

RULES AND REGULATIONS



THE TEXAS STATE UNIVERSITY SYSTEM

LAMAR UNIVERSITY

LAMAR INSTITUTE OF TECHNOLOGY

LAMAR STATE COLLEGE - ORANGE

LAMAR STATE COLLEGE - PORT ARTHUR

SAM HOUSTON STATE UNIVERSITY

SUL ROSS STATE UNIVERSITY

SUL ROSS STATE UNIVERSITY RIO GRANDE COLLEGE

TEXAS STATE UNIVERSITY - SAN MARCOS

**Adopted September 1, 1980
Amended May 21, 2010 and August 20, 2010**

- 4.431 The designee or hearing officer, presiding over the grievance, will make a recommendation to the President, who will make the final decision regarding the grievance;
- 4.432 The faculty member may present the grievance individually or through a representative that does not claim the right to strike;
- 4.433 A hearing officer may not recommend changing the Component administration's action regarding tenure, non-renewal, termination of employment, or denial of promotion unless the faculty member establishes, by preponderance of the evidence, that he or she has been denied a right guaranteed by the constitution or laws of the United States or the State of Texas;
- 4.434 A hearing officer may not recommend changes in disciplinary actions taken against a faculty member, unless the faculty member establishes, by a preponderance of the evidence, that the disciplinary action was an abuse of discretion and authority of the person imposing the disciplinary action;
- 4.435 The administration of the Component need not state the reasons for the questioned decision or offer evidence in support thereof, unless the faculty member presents a *prima facie* case in support of his or her allegation, in which case, the hearing officer shall determine whether the administration has stated a nondiscriminatory reason for its decision.

4.5 Termination and Due Process Procedures.

- 4.51 Grounds. Termination by a Component of the employment of a tenured faculty member and of all other faculty members before the expiration of the stated period of their appointment, except by resignation or retirement, will be only for good cause shown.

Good cause includes but is not limited to the following:

- (1) Failure to work efficiently or effectively;
- (2) Insubordination;
- (3) Serious professional or personal misconduct, examples of which include:
 - (a) Commission of a misdemeanor involving moral turpitude, or a felony;
 - (b) Failure to secure and maintain Federal, State, or local permits required in the discharge of teaching,

- research, or other professional duties, including failure to maintain appropriate documentation;
- (c) Willful destruction of Component property or violent disruption of the orderly operation of the campus;
 - (d) Violation of the System's ethics policy (*Chapter VIII* of these *Rules and Regulations*), including acceptance or solicitation of gifts that might tend to influence the discharge of one's professional responsibilities;
 - (e) Stealing and publishing as one's own the intellectual property of another;
 - (f) Misuse or misappropriation of state property, resources, funds, including funds held by a faculty member as part of official duties;
 - (g) Sexual harassment, as defined by *Section 4.4* of *Chapter VII* of these *Rules and Regulations*; and,
 - (h) Racial harassment as defined by *Section 4.3* of *Chapter VII* of these *Rules and Regulations*.
- (4) Professional incompetence and/or neglect of professional duties;
 - (5) Mental or physical disablement of a continuing nature adversely affecting to a material and substantial degree of the performance of duties or the meeting of responsibilities to the institution, or to students and associates;
 - (6) Illegal use of drugs, narcotics, or controlled substances. A faculty member who, by a preponderance of the evidence, under these *Rules and Regulations*, is found to have illegally possessed, used, sold, or distributed any drug, narcotic, or controlled substance, whether the infraction is found to have occurred on or off campus, shall be subject to termination, suspension or other discipline as determined by the President or the President's designee. That an employee is charged in a criminal case, or is found "not guilty" therein, shall not be construed as prohibiting administrative enforcement of these *Rules and Regulations*. If, in the judgment of the President or the Board of Regents, the best interests of the students or the Component or the System so dictate, the employee may be immediately removed from contact with students and other employees, pending resolution of disciplinary proceedings; and,

