

## **10 SEPARATION**

At times Whitworth University or individual faculty members may find it necessary to sever their contractual relationship. To protect the interests of both parties, policies and procedures related to each category of separation are set forth. All separating faculty are required to arrange for an exit interview with the office of human resources to receive information about continuation of benefits, to make arrangements for clearing any outstanding debts to the University, and to make arrangements for receiving the final paycheck. All University property, including keys and access cards, must be returned to the appropriate office before the exit interview.

### **10.1 DEFINITIONS**

The following definitions apply to the various modes of separation covered in this section:

- Resignation and retirement refer to separation actions initiated by the faculty member.
- Non-reappointment or non-renewal refers to non-renewal of a faculty member's contract at the end of the contractually specified appointment term. This is typically an institutional decision but may also be by mutual agreement.
- Termination refers to a separation action initiated by the institution and covers two importantly distinct situations:
  - a) early termination of a non-tenured contract, i.e., termination of a non-tenured faculty member before the end of the contractually specified appointment period.
  - b) ending of a tenured appointment, whether during or at the end of an annual contract.

A special category of termination is dismissal, generally reserved for a subset of termination cases where the grounds are some fault or inadequacy (such as incompetence, non-performance of duties, or moral turpitude) on the part of the faculty member being terminated.

### **10.2 RESIGNATION**

Resignation is a severance action by which a faculty member voluntarily seeks to be released from a contract with the University. Late notice of resignation may create a substantial hardship for others, including colleagues who must conduct the search and appointment. It is therefore expected that written notice of resignation will be delivered to the provost no later than May 1 of the academic year in which the appointment ends, and even earlier notice would be helpful. A faculty member may properly request a waiver of this requirement of notice in case of hardship or in a situation where substantial professional advancement or other opportunity would otherwise be denied. Unless otherwise negotiated in individual cases, resignation will be effective at the end of the fiscal year (June 30th). All resignations are subject to approval by the provost.

A tenured faculty member who resigns from his or her tenured appointment thereby relinquishes tenured status. There is no right, stated or implied, to resume tenure if the faculty member subsequently applies for and is hired to fill the same or another position at Whitworth.

### **10.3 RETIREMENT**

Retirement is a voluntary separation action, similar to resignation, by which a faculty member indicates the intention to bring his or her full-time working career at Whitworth to a close. It establishes a

prerequisite for, but does not automatically entail, the awarding of emeritus faculty status (see Section 1.3.5). Faculty planning to retire from the University shall notify the provost, in writing, no later than December 15 of their final year. For information regarding retirement benefits and process, please contact the office of human resources.

A tenured faculty member who retires from his or her tenured appointment thereby relinquishes tenured status. There is no right, stated or implied, either to return to an active faculty role, or to resume tenure if the faculty member is subsequently rehired into an active faculty role at Whitworth.

## **10.4 NON-REAPPOINTMENT**

The decision not to renew a non-tenured appointment is made by the provost with the endorsement of the president. Such a decision may be the result of an evaluation procedure conducted by the department chair, athletic director, the Faculty Promotion and Tenure Committee, the Faculty Review Committee, or the provost (see Section 7.3). For due cause, the decision may be made solely at the administration's initiative. If the non-reappointment decision is not the direct outcome of an FPTC or FRC evaluation and involves a faculty member beyond his or her fourth year at Whitworth, the provost, before making the decision, will confer with the chair of FPTC or FRC (whichever committee has most recently reviewed the faculty member). The committee chair may offer a written opinion on the decision. Prior to issuing a notice of non-renewal of a non-tenured appointment, the administration may place a faculty member on probation for a specified period of time.

Since a notice of non-reappointment is not a dismissal for cause, it is not necessary for the University to set forth its reasons. The provost may, but need not, provide reasons for the decision.

A faculty member who believes his or her non-reappointment was in violation of Whitworth's Policy Prohibiting Discrimination, Harassment, and Retaliation may file a complaint in accordance with the provisions of that policy. The procedures specified in the policy for handling such a complaint will likewise be followed.

A faculty member who believes his or her non-reappointment involves an infringement of academic freedom may pursue the complaint and grievance procedures established in Section 11 of this Handbook. The burden of proof in such cases shall be on the faculty member.

