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## UNO Website: Faculty Senate - Academic Freedom and Tenure Committee - Policies and Rules of Procedure

UNO Faculty Senate University of Nebraska at Omaha

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## Academic Freedom & Tenure Committee

### UNO Policies and Rules of Procedure

#### I. Definitions.

A. Academic freedom shall be defined as found in section 4.14 of the **Bylaws of the Board of Regents of the University of Nebraska** and in the **American Association of University Professors 1940 Statement of Principles on Academic Freedom and Tenure**.

B. Continuous appointment/tenure is "an appointment terminable only for adequate cause, bona fide discontinuance of a program or department, retirement for age or disability, or extraordinarily circumstances because of financial exigencies. No personal shall acquire a continuous appointment until notice has been received by him that such an appointment has been awarded by the Board. Continuous appointment as defined herein means academic tenure." (Section 4.4.3 of the Bylaws.)

C. Adequate cause if defined as:

1. "demonstrated incompetency or dishonesty in teaching or research,
2. Substantial and manifest neglect of duty,
3. Personal conduct which substantially impair's the individual's fulfillment of his institutional responsibilities." (Faculty Tenure (San Francisco, Washington, London: Jossey-Bass Publishers, 1973), p. 75.)

a. The University shall have the burden of proving adequate cause by a preponderance of the evidence for termination of a Continuous Appointment, the termination of an Appointment for a Specific Term prior to its stated termination date, or of a Special Appointment prior to its termination date. (Section 4.16, h of the Bylaws.)

#### II. Sources of Power:

The UNO Academic Freedom and Tenure Committee derives its powers from the action of the Board of Regents in approving the **Constitution of the Faculty Senate** of the University of Nebraska at Omaha and from the action taken by the Faculty Senate to carry into effect the enabling clause (Section 4.14) of the Bylaws of the Board of Regents of the University of Nebraska subject to the specification of "Academic Freedom and Tenure Committee; Powers; Rules of Procedures: in Section 4.14.2 of those same Bylaws.

#### III Scope of Authority.

The UNO Academic Freedom and Tenure Committee shall consider:

A. "any complaint filed by any member of the professional staff alleging any grievance which constitutes an allegation that action taken, or threatened, violates the complainant's academic freedom or his academic tenure." (Section 4.14.2 (a) of the Bylaws.)

1. The foregoing may include a complaint by a member of the professional staff that a denial of continuous appointment is a result of violations of academic freedom. In an complaint based on one or more of the above, the burden of proof will be on the professional staff member making the complaint. (Faculty Tenure, p. 72.)

B. "A complaint filed against any member of the professional staff seeking to terminate his Continuous Appointment, his Appointment for a Specific Term prior to the termination date stated in the appointment, or his Special Appointment prior to its termination date," subject to the provision of the Bylaws that the Board, or the President, shall have authority to direct that proceedings under this scope of authority be instituted as prescribed in 4.14. (b)(2)(3).

C. Before any termination for cause may occur, it shall be necessary to submit the matter to the Academic Freedom and Tenure Committee. (Section 4.11 of the Bylaws.)

D. The Committee shall have power to consider a request filed by any person, board, or committee which alleges that a staff member should be subjected to sanctions less severe than appointment termination, and power to recommend in any case sanctions less severe than appointment termination where less severe sanctions seem appropriate. (Section 4.14.2 (j), of the Bylaws.)

#### IV Filing a Complaint.

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A. The individual professional staff member or his designated representative shall be responsible for filing a complaint under 1.3 (a) or 1.3 (a)(1) of these Rules of Procedure. The complaint must be in writing and must:

1. Be filed with the committee and copy thereof served upon the person or persons charged in the complaint.
2. State in concise terms the facts upon which it is based and the relief sought.
3. Indicate that efforts to resolve the complaint at departmental, college, or higher levels as appropriate have been exerted but without satisfactory resolution of the complaint.
4. Indicate that the services of the Ombudsman, where appropriate, have been sought and used, but without satisfactory resolution of the complaint.
5. Indicate whether or not the complaint has been presented to any grievance committee and the results therefrom.
6. Indicate whether or not the complaint is currently before any grievance committee.

B. Upon receiving a recommendation that there is a reasonable cause for terminating an appointment, the President or the Board of the University may order the attorney making the report to file a complaint with the Academic Freedom and Tenure Committee. Section 4.16 b. (3).)

1. The complaint must be filed with the committee and copy thereof served upon the person or persons charged in the complaint.
2. The complaint shall state in concise terms the facts upon which it is based and the relief sought.

C. Upon receiving a complaint under (a) or (b) above, the chairman of the committee will provide the individual filing the grievance a written receipt indicating the date the complaint was filed.

D. The chairman of the committee will be responsible for informing in writing the person(s) charged in the complaint that he/they shall have a period of twenty (20) days from the date of service of the complaint to file an answer in writing to the complaint, and that copy of the answer must be served by such person(s) upon the individual or attorney filing the complaint by regular United States mail with sufficient postage attached and properly addressed to said individual or attorney and mailed on or before twenty (20) days after filing of the said complaint.

E. Failure by the person(s) charged to file an answer in the prescribed, unless the time limit is extended by the committee for substantial reasons, shall constitute a presumption of facts as stated in the complaint.

