

UHCL ACADEMIC AFFAIRS POLICY (UAAP)

SECTION: ACADEMIC AFFAIRS

AREA: GENERAL

UAAP Number: __. __. __. __

SUBJECT: DISMISSAL OF FACULTY

I. PURPOSE

University of Houston Board of Regents Policy 21.07 states, "Dismissal is the termination of employment of a tenured faculty member, or of a probationary or non-tenured tenure track faculty member before the term of appointment has expired. Each University, through its faculty governance processes, shall develop policies and procedures pertaining to dismissal of faculty members. Such policies must be consistent with those specified herein and must be approved by the Chancellor".

This policy is the University of Houston – Clear Lake's implementation of this requirement. In the event this policy conflicts with UH System Board of Regents Policy, the latter prevails.

II. DEFINITIONS

- 1) Dismissal - Severance from employment due to adequate cause, financial exigency, medical reasons, constructive resignation, or the discontinuance of academic programs. (See Board of Regents Policy 21.07.)
 - 2) Dismissal for Adequate Cause is the termination of employment of a tenured faculty member or of a probationary or non – tenured track faculty member before the term of appointment has expired due to adequate cause as set forth in Board of Regents 21.07.2
 - 3) Summary Dismissal is dismissal in accordance to applicable procedures when the allegations made against the faculty member are so egregious that it is considered in the university interest to remove the faculty member from campus immediately to prevent further harm to the university community before allowing the standard hearing process to unfold. Causes for summary dismissal include but are not limited to sexual misconduct, egregious scientific/research misconduct, fraud, violence or threat of violence in the workplace, intentional or knowing falsification of a faculty member's academic credentials; or conviction of a crime substantially affecting the fitness of the faculty member to engage in teaching, research, service, outreach, or administration.
 - 4) Financial Exigency. Termination of employment may be justified by a demonstrated and bona fide imminent financial crisis that threatens the continuation of the academic programs in their present form, and that cannot be alleviated by other means. See UHCL 04.A.03 AP – Financial Exigency.
 - 5) Discontinuance of Academic Program. Termination of employment may be based on the discontinuance of all or part of an academic program reflecting long-range judgments concerning the educational mission of the University. See UHCL 07.A.02 AP – Program Discontinuance Policy.
 - 6) Constructive Resignation - A faculty member who, without permission of the department chair, dean, or Provost, fails to report to work for a period exceeding 30 days or fails to return to work after the expiration of an approved absence.

- 7) Dismissal Advisory Committee. The Dismissal Advisory Committee (DAC) considers matters related to dismissal and summary dismissal of faculty (as set forth herein) before the end of their term of appointment.

III. POLICY

1. A tenured faculty member or a tenure-track faculty member may be terminated from their employment before the term of appointment has expired due to adequate cause, financial exigency, medical reasons, constructive resignation, or the discontinuance of academic programs.
2. The authority for summary dismissal of a tenured faculty member rests with the Provost.
3. The authority to summarily dismiss a non-tenure-track faculty member through regular or summary Dismissal prior to expiration of the specified term of appointment rests with the Provost.
4. The dismissal of a tenured faculty member requires a recommendation from the President, approval by the Chancellor, and subsequent presentation to the Board of Regents for action on the recommendation. When Dismissal involves a tenured faculty member, consultation with the Chancellor and System General Counsel shall be made prior to any official action.
5. All judgements made should be based on the preponderance of evidence.

