

DRAKE UNIVERSITY

Statements on Policy and Procedure for Dismissal of
Tenured or Nontenured Faculty

Standing Committee of the Faculty Senate
on
ACADEMIC FREEDOM AND TENURE

April 1991

The following draft has been modified by the Provost's Office to reflect changes in the Academic Charter created since 1991 and changes in the name of the Governing Board. Other minor editing (page 5 Record of Proceeding") brings the document into line with standard language and technology.

Part I

CHARGE OF THE COMMITTEE ON ACADEMIC FREEDOM AND TENURE

The charge of the Committee on Academic Freedom and Tenure is stated in the *Academic Charter of Drake University*, Article IX.

IX. Standing Committee on Academic Freedom and Tenure

- A. There shall be a Standing Committee of the Faculty Senate on Academic Freedom and Tenure elected by the Executive Committee of the Faculty Senate. The Committee shall have seven regular members and seven alternates. Members of the Committee and alternates shall be members of the Faculty of Instruction with tenure. The principle of broad representation shall be honored. The Chair shall be elected by the Committee. Alternates shall be called to serve on the Committee in the order of preference provided by the electing authority. Committee members and alternates, except those elected for short terms to fill vacancies and first elected, shall serve three-year terms. The terms of office shall be staggered on a basis of three-two-two with annual election.
- B. The Committee shall function as a standing committee of the Senate in matters pertaining to procedures or policies relating to academic freedom or to tenure, provided the Committee shall make no recommendations or reports to the Senate concerning a matter being heard by the Committee.
- C. The Committee shall be the adjudicatory body for cases and controversies relating to academic freedom or to tenure which are not resolved through informal procedures or through regular administrative channels. In cases involving tenured faculty, and in all cases involving allegations of academic freedom violations or dismissal of a faculty member whose term appointment has not expired, subject to review by the Board of Trustees, decisions of the Committee shall be final. In cases involving probationary faculty where allegations of inadequate consideration (as described in the Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments as stated in the AAUP Policy Documents & Reports, 1984) or violations of fundamental fairness are raised, the Committee shall report its finding to the President, and if the committee finds substantial procedural error or serious questions of fairness, recommend the appropriate remedial action. If the President rejects the Committee's recommendation, he/she shall state the reasons for doing so and his/her subsequent judgment and action in the case, in writing, to the hearing committee and to the faculty member. The President shall also report to the Faculty Senate that he/she has received and rejected a recommendation from the Committee. The Faculty member shall have the right to appeal the President's decision to the Board of Trustees. The Committee shall not participate in preliminary proceedings or in the development or presentation of any case, and members of the committee should exercise caution to avoid sitting in any case in which they have an immediate interest.

- D. The Committee may appoint a lawyer to act as its counsel, the cost being borne by the University.
- E. Dismissal of Tenured Faculty. Also see Appendices A, B, C, D, E, and F (of the Academic Charter)

Part II

POLICY ON DISMISSAL OF TENURED FACULTY

The policy on dismissal of tenured faculty is stated in the *Academic Charter of Drake University*, Article VI and VIII.

VI. Conditions of Academic Tenure

- A. The term “Academic Tenure” means employment by the University to the time of retirement except for cause as outlined below.

VIII. Dismissal of Tenured Faculty Members

- A. Tenured members of the faculty shall be dismissed only for one or more of the following causes:

1. Incompetence;
2. Moral turpitude;
3. Persistent inattention to duties;
4. Intransigent refusal to conform to University processes or policy where such behavior places the University at risk;
5. A declaration of a *bona fide* financial exigency of the University.
6. Discontinuance of a college, school, program or department of instruction.

- B. In cases of dismissal of tenured faculty members for cause, as stated above, Drake University adheres to the AAUP procedural standards for dismissal, as described in Appendix C, pages 22 through 26.

