

North Dakota State University

Policy Manual

SECTION 350.3

BOARD REGULATIONS ON NONRENEWAL, TERMINATION OR DISMISSAL OF FACULTY

SOURCE: SBHE Policies 605.1, 605.2, 605.3, 605.4

1. A probationary appointment may be terminated, without cause, with notice to the faculty member that the appointment will not be renewed.
 - a. Notice shall be given:
 - 1) At least 90 days prior to termination during the first year of probationary employment at the institution.
 - 2) At least 180 days prior to termination during the second year of probationary employment at the institution.
 - 3) At least one year prior to termination after two or more years of probationary employment at the institution.

If a faculty member is appointed during the academic year, then the initial contract shall indicate when the first academic year of service at the institution begins. For the purpose of this section, "academic year of service" means on a probationary appointment. The twelve months notice may be given at any point during the calendar year and the appointment terminates twelve months thereafter. (This NDSU language clarifies the interpretation that has been applied to this NDUS language throughout the University System.)

- b. A department chair, dean or other person authorized under institution policies to give such notice shall provide written notice of the decision, including a reference to the policy section pursuant to which the action is taken. The faculty member may within ten calendar days after receipt of the notice request a reconsideration by the deciding body or individual. The faculty member may incorporate a request for mediation in the request for reconsideration. The institution shall respond in writing to the faculty member within ten calendar days after receipt of the request.

Nonrenewal decisions shall be made in every instance by the University President. Recommendations for nonrenewal shall be initiated within the academic unit in accordance with Policy 352. Colleges shall have specific procedures for nonrenewal recommendations prior to the sixth year in accordance with Policy 352 and 350.3.2 (See below.). A department chair may initiate a review for nonrenewal at any time.

2. An institution may terminate a probationary appointment, effective at the end of any contract term, with no less than 90-day notice of nonrenewal, based upon a determination by the Board that a financial exigency exists which requires such action at an institution or institutions, or upon determination by the institution that such action is necessary because of loss of legislative appropriations, loss of institutional or program enrollment, consolidation of organizational units or program areas or elimination of courses. The notice of nonrenewal shall include a reference to the policy section pursuant to which the action is taken. When a probationary appointment is

terminated pursuant to this subsection, the provisions of subsection 1 do not apply.

3. A special appointment expires at the end of the term stated on the contract and may be renewed at the discretion of the institution.
4. The following individuals may request review of the below decisions and a hearing by the Standing Committee on Faculty Rights:
 - a. A faculty member on a probationary appointment which is not renewed; or
 - b. A faculty member whose special appointment is terminated.

The request for review and a hearing must be made within twenty calendar days after receipt of notice of the proposed action or, if the faculty member requests reconsideration or the parties agree to mediation pursuant to this Policy, within twenty calendar days of receipt of the results of the reconsideration or conclusion of mediation, request review of the decision and hearing by Standing Committee on Faculty Rights by following the process set forth in NDSU Policy 350.4. Such request shall be filed in writing with the deciding body or individual and the chair or the senior member of the Standing Committee on Faculty Rights. The request for review may be based on allegations that the institution failed to comply with applicable policies or gave the decision inadequate consideration, or that the nonrenewal decision violated (a) academic freedom, (b) rights guaranteed by the United States Constitution, or (c) terms of the employment contract or other written agreement. The allegation must be supported by a specification of the reasons why the decision violated these rights and a summary of the evidence supporting the allegation(s). "Inadequate consideration" means that the decision was arbitrary and capricious, or not the result of a conscientious and deliberative review process in which relevant evidence was considered and irrelevant evidence was excluded, or that the process lacked fundamental fairness. The institution shall, within twenty calendar days of receipt of the written notice and specifications, provide a written response to the faculty member and the chair of the Standing Committee on Faculty Rights.

5. A faculty member may terminate an appointment effective at the end of the term of the appointment by giving notice in writing at the earliest possible opportunity, but not later than May 15, or one month after receiving notification by the institution of the terms of an appointment for the coming academic year, whichever date occurs later. The faculty governance structure at an institution may recommend procedures permitting a faculty member to request a waiver of this deadline in case of hardship or for other good cause defined by those procedures. An institution may provide that failure without reasonable cause by a faculty member to return a contract by the time set forth in the contract shall constitute a resignation. Any return time so established by the contract shall be reasonable.

