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DOC 2020-05 Faculty Hearing Committee on Academic Freedom and Tenure Bylaws and Operating Procedures

University of Dayton. Faculty Affairs Committee

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Faculty Hearing Committee on Academic Freedom and Tenure Bylaws and Operating Procedures

Approved, May 3, 2000 Amended, August 2012; December 2014;
April 17, 2020

I. Area of Competence

A. The Faculty Hearing Committee on Academic Freedom and Tenure (hereafter the Committee) hears disputes involving tenure, dismissal, and/or academic freedom for **“faculty members” as defined in III(D) and, for part-time faculty, grievances related to academic freedom only.**

B. Disputes arising from matters such as promotions, salaries, assignment of space or other facilities, assignment of teaching duties, and other sanctions not otherwise addressed by Section I(D) below, are heard by the Faculty Hearing Committee on Grievances (hereafter FHC-G).

C. If the issues in a dispute are such that it could be brought before both the Committee and the FHC-G, a case involving tenure must first be submitted to the Committee. At no time would the Committee and the FHC-G handle any complaints in the same case simultaneously.

D. All disputes involving allegations of faculty sexual misconduct, harassment, discrimination or retaliation in violation of the University’s Nondiscrimination and Anti-Harassment Policy shall be addressed via the applicable Equity Complaint Resolution Process. However, Faculty members shall have the opportunity to appeal to the Committee any sanction imposed via the Equity Complaint Resolution Process on the grounds that the sanction violates the faculty member’s right to academic freedom. In addition, when the sanction imposed is dismissal, the faculty member may appeal the appropriateness of that sanction to the Committee. **In any such appeal, the Committee must accept all findings of fact from the Equity Complaint Resolution Process because matters involving sexual misconduct, harassment, discrimination or retaliation are not within the area of competence of the Committee.**

E. In disputes alleging bias, discrimination or retaliation in the tenuring process, the Committee may hear evidence or findings as investigated by the Equity Compliance Office and/or presented by the faculty member directly to the Committee. The Committee will comply with the University’s “Mandatory Reporting Policy but may continue with the complaint independently.

II. Operating Procedures

A. The Committee consists of nine faculty members elected for staggered 3-year terms. These faculty members are elected from a list of full-time tenured faculty, none of whom may be a Department Chair, an administrative official, or on the staff of a Dean. No member of the Committee may be a Faculty Mediator or a member of the FHC-G.

B. During September of every academic year, the Associate Provost for Faculty and Administrative Affairs will convene the Committee for the purpose of electing a Chair and a Secretary. **The Chair convenes the committee, communicates with all parties and persons and guides the proceedings as set forth in detail below. The Secretary records the minutes of all meetings, records votes and outcomes of the various stages of the process. The Secretary and Chair, in collaboration with the Committee members, are responsible for finalizing all Committee recommendations required in this document. The names and contact information for those holding those positions should be conveyed to the Senate and published on the Office of the Provost's website for Faculty Personnel Policies.**

C. Prior to the first meeting of the academic year, the Associate Provost for Faculty and Administrative Affairs will distribute copies of the Committee's Bylaws and Operating Procedures of the Committee to all members.

D. All Committee members are expected to attend all meetings **and hearings and deliberate in person except for extenuating circumstances agreed upon by the Committee members where electronic means may be substituted.**

E. All proceedings, discussions and deliberations of the Committee shall be held strictly confidential, except as provided in these Bylaws or otherwise as required by law.

III. Definition of Terms

A. "Dismissal" means termination of a faculty member with tenure, or a non-tenured faculty member with a special or probationary appointment before the end of the specified term **of their appointment and for lecturers, clinical faculty or faculty of practice, before the end of their current contract.**

B. "Adequate cause" for dismissal exists when the faculty member fails to demonstrate fitness in her or his professional capacity as a teacher or researcher; chronically fails to meet expectations; engages in unlawful, unethical and/or morally reprehensible behavior; violates University policy and protocols (including the faculty policies and procedures enumerated in the faculty handbook); fails to fulfill a contractual obligation to the University; becomes unable to perform the essential functions of the position with any legally-required accommodation; engages in intellectual dishonesty; exhibits professional incompetence; engages in violent, threatening, abusive, insubordinate and/or disruptive behavior; is excessively absent; poses a safety threat to others; is no longer legally authorized to work in the United States, and/or engages in other similar behavior.

