

Faculty Senate DRAFT Policy Revisions – HOP ADM 06-507

Version & Distribution History:

- The Chief Legal Officer shared the UT System Model Policy with Faculty Senate (FS) leadership on January 25, 2024.
- FS leadership shared the UT System Model Policy with the FS Council on Academic Freedom and Responsibility (the committee tasked with developing the revised termination policy) on January 29, 2024.
- FS leadership shared and discussed the UT System Model Policy with the FS Executive Committee on January 30, 2024.
- FS leadership shared and discussed the UT System Model Policy and a synopsis of the policy on the floor of the Faculty Senate during its monthly meeting on February 13, 2024.
- FS leadership shared the UT System Model Policy with the full UTRGV faculty and solicited their feedback on February 19, 2024.
- The FS Council on Academic Freedom and Responsibility met weekly from January 31-present to discuss faculty feedback and develop a revised faculty termination policy (HOP ADM 06-507).
- Feedback from faculty constituents regarding the UT System Model Policy and draft proposed revisions to HOP ADM 06-507 were discussed on the floor of the Faculty Senate during its monthly meeting on March 5, 2024.
- FS leadership shared the complete version 1.0 of the DRAFT revised HOP ADM 06-507 with the FS Council on Academic Freedom and Responsibility and the FS Executive Committee on March 22, 2024.
- The DRAFT revised HOP ADM 06-507 version 1.1 was created via discussion with the FS Executive Committee on March 26, 2024.
- The DRAFT revised HOP ADM 06-507 version 1.1 was approved by the FS Executive Committee and FS Council on Academic Freedom and Responsibility for release to faculty Senators and administration on March 27, 2024.
- A version and distribution history was added to the DRAFT revised HOP ADM 06-507 version 1.1 during the March 27, 2024 meeting of the FS Council on Academic Freedom and Responsibility.

TERMINATION OF A FACULTY MEMBER DURING TERM OF APPOINTMENT

PART I - GENERAL

Sec 1. Purpose

The purpose of this policy is to provide the reasons and procedures for termination of the employment of a faculty member who has been granted tenure and of all other faculty members before the expiration of the stated period of appointment, including cases of summary dismissal in accordance with Regents' Rule 31008, except for termination as provided in Rule 31007, Section 5 of the *Rules and Regulations* of the Board of Regents of The University of Texas System (*Rules and Regulations*), HOP ADM 6-505, Faculty Tenure and Promotion, or Texas Education Code Section 51.943, or by resignation or retirement.

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Sec 2. Persons Affected

This policy applies to faculty of The University of Texas Rio Grande Valley (UTRGV).

Sec 3. Policy

Termination by UTRGV of the employment of a faculty member who has been granted tenure and of all other faculty members, including non-tenure track faculty, before the expiration of the stated period of appointment, except as is otherwise provided for in Rule 31007, Section 5 of the *Rules and Regulations*, HOP ADM 6-505, Faculty Tenure and Promotion, and Texas Education Code Section 51.943, or by resignation or retirement, will be only for good cause shown. In each case the issue of good cause will be determined according to the equitable procedures provided in this policy and in accordance with Rule 31008 of the *Rules and Regulations*, Termination of a Faculty Member.

Sec 4. Good Cause

“Good cause” for termination may be found when the faculty member has engaged in one of the following forms of conduct and the faculty conduct is sufficiently persistent, intentional, and severe in nature such that the president determines it is in the best interest of the institution to separate the implicated faculty:

- (a) continuous or repeated exhibition and assessment of professional incompetence;
- (b) continually or repeatedly failing to perform duties or meet professional responsibilities of the faculty member’s position;
- (c) failure to successfully complete a documented and required professional development program (see HOP ADM 06-502 (pp 5-6) and HOP ADM 06-504 (pp 5));
- (d) conduct involving moral turpitude that adversely affects the institution or the faculty member’s performance of duties or meeting of responsibilities;
- (e) engagement in egregious conduct in violation of laws or System or institution policies substantially related to the performance of the faculty member’s duties;
- (f) conviction of a crime affecting the fitness of the faculty member to engage in teaching, research, service, outreach, or administration;
- (g) continuous or repeated engagement in unprofessional conduct that significantly and adversely affects the institution or substantially impedes the faculty member’s performance of duties or meeting of responsibilities;
- (h) falsification or misrepresentation of the faculty member’s academic credentials, scholarly work, or research data, or other research or academic fraud or misconduct,

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including but not limited to fabrication, falsification, plagiarism or misrepresenting publications;

(i) failure to maintain credentials or licenses required to perform job duties; or

(j) sexual misconduct.

