



Operating Policy and Procedure

**OP 32.xx: Faculty Non-reappointment, Termination, and Tenure Revocation**

**DATE:** [m d, y]

**PURPOSE:** The purpose of this Operating Policy/Procedure (OP) is to outline and ensure understanding of both standards and procedures concerning promotion and tenure, the non-reappointment, termination, or tenure revocation of tenure-line faculty. This Operating Policy will not be used to restrain faculty members in their exercise of academic freedom or constitutional rights.

**Comment [FSC1]:** This statement applies to all categories, not just termination.

**REVIEW:** This OP will be reviewed in November-[month] of odd-numbered years by the senior vice provost with recommended revisions presented to the provost and senior vice president for academic affairs (PSVPA) by December 15 [month day]. In accordance with OP 10.01, subsequent review is to be provided by the Faculty Senate and by the Tenure Advisory Committee with Senate recommendations submitted to the PSVP. Any In accordance with the principle of shared governance, any change in this OP must be approved by both the voting faculty and the Board of Regents.

**Comment [FSC2]:** In accordance with TTU's academic tradition & AAUP charter.

**Comment [FSC3]:** Consistent with Section 4.

**POLICY/PROCEDURE**

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

**Comment [r4]:** Recommend that the section previously appearing 32.01 as section 7. Definitions of Termination be placed here as the Policy/Procedure statement guiding this OP. It is re-ordered slightly for clarity and flow.

a. Revocation of tenure, which is termination of a tenured faculty member's employment:

Revocation of tenure, 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.

**Comment [FSC5]:** Consistent with categories as defined here.

Adequate cause for revocation of tenure must be directly and substantially related to the performance and/or fitness of faculty members in their professional duties and public trust to perform such duties as teachers and scholars. This policy will not be used to restrain faculty members in their exercise of academic freedom or constitutional rights.

**Comment [FSC6]:** Consistent with categories as defined here.

**Comment [FSC7]:** Unconditional mandate, not an unspecified conditional term.

**Comment [FSC8]:** This statement applies to all categories, not just termination.

b. Non-reappointment, which is the cessation of a non-tenured faculty member's employment at the end of the stated appointment period; and

**Comment [FSC9]:** This whole section belongs under part a, not part c.

c. Termination, which is immediate termination for cause of a non-tenured faculty member's employment before the expiration of the stated appointment period.

~~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 should be directly and substantially related to the performance and/or fitness of faculty members in their professional capacity/duties and public trust to perform such duties 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 of 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~~

~~e. Termination, which is immediate termination for cause of a non-tenured faculty member's employment before the expiration of the stated appointment period.~~

Comment [FSC10]: Consistent with categories as defined here.

Comment [FSC11]: This statement applies to all categories, not just termination.

## 6.1. 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 shall be informed in writing of the reasons for disapproval within 10 business days. ~~The substance of any recommendation by the committee, if approved by the president, shall be given consideration for incorporation in the operating procedures of the university.~~

b. The committee shall consist of five full-time tenured faculty, none of whom has served in any administrative post at or above the level of chair of a department during the preceding five years. and two ex-officio members who are the PSVPAAPSVP and a dean selected by the Provost's Council. The faculty members will be elected at large by the voting faculty (with nominations solicited and voting tallied by the Faculty Senate) for staggered terms of five years, with one membership position terminating August 31 of each year. No more than two faculty members elected from any college or school shall serve on the committee at the same time. No elected faculty member will be eligible for reelection to the committee until a period of one year has elapsed from the termination date of a prior term unless he or she was elected to serve less than two years of an unexpired term of a previous member. The dean member shall serve for three years but shall not be eligible to serve consecutive terms. The committee shall determine its own rules of procedure.

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Comment [FSC12]: Timeline inserted.

Comment [FSC13]: Section removed due to lack of relevance to this policy.

Comment [FSC14]: Clarification.

Comment [FSC15]: Insertion based on Faculty Senate & AAUP recommendations.

Comment [FSC16]: Clarification of procedure.

## 7. Definitions of Termination

~~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.~~

Comment [RAS17]: Recommend move these paragraphs to POLICY/PROCEDURES section.

