

## BOARD POLICY 405.1

### APPOINTMENTS, PROMOTION, TENURE, NON-REAPPOINTMENT, AND DISMISSAL OF FACULTY<sup>1</sup>

~~This policy, adopted by the Board of Trustees on February 8, 1980, to become effective on July 1, 1980, This policy~~ supersedes all existing policies concerning appointments, promotion, tenure, non-reappointment, and dismissal of faculty ~~(specifically, Administrative Memorandum No. 43, dated August 31, 1962; Universitywide Administrative Memorandum 421.1, dated December 6, 1976; Universitywide Administrative Memorandum 450.1, dated November 17, 1975; and Board Policy 405.1, dated September 1, 1962, and revised). Nevertheless, an employee of the University of Arkansas who held the rank of instructor prior to the effective date of this policy is eligible for tenure in accordance with Section II.A.(1-4) of Board Policy 405.1 dated September 1, 1962, and revised.~~ The Board of Trustees has the right to amend any portion of this policy at any time in the future.

~~Copies of this statement of policies shall be kept by the dean of each college or school and by each department head or chairperson or other appropriate official and This policy shall be included without change or inter-lineation in the Faculty Handbook for each campus. Care shall be taken to insure that each faculty member is familiar with its contents, and the department chairperson or other appropriate official shall supply a copy to each new member.~~

#### I. —Definition of Terms

For purposes of this policy, the following definitions shall apply:

Appointment —An appointment is employment by written ~~contract~~ **notice** ("Notice of Appointment") by the Board of Trustees of an individual in a given capacity for a specified time period at a stated salary. An appointment is valid only when ~~the appointment form is~~ approved and signed by the President of the University ~~or, the Chancellor of the President's respective campus, the Vice President for Agriculture, the Chief Executive Officer of the respective unit, or their designee,~~ in accordance with authority delegated by the Board of Trustees, ~~and the Notice of Appointment is signed by the individual being appointed and returned. Such appointment is subject to the specified~~ all applicable policies of the Board of Trustees, the University ~~official~~ of Arkansas System, and the respective campus, division or unit.

Cause - Cause is defined as conduct that demonstrates the faculty member lacks the willingness or ability to perform duties or responsibilities to the University. A faculty member may be disciplined, or dismissed, for cause on grounds including but not limited to **unsatisfactory performance** or (1) professional dishonesty or plagiarism; (2) discrimination, including

<sup>1</sup> In most cases, academic units are organized into colleges with deans, chairpersons, and faculty. The normal order is for appointment, promotion and tenure processes to utilize this structure in making recommendations. Where colleges are not present, the normal order shall follow a pattern that closely mirrors the typical structure. For example, in Schools without departments, the decisions shall start with the faculty and move to the dean. For the purpose of this policy, and in reference to items involving professional librarians, extension specialists, instructional development specialists, or museum curators the terms "chairperson," "administrative officer," and "administrator" refer to the director or head librarian

**Comment [j1]:** The change from "contract" to "notice" could be construed to limit or eliminate contractual tenure protections under both contract law and constitutional law. Indeed, the word "contract" no longer appears anywhere in the rules. The only other use of this term was also removed. I've highlighted that change below.

**Comment [j2]:** This is a significant change. Under the current standard, termination for performance issues may result only from "incompetence," "neglect of duty," or the like. Under the new standard, a mere finding of unsatisfactory performance in an annual review is sufficient grounds to warrant termination. This interpretation is confirmed by language discussed in my final comment below.

harassment or retaliation, prohibited by law or university policy; (3) unethical conduct related to fitness to engage in teaching, research, service/outreach and/or administration, or otherwise related to the faculty member's employment or public employment; (4) misuse of appointment or authority to exploit others; (5) theft or intentional misuse of property; (6) incompetence or job abandonment, pattern of disruptive conduct or unwillingness to work productively with colleagues, or refusal to perform reasonable duties; (7) threats or acts of violence or retaliatory conduct; or (8) violation of University policy, or state or federal law, substantially related to performance of faculty responsibilities or fitness to serve the University.

Dismissal -Dismissal is severance from employment for cause after administrative due process as specified in Section IV C. ~~Non-provided in this policy. Termination by notice, expiration of appointment, or non-reappointment~~ is not a dismissal (see further).

Faculty --Faculty are employees who hold academic rank of lecturer, master lecturer, ~~assistant~~ instructor, ~~advanced instructor, senior~~ instructor, assistant professor, associate professor, professor, University professor, distinguished professor, University professor, or professor or one of the above titles modified by clinical, research, teaching, adjunct, visiting, executive in residence, ~~or professor of practice~~, emeritus, e.g., clinical professor, adjunct assistant professor. Additional appropriate non-tenure track modifiers may be approved by the President. For the purposes of tenure and promotion policy and recommendations, a campus may define which faculty may participate in tenure and promotion related decisions. For example, institutions that offer tenure could limit for tenure and promotion matters the definition of faculty to tenured and tenured track faculty.

