FACULTY GRIEVANCE AND TERMINATION

Serious Discipline/Termination

Ordinarily, serious discipline or termination will not be initiated until after the faculty member and appropriate administrators have attempted to resolve the dispute by mutual agreement. The termination of a contract before the end of a specified term, the failure to renew a contract with a tenured faculty member, or serious discipline of a faculty member shall not occur without adequate cause. Adequate cause shall include, but is not limited to, one or more of the following reasons:

1. Long-term inability to meet faculty responsibilities due to medical reasons.
2. Financial exigency or removal of the subjects taught by the faculty member from the offerings of the College.
3. Unsatisfactory teaching, as confirmed by the College administration using information assembled from the Department Chair, other faculty, students, and administrators.
4. Significant dereliction in discharging College obligations.
5. Serious violation of policies and procedures of the College, such as those governing sexual harassment, including, but not limited to those policies and procedures set forth in this Faculty Handbook and the Employee Handbook.
6. Failure to satisfactorily carry out the aims and objectives of the College; personal conduct that will reflect unfavorably on the College or inhibit its effectiveness in carrying out its aims and objectives.
7. An action that is seriously contrary to clearly established principles of professional ethics or of the mission statement of the College.

Serious discipline may involve a reduction in salary, relief from duties without pay, demotion in rank, or other action seriously impacting the economic security or status of a faculty member where such action is for disciplinary reasons as opposed to unsatisfactory performance.

Procedures for Serious Discipline/ Termination

Ordinarily, the College's procedures governing serious discipline/ termination will be promptly initiated. In the event the President determines that serious, immediate harm would come otherwise to the faculty member, to students, to other individuals, or the College, the President may impose an immediate, interim suspension of the faculty member that shall take effect prior to completion of the College's procedures governing serious discipline/termination. Notice of such immediate, interim suspension together with a specific statement of the reasons for such action shall be promptly provided to the faculty member affected thereby. The immediate, interim suspension may be lifted at the discretion of the President prior to completion of the College's procedures governing serious discipline/termination but otherwise shall remain in effect unless and until the College's procedures governing serious discipline/termination result in a finding in favor of the faculty member.

Except in cases of financial exigency or removal of the subjects taught by the faculty member from the offerings of the College, any matter involving termination of a contract before the end of a specified term, failure to renew a contract, and serious discipline for adequate cause will be preceded by a written notice including a statement of reasons approved by the President, and the individual concerned will have the right to be heard by a hearing committee of his or her peers. The faculty member shall request a hearing within ten (10) calendar days from the date of the notice. The termination or serious discipline, other than immediate suspension (as set forth above), will not become effective until after the ten-day period to request a hearing has expired or the hearing and appeals procedures have been exhausted, whichever is earlier. Should the hearing and appeals process find for the faculty member, any pay that was withheld as the result of immediate suspension will be reinstated retroactive to the initial date of the suspension.

The hearing committee will consist of the Provost (who will serve as Chair), two tenured faculty members recommended by the faculty member, and two tenured faculty members appointed by the Provost. In the event the Provost is unable to serve, the President may appoint another member of the administration to serve in the Provost's stead. A member of the committee may remove himself or herself from the case if he or she wishes to be disqualified by bias or interest. Each party will have a maximum of two challenges to the committee membership without stated cause except that the seat filled by the Provost (and/or another member of the administration in the event the Provost is unable to serve) is not subject to challenge.

