

Faculty Hearing Committee on Academic Freedom and Tenure Bylaws and Operating Procedures

Approved, May 3, 2000

Amended, August 2012, December 2014

I. Area of competence

- A. The Faculty Hearing Committee on Academic Freedom and Tenure (hereinafter designated as FHC-AFT) handles all appeals involving the granting of tenure, dismissal, or academic freedom.
- B. The FHC-AFT handles appeals arising from improprieties of conduct other than matters which are covered by the University Nondiscrimination and Anti-Harassment Policy.
- C. Appeals arising from matters such as promotions, salaries, assignment of space or other facilities, and assignment of teaching duties are heard by the Faculty Hearing Committee on Grievances.
- D. If the issues in a case are such that it could be brought before both the Faculty Hearing Committee on Academic Freedom and the Faculty Hearing Committee on Grievances, a case involving tenure must first be submitted to the FHC-AFT. At no time would the FHC-AFT and the FHCG handle any complaints in the same case simultaneously.
- E. Appeals that relate to the granting of tenure, dismissal, or academic freedom, and that are also based on, or related to, matters covered by the University Nondiscrimination and Anti-Harassment Policy, will be addressed in a sequential process. The Office of Equity Compliance and the Title IX Coordinator will first address the element(s) of the appeal that are related to matters covered by the University Nondiscrimination and Anti-Harassment Policy. The FHC-AFT will receive the findings of the Office of Equity Compliance investigation, which are binding with respect to the elements of the appeal involving matters covered by the University Nondiscrimination and Anti-Harassment Policy. However, the FHC-AFT may make its own determination regarding whether any actions in the appeal are protected by principles of academic freedom. The FHC-AFT will then commence its review of any elements of the appeal that do not involve matters covered by the University Nondiscrimination and Anti-Harassment Policy. The FHC-AFT's deliberations and final recommendation will take into account the results of the OEC investigation as warranted.

II. Internal operating procedures

- A. The FHC consists of nine faculty members elected for staggered 3-year terms and chosen from a list of full-time tenured faculty, none of whom may be a Department Chair, an administrative official, or on the staff of a Dean. No member of the FHC may be a Faculty Mediator or a member of the Faculty Hearing Committee on Grievances.
- B. The FHC will meet during September of every academic year to elect a Chair and a Secretary.
- C. At the end of each academic year, the Chair of the FHC will call a final meeting to elect a Convener from among the continuing members.
- D. The Convener will call the first meeting in September, chair the meeting, and conduct the election of Chair and Secretary.
- E. Prior to the first meeting of the academic year, the Convener will distribute copies of the bylaws and internal operating procedures of the FHC to all members
- F. All members are expected to attend all meetings.

III. Definition of terms

- A. "Dismissal" means termination of a faculty member with tenure, or with a special or probationary appointment before the end of the specified term, for adequate cause. Dismissal is only one form of Termination of Appointments by the Institution as described by the Faculty Handbook. Dismissal differs from a decision by the University not to reappoint a faculty member at the end of a period specified in the person's contract. A decision by the university not to grant tenure is not of itself a grounds for appeal.
- B. "Adequate cause" means that the faculty member has failed to demonstrate fitness in his or her professional capacity as a teacher or researcher.
- C. "Academic freedom" is defined in the 1940 AAUP Statement of Principles of Academic Freedom and Tenure. The Statement affirms the right of any faculty member, tenured or not, full-time or part-time, in class or out, to take a scholarly stand, in writing or in speech, on any topic that may reasonably be considered to be within the academic competence of that person. No faculty member may be dismissed, denied tenure, or otherwise penalized for exercising this right. [See Faculty Handbook, sections 9 and 10 of the regulations on Academic Freedom and Tenure.]
- D. "Complaint" refers to a charge by a faculty member that the administration has violated the person's academic freedom and/or dismissed the person without adequate cause or improperly.

