



TEXAS TECH UNIVERSITY
HEALTH SCIENCES CENTER™

School of Medicine

Operating Policy and Procedure

SOM OP: 20.11, **Appeal of Dismissal, Termination, and Non-Reappointment**

PURPOSE: The purpose of this School of Medicine (SOM) policy and procedure is to establish a model procedure that allows for fair and consistent consideration of faculty appeals of dismissal, termination and non-reappointment.

REVIEW: This SOM Policy and Procedure shall be reviewed within each even-numbered fiscal year by the Hearing Committee. Revisions will be forwarded to the Office of the Dean for approval and publication.

POLICY/PROCEDURE:

1. **General.** This policy is intended to provide procedures for faculty seeking to appeal a dismissal, termination charges or non-reappointment in accordance with [HSC OP 60.01, Tenure and Promotion Policy](#). Two separate procedures are outlined:
 - a. Hearings for Appeal of Dismissal and Termination of Appointment
 - b. Hearings for Appeal of Non-Reappointment.
2. **Hearings for appeal of dismissal and termination of appointment.**
 - a. Dismissal for Cause. Dismissal of a tenured faculty member and termination of all other faculty members before the expiration of the stated period of their appointment, except by resignation or retirement, *will be for cause only*, (see [HSC OP 60.01](#), §§7.e., 11, and 12). TTUHSC shall bear the burden of showing cause for dismissal or termination of appointment. Examples of cause for dismissal or termination include, but are not limited to the following:
 - 1) Professional incompetence;
 - 2) Neglect of professional responsibilities;
 - 3) Moral turpitude adversely affecting the performance of duties or the meeting of responsibilities to the school, or to students or associates;
 - 4) Mental or physical disability of a continuing nature adversely affecting the performance of duties or the meeting of responsibilities to the school, or to students or associates that cannot be reasonably accommodated;
 - 5) Unprofessional conduct adversely affecting the performance of duties or the meeting of responsibilities to the school, or to students or associates; and
 - 6) Failure to pass comprehensive performance evaluation (see [HSC OP 60.03, Comprehensive Performance Evaluation of Tenured Faculty](#)).
 - b. Mediation Team Appointment. Before the filing of formal dismissal or termination charges by the Dean, a reasonable effort shall be made to mediate and conciliate differences, where appropriate (see [HSC OP 60.01](#), §12.f.). Upon written notification by the Dean of a request for dismissal or termination, the chair of the SOM Hearing Committee shall appoint a mediation team within fifteen (15) TTUHSC business days comprised of two faculty members, neither of whom serves in the same department as the faculty member recommended for dismissal or termination, who are not on the SOM Hearing Committee, and who are acceptable to both parties. If no mediators are found acceptable within fifteen (15)

TTUHSC business days, mediation will be deemed not feasible and the matter will be referred back to the Dean. In this case, the Dean will determine whether formal charges should be issued to dismiss or terminate the faculty member for cause.

- c. Mediation Proceedings. If a mediation team is accepted, the Chair of the SOM Hearing Committee shall provide the members of the mediation team with a copy of this policy. The team shall attempt to reach a mutually acceptable solution between the Dean and the affected faculty member in a thorough, confidential, equitable, and expeditious manner. Mediation proceedings will involve only members of the faculty; no legal representatives will participate in the negotiations except under unusual circumstances. This does not prevent parties from consulting legal or other representatives for information or advice when such is needed to proceed with the mediation. If a successful solution to the dispute is obtained, both parties shall sign a statement containing the agreed upon facts and actions, and forward this document as soon as possible to the Office of Faculty Affairs and Development. The Office of Faculty Affairs and Development will report the outcome of the mediation to the President within fifteen (15) TTUHSC business days of the first day of mediation, with copies provided to the Dean and the Chair of the SOM Hearing Committee. If conciliation is not achieved within that time period, the Dean shall determine whether formal charges should be issued to dismiss or terminate the affected faculty member for cause.
- d. Issuance of Charges. In all cases where formal dismissal or termination charges are issued, the faculty member involved will be informed in writing by the Dean of the charges against him/her. The charges will then be considered by the SOM Hearing Committee, unless the affected faculty member offers his/her resignation in writing, or the faculty member fails to cooperate in advancing the appeal (see [HSC OP 60.01](#), §§12.c. and 12.d.).