Sec 5. Grounds for Summary Dismissal

Summary Dismissal procedures may be initiated, in accordance with applicable procedures, when the allegations made against the faculty member are sufficiently persistent, intentional, and severe in nature such that the president determines it is in the best interest of the institution to have the faculty member immediately removed from their position because the alleged conduct (1) creates a serious safety threat to students, faculty, staff, or members of the public; (2) creates a significant threat to national security; or (3) creates a significant adverse impact on the operation of the institution.

Sec 6. Chief Academic Officer Initial Review

The President shall assure that all allegations against a faculty member that involve the potential for termination are reviewed under the direction of the appropriate Executive Vice President (EVP), unless another officer is designated by the President, hereafter referred to as the Chief Academic Officer (CAO).

Upon receipt of an allegation of misconduct, the CAO shall review the allegation and determine whether if true it justifies recommending proceeding with the good cause procedures (Part II, below) or through the summary dismissal procedures (Part III, below).

The CAO may determine that recommending initiation of the summary dismissal procedures is proper at any point during the CAO's investigation and review of an allegation.

PART II – TERMINATION FOR GOOD CAUSE

Sec. 1. Review of Allegations for Termination for Good Cause.

(a) Notification to Faculty Member of Allegations.

When the CAO reviews allegations against a faculty member that involve the potential for termination, the CAO shall present the faculty member with written notice of the allegations and an explanation of the evidence supporting termination.

If the CAO's review involves an investigation into the allegations, the CAO has discretion as to when to notify the faculty member of the allegations. The CAO must notify the faculty member of the allegations at least ten business days prior to the interview and grievance opportunity as described in Section 1(b).

Commented [CG1]: This gives the faculty member 5 business days to find and secure counsel and to file any grievance before the deadlines to do so.

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During the pendency of a Rule 31008 matter, a faculty member may be placed on leave of absence with pay, if it is determined the allegations warrant it. If the faculty member is placed on leave, the faculty member will be entitled to an appeal of the decision pursuant to the UTRGV faculty grievance procedure (HOP ADM 06-111), separate from this policy.

(b) Faculty Member Meeting Opportunity.

As part of the review process, the CAO shall set a date to meet with the faculty member and provide an opportunity for the faculty member to respond to the allegations and to present to the CAO a grievance (see Section 1(c) below) related to the allegations under review.

The faculty member may choose to be represented during the meeting by a representative or an attorney retained by the faculty member (“Advisor”). If the faculty member chooses to be represented by an Advisor, the faculty member must provide written notice to the CAO at least five business days prior to the scheduled meeting. The CAO may attend the meeting with an attorney from UTRGV and/or from The University of Texas System Office of General Counsel (UT System OGC).

In lieu of or in addition to the meeting, the faculty member may submit to the CAO a written response to the allegations and supporting documents before and/or after the meeting within a reasonable time set by the CAO.

If the faculty member elects not to meet or to submit a written response, the CAO shall rely on the evidence gathered during the review and investigation.

A tenured faculty member who is recommended for termination on the basis of periodic evaluation must be given the opportunity for referral of the matter to nonbinding alternative dispute resolution, as required by Texas Education Code 51.942 and in compliance with applicable policies and procedures for alternative dispute resolution within The University of Texas System and UTRGV, prior to referral of the charges to a hearing tribunal.

(c) Faculty Member Grievance Opportunity.

The faculty member will have the right to present a grievance, directly or through a representative, to the CAO on an issue or subject related to the allegations under review. If the faculty member elects to exercise the right to a grievance, the faculty member must present the grievance no later than five business days prior to the meeting with the CAO. The faculty member may request one extension of time from the CAO, if needed.

The faculty member has discretion to present the grievance during the meeting described in Section 1(b) or separately in writing, directly or through a representative.

Commented [CG2]: Language from current HOP policy; not sure if this section is the best place for it.

Commented [CG3]: Conflict in the deadline for when a faculty member must file a grievance? 5 business days vs. at the meeting?