- E. "Faculty member" denotes one employed by the University of Dayton whose activities affect the educational function of the institution, who is affiliated with an academic department or the Library, and who has been granted faculty rank or is a member of the University's instructional staff. "Faculty member" will normally identify the person making the complaint.
- F. "The administration" will normally identify the relevant administrative person or persons named in the complaint.
- G. "Faculty Mediator" denotes one of the mediators appointed and trained by the University.
- H. "Day" denotes a working day.
- I. "Preponderance of the evidence" means that, based on evidence presented and reasonable inferences from that evidence, a conclusion is more likely than not.
- J. "Executive session" denotes a meeting that is attended only by the members of the FHC.
- K. "Faculty advisor" denotes a University of Dayton faculty member chosen by the complainant to serve as an advisor.
- L. "Rule" denotes a decision made by the FHC based upon the vote of a simple majority of the members present and voting, if a quorum is present.
- M. "Quorum" is any six FHC members.

IV. **Initiating a complaint: step#1 (informal procedures)**

- A. To initiate a complaint, the faculty member should normally follow this process as outlined in the University of Dayton Regulations on Academic Freedom and Tenure, August 15, 1996.
 1. Consult his or her Chair.
 2. If the consultation with the Chair does not resolve the matter, consult the Dean of his or her division.
 3. If the consultation with the Dean does not resolve the matter, consult with the Associate Provost for Faculty and Administrative Affairs or the Provost.
 4. If the consultation with the Dean and the Associate Provost does not resolve the matter, the faculty member will consult a Faculty Mediator. The faculty member can obtain a list of Faculty Mediators from the Associate Provost or Provost.
 5. If mediation is unsuccessful, the faculty member may present a written petition to the FHC, after which the complaint must proceed in accordance with the steps outlined in V and VI, below. Appendix A provides an outline for submitting a complaint to the FHC.

- B. Complaints not initiated by following the entire process set out in IV (A), above.¹
1. The FHC strongly recommends that faculty members proceed through the process of administrative review set out in IV (A) above and consult a Faculty Mediator. The FHC will not hear complaints that have not gone through this process, unless the faculty member can cite good reasons why he or she did not do so.
 - a. If the members of the FHC find that the faculty member's specific reasons for not proceeding through the process are convincing, the FHC will hear the complaint.
 - b. If the members of the FHC find that the faculty member's stated reasons for not proceeding through the process, in whole or in part, are not convincing, the FHC will not hear the appeal until the faculty member does complete that process. If the faculty member refuses to complete the process, the FHC will not hear the complaint.
 2. The following could be accepted as a good reason for failing to appeal informally to the various relevant administrators: the faculty member's convincing argument that there is some specific personal conflict of interest of a non-academic nature at issue.
 3. The following could be accepted as a good reason for failing to consult a Faculty Mediator: a convincing argument by the faculty member that all available Faculty Mediators have a conflict of interest of a sort which would make consultation with them futile.
- C. Privileged communications with Faculty Mediator
1. Privilege of confidentiality encompasses
 - a. All conversations involving the faculty member, the administration, and the Faculty Mediator about the merits of a complaint.
 - b. All communications to the Faculty Mediator concerning the complaint that are made by the faculty member and/or administration.
 - c. All communications concerning the complaint that the Faculty Mediator makes to the faculty member and/or the administration.
 2. This privilege of confidentiality means that
 - d. Neither the faculty member, nor the administration, nor the Faculty Mediator can be required to disclose to the FHC what occurred during their conversations about the complaint.
 - e. Communications between/among the Faculty Mediator, the faculty member, and/or the administration cannot be introduced into evidence at the Hearing.
 - f. The Faculty Mediator cannot be called as a witness by the faculty member, by the administration, or by the FHC.

¹ See Option #2 in Appendix A.

