

12.01 Academic Freedom, Responsibility and Tenure

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Policy Statement

The relationship between tenure/tenure-track faculty and the academic institution of The Texas A&M University System (system) for which they work is a balance between the responsibilities and obligations of the faculty with the requirements and demands of the system academic institution. Faculty are provided with the ability to receive a tenured position which allows them the freedom to carry out teaching, research and service which is consistent with their disciplines, expertise and interests. System academic institutions are provided with qualified faculty members who provide classroom instruction, basic and applied research, and service to the institutional and larger communities.

Reason for Policy

This policy provides the basis upon which tenure/tenure-track faculty may be hired, tenured, and dismissed. The responsibilities of the tenure/tenure-track faculty are described as are the criteria by which they will be evaluated. The manner in which tenure/tenure-track faculty may be dismissed is also described.

Procedures and Responsibilities

The following policies on academic freedom, responsibility and tenure apply separately, but equally, to each of the universities and the health science center (academic institutions) of the system.

1. ACADEMIC FREEDOM

- 1.1 Institutions of higher education exist for the common good. The common good depends upon an uninhibited search for truth and its open expression. Hence, it is essential that each faculty member be free to pursue scholarly inquiry, and to voice and publish individual conclusions concerning the significance of evidence that the faculty member considers relevant. Each faculty member must be free from the corrosive fear that

others, inside or outside the academic community, because their vision may differ, may threaten the faculty member's professional career or the material benefits accruing from it.

- 1.2 Each faculty member is entitled to full freedom in the classroom in discussing the subject which he or she teaches, but should not introduce controversial matter which has no relation to the classroom subject. Each faculty member is also a citizen of the nation, state and community; and when speaking, writing or acting as such, must be free from institutional censorship or discipline, subject to academic responsibility. In such instances, the faculty member should clearly state that he or she is not speaking for the system academic institution.

2. ACADEMIC RESPONSIBILITY OF FACULTY MEMBERS

The concept of academic freedom for faculty must be accompanied by an equally demanding concept of academic responsibility. Faculty members have a responsibility to the system academic institution, their profession, their students, and society at large. The rights and privileges of faculty members extended by society and protected by governing boards and administrators through written policies and procedures on academic freedom and tenure, and as further protected by the courts, require reciprocally the assumption of certain responsibilities by faculty members. Some of those are:

- 2.1 The fundamental responsibilities of faculty members as teachers and scholars include maintenance of competence in their field of specialization and the exhibition of professional competence in the classroom, studio or laboratory and in the public arena through activities such as discussions, lectures, consulting, performances, exhibitions, publications and participation in professional organizations and meetings.
- 2.2 Faculty members must recognize that the public will judge their profession and system academic institutions by their statements. Hence, faculty members should at all times strive to be accurate in their statements, exercise appropriate restraint, show respect for opinions of others, and make every effort to indicate that they are not speaking or acting for the system academic institution when they are speaking or acting as private persons.
- 2.3 The constitutionally protected rights of faculty members, as citizens, to freedom of expression on matters of public concern must be balanced with the interest of the state, as an employer, in promoting the efficiency of the educational services it performs through its employees. A faculty member's comments are protected even though they may be highly critical in tone or content, or erroneous, but such statements are not protected free speech if they either substantially impede the faculty member's performance of daily duties or materially and substantially interfere with the regular operation of the system academic institution, department or college. False statements made with knowledge of their falsity or in reckless disregard of the truth are not entitled to constitutional protection, and public statements may be so without foundation as to call into question the fitness of the faculty member to perform his or her professional duties.
- 2.4 Faculty members should be professional in their conduct in the classroom and in relationships with students. They should maintain respect for the student and for the

student's posture as a learner and should be appropriately available to students for consultation on course work.

- 2.5 Faculty members have the responsibility to provide timely and adequate notice of their intention to interrupt or terminate institutional services.