Upon receipt of the formal dismissal or termination charges, the affected faculty member shall be notified by the Dean in writing of his/her right to an appeal hearing and shall be given fifteen (15) TTUHSC business days from the date of receipt of such notice to submit a request for a Hearing before the SOM Hearing Committee to the Dean and the Chair of the SOM Hearing Committee. Failure to appeal the action within the stated time will relieve TTUHSC of any further obligation to pay the affected faculty member's salary and benefits, effective immediately. ([HSC OP 60.01](#), §§12.c. and 12.d.).

- e. Adjustment of Procedures. The SOM Hearing Committee reserves the right to adjust these procedures in individual cases as necessary, and all parties will be notified in advance if changes are made. In accordance with [HSC OP 60.01](#), §12.m., "the procedure shall be investigatory and non-adversarial."
- f. Selection of Hearing Panel. In cases where mediation failed to resolve the issue or where mediation has been deemed unfeasible, the Dean will inform the Chair of the SOM Hearing Committee and instruct him/her to arrange for a formal Hearing of the case.

The Chair, or his/her designee, upon notice from the Dean, shall be responsible for assembling a hearing panel from among the committee members and naming a chair of the panel ([HSC OP 60.01](#), §12.e. and [SOM OP 20.05, Faculty Council Bylaws](#), Article IV, §2.B.5.). The panel shall have no less than five (5) members, including the chair. The panel members may not have any conflict of interest in the case and be acceptable to the faculty member and his/her Chair. Should there be difficulty in assembling a panel in a reasonable period of time, the Chair of the committee may name tenured members of the SOM faculty to serve on the panel. The committee shall establish procedures to be used during any hearings and make these available to all parties at the beginning of the process.

- g. Exchange of Documents.
 - 1) The Chair of the SOM Hearing Committee will send the affected faculty member a letter containing:

- a) Copy of this policy;
 - b) Copy of the letter requesting the hearing;
 - c) Copy of the Dean's response;
 - d) Names of the Hearing Panel and the appointed Chair for approval; and
 - e) Notification that material forwarded at any stage of the process should be accompanied by a listing of individual items contained therein and that acknowledgement of receipt of all items must be made by the recipient.
- 2) The Chair of the SOM Hearing Committee will send the Departmental Chair who requested the dismissal/termination a letter containing:
- a) Copy of this policy.
 - b) Request that within ten (10) TTUHSC business days from date of receipt of this letter, he/she submits the following items to the Office of the Dean:
 - (1) Brief summary of the basis or bases for the requested dismissal or termination;
 - (2) Copies of all materials that he/she intends to use as documentation at the formal hearing; and
 - (3) List of witnesses he/she intends to call at the formal hearing.
 - c) Names of the Hearing Panel and the appointed Chair for approval.
 - d) Notification that material forwarded at any stage of the process should be accompanied by a listing of the individual items contained and that acknowledgement of receipt of all items must be made by the recipient.
- 3) Office of the Dean immediately forwards copies of all material received to the Chair of the SOM Hearing Committee.
- 4) The Chair of the SOM Hearing Committee will send to the affected faculty member a request that within ten (10) TTUHSC business days from date of receipt of this material the affected faculty member submits the following items to the Office of the Dean:
- a) Summary of his/her response to the requested dismissal or termination;
 - b) Copies of all materials that he/she intends to use as documentation at the Hearing, and
 - c) List of witnesses he/she intends to call at the formal hearing.
- 5) The Chair of the SOM Hearing Committee will distribute all submitted materials to the members of the Hearing Panel with the understanding that all material is strictly confidential.
- 6) All submitted material must pertain to the original charges. The Hearing Panel has the right to rule on the admissibility of material provided.
- h. Procedures for the Hearing. The Chair of the Hearing Panel shall arrange for the formal hearing to be held as soon as possible but no less than ten (10) working days after receipt of all materials. Audio recordings will be made of the hearing in accordance with [HSC OP 60.01](#), §12.I. There should be two rooms available in close vicinity of the hearing room where

witnesses can wait to testify. Witnesses may present testimony by telephone if absolutely necessary.

