

DISMISSAL OF FACULTY

1 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.

2 DEFINITIONS

This policy addresses four categories of involuntary separation of employment for faculty.

- 2.1 Dismissal, which is termination for cause of a tenured faculty member's tenure and employment or a non-tenured faculty member's employment before the expiration of the stated appointment period.
- 2.2 Summary Dismissal, which is termination for egregious misconduct of a tenured or untenured faculty member's employment following an expedited process outlined below.
- 2.3 Financial exigency (UHCL 04.A.03. AP), which is a bona fide imminent financial crisis that threatens the continuation of academic programs in their present form and cannot be alleviated by other means.
- 2.4 Program discontinuance (UAAP #), in which a faculty member's program or part of program is ended and where there is no reasonable alternative placement within the university for the faculty member.
- 2.5 Dismissal Advisory Committee
 - 2.5.1 The Dismissal Advisory Committee (DAC) considers matters related to dismissal of faculty before the end of their term of appointment. The committee reports to the Provost. If the Provost does not approve a recommendation of the committee, the committee shall be informed in writing of the reasons for disapproval within 20 business days.
 - 2.5.2 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. Faculty Council will appoint a fifth member to the DAC annually, who will serve as convener, 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.

3 DISMISSAL OF TENURED FACULTY

3.1 DISMISSAL FOR CAUSE

Justification for Dismissal for Cause: Dismissal for cause may be justified by one or more of the following (see Board of Regents Policy: 21.07.2):

- 3.1.1 Engagement in conduct involving moral turpitude that adversely affects the institution or the faculty member's performance of duties or meeting of responsibilities.
- 3.1.2 Continuous or repeated failure to perform expected duties or meet professional responsibilities of the faculty member's position.
- 3.1.3 Failure to successfully complete any documented and required post-tenure review professional development program.
- 3.1.4 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.
- 3.1.5 Conviction of a crime affecting the fitness of the faculty member to engage in teaching, research, service, outreach, or administration.
- 3.1.6 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.
- 3.1.7 Intentional or knowing falsification of the faculty member's academic credentials. (This will almost always result in Summary Dismissal – see section V – but this cause remains in Board policy in both sections.)
- 3.1.8 Actions that would result in a general condemnation of the faculty member by the U.S. academic community.

Medical causes. To the extent that “professional incompetence” or “failure to perform” are alleged by either party to be caused by medical problems, all options, including but not limited to use of sick leave and accommodations, should be used for conditions that may be temporary, before dismissal is pursued. Ultimately, termination of employment may be justified by clear

and convincing medical evidence that the faculty member cannot fulfill professional and academic obligations even with reasonable accommodation and has no path to return.

3.2 Procedure for Dismissal for Cause

3.2.1 Recommending Dismissal and Revocation of Tenure: A recommendation of tenure revocation or early contract termination 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 contract termination and the basis/bases for it .

3.2.2 Decision to contest recommendation: If a faculty member wishes to challenge the grounds for tenure revocation, the faculty member may submit their challenge to the Provost in writing within 10 business days. The issue will be determined by a procedure that affords protection to the rights of the individual and to the interest of the university.

3.2.3 Formation of hearing panel. The DAC will serve as the hearing panel. In all cases of a hearing, the faculty member will be informed of the **recommendation** in writing by the Office of the Provost, which, on reasonable notice, will be considered by the Dismissal Advisory Committee convened by the Provost within 30 calendar 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 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 three business days from the receipt of notification from the Provost to request replacement of up to two hearing panel members.

3.2.4 Hearing procedure

3.2.4.1 The Dismissal Advisory Committee may consult with university counsel on technical or procedural questions not directly bearing on the merits of the case. The hearing will be private and closed.

3.2.4.2 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.

3.2.4.3 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.

3.2.4.4 The university shall also have the right to legal counsel from the Office of General Counsel in the preparation and presentation of recommendations. 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.

3.2.5 **Decision to recommend dismissal.** The Dismissal Advisory Committee shall make written findings of fact and make specific recommendations. The burden of proof rests upon the university, so the expectation is that sufficiently controverted findings will break in favor of the faculty member. If minority findings or recommendations are made, they shall be similarly treated. The Dismissal Advisory Committee shall deliver the findings and recommendations to the faculty member and the Provost. The Provost's subsequent recommendation will be documented in writing and sent to both the president and faculty member within 10 business days.