V. Initiating a Complaint: step #2 (formal procedure)

- A. *Petition:* After a faculty member has (i) completed the informal procedure set out in IV (A), above, without resolution, or (ii) provided a convincing argument for failing to initiate and complete that procedure, he or she can initiate a formal complaint by filing a written petition in accord with the outline attached as Appendix A to this document.
- B. *Filing:* The original petition plus nine copies of the petition must be filed with the Chair of the FHC. The faculty member files the petition by having the original and nine copies delivered to the Chair's campus office; the petitions can be delivered in person or by using any acceptable carrier (e.g., Campus Mail, U.S. Mail, Federal Express).
- C. *Distribution:* It is the Chair's responsibility to see that the copies of the petition and of all subsequent filings (e.g., the administration's answer, any amendments to the petition, etc.) are distributed and delivered to the members of the FHC and to the Provost as representing the University administration.
- D. *Amendment:* A faculty member can amend his or her petition at any time before the Hearing at the discretion of the FHC. The FHC may require a return to mediation or other steps in the informal procedures (section IV above) in the case of significant emendations.
- E. *Recusal:* Members of the FHC will remove themselves from the case on their own initiative if they deem themselves disqualified for bias or interest.
- F. *Scheduling:* In convening meetings, the Pre-Hearing, and the Hearing, the Chair should make every effort, within reasonable time limits, to accommodate the schedules of the members of the FHC in order to ensure, insofar as possible, that all members can attend.
- G. *Initial Investigation:* Upon receiving a petition, the FHC will investigate whether the faculty member's allegations present a *prima facie* case, sufficiently grounded in fact and supported by applicable University policies and standards to warrant a Hearing before the FHC. (In the case of dismissal see IV.A.)
 - 1. The chair will convene the FHC within 5 working days of receipt of the faculty member's petition to consider whether the faculty member has a *prima facie* case.
 - 2. The FHC may meet with the faculty member, who may be accompanied by his or her faculty advisor and/or private attorney.
 - 3. The FHC may also meet with the representative(s) of the administration.
 - 4. When the FHC has completed its initial investigation, the members will meet to vote whether or not to hold a Hearing.
 - a. If a majority of the quorum of the FHC members vote to hold a Hearing on the charges, the matter proceeds as outline below.
 - b. The Chair advises the faculty member and the administration in writing of the FHC's decision.

- c. The Chair provides the administration with a copy of the faculty member's petition, along with any supporting documents, and advises the administration that a response can be filed in accord with procedures set out in V. H. below.
 - d. If a majority of the quorum of the FHC votes not to hold a Hearing on the charge, the matter is concluded. The Chair advises the Faculty member and the administration in writing of the FHC's decision, briefly summarizing the reasons for that decision.
- H. The Administration's Response: Upon receiving notice from the FHC that a Hearing will be held on a complaint, the administration may file a written response to the complaint within ten working days of receiving the notice and petition from the FHC.
 1. The original and eleven copies of the response must be delivered to the Chair's campus office: The response may be delivered in person or by using any acceptable carrier (e.g., Campus Mail, U.S. Mail, Federal Express).
 2. The administration may attach any supporting evidence.
 3. The response or any part of it may be amended at any time before the Hearing, and thereafter at the discretion of the FHC.
 4. The FHC shall, within ten working days after the date of the filing of a response or an amended response, but in any case no fewer than three days before the date set for the Hearing, give a copy of the response or amended response to the faculty member.
 5. The FHC may proceed, notwithstanding any failure of the administration to file a response within the time provided, to hold a Hearing and issue a report on the complaint.
- I. Pre-Hearing: The purpose of the Pre-Hearing is to simplify and clarify issues as much as possible, provide for an exchange of evidence between the parties, set a date for the Hearing, and resolve any other necessary matters.
 1. The Pre-Hearing will be attended by the members of the FHC, the administration and/or appointed delegate, the faculty member and/or appointed delegate, and such academic advisor and/or legal counsel as either party may choose.
 2. At the Pre-Hearing, the FHC will
 - a. announce the names of any FHC members who have recused themselves;
 - b. allow each party to challenge and exclude a maximum of two members of the FHC with or without stated cause;
 - c. clarify the issues;
 - d. stipulate the facts;
 - e. encourage further exchange of documentary or other information;
 - f. discuss such other Pre-Hearing objectives as will make the Hearing fair, effective, and expeditious;
 - g. set a date for the Hearing agreeable to both parties (this date shall be no sooner than twenty [20] working days after the Pre-Hearing), and prepare notice of the Hearing, with specific issues stated in writing;

- h. consult the Provost, President, and the faculty member, to determine whether in the FHC's judgment, the Hearing will be private or public;
- i. provide opportunity to all parties to reach agreement without a further Hearing (in which case, the FHC will report to the Provost, President, and the faculty member).
- j. if the faculty member does not waive a hearing, the FHC will hear all available evidence and rest its recommendation upon the evidence in the record.

