

CHAPTER NINE

TERMINATION OF FACULTY APPOINTMENTS

Termination of an appointment with tenure, or of a probationary appointment before the end of the specified term, may be effected by the University only for adequate cause.¹ Adequate cause will be related, directly and substantially, to the fitness of the faculty member in his or her capacity as a teacher and/or researcher, or based on valid reasons for discontinuing a program or department of instruction, or financial exigency. Termination will not be used to restrain faculty members in their exercise of academic freedom or any Constitutional rights.

A. Specific Causes for Termination

The University may initiate proceedings for termination of tenured appointments or of non-tenured contracts during the contract period only for the following causes:

1. Grave irresponsibility in discharging faculty obligations as set forth in Chapter 7, Sections A, B, C-3 and F.

2. Incompetence in carrying out teaching responsibilities according to Chapter 7, Section C-1.

3. Prolonged inactivity in research, publication and other scholarly activity as set forth in Chapter 4, Sections A through C and Chapter 7, Sections C-2 and E-5.

4. Substantial misrepresentation of facts relevant to faculty status at Loyola University New Orleans, such as false claims to academic degrees or serious misrepresentation of previous academic or professional experience.

5. Use of the classroom or of University activities to deride flagrantly the Catholic faith. This does not inhibit the scholarly and relevant criticism of such things as Catholic organizations, leaders, activities, and particular theological opinions and traditions. Each faculty member has the right to express and explain personal beliefs, though these may disagree with Catholic doctrine.

6. A grave offense which clearly and flagrantly violates well-established principles of Catholic morality, knowing that it does so, and committed during the discharge of University responsibilities. Examples of grave offenses of this kind would include causing any student to commit an immoral or illegal act, or the practice of racism in any phase of University life. It should be noted that private activities of faculty members and personal opinions expressed by faculty members do not come within this definition of grave offense.

7. Blameworthy involvement in criminal activities or flagrantly unacceptable public conduct which would reasonably be expected to affect seriously the faculty member's discharge of University responsibilities or to interfere seriously with the educational purposes of the University.

8. Clear and convincing medical evidence that the faculty member cannot continue to fulfill the terms and conditions of his or her appointment.

9. Discontinuance of a program or department of instruction. If a decision is made to discontinue formally a program or department of instruction, this decision will be based essentially upon educational considerations, which may involve financial matters. Educational considerations and financial matters do not include cyclical or temporary variations in enrollments but must reflect the long-range judgments that the educational mission of the University as a whole will be maintained or enhanced by discontinuance.

10. Termination for financial exigency under extraordinary circumstances because of a demonstrably *bona fide* imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means.

B. *Suspension from Exercise of Faculty Status*

A suspension occurs when a faculty member is temporarily relieved of his or her faculty responsibilities. The procedures established below shall be followed expeditiously in all cases, including medical, and the compensation of the faculty member shall be continued during the period of the suspension.

1. When alleged grounds arise to consider suspension of a faculty member who has tenure or whose term appointment has not expired, before the proposed suspension takes effect the Provost and Vice President for Academic Affairs will discuss the matter with that faculty member and/or that faculty member's designate in personal conference. The matter may be concluded by mutual consent at this point.

However, if an agreement does not result at this point, the Provost and Vice President for Academic Affairs will present the issues to the University Conciliation Committee, which will make an informal inquiry into the situation to effect an agreement if possible and, if no agreement is effected, determine whether in its view formal proceedings to consider the proposed suspension will be instituted. If the committee recommends to the President of the University that such proceedings should begin and the President concurs, or if the President, even after considering a recommendation of the Committee favorable to the faculty member, decides that proceedings should be undertaken, then the suspension will take effect immediately and action will be commenced under the following procedures:

a. 1. If the President of the University and the University Conciliation Committee agree, they will jointly formulate a statement with reasonable particularity of the alleged grounds for the suspension and issue it to the faculty member within ten working days;

¹ This chapter of the *Faculty Handbook* does not relate to decisions not to renew probationary appointments.