3.2.6 **Appeal to the president.** The faculty member may submit a rebuttal to the Provost's recommendation to dismiss within ten business days. For cases of revocation of tenure, after consideration of all reports and any rebuttal, the President may then recommend dismissal to the Chancellor, who may do so subject to final approval of the Board of Regents. This conforms to Board of Regents Policy 21.07.

3.2.7 **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.

3.3 SUMMARY DISMISSAL FOR CAUSE

3.3.1 Justification for Summary Dismissal for Cause:

Summary dismissal is reserved for cases that 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. 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:

3.3.1.1 Sexual misconduct;

- 3.3.1.2 Egregious scientific/research/scholarly misconduct;
 - 3.3.1.3 Fraud;
 - 3.3.1.4 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);
 - 3.3.1.5 Intentional or knowing falsification of a faculty member's academic credentials; or
 - 3.3.1.6 Conviction of a crime substantially affecting the fitness of the faculty member to engage in teaching, research, service, outreach, or administration.
- 3.3.2 Procedure for Summary Dismissal for Cause
- 3.3.2.1 **Differences from (regular) Dismissal:** The procedure for Summary Dismissal for Cause is the same as for regular Dismissal for Cause but for the following changes:
 - 3.3.2.2 **Suspension with or without pay.** A faculty member who is subject to summary dismissal may be suspended with or without pay during the summary dismissal proceeding.
 - 3.3.2.3 **Notification to faculty.** 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. There is no advanced notification requirement. Generally, as much time as possible is preferred, but there are potential cases – such as when violence or destruction of evidence is possible - when a faculty member may need to be informed as they are escorted from campus.
 - 3.3.2.4 **Expedited hearing.** The faculty member may select the standard hearing process, which follows the dismissal for cause procedure (IV.B forward) . However, the faculty member- particularly in cases where there has been a suspension – may opt for an expedited hearing. Expedited hearings will take place no sooner than 10 business days but no later than 20 business days of the faculty member’s selection of an expedited hearing.
 - 3.3.2.5 **Suspension automatic on adverse finding.** Regardless of whether the hearing is standard or expedited, if the Hearing Panel finds by majority vote that

summary dismissal is warranted, the result will be immediate suspension without pay.

- 3.3.2.6 **Responsibility of the Provost.** The Provost will review the determination of the DAC and any response from the faculty member and make a written determination of whether the University will proceed with the summary dismissal of the faculty member. This determination will indicate the detailed basis for the decision, the effective date of dismissal and outline the opportunity for post-determination appeal. The determination is subject to final review by the Board of Regents.
- 3.3.2.7 **Right of Appeal to President.** 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.
- 3.3.2.8 **Result of Appeal.** 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 Hearing Panel. If an appeal is filed, the President will review all records and 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.
- 3.3.2.9 **Regular Dismissal Still Possible.** If the Provost (or after appeal, the President) determines that the faculty member is not subject to summary dismissal, if appropriate, the University may choose to proceed under regular dismissal proceedings as governed by System and campus policies.
- 3.3.2.10 **Return of back pay if not dismissed.** If a faculty member is suspended without pay but is ultimately found not subject to dismissal, the faculty member should receive back pay and have university privileges restored.

4 DISMISSAL OF UNTENURED FACULTY

4.1 DISMISSAL FOR CAUSE

- 4.1.1 **Justification for Dismissal for Cause:** Dismissal for cause may be justified by one or more of the reasons stated in IV.a above. (see Board of Regents Policy: 21.07.2). Similarly, see IV.a above for medical causes.
- 4.1.2 Procedure for Dismissal for Cause
- 4.1.2.1 **Recommending Dismissal:** A recommendation of early contract termination 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 contract termination and the basis/bases for it.

- 4.1.2.2 **Decision to contest recommendation:** If a faculty member wishes to challenge the grounds contract termination, the faculty member may submit their challenge to the Provost within 10 business days. The issue will be determined by a procedure that affords protection to the rights of the individual and to the interest of the university.
- 4.1.2.3 **Formation of hearing panel.** The DAC will serve as the hearing panel. The faculty member under review has the option to remove up to two hearing panel members, who will be replaced by their alternates. In all cases of a hearing, the faculty member will be informed of the **recommendation** in writing by the Office of the Provost, which, on reasonable notice, will be considered by the Dismissal Advisory Committee convened by the Provost within 30 calendar 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.
- 4.1.2.4 **Hearing procedure.**
 - 4.1.2.4.1 The Dismissal Advisory Committee may consult with university counsel on technical or procedural questions not directly bearing on the merits of the case. The hearing will be private and closed.
 - 4.1.2.4.2 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.
 - 4.1.2.4.3 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.
 - 4.1.2.4.4 The university shall also have the right to legal counsel from the Office of General Counsel in the preparation and presentation of recommendations. 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.
- 4.1.3 **Decision to dismiss.** The Dismissal Advisory Committee shall make written findings of fact and make specific recommendations. The burden of proof rests upon