J. The Hearing:

- A. The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence, and the University, insofar as it is possible, will secure the cooperation of such witnesses and make available necessary documents and other evidence within its control.
 - 1. Both faculty member and administration will have the right to confront and cross-examine all witnesses. Where the witness cannot or will not appear, but the FHC determines that the interest of justice requires admission of the witness' statement, the FHC will identify the witness, disclose the statement, and if possible provide for interrogatories.
 - 2. A verbatim record of the Hearing will be taken (a court recorder will be hired by the Provost's Office to make the record), and one printed copy will be made available to the faculty member without cost upon request.
 - 3. At the opening of the hearing, the Chair of the FHC will state the issues before the FHC, reporting on the stipulations agreed upon at the Pre-Hearing.
 - 4. The Hearing will be attended by the members of the FHC, the administration and/or appointed delegate, the faculty member and/or appointed delegate, and such academic advisor and/or counselor as either party may choose.
- 5. Presentations by Both Parties
 - a. Either the faculty member or delegate (but not both) will present an overview of his or her case. During this overview the faculty member or his or her delegate may introduce documents. At this time any member of the FHC may question the faculty member or delegate. Subsequent to the overview witnesses may be called. In consultation with the faculty member the FHC will determine which witnesses to hear. During testimony by a witness any member of the FHC may question the witness; after testimony the administration may cross-examine.
 - b. In case of physical incapacity or for other serious reason the faculty member may appoint a delegate to make the presentation, call witnesses, answer committee's questions and respond to cross-examination.
 - c. The administration will present the University's case, following the same procedure described above (V.J.6.a).

- K. In a Hearing of charges of incompetence, the testimony shall include that of qualified faculty members from this or other institutions of higher education.
- L. Guidelines for the Hearing procedures
1. The FHC 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.
 2. The FHC will grant adjournments to enable either party to investigate evidence to which a valid claim of surprise is made.
 3. The FHC, on its own initiative, may call other witnesses and admit as evidence other documents it deems essential to the case.
 4. The cases of dismissal for cause or financial exigency, the burden of proof rests with the University and shall be satisfied only by clear and convincing evidence in the record considered as a whole.
 5. Except for such simple announcements required covering the time of the Hearing and similar matters, public statements and publicity about the case, by either party to the case or by members of the FHC, will be avoided until the proceedings have been completed, including consideration by the President and the Board of Trustees of the University.
 6. After all evidence has been presented, the FHC members hearing the case will discuss the case in executive session. If a majority of the FHC members hearing the case feel dissatisfied with the evidence presented, the FHC may call other witnesses or collect other evidence which it deems necessary.
 7. The finding of fact and the decision will be based solely on the record of the Hearing.
- M. Post-Hearing: after the Hearing has ended, the members of the FHC who attended the Hearing will discuss the case in executive session.
1. After the FHC has the opportunity to discuss the case fully, the Chair will poll the FHC members to obtain their tentative votes through a secret written ballot. The Chair will arrange for a member of the FHC to write a majority opinion. Any other voting member or members of the FHC may write a minority opinion. The Chair sets a date, about a week after the Hearing, for the FHC to reconvene and discuss the opinions prepared. When these opinions have been discussed, the Chair polls the FHC for a final vote. The FHC members commissioned to write the majority report will include the significant reservations of the minority.
 2. About a week after the FHC has arrived at its decision, and its judgment (contained in the majority report) has been written and approved by the FHC, the Chair will inform all parties to the case and the President of the FHC's disposition of the case and will give them copies of its judgment.

