

# Academic Operating Procedure 1

## Academic Freedom, Responsibility and Tenure

February 1, 2022



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### Statement

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This document supplements information in System Policy 12.01, Academic Freedom Responsibility and Tenure, on topics such as written terms of employment, administrative leave, faculty dismissals for cause, non-renewal of non-tenured track faculty at the end of a term contract, financial exigency, and the phasing out of programs.

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### Procedures and Responsibilities

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1. **WRITTEN TERMS OF EMPLOYMENT** Section 3 of System Policy 12.01 addresses written terms of employment.
2. **ADMINISTRATIVE LEAVE** Section 5 of System Policy 12.01 addresses administrative leave. A faculty member placed on administrative leave with pay may appeal the decision to the Provost by submitting an appeal in writing within five (5) business days of being notified of the leave. Appeals presented after the fifth business day shall be denied as untimely.
3. **NOTICE OF NON-REAPPOINTMENT OR OF INTENTION NOT TO REAPPOINT**
  - 3.1 Notice of non-reappointment, or of intention not to reappoint a non-tenured tenure-track faculty member, will be given in writing in accord with the following standards:
    - 3.1.1 Not later than March 1 of the first academic year of probationary service, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination;
    - 3.1.2 Not later than December 15 of the second year of probationary service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination; or
    - 3.1.3 At least twelve months before the expiration of a probationary appointment after two or more years in the institution.

3.2 Section 5 below discusses the process by which a full-time faculty member, including a professional librarian, may present a grievance to an administrator related to the non-renewal or termination of the faculty member's employment. (See Section 5.2.) Section 5 also discusses the process by which a non-tenured tenure-track faculty member may appeal a decision not to reappoint. (See Sections 5.3 through 5.14).

#### 4. REVIEW BY FACULTY PEERS IN APPEALS OF ADMINISTRATIVE DECISIONS

By May 31 each year, the Faculty Senate President and Faculty Senate Executive Committee, with the approval of the Faculty Senate, appoints twenty-four (24) faculty members to form the pool from which the appeals committees are formed. Overall membership should be roughly proportional to the number of faculty members in each college. Members serve one (1) year, but can be reappointed. The same Advisory and Hearing Committees will consider all appeals each academic year, except for individuals who are recused.

#### 5. NON-RENEWAL OF NON-TENURED TENURE TRACK FACULTY AT END OF AN APPOINTMENT TERM

5.1 Section 7 of System Policy 12.01 addresses Non-renewal of Non-tenured Tenure Track Faculty at the end of an appointment term.

5.2 Tenure and promotion appeals are submitted as one appeal, heard by the Advisory Committee and, if recommended, the Hearing Committee.

5.3 A faculty member has a right to present a grievance, in person, to the Provost and Vice President for Academic Affairs on an issue related to the non-renewal or termination of the faculty member's employment at the institution, including that the decision was made in retaliation for the faculty member's exercise of protected First Amendment rights. If a faculty member desires to present a grievance, the faculty member shall notify the Provost in writing not later than the 10th business day after the faculty member receives notice of the non-renewal or termination. Grievances presented after the 10th business day shall be denied as untimely.

5.4 A non-tenured tenure-track faculty member may appeal a decision not to reappoint, on the basis that the decision was made: (1) in violation of the academic freedom of the individual and/or (2) for inadequate consideration of the record of professional achievement. Such an appeal must be presented to the Provost in writing, pursuant to Section 7.3 of System Policy 12.01. At least one of these allegations must be made by the faculty member in order to initiate the appeal process. If a faculty member desires to appeal, the faculty member shall notify the Provost in writing not later than the 20th business day after the faculty member receives written notice of the decision not to reappoint. Appeals presented after the 20th business day shall be denied as untimely.