The following schedules are to be observed in making a notification of non-renewal:

### **10.4.1 NON-RENEWAL WITHIN THE FIRST YEAR OF SERVICE**

In the event that the contract of a faculty member in his or her first year of service, regardless of track, will not be renewed, the provost will notify the faculty person about non-renewal no later than March 15, if the appointment expires at the end of that academic year. If a one-year appointment terminates during, rather than at the end of, an academic year this notification will be given at least three months in advance of the end of the appointment. The faculty member's employment shall therefore end on the date his or her first year appointment lapses.

#### **10.4.2 NON-RENEWAL WITHIN THE SECOND YEAR OF SERVICE**

In the event that the contract of a faculty member in his or her second year of service will not be renewed, the provost will notify such individuals about non-renewal no later than December 31 of the second contract year, if the appointment expires at the end of that academic year. If the contracted period ends during, rather than at the end of, an academic year this notification will be given at least six months in advance of the end of the appointment. The faculty member's employment shall therefore end on the date that his or her second year appointment lapses.

#### **10.4.3 NON-RENEWAL AFTER THE SECOND-YEAR EVALUATION**

In the event that the contract of a non-tenured faculty person who has completed a second-year evaluation (see Sections 7.3.3 - 7.3.7) is not renewed, the provost will give written notification no later than June 30 that the subsequent academic year's contract will be the terminal year contract. The June 30 deadline for such notification applies in each subsequent year to all non-tenured regular faculty.

#### **10.4.4 NON-RENEWAL FOLLOWING DENIAL OF TENURE AT THE TENURE REVIEW**

A faculty member who is unsuccessful in his or her tenure review and whose denial of tenure is confirmed by the board of trustees is entitled to one additional contract year which cannot be subsequently renewed, unless there is cause for non-renewal on shortened notice (Section 10.4.5) or early termination (Section 10.5). All decisions by the board to deny tenure are final and binding.

See Sections 7.6.7 through 7.7 for options regarding requests for reconsideration and appeals on denial of tenure.

#### **10.4.5 NON-RENEWAL ON SHORTENED NOTICE**

For due cause or under extraordinary institutional circumstances, non-renewal of a faculty contract may occur with shorter notice than the applicable timeline specified in Section 10.4.1, 10.4.2, 10.4.3, or 10.4.4. In some instances non-renewal on shortened notice may be used at the administration's sole discretion in lieu of early termination of contract (Section 10.5), and it may be accompanied by conditions such as probation or paid suspension. Provisions for non-renewal on shortened notice, including justifications and options for appeal, are the same as the provisions governing early termination of a contract specified in Section 10.5.

### **10.5 EARLY TERMINATION OF A NON-TENURED CONTRACT**

"Early termination" refers to termination of a contract by the university before the contractually specified end of the appointment. The provisions of this section also apply to non-renewal of a contract on shortened notice, as described in Section 10.4.5. Only exceptional and substantially serious circumstances such as are addressed in 10.5.1 through 10.5.3 will lead the administration to exercise either option.

### **10.5.1           TERMINATION FOR MEDICAL REASONS**

A non-tenured faculty member who for medical reasons (physical, mental, or sensory conditions) is unable to perform all or a substantial part of regular duties for a period of more than six months may request a leave of absence without pay for up to one year at a time. The official form to apply for leave of absence is available through the office of human resources. Any such leave of absence, if granted, is not automatic and must be supported by current medical evidence.

Early termination of an appointment for medical reasons will be based on evidence that it is more probable than not that the faculty member is and will be unable to perform the normal duties of the appointment because of ill health or disability despite reasonable accommodation. Any decision to terminate under these provisions shall be reached only after appropriate consultation, and after the faculty member has been informed of the basis of the proposed action and has been afforded an opportunity to respond to the evidence. If the faculty member so requests, the evidence will be reviewed by the Faculty Promotion and Tenure Committee or Faculty Review Committee before the president makes a recommendation to the board of trustees. A faculty member whose appointment is terminated under this provision shall receive severance salary in accord with the current policy on disability payments and insurance.

When the provost notifies a non-tenured faculty member of a decision to terminate early for medical reasons, the provost will also inform the Faculty Executive.