Individuals holding ~~the following~~ non-teaching titles (i.e. Director of Libraries, Instructional Development Specialist II, and Curator) will also receive faculty rank, ~~the highest. The rank for that corresponds with~~ each title being as indicated, is reflected in the chart below. Both the title and the academic rank will be stated in the appointment.

**Comment [j3]:** The language highlighted in yellow contains highly subjective standards that could easily be used to undercut academic freedom and tenure. "Disruptive conduct" and "unwillingness to work productively with colleagues" are vague concepts that are very much subject to abuse. They also violate AAUP standards as explained in my email.

<del>Instructional and</del>		<del>Cooperative Extension</del>	<del>Instructional</del>	
<del>Instructional and</del> Research Ranks	Library	<del>Service*</del>	<del>Instructional</del> Development	Museum
<del>Professor, University Professor, Distinguished Professor, Distinguished Professor</del>	Director of Libraries, Librarian	<del>Extension Specialist IV</del>	Instructional Development Specialist II	Curator
Associate Professor	Associate Librarian	<del>Extension Specialist III</del>	Instructional Development Specialist I	Associate Curator
Assistant Professor	Assistant Librarian		<del>Extension Specialist II</del>	Assistant Curator
Instructor			<del>Extension Specialist I</del>	

~~\*Academic rank will be granted only if the individual is appointed in an academic unit.~~

Non-Reappointment --Non-reappointment means that a non-tenured, tenure-track faculty member is not offered a next successive contract appointment for employment at the end of a stated appointment period.- It is effected by a written notice sent in compliance with the time limits hereafter specified (IV.B.). This provision and the time limits specified in IV. B. do not apply to the non-renewal of a term appointment of a non-tenure-track faculty member.

**Comment [j4]:** This is the other place where "contract" was removed.

Probationary Period --~~The probationary period is the time a faculty member spends under appointments for full-time services in a tenure-track position on one campus of the University of Arkansas prior to being awarded tenure.~~

Promotion --Promotion is advancement based on merit to a higher rank or title.- All promotions must be approved by the Board of Trustees and become effective with the next year's appointment following action of the Board of Trustees, unless a different effective date is approved by the Board ~~for a specific case.~~

Resignation --Resignation is voluntary termination of employment by an employee.- The dean or director of the unit to which the employee is assigned is authorized by the Board of Trustees to accept the resignation.

Suspension -- Suspension is temporarily relieving an employee of duties. A disciplinary suspension or suspension pending an investigation does not alter the nature of an individual's appointment. Suspension may be with or without pay as warranted by the circumstances.

Tenure --Tenure is the right of continuous appointment. ~~It is,~~ awarded by the President to eligible members of the faculty upon successful completion by each of a probationary period and, once granted, it ceases to exist only by (1) dismissal for cause according to the procedures in Section IV.C., (2) demonstrably bona fide financial exigency, (3) reduction or elimination of programs, (4) retirement, or (5) resignation. ~~"Cause" is defined as conduct which demonstrates that the faculty member lacks the ability or willingness to perform his or her duties or to fulfill his or her responsibilities to the University; examples of such conduct include (but are not limited to) incompetence, neglect of duty, intellectual dishonesty, and moral turpitude.~~ ~~The probationary period may be waived as provided in Section IV.A.4. Salaries for tenured faculty may be adjusted based on job duties and performance.~~ NOTE: Tenured faculty holding positions eliminated by reduction or elimination of programs will be relocated in other academic

**Comment [j5]:** Here is the original definition of "cause." This is much narrower than the new proposed standard. The new standard makes it much easier to terminate a faculty member.

units of the campus whenever possible. A position occupied by a tenured faculty member ~~which that~~ was eliminated as a result of reduction or elimination of a program may not be reactivated for a period of five academic years.

Tenure-Track and Non-Tenure-Track Positions -Tenure-track positions are ranks of assistant professor, associate professor, professor, ~~distinguished~~University professor, and ~~University~~distinguished professor. Faculty appointed to clinical attending positions at the University of Arkansas for Medical Sciences, other faculty positions designated as clinical positions, or other ~~non~~tenure~~non-tenure~~-track positions approved by the President, may bear the designation of assistant professor, associate professor or professor but in no event shall be considered ~~in~~-tenure-track positions and shall acquire no tenure rights by virtue of occupying such positions. Such non-tenure track positions shall be set forth in applicable promotion and tenure policies approved by the President ~~which, following review by the Office of General Counsel; such policies~~ may authorize term appointments beyond one year, but not to exceed five years, under merit-based campus procedures approved by the President.

Terminal Appointment -A terminal appointment is a final appointment, the expiration of which results in termination of an individual's employment.

Termination -Termination is the general term to describe severance of employment from the University. Termination may be by resignation, retirement, dismissal, written notice, non-reappointment, or expiration of appointment.

Year -Year will be either a fiscal year (July 1 through June 30 next) or an academic year (fall and spring semesters of the same fiscal year), unless otherwise designated.