C. "Academic freedom" is defined in the 1940 AAUP Statement of Principles of Academic Freedom and Tenure. The Statement affirms the right of any faculty member, in the contexts of either teaching or research, to take a scholarly stand, in writing or in speech, on any topic that may reasonably be considered to be within the academic competence of that person. No faculty member may be dismissed,

denied tenure, or otherwise penalized for exercising this right. [See Faculty Handbook, Section IV, section 4 (“University Regulations on Academic Freedom and Tenure”).]

D. “Faculty member” denotes one employed by the University of Dayton whose activities are in service of the educational function of the institution; who is affiliated with an academic department, center, or University Libraries; and who has been granted faculty rank or is a full-time non-tenure track faculty member. “Faculty member” will normally identify the person making the complaint or appeal. **For grievances related to academic freedom, the provisions of these bylaws apply to all “faculty members” as defined above, as well as part-time faculty.**

E. A “prima facie case” is the allegation of sufficient facts that, if proven to be true, could establish a violation of academic freedom, or the denial of tenure or dismissal without adequate cause, such that a hearing before the Committee is warranted.

F. “Quorum” is any six FHC members.

IV. Academic Freedom and Tenure Complaints

A. Informal resolution: Faculty members and the Administration are strongly encouraged (but not required) to attempt informal resolution of any dispute involving questions of academic freedom and/or tenure, including but not limited to the following:

1. Consultation with the Department Chair.
2. Consultation with the Dean of the Unit.
3. Consultation with the Associate Provost for Faculty and Administrative Affairs or the Provost.
4. Mediation by a Faculty Mediator. The faculty member may obtain a list of Faculty Mediators from the Provost’s office. All communication with and by the Faculty Mediator relating to the dispute shall be confidential. Such communications cannot be offered or introduced into evidence at any hearing by the Committee. The fact that the parties are participating or have participated in (or elected not to participate in) mediation is not confidential.

B. Formal Complaints and Appeals

1. A faculty member may file a Complaint/Appeal with the Chair of the Committee relating to issues within the Committee’s area of competence. **The Complaint/Appeal must follow the format as attached in Appendix A and may be filed via email. It is the faculty member’s obligation to confirm that the Chair of the Committee receives the Complaint/Appeal.**

2. The Provost shall present any recommendations for dismissal to the Chair of the Committee accompanied by a written basis for the recommendation and supporting documentation and evidence.

3. In the case of denial of tenure or non-renewal of a contract, a Complaint must be filed within thirty (30) calendar days of the notification of the denial or non-renewal.

4. The Chair will distribute the Complaint/Appeal/Recommendation for dismissal and all other submissions to the other members of the Committee **within (5) five business days.**

6. A faculty member may be permitted to amend his/her Complaint/Appeal with permission of the Chair of the Committee. Such permission shall not be unreasonably withheld. A request to amend made within fourteen (14) calendar days of a scheduled hearing shall be deemed unreasonable and denied.

7. Committee members may recuse themselves from participating in hearing any Complaint/Appeal if they deem themselves disqualified based upon bias or a conflict of interest.

8. Upon receiving a Complaint/Appeal **or recommendation of dismissal by the Provost**, the Committee will make a preliminary determination (by a majority vote of a quorum) whether the faculty member's allegations present a *prima facie* case, sufficiently grounded in fact and supported by applicable University policies and standards to warrant a Hearing before the Committee. The Committee will meet to start deliberating on the issue of whether a *prima facie* case exists. That meeting must occur within fourteen (14) calendar days of the Committee receiving the Complaint/Appeal.

9. Should the Committee determine that the Complaint/Appeal does not state a *prima facie* case sufficient to warrant a Hearing, the Committee may at its discretion afford the faculty member an opportunity to amend her/his Complaint/Appeal within fourteen (14) business days. Otherwise, a Complaint/Appeal that does not state a *prima facie* case will be dismissed and the dismissal will be final and not subject to further appeal or review.

10. If the Committee determines that the Complaint/Appeal states a *prima facie* case, the Chair will notify the faculty member and the Administration **within three (3) working days.** The Chair will also schedule the case for a Pre-Hearing (See Section VII(B) below). At the time the Committee determines the *prima facie* case requirement is met, the Committee will provide a copy of the Complaint/Appeal (including any amendments and supporting documentation) to the Administration.

V. Review of Faculty Dismissals

A. The Committee has authority to review cases of proposed dismissals of a faculty member with tenure or a non-tenured faculty member with special or probationary appointments before the end of the specified terms. In addition, the Committee will review the appropriateness of the sanction of dismissal imposed for a violation of the Nondiscrimination and Anti-Harassment Policy.

B. The Provost or her/his designee shall provide to both the Committee and the faculty member a statement of reasons for any such proposed faculty dismissal.

C. Upon receipt of a statement of reasons for a faculty dismissal, the Chair shall notify and provide copies to the Committee members.

