

## **Chapter 7 Termination of Tenured Faculty**

### **7.0 OVERVIEW**

Faculty can be subject to two types of termination: Administrative Termination and Reduction in Force.

### **7.1 ADMINISTRATIVE TERMINATION**

#### **7.1a Defining Cause**

“Cause” shall mean one or more of the following:

- failure to complete the remedial conditions of a negative post-tenure review and/or to remedy the concerns raised by the review;
- failure to perform adequately the duties of the position so as to constitute incompetence and/or habitual neglect of duty, including, but not limited to, failure to satisfy the conditions of the remediation process established as the result of a negative post-tenure review;
- misconduct related directly and substantially to the fitness of the faculty member in his or her professional capacity as a teacher, researcher, or librarian;
- conduct or action which is not protected by the Constitution or laws and which clearly interferes with the academic functions of the University;
- prolonged inability for medical reasons to perform the duties required for the position; termination of a tenured faculty member for medical reasons will be based upon clear and convincing medical evidence that he or she cannot continue to fulfill the terms and conditions of appointment;
- lapse or withdrawal of licensure to practice in the State of South Carolina; the loss of licensure in any professional area may also be considered as a cause for termination if the license is necessary for the performance of one's academic duties; and
- bona fide reduction in staff, which may be caused by financial exigency or by discontinuance or reduction in size of a program or instructional unit for reasons not related to financial exigency.

### **7.2 PROCEDURES**

#### **7.2a Option 1: Assignment of New Duties**

After it becomes evident to the chancellor that termination may be desirable, there must be discussions between the faculty member and the chancellor with the intent of arriving at a mutually agreed-upon resolution. The chancellor may assign the faculty member to new duties if his or her continuance in normal duties threatens immediate harm to the faculty member or to others.

#### **7.2b Option 2: Termination of Employment**

If the chancellor and the faculty member are unable to reach a resolution, the chancellor informs the chair of the Faculty Welfare Committee of their intention to terminate a tenured member of the faculty. The chancellor gives this chair and the faculty member a statement of charges, framed with reasonable particularity, and the basis for these charges, also stated with reasonable particularity.

### **7.3 GRIEVING NOTICE OF TERMINATION**

Faculty members who have been notified by the chancellor of the intention to initiate

termination proceedings may choose to grieve this action by notifying the chair of the Faculty Welfare Committee of their intent.

### 7.3a Forming the Grievance Panel

The chair of the Faculty Welfare Committee draws by lot the names of three members from the grievance pool, excluding those from the faculty member's academic unit, to serve as a grievance panel. The panel chooses its own chair. The function of the grievance panel is to determine whether the facts alleged, if true, establish the charge and whether the charge is of such a nature as to warrant termination. The discussions, records, and recommendations of the grievance panel remain confidential.

### 7.3b Grievance Panel Procedures

Within twenty (20) days after its formation, the chair of the grievance panel informs in writing both the chancellor and the faculty member of its recommendations and the reasons for those recommendations. All days referred to in the procedure are calendar days. When the last day of the time period falls on a weekend or University holiday, the effective date is the next regular business day. The day following the actual day of notification is counted as the first day.

### 7.3c Chancellor Procedures

Should the chancellor then wish to pursue termination proceedings, the chancellor informs in writing the faculty member of his or her intention to terminate, including a precise statement of specific charges. The letter shall also inform the faculty member of his or her right to request a hearing by the Promotion and Tenure Committee.

If a faculty member does not request a hearing by the Promotion and Tenure Committee within ten (10) days of receipt of notification by the chancellor, the chancellor, without recourse to further proceedings, may send a written letter of termination.

If a faculty member desires a hearing by the Promotion and Tenure Committee, he or she must inform the Committee and the chancellor in writing within ten (10) days of the receipt of notification by the chancellor of the proposed termination.

### 7.3d Appeal to the Promotion and Tenure Committee

Upon receipt of a written request for a hearing, the chair of the Promotion and Tenure Committee schedules a hearing no sooner than twenty (20) days and no later than sixty (60) days from the date of receipt. All parties must be given written notice as to the time, date, and place.

The following standards and procedures apply to the conduct of the hearing:

- The hearing is closed.
- A verbatim record of the hearing(s) is taken and a copy made available to the faculty member, without cost, upon request.
- The burden of proof that adequate cause exists rests with the chancellor and is satisfied only by clear and convincing evidence in the record, as established at the hearing, considered as a whole.
- Faculty members and the chancellor are permitted to have an academic advisor and/or counsel of their choice present during the proceedings.
- Faculty members are afforded an opportunity to present their case and to defend themselves, to obtain necessary witnesses, and documentary or other evidence. The

chancellor cooperates with the Committee in making available documentary or other evidence.

- Faculty members and their advisors or counsel and the chancellor or the chancellor's representative have the right to confront and to cross-examine all witnesses. Where the witness cannot or will not appear but the Committee determines that the interest of justice requires admission of witnesses' statements, the Committee identifies the witnesses and, if possible, provides for interrogatories.
- The Committee is not bound by strict rules of legal evidence and may admit any evidence that is of probative value in determining the issues involved. Every possible effort is made to obtain the most reliable evidence available.
- The findings of fact and the decision of the Committee are based solely on the hearing record.

