

ATTACHMENT 3a
Proposed Changes to University Handbook, Appendix M
Approved by Faculty Affairs

University Handbook, Appendix M:
Procedure for Review of Dismissal of Tenured Faculty

Procedure for Review of Dismissal of Tenured Faculty (FSM 2-11-86, 12-9-14)

1. Charge

The Committee to Hear a Case Regarding the Dismissal of a Tenured Faculty Member, hereafter referred to as the committee, is established according to the regents policy incorporating the 1940 AAUP Statement of Principles of Academic Freedom and Tenure (University Handbook Appendix C). It is convened upon the request of the faculty member and represents an independent peer review of the faculty member's case. The charge of the committee shall be to receive evidence at the hearing, to make written findings of fact, and to recommend to the provost of the university action concerning the proposed dismissal.

2. Jurisdiction

The jurisdiction of the committee shall extend to cases involving the dismissal of tenured faculty for reasons other than financial exigency and program discontinuance.

3. Composition and Eligibility

The committee shall be composed of six tenured faculty members, none of whom shall be administrators or faculty with an administrative appointment at or exceeding 0.25 time. One of the six shall serve as the non-voting chair. Faculty of the college in which the faculty member holds an appointment shall not be eligible. Members of the committee shall hold appointments of at least nine-tenths time at or above the academic rank of the faculty member.

4. Nature of Hearing

The hearing shall be open, unless the faculty member requests it to be closed; however, deliberations of the committee shall be conducted in closed session. The request for a closed hearing must be made in writing, either electronic or hard copy, to the president of faculty senate before the pre-hearing conference.

5. Procedures

- a. The hearing procedure shall be initiated by a written request in the form of a letter with the faculty member's signature. This letter can either be mailed as a hard copy or sent as an attachment to an e-mail to the president of faculty senate. This request must be made within thirty (30) work days from the receipt of the notice of dismissal unless defined in a different manner by the administrator issuing the notice. After the formal request is received by the president of faculty senate, he/she will notify the provost and the dean of the faculty member. The name of the faculty member making the request may be revealed as needed to carry out the policy.

- b. Within twenty (20) work days from the receipt of the request for the hearing, the president of faculty senate shall obtain fourteen (14) faculty members' names, compiled by the University Office of Planning and Analysis through random selection of eligible faculty. There shall be at least one member from each of the remaining colleges, and the composition shall reflect as nearly as possible the numerical balance of eligible faculty in the remaining colleges.
- c. Within ten (10) work days from obtaining the 14 faculty members names, the president of faculty senate shall call together the respondent for administration (dean and/or department head, as designated by the provost) and the faculty member, and/or their respective representative and/or attorney, for the purpose of selecting the hearing Committee. The parties must inform the president of faculty senate and the other party at least three (3) work days prior to this meeting of the name of the following participants if they will be used at any of the meetings or the hearing 1) a representative, who is not an attorney, and 2) an attorney, both of whom may be present at the meetings or hearing, but only one of whom may serve as the party's spokesperson at the hearing if they party so chooses. From the list of fourteen (14) names, each party shall remove three names, one at a time, in alternating sequence, with the administration striking the first name. From the remaining eight (8) names, the primary and back up alternate committee members shall be selected by lot. Within seven (7) work days after the committee has been named, the president of faculty senate shall convene the committee and the members shall select one member as the nonvoting chair. Within three (3) work days after the selection of the chair, the designated respondent for administration shall submit to the chair a statement of the specific grounds for the dismissal. The parties, their representatives, and attorneys shall not communicate with the committee members about the substance of the hearing, other than as designated in Appendix M.
- d. Within six (6) work days from the selection of the chair, the chair shall provide to each party:
 - i. a copy of the specific grounds for the dismissal,
 - ii. a list of the membership of the committee,
 - iii. a notification of the date, time, and place of the prehearing conference.

The date of the pre-hearing conference shall be determined by the chair, and shall be not less than ten (10) nor more than fifteen (15) work days after such notification.

- e. An attorney for each party and for the committee may be present at the pre-hearing conference. At the pre-hearing conference each party shall provide a list of proposed witnesses to be called and a list of documents to be introduced, with print copies available to the other party. In case there are relevant documents that are not accessible to the faculty member to which administration might have access, a request for such documents must be made to the chair at a minimum of five (5) work days prior to the pre-hearing conference. A document's relevance will be determined by the chair.

