

## **Termination for Incompetent Performance**

### **I. Introduction**

The standards and procedures specified in this policy articulate the conditions under which faculty with tenure or with Security of Employment (SOE) may be terminated for incompetent performance. They represent a careful balance between conflicting imperatives. It is exceedingly important that the ability of the University to fulfill its central functions not be impaired by the presence of incompetent faculty, but it is equally important that the freedom and security protected by tenure and Security of Employment not be compromised or diluted. These dual objectives require that standards for incompetent performance be stated clearly and that the procedures for termination be crafted to ensure that such standards are applied fairly and accurately.

To simplify the policy, the procedures and standards herein are written to address tenured faculty. For Lecturers with SOE and Senior Lecturers with SOE, these same procedures and standards apply, with the exception that the standards for evaluating research in Section II.C are not applicable, since research is not a requirement for the Lecturer SOE titles.

### **II. Framework for Termination Action**

#### **A. Premises and Assumptions**

These procedures are based on several premises. Termination of a faculty member for incompetent performance is an extraordinary remedy designed to address gross performance deficiencies in extremely rare cases. There are many ways to indicate to a faculty member that his or her performance is substandard, such as conferences with the Chair or with the Dean and the denial of merit increases. In a more extreme case, formal notification by a Chair or Dean that a faculty member's teaching and/or scholarship are unsatisfactory will often be sufficient to produce improvement in performance.

These procedures are designed to achieve two basic purposes: (1) to ensure that tenured faculty who are alleged to perform incompetently are terminated under this policy only for the reasons specified in Sections II.B and C below; and (2) to ensure that such a termination is supported by demonstrable facts.

These procedures give both the Committee on Academic Personnel (CAP) and the Privilege and Tenure Committee (P & T) a role in the process since each

serves a different function. With wide experience in evaluating scholarship, research, and teaching across the entire campus, CAP is expert in assessing standards of academic performance. In tenure cases, CAP is looking for excellent performance; under APM - 075, CAP is assessing incompetent performance. In both circumstances, CAP's judgement should be based on a comprehensive evaluation and a weighing of all areas of responsibility. The P & T Committee, which is expert in adjudication and fact-finding, has the responsibility for assessing whether the facts warrant termination. The University has the burden of proof to show clear and convincing evidence of incompetent performance.

Informal resolution is appropriate at any time during the process described below. Prior to finalizing an informal resolution, the faculty member is encouraged to consult with senior faculty advisors, such as the chair of CAP, a P & T Committee advisor, or the P & T Committee chair. The faculty member has the right to request CAP's review of the proposed resolution along with supporting documentation prior to responding to or finalizing an informal resolution.

For a faculty member who has an excellent teaching record but who has performed inadequately in research or creative activity, following regular academic review and with the consent of the faculty member, the Chancellor may offer the individual a transfer to the Lecturer SOE series. In addition, APM - 005, "Privileges and Duties of Members of the Faculty," provides for an increase in the teaching load for faculty members who are "giving little or no time to activities of other types."

#### **B. Determination of Incompetent Performance**

A faculty member may be terminated for demonstrated incompetence in the performance of his or her University duties. Reviewers should look at the faculty member's job as a coherent whole and examine comprehensively the individual's contributions in all areas of faculty responsibility, including evaluation of clinical competence for faculty with clinical responsibilities. After this comprehensive evaluation, reviewers may consider whether, in the particular circumstances of the individual case, incompetence in a single area is sufficient grounds for termination.

**C. Standards for Determination of Incompetent Performance**

**1. Research or Creative Activity**

A tenured faculty member will be deemed to have performed incompetently in research or creative activity: (1) if for several years he or she has not engaged in bona fide research or creative activity, and; (2) if he or she gives no satisfactory evidence that he or she will engage in research or creative activity in the foreseeable future. The absence of frequent publication or the lack of recent funding does not per se mean the research is incompetent. Because norms of productivity and standards of active scholarship vary from discipline to discipline, the norms appropriate to the faculty member's current research area should be used. In evaluating research and creative work, reviewers should use APM - 210-1-d(2) as a guide.