## II. -Appointments

A. Faculty. The following principles shall apply to appointments to faculty positions:

### A1. General

Appointments shall be for a specified period of time not to exceed one fiscal year, at a specified salary. Except for appointments to faculty positions for summer school, appointments shall not extend beyond the end of a fiscal year.

Recommendations for appointments to the faculty will be made by the departmental chairperson or equivalent after consultation with the ~~departmental~~ faculty concerned, and subject to the approval of the dean, chief academic officer, and chief executive officer of the campus, who alone shall make the final recommendation for appointment. (See definition of appointment, Page 1.)

### B. Initial Appointment

Criteria and procedures for the initial appointment and successive appointment of all faculty members on a campus shall be adopted by ~~the~~each campus. The faculty ~~of that campus~~, through its governance structure<sup>2</sup>; the deans and chief academic officer of the campus shall each have an opportunity to give their advice regarding these criteria and procedures; these criteria and procedures must be submitted to the Chancellor of the campus and the President for approval. More detailed criteria and procedures may be adopted by the faculty and chairperson<sup>2</sup> of each

<sup>2</sup>~~-For the purpose of this policy, and in reference to items involving professional librarians,~~

academic unit; these criteria and procedures must be submitted to the dean, the chief academic officer of the campus, the Chancellor of the campus, and the President for approval. Campus and unit criteria and procedures must be consistent with and are subject to this and other applicable University policies.

## 2. Initial Appointment

An appropriate degree or professional experience is an essential qualification for appointment to positions at academic ranks.

Other important qualifications include experience in teaching, research, or other creative activity, and educational service either at other colleges and universities and/or in ~~nonacademic~~non-academic settings.

## 3. Successive Appointments

Tenured faculty members have a right to a next successive appointment except for the reasons for termination of a tenured appointment given in Section I under definition of tenure. Salaries for tenured faculty may be adjusted based on job duties and performance. Non-tenured faculty do not have a right to a next successive appointment, but may be offered an appointment after the expiration of a current appointment, provided ~~it, in the case of tenure-track faculty, the~~ appointment does not extend the time in probationary status beyond the limits set in Sections IV.A.4 and IV.A.11. In the event that a non-tenured, tenure-track faculty member is not recommended for reappointment, the procedure described in Section IV.B. shall be followed. Non-tenure track faculty with a term appointment for a specified term of years do not have a right to an appointment beyond the appointment period.

~~Criteria and procedures for successive appointments of all faculty members on a campus shall be adopted by the faculty of that campus through its governance structure; the deans and chief academic officer of the campus shall have an opportunity to give their advice regarding these criteria and procedures; these criteria and procedures must be submitted to the Chancellor of the campus and the President for approval.~~

## B. Administrative Appointments

~~Consistent with longstanding policy and practice, appointments as dean are made by the chief executive officer or chief academic officer of the campus. Deans serve at the pleasure of the chief executive officer or chief academic officer. Appointments as department head or chair, or as director of an academic program or center, are made by the dean, in consultation with the chief executive officer or chief academic officer, and serve at the pleasure of the dean. Tenure may only be granted in faculty status and not in an administrative appointment. More detailed criteria and procedures may be adopted by the faculty and chairperson of each academic unit; these criteria and procedures must be submitted to the dean, the chief academic officer of the campus, the Chancellor of the campus, and the President for approval.~~

## III. Promotion

Promotion in academic rank shall be based primarily on the accomplishments of the individual while in the most recent rank. No minimum time in rank is required before a faculty member is

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~~extension specialists, instructional development specialists, or museum curators the terms "chairperson," "administrative officer," and "administrator" refer to the director or head librarian.~~

eligible for promotion, nor is there a maximum time an individual may remain in a given rank except as limited by Sections IV.A.4. and IV.A.11. However, individual accomplishments and potential for continued value to the University are required for promotion. Except at institutions that do not offer tenure, no person shall be promoted to the rank of associate professor or higher without also being granted tenure.

Recommendations for promotion shall originate with the chairperson, who shall inform the faculty members who are being considered for promotion and shall give them the opportunity to submit material which they believe will facilitate consideration of their competence and performance. Each campus shall provide for the inclusion of peer ~~evaluation in the consideration of faculty nominated for promotion.~~

Criteria and procedures for promotion to each rank on a campus, including an appeals procedure for those desiring reconsideration of a negative recommendation, shall be adopted by ~~the~~each campus. The faculty ~~of that campus,~~ through its governance structure, the deans and chief academic officer of the campus shall each have an opportunity to give their advice regarding these criteria and procedures; these criteria and procedures must be submitted to the Chancellor of the campus and the President for approval. More detailed criteria and procedures may be adopted by the faculty and chairperson of each academic unit; these criteria and procedures must be submitted to the dean, the chief academic officer of the campus, the Chancellor of the campus, and the President for approval. More detailed criteria ~~Campus and procedures may be adopted by the faculty and chairperson of each academic unit; these criteria and procedures must be submitted consistent with and are subject to the dean, the chief academic officer of the campus, the Chancellor of the campus, this~~ and the President for approval. other applicable University policies

#### IV. -Tenure, Non-reappointment, and Dismissal

##### A. Tenure

1. The granting of tenure implies that the individual has completed successfully his or her probationary period and has become a permanent member of the University community. As such, he or she acquires additional procedural rights in the event that dismissal proceedings may be brought against him or her.

