

Sec. 5.09. Procedures in Cases of Dismissal, Demotion, or Terminal Appointment for Tenured and Tenure-Track Faculty (revised May 2020)

The procedures prescribed in this section shall be followed before recommendation is made to the Board of Regents of dismissal or demotion of:

1. a tenured faculty member; or
2. a tenure-track faculty member during the term of their appointment; or
3. a tenure-track faculty member who has held appointments with the University for a total of ten years in the rank of full-time instructor or higher.

A recommendation of dismissal, demotion, or terminal appointment may be made on the basis of demonstrated misconduct in teaching or research, substantial and manifest neglect of duty, and/or personal conduct that substantially impairs the individual's fulfillment of institutional responsibilities; this includes acts involving moral turpitude or professional or scholarly misconduct. This recommendation must be supported by clear and convincing evidence, subject to the procedures contained in this Bylaw. The process should never be employed to enable harassment or persecution for political or religious belief, or on the grounds of racial, gender, or sexual identity, or any other form of prohibited discrimination, or the diminishment of academic freedom and free speech.

In cases where it is not possible to continue the appointment of a tenured faculty member due to program discontinuation as provided in the university's policy on discontinuance of academic programs, the procedures under this Bylaw are applicable.

Initiation of Proceedings. Proceedings that may result in a recommendation of dismissal, demotion, or terminal appointment may be initiated by the provost and executive vice president for academic affairs or by the executive authority (dean, director, or executive committee) of the school, college, or other unit (hereinafter called the administrative unit) in which the affected faculty member is employed. Before initiating proceedings under this Bylaw, the president, the provost, and executive authority of the unit must all be notified in writing and the president shall refer the case to SACUA. In exceptional cases, where the alleged misconduct of a faculty member as presented in the complaint threatens direct and immediate injury to one or more members of the University community or to the essential functions of the University, the president may direct that the affected faculty member be relieved of some or all of his/her/their university duties and responsibilities, without prejudice and without loss of compensation except as provided below, pending the final disposition of the case.

Suspension of Pay. In cases in which the president has relieved the affected faculty member of some or all his/her/their duties under this Bylaw, and a basis for the initiation of dismissal proceedings is that the affected faculty member has been charged with or convicted of a felony involving violence, including but not limited to, murder, manslaughter, rape, robbery, aggravated assault (or the attempt to commit any of these offenses), the president may invoke this pay suspension process to suspend the affected faculty member's pay during the pendency of the dismissal proceeding. The president may also invoke the pay suspension process in cases of job abandonment.

The pay suspension process may be invoked at the time the president relieves the faculty member of some or all of his/her/their duties, or at a later point in the proceeding, but may not be invoked more than once. Further, no other steps under this Bylaw are delayed by the steps in the pay suspension process.

To initiate the pay suspension process, the president will appoint a committee of three (3) tenured faculty members at or above the rank of the affected faculty member to advise on the question of pay suspension,

after consulting with SACUA and the executive authority of the administrative unit regarding the membership of the Committee. The president will inform the affected faculty member of the committee membership.

Coincident with appointing the Pay Suspension Committee the president will provide the affected faculty member and the Pay Suspension Committee all evidence upon which the president is relying for the pay suspension determination. Within seven (7) days of receipt of this information, the affected faculty member shall provide to the Pay Suspension Committee all information the affected faculty member wishes the Pay Suspension Committee to consider.

The Pay Suspension Committee will have seven (7) days from receipt of all information to provide the president and the affected faculty member with its written recommendation as to whether there is clear and convincing evidence that the affected faculty member either (1) committed the violent crime identified as a basis for the initiation of dismissal proceedings under this Bylaw, or (2) abandoned his/her/their job such that pay should be suspended. The affected faculty member will have seven (7) days to provide a written response to the Pay Suspension Committee's recommendations. Within five (5) days of receipt of the affected faculty member's response, the president will determine whether pay will be suspended and the effective date of pay suspension.

In the event pay is suspended, the affected faculty member will continue to receive the same university contributions to health, dental, and vision insurance as those that were in place prior to pay suspension. In addition, if the proceedings under this Bylaw do not result in dismissal, the faculty member shall receive all compensation he/she/they would otherwise have received during the period of pay suspension.

The university will not disclose the pay suspension decision, nor the recommendation of the Pay Suspension Committee, to the Hearing Committee.

Proceedings.

1. Notice of Charges and Hearing Committee Members. Immediately upon the referral of a case to SACUA, the affected faculty member shall be given written notice in the form of a Charge Letter, stating with reasonable particularity the charges (as prepared by the provost and executive vice president for academic affairs or executive authority of the administrative unit). Not later than seven (7) days after receipt of the notice, the affected faculty member has the right to request a hearing before a Hearing Committee to be appointed by SACUA. Not later than seven (7) days after the affected faculty member has requested a hearing, SACUA must appoint and provide the affected faculty member with the names of a Hearing Committee, which will consist of five (5) tenured faculty at rank or above rank of the affected faculty member, with three (3) from a Standing Judicial Committee appointed by SACUA and two (2) from a list provided by the administrative unit of the affected faculty member. The affected faculty member may, with clear and sufficient reasons for potential bias, request the removal and replacement of one or more members of the Hearing Committee. Any such request shall be made by the affected faculty member, and resolved by SACUA, within seven (7) days of the day the affected faculty member receives the names.