2. If the President of the University and the University Conciliation Committee do not agree, then the President or his delegate will formulate a statement with reasonable particularity of the alleged grounds for the suspension and issue it to the faculty member and to the members of the University Conciliation Committee within ten working days.

b. Formal proceedings to consider the suspension will commence with the written statement addressed to the faculty member from the President of the University informing the faculty member of the reasonable particulars for the suspension. These reasonable particulars will include the dates and times of alleged incidents, a preliminary list of potential witnesses, and the names of any individuals making charges against the faculty member. This written communication will also contain the time and place that the University Rank and Tenure Committee will formally hear the case. The hearing date will be no later than twenty working days after the written communication has been received by the faculty member and will be conducted according to the following procedures which can be waived only in writing by the suspended faculty member:

1. Members of the University Rank and Tenure Committee deeming themselves disqualified for bias or interest shall remove themselves from the case. Each party will have a maximum of two challenges without a stated cause.

2. The Committee may, with the consent of the parties concerned, hold joint prehearing meetings with the parties in order to (a) simplify the issues, (b) elicit stipulations of facts, (c) provide for the exchange of documentary or other information, and (d) achieve such other appropriate prehearing objectives as will make the hearing fair, effective and expeditious.

3. The hearing will be closed unless both the President and the faculty member agree to a public hearing.

4. During the proceedings the faculty member will be permitted to have an academic advisor and/or counsel of his or her choice.

5. At the request of either party or the Committee, a representative of a responsible educational association shall be permitted to attend the proceedings as an observer.

6. A verbatim record of the hearing or hearings will be taken and a typewritten copy will be made available to the faculty member without cost, at the faculty member's request.

7. The burden of proof that adequate grounds for the suspension exist rests with the University and shall be satisfied only by clear and convincing evidence in the record considered as a whole.

8. The Committee will grant adjournments to enable either party to investigate evidence when a valid claim of surprise is made.

9. The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The administration will cooperate with the Committee in securing witnesses and making available all documentary and other evidence.

10. The faculty member and the administration will have the right to confront and cross-examine all witnesses. Where the witnesses cannot appear, but the Committee determines that the interests of justice require admission of their statements, the Committee will identify the witnesses, disclose their statements, and, if possible, provide for interrogatories.

11. In the hearing of charges of academic incompetence, the testimony shall include that of qualified faculty members from this or other institutions of higher education.

12. The Committee will not be bound by strict rules 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.

13. The findings of fact and decision will be based solely on the hearing record.

14. Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements and publicity about the case by either the faculty member or administrative officers will be avoided so far as possible until the proceedings have been completed.

15. Within ten working days after completing its deliberations, the Committee will simultaneously provide the President and the faculty member its written recommendation. Both the President and the faculty member will be given a copy of the record of the hearing as expeditiously as possible.

16. If the Committee concludes that adequate cause for suspension has not been established by the evidence in the record, it will so report to the President. If the Committee concludes that adequate cause for suspension has been established, it shall make a recommendation concerning the length and other conditions of the suspension. If the Committee concludes that adequate cause for a suspension has been established, but that a penalty less than suspension would be more appropriate, it will so recommend with supporting reasons. If the President rejects the report, he will state his reasons for doing so in writing both to the Committee and to the faculty member and will provide an opportunity for a written response before making a final determination.

17. If a suspension occurs for more than one year, absent mutual agreement otherwise, it is a termination and should be treated as such (cf. 9-4 to 9-7 below, "Procedures for Contract Termination for Cause" and "Procedures for Termination for Medical Reasons").

