SIXTH DRAFT

(Approved by the UTK Faculty Senate on Feb. 2, 2004, This draft also reflects the April 5
decision by the Faculty Senate to appoint members of the Appeals Committee to 3 year staggered
terms.)

CHAPTER FIVE
Faculty Rights of Appeal

5.1 INTRODUCTION

Faculty members are entitled to fair, impartial, honest resolution of problems that may arise in
relation to employment. Accordingly, the University ensures that resolutions to problems occur
judiciously through due process and within a reasonable time period.

The rights of appeal described in this chapter apply to all tenured, tenure-track, and non-tenure-
track faculty. Faculty members have the right, individually or collectively, to submit an appeal.
Faculty are encouraged to bring complaints or grievances to the administrator closest to the
situation at the earliest possible time. Every effort should be made to expeditiously resolve such
matters informally, through conversation with the department head, director, or dean, before
submitting a written grievance or complaint. Faculty members with grievances have four options
for pursuing appeals. They may contact the Ombudsperson for consultation or mediation; they
may initiate an appeal through the administrative channel; they may request an appeal through the
Faculty Senate Faculty Appeals Committee; or they may bring an appeal through the Tennessee
Uniform Administrative Procedures Act (TUAPA). Each of these options is described in the
following sections. Appeals may be pursued simultaneously through more than one channel. At
any point in the appeals process, faculty members are encouraged to consult the Faculty
Ombudsperson.

The appeals procedures outlined here are a formal but not legal process that aims to resolve
problems and address systemic issues. Faculty members have a right to consult an attorney, but
legal advisors are not to be present when following these university appeals channels. For
conflicts arising between faculty and students, Hilltopics should be consulted [link]. For tenured
faculty appealing termination for adequate cause, appeals procedures are described in Section 5.6.

5.2 FACULTY OMBUDSPERSONS

Faculty Ombudspersons are three distinguished members of the faculty selected by the Chief
Academic Officer and the Executive Committee of the Faculty Senate. They are appointed to
staggered renewable three-year terms and receive compensation as described in their appointment
letters. The Ombudsperson in the third year of appointment serves as lead consultant and
coordinator of mediation services.

Faculty Ombudspersons are both consultants and mediators in faculty disputes. They are neither
advocates for the faculty nor agents of the university, but rather supporters of fair practices and
mutual respect, fostering probity and timeliness in the administration of campus policies and
practices. Their responsibilities do not include grievances initiated by administrators, students, or
staff.

As consultants, the Ombudspersons act as a private resource for information on rights and
procedures of appeal and due process. They help faculty members solve problems early and
generally at the lowest levels. Except as required by law, consultations with Faculty
Ombudspersons shall not be communicated to a third party unless the faculty member gives
his/her permission.

As mediators, Faculty Ombudspersons serve as mutual communications channels and dispute
resolution facilitators. Their services do not supersede or replace other university grievance or
appeals procedures, but may supplement or enhance them. All Ombudsperson mediation is
private, except as required by law.

5.3 APPEALS THROUGH THE ADMINISTRATIVE CHANNEL
Any faculty member may initiate a written appeal with his/her administrative leader. If resolution
of the problem is not achieved, the faculty member has the right to request review at successively
higher administrative levels, up to the President (University Bylaws: Article V, Section 7).
Her/his administrative officer shall inform the faculty member of current appeal procedures to
facilitate its submission.

5.4 APPEALS THROUGH THE FACULTY SENATE APPEALS COMMITTEE

Jurisdiction of the Faculty Senate Appeals Committee. The function of the Faculty Senate
Appeals Committee is to gather evidence and make findings, and to make recommendations to
the Chief Academic Officer of the University for the disposition of cases within its jurisdiction.
The Faculty Senate Appeals Committee does not replace the role of faculty and administrators in
making employment-related decisions. Instead, it is guided by the aim of maximizing the
protection of the principles of academic freedom and due process. In all cases, faculty members
are entitled to notice regarding grounds on which administrative action has been taken. All
matters before the Faculty Senate Appeals Committee are kept in strict confidence, subject to
state open records laws.
The jurisdiction of the Faculty Senate Appeals Committee includes complaints regarding violations of due process and fairness in tenure or promotion decisions, annual performance reviews, and violations of provisions contained in this Handbook and in collegiate and departmental bylaws. The Appeals Committee is comprised of 18 tenured faculty members appointed to staggered three-year terms by the Faculty Senate Committee on Nominations and Appointments with the advice and consent of the Faculty Senate. At least one member of the committee must have legal expertise. The complete procedures for appeals through the Faculty Senate Appeals Committee are posted on the Faculty Senate web site [link].

Faculty making an appeal are encouraged to consult the Faculty Ombudsperson before bringing an appeal to the Appeals Committee. After receiving a request for an appeal review, the Appeals Committee will take one of four actions:

(a) mediate an amicable resolution of the grievance in conjunction with the Faculty Ombudspersons;
(b) take no action on the grounds that the appeal lacks merit for consideration or lies outside of the scope of the committee.
(c) redirect the appeal through the administrative channel, or
(d) initiate a Review Panel.