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The CAO shall take the grievance, if any, into consideration prior to deciding whether the allegations are supported by evidence that justifies termination proceedings.

If the grievance includes credible allegations against the CAO, the president shall designate another individual to review the allegations related to termination proceedings as well as the grievance and decide whether the allegations are supported by evidence that justifies termination proceedings.

If a faculty member does not present a grievance to the CAO, the faculty member will not be precluded from presenting an issue or subject to the president or faculty hearing panel in defense of charges in termination proceedings.

(d) CAO Options upon Review of Allegations.

Upon completion of the review of allegations of good cause, the CAO may:

- (1) Recommend to the president that good cause exists to initiate the termination hearing process;
- (2) Conclude the Rule 31008 process and impose discipline less than termination;
- (3) Conclude the Rule 31008 process and refer the matter to another academic department or dean to impose discipline less than termination; or
- (4) Conclude the Rule 31008 process with no disciplinary action taken.

When termination is not recommended but disciplinary action is taken, the faculty member may choose to grieve the discipline under UTRGV's faculty grievance procedure, as applicable.

Sec. 2. President's Review of Chief Academic Officer's Recommendation of Termination for Good Cause.

(a) President Notification to Faculty Member of Good Cause for Termination.

If after review, the president determines that the CAO recommendation provided pursuant to Section 1(d)(1) establishes good cause for termination, the president shall provide written notice to the faculty member within 10 business days of receiving the CAO's report, specifying the allegations for termination, and provide the faculty member with an opportunity to respond.

(b) Faculty Member Opportunity to Respond.

Commented [CG4]: Is there a deadline for this after the faculty meeting with the CAO?

Commented [CG5]: Here and elsewhere, what are the consequences if the CAO, President, or other administrator fails to meet one of these deadlines? Are charges dropped?

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No later than 10 business days after receipt of the president’s written notice, the faculty member may respond to the president orally or in writing. The faculty member may request one extension of time from the CAO, if needed.

Commented [CG6]: CAO or president?

In lieu of or in addition to a meeting wherein the faculty member can respond orally, the faculty member may submit to the president a written response to the allegations and supporting documents before and/or after the meeting within a reasonable time set by the president. If an oral response is presented to the president, a record of that meeting will be maintained.

If the faculty member elects not to respond to the president, the president will rely on the CAO’s recommendation and supporting evidence.

If the faculty member meets with the president in person or virtually, the faculty member may choose to be accompanied during the meeting by a representative or an attorney retained by the faculty member (“Advisor”). If the faculty member chooses to be represented by an Advisor, the faculty member must provide written notice to the president at least five business days prior to the scheduled meeting. The president may attend the meeting with an attorney from UTRGV and/or from UT System OGC.

At any point, if the president decides termination is not warranted, the president may end the Rule 31008 proceedings and may impose a lesser disciplinary action in accordance with UTRGV policies.

When the president decides to impose lesser disciplinary action, the faculty member may choose to grieve the discipline under UTRGV’s faculty grievance procedure, as applicable.

If the president recommends termination, the president shall convene a faculty hearing panel to hear the charges against the faculty member in accordance with Section 3.

Sec. 3. Termination Hearings Procedures.

(a) Process for Appointing Faculty Hearing Panel.

In cases that proceed to a hearing based on a termination recommendation by the president, the president shall appoint a faculty hearing panel (Hearing Panel) no later than 10 business days after receiving the meeting opportunity described in Section 2(b) above. The Hearing Panel will be composed of five faculty members excluding any faculty with the title of Assistant Department Chair/School Director or above. The president may also appoint alternates subject to the same rules governing membership. Each member of the panel must be tenured, where

Commented [CG7]: This time limit keeps the process moving. Sitting on a case to force attrition from the faculty member is less likely if leave without pay is ruled out, but it is still possible. We think this is a reasonable time limit, but we don’t know how difficult securing panel members might be.

Commented [CG8]: We prefer five members but would accept three (a tribunal), if it is upheld that two members are selected from the faculty-selected pool, that the tribunal selects the chair by a simple majority vote, and that a majority vote by the tribunal can override chair decisions about hearing scope, timing, testimony, evidence, etc.

Commented [CG9]: This is important for limiting the capacity for (or fear of) retaliation, but full professors only would be even better in this regard.