- 5.5 If a grievance or appeal related to the nonrenewal of a non-tenured tenure track faculty includes an allegation(s) that the decision was based on discrimination, the Provost will promptly report the allegation(s) to the Office of Compliance, in accordance with System Regulation 08.01.01.
- 5.6 Upon receipt of an appeal from the faculty member, the Provost will select five faculty members, one from each tenure-granting college, to serve on an Advisory Committee, plus four (4) alternate members designated in rank order (first alternate, second alternate, etc.) from the faculty pool (Section 4). Each member of the Advisory Committee shall be subject to challenge for cause by the faculty member and the administration. Each side shall be allowed one (1) challenge. The President of the Faculty Senate will determine the validity of the challenges. If a faculty member believes that he or she is unable to serve on the Advisory Committee, a written request to be recused must be submitted to the President of the Faculty Senate and Provost. The request must specify the reason(s) for the recusal. A committee member who has voted on the tenure and promotion application being appealed at the department or college levels is considered to have a conflict of interest. The President of the Faculty Senate will determine the validity of the request. Members removed due to challenge or recusal will be replaced by the alternates in designated order, and those replacements will be subject to challenge so long as challenges remain. A committee member who is recused from serving on the Advisory or Hearing Committee becomes a member of the alternate pool. The committee shall elect its own chairperson. The chairperson shall retain the right of discussion at all times and will vote only in case of a tie.
- 5.7 The Advisory Committee will conduct a preliminary review of the allegations, pursuant to Section 7.6 of System Policy 12.01 to determine whether the faculty member has established that a violation as defined in Section 5.4 of this procedure may have occurred. The Advisory Committee's determination shall be conveyed in writing to the Provost and to the faculty member. The Advisory Committee's proceedings may be informal and flexible. Representatives of the administration, including an attorney from the Office of the General Counsel, may attend the proceedings as observers.
- 5.8 If the Advisory Committee determines that the allegations do establish a prima facie case and recommends a formal hearing, the Provost will proceed with arrangements for the hearing by the deadlines provided in subparagraph 7.7 of System Policy 12.01. The University will provide staff support to schedule and hold a hearing. The Provost will select seven (7) faculty members to serve on a Hearing Committee and eight (8) alternates in rank order (i.e., first alternate, second alternate, etc.), one from each college, from the faculty pool. The Hearing Committee will be a separate and distinct body from the Advisory Committee described above. Each member of the Hearing Committee shall be subject to challenge for cause by the faculty member and the administration. Each side shall be allowed a maximum of two (2) challenges. The President of

the Faculty Senate will determine the validity of the challenges. If a faculty member believes that he or she is unable to serve on the Hearing Committee, a written request to be recused must be submitted to the President of the Faculty Senate and Provost. The request must specify the reason(s) for the recusal. The President of the Faculty Senate will determine the validity of the request. Members removed due to challenge or recusal will be replaced by the alternates in designated order, and those replacements will be subject to challenge so long as challenges remain. The committee will select its own chairperson and other such officers as it deems necessary. The chair shall retain the right of discussion at all times and will vote only in case of a tie. Control of the committee proceedings shall be retained by the chair.

- 5.9 Both the faculty member and the administration have the right of representation at the hearing, as well as the right to confront and question witnesses, and if a witness cannot appear, the right to the name of the witness and any written statements made by the witness. A record of the proceedings shall be prepared.
- 5.10 The hearing will be scheduled pursuant to System Policy 12.01, subparagraph 7.5.
- 5.11 The faculty member shall present: (1) a brief of the specific basis for the allegations; (2) exhibits (documents) supporting the allegations; and (3) a list of witnesses, including a short statement of the anticipated testimony of each witness, to the Chair of the Hearing Committee and to the administration's representative at least thirty (30) days before the date of the formal hearing.
- 5.12 The findings of the Hearing Committee shall be limited to determining whether the decision not to renew the appointment was made in violation of the faculty member's academic freedom or without adequate consideration of the faculty member's record of professional achievement, depending on the basis of the faculty member's appeal. The Hearing Committee may make recommendations to the Provost regarding possible solutions.
- 5.13 In deliberating, the Hearing Committee should allow oral arguments and/or written briefs by the dean or his or her representatives and by the faculty member or his or her designated representatives. The committee's findings and recommendation shall be conveyed in writing to the President and to the faculty member, pursuant to System Policy 12.01, subparagraph 7.7.
- 5.14 The hearing shall be closed unless the affected faculty member requests that it be open.
- 5.15 The President will review the recommendations of the Hearing Committee and will make a decision. The President's decision is final.

## 6. NON-TENURE TRACK FACULTY This section does not apply to Professional Track

Faculty with multi-year appointments. See System Policy 12.07, *Fixed Term Academic Professional Track Faculty*.