Resignation or Retirement

Generally accepted standards of professional ethics (see AAUP Statement on Recruitment and Resignation of Faculty Members) require faculty members who plan to resign or retire to give prompt notice in writing to their chair or supervisor. This includes prompt notice when employment is accepted elsewhere. Only in personal emergencies or for other compelling reasons, should faculty members leave during the academic year, except when this coincides with the expiration of their contractual obligations.

6. An institution may terminate an appointment of a tenured faculty member following a determination by the Board that a financial exigency exists which requires such action at an institution or institutions, or upon determination by the institution that such action is necessary because of loss of legislative appropriations, loss of institutional or program enrollment, consolidation of academic units or program areas, or elimination of courses. In such cases, significant consideration shall be given to length of service and tenure status in the retention of

faculty members within the affected academic unit or program area, curriculum requirements, professional achievements, breadth of competence, and equal employment opportunity. A tenured faculty member terminated pursuant to this subsection shall be given written notice of termination, including the reason(s) for the action, at least twelve months prior to the date of termination. Each institution shall establish procedures for implementing this policy.

- a. A tenured faculty member given notice of termination under this section may request that the institution circulate his or her vita to other academic units or program areas within the institution. In addition, the institution shall ensure that fair consideration is given to the faculty member, during the period of the terminal appointment, for vacant academic positions in the employing institution for which the faculty member is qualified. The faculty within any academic unit or program area shall have the major responsibility in determining qualifications for appointment therein. If a tenured faculty member accepts an appointment in a different academic unit or program area, the faculty member shall retain his or her tenure status, subject to approval of the Board.
 - b. A position terminated under this section shall not be filled by a replacement within two years, unless the released faculty member has been offered appointment with tenure and a reasonable time within which to accept or decline it.
 - c. The provisions of section 605.4 (*NDSU 350.4*) do not apply when a tenured faculty member is terminated under this subsection. The faculty member may, however, within twenty-one calendar days of receipt of notice of termination, file a request for review under processes established at the institution for that purpose.
 - 1) *An administrative decision to terminate a tenured faculty member within the university shall be preceded by the following steps:*
 - a) *Consultation with the dean of the college or equivalent unit involved regarding the justification for terminating tenured appointments.*
 - b) *Consultation with the faculty and the relevant PTE committee in an academic unit or program regarding the termination of tenured appointments.*
 - 2) *Once the administration decision is finalized following these consultations, the identification of faculty members for termination shall be made by the University president following recommendations by the dean.*
7. In accordance with principles of shared governance, the faculty governance structure at each institution shall adopt procedures by which faculty participation is solicited before notice of termination is given any tenured faculty member pursuant to subsection 6. Faculty participation shall be solicited concerning:
- a. The extent to which there are grounds for termination of tenured appointments;
 - b. Judgments determining where within the overall academic program termination of appointments may occur; and
 - c. The procedure and criteria for identifying the individuals whose appointments are to be terminated.

- 1) *An administrative decision to terminate a tenured faculty member within the university shall be preceded by the following steps:*
 - a) *Consultation with the Executive Committee of the Faculty Senate regarding the extent to which there are grounds for termination of tenured appointments.*
 - b) *Consultation with the Faculty Affairs committee of the Faculty Senate regarding the justification for terminating tenured appointments, if that is a consequence of the decisions; and*
 - c) *Consultation with the Faculty Affairs committee, or the equivalent, of the college or equivalent unit involved regarding the justification for terminating tenured appointments.*
 - d) *Consultation with the faculty in an academic unit or program regarding the consequences of the decision.*
- 2) *Once the administration decision is finalized following these consultations, the identification of faculty members for termination shall be made by the University president following recommendations by the dean.*

8. A faculty member may be dismissed at any time for adequate cause. Adequate cause means: (a) demonstrated incompetence or dishonesty in teaching, research, or other professional activity related to institutional responsibilities, (b) continued or repeated unsatisfactory performance evaluations and failure to respond in a satisfactory manner to a recommended plan for improvement; (c) substantial and manifest neglect of duty, (d) conduct which substantially impairs the individual's fulfillment of his or her institutional responsibilities or the institutional responsibilities of others, (e) a physical or mental inability to perform assigned duties, provided that such action is consistent with laws prohibiting discrimination based upon disability, or (f) significant or continued violations of Board policy or institutional policy, provided that for violations of institutional policy the institution must notify the faculty member in advance in writing that violation would constitute grounds for dismissal, or the institutional policy must provide specifically for dismissal as a sanction.

