

# V. PROCEDURES FOR TERMINATION

## A. General Statement

A faculty member may be disciplined or dismissed for cause on grounds including but not limited to: (1) academic dishonesty; (2) acts of discrimination, including harassment, prohibited by law or University policy; (3) acts of moral turpitude substantially related to the fitness of faculty members to engage in teaching, research, service/outreach, and/or administration; (4) theft or misuse of University property; (5) incompetence in the performance of material assigned duties in teaching, research, and/or service; (6) refusal to perform reasonable assigned duties in teaching, research, and/or service; (7) engaging in or substantially contributing to actions materially disruptive to the effective operations of the faculty member's academic unit, division, or University; (8) use of professional authority to exploit others; (9) violation of University policy substantially related to performance of faculty responsibilities (including University internet); and (10) violation of law(s) substantially related to the fitness of faculty members to engage in teaching, research, service/outreach, and/or administration. The procedure that will be followed when terminating the employment of a faculty member for cause is discussed below.

## B. Pre-termination Resolution Process

Before a recommendation for termination or a decision to terminate for cause is made, certain interactions, at a minimum, should have already occurred. For units that have department chairs, there should have been communication between the department chair and the faculty member who has one or more problematic issues that would suffice as grounds for termination for cause as set out above. If that communication does not result in prompt resolution of the problem or a Performance Improvement Plan ("PIP"), then the department chair (or analogous position) shall arrange for a Pre-termination Resolution Process meeting between the faculty member, the department chair (or analogous position), and the Dean. For units without department chairs, the initial meeting shall be between the faculty member and the Dean. Notice of the meeting shall be in writing and shall indicate that the meeting is for a pre-termination resolution process pursuant to the Faculty Termination processes in the faculty handbook. If there is no intent by the Dean to make a recommendation for termination or suspension at the conclusion of the meeting, regardless of the outcome, then the meeting is not considered a Pre-termination Resolution Process meeting, and this written notice is not required. For all units, if the meeting with the Dean results in immediate resolution of the issue(s) or if a PIP is implemented, then the matter would not proceed further towards termination at that time. However, IF THE CONDUCT OF THE FACULTY MEMBER IN THE JUDGMENT OF THE PROVOST/VICE PRESIDENT OF ACADEMIC AFFAIRS ("Provost"), AFTER CONSULTING WITH THE DEAN, POSES A SUBSTANTIAL RISK TO THE SAFETY OF OTHERS, then the Pre-termination Resolution Process described in this paragraph may be disregarded and the Dean may move directly to the Formal Termination Process.

## C. Employment status pending completion of University processes

1. The title, compensation, and benefits of the faculty member shall continue through the process until the President's determination is issued. The Provost, in consultation with the Dean, may re-assign the faculty member to other duties or no duties pending the resolution

of University's process as the Provost deems appropriate, however; such reassignment is not intended and shall not be used to create any undue hardship on the faculty member's ability to fully participate in the Procedures for Termination for Cause.

2. The Provost may suspend the faculty member without pay at any time during the pendency of the University's process if the conduct of the faculty member in the judgment of the Provost poses a substantial risk to the safety of others or if there is a substantial disruption to the operations of the academic unit, division, or University. This decision shall be provided in writing to the faculty member. Such suspension without pay is not intended and shall not be used to create any undue hardship on the faculty member's ability to fully participate in the Procedures for Termination. This action is considered an extraordinary sanction and should be used only when there is no other option available to fully protect the interests of the University.
  - a. The faculty member may request, within three business days of the written notice of suspension without pay, a meeting with the Provost to review the suspension without pay. This meeting shall occur as soon as practicable but no later than five business days from the date of the request for meeting unless agreed to by the Provost and faculty member. If the faculty member requests a review of the suspension without pay, the faculty member shall continue to be paid until the Provost's decision after review is issued.
  - b. The faculty member may present any information to the Provost that the faculty member believes is relevant to show why the faculty member should not be suspended without pay pending resolution of the matter.
  - c. The Provost, after considering the information presented by the faculty member, shall notify the faculty member within two business days if the suspension without pay remains in place. The Provost's decision shall be final and not subject to further review by the University.
  - d. If the faculty member is not terminated at the end of the process, then the faculty member shall receive compensation for pay lost during the period of suspension without pay.