The faculty member shall have the right to appear in person with legal counsel retained by the individual, or other representative of his or her choice, and to confront and cross-examine witnesses ([HSC OP 60.01](#) §12.j.). The faculty member shall have the right to testify, but may not be required to do so, and may introduce on his or her behalf all evidence, written or oral, which he or she considers to be relevant or material to the case. TTUHSC shall also have the right to legal counsel from the Office of General Counsel in the preparation and presentation of charges and have the same rights in the hearing as those accorded to the faculty member. Failure on the part of the faculty member to utilize an attorney or other representative at the hearing shall not preclude the SOM Hearing Committee from utilizing *pro bono* legal counsel or other assistance from the Office of General Counsel.

Each party is responsible for having documents for presentation and witnesses present when called upon. Witnesses should be informed that the proceedings within the hearing room should be treated as confidential. The Hearing Panel may have an attorney available. It has the right to go into executive session at any time. It also has the right to ask questions of the parties, to call its own witnesses and to cross-examine witnesses for each party.

No additional charges, documentation or other information concerning the dismissal or termination will be introduced at the formal hearing by the Departmental Chair requesting the dismissal or termination that has not been disclosed to the affected faculty member at least two working days prior to the start of the formal hearing, unless justifiable reasons require such admission, as determined by the Hearing Panel. However, any introduced evidence, documentation or information from either party that could/should have been included in the material requested under paragraph 2.g., Exchange of Documents, will be ruled inadmissible by the Hearing Panel.

The formal hearing will follow a standard format:

- 1) Each party may present an opening statement not to exceed five (5) minutes.
- 2) Following the opening statements, each party will present his/her case. The Departmental Chair requesting the dismissal or termination shall present his/her charges first. The Hearing Panel, in consultation with the parties, will set a time limit for these presentations and has the option to end discussion that is repetitious or not relevant. The opposing party will have the right to cross-examine witnesses at appropriate times. This will count toward his/her allotted time.
- 3) Closing statements by each party will be limited to five (5) minutes. The Departmental Chair requesting the dismissal or termination will present first.

- i. Panel Report and Dean's Decision. The Hearing Panel, by majority of its membership, shall make written findings on the material facts on each charge and make specific recommendations with regard to each of the charges, as well as general recommendations concerning the dismissal or termination. The Hearing Panel, by majority of its membership, may make any supplemental recommendations it deems appropriate concerning disposition of the case. Minority findings, recommendations, or suggestions may also be made.

The Chair of the Hearing Panel shall deliver the written findings, recommendations, and suggestions to the Dean of the School of Medicine within seven (7) TTUHSC business days of the Hearing.

The Dean of the School of Medicine shall review the Hearing Panel's findings and recommendations and, within seven (7) TTUHSC business days, shall transmit them along with his/her own recommendations to the President of TTUHSC.

j. Dismissal.

- 1) In the case of a dismissal of a *non-tenured* faculty member, the President shall review the Hearing Panel's findings and recommendations as well as the Dean's recommendation and render a decision. The decision will be stated in writing and communicated to the affected faculty member and the Dean within ten (10) TTUHSC business days of receipt of the recommendations of the Hearing Panel and the Dean. The decision of the President shall be final.
- 2) In the case of a dismissal of a *tenured* faculty member, the President shall transmit the findings and recommendations of the Hearing Panel and the Dean's recommendations, along with his/her recommendations, to the affected faculty member and to the Board of Regents for its consideration. The Board, by a majority of its total membership, shall take final action. The decision of the Board will be stated in writing and communicated to the President, who will communicate it to the Dean of the School of Medicine. The President shall also notify the affected faculty member in writing of the Board's decision. The decision of the Board shall be final.

k. The President of TTUHSC shall have the prerogative of extending any of the time periods specified above when such is in his/her opinion in the best interest of TTUHSC or the affected faculty member, and shall have the right to intervene, when in his/her judgment, the proceedings are not progressing in a timely manner. Time periods may also be extended upon agreement by both parties and concurrence by the Hearing Committee.

