

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

Approved, May 3, 2000

Amended, August 2012; December 2014; October 2018

I. Area of Competence

- A. The Faculty Hearing Committee on Academic Freedom and Tenure (hereafter the Committee) hears disputes involving tenure, dismissal, and/or academic freedom.
- B. Disputes arising from matters such as promotions, salaries, assignment of space or other facilities, assignment of teaching duties, and other sanctions not otherwise addressed by Section I(D) below, are heard by the Faculty Hearing Committee on Grievances (hereafter FHC-G).
- C. If the issues in a dispute are such that it could be brought before both the Committee and the FHC-G, a case involving tenure must first be submitted to the Committee. At no time would the Committee and the FHC-G handle any complaints in the same case simultaneously.
- D. All disputes involving allegations of faculty sexual misconduct, harassment, discrimination or retaliation in violation of the University's Nondiscrimination and Anti-Harassment Policy shall be addressed via the applicable Equity Complaint Resolution Process. However, Faculty members shall have the opportunity to appeal to the Committee any sanction imposed via the Equity Complaint Resolution Process on the grounds that the sanction violates the faculty member's right to academic freedom. In addition, when the sanction imposed is dismissal, the faculty member may appeal the appropriateness of that sanction to the Committee. In any such appeal, the Committee must accept all findings of fact from the Equity Complaint Resolution Process because matters involving sexual misconduct, harassment, discrimination or retaliation are not within the area of competence of the Committee.

II. Operating Procedures

- A. The Committee consists of nine faculty members elected for staggered 3-year terms. These faculty members are elected 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 Committee may be a Faculty Mediator or a member of the FHC-G.
- B. During September of every academic year, the Associate Provost for Faculty and Administrative Affairs will convene the Committee for the purpose of electing a Chair and a Secretary.

- C. Prior to the first meeting of the academic year, the Associate Provost for Faculty and Administrative Affairs will distribute copies of the Committee's Bylaws and Operating Procedures of the Committee to all members.
- D. All Committee members are expected to attend all meetings.
- E. All proceedings, discussions and deliberations of the Committee shall be held strictly confidential, except as provided in these Bylaws or otherwise as required by law.

III. **Definition of Terms**

- A. "Dismissal" means termination of a faculty member with tenure, or a non-tenured faculty member with a special or probationary appointment before the end of the specified term.
- B. "Adequate cause" for dismissal exists when the faculty member fails to demonstrate fitness in her or his professional capacity as a teacher or researcher; chronically fails to meet expectations; engages in unlawful, unethical and/or morally reprehensible behavior; violates University policy and protocols (including the faculty policies and procedures enumerated in the faculty handbook); fails to fulfill a contractual obligation to the University; becomes unable to perform the essential functions of the position with any legally-required accommodation; engages in intellectual dishonesty; exhibits professional incompetence; engages in violent, threatening, abusive, insubordinate and/or disruptive behavior; is excessively absent; poses a safety threat to others; is no longer legally authorized to work in the United States, and/or engages in other similar behavior.
- 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, in the contexts of either teaching or research, 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, Section IV, section 4 ("University Regulations on Academic Freedom and Tenure").]
- D. "Faculty member" denotes one employed by the University of Dayton whose activities are in service of the educational function of the institution, who is affiliated with an academic department, center, or University Libraries, and who has been granted faculty rank or is a full-time non-tenure track faculty member. "Faculty member" will normally identify the person making the complaint or appeal.
- E. A "prima facie case" is the allegation of sufficient facts that, if proven to be true, could establish a violation of academic freedom, or the denial of tenure or dismissal without adequate cause, such that a hearing before the Committee is warranted.
- F. "Quorum" is any six FHC members.

IV. Academic Freedom and Tenure Complaints

A. Informal resolution: Faculty members and the Administration are strongly encouraged (but not required) to attempt informal resolution of any dispute involving questions of academic freedom and/or tenure, including but not limited to the following:

1. Consultation with the Department Chair.
2. Consultation with the Dean of the Unit.
3. Consultation with the Associate Provost for Faculty and Administrative Affairs or the Provost.
4. Mediation by a Faculty Mediator. The faculty member may obtain a list of Faculty Mediators from the Provost's office. All communication with and by the Faculty Mediator relating to the dispute shall be confidential. Such communications cannot be offered or introduced into evidence at any hearing by the Committee. The fact that the parties are participating or have participated in (or elected not to participate in) mediation is not confidential.