## D. Definitions and information:

- Calculation of Time:
  - All time periods referenced in this process are stated in calendar days unless otherwise indicated.
  - "business day" shall mean any day that is not a Saturday, Sunday, or a day that the University offices are closed.
  - If the last day of a time period occurs on a Saturday, Sunday, or day that the University offices are closed, then the time period shall continue to the next business day.
  - If University offices are closed three or more consecutive weekdays, such as winter break or due to weather, then those weekdays and any intervening weekends and holidays shall not be included in the calculation of the time period.
- The term "meeting" (other than for the hearing before the Faculty Discipline Review Committee) is intended to be a meeting between the named individuals in the same room. Meetings are intended and preferred to be in person. If, however, the individuals cannot meet in person, meeting by virtual platform, such as Zoom, is acceptable. If the faculty member requests the meeting occur by virtual platform, as long as such meeting can occur with the technology available to all of the parties, the request shall be granted.

- If, at any time during the process, the Provost or the President are unable or otherwise unavailable to complete their obligations in a timely fashion, they may designate another person employed at the University to perform the duties described in this process.
- Any time period set out in this process may be extended by agreement of the parties. This agreement shall be in writing, which can be satisfied by email communications between the parties.
- If the faculty member is unavailable for a period of time due to Family Medical Leave Act as reviewed and approved by the Department of Human Resources, then any pending time period in this process shall be stayed until such time the faculty member becomes available to participate in the process.
- The term “termination” when terminating a tenured faculty member shall mean terminating the faculty member’s employment with the University and revoking the faculty member’s tenure.

#### E. FORMAL TERMINATION PROCEDURE FOR ALL FACULTY WHO ARE NOT TENURED (See Appendix IX for flowchart of process.)

STEP 1: If the Pre-termination Resolution Process does not result in immediate resolution of the problem(s) and no PIP is implemented, or if the Dean determines that the Pre-termination Resolution Process should be disregarded per Section B above, the Dean, after consultation with the Provost, shall notify the faculty member that he/she is terminated from his/her faculty position effective immediately. The notification shall be in writing and shall state the cause(s) that are the basis for the Dean’s decision.

STEP 2: The faculty member shall have seven (7) days to file a written request for appeal with the Provost. The written appeal need only state the faculty member appeals the decision of the Dean and requests a meeting with the Provost. If no appeal of the Dean’s decision is timely made, then the termination of the faculty member becomes final and not subject to further review by the University.

STEP 3: If the faculty member does submit a written appeal with the Provost, the Provost shall arrange to meet with the faculty member within seven (7) days from the date the written appeal is received by the Provost. The Provost may choose to have the Dean be present during the meeting with the faculty member. The faculty member may present any information to the Provost in advance of the meeting to assist the Provost’s preparation for the meeting. The faculty member, however, is not required to do so, nor is the faculty member restricted from raising any other issues in opposition to the Dean’s termination during the meeting with the Provost that were not addressed in any information provided by the faculty member prior to the meeting.

STEP 4: After the meeting, the Provost shall have seven (7) business days to issue the decision on the appeal. The Provost may uphold the termination of the faculty member, grant the appeal, or determine an alternative resolution to the matter. The decision of the Provost shall be final and not subject to further review by the University.

#### F. FORMAL TERMINATION PROCESS FOR TENURED FACULTY (See Appendix X for flowchart of process.)

STEP 1: If the Pre-termination Resolution Process does not result in immediate resolution of the problem(s) and no PIP is implemented, the Dean shall make a recommendation to the Provost that the faculty member be terminated from his/her faculty position effective immediately. If the Provost previously determined that the Pre-

termination Resolution Process should be disregarded per Section B above, the process moves to Step 2.

