



Angelo State University
Operating Policy and Procedure

OP 06.29: Faculty Non-Reappointment and Tenure Revocation

DATE: August 1, 2017 *{Effective fall 2017}*

PURPOSE: The purpose of this Operating Policy/Procedure (OP) is to outline and ensure understanding of procedures concerning the non-reappointment and dismissal of faculty or tenure revocation of tenured faculty.

REVIEW: This OP will be reviewed every three (3) years by the Provost/Vice-President for Academic Affairs in collaboration with the Academic Affairs subcommittee of the Faculty Senate. This policy may be amended only by action of the Board of Regents of the Texas Tech University System.

1. Involuntary Separation of Employment

Termination of tenured faculty, except by resignation, retirement, or under extraordinary circumstances because of demonstrable bona fide financial exigency, will be only for adequate cause shown with the burden of proof on the university.

Adequate cause for termination is directly and substantially related to the fitness of faculty members in their professional capacity and public trust as teachers and scholars. Termination will not be used to restrain faculty members in their exercise of academic freedom or constitutional rights.

There are three categories of involuntary separation from employment for faculty:

- a. Revocation of tenure, which is termination of a tenured faculty member's employment;
- b. Non-reappointment, which is the cessation of a non-tenured faculty member's employment at the end of the stated appointment period, and
- c. Dismissal, which is immediate termination for cause of a non-tenured faculty member's employment before the expiration of the stated appointment period.

2. Tenure Advisory Committee

- a. The Tenure Advisory Committee may consider matters pertaining to tenure or academic freedom referred to it by members of the university community. The committee reports to the president. If the president does not approve a recommendation of the committee, the committee will be informed in writing of the reasons for disapproval.
- b. The committee will consist of five tenured faculty and two ex-officio members, who are the PVPAA and a dean selected by the Deans' Council. Each undergraduate college will

elect one member. Each dean's office will prepare and distribute ballots to the faculty of the respective college. Elected members serve two-year terms. Only tenured faculty teaching full time are eligible for election. Elected faculty members will not be eligible to serve consecutive terms. The Deans' Council member will serve for three years but will not be eligible to serve consecutive terms. The committee will determine its own procedural rules.

3. Termination Review Procedures for Tenure Revocation, Non-reappointment and Termination Cases

In each faculty termination case reviewed at the request of the faculty member, the issue will be determined by an equitable procedure that affords protection to the rights of the individual and to the interest of the university. In cases where the faculty member agrees that his or her conduct constitutes adequate cause, or does not choose to have a hearing, he or she will offer in writing his or her resignation. That faculty member will give notice of resignation as early as possible to obviate serious inconvenience to the university and to ensure that department objectives and student needs are met.

The procedures for termination described in this section do not negate the right of the president to suspend a faculty member from some or all duties when the president reasonably believes that the allegations, if true, create a likelihood of harm for persons or the university. The suspension will be with pay until such time as the suspended faculty member has been accorded the procedural rights appropriate to his or her appointment type, as described in this section.

a. Tenure Revocation

(1) Mediation and Investigation

Tenure revocation charges will not be filed until reasonable efforts to mediate and conciliate differences between the faculty member and the university have been exhausted. The chair of the Tenure Advisory Committee (or member designated by the committee) and the PVPAA (or designee) will attempt to secure a confidential and equitable agreement in no more than twenty business days.

If the mediation efforts fail, the mediators will provide a written, detailed report to the president and the faculty member, and a formal investigation will begin. Together, the chair of the Tenure Advisory Committee (or member designated by the committee) and the PVPAA (or designee) will conduct a thorough, confidential, expeditious review of all charges, and report their findings and recommendations to the president. After consideration of the report and recommendations, the president will determine whether to file formal charges to terminate the faculty member's employment for cause no more than fifteen business days after receiving the report.

(2) The Hearing Panel

In all cases of formal charges, the faculty member will be informed in writing of the charges, which, on reasonable notice, will be considered by a Hearing Panel convened by the president. The Hearing Panel will be made up of five members chosen by the Tenure Advisory Committee from a hearing pool formed of twenty tenured faculty members. Those members will be elected annually by faculty at large

from a ballot prepared and distributed by the PVPAA's office. Only tenured faculty teaching full time are eligible for election. Faculty may not serve on the Tenure Advisory Committee and the tenure hearing pool concurrently.

The Tenure Advisory Committee will, by lot, order the names of the members of the hearing pool, assigning each a number from one to twenty. Pool members deeming themselves biased must withdraw from consideration for the Hearing Panel. Either party in the dispute may strike no more than three names from those remaining on the list. The Tenure Advisory Committee designates the five pool members with the lowest numbers remaining on the list to constitute the Hearing Panel. The Hearing Panel will select a chair from its membership and may, if it chooses, request appropriate legal counsel to be furnished by the university but not from the Office of General Counsel. The legal counsel will advise the Hearing Panel but does not vote. The Hearing Panel may also consult with the general counsel of the university on technical and/or procedural questions not directly bearing on the merits of the case if the Hearing Panel considers such consultation appropriate and helpful.

(3) The Hearing

In consultation with the faculty member and the chair of the Hearing Panel, the president will set a date for the hearing. The hearing will be private and confidential unless the faculty member elects to have a public hearing. The Hearing Panel will determine hearing procedures that afford both due process and fairness. The hearing will be non-adversarial in nature.