D. The Chair will notify the faculty member and the Administration and will initiate the Hearing Procedure by scheduling the case for a Pre-Hearing (See Section VII(B) below) and providing the Administration with a copy of the Complaint/Appeal.

E. The faculty member may at any time elect not to proceed with a hearing.

VI. Appeal of Sanctions Less Than Dismissal for Nondiscrimination and Anti-Harassment Policy Violations

Faculty members receiving sanctions less than dismissal imposed for violating the Nondiscrimination and Anti-Harassment Policy who believe the sanction implicates issues of academic freedom may appeal the appropriateness of the sanction imposed to the Committee pursuant to Section IV.B above.

VII. Hearing Procedure

A. The Administration's Response: Upon receiving notice from the Committee that a Hearing will be held on a Complaint or Appeal, the Administration may file a written response to the Complaint or Appeal within fourteen (14) calendar days.

1. The Administration should submit its Response **and any supporting evidence** to the Chair. Submission may be accomplished via email, but the Administration is responsible for confirming that the Chair received the Response. The Chair will distribute the Response and all other submissions to the other members of the Committee **and to the faculty member within three (3) business days.**

2. The Administration's Response or any part of it may be amended with the permission of the Chair. Such permission shall not be unreasonably withheld **and will be conveyed to the faculty member within three (3) business days.**

3. The Committee may proceed, notwithstanding any failure of the Administration to submit a Response within the time provided, to hold a Hearing and issue a report on the Complaint.

B. Pre-Hearing: The purpose of the Pre-Hearing is to simplify and clarify issues as much as possible, provide for an exchange of evidence between the parties, set a date for the Hearing, and resolve any other necessary matters. **Unless otherwise agreed upon by the parties, the Pre-hearing should take place within fourteen calendar days of the Committee's determination of a prima facie case.**

1. The Pre-Hearing will be attended by the members of the Committee, the Administration and/or appointed delegate, the faculty member and/or appointed delegate, and such academic advisor and/or legal counsel as either party may choose.
2. At the Pre-Hearing, the Committee will:
 - a. announce the names of any Committee members who have recused themselves;
 - b. allow each party to challenge and exclude a maximum of two members of the Committee with or without stated cause;
 - c. clarify the issues;
 - d. seek stipulations of the facts;
 - e. identify witnesses and/or impose restrictions on the number of witnesses;
 - f. encourage further exchange of documentary or other information;
 - g. discuss such other Pre-Hearing objectives as will make the Hearing fair, effective, and expeditious;
 - h. set a date for the Hearing agreeable to both parties (this date shall be no sooner than thirty (30) calendar days after the Pre-Hearing), and prepare notice of the Hearing, with specific issues stated in writing;
 - i. provide opportunity to all parties to reach agreement without a further Hearing (in which case, the Committee will report to the Provost, President, and the faculty member).

C. The Hearing:

1. The University, insofar as it is possible, will secure the cooperation of witnesses and make available necessary documents and other evidence within its control. The Hearing will not be open to the public.
2. Both the faculty member and the Administration will have the right to confront and cross-examine all witnesses. Where the witness cannot or will not appear, but

the Committee determines that the interest of justice requires admission of the witness' statement, the Committee will identify the witness, disclose the statement, and if possible provide for interrogatories.

3. A verbatim record of the Hearing will be taken (a court reporter will be hired by the Provost's Office to make the record), and one printed or electronic copy of the transcript will be made available to the faculty member without cost **upon request within fourteen (14) days of the conclusion of the hearing.**

4. At the opening of the Hearing, the Chair will state the issues before the Committee, reporting on the stipulations agreed upon at the Pre-Hearing.

5. The Hearing will be attended by the members of the Committee, the Administration and/or appointed delegate, the faculty member and/or appointed delegate, and such academic advisor and/or counselor as either party may choose.

6. Presentations by Both Parties

a. Unless otherwise agreed by the parties and the Committee, the faculty member will present her/his case first. Either the faculty member or delegate (but not both) will present an overview of his or her case. The Administration will then present its overview of the case. During these overviews, the parties may introduce documents. The Committee will impose a reasonable time limitation for these overviews that shall apply to both parties.

b. Following the overviews, the faculty member will present her/his witnesses. The Administration will be given an opportunity to cross-examine any witnesses presented on behalf of the faculty member, including the faculty member himself or herself. Members of the Committee may question the parties or witnesses at any time.

c. The Administration will present the University's case, following the same procedure described above. **The faculty member will be given an opportunity to cross-examine any witnesses presented on behalf of the faculty member, including the faculty member himself or herself.**

7. The Committee, on its own initiative, may call other witnesses and admit as evidence other documents it deems essential to the case.