- C. Dismissal of Tenured Faculty Under Conditions of a Bona Fide Financial Exigency

1. *Bona fide* financial exigency is defined as a critical financial condition of the University as a whole, such that a failure to dismiss tenured faculty members would threaten the welfare of the University.
2. Under the conditions of a *bona fide* financial exigency, preserving the life of the University and protecting the welfare of the students and the remaining faculty shall be the fundamental policy objective in decisions concerning

dismissal or retention of faculty. Consistent with this broad policy, decisions concerning the dismissal of tenured faculty will be governed by the following principles:

- a. Except as essential to maintain programs, nontenured faculty will be released prior to the dismissal of any tenured faculty.
 - b. Except as essential to maintain programs at the highest quality level consistent with the current faculty available at Drake University, tenured faculty will be released in inverse order of seniority defined as length of service to the University.
3. The faculty member concerned will be given written notice no less than one year in advance or salary in lieu thereof.
 4. Both prior to initiating dismissal proceedings and thereafter the University will make every reasonable effort to place the faculty member in another suitable position.
 5. The released faculty member's place will not be filled by a replacement within a period of three years unless the released faculty member has been offered reappointment and a reasonable time within which to decline it.
 6. Educational benefits held by a dismissed faculty member under the Faculty Manual shall continue for the living dependents of a dismissed faculty member unless comparable benefits are acquired as incidents of a subsequent position. Educational benefits shall be acquired in accordance of the Faculty Manual.
 7. For purposes of retraining, a dismissed faculty member may pursue without charge a degree program or other approved program of study at Drake University for which he/she enrolls within one year following dismissal.
- D. Discontinuance of a College, School, Program, or Department of Instruction. Where termination of an appointment with continuous tenure is based upon discontinuance of a college, school, program, or department of instruction the following standards and procedures will apply:
1. The decision to discontinue a college, school, program, or department of instruction will be based solely upon educational considerations as determined by the faculty, administration, and governing board of the University. "Educational considerations" do not include cyclical or temporary variations in enrollment. They must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance. A college of the University may be terminated by the concurrent agreement of the Faculty Senate, the President of the University, and the Board of Trustees. Degree programs may be terminated by the concurrent agreement of the faculty concerned, the President of the University, and the Board of Trustees; or, by the concurrent agreement of the Faculty Senate, the President of the University, and the Board of Trustees.

2. Before the administration issues notice to a tenured faculty member of its intention to terminate an appointment because of discontinuance of a college, school, 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 offered. If no position is available within the institution, with or without retraining, the faculty member's appointment then may be terminated with written notice of termination given not less than one year in advance or salary in lieu thereof.
3. Dismissal of a faculty member who has tenure on the grounds of discontinuance of a college, school, program, or department of instruction shall be initiated by a formal statement in writing to the faculty member by the President of the University. This letter shall contain a statement of the factual data showing the need for discontinuance and the necessary relationship between the discontinuance and the dismissal of the faculty member. In all other respects procedure will be the same as in any other dismissal case.
4. The faculty member concerned will be given written notice no less than one year in advance or salary in lieu thereof.
5. Both prior to initiating dismissal proceedings and thereafter the University will make every reasonable effort to place the faculty member in another suitable position.
6. The released faculty member's place will not be filled by a replacement within a period of three years unless the released faculty member has been offered reappointment and a reasonable time within which to decline it.
7. Educational benefits held by a dismissed faculty member under the Faculty Manual shall continue for the living dependents of a dismissed faculty member unless comparable benefits are acquired as incidents of a subsequent position. Educational benefits shall be acquired in accordance of the Faculty Manual.
8. For purposes of retraining, a dismissed faculty member may pursue without charge a degree program or other approved program of study at Drake University for which he/she enrolls within one year following dismissal.

HEARING PROCEDURES ESTABLISHED BY THE COMMITTEE ON ACADEMIC FREEDOM AND TENURE FOR CASES INVOLVING TENURED FACULTY

1. Purpose of Hearing

A hearing will be held whenever any issues of academic freedom and tenure are raised by any faculty member, to the extent that such issues are proper for adjudication by this Committee. The parties to such hearing shall be the faculty member and the University, which shall designate appropriate representatives to develop and present its side of the

controversy. If desired, the faculty member shall be entitled to have an academic advisor of his or her own choice to assist at the hearing.

2. Time and Place of Hearing

The Committee shall fix the time and place for such hearing. The Committee shall give each party notice thereof at least 20 days in advance.