The chairperson will give written notice of that decision with explanation to the faculty member, the administrator(s) whose decision is being contested, and Chief Academic Officer.

Process for Appeals. Faculty member(s) have the right to initiate an appeal to the Appeals Committee within one year of the administrative action that caused the grievance. The appeal must be submitted in writing and include a comprehensive statement of the grievance. After the chair of the Faculty Senate Appeals Committee has consulted with the Committee and they have determined that a grievance both lies within the jurisdiction of the Committee and merits consideration, the Committee Chair will establish arrangements necessary to ensure a complete review of the grievance by a Review Panel.

The chairperson appoints a panel consisting of no fewer than three members of the Committee and designates one of the three as chair of the Panel. The chair of the Faculty Senate Appeals Committee provides written notification of the appointment of a Review Panel along with the names of the chair and the members to the faculty member, each administrator whose decision will be reviewed, and the Chief Academic Officer. The written notification also includes a description of review procedures and a copy of the comprehensive statement of the grievance. Any objections to the membership of the review panel or the review procedures shall be made in writing to the chair of the Faculty Senate Appeals Committee, whose written decision to sustain or overrule the decision shall be final. If the objection is sustained, the chair will facilitate a resolution so that the review may proceed.
Hearing Results and Recommendations. The Faculty Senate Appeals Committee shares its findings and recommendations with the Chief Academic Officer. The Chief Academic Officer will then meet with the Appeals Committee to exchange views and determine whether the case can be resolved in a mutually acceptable manner between the Chief Academic Officer and the Committee. If the Committee’s findings indicate that principles of due process, shared governance, and/or academic freedom as described in this Handbook have been violated, the Appeals Committee may request that the Faculty Affairs Committee consider structural or systemic issues.

If the recommendations of the Appeals Committee are approved by the Chief Academic Officer, a written copy of the findings and recommendations will be provided to the faculty member(s) making the appeal. Should the Chief Academic Officer not accept the findings and recommendations of the Faculty Senate Appeals Committee, she/he must provide written justification to the committee and the complainant(s). Faculty members bringing appeals will receive a copy of the Appeals Committee findings and recommendations, and they may request reconsideration by the Appeals Committee based on an alleged error in the findings or new evidence. If the findings of the Appeals Committee are at variance with the Chief Academic Officer’s decision regarding principles of due process and/or academic freedom as described in this Handbook, the Appeals Committee is to bring the case to the Faculty Senate for its consideration.

5.5 APPEALS THROUGH THE TENNESSEE UNIFORM ADMINISTRATIVE PROCEDURES ACT

While all appeals through the Faculty Senate Appeals Committee can be brought to the Tennessee Uniform Administrative Procedures Act (TUAPA), allegations of discrimination due to race, sex, religion, national origin, age, handicap or veteran status must be brought through TUAPA. Allegations of discrimination on the basis of race, sex, national origin, religion, age, handicap, or veteran status are brought and investigated in accord with procedures described in the UTK Affirmative Action Plan. Copies of the Plan are available in the department or college office, may be obtained from the Director of the Campus Office for Equity and Diversity (OED). Personnel Policies regarding Equal Employment Opportunity and Affirmative Action are posted through the UT Office of Human Relations at: http://admin.tennessee.edu/hr/policies/220pol.html

5.6 APPEALS OF TERMINATION OF TENURED FACULTY FOR ADEQUATE CAUSE

Disciplinary action (other than termination for adequate cause) may be taken against a faculty member for misconduct as defined in Chapter 3. Before such disciplinary action may be taken, the Department Head or Dean must notify the faculty member of his/her intent to take disciplinary action. This written notice shall include a detailed specification of the alleged misconduct and the nature of the proposed discipline. It shall also inform the faculty member of
her/his right to appeal the proposed discipline or to request a review by the Faculty Senate Appeals Committee in accordance with the provisions of this chapter. “Adequate cause” is defined in Chapter 3, section 3.11.3.4.

Revocation of tenure and termination for adequate cause of a tenured faculty member takes place in the following way:

1. The Department Head, after consultation with the tenured faculty, and with approval of the Dean, will advise the Chief Academic Officer that grounds exist for revocation of tenure and termination of employment. If the reason for the proposed action is incompetence, the Chief Academic Officer will also be advised as to the history of efforts made within the department, school, or college to encourage and help the faculty member to improve his/her performance. The Chief Academic Officer will also be advised as to the judgment of the tenured faculty in the department on the matter.

2. If the Chief Academic Officer concludes that grounds exist for revocation of tenure, he/she will discuss the matter with the faculty member, seeking an amicable settlement.

3. If no such settlement can be agreed upon, the Chief Academic Officer will ask the Appeals Committee to conduct an informal inquiry, to determine whether, in its opinion, dismissal proceedings should be undertaken. (The opinion of the Appeals Committee is not binding on the decision of Chief Academic Officer, but the opinion does become part of the procedural record.)