STEP 2: The Provost shall meet with the faculty member regarding the concerns(s) raised by the Dean. This meeting should occur as soon as reasonably possible after receiving the Dean’s recommendation but no later than seven (7) days after receiving the Dean’s recommendation.

If the Provost and faculty member are able to agree in writing to a resolution regarding the matter, then no further action will be required.

The written notice by the Provost to the faculty member regarding this meeting shall indicate the Dean is recommending termination and the meeting is Step 2 of the Formal Termination Process for Tenured Faculty.

If the Pre-termination Resolution Process was not utilized per Section V.B. above, the written notice shall also include the causes provided by the Dean for such termination.

STEP 3: If no resolution is reached after the meeting in Step 2, the Provost may, but is not required to, appoint a Faculty Advisory Council (“FAC”) within three (3) business days with whom to confer before making any further determination in the matter. The purpose of the FAC is to provide the Provost with a faculty perspective to assist the Provost in considering appropriate next steps in the process. The FAC will consist of three tenured faculty selected by the Provost, none of whom shall be in the faculty member’s department (or unit if the faculty member is not in a department and the FAC member’s duties do not involve interaction with the faculty member). The meeting between the Provost and the FAC shall occur no later than seven (7) days after the appointment of the FAC absent compelling circumstances. The FAC may, but is not required to, request a meeting with the faculty member within seven (7) days after the FAC meets with the Provost. The FAC shall then meet with the Provost no later than three (3) business days after meeting with the faculty member. Meetings of the FAC shall be confidential to the extent practicable. The faculty member, the members of the FAC, and the Provost may not be called as witnesses at the hearing of the Faculty Discipline Review Committee (“FDR”) (as described in Section G below) to testify about any communications between the FAC and the Provost in any meetings with or held by the FAC. Members of the FAC may be called to testify about other matters if relevant to the proceeding.

- After meeting with the FAC, if the Provost, in his or her sole discretion, believes another meeting with the faculty member would be beneficial, then the Provost may schedule another meeting with the faculty member. That meeting shall occur within seven (7) days of the Provost extending the invitation.
- If the Provost and faculty member are able to agree in writing to a resolution regarding the matter, then no further action will be required.

STEP 4: If after meeting with the FAC (and if no resolution is reached after an additional meeting with the faculty member) or if the FAC is not utilized (and Step 3 is skipped), the Provost shall then determine if the faculty member should be placed on a PIP, impose additional conditions on an existing PIP, or recommend to the President that the faculty member be suspended or terminated and have . The Provost shall make this decision within seven (7) days from the last meeting with the FAC or meeting with the faculty member whichever occurs later. If the Provost decides to take action other than to proceed with suspension or termination of the faculty member, the process shall end with the Provost’s decision and it shall not be subject to further review by the University.

- The written decision of the Provost should be delivered in person to the faculty member when practicable. The Dean (and department

chair, if applicable) may be present at the discretion of the Provost.

If an in-person meeting is not possible or is conducted by virtual platform, then the decision shall be delivered by mail and/or by email to the faculty member.

- If the Provost's decision is to recommend termination or suspension of the faculty member to the President, the written notification shall include the cause(s) set out in Section V.A above that the Provost relied upon in making the recommendation.
- A copy of any recommendation for termination or suspension by the Provost shall be provided to the President at the time it is provided to the faculty member.

STEP 5: If the Provost's recommendation is to suspend and/or terminate the faculty member, the faculty member shall have seven (7) days to make a written request to the Provost for review by the FDRC. (There is no review process if the Provost recommends a PIP or some other form of resolution not including suspension or termination.)

- If the faculty member does not make a written request for review by the FDRC of the Provost's recommendation in a timely fashion, the President shall review the recommendation. Unless the President determines that the Provost's recommendation lacks a reasonable basis, the President shall follow the recommendation and suspend and/or terminate the faculty member. There shall be no further review of the President's decision by the University.