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applicable, and hold an academic rank at least equal to that of the accused faculty member.

The president shall appoint the hearing panel members from a standing panel (Standing Pool) of members of the faculty:

- At least 50% of the Standing Pool shall be selected by a procedure established by the UTRGV Faculty Senate (Faculty-Selected Pool Members).
- The president shall appoint the remaining members of the Standing Pool (President-Selected Pool Members).
- The Hearing Panel shall elect the Panel Chair by a simple majority vote.

The president must appoint to the Hearing Panel a minimum of **three** Faculty-Selected Pool Members.

Commented [CG10]: Two if tribunal.

The Hearing Panel will not include any accuser of the faculty member.

The Hearing Panel may be advised by a UT System OGC attorney.

(b) Notice to Concerned Faculty of Hearing Panel.

The president shall notify the faculty member in writing of the names of the Panel Chair and all other faculty members selected for the Hearing Panel. The faculty member will also be notified of the date, time, and place for the hearing. The written notifications will be made at least 10 business days prior to the hearing. **The** hearing shall begin no later than 30 days after the president appoints the Hearing Panel.

Commented [CG11]: As above, this time limit keeps the process moving and prevents sitting on a case to force faculty attrition. However, we are concerned this may not be enough time for the faculty member to prepare their case (see extension option below).

If the accused faculty member is not satisfied with the fairness or objectivity of any member or members of the Hearing Panel, the faculty member may submit a written challenge to the Panel Chair regarding the alleged lack of fairness or objectivity no later than three business days prior to the date for the hearing. The accused faculty member will have no right to disqualify any member or members from serving on the Hearing Panel. The Hearing Panel shall determine by a simple majority vote whether each challenged member can serve with fairness and objectivity in the matter. If any challenged member should voluntarily disqualify their self or should be disqualified by a majority vote of the Hearing Panel, the president will appoint either an alternate or a substitute member of the Hearing Panel from the Standing Pool described in Section 3(a).

(c) Hearing Procedures.

(1) Burden to Prove Good Cause.

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UTRGV has the burden to prove good cause for termination by the greater weight of the credible evidence.

Commented [CG12]: Strengthen this standard? "Beyond a reasonable doubt"?

(2) Parties and Representatives.

A representative of UTRGV (Institution Representative) will appear before the Hearing Panel to present the charge(s) against the faculty member. UTRGV is entitled to be represented by an administrator, an attorney from the institution, or an attorney from UT System's OGC.

The faculty member has a right to appear at the hearing and be represented by an attorney retained by the faculty member.

(3) Oral and Written Evidence.

The Panel Chair will have the discretion to determine the length of the hearing and the form and scope of examination during the hearing, but each of these aspects of the hearing can be overruled by an objection from a member of the Hearing Panel that is supported by a majority of the panel members. The Panel Chair will preside over the hearing and ensure the order of presentation as well as rule on evidentiary matters. Rulings on evidentiary matters can also be overruled by objections from members of the Hearing Panel that are supported by a majority of the panel members.

The Institution Representative and Faculty Member, or their attorneys, will have the right to appear before the Hearing Panel to present oral and written evidence in support of or in defense against the charge(s) against the faculty member.

Each party has the right to confront and cross-examine the other party's witnesses.

The faculty member has the right to testify, but may not be required to do so. If the faculty member chooses to testify, the Institution Representative, or their attorney, has the right to cross-examine the faculty member.

(4) Closed Hearing

The hearing will be closed.

(5) Exchanging Documents

The Panel Chair shall set a reasonable time prior to the hearing for the parties to exchange exhibits and witness lists. The faculty member will be granted an extension to the 30-day deadline for the initiation of the hearing

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prescribed in Section 3(b) above if needed to allow sufficient time to gather evidence and secure commitments from witnesses. This Policy does not require UTRGV or UT System to find or produce documents to the accused faculty member or their attorney beyond the institution's obligations under the Texas Public Information Act.

(6) Record of Proceeding.

A stenographic, audio, or video recording of the proceedings will be made, and a copy of the record will be made available to the faculty member and the president.

(d) Hearing Panel Findings and Recommendations.

(1) Findings:

(i) The Hearing Panel, by a majority of its total membership, shall make written findings on the material facts and shall make a recommendation as to the continuance or termination of the faculty member's appointment.