1) DISMISSAL OF TENURED FACULTY FOR ADEQUATE CAUSE

- a. **Justification for Dismissal for Adequate Cause:** Dismissal for adequate cause may be justified by one or more of the following (see Board of Regents Policy: 21.07.2):
 - 1) Grounds related to dishonesty or conduct involving moral turpitude that adversely affects the University or the faculty member's performance of duties or meeting professional responsibilities, or to demonstrate professional incompetence in teaching or research. Under this provision and in order to constitute a basis for dismissal, moral turpitude must also be conduct for which criminal prosecution would be permitted and that Texas Courts would deem a crime of moral turpitude;
 - 2) Grounds related to substantial and manifest neglect of professional or academic responsibilities, including continually or repeatedly failing to perform duties or meet professional responsibilities, as well as job abandonment. Job abandonment means failure or refusal to report to work, to perform the terms of employment, or to report notification of absence for more than five consecutive workdays, except in cases of emergency, documented illness or injury, or when other specific notification arrangements have been made in agreement with the faculty member's supervisor;
 - 3) Grounds related to failing to successfully complete any post-tenure review professional development program;
 - 4) Grounds related to violating laws or University policies substantially related to performance of the faculty member's duties, including but not limited failure to report sexual harassment, sexual assault, dating violence, or stalking, as required by Texas Education Code 51.252;

- 5) Grounds related to conviction of a crime affecting the fitness of the faculty member to engage in teaching, research, service, outreach, or administration;
- 6) Grounds related to engaging in unprofessional conduct that adversely affects the University or the faculty member's performance of duties or meeting of responsibilities;
- 7) Grounds related to falsifying the faculty member's academic credentials; or
- 8) Actions that would result in a general condemnation of the faculty member by the U.S. academic community.

b. **Medical causes.**

Termination of employment may be justified by clear and convincing medical evidence that the faculty member cannot fulfill professional and academic obligations, or the terms and conditions of appointment, with reasonable accommodation and has no reasonable expectation of being able to resume their duties.

c. **Procedure for Dismissal for Cause**

- 1) **Recommending Dismissal and Revocation of Tenure:** A recommendation of tenure revocation and dismissal may be made by the faculty member's department chair through the dean to the Provost, or from the dean to the Provost, or may be made by the Provost directly. The faculty member will be advised, in writing by the Office of the Provost, of the proposed revocation of tenure and dismissal and the basis/bases for it, including copies of any evidence used to make the decision.
- 2) **Decision to contest recommendation:** If a faculty member wishes to challenge the grounds for tenure revocation and dismissal, the faculty member may submit their challenge to the Provost in writing within 10 business days after receiving notice of the proposed revocation of tenure and dismissal. The issue will be determined by a procedure that affords protection to the rights of the individual and to the interest of the university.

3) **Hearing Preparation**

A> **Setting the hearing date.** If the faculty member timely submits a challenge, the Provost will promptly schedule the Dismissal Advisory Committee (DAC) for a hearing to be held on the challenge within 30 calendar days, if possible. If a delay of an additional 30 calendar days(maximum) is needed, the faculty member will be informed of the reason for the delay.

B> **Membership of hearing panel.** The Dismissal Advisory Committee shall consist of five full-time tenured faculty who are currently eligible for Faculty Council membership. Each college will elect one member for staggered terms of four years, with one membership position terminating August 31 of each year. Each college will also elect a first and second alternate and the Faculty Council will appoint a fifth member to the DAC annually, who will serve as chair, and an alternate. No elected faculty member will be eligible for reelection or reappointment 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 faculty member under review has the option to remove up to two hearing panel members, who will be replaced by their alternates. The faculty member has ten business days from the receipt of notification from the Provost of the hearing and default composition of the panel to request replacement of up to two hearing panel members.

- C> **Faculty may waive a hearing.** The faculty member may waive a hearing. If the faculty member waives a hearing, but challenges the recommendation for dismissal against them, or asserts that the recommendation for dismissal does not support a finding of adequate cause, the DAC shall evaluate all available evidence and rest its recommendation upon the evidence in the record.
- D> **Faculty submits witness list and documents with 10 days of notification.** The faculty member shall be afforded an opportunity that shall not exceed 10 business days after receiving notice of the hearing to obtain necessary witnesses and documentary or other evidence, including a written response to the dismissal. The administration shall make every reasonable effort to cooperate with the DAC in securing witnesses and in making documentary and other evidence available. All documentary evidence will be made available to both parties. The administration will be represented by the faculty member's dean or designee in the hearing.
- E> **Both parties submit proposed questions no less than a week before the hearing.** The parties shall submit a proposed set of written questions they wish the DAC to ask no later than 7 calendar days before the hearing. Questions are limited to the action, decision, or treatment related to the subject of the dismissal hearing. The DAC may ignore any question it determines irrelevant.