STEP 6: If the faculty member does make a written request for review with the FDRC, the FDRC shall be appointed as set out in Section G below. After the FDRC is appointed, the Provost, absent compelling circumstances, shall provide for the chair of the FDRC a description of the charges stated with reasonable particularity (hereafter "Charges") within twenty-one (21) days after receiving the faculty member's written request for review (but in all events as soon as practicable). The Chair of the FDRC shall also receive information stating the cause(s) relied upon by the Provost in making the recommendation, along with a summary of the evidence upon which the Charges are based.

STEP 7: The faculty member shall file a written response to the Charges no later than fourteen (14) days after receipt of the Charges from the Provost.

NOTE: If one of the Charges to be presented to the FDRC is for incompetence in teaching, research, or service, then two outside evaluators shall be identified, one by the faculty member and one by the Provost, to provide objective evaluations of the faculty member's competence or lack thereof in teaching and/or research. The evaluations shall be conducted by outside evaluators in the faculty member's field. The evaluators shall provide written reports within twenty-one (21) days of being appointed by the Dean and the reports shall be made available to the FDRC for their consideration.

STEP 8: The FDRC shall follow the procedures set out in Section G below and then provide its recommendation, in writing, to the President stating whether the Provost's recommendation should be followed, rejected, or modified, including what modifications it would recommend. The FDRC shall simultaneously provide a copy of its recommendations to the Provost and the faculty member.

STEP 9: The faculty member, after being advised of the FDRC's recommendation in Step 7 above, shall have seven (7) days to notify the President in writing if the faculty member agrees or disagrees with the FDRC's recommendation. This is an opportunity for the faculty member to make any relevant statement to the President that the faculty member

wishes the President to consider relating to the FDRC's recommendation before the President makes his/her decision. The Provost shall also have seven (7) days to notify the President in writing if the Provost agrees or disagrees with the FDRC's recommendation.

STEP 10: The President shall review the Provost's Charges (as amended if applicable), the faculty member's response to the Provost's Charges (as amended, if applicable), any post-hearing submissions as allowed by the FDRC, the recommendation by the FDRC, and any statement provided by the faculty member and Provost in Step 9. Within fourteen (14) days of receipt of the FDRC's recommendation, the President shall provide his/her written decision to the faculty member and Provost as to whether the faculty member should be dismissed, suspended, or other lesser action shall be taken, which could include taking no action at all against the faculty member. If the President's determination is different than the FDRC's recommendation, the President shall address the reasons for the difference in his/her decision. If the President's decision is something other than termination or suspension, the President's decision is final and no further review of the President's decision shall occur.

STEP 11: If the President determines that the faculty member shall be terminated, the faculty member shall have seven (7) days to make a written request for appeal to the Washburn University Board of Regents ("WUBOR"). If the faculty member does not request an appeal to WUBOR, then the President's decision is final and no further review of the President's decision shall occur. The faculty member's written request for appeal shall be made to the Chair of the WUBOR, the President, and the Provost. The faculty member's written request for appeal shall include any response the faculty member wishes to make regarding the President's written decision. The Provost shall have seven (7) days after receipt of the faculty member's written request for appeal to respond in writing, which response will be provided to the Chair of the WUBOR, the President, and the faculty member.

STEP 12: If the faculty member timely makes a written request for appeal to the Chair of the WUBOR, the WUBOR shall review a) the Charges (as amended, if applicable), b) the faculty member's response to Charges (as amended, if applicable), c) any post-hearing briefs filed by the parties as allowed by the FDRC, d) the recommendation of the FDRC, e) the faculty member's statement of disagreement with the FDRC recommendation, f) the decision of the President, g) the written appeal of the faculty member, h) the Provost's response to the faculty member's appeal, and i) the transcript of the proceedings before the FDRC. WUBOR shall *not* consider any information not listed above. After reviewing the above documentation, WUBOR may accept, reject, or modify the decision of the President. WUBOR shall issue its decision, in writing, within twenty-eight (28) days from receipt of the faculty member's written request for appeal. The decision of the WUBOR is final and not subject to any further appeal or University process.