1. Submission of Evidence. The provost and executive vice president for academic affairs or the executive authority (dean, director, or executive committee) of the school, college, or other unit shall present all evidence to be used at the hearing to the affected faculty member within seven (7) days of the issuance of the Charge Letter. The affected faculty member shall present to the provost or executive authority all evidence to be used at the Hearing within 30 days after receiving those materials.

2. **The Hearing.** Under ordinary circumstances, the Hearing Committee shall conclude the hearing no later than 58 days after the issuance of the Charge Letter, or 21 days after the affected faculty member presents to the provost or executive authority all evidence to be used at the Hearing, whichever occurs sooner. The provost and executive vice president for academic affairs, or a representative, as well as the executive authority of the administrative unit in which the affected faculty member is employed, or a representative, may be present at the committee hearing, and may present such evidence as was submitted prior to the hearing, as described in 2. herein. In addition, they may (1) have an adviser of their choosing who may act as counsel; (2) be present at all sessions of the Hearing Committee at which evidence is received or argument is heard; (3) call, examine, and cross-examine witnesses; (4) examine documentary evidence received by the Hearing Committee, and may present such evidence as was submitted prior to the hearing, as described in 2. herein. If they wish to make any recommendations, they shall make them to the Hearing Committee prior to the conclusion of the hearing, whereupon such recommendations shall become a part of the Hearing Committee's record in the case. The affected faculty member may (1) have an adviser of the faculty member's own choosing who may act as counsel; (2) be present at all sessions of the Hearing Committee at which evidence is received or argument is heard; (3) call, examine, and cross-examine witnesses; (4) examine documentary evidence received by the Hearing Committee; and may present such evidence as was submitted prior to the hearing, as described in 2. herein. A full record of the hearing shall be taken.
3. **Written Report of Hearing Committee's Recommendation.** The Hearing Committee shall file a written report with SACUA, the affected faculty member, the Executive Authority of the affected faculty member's unit, the provost, and the president within 14 days of completion of the hearing. The report shall contain the Hearing Committee's conclusions, recommendations, and the reasons therefor. If dismissal, demotion, and/or terminal appointment are recommended, the report shall contain a specific statement of the conduct on which the recommendation is based. There shall be filed with the report the complete written record in the case, including the recommendations, if any, made to the Hearing Committee and a transcript of the record of any hearings conducted by the Hearing Committee.
4. **SACUA Review of the Hearing Committee Report.** If the Hearing Committee recommends that adverse action be taken against the affected faculty member, SACUA shall immediately advise the affected faculty member that they may request, within five (5) days, that SACUA review the proceeding conducted by the Hearing Committee. If the affected faculty member requests a review, in conducting this review, SACUA shall take account of all relevant factors, including consideration of the questions (1) whether the Hearing Committee observed the procedure prescribed in this subsection, (2) whether the Hearing Committee accorded a fair hearing, (3) whether the deficiencies or acts of misconduct on which the Hearing Committee's recommendations are based are related to the charges stated in the first instance as the basis for investigation, and (4) whether the weight of the evidence, as it appears in the record, supports the Hearing Committee's findings and recommendations. This review will be based solely on the full record of the Hearing Committee's proceedings. In determining its recommendation, SACUA shall be free to make any recommendation appropriate to its findings and conclusions respecting either the procedural or substantive aspects of the case. The faculty member, either in person or through a representative or both, shall have the right to appear before SACUA and to comment on the Hearing Committee's proceeding. A full record shall be kept of the SACUA review. This hearing will take place within 21 days of the request for review from the affected faculty member.

Attachment I

5. SACUA Report. A written report of the conclusions made by SACUA, together with the record of the review proceeding, shall be filed with the affected faculty member, the executive head of the administrative unit, the provost and executive vice president for academic affairs, and the president within seven (7) days of the completion of the SACUA review hearing. SACUA may also include its comments on the Hearing Committee's findings, conclusions, and recommendations.
6. If dismissal is recommended. The affected faculty member, the executive authority of the administrative unit, and the provost and executive vice president for academic affairs may, within seven (7) days after receiving copies of the SACUA report and the record, file written comments with the president.
7. If dismissal is not recommended or if the affected faculty member does not request a SACUA review. The affected faculty member, the provost and executive vice president for academic affairs and/or the executive authority of the administrative unit may, within seven (7) days after receiving the Hearing Committee report, file written comments with the president.
8. President's Recommendation and Parties' Response. The president shall thereafter review the record in the case and shall formulate his/her/their own recommendations and the reasons therefor within seven (7) days of receiving the parties' written comments. The full record of the case, including the recommendations of the president shall then be transmitted by the president to the board for final action. All parties to the proceeding shall receive copies of the president's recommendations.
9. Removal of Tenure/Dismissal or Demotion shall be discussed and voted upon no later than the next regularly scheduled board meeting for which all materials have been provided.