If the chair denies the request for the document, this must be communicated to all parties three (3) work days prior to the pre-hearing. The date, time, and place of the hearing shall be determined by the hearing committee chair and both parties shall be so notified. The hearing shall begin not less than ten (10) nor more than twenty (20) work days after the pre-hearing conference. In a period of time not to exceed five (5) work days following the prehearing conference, both parties, and/or their respective representative and/or attorney, shall confer and assemble a common set of documents, consecutively numbered and with duplications eliminated. These documents will be made available in electronic format to the hearing committee no less than five (5) work days prior to the hearing. The president of faculty senate shall announce the fact a hearing is being conducted at the next faculty senate meeting following the scheduling of the hearing date. The announcement shall include the name of the faculty member requesting the hearing, the date, time and place of the hearing, and whether it will be open or closed.

- f. All Appendix M hearings shall be conducted in accordance with the Kansas Open Meetings Act (KOMA). The hearing of the evidence shall be conducted in open session, unless the faculty member requests the hearing to be closed. Deliberations of the committee shall be in closed session. Any vote or other decision-making action must occur in open session.
- g. At the direction of the president of faculty senate, the university will provide suitable space, associated equipment, supplies, and refreshments necessary to meet the reasonable needs of the committee and the parties involved.
- h. At the hearing, each party may be accompanied by 1) a representative, who is not an attorney, and/or 2) an attorney who may advise and participate in the proceedings, only one of whom may serve as the party's spokesperson at the hearing if the party so chooses. Both parties must be present and are allowed the option of being accompanied by a representative and/or attorney. If the faculty member wishes to be represented by independent counsel, the provost shall provide funds for reasonable attorney's fees which shall be construed to mean funds for no more than two weeks of full-time service, or 96 hours, at the average per hour rate in the area.
- i. The chair shall call the hearing to order, summarize the case, establish the order of business, and review the rules. Because the hearing is conducted by peers, the committee shall not be bound by strict rules of legal evidence; it may admit any evidence it deems to be of value and may exclude evidence judged not relevant to the case or repetitive.
- j. If the hearing is open, the chair shall have the right to limit the number of observers. Observers shall not participate in any of the proceedings nor interact with either party when the hearing is in session. Witnesses shall not be present at the hearing until called to testify and then shall be excused, unless either party or the panel requests that they remain available. Only witnesses who have been excused may remain in the audience and then only when it is an open hearing. Witnesses who are also parties may be

present during the entire hearing. Photographs of the hearing room and the participants shall be allowed only when the committee is not in formal session.

- k. The president of faculty senate shall arrange for a plainclothes officer of the university police to attend the door of the hearing room when the committee is in session, for security purposes. The president elect of faculty senate, or his/her designee, shall attend the hallway of the hearing room when the committee is in session. The duties of the president elect shall be to direct people to appropriate rooms, call witnesses, and answer questions for those arriving during a session.
 - i. The administration and the faculty member, in that order, shall make an opening statement.
 - ii. The administration and the faculty member, in that order, shall present evidence, which may include testimony by supporting witnesses.
 - iii. The administration and the faculty member shall have the opportunity to question the witnesses and/or present rebuttal.
 - iv. Members of the committee, including the chair, may question the parties and/or witnesses.
 - v. The parties may be recognized by the chair for the purpose of objecting to any testimony or question on the grounds that it is not relevant to the case. The chair shall rule on each objection; the chair may consult with the committee and/or its attorney.
 - vi. The administration and the faculty member, in that order, shall be given the opportunity to make closing statements.
 - vii. The administration bears the burden of proof by presenting clear and convincing evidence of the justification for dismissal. In order to meet the standard and prove something by clear and convincing evidence, a party must prove that it is substantially more likely that it is true than not true.
- l. The chair may, on request of any member of the committee or either party, continue the hearing to a specified date, time, and place. The chair, after consultation with members of the committee, may request the production of additional information and/or invite other witnesses to provide testimony pertinent to the case. Any such information or witness testimony must be presented during the hearing to allow for questioning by both parties and rebuttal or other relevant evidence. Reasonable expenses for outside witnesses invited by the chair, shall be borne by the provost's office.
- m. The president of faculty senate or his/her designee shall attend the pre-hearing and hearing to ensure the procedures defined in this section of the handbook are followed.
- n. A professional stenographic record shall be made of the hearing. The transcribed record is available from the stenographer to either party at the expense of the requesting