4) Hearing procedure

- A> The DAC may proceed with a hearing if the faculty member or Provost or designee fails to appear at the scheduled date and time of the hearing. The hearing will be private and closed.
- B> The DAC may choose to conduct all meetings and hearings outlined in this policy in person or virtually.
- C> **Use of outside counsel.** During the proceedings, the faculty member shall be permitted to have an academic advisor or counsel of their choice present at the hearing. However, if the faculty member chooses to have their legal counsel attend the proceedings, then they must notify the DAC chair in writing 10 business days prior to the hearing so that a member of the UH Office of General Counsel may attend the proceedings. Legal counsel, if present, may attend dismissal proceedings in an advisory capacity only. Legal counsel shall not directly participate in the proceedings, including questioning witnesses, presenting evidence, examining or cross-examining participants, or making arguments to the hearing body. Counsel may communicate privately with and provide advice to their respective party during the proceeding. The DAC may be advised by a UHS OGC

attorney on technical or procedural questions not directly bearing on the merits of the case.

- D> **Questions are directed through DAC.** The DAC chair will ask questions of the parties and witnesses. Through the chair, the faculty member, department chair, dean, and university officers involved with dismissal proceedings shall have the right to address and cross-examine all witnesses. Where those witnesses cannot or will not appear, but the DAC determines that the interests of justice require admission of their statements, the DAC shall identify the witnesses, disclose their statements, and, if possible, provide for examinations and cross-examinations.
 - E> **Faculty member testimony.** The faculty member shall have the right to testify, but may not be required to do so, and may introduce on their behalf all evidence and material, written or oral, that he/she considers to be relevant or material to the case.
 - F> The DAC shall not be bound by strict rules of legal evidence and may admit any evidence that is of probative value in determining the issues involved. Every reasonable effort shall be made to obtain the most reliable evidence available.
 - G> The burden of proof that adequate cause for termination or dismissal rests with the university administration.
 - H> **Records.** An accurate record of the hearing or hearings shall be taken, and the official transcript or electronic recording shall be made available to the faculty member, without cost, at the faculty member's request.
- 5) **Decision to recommend dismissal.** The Dismissal Advisory Committee shall make written findings of fact and make specific recommendations based solely on the hearing record or, if the hearing was waived, on the evidence. If minority findings or recommendations are made, they shall be similarly treated. The Dismissal Advisory Committee chair shall deliver the findings and recommendations to the faculty member and the Provost within 10 business days of the hearing. The Provost's subsequent recommendation will be documented in writing and sent to both the president and faculty member within 10 business days of receiving the DAC recommendation. If the Provost does not approve the majority recommendation of the committee, the committee shall be informed in writing of the reasons for disapproval within 20 business days. **Appeal to the president.** The faculty member may submit a rebuttal to the Provost's recommendation to revoke tenure and dismiss within ten business days. After consideration of all reports and any rebuttal, the President may then recommend revocation of tenure and dismissal to the Chancellor, who may accept subject to final approval of the Board of Regents. This conforms to Board of Regents Policy 21.07.
- 6) **Notification to faculty of final decision to revoke tenure.** The University shall 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.

2) SUMMARY DISMISSAL OF TENURED FACULTY FOR CAUSE

a. Justification for Summary Dismissal for Cause:

Summary dismissal is reserved for cases that are so egregious that it is considered in the university's interest to remove the faculty member from campus immediately to prevent further harm to the university community before allowing the standard hearing process to unfold. Refer to SAM 21.07.

