

W. **CENSURE, SUSPENSION, TERMINATION OF FACULTY; INVESTIGATIONS INVOLVING FACULTY**

Comment [a1]: The new title better reflects the contents of the section

1. Provisions for censure or dismissal of faculty.

a. ~~Tenure is not a license for misconduct or incompetence (see Appendix G for examples of these).~~ Disciplinary action up to and including dismissal may be taken against a faculty member for serious misconduct or incompetence. A complaint involving serious misconduct or incompetence may be initiated by any member of the ~~faculty or administration~~ **university community** by submitting a written complaint to the Provost and Vice President for Academic Affairs (PVPAA). **Complaints involving sexual harassment should be initiated by filing with the university's Affirmative Action Officer or Title IX Coordinator pursuant to university policy.**

Comment [a2]: The section applies to all faculty, not just those with tenure.

Comment [a3]: The new phrase is more inclusive. Anybody could bring a complaint, including staff members, for example.

Comment [a4]: By law, sexual harassment complaints must be handled through these avenues. Faculty file such complaints with the AAO; students with the Title IX coordinator.

b. When a complaint is lodged against a member of the faculty, the PVPAA must ~~inform~~ **provide** the member **in writing within five working days a copy of the nature** of the complaint, the identity of the complainant **(unless law allows it to be withheld)**, and the member's right to have an investigative committee appointed to determine the validity of the complaint.

Comment [a5]: The accused needs to be able to see exactly of what he or she is being accused.

Comment [a6]: The law allows the identity of the complainant in a sexual harassment case to be withheld.

c. A faculty member who desires the appointment of an investigative committee must inform the PVPAA in writing within ~~seven~~ **five working** days of being notified of the complaint. The PVPAA shall then appoint a committee of three tenured members of the faculty (at least one of whom shall normally be from the faculty member's department) and designate one to serve as chair. ~~The committee shall investigate the complaint and report to the PVPAA. The report shall include a statement of the complaint, a determination of its validity, and a recommendation for appropriate action to be taken. The PVPAA shall review the complaints and the committee findings and shall take appropriate action.~~

Comment [a7]: "Five working days" is more practical than seven calendar days.

Comment [a8]: This material appears elsewhere in the section. It is not needed here.

d. If the faculty member does not formally request the appointment of an investigative committee, the PVPAA may either:

(1) investigate the complaint and take appropriate action, or

(2) appoint an investigative committee in the same manner as if the faculty member had formally requested such an appointment.

e. Should a complaint arise against a department chair as a member of the faculty, the complainant shall register the complaint in writing with the PVPAA, who shall then follow the preceding procedure of informing the chair of the nature of the complaint, the identity of the complainant, and the chair's right to have an investigative committee appointed. If the chair does not request such an

appointment within ~~seven~~ **five working** days, the PVPAA shall investigate the matter or appoint an investigative committee in the same manner as above.

2. The Investigative Committee

a. The authority of the committee is to seek and evaluate evidence pertinent to the specific complaint.

~~b. If any of the following procedures need modification in a particular case, the committee shall specify them in writing to all involved parties before the investigation begins.~~

Comment [a9]: The deleted material gives too much latitude to the committee, essentially enabling it to write its own procedures.

eb. All deliberations of the committee are confidential, and all materials reviewed by the committee shall be held in confidence.

ec. All meetings shall be attended by the full membership of the committee.

ed. The deliberations of the committee shall be restricted to facts from the record and by direct testimony. The committee shall keep confidential records of the evidence examined. ~~The faculty member and the administration will have the right to confront and cross-examine all witnesses.~~ **The committee may call any person who it believes has evidence pertinent to the case to testify.** Where the witnesses cannot or will not appear, but the committee determines that the interests of justice require admission of their statements, the committee will identify the witnesses and provide for interrogatories. The hearing committee will not be bound by strict rule of legal evidence, and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

Comment [a10]: In a sexual harassment case, the law does not give the accused the right to confront anyone. The Attorney General's office says that these are civil, not criminal, proceedings, and standard constitutional rights don't necessarily apply. Furthermore, the paragraph as originally written is self-contradictory. If a witness will not appear, he or she cannot be confronted.

e. The accused faculty member has the right to be present at presentations of evidence before the committee (but not during its deliberations), to see all the evidence against him or her, and to present evidence in his or her defense.

Comment [a11]: We think this is essential for the protection of the accused.

f. The accused has the right to have a silent advisor of the accused's choice present whenever the accused is present.

