

3344-11-15 Attachment C to Chapter 3344-11 of the Administrative Code – 1958 - statement on procedural standards in faculty dismissal proceedings.

(A) Foreword.

The following statement on procedural standards in faculty dismissal proceedings has been prepared by a joint committee representing the association of American colleges and the American association of university professors. It is intended to supplement the 1940 statement of principles on academic freedom and tenure by providing a formulation of the “academic due process” that should be observed in dismissal proceedings. However, the exact procedural standards here set forth “are not intended to establish a norm in the same manner as the 1940 statement of principles on academic freedom and tenure, but are presented rather as a guide... .” (The statement was approved by the association of American colleges in January 1958, and by the American association of university professors in April 1958.)

(B) Introductory comments.

- (1) Any approach toward settling the difficulties, which have beset dismissal proceedings on many American campuses, must look beyond procedure into setting and cause. A dismissal proceeding is a symptom of failure; no amount of use of removal process will help strengthen higher education as much as will the cultivation of conditions in which dismissals rarely if ever need occur. Just as the board of control or other governing body is the legal and fiscal corporation of the college, the faculty are the academic entity. Historically, the academic corporation is the older. Faculty were formed in the middle ages, with managerial affairs either self-arranged or handled in course by the parent church. Modern college faculties, on the other hand, are part of a complex and extensive structure requiring legal incorporation, with stewards and managers specifically appointed to discharge certain functions.
- (2) Nonetheless, the faculty of a modern college constitutes an entity as real as that of the faculties of medieval times, in

terms of collective purpose and function. A necessary precondition of a strong faculty is that it have firsthand concern with its own membership. This is properly reflected both in appointments to and in separations from the faculty body.

- (3) A well-organized institution will reflect sympathetic understanding by trustees and teachers alike of their respective and complementary roles. These should be spelled out carefully in writing and made available to all. Trustees and faculty should understand and agree on their several functions in determining who shall join and who shall remain on the faculty. One of the prime duties of the administrator is to help preserve understanding of those functions. It seems clear on the American college scene that a close positive relationship exists between the excellence of colleges, the strength of their faculties, and the extent of faculty responsibility in determining faculty membership. Such a condition is in no way inconsistent with full faculty awareness of institutional factors with which governing boards shall be primarily concerned.
- (4) In the effective college, dismissal proceedings involving a faculty member on tenure or one occurring during the term of an appointment shall be a rare exception, caused by individual human weakness and not by an unhealthy setting. When it does come, however, the college should be prepared for it so that both institutional integrity and individual human rights may be preserved during the process of resolving the trouble. By the same token, presidents and governing boards shall be willing to give full weight to a faculty judgment favorable to a colleague.
- (5) One persistent source of difficulty is the definition of adequate cause for the dismissal of a faculty member. Despite the 1940 statement of principles on academic freedom and tenure and subsequent attempts to build upon it, considerable ambiguity and misunderstanding persist throughout higher education, especially in the respective conceptions of governing boards, administrative officers, and faculties concerning this matter. The present statement

assumes that individual institutions will have formulated their own definitions of adequate cause for dismissal, bearing in mind the 1940 institutions.

- (6) This statement deals with procedural standards. Those recommended are not intended to establish a norm in the same manner as the 1940 statement of principles on academic freedom and tenure, but are presented rather as a guide to be used according to the nature and traditions of particular institutions in giving effect to both faculty tenure rights and the obligations of faculty members in the academic community.
- (C) Procedural recommendations - preliminary proceedings concerning the fitness of a faculty member.
- (1) When reason arises to question the fitness of a college or university faculty member who has tenure or whose term appointment has not expired, the appropriate administrative officers should ordinarily discuss the matter with the faculty member in personal conference. Consideration of the matter may be terminated by mutual consent at this point; but if an adjustment does not result, a standing or ad hoc committee elected by the faculty and charged with the function of rendering confidential advice in such situations should informally inquire into the situation to effect an adjustment if possible, and if the president of the institution, even after considering a recommendation of the committee favorable to the faculty member, expresses the conviction that a proceeding should be undertaken, action should be commenced under the procedures that follow. Except where there is disagreement, a statement with reasonable particularity of the grounds proposed for the dismissal should then be jointly formulated by the president and the faculty committee; if there is disagreement, the president or their representative should formulate the statement.
 - (2) Commencement of formal proceedings.

