exigency, Etc.**

### **I. Procedures**

- A. Within 14 days of the ~~Grievance Committee~~ chair's receipt of a request from the president

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that the Grievance Committee review a faculty member's appeal of a notice of termination issued to that faculty member under the policy for Dismissal of Faculty From Employment Due to Financial Exigency, etc., the chair of the committee shall impanel a Hearing Panel.

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B. The chair of the Grievance Committee shall provide a copy of the faculty member's appeal and notice of termination to the chair of the Hearing Panel.

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C. The Hearing Panel shall review the notice of termination in accordance with the procedures described in section IV.

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D. The president or an administrative official designated by the president shall appear in proceedings before the Hearing Panel in support of the notice of termination issued to the faculty member.

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E. The faculty member shall bear the burden of proving that the president's decision to issue the notice was arbitrary, capricious, unreasonable, or contrary to the facts or that there was a material deviation from the University's policies or procedures in the issuance of the notice.

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F. Each party may be represented by an adviser who may be legal counsel.

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G. Faculty members from the same department of instruction or program of study may appear before the Hearing Panel collectively if they should so choose.

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## II. Hearing Panels

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### A. Composition and Appointment of the Hearing Panels

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1. The Faculty Grievance Committee shall not hear matters brought before it but shall designate Hearing Panels for that purpose. A Hearing Panel shall consist of five full-time faculty members and shall be selected on a case-by-case basis. The Hearing Panel shall be appointed by the chair of the Grievance Committee upon the recommendation of the members of the committee.

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2. The chair of the Grievance Committee shall appoint one of the Hearing Panel members as panel chair.

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3. A Grievance Committee member who has taken a prejudicial public position on a matter before the committee, who has a personal interest in a matter before the committee, or who has a close personal or direct professional relationship with either of the parties in a matter before the committee shall not designate a member of the Hearing Panel for that matter. Such Grievance Committee member shall disclose the relevant conflict of interest and recuse himself/herself. No person may serve on the Grievance Committee or a Hearing Panel if he/she is the person against whom the grievance is brought.

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4. Only full-time faculty members whose duties are primarily non-administrative in nature are eligible to serve on Hearing Panels. A Hearing Panel constituted to hear the case of a tenured faculty member shall consist of tenured faculty members. A Hearing Panel constituted to hear the case of a nontenured faculty member shall consist of at least one, but not more than two, nontenured faculty members. No members of the panel may be from the college of the faculty member whose case will be heard by the panel. No member of the panel may be from the library if the faculty member whose case will be heard is from the library. There shall be no restriction as to the colleges of panel members selected to hear the case of an administrative faculty member who has no departmental designation.

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5. It shall be the responsibility of the chair of the Faculty Grievance Committee to assure that members of the Hearing Panel meet the requirements described herein.

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6. Either party in a case may challenge individual members of the Hearing Panel for cause. "Cause" may include the taking of a prejudicial public position on the matter to be heard, a personal interest in the matter to be heard, or a close, personal, or direct professional relationship with either of the parties. The Grievance Committee shall determine the legitimacy of a challenge.

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7. Members of a Hearing Panel should voluntarily recuse themselves from hearing matters if their participation on the Hearing Panel could result in legitimate challenges for cause, whether such challenges have been made.

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8. Any Hearing Panel member who has a close personal or direct professional relationship with the person filing a grievance or the administrative official representing the president must disqualify himself/herself from serving on that case.

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### III. Hearing Panel Procedures

#### A. Prior to the Hearing

- i. The Faculty Grievance Committee chair will provide contact information for the Hearing Panel chair to the grievant and respondent.
- ii. At least five working days prior to a hearing, all parties must submit all written documents and exhibits to be considered at the hearing to the chair of the Hearing Panel, who will distribute or otherwise make available all materials to both parties at least two working days before the hearing. These materials shall be held privately among Faculty Grievance Committee, the Hearing Panel, and both parties to the complaint.
- iii. The Hearing Panel shall be provided and shall review all statements and attached documentation filed by the parties in the cases before the panel.
- iv. The Hearing Panel may hold a pre-hearing conference with or without the parties prior to the hearing to discuss procedures, to clarify the issues, to exchange documentary evidence, to make stipulations of fact, and to take any other actions necessary to expedite the proceedings.
- v. At any stage of the proceedings, the Hearing Panel is encouraged to consult with University Counsel, the chair of the Grievance Committee, or the Grievance Committee as a whole for procedural advice concerning a case.
- vi. The Hearing Panel chair shall set the date, time, and place of the hearing. Insofar as is possible within the guidelines described in paragraphs 5 and 6, the hearing shall be set at a date and time which is convenient to all parties, and continuance of the hearing date may be granted by the chair of the Hearing Panel upon the request of either party or upon the panel's own motion.
- vii. A hearing should be held no less than 14 days and no more than 45 days after impaneling of the Hearing Panel. Upon agreement of all parties, a hearing may be held earlier than 14 days, and in extraordinary cases, as determined by the chair of the Grievance Committee in consultation with the University Counsel, a hearing may be held later than 45 days.

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#### F. Consideration and Decision by the Board of Visitors

The Board, through a designated committee, shall review the record of the case including the recommendations of the appropriate executive vice president, the president, and the report of the Faculty Grievance Committee. The Board shall provide the faculty member and the president (or the president's designated representative) with an opportunity to make a written statement and, if either party should so choose, an oral statement. These statements shall be based upon the record of the case. The Board, in its discretion, may request additional evidence from either party, which shall be disclosed to the other party.

1. Faculty members from the same program of study, department/school, or college may make a collective statement before the Board if they should so choose or if requested by the Board.
2. After its consideration of a recommendation to dismiss a faculty member, the Board may decide to accept the recommendation to dismiss the faculty member, alter the terms of the recommendation, or decide not to dismiss the faculty.
3. The Board shall provide written notification of its decision to the faculty member and to the president within 60 calendar days of its receipt of the president's recommendation.
4. If the Board's decision is not rendered within 60 days as provided in paragraph E.4., such failure to act shall be deemed a decision not to dismiss the faculty member.

#### F. Future Actions

1. In the event faculty are dismissed pursuant to this policy, a position may not be offered within a program of study or department/school to a new candidate within the specialty of the faculty member dismissed for at least three years following the effective date of the dismissal without first offering to reinstate the dismissed faculty member. The offer to reinstate the faculty member shall remain open for a reasonable time and shall be based on their past performance.
2. Priorities for faculty reinstatement are tenured, non-tenured tenure track, research faculty, faculty with joint appointments, non-tenured faculty – lecturers, clinical.

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