the university, so the expectation is that sufficiently controverted findings will break in favor of the faculty member. If minority findings or recommendations are made, they shall be similarly treated. The Dismissal Advisory Committee shall deliver the findings and recommendations to the faculty member and the Provost. If the Provost determines termination is merited, the decision will be documented in writing and sent to the faculty member within 10 business days.

4.2 SUMMARY DISMISSAL FOR CAUSE

4.2.1 Justification for Summary Dismissal for Cause:

Summary dismissal is reserved for cases that 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. Summary dismissal for cause of untenured faculty members may occur in response to instances of egregious misconduct as defined in 3.3.1.

4.2.2 Procedure for Summary Dismissal for Cause

4.2.2.1 **Differences from (regular) Dismissal:** The procedure for Summary Dismissal for Cause is the same as for regular Dismissal for Cause but for the following changes:

4.2.2.2 **Suspension with or without pay.** A faculty member who is subject to summary dismissal may be suspended with or without pay during the summary dismissal proceeding.

4.2.2.3 **Notification to faculty.** 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. There is no advanced notification requirement. As much notice as possible will be provided, however, depending on the circumstances, there is no advanced notification requirement.

4.2.2.4 **Expedited hearing.** The faculty member may select the standard hearing process, which follows the dismissal for cause procedure (IV.B forward) . However, the faculty member- particularly in cases where there has been a suspension – may opt for an expedited hearing. Expedited hearings will take place no sooner than 10 business days but no later than 20 business days of the faculty member’s selection of an expedited hearing.

- 4.2.2.5 **Suspension automatic on adverse finding.** Regardless of whether the hearing is standard or expedited, if the Hearing Panel finds by majority vote that summary dismissal is warranted, the result will be immediate suspension without pay.
- 4.2.2.6 **Responsibility of the Provost.** The Provost will review the determination of the Administrative Panel and any response from the faculty member and make a written determination of whether the University will proceed with the summary dismissal of the faculty member. This determination will indicate the detailed basis for the decision and the effective date of dismissal.
- 4.2.2.7 **Regular Dismissal Still Possible.** If the Provost (or after appeal, the President) determines that the faculty member is not subject to summary dismissal, if appropriate, the University may choose to proceed under regular dismissal proceedings as governed by System and campus policies.
- 4.2.2.8 **Return of back pay if not dismissed.** If a faculty member is suspended without pay but is ultimately found not subject to dismissal, the faculty member should receive back pay and have university privileges restored.

5 PROGRAM DISCONTINUANCE AND FINANCIAL EXIGENCY

- 5.1 This section covers dismissal for reasons not based on individual performance, but on the economic conditions of the university. The requirements for triggering financial exigency are detailed in UHCL UAAP 5.7 and the requirements for Program Discontinuance are governed by UHCL UAAP 5.8. 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.
- 5.2 **Order of Termination** – Except in circumstances where a serious distortion of an academic program would otherwise result, non-tenure-track faculty with their primary program designated as the one to be discontinued shall be terminated before any tenure-track faculty are terminated, and any untenured faculty designated within the same primary program shall be terminated before any tenured faculty designated within the same primary program are terminated. Preference shall be given to tenured faculty of higher rank, and for faculty of the same rank, preference shall be given to those with more time in that rank. Tenure-track faculty who are qualified to teach in continuing programs will be prioritized for retention regardless of whether they taught primarily undergraduate or graduate courses (see BOR 21.07.2.F).
- 5.3 **Appeals process** - If a faculty member believes that their dismissal is in violation of university policy, they may utilize the standard grievance procedure. This grievance should be filed within 30 calendar days of notification of their dismissal against the dean

of their college. This grievance bypasses the informal resolution process and proceeds directly to a Grievance Committee hearing (see UHCL Faculty Grievance policy).