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~~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 of 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~~
- ~~e. Termination, which is immediate termination for cause of a non-tenured faculty member's employment before the expiration of the stated appointment period.~~

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

~~If a faculty member wishes to appeal the decision of involuntary separation, the faculty member may do so utilizing the following procedures. 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 respondent faculty member admits his or her conduct constitutes adequate cause, or does not choose to have a hearing, he or she may will offer in writing his or her resignation. That faculty member will give giving notice of resignation as early as December 8, 2009 Page 6 OP 32.01~~

~~possible to obviate serious inconvenience to the university, and so 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 shall be with pay until such time as the suspended faculty member has been accorded the procedural rights appropriate to their appointment type, as described in this section, ~~or through the May pay period of the next academic year and a final verdict has been reached by the Board of Regents.~~

### a. Tenure Revocation

The following tenure revocation review procedures outlined in subsections (1) through (6) below apply to tenured faculty members. ~~Reasons for a charge of tenure revocation may be brought by the faculty member's chairperson or area coordinator through the dean to the PSVP, or from the dean to the PSVP. The President files formal charges of tenure revocation.- The faculty member will be advised in writing, by the Office of the PSVP, of the proposed revocation of tenure and the bases for it within 10 business days of the President's decision.~~

~~If a faculty member wishes to appeal the decision challenge the grounds for of involuntary separation, the faculty member may do so utilizing the following procedures specified below.~~

Comment [FSC18]: Correction and elimination of redundancy.

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Comment [FSC19]: Clarification of timeline.

Comment [r20]: These points are suggested for placement here for clarity at the outset.

Comment [FSC21]: Timeline needed.

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 respondent faculty member admits his or her conduct constitutes adequate cause, or does not choose to have a hearing, he or she may offer in writing his or her resignation giving notice of resignation as early as possible to obviate serious inconvenience to the university, and so that department objectives and student needs are met.

(1) Before the filing of tenure revocation charges, every reasonable effort shall be made to mediate and conciliate differences between the faculty member and the university. The chairperson of the Tenure Advisory Committee (or another member designated by the committee) shall make a rigorous attempt at confidential, equitable, and expeditious mediation.

Comment [FSC22]: The paragraph on appeals belongs after the paragraph on how to initiate revocation proceedings.

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If such attempted mediation has failed and after the mediator has made a written report to the president and copied that report to the faculty member, a formal investigation shall be undertaken. Together, a member of the Tenure Advisory Committee who has been appointed by the chairperson of that committee, and the ~~PSVPA~~PSVP (or his representative) shall conduct a thorough, confidential, expeditious review, which must be concluded within 30 business days. This review and the recommendations of the investigating team shall be considered by the president in determining whether formal charges should be filed by the president to end the faculty member's employment for cause.

Comment [FSC23]: Timeline needed.

In all cases of formal charges, the faculty member will be informed in writing of the charges by the Office of the PSVP, which, on reasonable notice, will be considered by a Hearing Panel convened by the president within no later than 30 business days. The Hearing Panel will be made up of five members chosen by the Tenure Advisory Committee from a Tenure Hearing Committee formed of twenty tenured faculty members who will be elected annually. Members of the Tenure Advisory Committee shall not be eligible for concurrent service on the Tenure Advisory Committee and the Hearing Committee.

Comment [FSC24]: Timeline needed.

(2) The Hearing Panel shall be selected in this fashion:

(a) The Tenure Advisory Committee shall by lot order the names of the members of the Tenure Hearing Committee, assigning them numbers one through twenty.

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(b) Hearing Committee members deeming themselves biased shall remove themselves from the case.

(c) Either party in the dispute may strike no more than three names from those remaining on the list.

(d) The Tenure Advisory Committee shall designate the five with the lowest numbers remaining on the list to constitute the Hearing Panel.

(3) The Hearing Panel will select a chairperson from its membership and may, if it chooses, request appropriate legal counsel from a firm or an individual attorney of its choosing to be furnished by the university but not ~~December 8, 2009 Page 7 OP 32.01~~

from the Office of General Counsel. The legal counsel will advise the Hearing Panel but will not vote.

The Panel may also consult with the general counsel of the university on technical or procedural questions not directly bearing on the merits of the case if the Panel considers such consultation appropriate and helpful.

(4) The hearing will be private and confidential unless the faculty member elects to have a public hearing. The Hearing Panel shall determine procedures to be implemented in the hearing, procedures that shall afford both parties due process and fairness.

In every such hearing, the faculty member shall have the right to appear in person with legal counsel, retained by the individual, and to confront and cross-examine witnesses. The faculty member shall have the right to testify, but may not be required to do so, and may introduce in his or her behalf 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 shall apply to the hearing.