1. The hearing shall be held no sooner than twenty (20) calendar days after the faculty member receives the written notice specifying the statement of reasons for imposition of termination/serious discipline.
2. During the hearing, the faculty member will be permitted to have an academic advisor or counsel of the faculty member's own choice. In the event the faculty member chooses to have legal counsel, the faculty member has sole responsibility for compensating such counsel.
3. An audio record of the hearing will be made and, upon request, a copy will be available to the faculty member without cost.
4. The burden of proof that adequate cause exists rests with the College and shall be satisfied only by clear and convincing evidence in the record considered as a whole, except to the extent applicable law requires the use of a different standard (i.e., such as preponderance of the evidence in cases involving sexual harassment).
5. The hearing committee may grant adjournment to enable either party to investigate evidence as to which a valid claim of surprise is made.
6. The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence, and the administration of the College will, insofar as it is possible for it to do so, secure the cooperation of such witnesses and make available necessary documents and other evidence within its control.
7. The faculty member and the administration and their representatives will have the right to confront and cross-examine all witnesses. Where the witnesses cannot or will not appear, but the hearing committee determines that the interest of justice require admission of their statements, the hearing committee will identify the witnesses, disclose their statements, and if possible provide for interrogatories.
8. In the hearing of charges of incompetence, the testimony must include that of qualified faculty members from this or other institutions of higher education.
9. The hearing committee will not be bound by strict rules of legal evidence and may admit any evidence that is of probative value in determining the issues involved.
10. The hearing committee may promulgate procedures to govern the conduct of the hearing and submission of evidence and argument.
11. At the conclusion of the hearing process, the hearing committee shall issue to the faculty member and President a written report

that includes findings of fact and a determination as to whether or not adequate cause exists for the termination/serious discipline imposed. The hearing committee's findings of fact and determination shall be based solely on the evidence and arguments submitted by the parties during the hearing process.

12. If the hearing committee's report concludes that adequate cause for termination/serious discipline does not exist, the President may, within ten (10) calendar days of the date of the hearing committee's report, serve on the faculty member a notice of rejection stating the reasons for the President's rejection of the hearing panel's determination. The faculty member shall have the right to appeal the President's rejection of the hearing committee's decision to the Board of Directors, as outlined in Number 14.
13. Except for such simple announcements as may be required, e.g., covering the time of the hearing and similar matters, public statements and publicity about the case by either the faculty member or administrative officers will be avoided so far as possible until the proceedings have been completed, including consideration by the Academic Affairs Committee of the Board of Directors.
14. If the hearing committee determines that adequate cause for serious discipline/termination exists, or if the President rejects the hearing committee's determination that adequate cause for serious discipline/termination does not exist, the faculty member may appeal the determination or rejection to the Academic Affairs Committee of the College's Board of Directors. The faculty member must give notice of his/her intent to appeal no later than ten (10) calendar days after the determination or rejection is filed. Such notice shall be provided to the President, in writing, and shall state with specificity the grounds upon which the faculty member is appealing. Upon receipt of the notice, the President shall cause the notice of appeal and the record of evidence and arguments from the hearing to be provided to the faculty member and transmitted to the Chair of the Academic Affairs Committee of the Board. The hearing record includes all the evidence introduced at the hearing as well as an audio recording or transcript of the hearing itself, together with the hearing panel's findings." The Academic Affairs Committee shall review the hearing record of the case and reach a recommendation as to whether to affirm the hearing committee's determination, or the President's rejection as the case may be, reverse the same, or modify the same. The Chair of the Board may participate in the Academic Affairs Committee's deliberations but shall not have voting rights. The Academic Affairs Committee's review shall be confined to the hearing record. The Academic Affairs Committee will apply a clear error standard of review to the hearing panel's findings of fact and a *de novo* standard of review to the hearing panel's interpretation and construction of applicable policies, rules, regulations, and standards. In conducting its review, the Academic Affairs Committee may invite the faculty member and President to present oral argument or further written statements, but whether and to what extent such argument and statements will be permitted is solely within the discretion of the Acdaemic Affairs Committee. In the event the Academic Affairs Committee permits oral argument or further written statements, both the faculty member and the President shall have an equal right to appear or submit statements, as the case may be. While the review of a hearing committee's determination is pending, the President and faculty member are prohibited from engaging in any *ex parte* communications with the Academic Affairs Committee, the Board President, and/or the Class A and B Board Members to the extent such communications relate to the subject matter of the serious discipline/termination or the hearing committee's determination."
15. At the conclusion of its review, the Academic Affairs Committee: "At the conclusion of its review, the Academic Affairs Committee shall forward its recommendation to the Class A and Class B members of the Board of Directors, along with the hearing record and a record of any additional oral argument or written submissions that Academic Affairs Committee received from the parties." The Class A and Class B members of the Board of Directors will review the recommendation and vote to affirm the hearing committee's determination, or the President's rejection as the case may be, reverse the same, or modify the same. In the event that a majority of the total number of Class A and Class B members of the Board of Directors cannot agree, the recommenation of the Academic Affairs Committee shall stand as the resolution of the appeal. After receiving the decision from the Class A and Class B members of the Board of Directors, the Chair of the Academic Affairs Committee shall issue and serve on the faculty member and President a written statement setting forth the determination of the appeal. The Class A and Class B members of the Board of Directors' determination shall be subject to further review only as permitted by the Alternative Dispute Resolution section of this handbook.