- a) An authorized institution officer shall give written notice of intent to dismiss and specify the reasons for the action. The officer may, in the officer's discretion, also schedule a meeting with the faculty member to discuss the action. The notice shall state that the officer will forward to the institution president a recommendation to dismiss unless the faculty member, within twenty-one calendar days of receipt of the notice, requests a hearing before the Standing Committee on Faculty Rights. If the faculty member does not make a timely request for a hearing, the president, upon receipt of a recommendation to dismiss, shall make a decision and provide written notice and reasons for the action to the faculty member within ten business days of receipt of the recommendation.

- 1) *Written notice of the intent to terminate or dismiss shall be given to the faculty member.*
- 2) *Appropriate administrative officers include the academic unit or program chair and the dean of the college or equivalent unit.*

The written notice of termination or dismissal from the President must in any event be given within 60 days of the initial written notice of intent to terminate or dismiss.

- b) A faculty member may, within twenty-one calendar days of receipt of notice of intent to forward to the institution president a recommendation to dismiss, request for a formal hearing before the Standing Committee on Faculty Rights, pursuant to section 605.4. (NDSU 350.4)
 - c) Pending a final decision on dismissal for adequate cause, the faculty member may be suspended by the institution's president, or assigned to other duties in lieu of suspension, if it is reasonably determined that it is in the best interests of the faculty member or the institution to do so. The decision to suspend a faculty member or to assign a faculty member to other duties under this paragraph shall not be subject to grievance under NDSU Policy 353, except to the extent that the assigned duties are not within the scope of a faculty position. The faculty member's salary and fringe benefits shall continue during a period of suspension. Salary and benefits shall be terminated upon a final decision by the institution president to dismiss the faculty member following conclusion of proceedings at the institution.
 - d) This section shall not apply to conduct by a faculty member which is alleged to constitute sexual harassment under Title IX of the Education Amendments of 1972, which is governed by NDSU Policy 156.1.
9. If the administration determines that the conduct of a faculty member, although not constituting ground for termination or dismissal, provides reasonable cause for imposition of a sanction, the administration shall inform the faculty member in writing of the sanction and the reasons for the sanction. A sanction means demotion, suspension (but not including suspension pending a dismissal or termination decision), salary reduction or loss of salary, or restriction or loss of privileges imposed as a formal disciplinary measure. A sanction does not include implementation of an improvement plan or performance action plan or negative comments in a performance review, letter of reprimand or other document placed in a personnel file; rights to respond to a performance review or a letter of reprimand or other document placed in a personnel file are set forth in N.D.C.C. 54-06-21 and institution grievance procedures adopted under SBHE Policy 612. If the sanction is imposed following a hearing by the Standing Committee on Faculty Rights and based on the hearing record, there is no further review. If the sanction is imposed without a hearing, the faculty member may request review upon filing with the institution's president and chair or senior member of the Standing Committee on Faculty Rights a request for review and specifications of reasons within twenty-one calendar days of receipt of notice of imposition of a sanction. The institution shall have twenty-one calendar days following receipt of the request for review to file a response. The Standing Committee on Faculty Rights shall review the matter according to procedures established at the institution for that purpose and issue a written report within twenty-one calendar days of receipt of the institution's response and may make a recommendation to resolve the dispute, stating its reasons. The institution shall make its final decision upon reconsideration and provide written notice of that decision to the faculty member within ten business days of receipt of the report and recommendation of the Standing Committee on Faculty Rights. Upon filing of a request for review pursuant to this subsection, imposition of the sanction shall be suspended pending a final decision of the institution's president following conclusion of those proceedings.

HISTORY:

Replaces portions of Policy 605, SBHE Minutes April 25, 1995, pg 6554.

Amended April 25, 1995

Amended July 1, 1996

Amended January 1997

Amended	October 1998
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