The university shall also have the right to legal counsel from the Office of General Counsel in the preparation and presentation of charges and have the same rights in the hearing as those accorded to the faculty member. An audio recording of the proceedings shall be made and delivered to the president for submission to the ~~board~~Board of Regents, and a copy of this audio recording shall be made available to the faculty member~~respondent~~. The record will be transcribed only on the request of either the faculty member or the president at the expense of the requesting party.

(5) The Hearing Panel, by a majority of its total membership, shall make written findings of fact on each charge and make specific recommendations with regard to each of the charges and the charges as a whole. The Panel, by a majority of its total membership, may make supplementary suggestions it deems proper concerning disposition of the case. If minority findings, recommendations, or suggestions are made, they shall be similarly treated. The chairperson of the Hearing Panel shall deliver the findings, recommendations, and suggestions to the president, who shall transmit them along with his/her recommendations to the faculty member and to the Board of Regents in sufficient time for the next Board of Regents meeting agenda.

(6) The Board of Regents, by a majority of its total membership, shall approve, reject, or amend the findings, recommendations, and suggestions to the Hearing Panel based on the record. Any amendment or change of such findings, recommendation, or suggestions, and the reasons therefore, will be stated 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 45 days submit its recommendations to the president. If the

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Comment [RAS25]: Do we mean to exclude attorneys in solo practice?

Comment [SEN26]: Inserted in response to RAS25.

Comment [FSC27]: Clarification needed.

Comment [FSC28]: Clarification.

Comment [SEN29]: Timeline added with approval of Sr. Vice Provost Stewart.

Board of Regents then overrules the recommendations of the Hearing Panel, it will state in writing to the president, who will transmit the decision to the Hearing Panel, its reasons for its actions in overruling the Hearing Panel's recommendations. The president shall also notify the faculty member in writing of the board's decision within 30 business days, and this communication shall include the findings and recommendations of the Hearing Panel as well as those of the board. The decision of the Board of Regents shall be final. ~~December 8, 2009 Page 8 OP 32.01~~

Comment [SEN30]: Timeline added with approval of Sr. Vice Provost Stewart.

#### b. Non-reappointment and Termination

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The following procedures on non-reappointment and termination for cause apply to untenured tenure-track faculty members, and to non tenure-track faculty members ~~(as listed in section 4.c)~~ who have served more than six full years and been granted continuing appointment status.

(1) The university is not required to give an untenured tenure-track faculty member a reason for a decision of non-reappointment, though common courtesy demands suggests that it do so unless such notification would harm the university. However, each faculty member is entitled to see all of his or her personnel file and, at his or her expense, to obtain a copy of the information contained therein.

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Comment [FSC31]: Consistent with the fair treatment mandated by TTU Ethics Policy.

(2) If an untenured tenure-track faculty member alleges that a decision not to reappoint him or her is:

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

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Comment [r32]: Consider inconsistent as more inclusive than noncompliant.

Comment [r33]: Established applies to both standards and procedures here and is sufficient.

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

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If the faculty committee concludes that there is probable cause for the faculty member's allegation, the Tenure Advisory Committee shall notify the ~~PSVPAAPSVP~~ and form the Hearing Panel, and the matter shall be heard in accordance with the following procedures. The faculty member shall be responsible for stating the specific grounds on which the allegations were based, and the burden of proof will rest upon the faculty member.

~~(3) The Hearing Panel will be made up of five members chosen by the Tenure Advisory Committee from a Tenure Hearing Committee formed of twenty tenured faculty members who will be elected annually, two Hearing Committee members being elected at large. Members of the Tenure Advisory Committee shall not be eligible for concurrent service on the Tenure Advisory Committee and the Hearing Committee.~~

(43) The Hearing Panel shall be selected in this fashion:

(a) The Tenure Advisory Committee shall, by lot, order the names of the members of the Tenure Hearing Committee, assigning them numbers one through twenty.

(b) Hearing Committee members deeming themselves biased shall remove themselves from the case.

(c) Either party in the dispute may strike no more than three names from those remaining on the list. ~~December 8, 2009 Page 9 OP 32.01~~

(d) The Tenure Advisory Committee shall designate the five with the lowest numbers remaining on the list to constitute the Hearing Panel.

(54) The Hearing Panel will select a chairperson 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 will not vote.