3. Filing of Statements and Briefs Prior to Hearing

At least 13 days prior to the date fixed for hearing, the University shall deliver to the Committee and to the faculty member a statement setting forth in reasonable detail the University's position on the issues presented for such position. The faculty member shall then, not less than six days prior to the date fixed for hearing, deliver to the Committee and to the office of the President of the University, a statement setting forth in reasonable detail responses to the issues presented and reasons for such position.

4. Representation by Counsel

Each party may be represented by counsel. A party intending to be so represented shall notify the Committee of the name and address of the attorney at least five days prior to the date set for the hearing at which counsel is to appear.

5. Record of Proceedings

The Committee shall make necessary arrangements for recording the proceedings. A printed copy of the records shall be made available to both parties, if requested, such expense to be borne by the University.

6. Attendance at Hearing by Committee Members

Any member of the Committee who is unable to attend the hearing shall notify the Chair as far in advance as possible so that arrangements can be made to have an alternate member of the Committee participate. Five members (or alternates) of the Committee shall constitute a quorum for purposes of holding the hearing, which shall be chaired by the Chair of the Committee or other designated member serving as temporary chair. If less than a quorum is present, the hearing date shall be rescheduled for a later date (not to exceed one week later), by the Committee. Only those Committee members (and alternates) who attend the hearing shall be entitled to participate in the adjudication of this case. The decision of the Committee will be a majority of the members entitled to adjudicate such issue. Counsel for the Committee may attend the hearing and may participate in the hearing as requested by the Committee.

7. Hearing

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

8. Attendance by Representative of Responsible Educational Association

Whether the meeting is public or private, at the request of either party or the Committee, a representative of a responsible educational association, such as the American Association of University Professors, shall be permitted to attend the proceedings as an observer.

9. Confidentiality of Pending Decision

Committee deliberations shall be in private. Announcements on Committee decisions and processes will be made only by the Chair of the hearing.

10. Adjournments

The Committee may take adjournments upon the request of either party, or upon its own initiative.

11. Order of Proceedings

The hearing shall be opened by the recording of the place, time, and date of the hearing, the presence of members (or alternates) of the Committee and parties and counsel, if any, and by the receipt by the Committee of any further written statement of brief which either party wishes to submit at that time. The Committee may, at the beginning of the hearing, ask for oral statements clarifying the issues involved. The University shall then present its claim and proofs and its witnesses, who shall submit to questions or other examination by the Committee. The faculty member shall then present claims and proofs and witnesses, who shall submit to questions or other examination by the Committee. Both parties shall be entitled, within reasonable limits, to submit rebuttal evidence, and to conduct such examination and cross-examination as may be required for a full and true disclosure of the facts. Exhibits, when offered by either party, may be received in evidence by the Committee.

12. Evidence

The parties may offer such evidence as they desire, and shall produce such additional evidence as the Committee may deem necessary for an understanding and determination of the dispute. The Committee shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. However, every reasonable effort will be made to obtain the most reliable evidence available. Each party to the hearing shall have the right to object to evidence offered by the other party. Any rulings as to the admissibility of evidence shall be made by the Chair. Documents not filed with the Committee at the hearing, but arranged for at the hearing or subsequently by agreement of the parties, shall be filed with the Committee and both parties shall be afforded an opportunity to examine such documents.

13. Evidence by Affidavit

The Committee will receive and consider evidence of witnesses by Affidavit, but shall give it only such weight as it deems it entitled to after due consideration of any objections made to its admission, provided, further, that both the faculty member and the University shall have the opportunity to be confronted by all adverse witnesses unless urgent and unusual reasons

move the Committee to withhold this right, or unless the witness cannot appear, and then only if the identity of the witness and his or her statements are fully disclosed to both parties.

14. Availability of Witnesses and Other Evidence

The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence, and the University will, insofar as possible for it to do so, secure the cooperation of such witnesses and make available necessary documents and other evidence within its control.

15. Closing of Hearing

The Committee shall specifically inquire of both parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the University representative and the faculty member or their respective counsel shall be given an opportunity in that order to make closing oral arguments to the Committee. Upon the completion of such oral arguments, the Committee shall declare the hearing closed. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the Committee for receipt of briefs. If documents are to be filed as provided for in Paragraph 12, and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be deemed the date of closing of the hearing.