3. Hearings for Appeal of Non-Reappointment.

- a. Reason for Non-Reappointment. TTUHSC is not required to give a non-tenured faculty member a reason for a decision of non-reappointment ([HSC OP 60.01](#), §§5.f., 10.a., and 10.b.). Thus, unlike termination, this is not a *for-cause* action. Three causes that justify an appeal ([HSC OP 60.01](#), §10.b.) are:
- 1) Considerations violative of academic freedom.
 - 2) Legally impermissible reasons.
 - 3) Significant noncompliance with TTUHSC's established standards or prescribed procedures.

Additional information regarding academic freedom is contained in [HSC OP 60.01](#), §2 and 3. [HSC OP 60.01](#), §10.b.(3), states the "faculty member shall have the burden of proving to the hearing panel facts that establish the non-reappointment was improper". The faculty member must provide specific reasons for his/her claims and sufficient documentation and testimony for the Hearing Panel to be able to make an informed decision. All documentation not related to these specified reasons shall be inadmissible.

- b. Adjustment of Procedures. The SOM Hearing Committee sets forth the following procedures for the formal hearing process ([HSC OP 60.01](#), §12.e.). The committee reserves the right to adjust these procedures in individual cases as necessary, and all parties will be notified in advance if changes are made. In accordance with [HSC OP 60.01](#) §10.b.(3), "the procedure shall be investigatory and non-adversarial in nature."
- c. Selection of Hearing Panel. The Dean notifies the Chair of the Hearing Committee in writing that an appeal concerning a non-reappointment has been filed and encloses copies of the letter requesting a hearing and the Dean's response.

The Chair, or his/her designee, upon notice from the Dean, shall be responsible for assembling a hearing panel from among the committee members and naming a chair of the panel ([HSC OP 60.01](#), §12.e. and [SOM OP 20.05, Faculty Council Bylaws](#), Article IV,

§2.B.5.). The panel shall have no less than five (5) members, including the chair. The panel members may not have any conflict of interest in the case and be acceptable to the faculty member and his/her Chair. Should there be difficulty in assembling a panel in a reasonable period of time, the Chair of the committee may name tenured members of the SOM faculty to serve on the panel. The committee shall establish the procedures to be used during any hearings and make these available to all parties at the beginning of the process.

d. Exchange of Documents.

- 1) The Chair of the Hearing Committee will send to the Departmental Chair who requested the non-reappointment a letter containing:
 - a) Copy of this policy;
 - b) Copy of the letter requesting the hearing;
 - c) Copy of the Dean's response;
 - d) Names of the Hearing Panel and the appointed Chair for approval; and
 - e) Notification that material forwarded at any stage of the process should be accompanied by a listing of individual items contained therein and that acknowledgement of receipt of all items must be made by the recipient.
- 2) The Chair of the SOM Hearing Committee will send the appealing faculty member a letter containing:
 - a) Copy of this policy.
 - b) Request that within ten (10) TTUHSC business days from date of receipt of this letter, he/she submits the following items to the Office of the Dean:
 - (1) Brief summary of the basis for the appeal and an explanation of how it falls under an allowable cause for an appeal;
 - (2) Statement defining specific relief being sought;
 - (3) Copies of all materials that he/she intends to use as documentation at the formal hearing; and
 - (4) List of witnesses he/she intends to call at the formal hearing.
 - c) Names of the Hearing Panel and the appointed Chair for approval.
 - d) Notification that material forwarded at any stage of the process should be accompanied by a listing of the individual items contained and that acknowledgement of receipt of all items must be made by the recipient.
- 3) The Office of the Dean immediately forwards copies of all material received to the Chair of the SOM Hearing Committee.
- 4) The Chair of the SOM Hearing Committee will forward material from the appealing faculty member to the departmental chair with the request that within ten (10) working days from date of receipt of this material he/she submits to the Office of the Dean:
 - a) Summary of his/her response to the appeal.
 - b) Copies of all materials that he/she intends to use as documentation at the hearing.

