

BU-PP: 705
Faculty Dismissal Policy

I. Dismissal of Faculty Member with Tenure.

A. Grounds for dismissal based on performance or conduct. A faculty member with tenure may be dismissed on one or more of the following grounds:

1. Failure to perform assigned University duties in a competent manner.
2. Repeated failure to comply with University policies, regulations as published in the Personnel Policies Manual, policies posted on the Provost's website, or with specific orders of University officials identified in Section I.B.2.b-e.
3. Gross abuse of trust in faculty-student relationship.
4. Misconduct involving moral turpitude, conduct constituting a felony under state or federal law, intemperance in the use of alcoholic beverages or use of illicit drugs, or other conduct clearly inconsistent with the standard of conduct generally expected of a teacher in a university sponsored by Baptists.

B. Process. To deprive a tenured faculty member of employment the following procedure shall be followed:

1. A written charge shall be filed against the faculty member with the University Dismissal Committee setting forth the factual basis of the cause for cancellation of tenure.
2. Such written charge shall be filed only by one of the following:
 - a. a majority of the tenured faculty members of the department in which the faculty member charged is employed;
 - b. the Chairperson of the department in which the faculty member charged is employed;
 - c. the Dean of the school or college in which the faculty member charged is employed;
 - d. the Provost; or
 - e. the President of the University.
3. A copy of the written charge shall be sent to the faculty member charged by the Chairperson of the Dismissal Committee with notice that the accused must file a written answer to the charge with the Dismissal Committee in not more than twenty days from receipt of the notice. The accused may answer denying the charge in whole or in part, admitting the charge in whole or in part, or stating that he/she does not wish to contest the charges. Failure by the accused faculty member to file a written answer within the prescribed time shall be regarded as a default and admission to the validity of the charge.
4. Prior to suspending a faculty member or assigning him or her to other duties, pending an ultimate determination of his or her status through a dismissal hearing, the Provost shall consult with the Academic Freedom and Responsibility Committee when logistically possible and legally advisable. If circumstances do not permit prior consultation, the Provost shall consult with the Committee as soon as circumstances allow. Suspension or reassignment of the faculty member prior to the final decision regarding his

or her tenure should only occur if immediate harm to the faculty member or others is threatened by the faculty member's continuance. Unless legal considerations forbid, any such suspension should be with pay.

5. The accused shall have the right to be represented by counsel of his/her choice.
6. After the receipt of the charge and answer thereto or lapse of time for filing the answer, the Dismissal Committee shall review the charge and answer and decide whether there is probable cause to cancel tenure of the accused and a hearing on the charges is thereby warranted.
7. If the Dismissal Committee decides a hearing on the charge is warranted, it shall set a date for the hearing and give written notice thereof to both the accuser and the accused. If the Dismissal Committee decides a hearing on the charge is not warranted, it shall so indicate in writing to both the accuser and the accused.
8. If any member of the Dismissal Committee is employed in the same department as the accused, he/she shall be disqualified to participate in the consideration of any charge or the hearing thereon. Any member of the Dismissal Committee may be challenged for cause by either the accuser or accused. If the challenge is sustained by a majority vote of the remaining members present, the challenged member shall be disqualified to participate in the consideration of any charge or the hearing thereon. If as a result of such challenges, the number of available committee members falls below nine, additional members shall be appointed jointly by the President and the Chair of the Faculty Senate.
9. At the hearing the person filing the charge must submit substantial evidence to support the charge to the Dismissal Committee. Substantial evidence means such evidence, when considered and compared to that evidence opposed to it, has more convincing force and produces belief that the factual allegation more likely occurred than not. The accused and his/her counsel shall have the right to hear and see such evidence and to challenge same and to present evidence in answer thereto. Ordinarily witnesses shall testify in person and be subject to cross-examination, but the strict rules of evidence in court trials shall not be binding on the Dismissal Committee. Sworn statements may be accepted when witnesses are not reasonably available.
10. The secretary of the Dismissal Committee shall preserve all papers and written evidence filed in a case. A tape recording of hearings shall be made and preserved as a part of the record of the case.
11. After the hearing the Dismissal Committee shall make findings of fact upon the charge and with such findings submit a recommendation regarding continuance or termination of tenure of the accused.
12. Such findings of fact and recommendation shall be submitted to the President of the University for review and final decision. In the absence of serious procedural error constituting denial of due process in the hearing, the findings of fact shall be accepted by the President, but if the findings support the charges, the President shall have the final decision regarding whether the tenure of the accused shall be cancelled, subject to the discretionary review by the Board of Regents. In cases in which the President filed the charges

against the accused, the review and final decision shall be made by the Provost.

