

Appendix C

General Termination Procedures

1. **Initiation.** The University recognizes the seriousness of faculty terminations and, therefore, reserves for its administrative officers and faculty committees the prerogative to be assisted by the Board of Regents Office of Legal Counsel throughout the decisional process including any formal hearing. Groundless threats to terminate or demands to resign as an alternative to termination should not be made by the unit administrator or other official of the University.

Any person who has substantial concern that a faculty member could be subject to termination under Section 1.14.1 or 1.14.3 or dismissal on the grounds stated in Section 1.16.2 may present those concerns, substantiating evidence, and related information to the VPAA¹² for evaluation and possible action. Although not mandatory, it is preferable that this communication be presented in writing and signed by the person submitting it. Following receipt of such communication, the VPAA may seek to obtain additional relevant information from other sources in evaluating same, and shall make a judgment as to whether further inquiry is appropriate.

Should the VPAA be inclined not to initiate an inquiry, the President shall be so informed. The President, having received and reviewed all available, relevant evidence, shall consider the complaint and make a judgment as to whether it is in the best interest of the University to initiate an inquiry.

If an inquiry is to be conducted, there shall be formed a termination review committee (referred to as the "Termination Review Committee") to serve as the administrators responsible for conducting an investigation to develop facts for evaluation and possible action. The Termination Review Committee shall be comprised of:

- a. An investigating official appointed by the VPAA.
- b. A member of the College Reappointment, Promotion and Tenure committee who is not from the same department of the affected faculty member and is at the same rank or higher than the affected faculty member. This member will be chosen at random by the chairperson of Faculty Council from a list provided by the Dean of the College; and
- c. A past chair of Faculty Council with an appointment that is less than fifty (50) percent administration. This member will be chosen at random by the chairperson of Faculty Council.

The affected faculty member shall be provided the names of the members chosen to serve on the Termination Review Committee. In the event the affected faculty member believes a member of the Termination Review Committee has a conflict of interest, the affected

¹²If the VPAA is unavailable, the President may designate another senior supervisory academic administrator to act for the VPAA.

faculty member shall notify the VPAA within three (3) working dates of the reasons the affected faculty member believes there is a conflict of interest. If the VPAA determines a conflict of interest exists, a new member shall be chosen as a replacement using the procedures set forth above.

The investigating official will serve as chair of the Termination Review Committee. The VPAA shall provide the Termination Review Committee with all of the written information and notes of oral statements which were submitted with or were made in relation to the initial communication of concerns. The Termination Review Committee will conduct an investigation and may request legal assistance for conducting the investigation from the Board of Regents Office of Legal Counsel. The Termination Review Committee may also meet with the person(s) who communicated the original concerns and others to seek clarification and documentation.

The Termination Review Committee should thereafter determine individuals to interview and evidence to examine. The Termination Review Committee should meet with the affected faculty member in a personal conference to explore relevant issues. In this conference, the faculty member shall be told of the reasons that the investigation is being conducted and the actions that are being considered. The faculty member shall be provided a copy of the published procedures which are followed in decisions to terminate. The Termination Review Committee shall prepare a confidential interim investigation report, and it shall be provided to the affected faculty member within five (5) working days of the personal conference. If a personal conference cannot be arranged, the Termination Review Committee will deliver to the affected faculty member in person or by mail to a current office or residential address its interim investigation report, a request for response from the faculty member within five (5) working days, and a copy of the published termination procedures.

Following receipt of the Termination Review Committee's interim investigation report, the faculty member shall have a fixed period of at least five (5) working days to respond to the substance of the interim investigation report, propose a suitable disposition to resolve concerns and/or present reasons that termination or other action(s) is unnecessary or unwarranted. Following receipt of the faculty member's written response, the Termination Review Committee will complete its investigation report and submit the report to the VPAA.

2. **Initial Administrative Review.** After the Termination Review Committee's investigation has been conducted, the affected faculty member's unit administrator, dean, and the VPAA shall meet to review all the information which has been collected. If the unit administrator, dean, or VPAA ("Administrative Review Team") is the faculty member being investigated, he/she shall not serve as part of this Administrative Review Team. The Termination Review Committee shall provide the members of the review team with all information that has been introduced into the case including that provided by those requesting the investigation, any provided by the affected faculty member or others, and documentary evidence. In the review, the Administrative Review Team may confer with the affected faculty member as well as others it may deem appropriate.

Following the review, the VPAA shall make a preliminary judgment whether there is reasonable and sufficient cause for termination and whether it would be in the best interest of the University to continue with the termination procedure. The VPAA's preliminary judgment shall be submitted to the President. The President shall make a judgment whether reasonable and sufficient cause exists for further evaluation and whether it would be in the best interest of the University to continue with the termination procedure. If in the judgment of the President reasonable and sufficient cause has not been established for further examination, or if it is judged not to be in the best interest of the University to continue with the termination procedure, the affected faculty member will be notified in writing by the VPAA that it is not the current intention of his or her office to make a recommendation of termination. If the final decision is that termination is not appropriate but that other action is warranted, the matter shall be referred to an appropriate academic supervisory administrator for consideration and action. If in the judgment of the VPAA and the President, reasonable and sufficient cause for termination appears to have been established and it is in the best interest of the University to continue with the termination procedure, the VPAA will notify the affected faculty member and the chairperson of the Faculty Council. If the affected faculty member chooses to proceed with the termination hearing, the affected faculty member shall notify the VPAA and the chairperson of the Faculty Council within five (5) working days.