3. If the President of the University rejects the report of the FHC and states his or her reasons in writing to the FHC (as prescribed in the University of Dayton Regulations on Academic Freedom and Tenure, August 1996), the FHC will reconvene to discuss the President's letter and to be provided with an opportunity to respond before the President transmits the case to the Board of Trustees.
4. Action by the Board of Trustees: If the Board of Trustees, after its review of the case, returns it with specific objections to the FHC, the FHC will reconvene and reconsider the case, taking into account the stated objections and receiving new evidence if necessary (University of Dayton Regulations on Academic Freedom and Tenure, August 1996).
5. In cases where dismissal or other penalty is recommended, the President will transmit to the Board of Trustees the record of the case. The Board of Trustees' review will be based on the record of the FHC Hearing, and it will provide opportunity for argument, oral or written or both, by the parties at the Hearing. The decision of the FHC will either be sustained or the proceeding returned to the FHC with specific objections. The FHC will then reconsider, taking into account the stated objections and receiving new evidence if necessary. The Board of Trustees will make a final decision only after study of the FHC reconsideration. At the conclusion of the case, the FHC shall report to the full faculty (University of Dayton Regulations on Academic Freedom and Tenure, August 1996).
6. Responsibilities of the Chair of the FHC:
 - a. Send a letter to the President and request that other relevant administrators be informed of the final decision.
 - b. Secure all documents related to the case in his or her office.
 - c. Remind all members of the FHC that cases heard are to be kept confidential.

VI. **Reports and Recommendations**

- A. The FHC may make recommendations to appropriate administrators and/or groups on the campus (e.g. the Academic Senate) regarding policies and procedures that it believes the University should change or adopt.
- B. The Chair of the FHC shall report annually to the full faculty.
- C. The Chair shall preserve the record of the Hearing(s).
 1. The complete record shall be preserved in the Provost's Office for 3 years.
 2. After having been preserved in the Provost's Office for 3 years, the complete record shall be transferred to the University Archives.

VII. **Amending Process**

- A. The elected Convener will distribute copies of the by-laws and internal operating procedures to the members of the FHC each year prior to the first meeting. Each member should review the by-laws and internal operating procedures prior to the first meeting of the FHC.
- B. Any member of the FHC can propose an amendment to the FHC's by-laws and internal operating procedures at any time.
- C. To be approved and go into effect, a proposed amendment must be ratified by a vote of a simple majority of the entire FHC.
- D. Amendments that have been approved by the FHC apply only prospectively, i.e., to complaints initiated after amendments have been approved. Such amendments do not apply to complaints pending before the FHC when the amendments were ratified.
- E. When amendments are made to the by-laws and internal operating procedures, the Secretary of the FHC will forward a copy of the amended by-laws to the Executive Committee of the Academic Senate as a point of information. A copy of the amended by-laws will also be sent to the Associate Provost for Faculty and Administrative Affairs to ensure that the Provost's Office can provide the faculty members with a current copy of the FHC's by-laws and internal operating procedures.

VIII. Publications of the By-laws and Internal Operating Procedures

- A. The Chair shall see that the by-laws and internal operating procedures are published on the web pages of the Academic Senate and the Provost.
- B. The Chair shall see that all changes in the by-laws and internal operating procedures are published in due time.

Appendix A
Petition to the Faculty Hearing Committee
On Academic Freedom and Tenure

1. Name of Faculty Member: _____
2. College or Unit: _____
3. Department: _____
4. Campus Address: _____
5. Telephone numbers: Campus _____ Off campus: _____
6. Other addresses for mailings to faculty member, if relevant: _____

On separate sheets of paper, please respond **briefly** to the following three items (## 7-9):
Attach your answers to this cover sheet.

7. Describe the complaint, **as related to tenure, dismissal, and academic freedom.**
 - a. Cite the University rule(s) or regulations(s) violated.
 - b. Provide particulars of the specific acts or omissions of the complaint, including dates.
 - c. Attach to this petition copies of all documentary evidence (letters, memos, etc.) that support the complaint.
8. List previous steps taken in an effort to resolve this matter.
 - a. Option #1: List consultations with chair, dean, provost, and faculty mediator, giving dates and times of each consultation. OR
 - b. Option #2: Give reasons why there is "good cause" for not consulting with the chair, dean, provost, and faculty mediator.
9. Identify the remedy sought as specifically as possible, including acceptable alternatives.
10. Representation (check whichever are relevant):
 - a. I will represent myself []
 - b. I will be represented by a University colleague []
Name of Colleague: _____
Colleague's campus address and phone number: _____
 - c. I will be represented by legal counsel. []
Counsel's name and phone number: _____

File an original and nine copies of this petition with the Chairperson of the faculty Hearing Committee on Academic Freedom and Tenure, including one copy of the supporting documents.

Signature of Faculty Member: _____ Date: _____