### **10.5.2           DISMISSAL FOR INCOMPETENCE, VIOLATION OR NON-PERFORMANCE OF CONTRACTUAL OBLIGATIONS, OR MORAL TURPITUDE**

For the causes of incompetence, serious and substantial violation or non-performance of contractual obligations, or moral turpitude, the provost has the authority to dismiss a non-tenured faculty member before the expiration of his or her contractual appointment. (For Whitworth's definition of "moral turpitude," see Section 10.6.1.1.6).

The provost will arrange discussions with the faculty member concerned and other appropriate administrative officers to seek an agreed resolution. In addition, the provost or the faculty person concerned may request, through the Faculty Executive, that the Faculty Promotion and Tenure Committee or Faculty Review Committee conduct a review and make a recommendation to the provost regarding the grounds for dismissal for cause, and whether to proceed to dismissal or institute a probationary period.

If an agreed resolution does not result, the provost, taking into consideration any FPTC or FRC recommendation if available and in concurrence with the president, will decide whether to offer a contract for a probationary period or to proceed to formal notification for dismissal for cause.

When issuing a formal notification of dismissal, the provost will determine and stipulate the effective date of dismissal. Salary and benefits cease on the effective date of dismissal. However, if the dismissal is reversed on appeal after the effective date of dismissal has passed, lost salary and (to the extent possible) benefits will be reinstated retroactively.

When issuing a formal notification of dismissal to a non-tenured faculty member, the provost will also inform the Faculty Executive.

### **10.5.3 EARLY TERMINATION FOR EXCEPTIONAL INSTITUTIONAL CIRCUMSTANCES**

Under extraordinary circumstances affecting the institution as a whole or an individual faculty member's department, the administration may terminate a non-tenured faculty member's contractual appointment before the end of the appointment. Such extraordinary circumstances may include, but are not limited to, a serious decline in enrollment (a sudden, significant, and unforeseen institution-wide or department-level decline in enrollment); financial exigency (see definition in Section 10.6.3); or a lesser but serious financial crisis brought on by an enrollment emergency or a major disruption of the academic program due to natural disaster or similar crisis.

Before proceeding to early termination of non-tenured faculty for exceptional institutional circumstances, the provost will consult with the Faculty Executive.

### **10.5.4 APPEAL OF EARLY TERMINATION**

#### **10.5.4.1 INITIATING AN APPEAL**

If the administration has rendered a decision to terminate a faculty member for any of the reasons specified in 10.5.1, 10.5.2, or 10.5.3 before the end of contractually specified appointment period, or gives shortened notice of a decision not to renew a contract (see Section 10.4.5), the candidate may appeal the decision to the Faculty Affairs Committee. The appeal is initiated by way of a request by the faculty member to the Faculty Executive to convene the Faculty Affairs Committee for this purpose (see Section 2.2.5.2.1). The appeal must be received by the faculty president within 10 working days of the faculty member's receipt of the formal notice of termination.

#### **10.5.4.2 PERMISSIBLE GROUNDS FOR APPEAL**

Appeals of early termination decisions may be based on one or more of the following grounds:

1. Violations of Faculty Handbook policies or procedures
2. Credible evidence that the decision violates Whitworth's Policy Prohibiting Discrimination, Harassment, and Retaliation.
3. Violation of academic freedom
4. Emergence of significant new evidence that is pertinent to the case.

#### **10.5.4.3 FACULTY AFFAIRS PROCESS**

The Faculty Affairs Committee shall commence its consideration of the appeal as soon as possible and shall complete its work within 20 working days of being convened by the Faculty Executive, unless granted an extension by the Faculty Executive.

The Faculty Affairs Committee is not authorized to substitute its judgment for that of the administration in the context of an early termination decision. Rather, its authority is limited to reviewing the evidence presented to determine whether policies and procedures were properly followed, including, when relevant, whether there is credible evidence of discrimination, harassment, retaliation, or violation of academic freedom. It may also consider, when applicable, new evidence that has emerged since the

decision and determine whether it is pertinent to the case. This review process must include interviewing the appellant and the provost. At the committee's discretion, the review may include interviewing witnesses and persons with significant insight regarding the appeal. The Faculty Affairs Committee may request information in the faculty member's personnel file if appropriate but will not have routine access to the following documents which are generally confidential: pre-employment letters of recommendation; letters of evaluation written for promotion review, tenure review, and pre-tenure review; and Track II and III evaluation letters for the Faculty Review Committee. At his or her discretion, the provost may agree to the disclosure of confidential information to the extent that it ensures a full and fair appeal process. The FAC may also request these records with a majority vote of the committee in order to ensure a full and fair appeal process.