13. The Board of Regents may, in its sole discretion, review the decision of the President (or Provost) in a case and make a final decision, but only upon request of either the President or the person against whom the charge was filed. The record of all proceedings herein shall be made available to the Board of Regents at the Board's request, and the Board's review shall be based on the available record of the hearing. The Board will not hold a second hearing.
14. The President, with consent of the Dismissal Committee, may issue additional dismissal procedural guidelines not inconsistent with this policy. (See appendix for legal details of procedural guidelines.)

II. Dismissal of Faculty Member Without Tenure.

The annual letter of appointment of a faculty member without tenure (including lecturer and senior lecturer letters of appointment and tenure track probationary letters of appointment) may be canceled during the term of such letter of appointment on the same grounds and by the same Faculty Dismissal Policy procedure before the University Dismissal Committee as provided for a faculty member with tenure. Such cancellation shall terminate all rights arising therefrom, including the right, if any, for reemployment for another year. Nothing herein in any way limits the right of the University not to renew the employment of a faculty member without tenure at the end of the term of his/her letter of appointment provided notice specified in Paragraph 3 of BU-PP 704 has been given to those faculty members on tenure track probationary appointments.

III. Selection and Composition of the University Dismissal Committee.

The Committee shall consist of twelve tenured faculty members representing the schools, the colleges, and the libraries as follows:

College of Arts and Sciences: two members
School of Business: one member
School of Education: one member
School of Engineering and Computer Sciences: one member
Honors College: one member
School of Law: one member
Libraries: one member
School of Music: one member
School of Nursing: one member
School of Social Work: one member
Truett Theological Seminary: one member

The President will appoint six members and the Faculty, through the Committee on Committees and Faculty Senate, will appoint six members. Each member will serve a three-year term, and each year the President will appoint two members, after which the Committee on Committees, with Senate approval, will appoint two members. When changes in the composition of the University Dismissal Committee occur (for example, because of the need to represent additional academic units), or when committee members are unable to complete their terms, partial terms will be used as necessary in order to make the numbers of new appointments each year as close to equal as possible.

Department Chairs may not serve on this committee.

At the beginning of each academic year, the Dismissal Committee will elect its own Chair from among the members who have served at least one year on the Committee. No member may serve as Chair for more than one year. After serving one term on the Dismissal Committee, a faculty member must rotate off for at least one year before becoming eligible for reappointment.

In order to avoid a tie vote, a member of the Dismissal Committee will serve as an alternate in each case brought before the Committee. The alternate shall be decided by lot, except that if a member of the Dismissal Committee is also a member of the department of the faculty member against whom charges have been filed, he or she will recuse himself or herself from that case. If as a result of members of the committee recusing themselves the number of available committee members' falls below nine, additional members shall be appointed jointly by the President and the Chair of the Faculty Senate.

Approved March 21, 2000

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Revision approved: Kenneth Winston Starr, President

August 15, 2013

Appendix

PROCEDURAL GUIDELINES FOR DISMISSAL HEARINGS PURSUANT TO BU-PP 705

These guidelines shall be followed by the University Dismissal Committee during dismissal hearings held pursuant to BU-PP 705.

1. *Filing of the Charge/ Notice of Factual Basis of the Charge*

The person or persons who sign the charge shall file the charge with the Chairperson of the Dismissal Committee. The Chairperson shall send a copy of the charge to the faculty member charged, or his or her counsel, with notice that the faculty member charged must file a written answer to the charge with the Dismissal Committee, addressed to the Chairperson or as directed by the Chairperson, in not more than 20 days from receipt of the charge and the notice to file an answer. A copy of the notice shall be provided to the person or persons who filed the charge.

Upon written request of the faculty member charged (or counsel), the person or persons who signed the charge (or counsel) shall provide the faculty member charged (or counsel) a list of the witnesses who may be called to testify if the Dismissal Committee determines a hearing to be warranted, a brief summary of their expected testimony, and a list of documents expected to be presented. Such a request does not extend the length of time provided to answer the charge.

The faculty member charged may answer denying the charge in whole or in part, admitting the charge in whole or in part, or stating that he/she does not wish to contest the charge. Failure to file a written answer within the prescribed time shall be regarded as a default and admission of the validity of the charge.