8. The Committee will grant adjournments to enable either party to investigate evidence to which a valid claim of surprise is made.

9. (Except for such simple announcements required covering the time of the Hearing and similar matters)-- delete, public statements and publicity about the case, by either party to the case or by members of the Committee **should be**

avoided until the proceedings have been completed, including consideration by the President and the Board of Trustees of the University.

D. Standards Regarding Evidence and Burdens of Proof

1. The Committee will not be bound by strict rules of legal evidence and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

2. Except for dismissals deriving from the Equity Complaint Resolution Process, in cases of dismissal for adequate cause or due to financial exigency, the burden of proof rests with the Administration and shall be satisfied only by clear and convincing evidence in the record considered as a whole.

E. Post-Hearing: after the Hearing has ended, the members of the Committee who attended the Hearing will discuss the case in executive session.

1. After the Committee has the opportunity to discuss the case fully, the Chair will poll the Committee members to obtain their tentative votes through a secret written ballot. The Chair will arrange for a member of the Committee to write a majority opinion. Any other voting member or members of the Committee may write a minority opinion. The Chair sets a date (approximately once a week after the Hearing) for the Committee to reconvene and discuss the opinions prepared. When these opinions have been discussed, the Chair polls the Committee for a final vote. The Committee members commissioned to write the majority report will include the significant reservations of the minority.

2. About a week after the Committee has arrived at its decision and recommendation, and its majority report has been written and approved by the Committee, the Chair will inform all parties to the case and the President of the Committee's disposition of the case and will give all parties copies of its report.

3. If the President of the University rejects the **recommendations put forth in the Committee's** report and states **their** reasons in writing to the Committee within fourteen (14) calendar days of receipt of the report, the Committee will reconvene to discuss the President's objection and **will** be provided an opportunity to respond before the President transmits the case to the Board of Trustees.

4. In cases where the President rejects the **recommendations of the committee,**

- a. the President will transmit to the Board of Trustees the Committee's record of the case (Note, however, that in cases originating with the Equity Complaint Resolution Process, the record from the Compliance Office will not be transmitted to the Board).

b. The Board of Trustees' review will be based on the record of the Hearing, and it will provide opportunity for argument, oral or written or both, by the parties at the Hearing. The report of the Committee will either be sustained or the proceeding **will be** returned to the Committee with specific objections.

c. The Committee will then reconsider, taking into account the stated objections and receiving new evidence if necessary.

d. The Board of Trustees will make a final decision only after study of the Committee's reconsideration.

6. Responsibilities of the Chair:

a. Send a letter to the President and request that other relevant administrators be informed of the final decision.

b. Secure all documents related to the case in his or her office until they are transferred, **at the close of the process**, to the Provost's Office per section VIII(C).

c. Remind all members of the Committee that cases heard are to be kept confidential.

VIII. Reports and Recommendations

A. The Chair of the Committee shall report annually **via a report to the Executive Committee of the Academic Senate and a written report submitted and appended to the minutes of the final meeting of the Academic Senate**. The reports shall:

- **Include number of cases, and**
- For each case
 - **Not reveal the identity of the parties or persons involved,**
 - **the nature of the appeal (i.e., whether it involved academic freedom, tenure, dismissal and/or determinations of the Nondiscrimination and Anti-Harassment Policy)**
 - **How the case was resolved within this process.**

B. The Committee may make recommendations to appropriate administrators and/or groups on the campus (e.g., the Academic Senate) regarding policies and procedures that it believes the University should change or adopt.

C. The Provost's office shall preserve the record of the Hearing(s).

1. The complete record shall be preserved in the Provost's Office for 3 years.
2. After having been preserved in the Provost's Office for 3 years, the complete record all be transferred to the University Archives.

IX. Amending Process

A. Outside of the proceedings of a given case, the Committee, **in Consultation with ECAS**, may propose an amendment to the Committee's Bylaws and Operating Procedures.

B. To be approved and go into effect, a proposed amendment must be ratified by a vote of a simple majority of the entire Committee.

C. Amendments that have been approved by the Committee apply only prospectively, i.e., to complaints and appeals initiated after amendments have been approved. Such amendments do not apply to complaints or appeals pending before the Committee when the amendments were ratified.

D. When amendments are PROPOSED to the Bylaws and Operating Procedures, the Secretary of the Committee will forward a copy of the amended Bylaws to the Executive Committee of the Academic Senate. A copy of the amended Bylaws will also be sent to the Associate Provost for Faculty and Administrative Affairs to ensure that the Provost's Office can provide the faculty members with a current copy of the Committee's Bylaws and Operating Procedures.