Comment [a12]: The advisor could be a lawyer.

g. The accused may record the oral evidence and testimony of witnesses. The accused will give a copy of the recording to the committee upon request.

Comment [a13]: The Attorney General office advises that recordings are notoriously difficult to do well, and poor recordings can be misinterpreted and give fodder to possible lawsuits. The AG's office recommends that if we want to allow a recording, then the burden should be put on the defendant, not on the committee.

fh. The committee members may ask questions of any party **or witness** to clarify the evidence.

gi. The recommendation of the committee shall be determined by majority vote. The vote shall be by secret ballot.

h.j. A letter approved by the ~~whole~~ committee shall make recommendations to the PVPAA. The letter shall contain all reasons for the recommendations agreed to by a majority of committee members. A minority report may accompany the majority report. **A copy of the letter(s) will be sent to the accused faculty member. The PVPAA shall review the complaint and the committee findings and shall accept, modify, or reject them.**

Comment [a14]: The accused needs to know the verdict of the committee.

Comment [a15]: This is in section 1.c of the current document. It fits better here. The wording was suggested by the AG's office

Comment [a16]: The correct name for this committee.

ik. In the event of an appeal to the Committee on Faculty Status **and Grievances** ~~and/or the Board of Visitors~~, the Committee records shall be made available to the appeal body.

3. Conditions for Immediate Suspension

If, in the opinion of the PVPAA, a faculty member poses a potential threat of harm to the faculty member or others, the PVPAA may immediately suspend the faculty member and, if necessary, remove the person from the classroom and campus. Such a suspension should be done only in serious circumstances and must be followed immediately by an investigation in accord with (1) and (2) above. Suspension of a faculty member during dismissal or censure proceedings is justified only if potential 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.

Comment [a17]: Hopefully, this section will never have to be invoked. However, extraordinary circumstances may arise in which immediate action must be taken, such as if a person poses a threat to himself or to others. The section provides protection for the accused.

3.4. Termination of Employment due to Academic or Financial Exigency

- a. Tenured and non-tenured faculty members may be terminated in cases of academic or financial exigency. Academic exigency is defined as an academic need which cannot be met by existing department personnel. Such an exigency arises when a change in enrollment or offerings in curricula or departments requires review and reduction of faculty staffing Levels. A financial exigency is a financial condition which threatens the well-being of the institution as a whole or in part and which cannot reasonably and responsibly be alleviated by any less drastic means than terminating tenured faculty.
- b. If the problem confronts the whole institution, the Executive Committee of the Senate shall meet with the President prior to the decision that an exigency exists or is imminent. The Executive Committee of the Faculty Senate shall then appoint an ad hoc committee on exigency to recommend to the PVPAA criteria for identifying positions to be terminated, and this committee shall make any other appropriate recommendations to the PVPAA.

- c. If the exigency applies to a department or discipline within the University, that department or discipline should recommend to the PVPAA criteria for identifying positions to be terminated.
- d. In either case, the Provost and Vice President for Academic Affairs shall meet formally with the committee, department, or discipline to discuss their recommendations before any formal action.
- e. If the administration notifies a particular member of its intention to terminate employment because of financial or academic exigencies, the faculty member shall:
- (1) Have a right to a full hearing before the Committee on Faculty Status **and Grievances**. The Committee on Faculty Status **and Grievances** shall consider the existence and extent of the condition of exigency, and the administration shall provide to the committee information that demonstrates the validity of the condition of exigency. The committee may offer alternative plans for resolving the exigency. The Committee on Faculty Status **and Grievances** will ascertain that the criteria for identification of positions to be terminated were properly applied in the individual case.
 - (2) Be given by the PVPAA a written statement of the grounds for terminating employment.
 - (3) Have the right to appeal the decision to the Board of Visitors.
 - (4) Be given a terminating contract of one academic year if the faculty member is tenured.
 - (5) Not have the position filled by a replacement within a period of two years, unless the released faculty member has been offered reinstatement and a reasonable time in which to accept or decline it.
- f. If a decision to terminate employment is reversed, the PVPAA shall so state in writing to the faculty member and shall place a copy of this letter in the faculty member's file.

5. Rights of witnesses in investigations

From time to time, the University may conduct investigations in which faculty members are not directly accused of misconduct, but are interviewed as witnesses or as involved parties. In such investigatory interviews, threats to a faculty member's tenure or future employment are not permitted. The faculty member may record such an interview, and the University shall be given a copy of the recording upon request.

Comment [a18]: Such situations haven't happened at Longwood (at least not in the committee members' memories), but they have occurred at other institutions. We want to make sure they do not occur here.