2. The procedures outlined in section 1 above must be followed in all cases. If, however, the Provost and Vice President for Academic Affairs and/or the President of the University judge that serious, immediate harm would come to a faculty member, whether tenured or not, to students, or to the University through the continued professional or teaching activity of a faculty member, they may immediately suspend that faculty member, whether tenured or not, and refer the case to the University Conciliation Committee, in writing, as soon as practicable but no later than ten working days. If at all possible, even under these circumstances, the Provost and Vice President for Academic Affairs shall make every reasonable attempt to discuss the matter with that faculty member and/or that faculty member's designate in personal conference, and then the procedures outlined in section 1 above will be followed.

C. Procedures for Contract Termination for Cause

These procedures are used when it is proposed to dismiss a faculty member during the contract period from a faculty position because of grave cause related, directly and substantially, to the fitness of the faculty member in his or her professional capacity as a teacher and researcher, specifically limited to those listed in this *Faculty Handbook* in Chapter 9, Section A, parts 1 through 7. Dismissal of a faculty member with continuous tenure, or with a special or probationary appointment before the end of the specified term will be preceded by:

1. Discussion between the faculty member and appropriate administrative officers looking toward a mutually agreeable settlement.

In the case of those serious causes for termination of a tenured faculty member set out above in which there is a reasonable basis for belief that such a cause or causes can be removed, remedied or changed by the faculty member after consultation, admonition or exhortation, the Dean shall meet with such faculty member before any proceedings for termination are instituted. The Dean shall confer with such a faculty member setting out with specificity any basis for termination and shall afford such faculty member a reasonable opportunity to explain his or her position and to remedy or rectify any deficiencies. A written account of the matters discussed at the meeting shall be sent to such faculty member by certified mail.

2. Informal inquiry by:

a. the faculty member's College Rank and Tenure Committee, if the alleged cause is listed in this Handbook at Chapter 9, Section A, parts 1 through 6; or

b. the University Conciliation Committee, if the alleged cause is listed in this Handbook at Chapter 9, Section A-7.

The committee that has made the informal inquiry may, failing to effect an adjustment, determine whether in its opinion dismissal proceedings should be undertaken. The committee will send a report of its finding, which is not binding, to the President and the faculty member.

3. A statement of charges framed with reasonable particularity by the President or the President's delegate. Following the statement of reasons, the individual concerned will have the right to a formal hearing by the University Rank and Tenure Committee.

4. A formal adjudicative hearing by the University Rank and Tenure Committee. The University Rank and Tenure Committee's procedures shall be as follows:

a. Members deeming themselves disqualified for bias or interest shall remove themselves from the case, either at the request of a party or on their own initiative. Each party will have a maximum of two challenges without a stated cause.

b. The University Rank and Tenure Committee may, with the consent of the parties concerned, hold joint prehearing meetings with the parties in order to (i) simplify the issues, (ii) elicit stipulations of facts, (iii) provide for the exchange of documentary or other information, and (iv) achieve such other appropriate prehearing objectives as will make the hearing fair, effective and expeditious.

c. Service of notice of hearing with specific charges in writing will be made at least twenty days prior to the hearing. The faculty member may waive a hearing or may respond to the charges in writing at any time before the hearing. If the faculty member waives a hearing, but denies the charges or asserts that the charges do not support a finding of adequate cause, the Committee will evaluate all available evidence and rest its recommendation upon the evidence in the record.

d. The University Rank and Tenure Committee, in consultation with the President and the faculty member, will exercise its judgment as to whether the hearing should be public or private.

e. During the proceedings the faculty member will be permitted to have an academic advisor and/or counsel of his or her choice.

f. At the request of either party or the Committee, a representative of a responsible educational association shall be permitted to attend the proceedings as an observer.

g. A verbatim record of the hearing or hearings will be taken and a typewritten copy will be made available to the faculty member without cost, at the faculty member's request.

h. The burden of proof that adequate cause exists rests with the University and shall be satisfied only by clear and convincing evidence in the record considered as a whole.

i. The Committee will grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.

j. The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The administration will cooperate with the Committee in securing witnesses and making available documentary and other evidence.