3. WRITTEN TERMS OF EMPLOYMENT

- 3.1 All new faculty members shall be provided with an appointment letter stating the initial terms and conditions of employment. Any subsequent modifications or special understandings in regard to the appointment, which may be made on an annual basis, should be stated in writing and a copy given to the faculty member. All faculty members, unless the terms and conditions of their appointment letter state otherwise, are expected to engage in teaching, scholarship, and service. Essential job functions for a position may vary depending upon the nature of the department in which the faculty member holds expertise, external funding requirements attached to the position, licensing or accreditation requirements, and other circumstances. It is therefore important that essential job functions for each faculty position be listed in the initial appointment letter. For example, all of the following that are applicable should be listed: teaching responsibilities, responsibilities for advising students, independent and/or collaborative research responsibilities, engaging in patient care, committee assignments, conditions imposed by external accrediting agencies, conditions for holding a named professorship or endowed chair, or a position that combines academic and administrative duties, and any other specific essential functions for the position in question. All appointment letters must indicate whether the appointment being offered is with tenure, tenure-accruing, or non-tenure accruing.
- 3.2 The system academic institution shall notify faculty members annually, in writing, of their salary. Any other changes or additions to the appointment also should be included.
- 3.3 Faculty members are expected to fulfill the terms and conditions of employment for the following year unless they resign prior to thirty (30) calendar days after receiving notice of the terms.

4. TENURE POLICY

Tenure means the entitlement of faculty members to continue in their academic positions unless dismissed for good cause. Tenured faculty who remain in good standing shall continue to enjoy those privileges customarily associated with tenure, including an expectation of continuing employment, appropriate compensation, a suitable office and workspace, serving as a principal investigator and conducting research, teaching classes, participating in faculty governance, and representing oneself as a tenured faculty member at his or her system academic institution. However, tenure shall not be construed as creating a property interest¹ in any attributes of the faculty position beyond the faculty member's regular annual salary. A specific system of faculty tenure should undergird the integrity of each system academic institution. System academic institution tenure systems should have these elements:

¹ A property interest refers to the constitutionally protected interest that may not be taken by the state without affording due process as required by federal and state law.

- 4.1 Beginning with appointment to a tenure-track position, the probationary period for a faculty member shall not exceed seven (7) years. This period may, at the system academic institution's option, include appropriate full-time service at other institutions of higher education, even if the inclusion of such service extends the total probationary period in the academic profession beyond the normal maximum of seven (7) years. However, any credit for prior service included within the seven-year probationary period shall be agreed upon in writing at the time of employment. System academic institutions shall develop a rule authorizing extension of the probationary period beyond seven (7) years to permit a possible "time-out" due to special conditions or in order to pursue special opportunities. Such extensions must be based on extraordinary circumstances and require written concurrence by the faculty member, department head, dean and the chief academic officer, or the chief academic officer's designee. Tenure is granted only by the affirmative action of the system Board of Regents (board) upon recommendation of the chief executive officer (CEO). At the conclusion of the probationary period, unless appropriately informed otherwise, the faculty member shall not have tenure. Prior to the beginning of the last year of the probationary period, the system academic institution shall notify the faculty member in writing of a decision regarding the granting or denial of tenure. The failure by the system academic institution to so notify shall not be construed as a grant of de facto tenure. If the decision is not to award tenure, the faculty member is entitled to serve for one additional contract year following the term or semester in which the notice is received.
- 4.2 Notice of non-reappointment, or of intention not to reappoint a faculty member, should be given in writing in accordance with the following standards:
- (a) 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;
 - (b) 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; and
 - (c) at least twelve months before the expiration of a probationary appointment after two or more years with the system academic institution.
- 4.3 Good cause for dismissal of a faculty member with tenure will relate directly and substantially to the performance of professional duties, and may include, but shall not be limited to, the following:
- (a) professional incompetence;
 - (b) continuing or repeated failure to perform duties or meet responsibilities to the system academic institution or to students or associates;
 - (c) failure to successfully complete a post tenure review professional development program;
 - (d) moral turpitude adversely affecting the performance of duties or the meeting of responsibilities to the system academic institution, or to students or associates;

- (e) violation of system policies, system regulations, system academic institution rules, or laws substantially related to performance of faculty duties;
- (f) conviction of a crime substantially related to the fitness of a faculty member to engage in teaching, research, service/outreach, and/or administration;
- (g) unprofessional conduct adversely affecting to a material and substantial degree the performance of duties or the meeting of responsibilities to the system academic institution, or to students or associates;
- (h) falsification of academic credentials;
- (i) bona fide financial exigency or the phasing out of institutional programs requiring reduction of faculty (see Section 9); or
- (j) the reduction or discontinuance of institutional programs based on educational considerations and requiring the termination of faculty members (see Section 9).

