

1 **FIRST DRAFT**

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4
5 **CHAPTER FIVE**

6 Faculty Rights of Appeal

7
8 5.1 INTRODUCTION

9 A faculty member is entitled to fair, impartial, honest resolution of problems that may arise in
10 relation to employment. Accordingly, the University ensures that resolutions to problems occur
11 judiciously through due process and within a reasonable time period.

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13 Faculty should bring complaints or grievances to the administrator closest to the situation at the
14 earliest possible time. Every effort should be made to expeditiously resolve such matters
15 informally, through conversation with the department head, director, or dean, before submitting a
16 written grievance or complaint. At any point in the appeals process, the Faculty Ombudsperson
17 may be consulted.

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19 5.2 FACULTY OMBUDSPERSON

20 The Faculty Ombudsperson is a neutral agent in faculty disputes who is neither an advocate for
21 the faculty nor an agent for the university. The Faculty Ombudsperson is an advocate for fair
22 practices, fostering probity and timeliness in the administration of campus policies and practices.
23 The services provided by the Faculty Ombudsperson do not supersede nor replace other
24 university grievance or appeals procedures but may supplement or enhance them. The Faculty
25 Ombudsperson aims to help faculty solve problems early and at the lowest levels, first through
26 administrative channels to obviate the need to pursue other appeals procedures. She/he is charged
27 to act as a confidential and informal resource for information on rights of appeal by serving as a
28 mutual communication channel, a complaint receiver, and dispute resolution facilitator. She/he
29 strives to promote the values of fairness, equity, justice, equality of opportunity and mutual
30 respect. If unsuccessful, the Faculty Ombudsperson will assist faculty with information and
31 counseling on formal grievance appeals processes. All inquiries to the Faculty Ombudsperson are
32 confidential unless the faculty member gives him/her permission to go to a third person.

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34 The Faculty Ombudsperson is a distinguished member of the faculty selected in consultation
35 between the Chief Academic Officer and the Executive Committee of the Faculty Senate. She/he
36 is appointed to a renewable three-year term and receives a monetary stipend as a form of
37 compensation.

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40 5.3 APPEALS THROUGH THE ADMINISTRATIVE CHANNEL

41 Any faculty member may initiate a written appeal with his/her administrative leader. If resolution
42 of the problem is not achieved, the faculty member has the right to request review at successively

1 higher administrative levels through the Dean, to the Chief Academic Officer. The University
2 bylaws (Article V, Section 7) provide that any faculty member of the University may appeal
3 through the Chief Academic Officer to the President. Her/his administrative officer shall inform
4 the faculty member of current appeal procedures to facilitate its submission. If administrative
5 channels are exhausted, the faculty may consider one of two formal appeals options stipulated
6 below.

9 5.4 GENERAL APPEALS PROCESS

10 **Scope and Jurisdiction of the Faculty Senate Appeals Committee.** The scope of the Faculty
11 Senate Appeals Committee includes, but is not limited to, complaints regarding tenure or
12 promotion decisions, annual performance reviews, workload, work conditions, and violations of
13 shared governance. The Faculty Senate Appeals Committee is a committee of faculty members
14 that hears complaints by faculty members claiming violations of due process and fairness in
15 employment status not covered under the Special Appeals procedures outlined later in this
16 chapter. The Faculty Senate Appeals Committee consists of tenured faculty appointed by the
17 senate. The committee has the authority to seek legal advice. The complete procedures for
18 appeals through the Faculty Senate Appeals Committee are posted on the Faculty Senate web site
19 (web.utk.edu/~senate).

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21 The function of the Faculty Senate Appeals Committee is to gather evidence and make
22 recommendations to the Chief Academic Officer of the University for the disposition of cases
23 within its jurisdiction. The Faculty Senate Appeals Committee does not replace the role of faculty
24 and administrators in making employment related decisions. Instead, it is guided by the aim of
25 maximizing the protection of the principles of academic freedom and due process. In all cases,
26 faculty members are entitled to notice regarding grounds on which administrative action has been
27 taken. All matters before the Faculty Senate Appeals Committee are kept in strict confidence.

28
29 While faculty members may bring these cases directly to the Faculty Senate Appeals Committee
30 without first going through other grievance procedures, they are encouraged to resolve complaints
31 first through contacting the Faculty Ombudsperson before administrative channels. The Faculty
32 Senate Appeals Committee takes one of the three actions:

- 33 (a) mediate an amicable resolution of the grievance in conjunction with the Faculty
34 Ombudsperson;
- 35 (b) initiate a Committee review; or
- 36 (c) take no action on the grounds that the appeal lacks merit for consideration.

37
38 If the Faculty Senate Appeals Committee chooses not to consider the appeal, the chairperson shall
39 give written notice of that decision with explanation to the faculty member, the administrator(s)
40 whose decision is being contested, and Chief Academic Officer.

41

1 **Process for Appeals Submission.** Within one year of the initial administrative decision, the
2 faculty member may appeal to the Faculty Senate Appeals Committee, after good faith efforts to
3 resolve the grievance, to the satisfaction of a faculty member, through administrative channels
4 and/or in consultation with the faculty Ombudsperson are exhausted.

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6 The appeal must be submitted in writing and include a comprehensive statement of the grievance.
7 Copies of the request must be provided to each administrator whose decision is being contested
8 and to the Office of the Chief Academic Officer. After the chair of the Faculty Senate Appeals
9 Committee has consulted with the Committee and the Office of the Chief Academic Officer and
10 they have determined that a grievance lies within the jurisdiction of the Committee, and merits
11 consideration, the Committee Chair will establish arrangements necessary to ensure a complete
12 review of the grievance by a Review Panel.