In every such hearing, the faculty member has the right to appear in person with legal counsel, retained by the faculty member, and to confront and examine witnesses. The faculty member has the right to testify but may not be compelled to do so. The faculty member may introduce all evidence and material, written or oral, which he or she considers to be relevant or material to the case. Neither the Texas Rules of Civil Procedure nor the Texas Rules of Evidence will apply to the hearing.

The university also has the right to legal counsel from the Office of General Counsel in the preparation and presentation of charges and has the same rights in the hearing as those accorded to the faculty member. An audio recording of the proceedings will be made and delivered to the president for submission to the Board of Regents, and a copy of this audio recording will be made available to the faculty member. The recording will be transcribed only on the request of either the faculty member or the president, with the requesting party bearing the transcription costs. The Hearing Panel, by a majority vote of its total membership, will make detailed, written findings of fact on each charge and make specific recommendations with regard to each of the charges and the charges as a whole and supplementary suggestions it deems proper concerning disposition of the case. Minority findings, recommendations, or suggestions will be similarly prepared and transmitted. The chair of the Hearing Panel will deliver the findings, recommendations, and suggestions to the president, who will transmit them along with a recommendation to the faculty member and to the Board of Regents.

(4) The Board of Regents' Decision

The Board of Regents will consider all relevant material furnished and, by a majority of its total membership, will approve, reject, or amend the findings, recommendations, and suggestions of the Hearing Panel based on the record. Any amendment or change of such findings, recommendation, or suggestions, and the reasons therefore, will be detailed in writing and communicated to the president who will transmit them to the Hearing Panel, which will then study any additional matters presented to it and within forty-five days submit its recommendations to the president. If the Board of Regents then overrules the recommendations of the Hearing Panel, it will state in writing its reasons for its actions in overruling the Hearing Panel's recommendations to the president, who will transmit the decision to the Hearing Panel. The president will also notify the faculty member in writing of the Board's decision. This communication will include the findings and recommendations of the Hearing Panel as well as those of the Board. The decision of the Board of Regents will be final.

b. Non-reappointment and Termination

The following procedures on non-reappointment and dismissal for cause apply to untenured faculty members who have served more than six full years and been granted continuing appointment status. However, each faculty member is entitled to see all of his or her personnel files and, at his or her expense, to obtain a copy of the information contained therein.

(1) The university is not required to give an untenured faculty member a reason for a decision of non-reappointment, though such notification may be given, except in cases where it would harm the university. However, each faculty member is entitled to see all of his/her personnel file and, at his/her expense, to obtain a copy of the information contained therein.

(2) Initial Investigation

If an untenured faculty member alleges that a decision not to reappoint him or her is:

- (a) Caused by considerations that violates academic freedom;
- (b) For constitutionally impermissible reasons; or
- (c) Significantly noncompliant with the university's established standards or prescribed procedures; then

The allegation of improper rationale for non-reappointment, as defined above, will be given preliminary consideration by a faculty committee. The Tenure Advisory Committee is responsible for appointing the faculty committee from within or outside its own membership and for its functioning.

(3) The Hearing Panel and Hearing

If the faculty committee concludes that there is probable cause for the faculty member's allegation, the Tenure Advisory Committee will notify the PVPAA and

convene the Hearing Panel constituted in Section 3 (a.2). The faculty member will be responsible for stating the specific grounds on which the allegations were based, and the burden of proof will rest upon the faculty member.

The Hearing Panel will consider the allegations using the procedures outlined in Section 3 (a.3). Upon conclusion of deliberations, the chair of the Hearing Panel will deliver its findings, recommendations, and suggestions to the president, who will approve, reject, or amend them based on the record, then transmit them along with the president's recommendation to the faculty member. The decision of the president will be final.

4. Timelines for Notice of Non-reappointment

These notification timelines apply to any notice of non-reappointment that is issued to untenured faculty.

- a. Full-time faculty members in their first year with the university whose duties commence with the first semester of the academic year must be notified by the following March 1 if they are not to be reappointed.
- b. Full-time faculty members in their first year with the university whose duties commence after November 15 must be notified by the following April 15 if they are not to be reappointed.
- c. Full-time faculty members who are in their second year with the university and who are not to be reappointed must be notified by December 15 of the academic year in which the appointment is to terminate.
- d. Full-time tenure-track faculty members with more than two years with the university will be notified of non-reappointment by issuance of a terminal contract for one academic year.
- e. Full-time faculty members who hold a position by appointment for a fixed time period shall receive notice of non-reappointment in accordance with the terms of the appointment or in accordance with sections a., b., c., or d above.

5. Policy Implementation, Periodic Review, and Revision

This policy is to be implemented upon approval by the Board of Regents. All tenured faculty members are subject to this policy's applicable provisions and procedures including those not addressed in any former policy. The tenure of faculty members who have attained tenure under prior policies at ASU continues. This policy shall not be applied in derogation of any faculty member's contract rights.

This policy will be comprehensively reviewed in September every three years or as needed, beginning with the 2020-2021 academic year, the Academic Affairs Committee of the Faculty Senate. Recommended changes will go forward with areas of disagreement noted to the deans and department heads for their consideration. The deans and department heads will then recommend changes to the PVPAA, who will take those deemed appropriate forward to the president for review. If the president approves, the proposed revisions will be forwarded

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to the Board of Regents for its consideration. Under the statutory authority of the State of Texas, the Board of Regents has the sole authority to revise this tenure and promotion policy.