B. Formal Complaints and Appeals

1. A faculty member may file a Complaint/Appeal with the Committee relating to issues within the Committee's area of competence.
2. In the case of denial of tenure or non-renewal of a contract, a Complaint must be filed within thirty (30) calendar days of the notification of the denial or non-renewal.
3. The Complaint/Appeal must be filed with the Chair of the Committee, following the format as attached in Appendix A. The Complaint may be filed via email to the Chair, but it is the faculty member's obligation to confirm that the Complaint is received by the Chair.
4. The Chair will distribute the Complaint/Appeal and all other submissions to the other members of the Committee.
5. A faculty member may be permitted to amend his/her Complaint/Appeal with permission of the Chair of the Committee. Such permission shall not be unreasonably withheld. A request to amend made within fourteen (14) calendar days of a scheduled hearing shall be deemed unreasonable and denied.
6. Committee members may recuse themselves from participating in hearing any Complaint/Appeal if they deem themselves disqualified based upon bias or a conflict of interest.
7. Upon receiving a Complaint/Appeal, the Committee will make a preliminary determination (by a majority vote of a quorum) 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 Committee. The Committee will meet to start deliberating on the issue of whether a *prima facie* case exists. That meeting must occur within fourteen (14) calendar days of the Committee receiving the Complaint/Appeal.

8. Should the Committee determine that the Complaint/Appeal does not state a *prima facie* case sufficient to warrant a Hearing, the Committee may at its discretion afford the faculty member an opportunity to amend her/his Complaint/Appeal within fourteen (14) calendar days. Otherwise, a Complaint/Appeal that does not state a *prima facie* case will be dismissed and the dismissal will be final and not subject to further appeal or review.
9. If the Committee determines that the Complaint/Appeal states a *prima facie* case, the Chair will notify the faculty member and the Administration and will schedule the case for a Pre-Hearing (See Section VII(B) below). At the time the Committee determines the *prima facie* case requirement is met, the Committee will provide a copy of the Complaint/Appeal (including any amendments and supporting documentation) to the Administration.

V. **Review of Faculty Dismissals**

- A. The Committee has authority to review cases of proposed dismissals of a faculty member with tenure or a non-tenured faculty member with special or probationary appointments before the end of the specified terms. In addition, the Committee will review the appropriateness of the sanction of dismissal imposed for a violation of the Nondiscrimination and Anti-Harassment Policy.
- B. The Provost or her/his designee shall provide to both the Committee and the faculty member a statement of reasons for any such proposed faculty dismissal.
- C. Upon receipt of a statement of reasons for a faculty dismissal, the Chair shall notify and provide copies to the Committee members.
- D. The Chair will notify the faculty member and the Administration and will initiate the Hearing Procedure by scheduling the case for a Pre-Hearing (See Section VII(B) below) and providing the Administration with a copy of the Complaint/Appeal.
- E. The faculty member may at any time elect not to proceed with a hearing.

VI. **Appeal of Sanctions Less Than Dismissal for Sexual Misconduct, Harassment, Discrimination or Retaliation**

Faculty members receiving sanctions less than dismissal imposed for violating the Nondiscrimination and Anti-Harassment Policy who believe the sanction implicates issues of academic freedom may appeal the appropriateness of the sanction imposed to the Committee pursuant to Section IV.B above.

VII. Hearing Procedure

- A. The Administration's Response: Upon receiving notice from the Committee that a Hearing will be held on a Complaint or Appeal, the Administration may file a written response to the Complaint or Appeal within fourteen (14) calendar days of receiving the notice from the Committee.
1. The Administration should submit its Response to the Chair. Submission may be accomplished via email, but the Administration is responsible for confirming that the Chair received the Response. The Chair will distribute the Response and all other submissions to the other members of the Committee.
 2. The Administration may attach any supporting evidence.
 3. The Response or any part of it may be amended with permission of the Chair. Such permission shall not be unreasonably withheld.
 4. The Chair shall, within fourteen (14) calendar days after the date of the filing of a Response or an amended Response, but in any case no fewer than three (3) working days before the date set for the Hearing, give a copy of the Response or amended Response to the faculty member.
 5. The Committee may proceed, notwithstanding any failure of the Administration to submit a Response within the time provided, to hold a Hearing and issue a report on the Complaint.
- B. 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 Committee, 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 Committee will:
 - a. announce the names of any Committee members who have recused themselves;
 - b. allow each party to challenge and exclude a maximum of two members of the Committee with or without stated cause;
 - c. clarify the issues;
 - d. seek stipulations of the facts;
 - e. identify witnesses and/or impose restrictions on the number of witnesses;
 - f. encourage further exchange of documentary or other information;
 - g. discuss such other Pre-Hearing objectives as will make the Hearing fair, effective, and expeditious;
 - h. set a date for the Hearing agreeable to both parties (this date shall be no sooner than thirty (30) calendar days after the Pre-Hearing), and prepare notice of the Hearing, with specific issues stated in writing;

- i. provide opportunity to all parties to reach agreement without a further Hearing (in which case, the Committee will report to the Provost, President, and the faculty member).