2. Only full-time faculty with ranks of ~~assistant professor,~~ associate professor, professor, University professor, and distinguished professor, ~~and University professor~~ are eligible to be awarded tenure. An assistant professor is eligible to seek tenure accompanied by a concurrent promotion to associate professor. Faculty and other employees with the following titles are ineligible to be awarded tenure: clinical, research, teaching, adjunct, visiting, professor of practice or executive in residence faculty, research associates or research assistants, graduate associates or graduate assistants, instructors, assistant/advanced instructors, ~~and senior instructors, lecturers-, and master lecturers.~~ Faculty appointed to clinical attending positions at the University of Arkansas for Medical Sciences, other faculty positions designated as clinical positions, or other non-tenure track positions approved by the President, although designated assistant professor, associate professor or professor, are ineligible to be awarded tenure. Academic administrators not appointed to a teaching or research unit may be awarded academic rank in addition to their administrative titles, with the concurrence of the faculty and administrative officer of the academic unit in which such rank could lead to tenure, in which case they may acquire tenure as faculty, but not as administrators. Other administrators and staff

whose primary duties do not involve teaching regularly scheduled credit-hour courses, but who occasionally teach courses are not eligible for tenure and do not acquire credit for service toward tenure for such teaching activities.

3. Tenure rights apply to the area or areas of the faculty member's expertise and in the academic unit(s) in which his or her position is budgeted (examples: Department of English, ~~UAF,~~ (not College of Arts and Sciences), UAF; School of Law, UALR; Library, UAM; Departments of Music and Education, UAPB). Tenure rights are confined to a particular campus and are not applicable on another campus of the University of Arkansas. Tenure and tenure rights are not awarded in a named or endowed chair or professorship or in any administrative appointment.

4. The probationary period may not extend beyond seven years, except as specifically provided herein, or as otherwise required by law. An initial appointment of one-half year (academic or fiscal) or less will not be included in the probationary period. ~~If more than one-half of any year is spent in leave of absence without pay status, that year shall not apply toward the probationary period.~~

During the first six years of the probationary period, a tenure-track faculty member may request, for reasons set forth below, that the probationary period be suspended by one (1) year. The reasons for such a request ~~are~~ will generally be the same as required under the Family and Medical Leave Act ~~of 1993 (FMLA), as amended,~~ and are as follows: (a) the birth of a child to the faculty member or ~~his~~ spouse and ~~its~~ the child's care during the first year; (b) the adoption of a child by the faculty member or placement in the faculty member's home of a foster child within the first year of placement; (c) the care of the faculty member's spouse, child, or parent with a serious health condition; (d) the serious health condition of the faculty member ~~that makes the faculty member unable to perform the functions of his or her job;~~ (e) a qualifying exigency arising from the military deployment of an employee's spouse, son, daughter, or parent to a foreign country; (f) to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

A request for a second extension is highly unusual and extraordinary, and will be considered on a case by case basis. However, the faculty member will receive any leave to which he or she is entitled under the FMLA.

A request to suspend the probationary period for these reasons must be made at the time of the qualifying event and shall first be directed in writing to the 405.1 department chair for approval and must also be approved by the dean (or approved through other established administrative channels), the vice chancellor for academic affairs, the chancellor, and the president, under such procedures as the president shall approve. These procedures may include, but shall not be limited to, the manner in which the faculty member's duties and salary, if any, are ~~determined during such year, the information which is required to substantiate a request and the extent to which a faculty member's performance during such year may be considered in awarding tenure. A faculty member who has been notified that he or she will not be reappointed may not subsequently request to suspend the probationary period under this policy.~~

5. Upon the recommendation of the department chair<sup>3</sup>, after consultation with the departmental faculty and with concurrence of the dean, the vice chancellor for academic affairs,

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<sup>3</sup> In Schools without departments and department chairs, refer to footnote 1



and the chancellor, new appointees at the rank of associate professor, professor, University professor, or distinguished professor, ~~or university professor~~ may be granted immediate tenure. Immediate faculty tenure may also be granted, under this same procedure, in connection with the hiring of senior leadership positions.

~~5-6.~~ Recommendations for tenure shall originate with the chairpersons, who shall inform the faculty members in tenure-track positions who are being considered for tenure and shall give them the opportunity to submit material which they believe will facilitate consideration of their accomplishments and potential.

