

# V. PROCEDURES FOR TERMINATION

## A. General Statement

The President may terminate the services of a member of the faculty at any time, for cause. Cause for termination consists of demonstrated incompetence or dishonesty in teaching or research; substantial and manifest neglect of duty; personal conduct which substantially impairs the individual's fulfillment of his/her University responsibilities; engaging in or substantially contributing to actions materially disruptive to the effective operations of the University; substantial falsification of credentials; or violation of other faculty, staff, or student's civil rights. Written notice of termination shall be given by the President to the faculty member concerned prior to the date of termination. The Board of Regents shall determine and fix the date on which payment of salary shall cease, which date shall not be prior to the effective date of the termination of services. Such termination by the President shall only be made after consultation with the appropriate dean. The termination for cause of a tenured faculty member previous to the expiration of a term appointment, if appealed by the affected teacher, will be considered by both the Faculty Appeals Committee and the Board of Regents.

If a faculty member who has been given notice of dismissal communicates an objection to the dismissal decision to the appropriate University authorities as described in Section V of the Bylaws of the University, that member shall not be suspended from previously assigned institutional duties during the period necessary to resolve the question, unless the member's discharge of those duties clearly constitutes a threat of immediate harm to the member or others as determined by the President. In the latter case the President shall reassign the faculty member to other duties that seem appropriate, if any are available. The faculty member shall be continued on regular salary while all the proceedings are pending.

## B. Informal Procedures

1. If a faculty member who has been given notice of dismissal communicates an objection to the dismissal decision to the appropriate University authorities as described in Section V of the Bylaws, the President or the representative authorized in writing (Hereafter a reference to "the President" shall be understood to include as an alternative "or an authorized representative," and whenever an authorized representative acts on behalf of the President the actions shall be deemed the actions of the President.) shall discuss the matter with the faculty member in a personal conference. Prior to the conference the President shall send to the faculty member, in writing,

- a. A clear statement of the facts which have given rise to the question, and
- b. A statement that the faculty member is invited to attend a personal conference at a specified time, date, and place, and may bring academic advisors and legal counselors if desired, and
- c. If the presence of legal counsel is desired by the tenured faculty member, the President must be informed in time to allow the presence of legal counsel for the University, and
- d. A statement that any information adduced or arguments advanced in the conference may later be used as admissions at a formal hearing, and

e. A statement that a personal conference can be successful only if the facts and issues are confronted in an atmosphere of a genuine, candid attempt to find a solution to a mutual problem, and that, as a means conducive to this end, the President will welcome the views of the faculty member and will present, in turn, the President's views on the question.

2. At this point the matter may be concluded by mutual consent. If so, and unless explicitly requested by the faculty member not to do so, the President shall send a signed letter setting forth the settlement to the faculty member within fifteen days.

3. If as a result of the personal conference a settlement is not reached, the President and the faculty member shall within three days select an Advisory Committee, which shall offer its confidential advice to the parties and attempt to effect a settlement. The Advisory committee shall consist of three tenured faculty members, one selected by the President, one selected by the faculty member, and a third selected by agreement between the President and the faculty member. The Committee shall elect its own chairperson. If a settlement cannot be effected, the proceeding will move to the formal stage.

## C. 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.