#### **10.5.4.4 FACULTY AFFAIRS ACTION**

The Faculty Affairs Committee will prepare a written report of its review on the appeal in accordance with Section 2.2.5.2.4. The report may (a) support or leave unchallenged the decision of the administration, or (b) recommend that the administration reverse or reconsider its decision. The report of the Faculty Affairs Committee will state the reasoning behind its recommendation. The report shall be provided to the Faculty Executive, which will distribute the final report and recommendation to key parties including the appellant and the provost.

#### **10.5.4.5 ADMINISTRATIVE ACTION FOLLOWING APPEAL**

The administration will consider the Faculty Affairs Committee recommendation, then make its decision and communicate that decision within ten working days to the faculty member and to the Faculty Affairs Committee. The president's decision at this stage is final and binding.

### **10.6 TERMINATION OF A TENURED APPOINTMENT**

Termination of a tenured appointment may be effected by the institution only for adequate cause relating to the individual's fitness to serve, institutional factors of financial exigency or curricular change, or medical reasons.

#### **10.6.1 DISMISSAL FOR CAUSE**

Adequate cause for dismissal will be related, directly and substantially, to the fitness of the faculty member for his or her professional capacity as an educator and university professor and to the faculty member's responsibility as a Christian example.

##### **10.6.1.1 PROCEDURE FOR DISMISSAL FOR CAUSE**

###### **10.6.1.1.1 PRELIMINARY PROCEDURES**

Where termination of a tenured appointment is being considered, the provost will first discuss the matter with the faculty member concerned and other appropriate administrative officers to seek an agreed resolution. In addition, either the provost or the faculty person concerned may consult with the Faculty Promotion and Tenure Committee requesting their advice on a possible course of action. The non-binding advisory recommendation of the FPTC will be given in writing to the provost and to the faculty member.

If an agreed resolution results, this agreement will be placed in writing and will be final and binding, and by signing the agreement the faculty member waives his or her right to a formal FPTC review. If the agreed resolution is for voluntary resignation, the resignation will be placed in writing and will be final and binding, and the faculty member by signing it waives the right to formal dismissal proceedings, further review, or subsequent recourse to the appeals process. If the agreed resolution involves a probationary period, the provost will follow the procedures outlined in 10.6.1.1.3

If an agreed resolution does not result, the provost will initiate the dismissal process specified in sections 10.6.1.1.4 through 10.6.1.1.6 and activate the Faculty Promotion and Tenure Committee to conduct a review. The provost will inform the faculty president when he or she takes this formal step toward dismissal.

#### 10.6.1.1.2 SUSPENSION OR REASSIGNMENT OF DUTIES

Until the final decision regarding probation or regarding termination of an appointment for cause has been reached, the faculty member may be suspended or assigned to other duties in lieu of suspension only if it is warranted by a pending investigation or the provost determines that immediate harm would occur by the continuance of regular duties. Normally, before suspending a faculty member, when the ultimate determination is pending through the institution's process, the provost will consult with the Faculty Promotion and Tenure Committee. If prior consultation is impossible, the provost will take appropriate action and notify FPTC at the earliest opportunity. Salary and benefits will continue during the period of suspension until a final decision regarding termination has been reached (10.6.1.1.7).

#### 10.6.1.1.3 PROBATION OF A TENURED FACULTY MEMBER

For any cause other than moral turpitude, the provost is authorized to place a tenured faculty member on probation to provide the faculty person an opportunity for improvement or for consideration of reassignment. If a probationary offer is made, the provost will inform a faculty member in writing of unsatisfactory performance of duties, specifying the area involved, and the expectations which would need to be fulfilled for the probationary period to be successfully concluded (the "probationary contract"). The probationary period may be offered for a minimum of four and up to twelve months and may be renewed for up to twelve additional months at the discretion of the provost. During the last month of the probationary period, a comprehensive review will be carried out by the Faculty Promotion and Tenure Committee. This review need not conform to the process for faculty promotion, pre-tenure, or tenure reviews.

The Faculty Promotion and Tenure Committee will report the results of this comprehensive review with its recommendations to the provost. If the administrative decision, whether consistent or inconsistent with the Faculty Promotion and Tenure Committee, is negative, then the faculty member will receive a written notification of dismissal and a contract for one more full semester before termination.