4.4 A faculty member with tenure shall not be dismissed until he or she has received notice of the cause for dismissal and, except as specified in Section 8 of this policy, only after an opportunity for a hearing pursuant to procedures established in accordance with Section 8.

5. ADMINISTRATIVE LEAVE

Faculty members may be placed on administrative leave with pay by the faculty member's dean, with the concurrence of the dean of faculties (or provost if there is no dean of faculties) pending an investigation into matters pertaining to the faculty member's job performance, including but not limited to, fiscal matters and improper conduct in teaching, research, or service. Notification shall be given in writing and shall include the reasons for placing the faculty member on administrative leave with pay and the terms of the leave. A faculty member placed on administrative leave with pay may appeal the decision to the provost by submitting an appeal in writing. The provost will conduct the appeal, and may appoint a person or persons to assist the provost in the appeal. The investigation process is not stayed by an appeal. The appeal should be completed within five (5) business days of the receipt of the appeal. This provision is distinct from suspension during the pendency of termination proceedings. Placing a faculty member on administrative leave with pay is justified to aid in an investigation or if the welfare of the faculty member or that of students, colleagues or other institutional employees is threatened by continuance, or if the continued presence of the faculty member would be disruptive of the regular operations of the system academic institution. Any such leave should be with appropriate provisions for useful duties, including appropriate access to classrooms, laboratories, libraries and other facilities. A tenured faculty member who has been placed on administrative leave with pay shall be entitled to his or her regular annual salary.

6. FACULTY DISMISSALS FOR CAUSE

System academic institutions shall establish proper procedures for dismissal of faculty for cause. These dismissal procedures shall apply only to a faculty member who has tenure or whose term appointment has not expired at the time of the dismissal. Such procedures shall have the following parts:

- 6.1 A bona fide effort by appropriate administrative officers and/or other persons or committees should be made to achieve a satisfactory resolution of difficulties through preliminary inquiry, discussion or confidential mediation.
 - 6.2 Should these efforts fail to achieve a satisfactory resolution and should the difficulties be considered by the administration to be serious enough to warrant dismissal, the faculty member should be afforded the opportunity for a hearing that meets the requirements set forth in Section 8.
 - 6.3 Unless a faculty member is summarily dismissed pursuant to Section 8.1, a faculty member may be reassigned or suspended during the pendency of termination proceedings; however, suspension of the faculty member is justified only if the welfare of the faculty member or that of students, colleagues or other institutional employees is threatened by continuance, or if the continued presence of the faculty member would be materially and substantially disruptive of the regular operations of the system academic institution. Any such suspension should be with pay and with appropriate provisions for useful duties including appropriate access to classrooms, laboratories, libraries and other facilities.
 - 6.4 In any of these proceedings the faculty member and the administration shall have the right to representation.
7. NON-RENEWAL OF NON-TENURED TENURE TRACK FACULTY AT END OF TERM CONTRACT

Procedures in cases of non-renewal of non-tenured tenure track faculty members at the end of any term contract (other than a one-year only contract which has not been renewed) shall have the following parts:

- 7.1 A system academic institution is not required to give a non-tenured faculty member a reason for a decision not to reappoint for another contract term or to provide a hearing. Generally, all faculty members are entitled under Texas law to see their personnel files and to obtain a copy of the information in these files at their own expense.
- 7.2 A non-tenured faculty member may present, in person, a grievance over non-renewal of the faculty member's employment at the system academic institution. The board delegates the authority through the chancellor to the CEO to designate an individual within the system academic institution's administration to hear the faculty member's grievance. The system academic institution shall adopt a method of presenting, reviewing and acting on grievances pursuant to this section.
- 7.3 A non-tenured faculty member may appeal a decision not to reappoint on the basis that the decision was made in violation of the academic freedom of the individual or for an illegal reason or for inadequate consideration of the faculty member's record of professional achievement. For purposes of this section, an illegal reason is defined as a decision based on race, sex, age, national origin, religion, creed, color, or disability unrelated to the performance of duties; or made in retaliation for the faculty member's exercise of protected First Amendment rights. Such an appeal must be filed within

twenty (20) business days of the date on which the faculty member was given written notice of non-reappointment.

