TERMINATION OF EMPLOYMENT OF A FACULTY MEMBER

A. Purpose

This document describes Board policy on the reasons and procedures for termination of tenured and non-tenured faculty. (See *Regents' Rules and Regulations*, Series 31008)

B. Basis for Employment Termination

1. Termination of the employment of a faculty member who has been granted tenure and other faculty members before the expiration of the stated period of their appointment, except as provided for in the tenure policy, or by resignation in accordance with policy, will be only for good cause shown. In each case the issue will be terminated by an equitable procedure, affording protection to the rights of the individual and to the interests of The University of Texas System.

    a. The President may for grave cause suspend an accused faculty member pending immediate investigation or speedy hearing as hereinafter provided.

    b. In cases of incompetency, gross immorality, or felony, where the facts are admitted, summary dismissal will follow.

    c. In cases where other offenses are charged, and in all cases where the facts are in dispute, the accused faculty member will be informed in writing of the charges, which, on reasonable notice, will be heard by a special hearing tribunal whose membership shall be composed of at least three (3) faculty, all with academic rank at least equal to that of the accused faculty member, appointed by the President from members of the Hearing Tribunal Pool.

C. Hearing Tribunal Pool

1. In the spring semester of each even-numbered calendar year, the Faculty Senate will provide all eligible faculty with the opportunity to volunteer for service on the Hearing Tribunal Pool. The Faculty Senate will then present to the President the names of forty tenured faculty members, at least twenty-five of whom are Full Professors, as potential members of a Hearing Tribunal Pool. The Faculty Senate shall ensure representation from all colleges as well as gender and ethnic diversity in determining this list.

2. The President will select twenty of these forty to serve as members of a Hearing Tribunal Pool.

3. Members of the Hearing Tribunal Pool will serve for two years beginning in the Fall semester of even-numbered calendar years.

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D. <u>Hearing Tribunal and Board Decision</u>

1. In every such hearing the accused will have the right to appear in person and by counsel of the accused's selection and to confront and cross-examine witnesses who may appear.

2. The accused faculty member shall have the right to testify, but may not be required to do so, and may introduce in his or her behalf all evidence, written or oral, which may be relevant or material to the defense.

3. A stenographic or electronic record of the proceedings will be taken and filed with the Board of Regents, and such record shall be made accessible to the accused.

4. A representative of the institution may appear before the hearing tribunal to present witnesses and evidence against the accused faculty member and in support of the charge brought against such faculty member, and such institutional representatives shall have the right to cross-examine the accused faculty member (if the faculty member testifies in his or her own behalf) and the witnesses offered on behalf of the faculty member.

5. The hearing tribunal shall not include any accuser of the faculty member. If the accused faculty member is not satisfied with the fairness or objectivity of any member of the hearing tribunal, the faculty member may challenge their alleged lack of fairness or objectivity, but any such challenge must be made prior to the submission of any evidence to the hearing tribunal. The accused faculty member shall have no right to disqualify any such member or members from serving on the tribunal. It shall be up to each such challenged member to determine whether he or she can serve with fairness and objectivity in the matter, and if any such challenged member should voluntarily disqualify himself or herself, the President shall appoint a substitute member of the tribunal who is qualified hereunder.

6. The hearing tribunal, by a majority of the total member-ship, will make written findings on the material facts and a recommendation of the continuance of termination of the accused faculty member's tenure. The hearing tribunal, by a majority of its total membership, may make any supplementary suggestions it deems proper concerning the disposal of the case. The original of such findings and the basic recommendation, together with any supplementary suggestions, shall be delivered to the Board of Regents and a copy thereof to the accused. If minority findings, recommendations, or suggestions are made, they shall be similarly treated.

7. The Board of Regents, by a majority of the total membership, will approve, reject, or amend such findings, recommendations, and suggestions, if any, or will recommit the

report to the same tribunal for hearing additional evidence and reconsidering its findings, recommendations, and suggestions, if any. Reasons for approval, rejection, or amendment of such findings, recommendations or suggestions will be stated in writing and communicated to the accused.

E. <u>Nontenured Faculty Members</u>

1. In the event of a decision not to reappoint a nontenured faculty member, written notice will be given him or her not later than March 1st of the first academic year of probationary service if the appointment expires at the end of that academic year, or not later than December 15th of the second academic year of probationary service if the appointment expires at the end of the academic year. After two or more academic years written notice shall be given not later than August 31st that the subsequent year will be the terminal academic year of appointment. The notice required by this Section is not applicable where termination of employment is for good cause under paragraph B of this section.

2. Nontenured faculty members who are notified in accordance with paragraph C.1 of this section, that they will not be reappointed or who are notified in accordance with section 8.2.1, paragraph I or paragraph D.1 of this section that the subsequent academic year will be the terminal year of appointment shall not be entitled to a statement of the reasons upon which the decision for such action is based. No hearing to review such a decision shall be held unless the affected faculty member submits in writing to the President factual allegations that the decision to terminate was based upon the faculty member's exercise of rights guaranteed by the laws or Constitution of the state or the United States and requests an administrative hearing to review the allegations. Such allegations shall be heard under the same procedures as in the case of dismissal, with the following exceptions:

   a. The burden of proof is upon the affected faculty member to establish at such hearing that the decision in question was based on the faculty member's exercise of rights guaranteed by the laws or Constitution of the state or the United States;

   b. The administration of the institution need not state the reasons for the questioned decision or offer evidence in support thereof unless the affected faculty member presents a prima facie case in support of the allegations.