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14 When it has been determined by the Faculty Senate Appeals Committee that a Review Panel
15 should be convened, the chairperson appoints a panel consisting of no fewer than three members
16 of the Committee and designates one of the three as chair of the Panel. The chair of the Faculty
17 Senate Appeals Committee provides written notification of the appointment of a Review Panel
18 along with the names of the chair and the members to the faculty member, each administrator
19 whose decision will be reviewed, and the Chief Academic Officer. The written notification also
20 includes a description of review procedures.

21
22 Any individual making a presentation to the Committee or the Review Panel may obtain the
23 assistance of an advisor or legal counsel of his/her choice. If legal counsel is desired by either the
24 faculty member or the Faculty Senate Appeals Committee, the other party must be notified in
25 writing at least ten days before a scheduled hearing. A description of procedural rules and
26 membership for the Faculty Senate Appeals Committee is documented in the Faculty Senate
27 Bylaws.

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29 **Hearing Results and Recommendations.** The Faculty Senate Appeals Committee will use the
30 hearing record to make findings and recommendations to the Chief Academic Officer of the
31 University. The Chief Academic Officer must meet with the Faculty Senate Appeals Committee
32 to exchange views and determine whether the case can be resolved in a mutually acceptable
33 manner between the Chief Academic Officer and the Committee. Should the Chief Academic
34 Officer not accept the recommendations of the Faculty Senate Appeals Committee, she/he must
35 provide written justification in clear and unambiguous language to the committee and the
36 complainant. If the Committee determines that basic principles of due process, shared governance
37 and/or academic freedom are being violated, the Committee has the right to bring the issues to the
38 Faculty Senate.

39 40 41 5.5 SPECIAL APPEALS PROCEDURES

42 Faculty members have right to due process for Special Appeals in the following four areas:

- 1 (a) allegations of discrimination due to race, sex, religion, national origin, age, handicap or
2 veteran status;
- 3 (b) termination or suspension of a non tenured-faculty member for adequate cause prior to the
4 expiration of his/her term of appointment or without the minimum advance notice
5 specified for non-reappointment of probationary faculty (see Chapter 3);
- 6 (c) allegation that the non-renewal of appointment of a probationary faculty member (see
7 Chapter 3) constitutes a violation of academic freedom. (The procedure for termination of
8 tenured faculty appears in Chapter 3.); and
- 9 (d) special procedures governing disciplinary action. These Special Appeals are addressed by
10 governing bodies within the University as follows:

- 11
- 12 A. Allegations of discrimination on the basis of race, sex, national origin, religion, age,
13 handicap, or veteran status are brought and investigated in accord with procedures described
14 in the UTK Affirmative Action Plan. Copies of the Plan are available in the department or
15 college office, may be obtained from the Director of the Campus Office for Equity and
16 Diversity (OED). Personnel Policies regarding Equal Employment Opportunity and
17 Affirmative Action are posted through the UT Office of Human Relations at:
18 <http://admin.tennessee.edu/hr/policies/220pol.html>
19
- 20 B. If the Chief Academic Officer suspends or dismisses a probationary faculty member before
21 their stipulated term of appointment is completed or without the minimum advance notice
22 specified for termination of probationary faculty in Chapter 3, the faculty member may
23 appeal this decision through the Faculty Senate Appeals Committee or may elect to follow
24 the contested case procedures under the Tennessee Uniform Administrative Procedures Act.
25 Dismissal or suspension of this kind must be for “adequate cause” (see Chapter 3), and the
26 burden of proof is on the University. The faculty member must notify the Chief Academic
27 Officer of his/her desire to appeal within ten days after receipt of the University’s intention to
28 dismiss or suspend. Details of procedures under the Administrative Procedures Act are
29 available upon request from the Office of the General Counsel of the University.
30
- 31 C. Allegations that non-renewal of an appointment of a probationary faculty member constituted
32 a violation of academic freedom are handled by appeal through administrative channels, as
33 outlined above, except that the Chief Academic Officer is obliged to ask the Faculty Senate
34 Appeals Committee to review the matter solely to determine whether the notice of non-
35 renewal establishes a violation of academic freedom.

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37 The burden of proof that non-renewal constitutes a violation of academic freedom is on the
38 faculty member. The Faculty Senate Appeals Committee will invite the faculty member to
39 appear and to present evidence and argument on his/her behalf. If legal counsel is desired, the
40 faculty member must notify the chair of the committee at least ten days before any hearing
41 that may be scheduled, so that the University may also schedule the presence of prepared
42 legal counsel. If this notification comes later than ten days before a hearing, postponements

1 may be granted so that those who desire counsel may have counsel present. The University
2 will be obliged to notify the individual in the same way. The Committee should ask the
3 Department Head, Dean, and any other appropriate parties to testify and present evidence and
4 argument. After hearing and weighing the evidence presented, as well as any other evidence
5 at its disposal, the Committee will submit a written recommendation to the Chief Academic
6 Officer within 21 days after the conclusion of its deliberations. A copy of the
7 recommendation will be given at the same time to the faculty member. The Chief Academic
8 Officer will consider the Committee's recommendation and inform the faculty member of
9 his/her decision within 30 days. [The by-laws of the University provide that any individual
10 may appeal to the President.]
11

- 12 D. Special Procedures Governing Disciplinary Action. Disciplinary action (other than
13 termination for adequate cause) may be taken against a faculty member for misconduct (as
14 defined in Chapter 3). Before such disciplinary action may be taken, the Department Head or
15 Dean must notify the faculty member of his/her intent to take disciplinary action. This written
16 notice shall include a detailed specification of the alleged misconduct and the nature of the
17 proposed discipline. It shall also inform the faculty member of his/her right to appeal the
18 proposed discipline through administrative channels as outlined above or to request a review
19 by the Faculty Senate Appeals Committee in accordance with the provisions of this chapter.
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