The formal proceedings should be commenced by a communication addressed to the faculty member by the president of the institution, informing the faculty member of the statement formulated, and that, if the faculty member so requests, a hearing will be conducted by a faculty committee at a specified time and place to determine whether the faculty member should be removed from his faculty position on the grounds stated. In setting the date of the hearing, sufficient time should be allowed the faculty member to prepare a defense. The faculty member should be informed, in detail or by reference to published regulations, of the relevant procedural rights. The faculty member should state in reply whether a hearing is desired and, if so, should answer in writing, not less than one week before the date set for hearing the statements in the president's letter.

(3) Suspension of the faculty member.

Suspension of the involved faculty member during the proceedings is justified only if immediate harm to themselves or others is threatened by continuance. Unless legal considerations forbid, any such suspension should be with pay.

(4) Hearing committee.

The committee of faculty members to conduct the hearing and reach a decision should be either an elected standing committee not previously concerned with the case or a committee established as soon as possible after the president's letter to the faculty member has been sent. The choice of members of the hearing committee should be on the basis of their objectivity and competence and of the regard in which they are held in the academic community. The committee should elect its own chair.

(5) Committee proceedings.

(a) The committee should proceed by considering the statement of grounds for dismissal already

formulated and the faculty member's response written before the time of the hearing. If the faculty member has not requested a hearing, the committee should consider the case on the basis of the obtainable information and decide whether the faculty member should be removed; otherwise, the hearing should go forward. The committee, in consultation with the president and the faculty member, should exercise its judgment as to whether the hearing should be public or private. If any facts are in dispute, the testimony of witnesses and other evidence concerning the matter set forth in the president's letter to the faculty member should be received.

- (b) The president should have the option of attendance during the hearing. The president may designate an appropriate representative to assist in developing the case, but the committee should determine the order of proof, should normally conduct the questioning of witnesses, and, if necessary, should secure the presentation of evidence important to the case.
- (c) The faculty member should have the option of assistance by counsel, whose function should be similar to that of the representative chosen by the president. The faculty member should have the additional procedural rights set forth in the "1940 statement of principles on academic freedom and tenure," and should have the aid of the committee, when needed in securing the attendance of witnesses. The faculty member or their counsel and the representative designated by the president should have the right, within reasonable limits, to question all witnesses who testify orally. The faculty member should have the opportunity to be confronted by all adverse witnesses. Where unusual and urgent reasons move the hearing committee to withhold this right, or where the witness cannot appear, the identity of the witness, as well as the

witnesses' statements should, nevertheless, be disclosed to the faculty member. Subject to these safeguards, statements may when necessary be taken outside the hearing and reported to it. All of the evidence should be duly recorded. Unless special circumstances warrant, it should not be necessary to follow formal rules of court procedure.

(6) Consideration of hearing committee.

The committee should reach its decision in conference, on the basis of the hearing. Before doing so, it should give opportunity to the faculty member or their counsel and the representative designated by the president to argue orally before it. If written briefs would be helpful, the committee may request them. The committee may proceed to decision promptly, without having the record of the hearing transcribed, where it feels that a just decision can be reached by this means; or it may wait the availability of a transcript of the hearing if its decision would be aided thereby. It should make explicit findings with respect to each of the grounds of removal presented, and a reasoned opinion may be desirable. Publicity concerning the committee's decision may properly be withheld until consideration has been given to the case by the governing body of the institution. The president and the faculty member should be notified of the decision in writing and should be given a copy of the record of the hearing. Any release to the public should be made through the president's office.

(7) Consideration by governing body.

The president should transmit to the governing body the full report of the hearing committee, stating its action. On the assumption that the governing board has accepted the principle of the faculty hearing committee, acceptance of the committee's decision would normally be expected. If the governing body chooses to review the case, its review should be based on the record of the previous hearing, accompanied by opportunity for argument, oral or written

or both, by the principals at the hearing or their representatives. The decision of the hearing committee should either be sustained or the proceeding be returned to the committee with objections specified. In such case the committee should reconsider, taking account of the stated objections and receiving new evidence if necessary. It should frame its decision and communicate it in the same manner as before. Only after study of the committee's reconsideration should the governing body make a final decision overruling the committee.

(8) Publicity.

Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements about the case by either the faculty member or administrative officer should be avoided so far as possible until the proceedings have been completed. Announcement of the final decision should include a statement of the hearing committee's original action, if this has not previously been made known.

Policy Name: Attachment C to Chapter 3344-11 of the Administrative Code – 1958 - statement on procedural standards in faculty dismissal proceedings.

Policy Number: 3344-11-15

Board Approved: 3/25/2014

Effective: 4/20/2014

Replaces: 3344-11-14

Prior effective dates: 8/1/1994, 7/15/2009.