Faculty members may be placed on probation for a maximum of twenty-four months, for the same issue or separate issues. If a third issue is raised for cause, then the probationary year is not an option and the provost will terminate the faculty member for cause as defined in Section 10.6.1.

#### 10.6.1.1.4 DISMISSAL FOR INCOMPETENCE

For the cause of incompetence, the provost has the authority to dismiss a faculty member. The first step in this process is for the provost to notify the faculty member and activate the Faculty Promotion and

Tenure Committee to conduct a review of the faculty member's performance (Section 10.6.1.1.7). The burden of proof in this assessment will be on the administration. The faculty member under review has the right to introduce testimony of colleagues from other institutions or professional organizations to the Faculty Promotion and Tenure Committee and provost.

#### 10.6.1.1.5 DISMISSAL FOR VIOLATION OR NON-PERFORMANCE OF CONTRACTUAL OBLIGATIONS

For the cause of serious and substantial violation or non-performance of contractual obligations, the provost has the authority to dismiss a faculty member. In the case of non-performance, this step will be taken only after the faculty member has been given clear warning in writing and afforded an opportunity to take corrective action. The first step in this process is for the provost to activate the Faculty Promotion and Tenure Committee to conduct a review of the faculty member's performance. The burden of proof in this assessment will be on the administration.

#### 10.6.1.1.6 DISMISSAL FOR MORAL TURPITUDE

For the cause of moral turpitude, the provost has the authority to dismiss a faculty member. Moral turpitude is defined as conduct that is unjust, depraved, illegal, or shameful, including actions that directly contradict the mission and values of Whitworth University. The standard for moral turpitude does not mean that moral sensibility of an individual member of the Whitworth community is affronted; instead the standard is behavior by a faculty member that would evoke general condemnation by the Whitworth community as a whole. At Whitworth, this standard may be interpreted by administrators and faculty committees involved in personnel matters.

Examples of moral turpitude include violation of federal, state, or local civil rights laws, the university's EEO and ADA policies including Whitworth's policies on discrimination, retaliation, and harassment. This may also include serious or repeated violations of federal, state, or local laws; serious or repeated violations of the professional responsibilities articulated in the Faculty Handbook; repeated or serious violations of Whitworth University employee policies; serious or repeated instances of insubordination (see employee disciplinary procedures in the Employee Handbook for Faculty and Staff); or serious or repeated violations of important health and safety regulations. The first step in this process is for the provost to activate the Faculty Promotion and Tenure Committee to conduct a review of the faculty member's performance. The burden of proof in this assessment will be on the administration.

#### 10.6.1.1.7 FPTC REVIEW PROCESS IN CASES THAT MAY LEAD TO DISMISSAL

In cases of dismissal of a tenured faculty member for incompetence, nonperformance of contractual obligations, or moral turpitude the FPTC will be notified in writing that the provost is initiating the dismissal process and requests committee review of the faculty member's performance as a Whitworth University faculty member. The notice will include a specific statement of the charge and an evidence-based rationale. The faculty member under review will also receive a copy of this notice. The committee has 30 days from the date of the provost's notification to conduct a review and render a recommendation. The review need not conform to the process for faculty promotion, pre-tenure, or tenure reviews.

The provost will provide to FPTC, in addition to an evidence-based rationale for the review, any supporting documentation necessary for the FPTC to make a qualified judgment about the faculty member's continued performance. The supporting documentation will ordinarily be available to the



faculty member as well, but may be held in confidence if mandated by law or by the university's policy and procedures governing discrimination, harassment, and retaliation, or in extraordinary circumstances when in the opinion of the FPTC and the provost there is a compelling need to protect the identity of a vulnerable member of the community. If substantive but confidential evidence presented to the committee will have a bearing on the outcome, FPTC is obligated to share the information with the faculty member under review during the interview and allow the candidate to respond. The faculty member will be evaluated against the standards for tenure outlined in Section 7.5.4, and the criteria for faculty evaluation outlined in Section 7.2.

The faculty member under review has the right to be interviewed by the FPTC and the right to introduce evidence on his or her own initiative.