E. Approval by the Senate. The Bylaws and Operating Procedures shall only become operational upon a vote of the Academic Senate.

X. Publications of the Bylaws and Internal Operating Procedures

A. The Chair shall see that the current Bylaws and Operating Procedures are published on the web pages of the Academic Senate and the Provost.

B. The Chair shall see that all changes in the Bylaws and Operating Procedures are published in a timely fashion.

Appendix A Complaint/Appeal to the Faculty
Hearing Committee On Academic Freedom and
Tenure

1. Name of Faculty Member:

2. College or Unit:

3. Department:

4. Campus Address:

5. Telephone numbers: Campus _____ Off campus:

6. Other addresses for mailings to faculty member, if relevant:

On separate sheets of paper, please respond **briefly** to the following three items
(## 7-9):

Attach your answers to this cover
sheet.

7. Describe the complaint/appeal, **as related to tenure, dismissal, and academic
freedom.**

a. Cite the University rule(s) or regulations(s) violated. b. Provide particulars of the specific acts or
omissions of the complaint, including dates. c. Attach to this petition copies of all documentary
evidence (letters, memos, etc.) that support the complaint.

8. List previous steps taken in an effort to resolve this
matter.

a. Option #1: List consultations with chair, dean, provost, and faculty mediator, giving dates and times
of each

consultation. OR b. Option #2: Give reasons why there is "good cause" for not consulting with
the chair, dean, provost, and

faculty
mediator.

9. Identify the remedy sought as specifically as possible, including acceptable alternatives.

10. Representation (check whichever are relevant):

- a. I will represent myself []
- b. I will be represented by a University colleague []

Name of Colleague: _____
Colleague's

campus address and phone number: _____ c. I will
be represented by legal counsel. []

Counsel's name and phone number:

File an original and nine copies of this petition with the Chairperson of the faculty Hearing Committee on Academic Freedom and Tenure, including one copy of the supporting documents.

Signature of Faculty Member: _____ Date: _____
4844-5563-4552, v. 2

Appendix B - Timeline of Events

Action	Responsible Party	Timeframe
Complaint is filed to Chair of the Grievance Committee	Complainant	Begins timeline.
Chair of the Grievance Committee distributes complaint to Grievance Committee	Chair of the Grievance Committee	Within 5 business days of receipt
Committee meets <i>prima facie</i>	Grievance Committee	Within 14 days of committee receiving complaint
Findings of prima facie communicated to complainant and administration	Chair of the Grievance Committee	Within 3 business days of committee decision.
If prima facie case does not exist: Complainant may amend complaint at the discretion of committee	Complainant	Within 14 days of notice from committee
If prima facie case exists: Administration files reasons for dismissal to both committee chair and complainant	Administration	??? is this in document
Notification of Administration reasons to committee	Chair of the Grievance Committee	??? is this in document
Initiation of Hearing Procedure, scheduling of case for Pre-Hearing -Provides administration with complaint	Chair of the Grievance Committee	??? is this in document
Administrative written response and any supporting evidence to complaint provided to committee chair	Administration	14 calendar days of notice of hearing

Distribution of response and supporting evidence to committee and complainant	Chair of the Grievance Committee	Within 3 business days of receipt of response
Notification of any amendments to response by the administration (with permission of chair) conveyed to complainant	Chair of the Grievance Committee	Within 3 business days of receipt of amendment
Pre-Hearing is held	Grievance Committee Administration or delegate Complainant or delegate	Within 14 days of receipt of Administrative response, and no sooner than 31 days nor more than 45 days after prima facie case determination)
Hearing is held		No sooner than 30 days after pre-hearing is held
Transcript is made available to complainant	??	Within 14 days of the conclusion of the hearing
Findings and recommendations of the report are issued to both parties and the President	Committee	Initial vote taken after conclusion of hearing Majority and minority opinions are written, Committee convenes ~1 week after to vote. Within ~1 week, Committee chair informs both parties and President.
President may file a disagreement with the recommendations of the report.	University President	Within 14 days
If the President disagrees with recommendations, case is transmitted to the Board of Trustees for review. The Committee may reconsider. The Board of Trustees makes the final decision after the Committee's reconsideration.	University President Board of Trustees Committee	Timely manner???
Presentation of annual report of activity of the committee.	Committee Chair to ECAS	Prior to final meeting of the academic year
Written report of activity of the committee.	Committee Chair submit to Academic Senate	In written minutes of the final meeting of the Academic Senate

Administration is defined as Provost or designee