2. *Disqualification of Dismissal Committee Members*

If a member of the Dismissal Committee is employed in the same department as the faculty member charged, he/she shall be disqualified to participate in the consideration of any charge or the hearing thereon and the alternate member shall be designated by the Chairperson to take his/her place. Any member of the Dismissal Committee may be challenged for cause by either the faculty member charged or the person or persons filing the charge.

A challenge must be submitted in writing with a statement of the reasons for the challenge. Any documents submitted or provided with respect to a challenge shall become part of the record. If a hearing is required to determine the challenge, the hearing shall be tape recorded as part of the record. A hearing on such challenge shall be held only in the event a majority of the committee members present, excluding the challenged member(s), vote that such hearing is necessary.

In case of such a challenge, the remainder of the permanent members of the Dismissal Committee shall consult with the challenged member regarding the challenge and then decide the challenge in closed session. If the challenge is sustained by a majority vote of the remaining members present, the challenged member shall be disqualified to participate in the consideration of any charge or the hearing thereon. The Chairperson shall notify both sides in writing of the result of the challenge. If the challenge is sustained, the Chairperson shall designate one of the alternates to act in the challenged member's place. In the event of recusal or disqualification of a committee member for any reason that reduces the

total number of members to less than nine, the President and Chair of the Faculty Senate shall jointly appoint a replacement member.

3. *Determination that a Hearing is Warranted*

After receipt of the charge and the answer to it, the Dismissal Committee shall review the charge and the answer to determine whether or not a hearing is warranted. A hearing is warranted if probable cause exists to cancel tenure (or the letter of appointment of non-tenured faculty), which means only that a reasonable basis may exist to cancel tenure or to cancel the letter of appointment of a non-tenured faculty member if the factual allegations are determined to be true. As such, a determination that a hearing is warranted is not in and of itself a determination that the alleged facts are true, but only that the charges are serious enough to warrant a hearing. The Dismissal Committee shall make this determination by majority vote of the members present as soon as possible after the answer is filed.

4. *Scheduling the Hearing/Mutual Exchange of Information*

The Chairperson of the Dismissal Committee shall schedule the hearing as soon as possible after the determination that a hearing is warranted. The Dismissal Committee, through the Chairperson, shall give written notice of the date, time, and place for the hearing to both the faculty member charged and the person or persons filing the charge. Such notice may be given to their counsel, if appropriate.

Upon request of either the faculty member charged or the person or persons who signed the charge (or their counsel), the faculty member charged and the person or persons who signed the charge (or their counsel) shall meet and exchange a list of witnesses who may be called at the hearing, a brief summary of the witnesses' expected testimony, and a list of documents expected to be presented at the hearing.

5. *Nature of the Hearing/Attendance by the President or Provost*

The hearing shall be considered civil in nature, intended to permit both sides in the hearing a fair opportunity to present evidence in support of their position. The faculty member charged may attend the entire hearing, except for the deliberations of the Dismissal Committee on findings and on the recommendation.

The hearing is not open to the public. Witnesses may attend only during their testimony.

The person or persons who filed the charge may attend the entire hearing, even if the person or persons who filed the charge is also a witness. Additionally, the President (or the Provost if the President files the charge) may attend the hearing as the individual who must review and decide the case (subject to discretionary review by the Board of Regents).

6. *Presentation of Substantial Evidence to Prove the Charge/Representation*

The person or persons who filed the charge shall submit substantial evidence to prove the charge themselves, or as an agent or agents for Baylor University under BU-PP 705, through counsel of Baylor's choosing. Substantial evidence means such evidence, when considered and compared to that evidence opposed to it, has more convincing force and produces belief that the factual allegations more likely occurred than not.

The faculty member who has been charged will present his or her case after the presentation of evidence by the person or persons who filed the charge. The person or persons who filed the charge may rebut evidence presented by the faculty member who has been charged. The person against whom the charge is filed may retain counsel at his or her own expense.

7. *Legal Advisor to the Dismissal Committee*

Baylor will provide to the Dismissal Committee a Legal Advisor selected by Baylor. The Legal Advisor will be a licensed attorney experienced in litigation and the rules of evidence. The Legal Advisor will attend the hearing. The Legal Advisor will rule on offers of proof and any objections to evidence during the hearing.

8. *Submission of Evidence*

The Dismissal Committee shall not be bound by the strict rules of evidence in court trials. Nonetheless, the Legal Advisor shall exclude evidence, upon objection or motion that is irrelevant, immaterial, untrustworthy, privileged, or unduly repetitious.

The person or persons who filed the charge and the faculty member who has been charged may stipulate to any factual matter.