k. The faculty member and the administration will have the right to confront and cross-examine all witnesses. Where the witnesses can not or will not appear, but the Committee determines that the interests of justice require admission of their statements, the Committee will identify the witnesses, disclose their statements, and if possible provide for interrogatories.

l. In the hearing of charges of incompetence, the testimony shall include that of qualified faculty members from this or other institutions of higher education.

m. The Committee will not be bound by strict rules 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.

n. The findings of fact and decision will be based solely on the hearing record.

o. Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements and publicity about the case by either the faculty member or administrative officers will be avoided so far as possible until the proceedings have been completed, including consideration by the Board of Trustees. The President and the faculty member will be notified of the decision in writing and will be given a copy of the record of the hearing.

p. If the Committee concludes that adequate cause for dismissal has not been established by the evidence in the record, it will so report to the President. If the President rejects the report, he will state his reasons for doing so in writing to the University Rank and Tenure Committee and to the faculty member, and provide an opportunity for response before transmitting the case to the Board of Trustees. If the Committee concludes that adequate cause for a dismissal has been established, but that an academic penalty less than dismissal would be more appropriate, it will so recommend, with supporting reasons. Such penalties may take the form only of reduction in academic rank, censure or admonition.

5. Action by the Board of Trustees

If dismissal or other severe sanction is recommended, the President will, on request of the faculty member, transmit to the Board of Trustees the record of the case. The Board's review will be based on the record of the University Rank and Tenure Committee hearing, and it will provide opportunity for argument, oral or written or both, by the principals at the hearings or by their representatives. The decision of the University Rank and Tenure Committee will either be sustained, or the proceeding returned to the Committee with the specific objections. The Committee will then reconsider, taking into account the stated objections and receiving new evidence if necessary. The Board will make a final decision only after study of the Committee's reconsideration.

6. In case of termination for cause, the University Rank and Tenure Committee will recommend to the President whether or not severance pay appears justified.

D. Procedures for Termination for Medical Reasons

Following a reasonable period when the faculty member is under suspension for medical reasons, procedures for termination for these same reasons as set forth in Chapter 9, Section A-8, may be initiated if there is a preponderance of medical evidence that the faculty member is unable to resume fulfillment of the terms and conditions of appointment. The decision to terminate will be reached only after there has been consultation and after the faculty member concerned, or someone representing the faculty member, has been informed of the basis of the proposed termination and has been afforded an opportunity to present the faculty member's position and to respond to the evidence. If the faculty member so requests, the evidence will be reviewed by the University Conciliation Committee, and this Committee shall issue a written recommendation concerning the propriety of the proposed termination to appropriate University administrators and to the faculty member concerned. The Board of Trustees shall make the final decision after careful consideration of the recommendations of the administration and the University Conciliation Committee. No decision to terminate for medical reasons shall become effective prior to six months following the onset of the faculty member's suspension for medical reasons or until the onset of disability benefits, whichever period comes first.

E. Procedures for Termination Because of Discontinuances

1. A proposal to discontinue a program or department of instruction will be evaluated by the Standing Council for Academic Planning, which will apply the criteria established by the University Senate. The Standing Council for Academic Planning will advise, in writing, the Board of Trustees, the President, and the University Senate concerning the proposed discontinuance. Final decision on program discontinuances is made by the Board.

2. Before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the University will make every effort to place the faculty member concerned in another suitable position. If placement in another position would be facilitated by a reasonable period of training, financial and other support for such training will be proffered. If no position is available within the University, with or without retraining, the faculty member's appointment may then be terminated, but only with the provision for severance salary equitably adjusted to the faculty member's length of past and potential service.

3. A faculty member may appeal a proposed relocation or termination resulting from a discontinuance and has the right to a full hearing before the University Rank and Tenure Committee in which the essentials of an on-the-record adjudicative hearing are observed. The issues in this hearing will include the question of the University's failure to satisfy any of the conditions of this section. In such a hearing the determination by the Standing Council for Academic Planning that a program or department is to be discontinued will be considered presumptively valid, but the burden of proof on other issues will rest on the administration.