3. **Consideration by Termination Hearing Committee.**¹³ Upon receipt of notice that a formally recommended termination will be disputed, the chairperson of the Faculty Council shall provide the principal parties (the affected faculty member and the Termination Review Committee) with a list of the individuals initially chosen to serve as members of the Termination Hearing Committee. The chairperson of the Faculty Council shall also provide the members of the Termination Hearing Committee with a copy of the notice of the recommended termination which has been disputed. The Termination Review Committee shall elect one of its members to serve as the University Representative during the termination hearing and this individual shall be considered a party for purposes of this Appendix C.

The University shall provide appropriate facilities, assistance, equipment and support to the Termination Hearing Committee and shall assist the committee in obtaining the cooperation of witnesses and making available documentary and other evidence. The personnel records of the affected faculty member shall be accessible to the parties, the Termination Hearing Committee, and review authorities and their representatives.

The Termination Hearing Committee shall begin the hearing within thirty (30) calendar days after the chairperson of Faculty Council is notified by the VPAA. The faculty member may waive a hearing or may respond to the charges in writing at any time before the hearing. If the faculty member waives a full hearing, but denies the charges against him/her or asserts that the charges do not support a finding of reasonable cause, the Termination Hearing Committee will evaluate all available evidence and rest its recommendation upon the evidence in the accumulated record of the matter and its reasonable inferences. The

¹³See Section 1.15, Termination Hearing Board.

Termination Hearing Committee shall hold a joint prehearing meeting(s) with the parties in order to: (a) simplify the issues, (b) effect stipulations of undisputed material facts or witness statements, (c) provide for the exchange of documentary evidence or other information, (d) exercise peremptory challenges and question prospective committee members to determine if disqualifying bias exists, and (e) achieve such other appropriate prehearing objectives as will make the formal hearing fair, effective, and expeditious.

4. Hearing Procedures. The following procedures and guidelines should be followed during the hearing:

- a. The University Representative will establish the history of the appointment and that there is reasonable cause to terminate the appointment based on a quality of proof that is clear and convincing.
- b. In all presentations of evidence, the University Representative presents his or her case first, with the faculty member following.
- c. The parties shall be permitted to utilize licensed legal counsel who shall be allowed to participate in all appropriate portions of the hearings (including prehearings), even including presentation of the faculty member's case to the Termination Hearing Committee. The committee shall consider such counsel's statements on procedural matters and may receive the opinion of its own counsel.
- d. The hearing shall be attended only by those individuals having an official connection with the proceedings as determined by the President after consultation with the chair of the Termination Hearing Committee. Other individuals will be excluded from the hearing room.
- e. Two confidential tape recordings of the hearing shall be made by a recorder designated for the proceedings by the chairperson of the Termination Hearing Committee and will be accessible to the principal parties involved, the Termination Hearing Committee, the President, the governing Board of Regents, and authorized representatives on a "need to know" basis.

Either party to the hearing may request that the Termination Hearing Committee endeavor to provide a typed transcript of the testimony. The cost of preparation of such a transcript shall be paid by the party making the request. The second party may obtain a duplicate copy by paying the current fees for copying.

- f. A reasonable time limit should be established for opening and closing statements and shall be announced prior to or at the outset of the hearing.
- g. Length of hearing sessions may be established in advance; every reasonable effort should be made to conduct the hearing(s) as expeditiously as possible, with equal fairness to both parties.

- h. The Termination Hearing Committee, through its chairperson, shall require from the parties involved that they submit to the committee and exchange with the other party within 72 hours of the conclusion of the prehearing meeting(s):
- a list of witnesses whom they wish to present;
 - a written exposition of all known relevant facts and/or opinions, as well as circumstantial evidence; and
 - documents which they deem pertinent to the case. In cooperation with the chair of the Termination Hearing Committee the respective parties are responsible for arranging the presence of their own witnesses and will schedule them for appearance as close to the time of call as possible. Both parties shall be permitted during the course of the hearing(s) to introduce additional documents and present witnesses not on their original lists, subject to reasonable notice to the other party and the consent of the committee.
- i. After primary witnesses for both parties have been heard, such witnesses may be recalled for additional questioning if requested by either party or the Termination Hearing Committee. The Termination Hearing Committee may call new witnesses whose testimony it deems relevant or helpful as well as request documents not otherwise introduced by either of the parties.
- j. All evidence and other information pertaining to the termination hearing shall be treated in a confidential manner, except for reporting authorized by this policy statement.
- k. Only information relevant to the termination action should be admitted into evidence. For the purpose of the Termination Hearing Committee, questions of relevance shall be decided by the chairperson (subject to later review as provided or referenced herein). Physical evidence and testimony that is excluded from evidence shall be appropriately described by the offering party and appended to the hearing report for review on appeal.
- l. The Termination Hearing Committee shall grant adjournments to enable either party to investigate evidence against which a valid claim of surprise is made.
- m. The faculty member and the University Representative shall normally have the right to confront and cross-examine all witnesses at the hearing. When the prospective witnesses cannot or will not appear, but the Termination Hearing Committee determines that the interests of fairness require formal admission of their statements, the committee shall identify the witnesses, disclose their statements, and if reasonably possible arrange for answers to proposed interrogatories from such witnesses.
- n. In the hearing of any allegations concerning incompetence, the evidence in

