

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION
Policy and Procedures Manual

SUBJECT: PERSONNEL

Policy 710.2.2 – Termination; faculty for cause

Adopted: January 14, 1974; Revised: November 18, 1999

Board policy

Termination of employment of a faculty member on continuous tenure, or of a special or probationary appointment before the end of the specified term of employment, may be effected by an institution for adequate cause. The exercise of academic freedom or constitutionally guaranteed civil rights will not be used as a basis for termination.

Adequate cause for termination includes: (a) conviction of a felony or a crime involving moral turpitude since commencing of employment at the campus or the willful concealment of such crime in making application for employment; (b) unreasonably endangering the welfare or unethical exploitation of students, employees or campus visitors; (c) substantial failure to carry out responsibilities of a faculty member as determined by the Committee on Service; (d) fraud or misrepresentation of professional preparation, accomplishments or experience in connection with initial hiring or in the submission of materials for evaluation for promotion, tenure, or salary adjustment purposes; or (e) gross insubordination.

A decision to terminate a faculty member for cause will be made by the president or chancellor, after the faculty member has had an opportunity for a hearing before the Committee on Service, and if a hearing occurs, following receipt of the report of the Committee on Service. The president or chancellor shall review and consider the report of the Committee on Service prior to making a decision. The decision and action of the president or chancellor may be appealed to the Commissioner of Higher Education and the Board of Regents in accordance with Board policy in effect when the appeal is initiated. The president or chancellor may, in his discretion, terminate the faculty member pending appeal.

Procedures

A. Notice. In all cases involving termination for cause, the president, chancellor or his designated representative shall prepare a formal statement of charges, framed with reasonable particularity, and setting forth the grounds for termination. Said statement of charges shall be mailed or served upon the faculty member and a copy sent to the Committee on Service. Within 20 days of the receipt of service of the statement of charges, the faculty member will submit a written response to the statement and shall indicate whether he/she desires a formal hearing. If no written response is received, or if a formal hearing is not requested within the specified time, such failure constitutes the waiver of the right to a formal hearing by the faculty member. If the faculty member has requested a formal hearing, the Committee on Service shall set the date and time for that hearing no sooner than five days from the date the faculty member's response is received.

B. Suspension. Until the Committee on Service has fully heard the termination for cause and made its recommendation, the faculty member may be suspended, or assigned to other duties in lieu of suspension, at the discretion of the president or chancellor. The president or chancellor may suspend a faculty member when, in the discretion of the president or chancellor, material harm or prejudice to the faculty member, the campus, or others is a concern. Salary will continue during the period of suspension. Any faculty member may be suspended without pay upon conviction in a court of law of a felony or a crime involving moral turpitude, or when the faculty member is absent without authorization or justification for a period in excess of five continuous class or regular workdays.

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C. Composition of the Committee on Service. The Committee on Service shall be composed of three tenured faculty members one appointed by the Commissioner, one by the president or chancellor, and one elected by the faculty. They shall serve staggered three-year terms beginning September 1. Members who believe they may be biased or have another conflict on a specific case may be excused and their alternate(s) appointed. Alternate(s) needing to withdraw will be excused and a temporary replacement will be named by the appropriate appointing authority. Each party to the hearing shall have one peremptory challenge, which allows each to dismiss, without cause, one member of the committee from taking part in the hearing. Any peremptorily challenged member will be replaced by his/her alternate, or if necessary, a substitute appointed by the appropriate appointing authority.

D. Privacy. The Committee, in consultation with the president or chancellor of the campus and the affected faculty member, will exercise its judgment as to whether the hearing should be public. However, the faculty member's request that the hearing be public shall be binding on the Committee. Except for such announcements as may be required, noting the time and place of the hearing, statements about the case by either the faculty member or the campus's administration will be limited so far as possible until the proceedings have been completed through final administrative review.

E. Representation. During the hearing, the faculty member may bring an academic advisor and/or counsel at his/her own expense to the proceedings. A record of the hearing will be made, and upon request, a copy will be made available to the faculty member at his/her cost.

F. Evidence. The faculty member will be afforded an opportunity to obtain and present necessary witnesses and documentary or other evidence. The faculty member and the campus will have the right to confront and cross-examine all adverse witnesses. When a witness cannot or will not appear, but the Committee determines that the interests of justice require admission of his/her affidavit, the Committee will identify the witness, disclose his/her affidavit and give such statement appropriate probative weight in view of either party's inability to cross-examine. Whenever appropriate, at the discretion of the Committee on Service, adjournments may be granted to enable either party to investigate evidence as to which a valid claim of surprise is made. The Committee will not be bound by rules of legal evidence, and may admit any evidence which is of probative value in determining the issues involved provided however, every reasonable effort will be made to obtain the most reliable evidence available.

G. Report of the Committee. The Committee shall prepare a written statement of findings of fact and recommendation, which shall be delivered to the faculty member and the president or chancellor within ten days following conclusion of the hearing. The findings of fact shall be based on a preponderance of the evidence in the record considered as a whole, as determined by a majority of the Committee.

History:

Item 3-015-R0174, Policy Regarding Appointments to Faculty Service Committees, January 14, 1974; Item 26-020-R0380, Termination of faculty for cause; Montana University System, March 10, 1980; revised November 18, 1999 (Item 104-103-R0999).