~~6-7.~~ Criteria and procedures concerning the awarding of tenure on a campus, including an appeals procedure for those desiring reconsideration of a negative recommendation, shall be adopted by ~~the~~each campus. The faculty ~~of that campus,~~ through its governance structure; the deans and chief academic officer of the campus shall each have an opportunity to give their advice regarding these criteria and procedures; these criteria and procedures must be submitted to the Chancellor of the campus and the President for approval. ~~More detailed criteria and procedures may be adopted by the faculty and chairperson of each academic unit; these criteria and procedures must be submitted to the dean, the chief academic officer of the campus, the Chancellor of the campus, and the President for approval.~~ Campus and unit criteria and procedures must be consistent with and are subject to this and other applicable University policies

~~7-8.~~ The President will not consider awarding tenure to a faculty member in a probationary status without the prior recommendation of the faculty member's departmental faculty, chairperson, dean, chief academic officer, and the chief executive officer of the campus concerned.

~~89.~~ A faculty ~~or staff~~ member, on ~~acquiring~~attaining tenure ~~rights~~, shall receive a notice from the chief executive officer of the campus affirming the acquisition of such rights. No person shall lose tenure rights by acceptance of leave-of-absence approved pursuant to University policy, or by appointment to a University of Arkansas administrative position.

~~910.~~ Tenure becomes effective at the beginning of the nine-or twelve-month appointment period following the President's action granting tenure (July 1 for twelve-month appointments, and the beginning of fall semester for nine-month appointments).

~~10.—11.~~ Each year at the meeting at which promotions are considered by the Board of Trustees, the President shall inform the Board of the names of each person awarded tenure during the preceding twelve months, and shall indicate for each such individual the rank and date of appointment to the University faculty.

~~1112.~~ An individual in a tenure-track position who was not awarded tenure with any of the first six academic year or fiscal year appointments must be evaluated as specified in Section IV.A.6. during the sixth appointment. If he or she is not approved for tenure, the seventh appointment shall be a terminal appointment; and the individual may not be considered for tenure during the seventh appointment.

~~1213.~~ A faculty ~~or staff~~ member holding tenure rights may be dismissed for cause only after the procedures prescribed in Section ~~VI~~IV.C. have been followed. A tenured person notified ~~that he or she of dismissal for reasons of unsatisfactory performance~~ will be ~~so dismissed will, except in cases of moral turpitude,~~ be given notice of dismissal twelve months prior to termination of employment. Dismissal on other grounds may be immediate or upon the conclusion of any procedures prescribed in Section IV.C. This provision does not create an award of severance pay,



but assumes the full performance of University responsibilities and duties assigned for the period between dismissal notice and final termination. Termination of a faculty member's employment because the faculty member has abandoned his or her job duties, or because the faculty member has accepted another position, shall not constitute dismissal under this policy.

~~13~~14. No faculty member shall be dismissed or denied reappointment in violation of the following principles of academic freedom, but the observation of the limitations stated herein is the responsibility of each faculty or staff member. ~~Mere expressions of opinions~~ Subject to all provisions of this and other applicable University policies, mere expressions of opinions related to the faculty member's scholarship and assigned teaching duties, however vehemently expressed and however controversial such opinions may be, shall not constitute cause for dismissal. The threat of dismissal will not be used to restrain faculty members in their exercise of academic freedom or constitutional rights.

a.- The faculty member is entitled to full freedom in research and in the publication of results, subject to the performance of his or her other academic duties, but personal research for pecuniary return requires prior approval by the appropriate University authorities and must be in accordance with Board Policy 450.1.

b. -The faculty member is entitled to freedom in the classroom in discussing the subject of the course, but should not teach material inappropriate or unrelated to the course, and should maintain a respectful and professional academic learning environment.

c.- \_\_\_\_\_ The University faculty member is a citizen, a member of a learned profession, and a member of an educational community. Speaking or writing as a citizen, the faculty member is free from institutional censorship or discipline. However, as a person of learning and as a member of an educational community, the faculty member has a responsibility for awareness that the public may judge the profession and the institution by his or her utterances. Hence, faculty should at all times make an effort to be accurate, exercise good judgment and appropriate restraint, show respect for the opinions of others, and indicate that they are not spokespersons for the institution. Faculty are expected to work productively with colleagues in carrying out the mission of the University.

## B. Non-Reappointment

These procedures apply to non-tenured faculty members who are in tenure-track positions (~~assistant professors, associate professors, professors, distinguished professors, and University professors~~) who are not offered a next successive appointment for the period following the expiration of a current appointment. ~~These procedures do not apply to faculty in clinical attending positions at the University of Arkansas for Medical Sciences bearing the designation of assistant professor, associate professor or professor-, other clinical faculty, or other non-tenure-track faculty.~~

The appointment of a non-tenured faculty member may be terminated effective at the end of the appointment period, at the option of either the individual or the University.-

A chairperson, dean, or chief academic officer who decides not to recommend a nontenured faculty member for reappointment shall notify him or her in writing in accordance with the following schedule and shall enclose a copy of this section with the letter of non-reappointment:-

~~Not later than March 1 of~~ For the first year of service, not later than March 1, if the appointment expires at the end of that academic year; or at least three months in advance of its termination if the appointment ~~terminates~~ expires at some other time during the ~~first~~

**Comment [j6]:** As above, this is a subjective standard that could easily be abused, critically undercutting academic freedom and tenure protection.

