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TEXAS TECH UNIVERSITY

Operating Policy and Procedure

### OP 32.02: Faculty Non-reappointment, Dismissal, and Tenure Revocation

**DATE:** January 4, 2023

**PURPOSE:** The purpose of this Operating Policy/Procedure (OP) is to outline and ensure understanding of procedures concerning the non-reappointment and dismissal of faculty or tenure revocation of tenured faculty.

**REVIEW:** This OP will be reviewed in November of odd-numbered years by the Vice Provost for Faculty Success with substantive revisions presented to the Provost and Senior Vice President (PSVP). Any change in this OP must be conducted in accordance with section 5 herein.

#### POLICY/PROCEDURE

##### Involuntary Separation of Employment

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

- a. Revocation of tenure, which is termination of a tenured faculty member's employment through traditional due-process procedures;
- b. Non-reappointment, which is the cessation of a non-tenured faculty member's employment at the end of the stated appointment period; and
- c. Dismissal, which is immediate termination for cause of a non-tenured faculty member's employment before the expiration of the stated appointment period.
- d. Summary Dismissal, which is termination for Serious Misconduct of a tenured or untenured faculty member's employment following an expedited process outlined below.

#### 2. Tenure Advisory Committee

- a. The Tenure Advisory Committee may consider matters referred to it by members of the university community pertaining to tenure or academic freedom. 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. This timeline may be extended by the President to a total of 30 business days (maximum), as deemed necessary, by informing the committee of the reason for the delay.
- b. The Tenure Advisory 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, non-voting members who are the PSVP (or a designate appointed by the PSVP) and a dean selected by the Provost's Council. The

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Commented [FS&W1]: Revised list now includes "Summary Dismissal".

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

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

Commented [FS&W2]: This edit sets a reasonable time limit.

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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.

3. Procedures for Tenure Revocation, Summary Dismissal, Non-reappointment, and Dismissal Cases

The procedures for employment separation 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.

a. Tenure Revocation

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.

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.

As provided by Texas Education Code, Section 51.942, some examples of adequate cause for revocation of tenure may include a determination, consistent with the procedures specified below, that the faculty member has engaged in any of the following:

- i. Continuous or repeated exhibition and assessment of professional incompetence;
- ii. Continuous or repeated failure to perform expected duties or meet professional responsibilities of the faculty member's position;
- iii. Failure to successfully complete any documented and required post-tenure review professional development program;
- iv. Engagement in conduct involving moral turpitude that adversely affects the institution or the faculty member's performance of duties or meeting of responsibilities;
- v. Engagement in egregious conduct in violation of laws or University system or institution policies substantially related to the performance of the faculty member's duties;
- vi. Conviction of a crime affecting the fitness of the faculty member to engage in teaching, research, service, outreach, or administration;

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Commented [FS&W3]: Moved up from below.

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Commented [FS&W4]: This list in our OP 32.02 mirrors the list given in SB18. However, the bar of the burden of proof for TTU has been raised by adding adjectives that are highlighted below, such as "continuous or repeated". Such qualifiers protect faculty from arbitrary accusations based on isolated transgressions.

Deleted: tenure may be revoked and tenured faculty may be dismissed with appropriate due process on a determination a faculty member has engaged in any of the following (the following is a non-exhaustive list of actions which may result in actions including but not limited to tenure revocation proceedings):

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Commented [FS&W5]: These adjectives were added to protect faculty.

Commented [FS&W6]: This term has been defined by the 1940 statement of AAUP to signify that the action violates common-sense academic standards of moral behavior: "The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally."

Commented [FS&W7]: An added safeguard of this passage is that the immorality must directly affect TTU or the faculty member's job. Please note that the due process procedure for tenure revocation means that all of these terms will be interpreted by a "jury of our peers" in the form of the Hearing Committee.

Commented [FS&W8]: This qualifier was added to raise the bar of the burden of proof on TTU so that faculty won't need to worry about having tenure revoked based on minor infractions.

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vii. Continuous or repeated engagement in unprofessional conduct that significantly and adversely affects the institution or substantially impedes the faculty member's performance of duties or meeting of responsibilities; or

viii. Intentional or knowing falsification of the faculty member's academic credentials.