(ii) Where there has been a finding of sexual misconduct or research misconduct (i.e., fabrication, falsification, plagiarism) through an investigation conducted in accordance with institution policy, the facts of the finding may be accepted by the Hearing Panel, who may request the full investigation materials with good cause. The Hearing Panel, by a majority of its total membership, shall provide a written recommendation as to the continuance or termination of the faculty member's appointment based on the provided factual findings or the judgment of the Hearing Panel based on their review of the full investigation materials.

(2) The Hearing Panel, by a majority of its total membership, may make any supplementary suggestions it deems proper concerning disposition of the case.

(3) The Panel Chair shall deliver the majority's written findings, recommendations, and any supplementary suggestions to the president, along with a copy to the faculty member, within 30 days after the hearing. If additional time is required, the Hearing Panel must request an extension from the president. If minority findings, recommendations, or suggestions are made, they will also be delivered to the president, along with a copy to the faculty member.

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(4) The Panel Chair shall also deliver the original transcript or audio recording of the testimony and the exhibits to the president and shall deliver copies of the same to the faculty member.

Sec. 4. President's Report.

Within 14 business days after receipt of the Hearing Panel's findings and recommendations, the president shall make one of the following decisions based solely on the evidence in the hearing record and submit a written report of that decision to the accused faculty member:

(a) If the Hearing Panel is unanimously in favor of continuance of the faculty member's appointment and unanimously recommends to dismiss the matter or to impose specific sanctions and/or take other specific actions, the president shall enact the recommendations of the Panel. In this case, the Panel's decision is final, and the Board of Regents will not review the matter.

(b) If the Hearing Panel is unanimously in favor of continuance of the faculty member's appointment but does not unanimously recommend specific actions, the president shall dismiss the matter or impose sanctions less than termination. In this case, the Panel's decision not to terminate is final, the president's decision on disciplinary actions less than termination is final, and the Board of Regents will not review the matter.

(c) If the Hearing Panel's is not unanimously in favor of continuance of the faculty member's appointment, the president may decide to dismiss the matter or impose sanctions less than termination. In this case, the president's decision is final, and the Board of Regents will not review the matter.

(d) If the Hearing Panel's is not unanimously in favor of continuance of the faculty member's appointment, the president may recommend termination to the Board of Regents if the president determines that the greater weight of the credible evidence establishes good cause for termination.

If so, the president shall forward the findings and recommendations of the Hearing Panel, the original transcript or audio recording of the testimony, and the exhibits to the Board of Regents for its review, along with the president's report.

If the president's recommendation is not the same as the majority recommendation of the Hearing Panel, the president shall state the reasons and provide adequate and appropriate justification for the president's decision to recommend termination in the president's written report.

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The accused faculty member may, within seven business days after receiving the president’s report, submit a written response to the Board of Regents. The response must be based solely on the evidence of record in the proceeding.

Sec. 5. Board Review.

The UT System Board of Regents, by a majority of the total membership, will approve, reject, or amend such findings, recommendations, and suggestions, if any, or will recommit the report to the same Hearing Panel for hearing additional evidence and reconsidering its findings, recommendations, and suggestions, if any. Reasons for approval, rejection, or amendment of such findings, recommendations, or suggestions will be stated in writing and communicated to the accused and the president.

PART III SUMMARY DISMISSAL

Sec. 1. Review of Allegations for Summary Dismissal.

(a) Notification to Faculty Member of Allegations.

When the CAO reviews allegations against a faculty member that may justify summary dismissal, the CAO shall seek approval from the president before proceeding.

If the president agrees that summary dismissal is appropriate based on a review of the allegations, the president shall confer with the Executive Vice Chancellor for Academic Affairs or the Executive Vice Chancellor for Health Affairs. If approved, the president shall direct the CAO to present the faculty member with written notice of the allegations and an explanation of the evidence supporting summary dismissal at least **ten** business days prior to the hearing opportunity described in Section 1(b).

A faculty member subject to these summary dismissal procedures shall be immediately placed on a leave of absence **with or** without pay.

(b) Faculty Member Hearing Opportunity.

The CAO shall promptly set a date for the faculty member to have an opportunity to respond to the allegations in a hearing before the CAO in person or virtually.