party. An official copy of the information presented at the hearing, the transcribed record, if obtained from the stenographer, and documents presented at the prehearing shall be kept in confidential files in the office of the provost for a period of at least three years following these proceedings and may be examined only with the approval of the faculty member, except in the case of a closed hearing for which consent of both parties shall be required. With the consent of both parties a videotape recording shall be made, at the expense of the requesting party.

- o. The recommendation of the committee shall be based upon only testimony and evidence presented at the hearing and/or documents distributed to the committee pursuant to 5e that have not been otherwise excluded pursuant to 5i. The vote and decision, if reached at that time, shall be announced at the end of the hearing, following deliberations. The report of the committee shall provide findings of fact regarding the evidence and shall recommend to the provost action concerning the proposed dismissal. Its content shall reflect a majority vote. A minority report may be appended.

6. Reports

The recommendations of the committee and the decision of the provost shall be communicated in the following manner: In the case of either an open or a closed hearing, within forty (40) work days from the conclusion of the hearing, the chair shall send the report to the provost of the university and to the parties; a copy shall be sent to the president of faculty senate, unless the faculty member requests otherwise, in which case only written notice of the committee's vote and recommendation(s) will be sent to the president of faculty senate. Within forty (40) work days from the receipt of the report, the provost shall send a written notice of his/her decision and a full explanation of the reasons to the faculty member and the faculty member's dean; a copy shall be sent to the president of faculty senate, unless the faculty member requests otherwise, in which case only written notice of the decision shall be sent to the president of faculty senate. The report of the committee and the decision of the provost shall also be part of the official record that is retained. The president of faculty senate shall announce the vote of the committee and the conclusion reached by the provost at the faculty senate meeting following the receipt of the provost's decision. The provost's decision is final and cannot be appealed within the university or to the Board of Regents.

7. Rights of Participants

The effective and equitable discharge of the responsibilities of the committee require the following guidelines to safeguard the rights of principals and committee members and to preserve the autonomy of the process:

- a) The charge of the committee and its procedures as defined by action of the faculty senate shall not be abridged in any way. Proposed changes in procedures shall require a review of the Faculty Affairs Committee and approval of the faculty senate, provost, and the Board of Regents. The committee shall have the right to adopt necessary operational procedures which are not inconsistent with these procedures.

- b) The university shall arrange for an outside attorney to advise the committee as required. Expenses incurred by the committee for the hearing shall be borne by the provost's office.
- c) The provost will inform the appropriate dean and department head of each committee member's responsibility for the task of the committee. The provost shall confer with the appropriate dean or department head to discuss how assigned responsibilities for each panel member will be arranged while the panel member is involved with the hearing and committee deliberations. This form of university service must receive positive recognition and shall not jeopardize the faculty member's yearly evaluation for performance, merit pay increase, or promotion.
- d) Neither party shall communicate electronically or otherwise with the hearing committee regarding the matters to be addressed at the hearing or the process before or following the hearing, except through the chair of the committee. Following the hearing, neither party nor their representatives shall communicate regarding the matters addressed at the hearing with witnesses not called by that party. Without regard to the panel's findings or those of the provost, the administration will make every effort to ensure that no one participating in the grievance hearing is subjected to retaliation. If it is found that a university employee has retaliated against a witness, representative, committee member, or any other person involved in the Appendix M process, the employee may be subject to disciplinary action, up to and including immediate termination of employment and removal from the university.
- e) Rights of the parties to the hearing shall include but are not limited to the following:
 - i. To be represented by an attorney
 - ii. To present supporting witnesses
 - iii. To question opposing witnesses
 - iv. To make closing statements
 - v. To receive written findings and recommendations of the committee and written notice of the provost's decision and a full explanation of the reasons
 - vi. To obtain and/or examine the record of the proceedings

For the purpose of Appendix M, a "work day" is defined as any weekday that is part of the regular nine-month academic calendar, including all days that classes are conducted. Student holidays, winter intersession, and the period when summer school is in session are excluded from the definition of "work day."