**Commented [FS&W9]:** These qualifiers were added to raise the bar of the burden of proof on TTU so that faculty won't need to worry about having their tenure revoked based on minor infractions. (The addition of "continuous or repeated" is consistent with items i and ii above.)

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**Commented [FS&W10]:** These qualifiers were added to raise the bar of the burden of proof on TTU so faculty won't need to worry about having their tenure revoked based on honest mistakes in their CV.

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The 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. If formal charges are to be filed, they will be filed by the President. The faculty member will be advised, in writing by the Office of the PSVP, of the proposed revocation of tenure and the basis/bases for it within 10 business days of the President's decision to file formal charges.

**Deleted:** Each University will be responsible for providing its policies and procedures regarding tenure, including amendments, for annual filing as required by Texas Education Code, Section 51.942(g).

If a faculty member wishes to challenge the grounds for tenure revocation, the faculty member may do so utilizing the procedures specified below. The issue will be determined by a 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 their conduct constitutes adequate cause, or does not choose to have a hearing, he/she may offer in writing their 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.

**Deleted:** 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.

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.

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.

**Commented [FS&W11]:** This deletion was recommended by the Tenure Advisory Committee.

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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 PSVP (or their representative) shall conduct a thorough, confidential, expeditious review, which shall be concluded within 30 business days, if possible. This review and the recommendations of the investigating team shall be considered by the President in determining whether to proceed with formal charges to dismiss the faculty member for cause.

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In all cases of formal charges, the faculty member will be informed of the charges in writing by the Office of the PSVP, which, on reasonable notice, will be considered by a Hearing Panel convened by the President within 30 business days, if possible. In the event that a delay of an additional 30 days (maximum) is needed, the faculty member will be informed of the reason for the delay. The Hearing Panel will be made up of five members chosen by the Tenure Advisory Committee from a Tenure Hearing Committee, which is formed of twenty tenured faculty members, none of whom has served in any administrative post at or above the level of department chair during the preceding three years. 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 4 years with 5 membership positions terminating August 31 of each year. 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 they were elected to serve less than two years of an unexpired term of a previous member. The Faculty Senate President may appoint members to fill vacancies between annual election cycles. Members of the Tenure Advisory Committee shall not be eligible for concurrent service on the Tenure Advisory Committee and the Hearing Committee.

**Commented [FS&W12]:** This edit ensures that faculty are judged by a jury of their peers and reflects the language in Section 2b.

**Deleted:** who will be elected annually.

- (1) The Hearing Panel shall be selected in this fashion:
  - (a) The Tenure Advisory Committee shall order the names of the members of the Tenure Hearing Committee by lot, assigning to 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.
  - (d) The Tenure Advisory Committee shall designate the five with the lowest numbers remaining on the list to constitute the Hearing Panel.
- (2) The Hearing Panel will select a chairperson from its membership and may, if it chooses, request appropriate legal counsel from a member of the Law School faculty or, if none is available, from a law firm of its choosing, provided that costs are affordable, 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 panel considers such consultation appropriate and helpful. 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 that shall afford both parties due process.

**Commented [FS&W13]:** This deletion was recommended by the Tenure Advisory Committee.

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The faculty member shall have the right to appear in person with legal counsel, retained by the individual. During the hearing, legal counsel may advise and consult with the faculty member, but only the faculty member shall have the right to address the panel and 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 their behalf all evidence and material, written or oral, that he/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.

**Deleted:** 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.

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The university shall also have the right to legal counsel from the Office of General Counsel in the preparation and presentation of charges and will 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 of Regents, and a copy of this audio recording shall be made available to the faculty member. The record will be transcribed only on the request of either the faculty member or the President at the expense of the requesting party.

- (3) 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 their recommendations to the faculty member and to the Chancellor, and then to the Board of Regents 30 days or more in advance of the date scheduled for formulation of the next Board of Regents meeting agenda.