Behavior sufficient to meet this standard is termed egregious misconduct. Egregious misconduct requires a finding of any of the following 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:

- 1) Sexual misconduct;
- 2) Egregious scientific/research/scholarly misconduct;
- 3) Fraud;
- 4) 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);
- 5) Intentional or knowing falsification of a faculty member's academic credentials; or
- 6) Conviction of a crime substantially affecting the fitness of the faculty member to engage in teaching, research, service, outreach, or administration.

b. Procedure for Summary Dismissal for Cause

Summary Dismissal procedure will follow the steps outlined in Board of Regents Policy 21.07.3

- A. The faculty member will be provided with written notice of the allegations against them together with an explanation of the evidence supporting summary dismissal and will be provided with an opportunity for them to respond to the allegations. The faculty member may be removed from the campus immediately and may be prohibited from returning without permission.
- B. The Provost shall promptly set a date as soon as practicable for the faculty member to have an opportunity to respond to the allegations in a meeting with the Provost.
- C. If the faculty member elects to meet with the Provost, the Provost shall hear the faculty member's response to the allegations. The faculty member may choose to be represented during the hearing by a representative or an attorney retained by the faculty member. The Provost may attend the hearing with an attorney from the UHS OGC. If the faculty member chooses to be represented by an Advisor, the faculty member must provide written notice to the Provost at least two business days prior to the scheduled hearing.
- D. In lieu of or in addition to the hearing, the faculty member may submit to the Provost a written response to the allegations and supporting documents. The written response must be submitted to the Provost at least two business days prior to the scheduled hearing.

- E. If the faculty member is unable or elects not to meet or to submit a written response, the Provost will rely on the evidence gathered during the review and investigation.
- F. The Provost may choose to conduct all meetings and hearings outlined in this policy in person or virtually.
- G. The Provost will review any response from the faculty member and make a written determination within 5 business days after the conference whether the University will proceed with the summary dismissal of the faculty member;
 - a. If the Provost's decision is against summary dismissal, the written determination will state that the faculty member is not subject to summary dismissal. The faculty member may still be subject to disciplinary measures up to and including regular dismissal.
 - b. If the Provost's decision is in favor of summary dismissal, the written determination will include the effective date of the dismissal and information regarding the faculty member's opportunity for a post-dismissal appeal. The faculty member is immediately suspended without pay as of the effective date of dismissal until the final decision is made by the Board of Regents.

The faculty member will be provided with the opportunity for a post-dismissal appeal consistent with the following dismissal hearing preparation and procedures.

- 1) **Hearing Preparation.** Hearing preparation proceeds the same as in III.1.c.3 above, except:

The Provost or designee will represent the administration in the hearing, rather than the faculty member's Dean

- 2) **Hearing Procedure.** Hearing procedure is the same as in III.1.c.4 above:

- 3) **Decision to recommend dismissal.** Decision to recommend dismissal is the same as in III.1.c.5 above, except:

The President, rather than the Provost, will review the reports of the DAC and will make a written determination of whether to proceed with recommending dismissal of the faculty member to the Chancellor. The determination is subject to final approval of the Board of Regents.

- 4) If a faculty member is ultimately found not subject to summary dismissal, the faculty member will receive back pay and have university privileges restored.

3) DISMISSAL OF UNTENURED FACULTY FOR ADEQUATE CAUSE

- a. **Justification for Dismissal for Cause:** Dismissal for cause may be justified by one or more of the reasons stated in III.1.a above (see Board of Regents Policy: 21.07.2). Similarly, see III.1.b above for medical causes.
- b. **Procedure for Dismissal for Cause**
 - 1) **Recommending Early Contract Termination and Dismissal:** A recommendation of early contract termination and dismissal may be made by the faculty member's department chair through the dean to the Provost, or from the dean to the Provost, or may be made by the Provost directly. The faculty member will be advised, in writing by the Office of the

Provost, of the proposed early contract termination and dismissal and the basis/bases for it, including copies of any evidence used to make the decision.