F. Upon receiving a complaint, the chairman of the committee or his representative(s) shall immediately make a reasonable effort, by telephone and in person, during normal working hours, to determine whether the facts presented in the complaint are correct. Failure by individuals or University agencies to make such information available to the chairman of the committee or his representative(s) shall constitute a presumption of facts as stated in the complaint.

#### **V Informal Procedures.**

In the twenty (20) day interval between receipt of a complaint and the deadline for filing an answer, the committee may:

- A. Informally inquire into the situation to effect an adjustment if possible.
- B. Precipitate renewed discussion, if appropriate, between the member of the professional staff involved and appropriate administrative officers looking toward a mutual settlement.

#### **VI Formal Procedures.**

If at the end of twenty (20) days from the receipt of a complaint, the complaint has not been resolved, the chairman of the committee shall immediately call a meeting of the committee for the purpose of setting the date of a hearing. The date shall be as early as possible but permitting the parties time to prepare reasonably for the hearing. The date of the hearing shall be delivered in writing to the complainant and person or persons charged.

A. Parties to the complaint will be informed in writing by the chairman of the committee or his representative, in detail or by reference to published regulations, of procedures and procedural rights, and that they shall be entitled to counsel at their own expense.

B. Person(s) charged in a complaint may in writing waive a hearing; one of the following shall then obtain:

1. The situation of the complaint shall stand as alleged and necessary action shall promptly be taken by appropriate administrative officers.
2. Waive but deny the charges or assert the charges do not support the action requested in the complaint; the committee will then evaluate all available evidence and rest its recommendations upon the evidence in record.

C. Hearing Procedures.

A hearing not being waived, the procedures shall be as follows:

1. The person(s) charged shall be notified in writing by the chairman of the committee or his representative at least ten (10) days in advance of the hearing of the witnesses to be called by the individual/attorney filing the complaint and of documents to be offered in evidence.

2. The person(s) charged shall notify the individual/attorney filing the complaint in writing at least five (5) days before the hearing of the witnesses to be called and documents to be offered in evidence by such person(s).

3. No witnesses or documents not so listed shall be heard or received at the hearing except in cases of surprise or for the purpose of rebutting oral testimony of the other party or for other justifiable cause found to exist by the committee.

4. Testimony shall be taken under oath.

5. Rules of evidence as followed by the District Courts in the State of Nebraska shall be applicable. Proceedings shall generally comply with the principles of law with respect to proceedings in the District Courts in Nebraska and all counsel and parties shall be bound by such rules and standards of ethics and codes of trial conduct as are applied in the District Courts.

6. In event any party to the proceedings desires the issuance of a subpoena, such subpoena shall be issued at the direction of the Secretary of the Board of Regents and may be served by the party requesting the subpoena or by any law enforcement officer in the manner provided for subpoenas in the Nebraska courts.

7. The committee, in consultation with the president or chancellor and the parties to the complaint shall exercise its judgment as to whether the hearing shall be public or private.

8. The president and the chancellor shall have the option of attendance during the hearing.

9. The committee shall determine the order of proof and normally conduct the questioning or witnesses, but parties to the complaint or their representatives shall have the right to question all witnesses who testify orally.

10. Individuals charged in a complaint, or their representatives, shall have the opportunity to be confronted by all adverse witnesses. Where unusual and urgent reasons move the committee to withhold this right, or where the witness cannot appear, the identity of the witness, as well as his statement, shall nevertheless be disclosed to the individual charged in a complaint.

a. Subject to these safeguards, statements may when necessary be taken outside the hearing and reported to it.

11. The committee shall reach its decision in conference, on the basis of the hearing. Before doing so, the committee will provide opportunity for parties to the complaint or their representatives to argue orally before it. If written briefs would be helpful, the committee may request them.

12. The committee shall make explicit findings with respect to each of the grounds of a complaint. Reasoned opinions may be provided.

13. The committee will submit to the appropriate administrative officers, and to the Board in case of a hearing on termination for cause, the complete verbatim account of the hearing and all exhibits filed with the committee, and report within two weeks of the hearing to the appropriate officers, to the Board in case of a hearing on termination for cause, and to the staff member involved the committee's findings, conclusions, and recommended action which the committee deems advisable.

14. Publicity concerning the committee's actions shall be withheld until consideration has been given to the complaint by the appropriate officials of the University.

15. Appropriate administrative officers, or the Board in the case of a hearing on termination for cause, are requested to file a written statement on their decisions and actions in response to the committee's recommendations within three weeks of receipt of the committee's hearing report.

16. In all proceedings where the complaint touches the question of policies, rules, and regulations, the UNO Academic Freedom and Tenure Committee shall be guided by written policies, rules, and regulations.

17. The committee may, with the consent of the parties concerned, hold joint pre-hearing meetings with the parties in order to:

a. simplify the issues,

b. effect stipulations of facts,

c. provide for the exchange of documents or other information,

d. achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious.

18. At least five members of the committee will constitute the hearing body. Members of the committee deeming themselves disqualified for bias or interest shall remove themselves from the complaint, either at the request of a party or on their own initiative. Should the number of qualified committee members fall below five, substitutes might be chosen by mutual agreement of the parties concerned.

19. Copies of the committee's report and the administrative response shall be filed with the committee, the parties to the complaint, and the Faculty Senate.