

Background Materials for Council Agenda Item VI.C. (8/24/99)

1. Draft of possible provision on dismissal for cause
2. Sample dismissal for cause policies from other universities
3. Excerpts, AAUP Redbook, 1940 Statement of Principles on Academic Freedom and Tenure; Recommended Institutional Regulations on Academic freedom and Tenure

Draft of possible provision on dismissal for cause, to be added to the Operations Manual, immediately following the section on tenure.

1 10.9A Termination of Tenured Faculty

2 1. **General Rule:** The appointment of a tenured member of the faculty:

- 3 a. Will be terminated for demonstrated academic unfitness;
- 4 b. Will be terminated for substantial and manifest neglect of duty;
- 5 c. May be terminated for a physical or mental disability precluding the performance
6 of the faculty member's duties because no reasonable accommodation can be made
7 by the University as required by the American with Disabilities Act;
- 8 d. May be terminated for violations of specific University policies, including but
9 without limitations, violations of any ethics, sexual harassment, and research
10 misconduct policies;
- 11 e. May be terminated for moral turpitude; or
- 12 f. May be terminated for financial exigencies.

13 2. **Academic Unfitness:** Academic unfitness occurs when the faculty member is unable to
14 directly, effectively and substantially carry out the faculty member's obligations as a
15 teacher, scholar or both and where adjustments of the faculty member's obligations as a
16 teacher and scholar can not be made in accordance with the University's post-tenure effort
17 allocation policy.

18 a. For purposes of this rule, teaching unfitness occurs when either:

- 19 i. The intellectual content of courses taught by the faculty member is so
20 wanting when compared to like courses within the discipline that the
21 teaching of the course by the faculty member would be a disservice to
22 students, or
- 23 ii. The faculty member's pedagogical skills are so wanting that the teaching
24 of the course by the faculty member would be a disservice to students. In
25 assessing a faculty member's pedagogical skills, account should be taken
26 of the faculty member's ability:

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page

- 1 (1) to communicate with students effectively,
2 (2) diligence, and
3 (3) willingness to support students in their learning efforts.

4 b. Any determination of teaching unfitness must be based, in whole or in part, on peer
5 evaluations but may include student evaluations as well.

6 3. Financial exigencies: Financial exigencies must be demonstrable and bona fide. They
7 include without limitation:

8 a. A financial crisis which exists or is imminent and which, if not corrected, threaten
9 the survival of the University as a whole, but only if the crisis cannot be corrected
10 by less drastic means than termination of tenured faculty,

11 b. Programmatic change or discontinuance for academic reasons when approved by
12 the President of the University and the Board of Regents which cannot reasonably
13 be accomplished without terminating the tenure of faculty in the particular
14 program. No faculty member may be terminated because of programmatic change
15 or discontinuance unless, following the good faith efforts of the University and the
16 faculty member, the faculty member cannot be transferred to another college or
17 department where the professional services of the faculty member can be
18 effectively used.

19 4. Procedures Other Than Appeal to Faculty Judicial Commission.
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23 a. Involuntary transfer for faculty from one department to another.

Cause

Sample policies from other un. vers. [10].

Adequate cause for dismissal shall be directly and substantially related to the fitness of faculty members in their professional capacity as teachers and scholars. Dismissal shall not be used to restrain faculty members in their exercise of academic freedom and other rights of American citizens.—Syracuse.

Incompetence in performance of duties or conduct which demonstrates the lack of ability or willingness to meet responsibilities to the university-Utah.

A medical condition which precludes competent performance of duties and responsibilities as a faculty member-Utah

A faculty member may be dismissed only with due process and only for adequate cause which includes, in addition to financial exigency of the institution, (1) professional dishonesty in teaching, research, or extension activity, (2) demonstrated incompetence, (3) substantial and manifest neglect of duty, and (4) serious misconduct prohibited by official university policies. Included among these policies are the Statement of Professional Ethics, the Sexual Harassment Policy Statement, and the Uniform Rules of Personal Conduct at Universities under the Jurisdiction of the State Board of Regents—Iowa State University

Dismissal shall occur only for reason of (a) incompetence, (b) serious personal or professional misconduct, or (c) extraordinary financial exigencies of the University—Indiana

Adequate cause for termination of an appointment or the imposition of some other sever sanction will be related, directly and substantially, to the faculty member's fitness in his or her professional capacities as a teacher or researcher, which includes conduct consistent with the principles of academic freedom and faculty responsibility. Termination, suspension or other severe sanction will not be used to restrain faculty members in their exercise of academic freedom or other rights of United States citizens. -Northwestern