~~calendar year of continuous employment.~~

~~Not~~For the second year of service, not later than December 15 ~~of the second year of service,~~ if the appointment expires at the end of that academic year; or at least six months in advance of its termination if an appointment ~~terminates~~expires at some other time during the ~~second calendar year of continuous employment.~~

~~At~~After the second year of service, at least twelve months before the expiration of the terminal appointment ~~after two or more consecutive academic, fiscal, or calendar years in the institution.~~ The terminal appointment will be for the academic or fiscal year, according to the appointment last held by the individual.

The individual, upon being notified that he or she will not be reappointed, may request ~~an interview,~~ within ten working days after receipt of the notice, first a meeting with the dean of the school or college, or other appropriate administrators, ~~then, if the employee requests it, The meeting shall be held~~ within ~~an additional~~ five working days, or as soon as practical thereafter. Following the meeting with the dean, if the dean reaffirms the recommendation of nonreappointment, within five working days the employee may request a meeting with the chief academic officer of the campus. ~~The dean of the school or college, or other administrator, and<sup>4</sup> Within ten working days following the meeting with~~ the chief academic officer ~~jointly will, within ten working days,~~ or as soon as possible thereafter, the chief academic officer will make the final decision on any request that the decision be reconsidered.

~~Department chairpersons and other employees of that campus may be requested to participate in their individual capacities in the interviews by the individual concerned, by the chief academic officer, or by the dean or other appropriate administrator.~~

In considering the matter, the dean and chief academic officer may consult with other University employees with relevant knowledge regarding the individual's performance. If the individual does not request these interviews within the time limits stated above after receipt of notification of non-reappointment, the matter shall be considered closed.

### C. Dismissal

This section applies to all tenure-track or tenured faculty members.

#### 1. Preliminary Proceedings

~~When~~a. Except in circumstances where there are personal safety concerns, when a chairperson or dean has reason to consider a decision to dismiss a ~~person who has tenured or tenure rights or an untenured-track~~ faculty member, prior to the expiration of an appointment, he or she shall discuss the matter with that person privately. After the discussion, if the decision of the chairperson or dean is to recommend dismissal, he or she shall prepare a statement of the grounds constituting the cause for dismissal and forward it through the chief academic officer<sup>5</sup> to the chief executive officer on the campus, with a copy to the faculty member. ~~If there are personal safety concerns, the faculty member requests it within five working days after receipt of~~

<sup>4</sup> For purposes of the Clinton School of Public Services, the employee may request a meeting with the Vice President of Academic Affairs.

<sup>5</sup> For purposes of the Clinton School of Public Services, the statement of grounds shall go directly to chief executive officer of the campus, with a copy to the faculty member.

~~private meeting can be bypassed and the chairperson or dean can proceed with providing the statement, a subcommittee of faculty members, as determined by procedures developed by each campus, shall be named by of grounds for dismissal through the chief executive officer to make an informal inquiry into the situation and to effect an adjustment, if possible. If no settlement is effected, the subcommittee shall determine whether, in its view, formal proceedings shall be instituted to consider the individual's dismissal, and it shall notify the individual concerned, academic officer to the chief executive officer of the campus, and other appropriate administrators of its conclusion. If the subcommittee recommends that such proceedings be begun, or if on campus, with a copy to the faculty member. If the chief executive officer of the campus, after considering the recommendation of the subcommittee favorable to the individual chairperson or dean, decides that a proceeding should be undertaken, action shall be commenced according to the procedures which follow.~~

b. If mutually requested by the parties, or if directed by the Chief Executive Officer, prior to further steps in the process, the parties may engage in discussions to determine whether an acceptable resolution of the matter is possible. Such discussion may include assistance of one or more faculty selected for this purpose.

## 2. Hearing Procedures

The formal proceedings shall be initiated by a communication addressed to the individual by the chief executive officer of the campus informing him or her of the dismissal and the grounds for it, and that, if he or she so requests, a hearing to recommend whether his or her employment by the University shall be terminated on the grounds stated, will be conducted at a specified time and place by a faculty committee constituted as described in Section 4 below. Sufficient time shall be allowed to permit the individual to prepare a defense. The individual shall be informed in detail, or by reference to published regulations, of the procedural rights to which he or she is entitled, including the right to advice of counsel.

The individual shall indicate whether he or she wishes a hearing and, if so, shall file with the chief executive officer of the campus within two weeks of the date of the mailing of the communication by the chief executive officer of the campus an answer to the statement of grounds for the proposed dismissal.

If the individual does not request a hearing, no further action shall be taken. Further, at the request of the individual the proceedings provided for herein may be terminated at any time after the request for a hearing on written notice to the chief executive officer of the employee's acquiescence in the dismissal. Similarly, the administration may drop dismissal proceedings at any stage.