#### G. Formal Procedures

1. When the procedures set forth above (V.B.) have been exhausted, then, and not until then, formal procedures may be initiated by the faculty member, and in this event the procedures defined below shall apply.

#### 2. Appeals Committee

##### a. The Appeals Committee composition and authority

- 1) The Faculty Appeals Committee shall consist of five (5) faculty appointed by the Faculty Senate. No one shall be appointed who is a member of the academic department of which the appellant is a

member. The member of the Committee senior in tenure shall serve as Chairperson. The functions and authority of the Appeals Committee are outlined in the Bylaws of the University, Article V, Section 9.

2) The decision of the Committee which shall include provisions for appropriate remedial action will be binding unless a party to the appeal makes a written request within ten days for final determination by the Board.

3) A formal procedure shall be initiated by the dispatch of identical copies of a formal communication from the President to the faculty member and to the chairperson of the Faculty Appeals Committee (hereinafter called the Committee), containing the following:

- a. A statement of the charge or charges relied upon, set forth in plain and descriptive English, and
- b. A detailed summary of the evidence upon which the charges are based, and
- c. A first list of witness to be called (the names of other witnesses to be communicated when they become known), and
- d. A copy of the pertinent Kansas Statutes and University regulations that govern the faculty member's procedural and substantive rights, specifically including but not being limited to relevant (1) statutes, (2) Bylaws, (3) Faculty Handbook, (4) statements concerning the proper composition, procedures, and powers of the Committee, and
- e. A statement that the Committee shall conduct a hearing on the charges, and
- f. A statement that the time and place of the hearing shall be set by the Committee, and shall be communicated to the faculty member, and shall be such as shall allow the faculty member adequate opportunity to prepare defense, normally not less than thirty days, and
- g. A formal invitation to the faculty member to attend the hearing accompanied by academic advisors and legal counselors.

Upon the request of the faculty member, separate copies of the statement of charges shall be sent to the appropriate professional organizations, together with formal invitations to send an observer to the hearing. These statements and invitations shall be sent by the President.

Not less than one week before the date set for the hearing, the faculty member shall submit to the President and to the Committee a written answer to the charges, or shall state to the President and to the Committee that he/she does not desire a hearing to be held at which point the previous action obtains.

Prior to the hearing the faculty member shall submit a copy of his/her answer to each of any professional organizations that at his/her request have been sent copies of the statement of charges.

If any evidence is tendered during the hearing to which objection is made on the ground that it is not within the issues raised by either the statement of charges or the answer, the committee may allow either the statement or the answer to be amended, and shall do so freely, especially when the presentation of substantive issues will thereby be facilitated.

Whenever an amendment has been allowed at the instance of one party, and the other party so requests, the Committee shall grant the objecting party a reasonable time within which to prepare a response to

the case on the new issue or issues that have been raised and to meet the evidence tendered.

4. When the faculty member submits an answer to the statement of charges as contemplated in V.C.3., the following procedures shall apply:

- a. Any member of the Committee is disqualified if he/she is a member of the faculty member's department.
- b. The faculty member may, at least one day before the hearing is scheduled to begin, indicate to the chairperson of the Committee a desire that the hearing shall be (1) public or (2) private, and the chairperson shall grant the request. However, if the faculty member fails to indicate his/her preference, the Committee in its independent judgment shall determine whether the hearing shall be public or private.
- c. The President, the faculty member, and their respective academic advisors and legal counselors, all shall have the right to be present at the hearing at all times, as shall any observer sent by a professional organization in response to a formal invitation.
- d. The hearing shall proceed in the following order: The submission of (1) evidence by the President in support of the statement of charges, (2) evidence by the faculty member in support of his/her answer, (3) rebuttal evidence by the President, (4) rebuttal evidence by the faculty member, and (5) closing arguments. However, in rare cases, if the Committee believes that a clearer or more expeditious way of exploring the issues can be achieved by varying this normal order of proceeding, it may so order.
- e. The testimony of witnesses and other evidence shall be received by the Committee; however, any testimony on which the opposing party is not afforded a reasonable opportunity for cross-examination shall be stricken from the record of the hearing. The rules of evidence applicable in courts of law shall not be binding at the hearing, but may be consulted by the Committee in its discretion. The University shall make available to the faculty member, and to his/her advisors and lawyers, all the authority it possesses to obtain information and to require the presence of witnesses and the production of evidence relevant to the issues of the hearing.
- f. Both parties, their representatives, and the Committee shall have the right to summon and to question all witnesses, and to present other evidence relevant to the issues of the hearing.
- g. The Committee, in its discretion, may exclude a witness from the hearing room except while testifying.