**2. Teaching**

The content of a course and pedagogy are not entirely independent of each other; however, for the purposes of this policy, there are two distinct standards for evaluating teaching. Teaching performance can be judged incompetent either because the substance of what is taught is unacceptably deficient or because the processes and methods of instruction are inadequate. A tenured faculty member's teaching shall be deemed incompetent if it meets either of the following standards:

**(a) Intellectual Content**

The intellectual content of the faculty member's teaching as judged from such sources as evaluations by current and former students, colleagues' assessments, and teaching portfolios, is so far below the professional standards of university-level instruction in the discipline that it is a disservice to students to permit the faculty member to continue to teach; or

**(b) Pedagogical Skills**

The pedagogical skills of the faculty member, judged from sources such as evaluations by current and former students, assessments by faculty colleagues, and teaching portfolios, are so far below the professional standards of university-level instruction that it is a disservice to students to permit the faculty member to continue to

teach. The intellectual content of the faculty member's teaching shall be excluded from consideration when applying this criterion.

Assessment of pedagogical skills will entail evaluation of such factors as clarity of presentation, diligence as a teacher, availability to students, and willingness and capacity to communicate effectively with students and to support their efforts to learn. These factors should be assessed through such means as student and faculty evaluations. Students who enrolled but dropped out of a faculty member's class may also be contacted; if the decision is made to contact such students, then an effort must be made to contact all such students within certain specified years.

In evaluating teaching, reviewers shall use APM - 210-1-d(1) as a guide.

### **3. University Service, Public Service, and Professional Service**

Teaching and research are the main responsibilities of members of the professorial series, but reviewers shall also examine the quality and quantity of the individual's contributions in the areas of University service, public service, and professional service as part of the assessment of an individual's overall performance. As a guide in evaluation, reviewers shall use APM - 210-1-d(3) and (4).

## **III. Procedure for Termination for Incompetence**

To terminate a tenured professor (the "Professor") for incompetence, the procedures described in Section III of this policy must be followed. (For a summary of these procedures, see Appendix A.) The term "department" as used in Section III of this policy refers to the department or equivalent unit to which the Professor is appointed for the majority of his or her position. If the Professor holds a joint and equal appointment in two departments, the term "department" shall refer to both departments. In a single-department school which does not have a Chair, the Dean shall act as department Chair. "Standards" refers to standards for determination of incompetent performance as defined in Section II of this policy. Unless otherwise provided in this policy, procedures used for evaluating a faculty member's performance for promotion to tenure should be applied.

Time Frame: The Professor shall be allowed a period of no less than one year as an opportunity for improving his or her performance; this period for improvement begins with the date of written notification that the possibility of termination is being

considered as described in Section III.A.3. If the termination case then goes forward, the total time for review of the case from the time of the departmental vote (Section III.A.4) to the Chancellor's decision on a recommendation to the President should normally not exceed one year.

**A. Procedures Within the Department/School**

**1. Confidentiality**

University officials and faculty members shall conduct all procedures for termination described in Section III of this policy with strict confidentiality. Materials generated specifically for the termination proceeding such as reports by the department, the Chair, the Dean, CAP, the Ad Hoc committee (as in III.B.3), and P & T shall be placed in a separate confidential file, shall not be included in the Professor's regular personnel file, and may not be used in subsequent personnel actions regarding merits or promotions or requests for deferral. Materials which are generated as part of a normal review process (such as student evaluations of classes) and which are used in the termination proceeding may be used in a later personnel review.

**2. Initiation**

Only the Chancellor or designee, either independently or at the request of the Dean or the Chair of the department, may initiate the termination process. Others, including CAP, who believe that the Professor's performance is so inadequate as to raise a serious question about the possibility of terminating the Professor should communicate that information to the Chancellor or designee, the Dean, or the Chair. The Chancellor or designee shall decide if a case involving nonperformance or unacceptably deficient performance is a disciplinary matter that falls under the Faculty Code of Conduct (APM - 015), or whether APM - 075 applies.