support thereof shall include that of qualified faculty members from Oklahoma State University and/or other institutions of higher education.

- o. The Termination Hearing Committee shall not be bound by strict rules of legal evidence, and may admit any evidence which is of probative value in evaluating the issues involved. Every reasonable effort shall be made to obtain the most reliable evidence available.
- p. The Termination Hearing Committee reports findings of fact and its recommendations shall be based solely on formally admitted evidence contained in the hearing record and reasonable inferences drawn therefrom. Members of the Termination Hearing Committee shall not converse with nor listen to any person outside the formally convened hearing committee pertaining to the facts, circumstances, or the subject person(s) related to the purpose(s) for which such hearing committee has been appointed or organized.
- q. Neither the participants nor their representatives should cause publicity or public statements about the case, except for such simple announcements as may be required covering the time of the hearing and similar matters.

5. **Committee Report.** The report of the Termination Hearing Committee shall specifically cite the information upon which its advisory conclusions were based. The written report shall contain:

- a. a statement of the purpose of the hearing;
- b. issues considered;
- c. findings of fact; and
- d. advisory recommendations.

The Termination Hearing Committee shall conclude whether reasonable cause for termination has been sufficiently established by clear and convincing evidence in the record, and it shall so report to the President. If the Termination Hearing Committee concludes that reasonable cause for termination has been established, but that an action other than termination should be considered, it shall so recommend, with supporting reasons. The Termination Hearing Committee shall make its confidential report to the President of the University with complete copies to the principal parties, their representatives, and related administrators. Said report shall also include all information barred from admission into evidence by the chairperson of the Termination Hearing Committee. The chairperson of the Termination Hearing Committee shall inform the chairperson of the Faculty Council that the report of the Termination Hearing Committee has been submitted to the President.

The affected faculty member and the Termination Review Committee shall each have five working days from the date the report is submitted to the President within which to present

in writing any specific objections for consideration regarding the content of the report or the adequacy of the processes used by the Termination Hearing Committee in arriving at its advisory conclusions. The Termination Hearing Committee shall make available to the President the taped record of the hearing for discretionary reference.

6. **Review and Recommendation by the President.** The President shall exercise reasonable care in reviewing the report of the Termination Hearing Committee. If the President is unable to concur in the findings or recommendations of the Termination Hearing Committee, the report shall be returned to the committee with specific concerns stated in writing. The Termination Hearing Committee will then reconsider, taking into account the stated concerns and, if necessary, review any new evidence or other matters with the parties, if practical. The final report of the Termination Hearing Committee shall be sent to the President and principal parties, with complete copies to their representatives and related administrators.

The written decision of the President shall be sent to the chairperson of the Faculty Council, the chairperson of the Termination Hearing Committee, and the principal parties, with copies to their representatives and related administrators. If the decision of the President is to recommend termination to the governing Board of Regents, the President shall inform the affected faculty member of the Board of Regents' published procedures for appeals to it. The President may submit a formal recommendation for termination to the Board of Regents no sooner than ten working days after the affected faculty member has been sent notice by the President that a recommendation for termination is to be made. A recommendation for termination to the Board of Regents shall include the full final report of the Termination Hearing Committee and any other related allied papers, reports, or recommendations as the President may deem appropriate. At any point in the procedure, prior to the time that the recommendation is formally considered by the Board of Regents, the affected faculty member may withdraw the challenge to the dismissal recommendation.

7. **Review and Action by the Board of Regents.** If the Board of Regents chooses to review the case or if the faculty member appeals the President's decision, the review should be conducted according to the published procedure which provides an opportunity for argument, oral or written or both, by the principal parties or their representatives. The Board of Regents has established procedures for perfecting an appeal to the Board and the conduct of the appeal. A copy of the procedures is available on request from the Office of Legal Counsel at the Board's Office located in the Student Union, Oklahoma State University. The appeal must be initiated by the filing of a petition by registered mail with the Board's Chief Executive Officer at the Board's office in the Student Union, Oklahoma State University, within fourteen regular calendar days of the President's decision.

8. **Announcements.** Except for such simple announcements as may be required, public statements about the proposed termination action by either the faculty member, Termination Review Committee, affected administrators, or other institutional personnel should be avoided until the proceedings have been completed. An announcement of the results of the completed proceedings shall be provided to the Chairperson of the Faculty Council who may share such information with the Faculty Council and it may be published in the minutes of the Faculty Council.