If the faculty member elects to appear before the CAO, the CAO shall hear the faculty member’s response to the allegations. The faculty member may choose to be represented during the hearing by a representative or an attorney retained by the faculty member (“Advisor”). The CAO may attend the hearing with an attorney from UTRGV and/or from UT System OGC. If the faculty member chooses to be

Commented [CG13]: 5 business days to find and retain counsel is reasonable.

Commented [CG14R13]: Ten here also allows 3 business days to prepare a written response and submit to CAO after 5 days to secure counsel.

Commented [CG15]: This may not be necessary, assuming summary dismissal is only ever justly used in clear and egregious cases, and where leave with pay would be disdainful to our human sensibilities and, by extension, bad PR for UTRGV and UTS.

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represented by an Advisor, the faculty member must provide written notice to the CAO at least two business days prior to the scheduled hearing.

In lieu of or in addition to the hearing, the faculty member may submit to the CAO a written response to the allegations and supporting documents. The written response must be submitted to the CAO at least two business days prior to the scheduled hearing.

If the faculty member is unable or elects not to meet or to submit a written response, the CAO will rely on the evidence gathered during the review and investigation.

(c) CAO Options upon Review of Allegations.

Upon completion of the review of allegations of serious misconduct for summary dismissal, the CAO may:

- (1) Recommend summary dismissal to the president if the allegations involve serious misconduct as identified in Part I, Sec. 5, above. If the president accepts the recommendation, the CAO will communicate the decision to the faculty member. The decision must clearly state that the faculty member is subject to summary dismissal and include the effective date of the dismissal and information regarding the faculty member's opportunity for a post-dismissal appeal in accordance with Section 2, below;
- (2) Recommend to the president that sufficient cause exists to initiate the Part II termination for good cause hearing process;
- (3) Conclude the process and impose discipline less than termination;
- (4) Conclude the process and refer the matter to another academic department or dean to impose discipline less than termination; or
- (5) Conclude the Rule 31008 process with no disciplinary action taken.

When termination is not recommended but disciplinary action is taken, the faculty member may choose to grieve the discipline under UTRGV's faculty grievance procedure, as applicable.

Sec. 2. Summary Dismissal Appeal

A former faculty member who has been summarily dismissed may appeal the dismissal decision. If the former faculty member appeals, the president shall convene a faculty hearing panel in accordance with Section 3.

Commented [CG16]: This would likely mean the response is prepared mostly without any help from counsel. This is the main reason for 10 days notice instead of 7 in section 1(a).

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To initiate an appeal, the former faculty member must notify the president in writing of the request for a hearing no later than five business days after the CAO issues the summary dismissal decision. The hearing request will include the grounds for the appeal, such as whether the material weight of the credible evidence failed to establish serious misconduct or whether the CAO's decision was in error; however, the written appeal does not need to include all the evidence the former faculty member will rely upon to support the appeal.

Sec. 3. Process for Post-Dismissal Appeal Hearings

(a) Process for Appointing Faculty Hearing Panel.

In cases that proceed to a hearing based on a summary dismissal appeal, the president shall appoint a faculty hearing panel (Hearing Panel) no later than 10 business days after receiving the request for an appeal from the former faculty member as described in Section 2 above. The Hearing Panel will be composed of five faculty members excluding any faculty with the title of Assistant Department Chair/School Director or above. The president may also appoint alternates subject to the same rules governing membership. Each member of the panel must be tenured, where applicable, and hold an academic rank at least equal to that of the accused faculty member.

The president shall appoint the hearing panel members from a standing panel (Standing Pool) of members of the faculty:

- At least 50% of the Standing Pool will be selected by a procedure established by the UTRGV Faculty Senate (Faculty-Selected Pool Members)
- The president shall appoint the remaining members of the Standing Pool (President-Selected Pool Members).
- The president must appoint to the Hearing Panel a minimum of three Faculty-Selected Pool Members.
- The Hearing Panel shall elect the Panel Chair by a simple majority vote.

The Hearing Panel will not include any accuser of the former faculty member.

The Hearing Panel may be advised by a UT System OGC attorney.

(b) Notice to Former Faculty Member of Hearing Panel.

The president shall notify the former faculty member in writing of the names of the Panel Chair and all other faculty members selected for the Hearing Panel. The former faculty member shall also be notified of the date, time, and place for the hearing. The written notifications will be made at least 10 business days prior to the

Commented [CG17]: Same rationale for a time limit as explained above.