- 7.4 System academic institution appeal procedures shall provide for preliminary consideration within fifteen (15) business days of the faculty member's notice of appeal of the allegations by a faculty committee to determine whether the faculty member has established a prima facie case that the decision was made in violation of the faculty member's academic freedom, for an illegal reason, or without adequate consideration of the faculty member's record of professional achievement. If the preliminary review committee determines that the faculty member has not alleged a prima facie case, the allegations shall be dismissed and the decision not to reappoint shall stand. If the committee determines that the allegations do establish a prima facie case, the matter shall be referred for an evidentiary hearing under established system academic institution procedures. A prima facie case for purposes of this section means that the faculty member's evidence, alone and un-rebutted, would establish that a violation as defined in Section 7.3 may have occurred.
- 7.5 In any evidentiary hearing, the burden of proving that the decision was made in violation of academic freedom or for an illegal reason, or without adequate consideration of the faculty member's record of professional achievement, shall rest with the faculty member. The burden of proof must be met by a preponderance of the evidence; i.e., that which is more convincing, more credible, and of greater weight than contrary evidence. Both the faculty member and the administration have the right of representation at this hearing. The system academic institution shall provide staff support to schedule and hold a hearing. If the appeal is filed before March 1, the hearing shall be scheduled within sixty (60) calendar days from the date the committee chair is notified of the appeal; the chair of the hearing committee may extend the time for completing the hearing fifteen (15) calendar days for good cause shown. If more than one appeal is filed in a given year, some appeals may be delayed until the first full academic term following the notice of appeal. The committee shall complete its report within fifteen (15) calendar days of the completion of the hearing. The importance of conducting the hearing in a prompt manner shall guide the system academic institution and the hearing committee. Hearing committee members' departments shall assist as needed to accommodate the scheduling of the hearing.

8. DISMISSAL FOR CAUSE HEARINGS

8.1 Summary Dismissal

Each system academic institution may establish procedures for the summary dismissal of faculty for specified causes. Such procedures shall provide the faculty member with notice of the charges, an opportunity to respond to an administrator prior to dismissal, and an opportunity for a post-termination evidentiary hearing appealing the dismissal. Post-termination appeals shall embody the elements set forth in Section 8.2.

8.2 Pre-termination Hearing

- 8.2.1 Unless summary dismissal procedures are invoked, each system academic institution shall provide a faculty member to be dismissed for cause with notice

of the charges and an opportunity for a fair and impartial hearing by a faculty committee. A faculty member requesting a hearing shall submit a notice of appeal to the system academic institution's CEO within ten (10) business days of receipt of the notice of termination. The CEO shall notify the hearing committee within five (5) business days of the date the appeal has been filed. The system academic institution shall provide staff support to schedule a hearing. The hearing committee shall schedule a hearing date within sixty (60) calendar days of the notice of appeal. The chair of the hearing committee may extend the time for completing the hearing fifteen (15) calendar days for good cause shown. The committee shall complete its report within fifteen (15) calendar days of the completion of the hearing. The importance of conducting the hearing in a prompt manner shall guide the system academic institution and the hearing committee. Hearing committee members' departments shall assist as needed to accommodate the scheduling of the hearing. The hearing committee shall formulate explicit findings with respect to each of the grounds for removal presented and shall recommend whether or not, in its judgment, there is good cause for dismissal. The burden of proof is on the system academic institution to establish by a preponderance of the evidence the existence of good cause for dismissal.

- 8.2.2 The committee's findings and recommendation whether or not, in its judgment, there is good cause for dismissal shall be conveyed in writing to the CEO and to the faculty member.
- 8.2.3 If the faculty member's appointment is proposed to be terminated by the CEO, the full report of the hearing committee, the record of the hearing, the CEO's recommendation, and other relevant documentation available to both the faculty member and the system academic institution shall be delivered to the chancellor who shall carry out a review of the documentation. In the event that the chancellor identifies the need for information not contained in the documentation, the chancellor may choose to give the system academic institution and the faculty member an opportunity to present their arguments and take questions from the chancellor. The chancellor shall have a maximum of forty-five (45) days in which to conduct the review. Upon completion of the review, the chancellor shall make a final determination as to the dismissal.
- 8.2.4 In the event that the review identifies information which is probative of the dismissal, and which was not made available to the faculty review committee and/or the CEO, the chancellor may return the matter to the system academic institution CEO. Upon return to the CEO, the hearing committee shall have fifteen (15) calendar days in which to conduct a follow-up hearing to evaluate the new information and render its recommendation. The CEO will then review its recommendation and take action as appropriate following the guidelines in Section 8.2.3.
- 8.2.5 A faculty member's termination from employment shall be effective as determined by the chancellor, upon a finding by the chancellor, pursuant to these procedures, that there is good cause for the faculty member's dismissal.