9. *Witnesses*

Ordinarily witnesses shall testify in person and are subject to cross-examination. Witnesses may retain counsel at their own expense, and such counsel may attend the hearing during the testimony of the witness the counsel represents. A witness who testifies may adopt a prior written statement made by the witness and the record shall include the prior written statement.

Witnesses may give testimony by telephone rather than in person when it would be inconvenient to the witness to testify in person or when the witness is unwilling to testify in person.

Sworn statements may be accepted without testimony by the witness when the witness is not reasonably available, including the witness's refusal to attend the hearing. In such event, the side seeking to use the sworn statement should give to the other side reasonable notice of the intended use of the statement and a copy of the statement.

10. *Oral Argument*

The faculty member who has been charged or his or her representative and the person or persons who filed the charge or his or her representative are entitled to oral argument before deliberation by the Committee on findings and again before deliberation by the Committee on the recommendation. The person or persons who filed the charge or his or her representative is entitled to open and close such arguments.

11. *Findings and Recommendation by the Dismissal Committee*

The hearing shall be bifurcated: the first part shall address only the factual findings on the charge, that is, whether there is substantial evidence in support of the factual allegations of the charge. If the Dismissal Committee finds there is substantial evidence in support of any factual allegation of the charge, the second part of the hearing will be to determine the Dismissal Committee's recommendation as to cancellation of tenure or of the letter of appointment for non-tenured faculty. Additional evidence may be submitted with respect to the recommendation.

To facilitate findings and the recommendation, the University shall prepare a findings worksheet and a recommendation worksheet. The Chair of the Dismissal Committee shall sign the findings worksheet and the recommendation worksheet. Voting will be by secret ballot. A finding or recommendation requires the vote of a majority of the members of the Dismissal Committee voting.

The Dismissal Committee may modify the findings worksheet to conform to the evidence as presented, if necessary. The vote on the recommendation of cancellation of tenure or of cancellation of the letter of appointment for non-tenured faculty is a vote to recommend or not recommend cancellation, and not a

vote on the ground or grounds on which to cancel tenure or the letter of appointment for non-tenured faculty.

Deliberations of the Dismissal Committee shall be in closed session, which will not be recorded. Only the voting members of the Dismissal Committee may be present during deliberations.

The Dismissal Committee shall make its findings and recommendation promptly after submission of the evidence and oral argument. The Dismissal Committee shall deliberate continuously with reasonable breaks until it makes its findings or recommendation, and the members should not perform any other duties during deliberations. Deliberations by the Dismissal Committee should occur only when all the voting members who have heard the evidence are present for deliberations.

12. *Record of the Hearing*

The secretary of the Dismissal Committee shall preserve all papers and written evidence filed in the case. Evidence that is excluded shall also be preserved even though it is not to be considered by the Dismissal Committee.

An official tape recording of the hearing may be made by a representative of Baylor and, if made, such recording shall be preserved for a reasonable time by Baylor as part of the record of the case. Transcription of the recording is not required, but either Baylor or the person against whom the charge is filed may arrange transcription at the requesting party's own expense.

The findings and recommendation worksheets shall also be preserved as part of the record.

13. *Decision by the President*

The findings and recommendation shall be submitted to the President (or the Provost if the President files the charge) for review and final decision, subject to discretionary review by the Board of Regents. Upon request, the President shall be provided a copy of the record of the proceeding. The President (or Provost if the President files the charge) shall notify the person against whom the charge was filed and the person(s) bringing such charges of his or her decision. The decision shall become part of the record. The decision may include a return of the record to the Dismissal Committee for further consideration and deliberation.

14. *Discretionary Review of the Record by the Board of Regents*

The Board may in its sole discretion review the decision of the President (or Provost) in a case and make a final decision, but only upon request of either the President or the person against whom the charge was filed. If the Board reviews a case, the review shall be based on the available record of the hearing. The Board will not hold a second hearing.

15. *Allegations of Noncompliance with the Procedural Guidelines*

An allegation that either the faculty member charged or the person or persons who signed the charge have not complied with the Procedural Guidelines shall be made in a timely manner to the Chairperson of the Dismissal Committee, the President or the Board of Regents as appropriate, provided, however, that nothing in this paragraph requires a review by the Board of Regents. In a timely manner means the allegation is made at the earliest time it would be possible to obtain relief. For example, in the event that the alleged procedural deficiency occurred before or during the hearing, such allegation must be raised prior to conclusion of the hearing.