**3. Notification of the Professor**

When the Chancellor or designee determines that the Professor's performance is so inadequate as to raise a serious question of recommending termination, the Chancellor or designee shall notify the Professor in writing: (1) concerning the areas of alleged deficiency; (2) that the possibility of termination is being considered; and (3) that the Professor's defined period of time for the improvement of his or her

performance has begun. For a period that shall be no less than one year in duration, the Chair and Dean shall offer guidance, such as providing a faculty mentor, and the opportunity for the improvement of his or her performance. The faculty member is encouraged to seek assistance as appropriate, from such campus resources as the employee assistance office, teaching improvement center, health center, or disability office.

In cases where the faculty member has indicated there is a physical or mental disability, and if requested, has provided medical certification, provisions should be made for reasonable accommodation as required by law and University policy.

After the mandated period for improvement, the Chancellor or designee in consultation with the Chair and Dean shall make a determination whether there has been satisfactory improvement and shall notify the Professor in writing.

#### **4. Departmental Recommendation**

If the Chancellor or designee decides to proceed with the proposed termination of the Professor, he or she shall ask for the department's written recommendation (the "departmental recommendation"). The standard that the department shall use in making this determination is whether the facts establish incompetent performance of University duties. In making this determination, the department must use the same procedures (but not the same standards) that it uses in deciding whether to recommend tenure (including rules regarding voting qualifications) and must maintain strict confidentiality. The provisions of APM - 220 and APM - 160 govern the Professor's access to this file, his or her right to respond to or add material to the file, and similar issues. The department may solicit letters evaluating the Professor's performance from persons outside the University and from current and former students, as appropriate. The letter should ask for an evaluation of the Professor's performance, with no mention that this request is part of a review addressing the question of incompetent performance. The department shall forward to the Dean a statement explaining the reasons for its determination on whether or not to recommend termination of the faculty member, together with all the materials that were assembled for the file.

**5. Dean's Recommendation**

The Dean shall review the departmental recommendation using the standards of the academic discipline and the evidence submitted by the department, and shall reach an independent determination whether to recommend termination of the Professor. The Dean shall then forward a statement explaining his or her recommendation, together with all materials received from the department, to the Chancellor or designee.

**B. Establishment of Case and CAP Review**

**1. The Chancellor**

After reviewing the file forwarded from the Dean, the Chancellor or designee may decide to: (1) take no action; (2) attempt to resolve the matter by informal means; or (3) proceed with the termination process. To initiate the termination process, the Chancellor or designee must formulate a request for termination (the "Request"). The Request shall consist of a statement explaining why the Chancellor or designee believes the Professor's performance is incompetent, as defined by the standards specified in Section II, "Framework for Termination Action," plus supporting documents. If there are letters from current or former students and/or from reviewers outside the University, these shall be included in the Request and shall be redacted pursuant to APM - 160.

**2. The Professor**

A copy of the materials constituting the Request shall be sent to the Professor. The Professor shall have a period of at least 30 calendar days during the time that the University is in session (that is, when regularly scheduled classes are meeting) and the Professor is not on sabbatical leave or other authorized leave that involves his or her absence from the University, to respond (the "Response") to the Request. If the University is not in session or the Professor is on a sabbatical leave or other authorized leave that involves his or her absence from the University, the Professor shall have a period of at least 90 calendar days to respond to the Request. The Response shall be sent to the Chancellor or designee and shall consist of any statements or materials that the Professor wishes to include. After reviewing the Response, if the Chancellor or designee decides to proceed with the review, he or she shall send the Request together with the Response to the campus Committee on Academic Personnel.

**3. The Committee on Academic Personnel (CAP)**

The Committee on Academic Personnel (CAP) shall nominate and the Chancellor or designee shall then appoint an Ad Hoc Committee (under the same procedures used to appoint a confidential Ad Hoc Committee to consider promotion to tenure). The Ad Hoc Committee shall evaluate the case using the same process used by Ad Hoc Committees in their review of promotions in personnel cases. After reviewing the Ad Hoc Committee report, CAP shall advise the Chancellor or designee whether the Request and the accompanying file provide a sufficient basis for termination of the Professor.