The committee may, at its own discretion, request additional evidence from the faculty member under review, seek clarification in writing from the faculty member or an evaluator, conduct additional classroom observations, consider any new evidence that arises subsequent to the provost's initiation of the dismissal process, and request interviews with faculty colleagues or the faculty member under review. Attorneys for the university and the faculty member may not be present during this review, nor will deliberations be transcribed or recorded.

The faculty member under review may submit additional evidence no later than 15 days after the notice of dismissal is received from the provost. The decision to accept the additional evidence is made by the committee chair in consultation with the provost. If new evidence arises after the committee's decision, this information may be included in an appeal as long as the new evidence is submitted according to the deadlines for appeal.

If negative evidence should arise between the committee's recommendation on dismissal and the final decision by the administration, the provost in consultation with FPTC may reconvene the committee to examine the new evidence and, if warranted, change the committee's recommendation. If negative evidence arises after the administration's decision but before final action by the board of trustees, the administration may reconvene FPTC to examine the new evidence and, if warranted, the committee may change its recommendation to the administration and/or the administration may change its recommendation to the board of trustees.

When new evidence arises during the course of a review that may lead to dismissal, or where circumstances warrant, the provost, in consultation with the FPTC, may extend time periods and deadlines to ensure a full and fair review process.

After the review is completed, the FPTC will deliver a written recommendation on the dismissal to the provost and the faculty member under review. FPTC may recommend that the faculty member be dismissed, be placed on probation, or neither. In the event of dismissal, the Faculty Promotion and Tenure Committee may, at its discretion, make a nonbinding recommendation to the administration regarding the effective date of dismissal, taking into account the length and quality of service of the faculty member and the nature of the case.

#### 10.6.1.1.8 NOTIFICATION OF DISMISSAL

To effect a dismissal for cause without a probationary period, and following the processes set forth in Section 10.6.1.1.7, the provost will take the FPTC recommendation into consideration. If the provost

decides to dismiss the faculty member for cause the provost will provide a notification of dismissal in writing, accompanied by a statement of the cause. The provost will determine and stipulate the effective date of dismissal. Salary and benefits cease on the effective date of dismissal. However, if the dismissal is reversed on appeal after the effective date of dismissal has passed, lost salary and (to the extent possible) benefits will be reinstated retroactively.

When issuing a formal notification of dismissal to a tenured faculty member, the provost will also inform the Faculty Executive.

#### 10.6.1.1.9 AFFECTED FACULTY RECOURSE

A tenured faculty member who has received a formal notification of dismissal for cause has the right to invoke, without additional preliminaries, the appeals process prescribed in Section 10.6.4.

### 10.6.2 TERMINATION FOR MEDICAL REASONS

A tenured faculty member who for medical reasons is unable to perform all or a substantial part of regular duties for a period of more than six months may request a leave of absence without pay for up to one year at a time. The official form to apply for leave of absence is available through the office of human resources. Renewal of the leave of absence, if granted, is not automatic and must be supported by current medical evidence. An individual who returns to regular duties after such a leave of absence continues in a tenured relationship with the University.

Termination of a tenured appointment for medical reasons (physical, mental, or sensory conditions) will be based on evidence that it is more probable than not that the faculty member is and will be unable to perform the normal duties of the appointment because of ill health despite reasonable accommodation. Any decision to terminate under these provisions shall be reached only after appropriate consultation, and after the faculty member has been informed of the basis of the proposed action and has been afforded an opportunity to respond to the evidence. If the faculty member so requests, the evidence will be reviewed by the Faculty Promotion and Tenure Committee before the president makes a recommendation to the board of trustees. A faculty member whose appointment is terminated under this provision shall receive severance salary in accord with the current policy on disability payments and insurance.

When the provost notifies a tenured faculty member of a decision to terminate for medical reasons, the provost will also inform the Faculty Executive.

A faculty member being terminated for medical reasons can invoke the appeals process in Section 10.6.4 before a final decision is made by the Academic Affairs Committee of the Board of Trustees.

### 10.6.3 TERMINATION FOR REASONS OF FINANCIAL EXIGENCY OR CURRICULAR CHANGE

Financial exigency is a serious institutional crisis presenting a critical, urgent need for the University to reorder its current fund monetary expenditures when it is unable otherwise to meet projected annual monetary expenditures with sufficient revenue. If the president believes that financial exigency exists, after consultation with the Faculty Economic Welfare Committee, the Faculty Executive, and the president's cabinet, the president shall recommend a declaration of financial exigency to the board of

trustees. Upon recommendation of the president, the board of trustees shall decide whether the financial crisis meets the criteria and whether a financial exigency should be declared.