The Hearing Panel may also consult with the general counsel of the university on technical or procedural questions not directly bearing on the merits of the case if the Hearing Panel considers such consultation appropriate and helpful.

(65) The hearing will be private and confidential unless the faculty member elects to have a public hearing. The Hearing Panel shall determine procedures to be implemented in the hearing, procedures that shall afford both parties due process and fairness.

In every such hearing, the faculty member shall have the right to appear in person with legal counsel, retained by the individual, and to confront and cross-examine witnesses. The faculty member shall have the right to testify, but may not be required to do so, and may introduce in his or her behalf 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 shall apply to the hearing.

The university shall also have the right to legal counsel from the Office of General Counsel in the preparation and presentation of charges and have the same rights in the hearing as those accorded to the faculty member. An audio recording of the proceedings shall be made and delivered to the president, and a copy of this audio recording shall be made available to the respondent. The record will be transcribed only on the request of either the faculty member or the president at the expense of the requesting party.

(76) The Hearing Panel, by a majority of its total membership, shall make written findings of fact on each charge and make specific recommendations with regard to each of the charges and the charges as a whole. The Hearing Panel, by a majority of its total membership, may make supplementary suggestions it deems proper concerning disposition of the case. If minority findings, recommendations, or suggestions are made,

Comment [FSC34]: Previous paragraph was deleted (redundant).

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they shall be similarly treated. The chairperson of the Hearing Panel shall deliver the findings, recommendations, and suggestions to the president, who shall approve, reject, or amend them based on the record, and then transmit them along with his or her recommendations to the faculty member and to the hearing panel. The decision of the president will be final.

~~(87)~~ The procedures for determining adequate cause in termination cases are equivalent to the non-reappointment review procedures in sections 8.b (1) - (7). These procedures begin with preliminary consideration by a faculty committee and may close with presidential review (see sections 8.b (1) - (7)); those of tenure revocation (Section 2a)

**Comment [r35]:** The purpose of this section is unclear, and it appears unnecessary, since this entire section b concerns both non-reappointments and terminations.

**Comment [FSC36]:** Clarification.

### 93. Timelines for Notice of Non-reappointment

These notification timelines apply to any notice of non-reappointment that is issued to untenured tenure-track faculty (see section 7). They do not apply to terminations issued to non tenure-track faculty as listed in section 4.c. of OP 32.01, December 8, 2009 Page 10 OP 32.01

**Comment [FSC37]:** There is no Section 7, and this category was defined at the start.

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.

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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 shall be notified by December 15 of the academic year in which the appointment is to terminate.

d. Full-time 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.

### 104. Policy Implementation and Revision

This policy is to be implemented immediately upon approval by the Board of Regents. ~~Faculty members in a probationary status on that date will have the opportunity to choose the tenure policy — the policy applicable to them, or this policy — under which they wish to be considered for tenure.~~ All tenure-lined faculty members are subject to this tenure-policy's applicable provisions and procedures. The tenure of faculty members who have attained tenure under prior policies at Texas Tech University continues to be governed by the tenure revocation policies in effect when they were awarded tenure. This policy shall not be applied in derogation of any faculty member's contract rights.

**Comment [RAS38]:** This clause seems out of place in this OP

**Comment [RAS39]:** This clause seems out of place in this OP.

**Comment [FSC40]:** This clause provides the basis for grandfathering faculty, thus protecting them from any post hoc amendments to their contracts.

Revisions to this policy may be proposed to the Board of Regents by the president. The Tenure Advisory Committee, the Faculty Senate, or other academic groups may submit proposals to the PSVPAAPSVP. Such proposals shall be reviewed and approved by the Tenure Advisory Committee and the Faculty

**Comment [FSC41]:** Added in the spirit of shared governance.

Senate. Following this review, the ~~PSVPAAPSVP~~ Faculty Senate shall present approved proposals to the faculty for consideration. In this process, the voting faculty (as defined in the Constitution of the Faculty Senate) shall be polled for approval or disapproval of the proposals. If approved by ~~a two-thirds majority of~~ the voting faculty, the proposals shall be forwarded by the ~~PSVPAAPSVP~~ to the president for his review and then, if the president approves, 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~~ policy.

**Comment [FSC42]:** The Faculty Senate should be the body tasked with polling the voting faculty on issues of tenure. (It routinely does so on all other voting matters.)

DRAFT