**C. Determination of Incompetence**

**1. Privilege and Tenure Committee Determination**

If both the department and CAP have recommended against termination, the Chancellor shall notify the Professor in writing that the case for termination has ended. For limitations on initiating a subsequent case for termination, see Section III.C.2.

If the department and/or CAP have recommended termination, the Chancellor or designee shall review the file. If the Chancellor or designee decides to bring formal charges of incompetent performance, he or she shall offer the Professor two choices: an immediate decision by the Chancellor on whether to recommend termination, or a full evidentiary hearing before the P & T Committee.

If the Professor chooses an immediate decision by the Chancellor, subsection 2(c) - (e), below, shall apply.

If the Professor chooses a P & T hearing, the Chancellor or designee shall present the entire file to the Committee. The file shall include the relevant documentation (teaching evaluation materials, letters, etc.), the departmental recommendation, the Dean's recommendation, the Chancellor's Request, the Professor's Response, and the CAP report (including the Ad Hoc Committee report). The P & T Committee shall judge whether the University has demonstrated by clear and convincing evidence that the case justifies termination according to the standards for determination of incompetent performance. In making this determination, the P & T Committee shall hold a hearing and use the procedures that it ordinarily uses in deciding an early termination action,

under Senate By-Law 335, brought by the University against a tenured professor (i.e., a full evidentiary hearing), and it shall follow the same rules of confidentiality that it follows in deciding such actions. The P & T Committee shall forward its recommendation together with all documents related to the case to the Chancellor or designee.

## **2. Chancellor's Determination**

- (a) In this subsection 2, the authority of the Chancellor may not be redelegated.
- (b) The Chancellor shall decide whether or not to proceed with the termination process. If the Chancellor's tentative decision disagrees with that of P & T, the Chancellor shall inform the Chair in writing that he or she may disagree and ask if the Chair of P & T would like the Chancellor to meet with the Chair or with the whole committee prior to making a final recommendation.
- (c) If the Chancellor decides to proceed with the recommendation for termination, he or she shall so inform the Professor, the P & T Committee (if P & T has been involved in the case), CAP, the Dean, and the Chair of the department, and shall forward the recommendation for termination to the President, together with all documents in the file. The President and The Regents will then proceed in accordance with Standing Orders 101.1(b) and 103.9. Termination for incompetence under the provisions of APM - 075 is "good cause" under Standing Order 103.9, and the hearing provided under APM - 075 Section III.C.1 is the hearing provided for under Standing Order 103.9.
- (d) If at any stage in this process after the department vote specified in Section III.A.4, the Chancellor or designee decides not to seek the termination of the Professor, in the absence of substantial new evidence a department shall not vote on a recommendation for the termination of the Professor for incompetent performance within the next three years. In the absence of substantial new evidence, neither shall the Chancellor or designee initiate a Request to CAP within the next three years.
- (e) Notification in writing of an informal or formal resolution should be made to the Professor and, in addition, to the department, the Dean, CAP, and P & T, if they have had a role in the case.

## **Summary of Procedures for Termination for Incompetent Performance**

### **A. Preliminary Stage: Procedures within the Department/School**

- Chancellor or designee may initiate
- Notify professor - one year for improvement
- Preparation of the file
- Department votes and recommendation sent to Dean
- Dean recommends to Chancellor

### **B. Establishment of Case and CAP Review**

- Chancellor formulates request for termination
- Professor may respond
- Chancellor forwards file to CAP
- Chancellor appoints Ad Hoc Committee
- CAP advises Chancellor

### **C. Formal Stage**

- Chancellor sends case to P & T (unless the Professor chooses an immediate decision by the Chancellor)
- P & T evidentiary hearing
- Findings to Chancellor
- Chancellor's recommendation
- Case forwarded to President and The Regents for decision