(Also includes extensive section on fiscal emergency-section 11).- Minnesota

Tenure...may be revoked...only for cause, academic cause, or bona fide financial exigency of the University. Cause shall be restricted to physical or mental disability or moral conduct unbefitting the position. Academic cause shall be defined as service which falls notably below the standard which the University may justly expect of a person holding the rank in question, in terms of a composite of teaching, productive scholarship, professional competence, and cooperation with colleagues.-Rochester

Adequate cause may be academic incompetence, neglect of duty, a serious violation of the faculty member's responsibilities (ed. Note. Relates to teaching, research and service), or admission or conviction of a serious violation of the criminal code—Termination, or the threat of it, shall not be used to restrain faculty members in their exercise of academic freedom or their rights. Wash U.

A faculty member may be terminated for demonstrable incompetence in the performance of his or her University duties.

Standards for Determination of Incompetent Performance

1. Research

A tenured faculty member shall be deemed incompetent in research or creative activity (1) if he or she does not engage in bona fide research or creative activity and (2) if he or she gives no satisfactory evidence of engaging in research or creative activity in the future. Because norms of productivity and standards of active scholarship vary from discipline to discipline, the norms appropriate to the faculty member's discipline should be used.

2. Teaching

Teaching can be competent either because the substance of what is taught is unacceptably deficient or because the processes and methods of instruction are inadequate. For this reason, there are two alternative and distinct standards for evaluating teaching. A tenured faculty member's teaching shall be deemed incompetent if it meets either of the following standards:

(A) Intellectual content

The intellectual content of the courses of the faculty member, as measured by the usual standards of intellectual and professional competence in university-level instruction within his or her academic discipline, is so inadequate that it is a disservice to students to permit the faculty member to continue to teach; or

(B) Pedagogical Skills

The pedagogical skills of the faculty member, when measured by such standards as student evaluations and collegial assessment, are so far below the standards of professional competence in university-level instruction that it is a disservice to students to permit the faculty member to continue to teach. The intellectual content of the courses taught by the faculty member shall be excluded from consideration when applying this criterion.

Assessment of pedagogical skills will entail evaluation of such factors as clarity of presentation, diligence as a teacher, availability to students, and willingness and capacity to communicate effectively with students and to support their efforts to learn. These factors should be assessed through such means as student and collegial evaluations. Students who enrolled but dropped out of a faculty member's course may also be contacted. Where teaching competence has been sufficiently poor that the department has been unwilling to make normal teaching assignments over a period of several years, this fact may be evidence of incompetent teaching.

3. University Service —Berkeley (draft of new policy)

The permissible grounds for suspension, diminishment in rank, or discharge are misconduct of such a nature as to indicate that the faculty member is unfit to continue as a member of the faculty, incompetence, and neglect of duty.—North Carolina

Termination of faculty employment may be effected because of (i) demonstrable, bona fide financial exigency, or (ii) program change for demonstrable, bona fide institutional reasons, on the basis of a decision by the Chancellor, concurred in by the President and approved by the Board of Governors, that for either cause the University's contractual obligation to one or more faculty members cannot be further met. Such a decision by the Chancellor may be made, and any resulting termination effected, only in accordance with the procedure provided in this Section 6.—University of Pennsylvania

Members of the general faculty may be removed for just cause. Stated causes for removal shall

include, but not be limited to professional incompetence, unacceptable performance after due notice, unethical conduct, or misconduct that interferes with the capacity of the employee to perform effectively the requirements of his employment, falsification of credentials or experience.

- a. Removal for cause is to be preceded by a predetermination hearing that is required *before* a decision can be made to terminate. In cases where there is some likelihood of threat to health or safety, the predetermination hearing can be waived.-Virginia

Procedure

Burden of proof that adequate cause exists rests with the University by a preponderance of all relevant evidence-Syracuse.

The university bears the burden of proving that the alleged reason is adequate cause for termination- Wash U.