Financial exigency as grounds for termination of any tenured position(s) shall be demonstrably bona fide and must meet the A.A.U.P standard of “an imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means” (American Association of University Professors Policy Document, “Recommended Institutional Regulations on Academic Freedom and Tenure,” revised 2006, section 4).

Curricular change as grounds for termination of any tenured position(s) must be substantial, such as discontinuance of a program of instruction or department, and “will be based essentially upon educational considerations as determined primarily by the faculty as a whole or an appropriate committee thereof” (A.A.U.P., *ibid.*). See Section 2.2 for Whitworth process for curricular changes.

#### **10.6.3.1 FACULTY EXECUTIVE REVIEW**

Where termination of a tenured appointment is based upon a state of financial emergency or bona fide discontinuance of a program or department of instruction, dismissal procedures will not apply, but the affected faculty members shall have the right to request that the Faculty Executive implement a review of the circumstances.

If the Faculty Executive has recommended reconsideration of the administrative decision, and the administration has not reconsidered, then the faculty member may invoke the appeals process prescribed in Section 10.6.4.

In the course of review or appeals procedures, the financial situation or curricular imperatives will be explained and substantiated to the Faculty Executive or the Faculty Affairs Committee.

#### **10.6.3.2 ADEQUATE NOTICE**

In every case of financial emergency or discontinuance of a program or department of instruction, the tenured faculty member concerned will be given notice as soon as possible. No less than twelve months' notice is given; in the case of a change in the academic program, two years' notice is given.

#### **10.6.3.3 RE-ASSIGNMENT OF AFFECTED FACULTY**

Before terminating a tenured appointment because of financial exigency, or the abandonment of a program or department of instruction, the institution will make every effort to place affected tenured faculty members in other suitable positions.

#### **10.6.3.4 RE-APPOINTMENT IN CASES OF FINANCIAL EXIGENCY**

If a tenured appointment is terminated because of financial exigency, the released faculty member's place will not be filled by a replacement within a period of two years, unless the released faculty member has been offered reappointment and a reasonable time to accept or decline it.

### **10.6.4 APPEAL OF TERMINATION OF A TENURED APPOINTMENT**

The right to appeal and the processes for appeal provided in this section apply to all forms of termination of a tenured appointment, including dismissal for cause (whether for incompetence,

10.6.1.1.4, for violation or non-performance of contractual obligations 10.6.1.1.5, or for moral turpitude, 10.6.1.1.6), termination for medical reasons (10.6.2), and termination for reasons of financial exigency or curricular change (10.6.3).

#### **10.6.4.1 INITIATING APPEAL TO FACULTY AFFAIRS COMMITTEE**

The faculty member who has been terminated may, within 15 working days following the formal notification of termination, petition the Faculty Executive to convene the Faculty Affairs Committee. The petition, which shall be in writing, shall set forth in detail the grounds for the appeal, including any supporting evidence that the petitioner deems pertinent to his or her case. A copy of the written petition will be provided to the provost. The Faculty Executive will automatically grant a properly submitted request to activate the Faculty Affairs Committee when it comes from a tenured faculty member who has been given notice of termination.

#### **10.6.4.2 RIGHTS OF TENURED FACULTY IN APPEALING A TERMINATION DECISION TO FACULTY AFFAIRS COMMITTEE**

Tenured faculty appealing a termination decision have the following rights:

- The right to a written copy of specific reasons that led to termination.
- The right to select a faculty member of his or her choosing to serve as an advisor. The advisor may accompany the appellant to any meeting at any stage of the appeal process in which the appellant is included. The advisor may speak and ask questions on the appellant's behalf. Although a faculty member has the right to obtain legal counsel, legal counsel shall not be permitted to participate in the appeal proceedings. Conferring with legal counsel shall not jeopardize access to the appeal process.
- The right not to have new issues introduced in the hearing process. (This does not preclude introduction or consideration of additional evidence on the issues at hand. If serious but unrelated concerns come to light in the hearing process, the Faculty Affairs Committee may, at its discretion, forward that information to the appropriate administrators but will not otherwise pursue them, except as they may become the subject of some future separate process.)
- The right to speak to the Faculty Affairs Committee and to challenge the charges and the specific evidence upon which those charges are based, including any new evidence introduced during the hearing process.
- The right to make an audio recording when the appellant meets with the Faculty Affairs Committee.
- The right to require the administration to carry the burden of proof.
- The right to make sure that every effort is taken to obtain the most reliable and complete evidence possible.
- The right that the Faculty Affairs Committee will make its recommendations solely on solid evidence and logic.
- The right to be notified of the specific findings in writing. This goes beyond a general statement simply saying the appeal has been approved or denied. This means that the appellant has a right to a specific response to each issue he or she raises.
- The right to receive from the president of the university specific reasons, in writing if the faculty member so requests, for overriding a recommendation by the Faculty Affairs Committee.