2. Reappointment of nontenured members of the faculty to a succeeding academic year or the award of tenure may be accomplished only by notice by the President or his or her delegate with the approval of the Board. Notwithstanding any provisions of the Tenure policy or paragraph D.1 of this section to the contrary, no person shall be deemed to

have been reappointed or to have been awarded tenure because notice is not given or received by the time prescribed in the Tenure policy or paragraph D.1 of this section or in the manner prescribed in the Tenure policy. Should it occur that no notice is received by the time prescribed in the Tenure policy or paragraph D.1 of this section, it is the duty of the academic employee concerned to make inquiry to determine the decision of the President, who shall without delay give the required notice to the academic employee.

4. Each faculty member shall keep the President or his or her delegate notified of his or her current mailing address. The written notice required by the Tenure policy or paragraph D.1 of this section shall be sent by certified mail return receipt requested, to the last address given by the faculty member.

5. Dismissal or demotion of classified or nonteaching personnel before the expiration of the stated period of appointment will be only for good cause shown, as determined by appropriate administrative officers to whom this responsibility is delegated by the chief administrative officer of the University and in the case of such dismissal or demotion any appeal shall be reviewed by the President.

F. <u>Reduction in Faculty Positions</u>

1. The President has the responsibility of determining when it shall be necessary to reduce academic positions or academic programs or both subject to approval by the appropriate Executive Vice Chancellor and the Chancellor of the University of Texas System. When such reductions are necessary as a result of financial exigency, the procedure for the selection and notification of those academic positions that are to be terminated shall be governed by this Section.

2. Upon determining the existence of a financial exigency and the need to reduce academic positions or academic programs, or both, the President shall appoint a committee composed of faculty and administrative personnel to make recommendations to the President as to which academic positions and/or academic programs should be eliminated as a result of the financial exigency.

3. The committee will review and assess the academic programs of the institution and identify those academic positions that may be eliminated with minimum effect upon the degree programs that should be continued. The review will include, but not be limited to, an examination of the course offerings, degree programs, supporting degree programs, teaching specialties, and semester credit hour production.

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4. Upon determination that one or more academic positions in a degree program or teaching specialty should be eliminated, the committee will recommend the particular position or positions to be terminated by reviewing the academic qualifications and talents of holders of all academic positions in those degree programs or teaching specialties, the needs of the program they serve, past academic performance, and the potential for future contributions to the development of the institution. Tenure status of a faculty member shall not be a consideration in the determination of whether a particular position should be eliminated except as permitted in paragraph E.5 of this section.

5. If, in the opinion of the committee, two or more faculty members are equally qualified and capable of performing a particular teaching role, the faculty member or members having tenure shall be given preference over nontenured faculty. However, if such faculty have the same tenure status, consideration will be given to the need of the institution for capabilities for teaching in multiple disciplines, and the faculty member or members qualified by training and experience to teach in more than one discipline or area of specialization will be given preference over a faculty member or members qualified to teach in only one discipline or area of specialization in other instances, length of service as a member of the faculty at the institution shall be the determining factor.

6. Upon completion of its review, the committee shall promptly recommend to the President those persons who may be terminated ranked in order of priority, with the reasons for their selection. The President shall, with such consultation with institutional administrative officers as he or she may deem appropriate, determine which academic positions are to be terminated because of the financial exigency and shall give the holders of these positions written notice of the decision.

7. Any person terminated due to financial exigency will be notified when a vacancy occurs in the same component institution in his or her field of teaching within the next two (2) academic years following the termination. If such person makes timely application and is qualified for the position to be filled he or she shall be offered employment in that position. If the vacancy is in a field of teaching in which two or more persons have been terminated because of financial exigency, all will be notified of the vacancy and of those so notified and making timely application, employment will be offered to the person who is the better qualified for the position to be filled.

8. The President shall appoint a hearing committee to hear any appeals for reconsideration of termination decisions based upon financial exigency. Within thirty days from the date of the notice of termination, a person shall have the right to appeal to the hearing committee for reconsideration of the termination decision. The appeal for reconsideration shall be in writing and addressed to the President. A person to be

terminated who appeals the decision of the hearing committee shall be given a reasonably adequate written statement of the basis for the initial decision to reduce academic positions and, upon request of the person shall be given any written data or information relied on in arriving at such decision.

9. The hearing committee shall set the date, time and place for hearing the appeal for reconsideration. Such hearing shall be held within thirty days of the date of the written request unless the person to be terminated waives such time requirement; however, such hearing shall be held within ninety days from the date of the request. The hearing committee shall conduct the hearing in accordance with the following conditions and procedures.

   a. The hearing will be closed to the public unless requested to be open by the appealing person.

   b. The appealing person may be represented by legal counsel at his or her expense.

   c. The appealing person and the institution may offer any written evidence or oral testimony that is material to the issues.

   d. The burden shall be upon the appealing person to show by preponderance of the credible evidence that:

      i. financial exigency was not in fact the reasons for the initial decision to reduce academic positions; or

      ii. the decision to determine the appealing person as compared to another individual in the same discipline or teaching specialty was arbitrary and unreasonable.

   e. No other issues shall be heard or considered by the hearing committee.

   f. The hearing committee shall make written findings of fact and recommendations to the President as soon as practical following the hearing. The President shall have the final decision to either accept or reject the recommendations of the hearing committee.

G. <u>Review</u>

This document shall be reviewed every five years by the Provost/Vice President for Academic Affairs in consultation with the Faculty Senate.