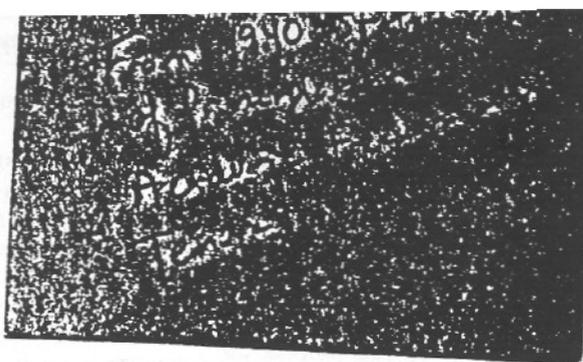
No faculty member shall be dismissed unless reasonable efforts have been made in private conferences between the faculty member and the appropriate administrative officers to resolve questions of fitness or of the specified financial exigency.- Indiana

Financial exigency "where there is an existing or imminent crisis which, if uncorrected, threatens the survival of the institution as a whole and cannot be alleviated by a less drastic means. -Utah

Inspirational

Tenure is not synonymous with a life appointment-Syracuse

Rationale:



ers of a learned profession, and officers
 write as citizens, they should be free
 their special position in the community
 national officers, they should remember
 or institution by their utterances. Hence
 wise appropriate restraint, should show
 ke every effort to indicate that they are

AAUP
 Redbook
 1940 Statement
 of Principles on
 Academic
 Freedom
 and
 Tenure

ACADEMIC TENURE

After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

1. The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.
2. Beginning with appointment to the rank of full-time instructor or a higher rank,[5] the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution, it may be agreed in writing that the new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years.[6] Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.[7]
3. During the probationary period a teacher should have the academic freedom that all other members of the faculty have.[8]
4. Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges and should have the opportunity to be heard in his or her own defense by all bodies that pass judgment upon the case. The teacher should be permitted to be accompanied by an advisor of his or her own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from the teacher's own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.[9]
5. Termination of a continuous appointment because of financial exigency should be demonstrably *bona fide*.

1940 INTERPRETATIONS

At the conference of representatives of the American Association of University Professors and of the Association of American Colleges on November 7-8, 1940, the following interpretations of the 1940 *Statement of Principles on Academic Freedom and Tenure* were agreed upon:

1. That its operation should not be retroactive.

and convincing medical evidence that the faculty member cannot continue to fulfill the terms and conditions of the appointment. The decision to terminate will be reached only after there has been appropriate consultation and after the faculty member concerned, or someone representing the faculty member, has been informed of the basis of the proposed action and has been afforded an opportunity to present the faculty member's position and to respond to the evidence. If the faculty member so requests, the evidence will be reviewed by the Faculty Committee on Academic Freedom and Tenure [or whatever title it may have] before a final decision is made by the governing board on the recommendation of the administration. The faculty member will be given severance salary not less than as prescribed in Regulation 8.

Review

- (f) In cases of termination of appointment, the governing board will be available for ultimate review.

5. DISMISSAL PROCEDURES

- (a) Adequate 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 other rights of American citizens.
- (b) Dismissal of a faculty member with continuous tenure, or with a special or probationary appointment before the end of the specified term, will be preceded by: (1) discussions between the faculty member and appropriate administrative officers looking toward a mutual settlement; (2) informal inquiry by the duly elected faculty committee [insert name of committee] which may, failing to effect an adjustment, determine whether in its opinion dismissal proceedings should be undertaken, without its opinion being binding upon the president; (3) a statement of charges, framed with reasonable particularity by the president or the president's delegate.
- (c) A dismissal, as defined in Regulation 5(a), will be preceded by a statement of reasons, and the individual concerned will have the right to be heard initially by the elected faculty hearing committee [insert name of committee].⁸ Members deeming themselves disqualified for bias or interest will remove themselves from the case, either at the request of a party or on their own initiative. Each party will have a maximum of two challenges without stated cause.⁹
- (1) Pending a final decision by the 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 institution's hearing procedures, the administration will consult with the Faculty Committee on Academic Freedom and Tenure [or whatever other title it may have] concerning the propriety, the length, and the other conditions of the suspension. A suspension which is intended to be final is a dismissal, and will be treated as such. Salary will continue during the period of the suspension.
- (2) The hearing committee may, with the consent of the parties concerned, hold joint pre-hearing meetings with the parties in order to (i) simplify the issues, (ii) effect stipulations of facts, (iii) provide for the exchange of documentary or other information, and

⁸This committee should not be the same as the committee referred to in Regulation 5(b)(2).

⁹Regulations of the institution should provide for alternates, or for some other method of filling vacancies on the hearing committee resulting from disqualification, challenge without stated cause, illness, resignation, or other reason.