- (7) Intentionally or knowingly violating any Board or administrative order, rule, or regulation, including the provisions of *Chapter V, Section 2.144* of these *Rules and Regulations*. The employee is presumed to have knowledge of such Board or administrative order, rule, or regulation that is published in these *Rules and Regulations* or is a published policy of the Component.
- 4.52 Suspension. A President may, for good cause, suspend an accused faculty member pending immediate investigation or speedy hearing as hereinafter provided when the continuing presence of the faculty member poses a danger to persons or property or an ongoing threat of disrupting the academic process. An employee who is suspended or discharged from a particular duty or job at the Component may be suspended or discharged from all other duties or jobs in the Component for the same or other good cause. The President shall, as soon as possible, notify both the Chancellor and the Vice Chancellor and General Counsel of any such actions.
- 4.53 Summary Dismissal. In cases of good cause where the facts are admitted by the faculty member, summary dismissal may follow.
- 4.54 Hearing Tribunal. In all cases where the facts are in dispute, the accused faculty member shall be informed in writing of the charges which, on reasonable notice, will be heard by a special hearing tribunal whose membership, including its chair, shall be appointed by the President from members of the faculty whose academic rank is equal to or higher than that of the accused faculty member. At such a hearing:
- (1) The hearing tribunal shall not include any accuser of the faculty member. The faculty member may challenge the alleged lack of fairness or objectivity of any tribunal member, provided such challenge is made prior to the submission of any evidence to the tribunal. The faculty member shall have no right to disqualify such member from serving on the tribunal. Each such challenged member shall determine whether he or she can serve with fairness and objectivity in the matter. In the event the challenged member chooses not to serve, the President shall appoint a substitute.
 - (2) The faculty member shall have a right to attend the hearing; confront and cross-examine adverse witnesses; present relevant evidence on his or her own behalf; testify or choose not to testify; and, be assisted or represented by counsel. The hearing shall be closed although the faculty member may request that it be open to the public. Notwithstanding a faculty member's request, the tribunal may close all or a portion of a hearing to deliberate or if it appears likely that privacy interests of others are relevant and could be affected by an open hearing.

- (3) The Component, through a representative and/or through counsel, shall have the right to attend proceedings; present witnesses and evidence against the faculty member; and, cross-examine the faculty member (if the faculty member testifies) and his or her witnesses.
 - (4) The hearing tribunal, by a majority of the total membership, shall make written findings on the material facts and a recommendation of the continuance or termination of the faculty member's tenure as well as any supplementary suggestions it may have concerning the case. The original of such findings, the recommendation, any supplementary suggestions, and the record of the hearing shall be delivered to the President and a copy thereof sent to the faculty member. Any minority findings, recommendations, or suggestions shall be distributed in the same manner.
 - (5) A stenographic or electronic record of the such record shall be made accessible to the faculty member.
- 4.55 Review by President. The President shall review the record, plus any additional written briefs the parties wish to submit, and render a decision, stating his or her reasons therefore in writing and communicating the same to the faculty member. The President may recommit the matter to the same tribunal to hear additional evidence and/or to reconsider its findings, recommendations, or suggestions, if any. The original findings, recommendations, and suggestions of the hearing tribunal, a transcript of the hearing, any briefs submitted, and the decisions, recommendations, findings, and suggestions of the President shall be delivered to the Board.
- 4.56 Appeal to the Board. Upon written request by the faculty member, received in the System Administrative Office within thirty (30) calendar days of the faculty member's receipt of the President's decision, the Board shall review the record before it. Such request should specifically address any defects in procedure or substance which require reversal of the President's decision. The President may submit a written response to the request for review. By a majority of the total membership, the Board may approve, reject, or amend any decisions, findings, recommendations, and suggestions before it, or recommit the matter to the President for reconsideration or the hearing of additional evidence. The Board shall notify the faculty member in writing of the reasons for its decision.
- 4.6 Termination of Faculty Employment Under Special Circumstances. If, in the judgment and discretion of the Board, reductions in legislative appropriations for faculty salaries; governmentally mandated reductions in faculty positions; significant loss of enrollment; consolidation of departments or other reorganization; dropping of courses, programs, or