- c) List of witnesses he/she intends to call at the hearing.
 - 5) The Office of the Dean immediately forwards copies of all material received to the Chair of the Hearing Committee.
 - 6) The Chair of the SOM Hearing Committee forwards material from the departmental chair to the appealing faculty member with the request that he/she submits to the Office of the Dean any additional material or list additional witnesses in rebuttal within ten (10) working days from date of receipt of this material. All material submitted must pertain to the original appeal and material in the second submission must be in direct rebuttal to documentation or witnesses originally submitted by the other party. The Hearing Panel has the right to rule on whether the appeal is based on one of three allowable causes as stated in paragraph 3.a., as well as the admissibility of material provided.
 - 7) The Chair of the Hearing committee distributes all materials submitted to the members of the Hearing Panel with the understanding that all material is strictly confidential.
- e. Procedures for the Hearing. The Chair of the Panel shall arrange for the hearing to be held as soon as possible but no less than ten (10) TTUHSC business days of the receipt of all material.

Audio recordings will be made of the hearing. There should be two rooms adjacent to the hearing room where witnesses can wait to testify. Witnesses may present testimony by telephone if absolutely necessary.

The faculty member shall have the right to appear in person with legal counsel retained by the individual, or other representative of his or her choice, and to confront and cross-examine witnesses ([HSC OP 60.01](#), §12.j.). The faculty member shall have the right to testify, but may not be required to do so, and may introduce in his or her behalf all evidence, written or oral, which he or she considers to be relevant or material to the case. TTUHSC shall also have the right to legal counsel from the Office of General Counsel in the preparation and presentation of charges and have the same rights in the hearing as those accorded to the faculty member. Failure on the part of the faculty member to utilize an attorney or other representative at the hearing shall not preclude the panel of the School Hearing Committee from utilizing *pro bono* legal counsel or other assistance from the Office of General Counsel.

Each party is responsible for having documents for presentation and witnesses present when called upon. Witnesses should be informed that the proceedings within the hearing room should be treated as confidential. The Panel may have an attorney present. It has the right to go into executive session at any time. It also has the right to ask questions of the parties, to call its own witnesses and to cross-examine witnesses for each party.

The hearing will follow a standard format:

- 1) Each party may present an opening statement (faculty member first) not to exceed five (5) minutes.
- 2) The faculty member shall present his/her case first. The Panel, in consultation with the parties, will set the time limit for these presentations and has the option to stop discussion that is repetitive or not germane. The opposite party will have the right to cross-examine witnesses at appropriate times. This will count toward his/her allotted time.
- 3) Closing statements by each party will be limited to five (5) minutes. The faculty member will present first. After the other party has completed his/her closing statement, the faculty member may request two (2) additional minutes to respond.

- f. Panel Report and Dean's Decision. The Panel shall submit all documentation and the report on the hearing together with its recommendations to the Chair of the Hearing Committee and the Dean within ten (10) TTUHSC business days of the hearing.

Upon receipt of the School Hearing Committee's findings and recommendations, the Dean shall submit same, along with his or her recommendations, to the President and to the faculty member within ten (10) TTUHSC business days.

- g. The President shall review the findings and recommendations and make a decision. The President's decision will be stated in writing and communicated to the Dean and the faculty member within ten (10) TTUHSC business days of receipt of the Dean's recommendation. The decision of the President shall be final.