#### **10.6.4.3 FACULTY AFFAIRS PROCESS**

The Faculty Affairs Committee has 30 days from the date of the terminated faculty member's appeal to conduct a review and render a recommendation. The FAC reviews the evidence presented to determine whether policies and procedures were properly followed, including, when relevant, whether there is credible evidence of discrimination or violation of academic freedom. It will also review the data and the reasoning used by the decision makers in deciding to terminate a tenured appointment. It may also consider, when applicable, new evidence that has emerged since the decision and determine whether it is pertinent to the case. This review process must include interviewing the appellant and the provost. At the committee's discretion, the review may include interviewing witnesses and persons with significant insight regarding the appeal. The appellant has the right to request that FAC call specific witnesses, but must provide to the committee a written rationale for each witness it is asked to call. The decision on each such request remains with the committee.

The Faculty Affairs Committee may request information in the faculty member's personnel file if appropriate but will not have routine access to the following documents which are generally confidential: pre-employment letters of recommendation; letters of evaluation written for promotion review, tenure review, and pre-tenure review; and letters of evaluation written for post-tenure review. At his or her discretion, the provost may agree to the disclosure of confidential information to the extent that it ensures a full and fair appeal process. The FAC may also request these records with a majority vote of the committee in order to ensure a full and fair appeal process.

#### **10.6.4.4 FACULTY AFFAIRS ACTION**

The Faculty Affairs Committee will prepare a written report of its review on the appeal in accordance with Section 2.2.5.2.4. The report may (a) support or leave unchallenged the decision of the administration, or (b) recommend that the administration reverse or reconsider its decision. The report of the Faculty Affairs Committee will state the reasoning behind its recommendation. The report shall be provided to the Faculty Executive, which will distribute the final report and recommendation to key parties including the appellant and the provost.

#### **10.6.4.5 ADMINISTRATIVE ACTION FOLLOWING APPEAL**

The administration will consider the Faculty Affairs Committee recommendation, then make its decision and communicate that decision in writing within ten working days to the faculty member and to the Faculty Affairs Committee, with a copy to the faculty president.

#### **10.6.4.6 FACULTY EXECUTIVE OPTIONS IN RESPONSE TO ADMINISTRATIVE DECISION IN SPECIAL CASES**

If a situation occurs in which the administration decides to terminate a tenured faculty member against the recommendations of both the Faculty Promotion & Tenure Committee and the Faculty Affairs Committee, the Faculty Executive shall be so informed. Faculty Executive may, at its discretion and with the consent of the faculty member being terminated, report this to Faculty Assembly. The Executive or Assembly may also take further actions that are in addition to the faculty member's personal option to appeal to the Academic Affairs Committee of the board of trustees (see 10.6.4.7).

#### **10.6.4.7 APPEAL TO ACADEMIC AFFAIRS COMMITTEE OF THE BOARD OF TRUSTEES**

If the president of the university upholds the decision to terminate, the faculty member may appeal the decision to the Academic Affairs Committee of the Board of Trustees. The Academic Affairs Committee may elect to consider or not consider the appeal. If it considers the appeal, then the committee will review the written record of all proceedings, and will receive oral or written arguments, at its discretion, from all the principals. The Academic Affairs Committee of the Board of Trustees will either sustain the decision of the administration or return the case to the administration with instructions for further action. The Academic Affairs Committee may request that the Faculty Affairs Committee reconsider its recommendations, taking into account the stated objections and receiving new evidence if necessary. The case may, after one reconsideration procedure, return to the Academic Affairs Committee of the Board.

The decision of the Academic Affairs Committee of the Board on termination of tenure is final and binding.