h. If professional incompetence has been charged, there shall be admitted as evidence, in addition to individual testimony, a formal report on the work of the faculty member by colleagues in the department and in cognate departments of the University; and if the faculty member so requests, there shall be admitted as evidence a report by fellow specialists from other institutions, selected by agreement between the faculty member and his/her departmental colleagues; and if the charges include incompetence in the classroom, testimony from students who have been taught by the faculty member may be received. Any judgment by the Committee on the point of professional incompetence must be restricted to, and based upon, the evidence delimited above, and cannot properly rest upon any other considerations.

i. In its discretion, the Committee may proceed independently to secure the presentation of evidence at the hearing, and it may direct the parties, or either of them, to produce evidence on specific issues that it deems significant.



j. The principal of confrontation and full examination of the evidence shall prevail throughout the hearing.

k. The burden of proving the charges shall rest on the party bringing them, and the burden of proving a charge must be sustained by a preponderance of the relevant evidence.

l. A verbatim record of the proceedings shall be made. The record may be made by a recording device or by a stenographic reporter, in the sole discretion of the Committee. A full transcript of the proceedings shall be furnished to the Committee and the parties. In the event the record is made by a recording device, it shall be sufficient if the Committee and the parties are furnished the original recording or duplicates thereof in lieu of a written transcript. The cost of making the record and the transcriptions shall be borne by the University.

m. The Committee shall not be bound by the formal procedure of the law courts.

n. In its discretion, the Committee may adjourn the hearing from time to time in order to permit the parties to obtain further evidence.

o. The Committee may request written briefs from the parties, and shall accept them if they are offered.

The Committee shall defer its decision until the verbatim record of the hearing has become available, except in the case where the Committee believes that it can render a just decision in the absence of the verbatim record. In all cases, the Committee shall render its decision in the full light of the requirement that the burden of proof of the charges rests upon the party bringing them.

All the decisions of the Committee shall be based solely upon the record of the hearing. The Committee shall make specific findings of fact to support its conclusions on each of the alleged grounds for dismissal. A copy of the Committee's opinion, setting forth its disposition of each issue in the case together with the reasons by which it justifies its conclusions, shall be made available to each of the parties and to any observer who was sent to the hearing by a professional organization in response to a formal invitation to do so. This shall be done at the time when the Committee announces its decision in the case; and at least one copy shall be filed at that time in the President's Office as a public document.

The decision of the Committee, which shall include provisions for appropriate remedial action, will be binding upon both parties unless either party makes a written request for final determination by the Board of Regents within ten days.

5) The Board of Regents' review of the case shall be scheduled for the earliest possible date and shall be based on the record of the previous hearing accompanied by opportunity for argument, oral or written or both, by the principals at the hearing or their representatives. The decision of the Faculty Appeals Committee should either be sustained or the proceeding be returned to the committee with objections specified. In such a case the committee shall reconsider, taking account of the stated objections and receiving new evidence if necessary. It should frame its decision and communicate it in the same manner as before. Only after study of the committee's reconsideration should the Board of Regents make a final decision overruling the committee.

6) Except for such simple announcements as may be required, covering the time of hearing and similar matters, public statements about matters before the Faculty Appeals Committee by either the faculty member

or administrative officers shall be avoided as far as possible until the proceedings have been completed. Announcement of the final decision shall include a statement of the Faculty Appeals Committee's original action if this decision has not previously been made known. University Bylaws, Article V, Section 9.