Commented [CG18]: As above, we prefer 5 but would accept 3 if the other rules regarding having a majority of the panel being from the faculty-selected pool, selection of the panel chair by a majority vote, and majority overrides on decisions about hearing scope, timing, and evidence are upheld.

Commented [CG19]: Same rationale as above.

Commented [CG20]: Two if tribunal.

Commented [CG21]: The compressed timeframe prior to summary dismissal is understandable and probably justified; however, compressing the timeframe for appeal lacks the same merit, especially if it presents a hardship for the faculty member, given that the faculty member has already been dismissed.

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hearing. The hearing shall begin no later than 30 days after the president appoints the Hearing Panel.

Commented [CG22]: Same rationale and concerns as above for this time limit.

If the former faculty member is not satisfied with the fairness or objectivity of any member or members of the Hearing Panel, the former faculty member may submit a written challenge to the Panel Chair regarding the alleged lack of fairness or objectivity no later than three business days prior to the date for the hearing. The former faculty member will have no right to disqualify any member or members from serving on the Hearing Panel. The Hearing Panel shall determine by a simple majority vote whether each challenged member can serve with fairness and objectivity in the matter. If any challenged member should voluntarily disqualify their self or should be disqualified by a majority vote of the Hearing Panel, the president shall appoint either an alternate or a substitute member of the Hearing Panel from the Standing Pool described in Section 3(a). If a new member is appointed, at least three of the five Panel members must be from the Faculty-Selected Pool.

Commented [CG23]: Two if tribunal.

Commented [CG24]: Three if tribunal.

(c) Hearing Procedures.

(1) Burden to Prove Sufficient Cause.

UTRGV has the burden to prove sufficient cause for summary dismissal by the greater weight of the credible evidence.

Commented [CG25]: "Good" cause is used above. Does this signify a meaningful and concrete difference in expectations or standards? If so, what is that difference?

(2) Parties and Representatives.

A representative of UTRGV (Institution Representative) will appear before the Hearing Panel to present the charge(s) against the former faculty member. UTRGV is entitled to be represented by an administrator, an attorney from the institution, or an attorney from UT System's OGC.

The former faculty member has a right to appear at the hearing and be represented by an attorney retained by the former faculty member.

(3) Oral and Written Evidence.

The Panel Chair shall have the discretion to determine the length of the hearing and the form and scope of examination during the hearing, but each of these aspects of the hearing can be overruled by an objection from a member of the Hearing Panel that is supported by a majority of the panel members. The Panel Chair shall preside over the hearing and ensure the order of presentation as well as rule on evidentiary matters. Rulings on evidentiary matters can also be overruled by objections from members of the Hearing Panel that are supported by a majority of the panel members.

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The Institution Representative and former faculty member, or their attorneys, shall have the right to appear before the Hearing Panel to present oral and written evidence in support of or in defense against the charge(s) against the former faculty member.

Each party has the right to confront and cross-examine the other party's witnesses.

The former faculty member has the right to testify but may not be required to do so. If the former faculty member chooses to testify, the Institution Representative, or their attorney, has the right to cross-examine the former faculty member.

(4) Closed Hearing

The hearing will be closed.

(5) Exchanging Documents

The Panel Chair shall set a reasonable time prior to the hearing for the parties to exchange exhibits and witness lists. The faculty member will be granted an extension to the 30-day deadline for the initiation of the hearing prescribed in Section 3(b) above if needed to allow sufficient time to gather evidence and secure commitments from witnesses. This Policy does not require UTRGV or UT System to find or produce documents to the former faculty member or their attorney beyond the institution's obligations under the Texas Public Information Act.

(6) Record of Proceeding.

A stenographic, audio, or video recording of the proceedings shall be made, and a copy of the record shall be made available to the former faculty member and the president.

(d) Hearing Panel Findings and Recommendations.

(1) Findings:

(i) The Hearing Panel, by a majority of its total membership, shall make written findings on the material facts and shall make a recommendation whether to uphold the summary dismissal or reinstate the former faculty member's appointment or tenure.