Alternative Dispute Resolution

THE FOLLOWING PARAGRAPHS CONSTITUTE A BINDING ARBITRATION PROVISION

The College and faculty member agree to submit to binding arbitration any individual claim, dispute, or controversy between the College and a faculty member arising out of and seriously impacting the employment relationship, including, but not limited to, claims of employment discrimination, breach of employment contract, wrongful discharge, denial of tenure, violation of academic freedom, arbitrary or discriminatory reduction of pay, and alleged tortuous conduct, such as, but not limited to, defamation, misrepresentation, fraud, or other claims. However, claims for workers' compensation benefits and claims relating to non-renewal of contract during the probation period for reasons other than unlawful discrimination under applicable statutes**,** and minor disputes not affecting the faculty member's compensation or employment status shall be excluded from arbitration. In the event the claim, dispute, or controversy arises from a termination/serious discipline that involved findings and a determination by a hearing panel, the arbitrator's review of whether adequate cause for such termination/serious discipline exists shall be confined to review of the record developed before the hearing panel unless a party can show (1) fraud or misconduct by the opposing party or (2) newly discovered evidence that, with reasonable diligence, could not have been discovered prior to the hearing panel's determination.

The College and faculty member agree that this arbitration agreement shall not govern or apply to any claim, dispute, or controversy between the College and more than one faculty member. Any claim, dispute, or controversy between the College and more than one faculty member, including, but not limited to, class action lawsuits, joint or multi-plaintiff lawsuits, motions to consolidate individual lawsuits, or disputes about the scope or enforceability of this provision, shall be adjudicated solely in the District Court of Atchison, Kansas, or the federal court for the District of Kansas with jurisdiction over claims arising in Atchison, Kansas.

For purposes of this arbitration agreement, the term "College" includes Benedictine College, its current and former administrators, officers, directors, employees, agents, and affiliates.

The faculty member agrees and understands that by accepting an appointment, they agree to the terms of this arbitration agreement.

The arbitration shall be administered by American Arbitration Association ("AAA") pursuant to the AAA rules for resolving employment disputes, as modified by this agreement. The AAA rules are available on the AAA's website www.adr.org. With respect to the substantive claims asserted, the arbitrator must follow and apply the substantive law of the State of Kansas (without regard to conflicts of laws) and federal law (to the extent federal law is applicable). Either party may conduct discovery as part of the arbitration to the same extent allowed in court proceedings.

The arbitrator shall be empowered to resolve the dispute with the same set of remedies that would be available if the particular claim, dispute, or controversy were heard in court, except that any relief shall only be granted to the extent necessary to provide relief warranted by the party's individual claim. The College does not consent, and the arbitrator shall have no authority to, conduct a class action arbitration, a private attorney general arbitration, or any arbitration involving joint or consolidated claims under any circumstance. If the immediately preceding sentence is found to be unenforceable, then the entirety of this arbitration agreement shall be null and void, subject to a party's right to appeal the court order invalidating the preceding sentence. All issues are for the arbitrator to decide, except that issues relating to the validity, enforceability, or scope of this arbitration agreement shall be determined by a court and not by the arbitrator.

The demand for arbitration must be filed within the time limit established by the applicable statute of limitations for the asserted claims or within one year of the conduct that forms the basis of the claim if no limitations period is applicable. Failure to demand arbitration within the prescribed time period shall result in a waiver of any claim(s). The arbitrator's decision shall be final and binding upon the parties.