## 3. Suspension Pending Dismissal Proceedings

Suspension of the individual from normal duties or reassignment to other duties during the proceedings will occur only if ~~an emergency exists~~ circumstances exist which ~~threatens~~ threaten harm or substantial disruption to the individual, to others, or to the University. ~~Determination of an emergency~~ Such determination shall be made by the chief executive officer, in consultation with the President. ~~Such suspension shall be with pay.~~ This provision does not preclude disciplinary suspension without pay.

## 4. Hearing Committee

The faculty of each campus shall establish a systematically rotated panel of faculty from which hearing committees can be drawn. To hear a particular case a committee, selected from the panel

in accordance with campus policies, shall be composed of faculty members of departments not involved in the dismissal.

Upon receipt from the chief executive officer of the campus of a copy of the statement of grounds for dismissal, accompanied by the individual's answer thereto, the chairperson of the hearing committee shall conduct hearings and recommend a course of action as provided in Section IV.C.5.

#### 5. Committee Proceedings

The committee shall proceed by considering, before the time of the hearing, the statement of grounds for dismissal already formulated and the individual's written response.

In addition to the members of the committee, only the person requesting the hearing and his or her representative, the chief executive officer of the campus ~~and~~ or his or her designee, and a representative, and witnesses called by the committee are permitted to attend the hearing.

Charges contained in the initially formulated statement of grounds for dismissal may be supplemented at the hearing by evidence of new events occurring after the initial communication to the individual which constitute new or additional cause for dismissal. If such supplementary charges are adduced, the committee shall provide the individual with sufficient time to prepare his or her defense.

The chief executive officer of the campus shall have the option to attend or not to attend the hearing, and he or she may ~~designate an appropriate representative~~ select a designee to assist in developing and presenting the case. The chief executive officer or designee may be assisted by the representative in developing and presenting the case and in other matters related to the hearing.

The committee shall determine the order of proof and shall supervise the questioning of witnesses. The committee may decline to accept unnecessarily duplicative material or unduly lengthy or repetitive testimony.

The individual shall have the aid of the committee when needed in securing the attendance of witnesses. The individual or his or her representative and the chief executive officer of the campus (or designee) or his or her ~~designated~~ representative shall have the right within reasonable limits to question all witnesses who testify orally.

The committee will use its best efforts to provide an opportunity for those involved to confront all witnesses, but where this cannot be achieved despite the efforts of the hearing committee, the identity of such non-appearing witnesses, and any written evidence they may have furnished, shall be disclosed to all interested parties during the hearing.

Subject to these safeguards, written statements may, when necessary, be taken outside the hearing and reported to it. All of the evidence shall be duly recorded. Formal These are not legal proceedings and formal rules of court procedure need or evidence do not be followed apply, but the committee shall exercise reasonable efforts to protect the rights of the parties in the reception of evidence receipt of evidence. For purposes of illustration, the proceedings shall be recorded digitally rather than via court reporter, and witnesses will not be sworn or subpoenaed. The ultimate objective of the hearing is consideration of the matter in a fair and efficient manner.

#### 6. Consideration by Hearing Committee

The committee shall formulate its recommendation in private, on the basis of the hearing. Before doing so, it shall give opportunity to the individual and the chief executive officer of the campus

**Comment [j7]:** This is a critical procedural change. Previously, a committee could employ greater protections. For example, the committee could mandate that the parties have the right to cross examine all witnesses, or provide other protections normally available in a court of law. This rule change eliminates the committee's flexibility to provide greater protections. Rather than "need not be followed," the rule now says that the rules employed in legal proceedings "do not apply."

or his or her designated representative to make oral statements before it. If written arguments are desired, the committee may request them. The committee shall ~~proceed to arrive at~~make its recommendation promptly ~~without having the record of the hearing transcribed when it feels that a just decision can be reached by this means; or it may await the availability of a transcript of the hearing. It shall make, including~~ explicit findings with respect to each of the grounds for removal presented.

The chief executive officer of the campus and the individual shall be notified of the recommendation in writing and a copy of the record of the hearing shall be available to both parties.

A copy of the record of the hearing and the recommendations of the hearing committee shall be furnished to the President of the University for his or her decision. ~~The decision of the President shall be transmitted to the chief executive officer of the campus and to the individual involved.~~

#### 7. ~~Consideration by Board of Trustees-~~

~~\_\_\_\_\_~~If the decision of the President is appealed to the Board of Trustees, or if the Board of Trustees chooses to review the case, the President shall transmit to the Board of Trustees the full report of the hearing committee, stating its recommendation and his or her own decision. The review 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 by their representatives. The decision of the Board of Trustees on review shall be final. It shall be communicated to the President and through him or her to the person involved.

### V. Annual Review

An annual review of the work and status of each tenured and tenure-track faculty member shall be made on the basis of assigned duties and according to criteria and procedures required herein. Faculty not in tenure-track positions shall be evaluated by procedures adopted by each campus.