(ii) Where there has been a finding of sexual misconduct or research misconduct (i.e., fabrication, falsification, plagiarism) through an investigation conducted in accordance with institution policy, the

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facts of the finding may be accepted by the Hearing Panel, who may request the full investigation materials with good cause. The Hearing Panel, by a majority of its total membership, shall provide a written recommendation as to the reinstatement or continued dismissal of the former faculty member's appointment based on the provided factual findings or the judgment of the Hearing Panel based on their review of the full investigation materials.

(2) The Hearing Panel, by a majority of its total membership, may make any supplementary suggestions it deems proper concerning disposition of the case.

(3) The Panel Chair shall deliver the majority's written findings, recommendations, and any supplementary suggestions to the president, along with a copy to the former faculty member, within 10 business days after the hearing. If additional time is required, the Hearing Panel must request an extension from the president. If minority findings, recommendations, or suggestions are made, they shall also be delivered to the president, along with a copy to the former faculty member.

(4) The Panel Chair shall also deliver the original transcript or audio recording of the testimony and the exhibits to the president and shall deliver copies of the same to the former faculty member.

Commented [CG26]: The limit is 30 days for the good cause process above, but this is probably okay because it speeds the process along and the former faculty member will not be getting paid during this period. This also mainly puts pressure on the hearing panel to move quickly, not the former faculty member.

Sec. 4. President's Decision.

Within 10 business days after receipt of the Hearing Panel's findings and recommendations, the president shall make one of the following decisions based solely on the evidence in the hearing record and submit a written report of that decision to the former faculty member:

(a) If the Hearing Panel is unanimously in favor of reinstating the former faculty member and unanimously recommends either no sanctions or specific sanctions, the president shall reinstate the former faculty member and shall enact only those sanctions recommended by the Panel. This is a final decision and may not be appealed.

(b) If the Hearing Panel is unanimously in favor of reinstating the former faculty member but does not unanimously recommend specific sanctions, the president shall reinstate the former faculty member and may impose sanctions less than termination. This is a final decision and may not be appealed.

(c) If the Hearing Panel is not unanimously in favor of reinstating the former faculty member, the president may reinstate the former faculty member, with or without sanctions. This is a final decision and may not be appealed.

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(d) If the Hearing Panel is not unanimously in favor of reinstating the former faculty member, the president may uphold a summary dismissal if the president determines that the greater weight of the credible evidence establishes serious misconduct for summary dismissal. This is a final decision and may not be appealed.

If the president's decision to uphold summary dismissal is not the same as the majority recommendation of the Hearing Panel, the president shall state the reasons and provide adequate and appropriate justification for the decision and shall submit it to the Chancellor for review.

Sec. 5. Chancellor Review and Decision.

The Chancellor may uphold summary dismissal or return the matter to the President for further action. The Chancellor's decision is final.

PART IV DEFINITIONS

1. *Business days* - Weekdays during which normal UTRGV business is conducted. This excludes weekends, holidays, and days on which UTRGV is closed except for essential services (skeleton days).

2. *College* – An academic unit organized within the university, which is usually comprised of many departments or provides programs in multiple academic specialties/professional instruction. This academic unit may be referred to as a college or school, and is led by a dean reporting to a designated EVP.

3. *Department* – An academic unit organized within a college, usually devoted to a particular academic discipline. This academic unit may be referred to as a department, school, or center, and the unit's head (usually a chair or director) reports to the dean of the college.

4. *Faculty member* - Any individual holding an academic title listed in Rule 31001, Section 2 of the *Rules and Regulations*.

5. *Tenure*- A status of continuing appointment as a member of the faculty at UTRGV.

6. *Tenure Titles* - Except for the titles Regental Professor and Regent's Research Scholar, the only titles to be used henceforth in which faculty members may hold tenure are as follows:

(a) Professor; (b) Associate Professor; and Assistant Professor.

PART V RELATED STATUTES OR REGULATIONS, RULES, POLICIES, OR STANDARDS

UTRGV HOP ADM 6-505 Faculty Tenure and Promotion

Texas Education Code Section 51.942, Performance Evaluation of Tenured Faculty

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Texas Education Code Section 51.943, Employment Contracts
University of Texas System Board of Regents' *Rules and Regulations* Rule 31008,
Termination of a Faculty Member
University of Texas System Board of Regents' *Rules and Regulation*, Rule 31007, Tenure

PART VI DATES REVIEWED OR AMENDED

Amended on July 15, 2019
For the current DRAFT document, see the version history above.