- 2) **Decision to contest recommendation:** If a faculty member wishes to challenge the grounds for early contract termination and dismissal, the faculty member may submit their challenge to the Provost in writing within 10 business days after receiving notice of the proposed early contract termination and dismissal. The issue will be determined by a procedure that affords protection to the rights of the individual and to the interest of the university.
- 3) **Hearing Preparation.** Hearing preparation proceeds the same as in III.1.c.3 above.
- 4) **Hearing procedure.** Hearing procedure is the same as in III.1.c.4 above.
- 4) **Decision to recommend dismissal.** The Dismissal Advisory Committee shall make written findings of fact and make specific recommendations based solely on the hearing record or, if the hearing was waived, on the evidence. If minority findings or recommendations are made, they shall be similarly treated. The Dismissal Advisory Committee chair shall deliver the findings and recommendations to the faculty member and the Provost within 10 business days of the hearing. The Provost's decision will be documented in writing and sent to both the president and faculty member within 10 business days of receiving the DAC recommendation. If the Provost does not approve the majority recommendation of the committee, the committee shall be informed in writing of the reasons for disapproval within 20 business days. The Provost's decision is final.

4) SUMMARY DISMISSAL OF UNTENURED FACULTY FOR CAUSE

a. Justification for Summary Dismissal for Cause:

Summary dismissal is reserved for cases that are so egregious that it is considered in the university's interest to remove the faculty member from campus immediately to prevent further harm to the university community before allowing the standard hearing process to unfold. Refer to SAM 21.07 and III.2.a above.

b. Procedure for Summary Dismissal for Cause

The procedure is the same as in III.2.b in that the President rather than the Provost will review the reports of the DAC. However, it is different in that the President does not have to recommend summary dismissal to the Chancellor and Board of Regents approval is not required. The President's decision is final.

IV. FINANCIAL EXIGENCY AND PROGRAM DISCONTINUANCE

- 1) Faculty may be dismissed with a declared financial exigency, the requirements and procedure for which are detailed in UHCL 04.A.03 AP, or through a program discontinuance, the requirements and procedure for which are detailed in UHCL 06.A.02.
- 2) **This section covers dismissal, not failure to reappoint.** This section covers dismissal for reasons not based on individual performance, but on the economic

conditions of the university. Untenured faculty are, subject to notification requirements (see SAM 06.A.09), able to be non-renewed at any time, so reductions in an academic program from reduction of non-tenured faculty do not require activation of the formal program discontinuance policy or a declaration of exigency.

- 3) **Order of Termination** – For the order in which faculty are dismissed for reasons of financial exigency, see UHCL 04.A.03 AP – Financial Exigency. For program discontinuance, see UHCL 06.A.02.
- 4) **The grievance process is the appeals process.** If a faculty member believes that the procedures followed in their dismissal are in violation of university policy, they may utilize the standard grievance procedure as outlined in UHCL 04.A.03 AP for financial exigency and UHCL 06.A.02 for program discontinuance. This grievance bypasses the informal resolution process and proceeds directly to a Grievance Committee hearing (see UHCL 08.A.02 AP - Faculty Grievance policy).

V. CONSTRUCTIVE RESIGNATION

- a. A faculty member who, without permission of the department chair, dean, or Provost, fails to report to work for a period exceeding 30 days or fails to return to work after the expiration of an approved absence shall be deemed to have constructively tendered a resignation. In such a case, after written notice, the faculty member's employment will be terminated without initiating termination for cause. This does not apply if the faculty member has been approved for additional leave or if an exception is necessitated by state or federal law.

VI. APPROVAL

Approved:

Senior Vice President of Academic Affairs and Provost

President

Date

REVISION LOG

Revision Number	Approval Date	Description of Changes