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(4) 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 Board of Regents then overrules the recommendations of the Hearing Panel, it will state its reasons for its actions in writing to the President, who will transmit the decision to the Hearing Panel. 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.

b. Summary Dismissal. A faculty member, with or without tenure, may be summarily dismissed—and tenure revoked if the faculty member is tenured—if the reason for dismissal is a finding of Serious Misconduct that has been substantiated by an investigation conducted by the System and/or its component institutions, or federal, state, or local agencies with applicable jurisdiction over the subject matter. For purposes of a summary dismissal proceeding, Serious Misconduct includes a finding of any of the following:

Commented [FS&W14]: SB18 left it up to the universities themselves to define this. The list that follows was achieved after extensive discussion between FS&W Comm., General Counsel, & Vice Provost. FS&W approved this final list by unanimous vote.

i. Sexual misconduct;

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ii. Egregious scientific/research/scholarly misconduct;

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iii. Fraud;

Commented [FS&W15]: Added by Pres. Schovanec to broaden it beyond STEM.

iv. Violence or threat of violence in the workplace (means a written, verbal, electronic, or behavioral message that, either explicitly or implicitly, communicates the intent to inflict, or cause to be inflicted, physical harm to persons or property);

v. Intentional or knowing falsification of a faculty member's academic credentials; or

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vi. Conviction of a crime substantially affecting the fitness of the faculty member to engage in teaching, research, service, outreach, or administration

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A faculty member, with or without tenure, may be subject to summary dismissal, with or without suspension without pay pending dismissal, if there is a substantiated finding of "serious misconduct" (TTU System Regulation 07.07; TTU Operating Policy 32.02).

Prior to summary dismissal, with or without suspension without pay, a faculty member will be provided with:

- written notice of the allegation(s) against the faculty member (including description of evidence), plus copies of non-confidential or non-privileged investigative reports, with appropriate redactions, that are available to the institution at the time of written notice;

and

- an opportunity for the faculty member to respond in a hearing (“Hearing”) overseen by a University-designated Administrative Panel:
  - The Administrative Panel will consist of three members of the Tenure Hearing Committee, who are chosen by the procedure described in OP32.02 Section 3a(1), the President or tenured Vice President of the Faculty Senate, and a tenured Vice Provost appointed by the Provost.
  - The hearing, to be conducted by the Administrative Panel, will take place no earlier than 10 business days of faculty member’s receipt of notice. During the hearing, the University has the burden of proof.
  - The faculty member shall have the right to appear in person with legal counsel, retained by the individual. During the hearing, legal counsel may advise and consult with the faculty member, but only the faculty member shall have the right to address the panel and confront and cross-examine witnesses.

The Administrative Panel will render a decision by majority vote via secret ballot and will make a written determination within 10 business days of the Hearing regarding whether the faculty member will be subject to summary dismissal. This determination shall promptly be provided to the faculty member and the President.

- If the faculty member is determined to be subject to summary dismissal, the written determination will indicate the effective date of dismissal and outline the opportunity for post-determination appeal.
- If a suspension without pay has not already been imposed, a summary dismissal determination by the Administrative Panel will result in an immediate suspension without pay.
- The written determination will include the detailed basis for the decision.
- If the faculty member wishes to appeal a determination of summary dismissal, the faculty member will have 10 business days from the date of receipt of the written determination to appeal the determination to the University president.
  - If no appeal is filed, the president will summarily dismiss the faculty member as of the effective date specified in the written determination issued by the Administrative Panel.
  - If an appeal is filed, the president will render a final decision regarding the matter within 15 business days after receipt of the faculty member’s appeal. The president’s decision shall be final.

**Commented [FS&W16]:** This section affords accused faculty member of genuine due-process, corresponding to AAUP guidelines and USA rules of jurisprudence, including the right to see the accusatory evidence, sufficient time to retain legal counsel, the right to a trial by a jury of peers (in the form of Administrative Panel), the presumption of innocence until proven guilty, the burden of proof being on TTU. Even though the timeframe is accelerated relative to traditional tenure revocation, FS&W considers it to be sufficient to afford extensive due process. Again, our vote to approve this section was unanimous.

**Commented [FS&W17]:** Note that **vindication** by the Administrative Panel (your peers) cannot be overturned by a veto of the TTU President, who can only overrule a **conviction** (based on appeal). That appeal is allowed to proceed **before** Summary Dismissal, thereby affording a fair hearing **before** being fired.

b. Non-reappointment and Dismissal of Non-tenured Faculty Members

The following procedures on non-reappointment and dismissal for cause apply to untenured tenure-track faculty members, and to non-tenure-track faculty members who have served more than six full years and been granted continuing appointment status.