• ***Procedures for Termination Because of Financial Exigency***

The University Senate, in cooperation with the University administration, shall formulate criteria for (a) identifying a *bona fide* state of financial exigency, and (b) determining proper institutional response to such a condition, which shall include guidelines for identifying faculty members to receive notice of termination, should this be necessary. The University Senate shall act expeditiously in formulating these criteria and guidelines and shall review these criteria and guidelines on a continuing basis, but no less than once every three years subsequent to their adoption.

1. If the President determines that a condition of financial exigency may be imminent, an *ad hoc* Exigency Planning Committee (EPC) shall be constituted. This Committee shall be composed of the full membership of the Standing Council for Academic Planning, with the voting privileges as described in Chapter 16-4. If the voting membership of SCAP does not include at least two non-tenured members of the Ordinary Faculty, the University Senate shall elect additional non-tenured member(s) so that EPC includes two non-tenured members of the Ordinary Faculty as voting members. The EPC shall hear all evidence that a state of financial exigency exists or is imminent based upon established criteria, and shall issue a written report regarding the existence and extent of the condition to the President and to the University Senate. If the EPC determines that a *bona fide* state of financial exigency exists or is imminent, it shall investigate and make recommendations, based upon the established criteria, concerning alternative institutional responses to the condition. These recommendations of the EPC shall be known as the Financial Exigency Plan. The University Senate may request in writing that the EPC reevaluate its recommendations if it is determined that the criteria established by the University Senate were improperly applied in the formulation of the Financial Exigency Plan. If, after receipt of the Financial Exigency Plan, the President judges that the condition of financial exigency is serious enough to warrant termination of tenured faculty appointments or cancellation of non-tenured contracts during the contract period, he shall order implementation of the guidelines established for identifying faculty members to receive notice of termination. The President shall provide each faculty member affected with a written statement of the basis for the initial decision to terminate, which shall include a description of the manner in which the decision to terminate was reached, and of the faculty member's right to a hearing before the University Rank and Tenure Committee.

2. If the President issues notice to a particular faculty member of an intention to terminate the appointment because of financial exigency, the faculty member will have the right to a full hearing before the University Rank and Tenure Committee. In this hearing, the essentials of an on-the-record adjudicative hearing will be observed. Issues in this hearing may include, but will not be limited to, the following:

a. The existence and extent of the condition of financial exigency. If the University Senate has accepted the Financial Exigency Plan of the EPC as conforming to established criteria and guidelines, the recommendations embodied in the Financial Exigency Plan shall be considered presumptively valid, such that the burden of proof will rest on the President or the affected faculty member if either disagrees with the determination of the EPC in this situation.

b. The validity of the remedy implemented by the administration. The

recommendations given by the EPC shall be given the greatest weight in reaching a conclusion on this matter.

c. The proper application of all criteria and guidelines established by the University Senate in identifying faculty members to receive notice of termination.

3. If the University, because of financial exigency, terminates tenured appointments or cancels non-tenured contracts before the end of the contract period, it will not at the same time make new appointments except in extraordinary circumstances where a serious distortion in the academic program would otherwise result. A faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.

4. Before terminating an appointment because of financial exigency, the University, with faculty participation, will make every reasonable effort to place the faculty member concerned in another suitable position within the University.

5. In all cases of termination of appointment because of financial exigency, the faculty member concerned will be given notice as in Chapter 6, Section C of this *Handbook*.

6. In all cases of termination of appointment because of financial exigency, the position of the faculty member concerned will not be filled by a replacement within a period of three years, unless the released faculty member has been offered reinstatement and a reasonable time in which to accept or decline the offer.

7. Faculty members terminated because of financial exigency are entitled to severance salary equitably adjusted to the faculty member's length of past and potential service.