9. TENURE, FINANCIAL EXIGENCY, AND TERMINATION OR REDUCTION OF PROGRAMS

9.1 Cases of bona fide financial exigency or the reduction or discontinuance of an institutional program based on educational considerations may permit exceptions to tenure regulations.

9.2 Definitions

9.2.1 Bona fide financial exigency means a pressing need to reorder the nature and magnitude of financial obligations in such a way as to restore or preserve the financial stability of any system academic institution. A bona fide financial exigency may exist without the entire system academic institution being affected.

9.2.2 Financial stability means the ability of a system academic institution to provide from current income the funds necessary to meet current expenses, including current debt payments and sound reserves, without invading or depleting capital.

9.2.3 Evidence of financial exigency may include, but is not limited to, substantially declining enrollments, substantial revenue cutbacks, and substantial ongoing operating budget deficits.

9.2.4 Educational considerations that could result in the reduction or discontinuance of a program may include, but are not limited to:

- (a) a substantial decrease in program enrollment;
- (b) the need to shift substantial resources to other programs; or
- (c) a substantial modification or redirection of a unit's mission.

9.3 Administration

9.3.1 When the system academic institution CEO believes that a state of bona fide financial exigency exists, the CEO shall inform the chancellor. If the chancellor concurs in this assessment, the chancellor shall inform the board. If the board finds that such conditions exist, a state of bona fide financial exigency shall exist within that system academic institution.

9.3.2 When faculty dismissals are contemplated on grounds of financial exigency or program termination or reduction, there should be 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 system academic institution to ensure continuation of a strong academic program and to minimize the losses sustained by affected students and faculty members.

- 9.3.3 Faculty members who are being considered for termination on the basis of a bona fide financial exigency or a program termination or reduction should be given opportunities for appointment in related areas at their system academic institution provided:
- (a) they are qualified professionally to teach in those areas;
 - (b) positions are available; and
 - (c) the affected dean and department head or director concur.
- 9.3.4 Any tenured faculty member or faculty member whose term appointment has not expired, who is selected for termination on the basis of a bona fide financial exigency or a program termination or reduction necessitating a reduction in staff, shall be given the following information:
- (a) a written statement of the basis for the initial decision to lay off;
 - (b) a description of the manner in which the initial decision was made; and
 - (c) information and data upon which the decision makers relied.
- 9.3.5 The faculty member selected for termination shall be given an opportunity to respond in a hearing before an appropriate faculty committee. In this hearing the burden of proof rests with the system academic institution to demonstrate by some credible evidence that a bona fide financial exigency exists or that educational considerations led to the reduction or discontinuance of a program. The faculty committee shall formulate findings whether or not, in its judgment, a bona fide financial exigency exists or that educational considerations led to the reduction or discontinuance of a program. The faculty committee's findings and recommendation, if any, shall be conveyed in writing to the CEO and to the faculty member.
- 9.3.6 Any faculty member reassigned to another position or terminated has the right to reappointment to his or her previous position if it is re-established within two (2) calendar years.

Related Statutes, Policies, or Requirements

System Policy 12.02, *Institutional Procedures for Implementing Tenure* (proposed)

<http://tamus.edu/offices/policy/policies/proposed/12-02.pdf>

System Policy 12.06, *Post-Tenure Review of Faculty and Teaching Effectiveness* (proposed)

<http://tamus.edu/offices/policy/policies/proposed/12-06.pdf>

System Policy 12.07, *Fixed Term Academic Professional Track Faculty* (proposed)

<http://tamus.edu/offices/policy/policies/proposed/12-07.pdf>

Contact Office

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