- 6.1 Pursuant to System Policy 12.01, Section 6, a non-tenure track faculty member whose appointment is not renewed may present a grievance in person to their dean regarding the non-reappointment within ten (10) business days of receipt of the notice of non-reappointment. The dean will consider the grievance and render a final decision in writing regarding the grievance within 10 business days of the presentation of the grievance.
- 6.2 A non-tenure track faculty member who is dismissed for cause before the end of the term may present a grievance in person to the provost regarding the dismissal within ten (10) business days of receipt of the notice of dismissal. The Provost will consider the grievance within ten (10) business days of the presentation of the grievance.
- 6.3 If a grievance or appeal related to the nonrenewal or dismissal of a non-tenure track faculty member includes an allegation(s) that the decision was based on discrimination, the Provost or Dean will promptly report the allegation(s) to the Office of Compliance, in accordance with System regulation 08.01.01.

## 7. DISMISSAL FOR CAUSE OF FACULTY WITH TENURE OR WITH UNEXPIRED TERM APPOINTMENTS

- 7.1 This rule should be read in conjunction with System Policy 12.01, Academic Freedom, Responsibility and Tenure, Section 8. Good cause for dismissal is defined and addressed in Sections 4.3 and 4.4 of System Policy 12.01.
- 7.2 A bona fide effort by appropriate administrative officers and/or committees should be made to achieve a satisfactory resolution of difficulties through preliminary inquiry, discussion, or confidential mediation.
- 7.3 Should these efforts fail to achieve a satisfactory resolution, the administration will initiate a dismissal for cause or summary dismissal. In such instances, the faculty member will be afforded the opportunity for a hearing that meets the requirements set forth in Section 8 below.
- 7.4 As provided in Section 51.942 of the Texas Education Code, a tenured faculty member subject to termination on the basis of a post-tenure review must be given the opportunity for referral of the matter to a non-binding alternative dispute resolution process as described in Chapter 154, Civil Practice and Remedies Code. The Code describes various processes, including mediation facilitated by an impartial third party. The opportunity for referral of the matter to nonbinding alternative dispute resolution must be provided prior to referral of the charges to a hearing committee under Section 8 of this rule.

- 7.5 In any dismissal proceedings the faculty member and the administration shall have the right to representation.

## 8. DISMISSAL FOR CAUSE HEARINGS

- 8.1 In hearings regarding the dismissal of a tenured faculty member or the dismissal of a probationary faculty member whose term appointment has not expired at the time of dismissal, the burden of proof is on the institution to establish by a preponderance of the evidence the existence of good cause for dismissal. The President has delegated authority for oversight of the logistics of pre-termination hearings to the Provost. The following procedures apply to cases involving such faculty members.
- 8.2 The Provost shall notify the faculty member in writing of the charges constituting good cause for dismissal, in accordance with System Policy 12.01, Section 4.3, and the opportunity for a fair and impartial hearing by a faculty hearing committee. A tenured faculty member subject to termination on the basis of a post-tenure review shall also be notified of the opportunity for referral of the matter to a non-binding alternative dispute resolution process, pursuant to subparagraph 7.4, above. If the faculty member desires to appeal the termination, the faculty member shall notify the Provost in writing not later than the 10<sup>th</sup> business day after the date the faculty member receives the notice of termination. A faculty member who notifies the Provost in writing within the time prescribed is entitled to a hearing as provided in this section. Appeals presented after the 10<sup>th</sup> business day shall be denied as untimely. The Provost will notify the Hearing Committee within five (5) business days of the date the appeal has been filed. If the faculty member does not present an appeal within the time prescribed time the administration shall take the appropriate action and notify the faculty member in writing.
- 8.3 At the hearing, the faculty member shall have the right to: (1) be represented by a representative of the faculty member's choice; (2) hear the evidence on which the charges are based; (3) present evidence; and (4) cross-examine each adverse witness and if a witness cannot appear, the right to the name of the witness and any written statements made by the witness. The administration shall also have the right to representation. The hearing will be recorded by a certified shorthand reporter in the case of in-person hearings and recorded electronically in the case of virtual hearings.
- 8.4 The Provost will select seven (7) faculty members to serve on a Hearing Committee and eight (8) alternates in rank order (i.e., first alternate, second alternate, etc.), one from each college, from the faculty pool (Section 4). Each member of the Hearing Committee shall be subject to challenge for cause by the faculty member and the administration. Each side shall be allowed a maximum of two (2) challenges. The President of the Faculty Senate will determine the validity of the challenges. If a faculty member believes that they are unable to

serve on the Hearing Committee, a written request to be recused must be submitted to the President of the Faculty Senate and Provost. The request must specify the reason(s) for the recusal. The President of the Faculty Senate will determine the validity of the request. Members removed due to challenge or recusal will be replaced by the alternates in designated order, and those replacements will be subject to challenge so long as challenges remain. The committee shall elect its own chairperson and other such officers as it deems necessary, and the chairperson shall retain the right of discussion at all times and will vote only in case of a tie. Control of committee proceedings shall be retained by the chair.