The university is not required to give an untenured tenure-track faculty member a reason for a decision of non-reappointment, though such notification may be given except in cases where it would harm the university. However, each faculty member is entitled to see all of their personnel file and, at their expense, to obtain a copy of the information contained therein.

**Deleted:** A faculty member who has been found to have engaged in Serious Misconduct will be subject to the summary dismissal process and procedures as set forth in the respective component University’s Operating Policies and Procedures in accordance with Texas Education Code Section 51.942(c-4).

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- (1) If an untenured tenure-track faculty member alleges that a decision not to reappoint him/her is:
  - (a) Caused by considerations that violate academic freedom;
  - (b) For constitutionally impermissible reasons; or
  - (c) Significantly noncompliant with the university’s established standards or procedures; then

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

If the faculty committee concludes that there is probable cause for the faculty member’s allegation, the Tenure Advisory Committee shall notify the PSVP 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. If the faculty committee concludes there is no probable cause for the faculty member’s allegation, the process will end.

- (2) The Hearing Panel shall be selected in this fashion:
  - (a) The Tenure Advisory Committee shall order the names of the members of the Tenure Hearing Committee by lot, assigning to 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.
  - (d) The Tenure Advisory Committee shall designate the five members 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 member of the Law School faculty or, if none is available, from a law firm of its choosing, provided that costs are affordable, but not from the Office of General Counsel.<sup>§</sup> 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.

- (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, which shall afford both parties due process.

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 their behalf all evidence and material, written or oral, that he/she considers to be relevant or material to the case. Neither the Texas Rules of Civil

**Commented [FS&W18]:** This deletion was recommended by the Tenure Advisory Committee.

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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 will 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.

- (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 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, 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 ~~their~~ recommendations, to the faculty member and to the Hearing Panel. The decision of the President will be final.

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**4. Timelines for Notice of Non-reappointment**

These notification timelines only apply to any notice of non-reappointment that is issued to untenured tenure-track faculty. They do not apply to dismissals issued to non-tenure-track faculty.

- 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.
- 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.

**5. Policy Implementation and Revision**

This policy is to be implemented immediately upon approval by the Board of Regents. All tenured and tenure-track faculty members are subject to this policy’s applicable provisions and procedures. Faculty members who have attained tenure under prior policies at Texas Tech University are governed by the tenure revocation policies in effect when they were awarded tenure, but Texas Education Code, Section 51.942, requires all faculty, regardless of their tenure status, year of appointment, or year of tenure attainment, be subject to Summary Dismissal following a determination of Serious Misconduct. This policy shall not be applied in derogation of any faculty member’s contract rights as set forth in the faculty member’s letter of appointment,

Commented [FS&W19]: This is required by SB18.

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nor shall it be used to restrain faculty members in their exercise of academic freedom or constitutional rights.

Revisions to this policy may be proposed to the Board of Regents by the President upon concurrence of the Chancellor. The Tenure Advisory Committee, the Faculty Senate, or other academic groups may submit proposals to the PSVP. Such proposals, regardless of their source, shall be reviewed and approved by the Tenure Advisory Committee and the Faculty Senate. Following this review, the Faculty Senate shall present approved proposals to the faculty for consideration. In this process, the voting faculty<sup>§</sup> shall be polled for approval or disapproval of the proposals. If approved by a majority of those voting, the proposals shall be forwarded by the PSVP to the President for their review and then, if the President approves, to the Chancellor, and then 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 policy.

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Texas Tech University will be responsible for providing its policies and procedures regarding tenure for annual filing as required by Texas Education Code, Section 51.942(g).

<sup>§</sup> The voting faculty consists of all tenured or tenure-track faculty on full-time appointments who have completed a residence of one year at this university.

<sup>\*</sup> The voting faculty consists of all tenured or tenure-track faculty on full-time appointments who have completed a residence of one year at this university

<sup>†</sup> The State of Texas requires that employment of outside counsel must be approved by the State Attorney General.

<sup>‡</sup> The State of Texas requires that employment of outside counsel must be approved by the State Attorney General.