#### A. ~~—~~Faculty

The annual review of each faculty member shall provide the primary basis for the chairperson's recommendations relating to salary, promotion, granting of tenure, successive appointment, non-reappointment, and dismissal. ~~Furthermore, this review is to provide guidance and assistance to all faculty in their professional development and academic responsibilities in the areas of teaching, scholarly and creative activity, and service.~~

Criteria and procedures for an annual review of all tenured and tenure-track faculty ~~on a campus~~ shall be adopted by ~~the each campus. The~~ faculty ~~of that campus,~~ through its governance structure; the deans and chief academic officer of the campus shall ~~each~~ have an opportunity to give their advice regarding these criteria and procedures; these criteria and procedures must be submitted to the Chancellor of the campus and the President for approval. More detailed criteria and procedures may be recommended by the faculty and chairperson of each academic unit; these criteria and procedures must be submitted to the dean, the chief academic officer of the campus, the Chancellor of the campus, and the President for approval. All procedures for annual reviews adopted by a campus shall include provision for and details for implementation of the following:

1. ~~Within a reasonable time after the beginning of the first appointment of each faculty member: written notification to the faculty member of the criteria, procedures, and instruments~~

currently in use in assessing performance;

2. -Within a reasonable time after the beginning of each academic year: written notification to each faculty member of that year's assignments, review schedule, and the criteria, procedures, and instruments to be used that year;

3. ~~\_\_\_\_\_~~ Reasonable opportunity for each faculty member to submit any relevant material ~~desired~~ documenting his or her professional performance to be considered in the annual review;

4. Peer evaluation;

5. Student evaluation of teaching;

6. Prior to the chairperson's making a recommendation in any year: (a) a meeting between the chairperson and faculty member to discuss all issues relating to the review, (b) the providing to that faculty member a copy of the chairperson's tentative recommendation(s), and (c) reasonable opportunity for the faculty member to submit a written response to be forwarded to each subsequent level of review;

7. ~~\_\_\_\_\_~~ As long as a faculty member is employed by the University and for at least three years thereafter: maintenance of annual review forms, summaries of annual discussions between the chairperson and faculty member, recommendations, and all other writings used in or resulting from the annual reviews of that faculty member;

8. ~~\_\_\_\_\_~~ Availability to each faculty member of all writings used in or resulting from the annual reviews of that faculty member.-

Each year the chief academic officer of each campus shall (a) require of each chairperson an assessment of the performance of all faculty members in the academic unit, including an identification of all faculty development needs and of all problems in performance of faculty, ~~(b) and (b) in consultation with the Chancellor,~~ take steps designed to insure compliance on that campus with all criteria and procedures for annual reviews, ~~and (c) provide the Chancellor with a written report indicating the extent of compliance during the past year, as well as any needs and problems identified and solutions planned.~~

~~NOTE: \_\_\_\_\_ A University wide committee has been established for the purpose of recommending criteria and procedures for an annual review of all administrative officers of the University. A report from this committee will be presented to the Board of Trustees at a fall 1989 meeting for appropriate action of the Board.-~~

~~The annual review of each administrative officer shall serve as the basis for decisions relating to salary and continuation as an administrator. Furthermore, this review is to provide guidance and assistance to all administrative officers in their professional development.-~~

9. In order to ensure a high quality and productive educational environment, annual review procedures adopted at the campus level must provide for prompt, meaningful and effective means of addressing unsatisfactory faculty performance. Any campus procedures regarding post-tenure review shall not allow greater than one academic year, with active cooperation from the faculty member, for an overall unsatisfactory performance rating to be substantially remedied prior to a recommendation of dismissal on the basis of unsatisfactory performance. In other words, if a faculty member's overall performance is evaluated as unsatisfactory for an academic year, any improvement plans or other remedial measures are expected to result in a satisfactory evaluation by the end of the following academic year; if not, the faculty member may be issued a notice of dismissal on twelve months' notice as provided for in this policy. Again, such period of

time for remediation assumes the active cooperation and engagement of the faculty member; otherwise, a shortened timeframe may be utilized.

**Comment [j8]:** This is one of the most profound changes. It effectively allows for the termination of a faculty member after a single “unsatisfactory” rating. Let me explain. On the surface, the provision appears to provide that termination is only permissible after two unsatisfactory ratings. The provision states that “any improvement plans or other remedial measures are expected to result in a satisfactory evaluation **by the end of the following academic year**; if not, the faculty member may be issued a notice of dismissal . . .” That **suggests** that two unsatisfactory ratings are required. But now look at the last sentence: “Again, such period of time for remediation assumes the active cooperation and engagement of the faculty member; **otherwise, a shortened timeframe may be utilized.**” This means that if the university, in its subjective judgment, determines that a person is not being sufficiently cooperative in the remediation plan, termination is possible well before the end of the first academic year after the unsatisfactory rating. In short, a single unsatisfactory rating, combined with a judgment of insufficient “cooperation and engagement” can result in termination. That is a dramatic change from the existing rule. The current standard requires “incompetence,” “neglect of duty,” or something comparable. Those words denote something considerably worse than a mere finding of unsatisfactory performance—or even multiple unsatisfactory ratings. As I explain in my email, this change is clear violation of AAUP standards.