- 8.5 The Hearing Committee shall schedule a hearing pursuant to subsection 8.2.1 of System Policy 12.01.
- 8.6 Subject to subsection 8.2.1 of System Policy 12.01, the Hearing Committee shall set a time for the hearing that will allow the faculty member a reasonable time to prepare a defense to the charges made and shall notify the faculty member and the administration of the time and place of the hearing. The administration's witness list, including a short statement of the anticipated testimony of each witness, and a copy of the administration's exhibits shall be provided by the administration to the Hearing Committee and the faculty member at least fifteen (15) business days before the hearing. The faculty member's witness list, including a short statement of the anticipated testimony of each witness, and a copy of the faculty member's exhibits shall be provided by the faculty member to the Hearing Committee and the administration at least ten (10) business days before the hearing. Witnesses may be added at a later date for good cause as determined by the Hearing Committee.
- 8.7 A faculty member may be reassigned or suspended during the pendency of termination proceedings pursuant to subsection 6.3 of System Policy 12.01.
- 8.8 The Hearing Committee shall formulate explicit findings and recommendations pursuant to subsection 8.2.1 and convey its findings and recommendations pursuant to subsection 8.2.2 of System Policy 12.01.
- 8.9 The hearing shall be closed unless the affected faculty member requests that it be open.
- 8.10 If the President proposes termination of the faculty member's appointment, the process outlined in subparagraphs 8.2.3 through 8.2.5 of System Policy 12.01 shall be followed.

## 9. TENURE, FINANCIAL EXIGENCY AND PHASING OUT OF PROGRAMS

- 9.1 Cases of bona fide financial exigency or reduction or discontinuance of institutional programs based on educational considerations shall follow the

definitions and procedures outlined in subsections 9.1 through 9.3 of System Policy 12.01. When faculty dismissals are contemplated on grounds of financial exigency or program termination or reduction, the Provost and appropriate college dean should facilitate early, careful, and meaningful sharing of information and views with appropriate faculty representatives on the reasons indicating the need to terminate programs. Recommendations from such faculty representatives shall be sought on alternatives available to the institution to ensure continuation of a strong academic program and to minimize the losses sustained by affected students and faculty members.

- 9.2 A faculty member selected for termination shall be given an opportunity to respond in a hearing before a Faculty Hearing Committee. If the faculty member desires to request a hearing, the faculty member shall notify the Provost in writing within fifteen (15) business days of the date on which the faculty member was given a written notice of the decision to terminate on the basis of a bona fide financial exigency or the phasing out of an institutional program necessitating a reduction in staff. A faculty member who notifies the Provost in writing within the time prescribed is entitled to a hearing as provided in this section. Requests presented after the 15th business day shall be denied as untimely. If the faculty member does not request a hearing within the time prescribed, the administration shall take the appropriate action and notify the faculty member in writing.
- 9.3 If the faculty member requests a hearing, the Provost will select eight (8) faculty members to serve on a Faculty Hearing Committee and six (6) alternates in rank order (i.e., first alternate, second alternate, etc.) from the faculty pool (Section 4). Each member of the Faculty Hearing Committee shall be subject to challenge for cause by the faculty member and the administration. Each side shall be allowed a maximum of three challenges. The President of the Faculty Senate will determine the validity of the challenges. If a faculty member believes that they are unable to serve on the Faculty Hearing Committee, a written request to be recused must be submitted to the President of the Faculty Senate and Provost. The request must specify the reason(s) for the recusal. The President of the Faculty Senate will determine the validity of the request. Members removed due to challenge or recusal will be replaced by the alternates in designated order, and those replacements will be subject to challenge so long as challenges remain. Normally, the Faculty Hearing Committee should be designated no later than fifteen (15) business days after the Provost has received the request for a hearing. The committee shall elect its own chairperson and other such officers as it deems necessary. The chairperson shall retain the right of discussion at all times and will vote only in the case of a tie. Control of committee proceedings shall be retained by the chair. Normally, the Faculty Hearing Committee should schedule a hearing within twenty (20) business days after their appointment by the Provost.
- 9.4 After reviewing the Faculty Hearing Committee's findings, the President will make a decision about the termination.