C. The Hearing:

1. The University, insofar as it is possible, will secure the cooperation of witnesses and make available necessary documents and other evidence within its control. The Hearing will not be open to the public.
2. Both the faculty member and the Administration will have the right to confront and cross-examine all witnesses. Where the witness cannot or will not appear, but the Committee determines that the interest of justice requires admission of the witness' statement, the Committee will identify the witness, disclose the statement, and if possible provide for interrogatories.
3. A verbatim record of the Hearing will be taken (a court reporter will be hired by the Provost's Office to make the record), and one printed or electronic copy of the transcript will be made available to the faculty member without cost upon request.
4. At the opening of the Hearing, the Chair will state the issues before the Committee, reporting on the stipulations agreed upon at the Pre-Hearing.
5. The Hearing will be attended by the members of the Committee, 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.
6. Presentations by Both Parties
 - a. Unless otherwise agreed by the parties and the Committee, the faculty member will present her/his case first. Either the faculty member or delegate (but not both) will present an overview of his or her case. The Administration will then present its overview of the case. During these overviews, the parties may introduce documents. The Committee will impose a reasonable time limitation for these overviews that shall apply to both parties.
 - b. Following the overviews, the faculty member will present her/his witnesses. The Administration will be given an opportunity to cross-examine any witnesses presented on behalf of the faculty member, including the faculty member himself or herself. Members of the Committee may question the parties or witnesses at any time.
 - c. The Administration will present the University's case, following the same procedure described above.

D. General Guidelines for the Hearing

1. The Committee 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 Committee will grant adjournments to enable either party to investigate evidence to which a valid claim of surprise is made.
3. The Committee, on its own initiative, may call other witnesses and admit as evidence other documents it deems essential to the case.
4. Except for dismissals deriving from the Equity Complaint Resolution Process, in cases of dismissals for adequate cause or due to financial exigency, the burden of proof rests with the Administration 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 Committee will be avoided until the proceedings have been completed, including consideration by the President and the Board of Trustees of the University.

E. Post-Hearing: after the Hearing has ended, the members of the Committee who attended the Hearing will discuss the case in executive session.

1. After the Committee has the opportunity to discuss the case fully, the Chair will poll the Committee members to obtain their tentative votes through a secret written ballot. The Chair will arrange for a member of the Committee to write a majority opinion. Any other voting member or members of the Committee may write a minority opinion. The Chair sets a date (approximately one a week after the Hearing) for the Committee to reconvene and discuss the opinions prepared. When these opinions have been discussed, the Chair polls the Committee for a final vote. The Committee members commissioned to write the majority report will include the significant reservations of the minority.
2. About a week after the Committee has arrived at its decision and recommendation, and its majority report has been written and approved by the Committee, the Chair will inform all parties to the case and the President of the Committee's disposition of the case and will give all parties copies of its report.
3. If the President of the University rejects the report of the Committee and states his or her reasons in writing to the Committee within fourteen (14) calendar days of receipt of the report, the Committee will reconvene to discuss the President's objection and to be provided with an opportunity to respond before the President transmits the case to the Board of Trustees.

4. In cases where dismissal or other penalty is recommended and the President rejects the Committee's report, the President will transmit to the Board of Trustees the Committee's record of the case (Note, however, that in cases originating with the Equity Complaint Resolution Process, the record from the Equity Compliance Office will not be transmitted to the Board). The Board of Trustees' review will be based on the record of the Hearing, and it will provide opportunity for argument, oral or written or both, by the parties at the Hearing. The report of the Committee will either be sustained or the proceeding returned to the Committee with specific objections. The Committee 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 Committee's reconsideration. At the conclusion of the case, the Committee shall report to the full faculty.
5. Responsibilities of the Chair:
 - 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 until they are transferred to the Provost's Office per section VIII(C).
 - c. Remind all members of the Committee that cases heard are to be kept confidential.

VIII. Reports and Recommendations

- A. The Committee 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 Committee shall report annually to the full faculty, if the Committee has been active that year.
- C. The Provost's office 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.

IX. Amending Process

- A. Any member of the Committee may propose an amendment to the Committee's Bylaws and Operating Procedures at any time.
- B. To be approved and go into effect, a proposed amendment must be ratified by a vote of a simple majority of the entire Committee.
- C. Amendments that have been approved by the Committee apply only prospectively, i.e., to complaints and appeals initiated after amendments have been approved. Such amendments do

not apply to complaints or appeals pending before the Committee when the amendments were ratified.

- D. When amendments are made to the Bylaws and Operating Procedures, the Secretary of the Committee will forward a copy of the amended Bylaws to the Executive Committee of the Academic Senate as a point of information. A copy of the amended Bylaws 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 Committee's Bylaws and Operating Procedures.

X. **Publications of the Bylaws and Internal Operating Procedures**

- A. The Chair shall see that the current Bylaws and 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 Bylaws and Operating Procedures are published in a timely fashion.

Appendix A
Complaint/Appeal 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/appeal, **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: _____