4. The Chief Academic Officer receives the opinion of the Appeals Committee, evaluates the report, and recommends dismissal or retention to the university President. If retention is recommended, the process is concluded.

5. If the Chief Academic Officer recommends dismissal, she/he will consider the record to determine whether dismissal proceedings should be held.

6. If the Chief Academic Officer decides that dismissal proceedings should be held, he/she (or his/her designee) will deliver to the faculty member a written statement of charges, framed with reasonable particularity. The statement of charges shall also include notice of the faculty member’s right to contest the charges in a hearing under the procedures described below or under the contested case provisions of the Tennessee Uniform Administrative Procedures Act. The written statement of charges will be delivered to the Faculty Senate Executive Committee at the same time.

7. If, within ten days of receipt of the written charges the faculty member has not notified the Chief Academic Officer in writing that she/he contests the statement of charges, the faculty
member will be dismissed, and no appeal of the matter will be heard within the University. If, within ten days after receipt of the statement of charges, the faculty member notifies the Chief Academic Officer in writing that she/he elects to contest the statement of charges and to waive the right to a hearing under the Tennessee Uniform Administrative Procedures Act, the Chief Academic Officer will ask the faculty representatives on the Faculty Senate Executive Committee to appoint a hearing tribunal no later than fifteen days after the request. The Chief Academic Officer will notify the faculty member of this action.

8. The tribunal will consist of members of the faculty and the administration. Members of the tribunal may be challenged if they are deemed (either by the Chief Academic Officer or by the faculty member) disqualified by reason of bias or interest. Such challenges will be judged by the Faculty Senate Executive Committee, whose decision on the matter will be final.

9. A hearing will then be scheduled, with steps taken as follows:

(a) Service of notice of hearing with specific charges in writing will be made by the Chief Academic Officer at least 20 days prior to the hearing. The faculty member may waive a hearing or may respond to the charges in writing at any time before the hearing. If the faculty member waives a hearing, but denies the charges against her/him or asserts that the charges do not support a finding of adequate cause, the hearing tribunal will proceed without her/him to evaluate all available evidence and will rest its recommendation upon the evidence in the record.

(b) During the proceedings the faculty member may elect to be represented by legal counsel or other representatives of his/her choice. If legal representation is desired, the faculty member must notify the chairperson of the hearing tribunal at least ten days before the scheduled date of the hearing so that the University may also schedule the presence of prepared legal counsel. If notification of the desire to have counsel present is given less than ten days before the hearing, the tribunal may at the University’s request postpone the hearing until counsel can be available on both sides. If the University intends to have legal counsel present at the hearing, it will notify the faculty member in the same way, with the same provision for postponement until legal counsel has been obtained.

(c) A verbatim record of the hearing will be taken and a typewritten copy will be made available upon request to the faculty member without charge.

(d) The hearing tribunal will grant adjournments to enable either party to investigate evidence to which a valid claim of surprise is made.

(e) The burden of proof that adequate cause exists rests with the University and shall be satisfied only by clear and convincing evidence in the record considered as a whole.
(f) The University will afford the faculty member an opportunity to obtain necessary witnesses and specific documents or other specific evidence requested by the faculty member.

(g) The faculty member and the University will have the right to confront and cross-examine all witnesses. Where the witness cannot or will not appear, but the committee determines that the interests of justice require admission of his/her statement, the committee will identify the witness, disclose her/his statement, and provide for possible interrogatories.

(h) In the hearing of charges of incompetence, the testimony shall include that of qualified faculty members from this or other institutions of higher education.

(i) The hearing tribunal will not be bound by strict rules of legal evidence, and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

(j) The findings of fact and the decision will be based solely on the hearing record.

(k) The Chief Academic Officer and the faculty member will be notified of the decision in writing and will be given a copy of the record of the hearing.

(l) If the hearing tribunal concludes that adequate cause for dismissal has not been established by the evidence of the record, it will so report to the Chief Academic Officer. If the Chief Academic Officer rejects the report, she/he will state her/his reasons for doing so, in writing, to the hearing tribunal and to the faculty member, and provide an opportunity for response before transmitting the case to the President and the Board of Trustees. If the hearing tribunal concludes that adequate cause for dismissal has been established, but that remedy other than dismissal would be more appropriate, it will so recommend, with supporting reasons.

(m) If dismissal or other penalty is recommended, the Chief Academic Officer will transmit the record and her/his recommendations to the President and the Board of Trustees. Review by the Board of Trustees will be based on the record of the tribunal hearing, and it will provide opportunity for argument, oral or written or both, by the principals or by their representatives at the hearing.

(n) Until the final decision has been reached the faculty member will be suspended, or assigned to other duties in lieu of suspension, only upon approval of the Chief Academic Officer for cause shown. Before suspending a faculty member, pending an ultimate determination of her/his status through the institution’s hearing machinery, the Chief
Academic Officer will consult with the Faculty Senate Executive Committee. Salary will continue during the period of the suspension.