16. Reopening of the Hearing

The hearing may be reopened by the Committee on its own motion, or, in the discretion of the Committee, upon application of either party at any time before the decision is made.

17. Time of Decision

The decision shall be made by the Committee promptly after the closing of the hearing. The findings of fact, if any, and the decision shall be based solely on the hearing record. The decision shall be in writing and shall be signed by the Chair of the hearing or by at least two members of the Committee. A signed copy of the decision will be immediately mailed or personally delivered to each party.

18. Attendance by Representative of Responsible Educational Association

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.

Part III POLICY ON THE RIGHTS OF NONTENURED FACULTY

Retention, promotion, and the granting of tenure are functions of the faculty, the College Dean, the Provost, the University President and the Board of Trustees.

Rights of nontenured faculty are stated in the Academic Charter of Drake University, Articles IV, V, VI and VI. The Committee on Academic Freedom and Tenure will serve as a hearing

body whenever a hearing is required as a result of a complaint that a nontenured faculty member's rights have been abridged. The necessity for impartiality when serving as a hearing body dictates that the Committee act in such controversies only when a formal complaint has been filed, and then shall act only as provided by the hearing procedures which have been adopted by this Committee.

The rights of tenured faculty differ significantly from those of nontenured faculty in that decisions regarding continuation of appointment differ from decisions regarding revocation of tenure. Nontenured faculty have the right to be judged according to established and reasonably constant standards, which have been published and made known to new faculty. They have a right to fair and impartial treatment, and to be judged in accordance with published procedures established in compliance with the applicable provisions of the Academic Charter. The burden is upon the University, College, or Department to show that the required standards and proper procedures have been adopted, published and followed and that the complainant has been furnished with notice of these. The burden then falls on the complainant to show that deviation from these procedures has been prejudicial, or that a denial of fundamental fairness is the cause of the dismissal or denial of tenure.

HEARING PROCEDURES ESTABLISHED BY THE COMMITTEE ON ACADEMIC FREEDOM AND TENURE FOR DISMISAL OF NONTENURED FACULTY

1. Commencement of Proceeding

Action by this Committee shall be initiated by the filing of a complaint, in writing, stating the name and title or position held by the complainant, and describing specifically the nature of the complaint. The complaint shall identify the right or rights deemed to have been violated, the manner in which it was violated, and shall identify the person(s) responsible for the violation, if known. The complaint shall state that the allegations contained therein are true to the best of the complainant's knowledge, and shall be signed by the complainant. The complaint shall be filed with the Chair of this Committee.

2. Procedure of Committee on Receiving a Complaint

A complaint shall be reviewed by this Committee, which shall determine whether its allegations state a case which is within the jurisdiction of the Committee. If the Committee shall so determine it shall inquire as to whether there is enough substance to the complaint to require a formal hearing on its allegations.

3. Notice

At any state of the preliminary review, the Committee may notify interested parties, whenever it shall deem it appropriate to do so, by sending them copies of the complaint.

4. Rejection of the Complaint

Whenever this Committee decides to take no further action on the complaint, it shall return it to the complainant along with its reasons for rejection. The complainant may request an

opportunity to argue the soundness of his or her complaint, or may amend the complaint and submit it again to the Committee as provided by paragraph 1, in which case it shall be treated as an original complaint.

5. Formal Hearing

If the Committee shall determine that the allegations warrant a formal hearing, it shall fix a time and place of such hearing, and notify all interested parties. Interested parties are the complainant, the President of the University, the Provost, the dean and/or department head as the situation dictates, and any other interested party as the Committee shall determine.

6. Procedure

The rules of procedure which pertain to hearings on complaints of tenured personnel shall apply to formal hearings by the Committee, except any rule which is in conflict with the above, or otherwise manifestly inappropriate.

7. Recommendation

If the Committee determines that the complainant has established denial of procedural or substantive fairness, it shall recommend the necessary action to correct the wrong. This recommendation shall be presented to the Provost and the appropriate dean. Complainant shall be furnished a copy of these recommendations.