If the Promotion and Tenure Committee concludes that adequate cause for termination has been established, the Promotion and Tenure Committee chair informs the chancellor and faculty member in question.

If the Promotion and Tenure Committee concludes adequate cause for termination has not been established, or that an action short of termination is more appropriate, the Committee makes a recommendation to both the chancellor and the faculty member giving supporting reasons. The Committee may recommend to the chancellor that the proceedings for termination cease.

#### 7.4 ADDITIONAL LEVELS OF APPEAL

Faculty members may appeal an adverse decision at Upstate to University of South Carolina system officials.

##### 7.4a Appeal to the USC System President

Within ten (10) days of receipt of the Promotion and Tenure Committee's report, the chancellor informs in writing the faculty member and the committee chair of this decision together with supporting reasons. The chancellor informs the faculty member of the right to appeal an adverse decision to the president of the university system.

If the faculty member takes no action within ten (10) days of receipt of notification by the chancellor, the chancellor may send a letter of termination. If the faculty member appeals to the president of the USC system, the president will respond within twenty (20) days.

##### 7.4b Appeal to the Board of Trustees

Should the president also render an adverse decision, the faculty member, within ten (10) days, may appeal to the Academic Affairs and Faculty Liaison Committee of the Board of Trustees. The Academic Affairs and Faculty Liaison Committee has thirty (30) days to render a decision.

##### **7.4c Final Decision**

The decision by the Academic Affairs and Faculty Liaison Committee of the Board of Trustees is final within the university. If the Board's decision is to support the intention of the

chancellor, the chancellor may then send formal notification of termination.

## **7.5 TERMINATION BECAUSE OF BONA FIDE REDUCTION IN FORCE (RIF)**

HR 1.45 defines Reduction of Force as “The procedure used by the university to eliminate or reduce a portion of one or more filled FTE positions in one or more organizational units within the university.”

### **7.5a Termination Because of Financial Exigency**

Financial exigency means an imminent financial crisis that threatens the survival of the university as a whole and which cannot be alleviated by less drastic measures than termination of tenured faculty members.

#### **7.5b Committee of 6**

A committee of the faculty must participate with the administration in the decision that a condition of financial exigency exists or is imminent and that all feasible alternatives to termination of tenured appointments have been pursued. This committee, called the Committee of 6 hereafter—will be formed at the discretion of the Faculty Chair, in consultation with the Chancellor. Membership shall consist of six members of the faculty, comprised of one tenured or tenure-track faculty member from CAHSS, CoEHPH, CST, JCBE, MBCON and one from the Library. Members are appointed by the faculty chair with the agreement of the Faculty Advisory Committee. Following recommendations from the American Association of University Professors, committee membership must include a mix of tenured and untenured faculty members.

The Committee of 6 must participate in the formulation of criteria for determining termination because of financial exigency. Length of service must be appropriately included among the criteria; senior faculty will be given preference for retention. The Committee of 6, with input from the Faculty Advisory Committee, must participate in the decision as to which appointments are to be terminated.

Faculty members receiving notification of an intention to terminate because of financial exigency are entitled to a hearing before the Promotion and Tenure Committee as specified above (see 7.1b Procedures). The issues in this hearing by the Promotion and Tenure Committee may include the following:

- the existence and extent of the condition of financial exigency. The burden rests upon the chancellor to prove the existence and extent of the condition;
- the validity of the educational judgments and criteria for determining termination; and
- whether the criteria are being properly applied in the individual cases.

### **7.5c Termination Because of Reduction in Program or Instructional Unit**

The decision to discontinue or reduce a program or instructional unit is based upon long-range judgments that the educational mission of the university as a whole is enhanced by the discontinuance in contrast to considerations that reflect cyclical or temporary conditions.

The decision to discontinue or reduce a program or instructional unit must be arrived at jointly by the chancellor, the Committee of 6, and the Faculty Advisory Committee as described above (see 7.5a *Termination Because of Financial Exigency*).

Every effort must be made to place tenured faculty members affected by discontinuance in another suitable position within the institution. If placement in another position

would be facilitated by a reasonable period of training, financial and other support for such training will be offered. Only if no position is available may a tenured member of the faculty be terminated for reasons of discontinuance.

A tenured faculty member receiving notification of an intention to terminate because of discontinuance is entitled to a hearing before the Promotion and Tenure Committee in accordance with the procedures described above (see 7.2a).

#### 7.5d Advance Notice of Termination

A faculty member receiving notification of an intention to terminate because of discontinuance or reduction in program or instructional unit is given twelve months' notice.

#### 7.5e Opportunity for Reinstatement

In all cases of termination of appointment, (excluding termination for cause), the place of the faculty member concerned is not to be filled by a replacement within a period of three years, unless the released faculty member is offered reinstatement and ten (10) working days in which to accept or decline the position.