The arbitration will take place in Atchison, Kansas, or such other location as is mutually agreed to by all parties.

This arbitration agreement shall survive termination of the faculty member's appointment.

The College and faculty member agree this arbitration agreement is made pursuant to a transaction involving and substantially affecting interstate commerce.

Any final award may be entered as a judgment or order in the federal court for the District of Kansas with jurisdiction over Atchison, Kansas. This arbitration agreement is contractually enforceable and deemed incorporated into the appointment and employment relationship between the faculty member and the College. This arbitration agreement shall be interpreted, construed, and enforced in accordance with the FAA and other applicable federal law and, to the extent state law applies, the laws of the State of Kansas. Except as set forth above, if any portion of this arbitration agreement is deemed invalid or unenforceable, it shall be severed and will not invalidate the remaining portions of the arbitration agreement.

Faculty Grievance Policy

A faculty member who feels he or she has cause for grievance involving any matter not otherwise specifically covered by a specific College policy and procedure may file a grievance in accordance with the following procedures.

Because the College desires that faculty grievances be resolved at the lowest level of administration possible, the faculty member should first pursue the grievance through normal administrative channels by speaking to the Department Chair and the Dean of Faculty or Dean of the School of Medicine (as appropriate), and Provost in that order. A formal grievance is initiated by filing a written statement summarizing the parties to the grievance, nature of the grievance, pertinent information and supporting information, and the resolution desired by the faculty member. The grievance must be filed with the Provost within twenty (20) calendar days of the action being grieved, absent extenuating circumstances. If the grievance is with the Provost, the President shall serve in place of the Provost in the grievance process. The Provost shall review or investigate the matter and respond within twenty (20) calendar days of receipt of the grievance. During the Provost's review or investigation, the party(ies) against whom the grievance has been filed will have the opportunity to review the grievance and provide a written statement regarding their position on the matter. The Provost (in consultation with the Dean of the Faculty or the Dean of the Medical School, as appropriate) will provide a written response on the grievance, supporting reasons and evidence, and action taken. The written response will be given to all parties involved.

If the faculty member is still not satisfied after exhausting normal administrative channels and the Provost's response, he or she may pursue the grievance by petitioning the Faculty Grievance Committee within ten (10) calendar days after receipt of the Provost's response. The petition shall set forth in detail the parties to the grievance, nature of each grievance, and any information the faculty member believes is pertinent to the dispute. Additionally, the faculty member shall attach copies of the original grievance, previous responses, and communications received or submitted through normal administrative channels. The party(ies) against whom the grievance has been filed will be asked to provide their previous written statement as well as any other information that they believe is pertinent to the dispute. The Committee will decide whether the petition shall be rejected or warrants further consideration and investigation. The Committee shall normally complete its review or investigation and reports its findings and recommendation in writing to the faculty member, other parties to the grievance, and the President within twenty (20) calendar days after receipt of the grievance. The President will normally within twenty (20) calendar days after receipt of the Committee's report, notify the Committee, faculty member, and parties to the grievance in writing that the Committee's findings and recommendations have been accepted, modified, or rejected including an explanation of the reasons for such action. The Committee and parties to the grievance shall have ten (10) calendar days after receipt of the President's notice to submit a written statement to the President requesting reconsideration of his or her decision, with reasons provided for this reconsideration. The Committee and parties to the grievance will be notified within twenty (20) calendar days of the President's decision. This decision is final.

If the grievance is against the President, the faculty member has the right of appeal to the Chair of the Academic Affairs Committee of the Board of Directors after exhausting the Faculty Grievance Committee procedures outlined above. The appeal to the Chair of Academic Affairs Committee of the Board is in lieu of the Faculty Grievance Committee's report being given to the President. The Chair of the Academic Affairs Committee of the Board may either decide the matter based on written and/or oral statements from the parties to the grievance or may call a special meeting of the Academic Affairs Committee of the Board to consider the matter. Each party to the grievance shall be provided equal time to personally represent the issue to the Academic Affairs Committee

of the Board at this meeting. The Academic Affairs Committee of the Board will provide a written decision to all parties to the grievance within ten (10) days of this meeting. This decision is final.

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