

CAFRT Hearings Guidelines
Committee on Academic Freedom, Responsibility, and Tenure
Revised September 5, 2011

1) Bases for a Faculty Member to Appeal to the CAFRT

- a) Faculty members may appeal to the Committee on Academic Freedom, Responsibility, and Tenure (CAFRT) under the *Texas A&M University Rule 12.01.99.M2*, “University Statement on Academic Freedom, Responsibility, Tenure, and Promotion.” Typically such appeals relate to an announced decision by the University not to continue a person as a member of the faculty. Other types of appeals are not appropriate for the CAFRT, but may be appropriate to the University Grievance Procedure (*see the University Rules*). In addition, once a tenured faculty member has been informed that dismissal is being considered for reasons other than sexual harassment or scientific misconduct, that faculty member, the faculty member’s department head, or the faculty member’s dean may request mediation by the University Tenure Mediation Committee (UTMC). Such a request must be made before the formal notice of intended dismissal is issued.
- b) With regard to tenure-track (but untenured) faculty members who have been informed that they will not be reappointed, there are precisely three possible bases for an appeal to the CAFRT (*see 12.01.99.M2, section 5.1*). Violation of one or more of the following bases must be identified by the faculty member.
 - i) The University’s decision shall be based on adequate consideration of the individual’s professional performance.
 - ii) The University’s decision must not be made in violation of academic freedom.
 - iii) The University’s decision must not be made as a form of illegal discrimination.

2) Initiating a Hearing

- a) In cases of non-reappointment of untenured, tenure-track faculty members, *Texas A&M University Rule 12.01.99.M2, section 9.1.3* sets forth the following steps to be followed.
 - i) If a non-tenured faculty member alleges that her/his tenure-track appointment was not renewed in violation of *12.01.99.M2, section 5.1* (also listed in 1b above), that faculty member shall inform the President of Texas A&M University of such allegation in writing within thirty (30) calendar days of receiving the notice of non-renewal. The faculty member may request from the President or from an appropriate administrator a statement of the reasons

for non-renewal of the tenure-track appointment and a copy of all documents relevant to that decision, such as the tenure/promotion file or the reappointment file. Such materials shall be given to the faculty member within seven (7) working days of the initial request.

- ii) The faculty member, if not satisfied by the stated reasons for the nonrenewal of the tenure-track appointment, may request that the matter be reviewed by the CAFRT. Such a request must be made in writing to the President within thirty (30) calendar days after the faculty member receives the documented reasons for non-renewal of the tenure-track appointment and receives a copy of the tenure/promotion file or the reappointment file, if requested.
 - iii) Upon receiving a request from the faculty member for a review by the CAFRT, the President will notify the Dean of Faculty and the CAFRT chair of the request (see *12.01.99.M2, section 9.1.3.4*). Included in such notification should be the faculty member's basis of appeal and the name of the University representative in the case.
 - iv) It shall be the responsibility of the CAFRT chair to convene the Preliminary Screening Committee and, in collaboration with the chair of the Preliminary Screening Committee, to schedule a meeting with the faculty member (see *12.01.99.M2, section 9.1.3.4*). The CAFRT chair may attend the meeting as an observer at her/his discretion.
 - v) As described in *12.01.99.M2, sections 9.1.3.4 and 9.1.3.5*, the Preliminary Screening Committee must consist of at least three (3) members. The faculty member may have legal counsel and/or other advisors present. Representatives of Texas A&M University (including an attorney from the Office of General Counsel) may attend the meeting as observers. At least two days before the scheduled meeting, the chair of the Preliminary Screening Committee must be notified if anybody other than the affected faculty member will be attending the meeting.
 - vi) If a majority of the members of the Preliminary Screening Committee reviewing the appeal finds that the information presented by the faculty member, standing alone and unrebutted, would establish that a violation, as described above in 1(b), may have occurred, the Committee shall refer the matter to the CAFRT for a full hearing and forward the material received from the President; otherwise, the matter shall not be given further consideration and the decision not to reappoint shall stand. Note that the burden of proof rests with the faculty member.
- b) In cases of tenured faculty members dismissed for cause or non-tenured faculty members dismissed for cause prior to expiration of their appointments, *Texas A&M University Rule 12.01.99.M2, sections 9.1.1 and 9.1.2*, sets forth the following steps to be followed:

- i) A faculty member who receives written notice of dismissal and who alleges that the dismissal is not for good cause shall inform the President of Texas A&M University of such allegations in writing within thirty (30) calendar days of receiving the notice of dismissal. The faculty member may request from the President or appropriate administrators a statement of the reasons for dismissal and a copy of all documents relevant to that decision, such as the dismissal file. Such materials shall be given to the faculty member within seven (7) working days of the initial request.
- ii) If the faculty member contests the stated reasons for dismissal and requests a hearing by the CAFRT, the faculty member shall so inform the President in writing within thirty (30) calendar days after receiving the statement of the reasons for dismissal and a copy of all documents relevant to that decision, if requested. A copy of the stated reasons for dismissal and the faculty member's request for a hearing shall be forwarded by the President to the chair of the CAFRT. Note that the burden of proof rests with the University.

3) Scheduling the Hearing and Selection of a Hearing Panel

Upon receipt of the Preliminary Screening Committee's letter in the case of a nonrenewal of appointment or of the President's letter in the case of dismissal for cause, the hearing will be scheduled with the following constraints.

- a) The chair and/or the vice chair of the CAFRT have authority to schedule the hearing.
- b) The hearing must be scheduled at least thirty (30) calendar days prior to the hearing date.
- c) Normally the hearing is scheduled over the course of three evenings with an expectation of spending four hours each evening.
- d) The chair of the CAFRT will provide the faculty member, the University's representative, University counsel, and all CAFRT members with a list of possible dates and times for the hearing, with the request that they promptly notify the chair of their availability. The faculty member is responsible for indicating the availability of her/his counsel (if involved).
- e) CAFRT members will also be requested to inform the chair of any possible conflicts of interest. The mere existence of friendships or other contacts between a panel member and other individuals does not necessarily constitute bias. CAFRT hearing panel members should not be from the same college as the faculty member making the appeal. The chair, at her or his discretion, may eliminate from consideration any member with a possible conflict of interest at any time prior to the full hearing.

- f) In constituting a CAFRT hearing panel, preference should be given to having diversity in the departments represented and having different CAFRT members serve on different panels. Since *University Rule 12.01.99.M2, section 9.4.4* requires that no less than seven (7) voting CAFRT members be present for all of the hearing, it is best to start with nine (9) members assigned to each hearing.
- g) The chair of the CAFRT will determine which dates the two sides and at least seven (7), but preferably nine (9), CAFRT members are available, and will notify both sides, the hearing officer (if other than the chair), and the CAFRT panel members of the time and place of the hearing.
- h) Normally either the chair or the vice chair of the CAFRT will serve as the *hearing officer*. Under unusual circumstances, the chair of the CAFRT may appoint someone else to be the hearing officer. In all cases the hearing officer is non-voting.

4) Discovery

Upon informing a faculty member that s/he may have a hearing before the CAFRT, the Dean of Faculties shall direct the appropriate administrative officers to make available to the faculty member all relevant files concerning the appeal not already in the possession of the faculty member within seven (7) working days of the date of the letter referring the appeal to the Preliminary Screening Committee or the CAFRT (for appeals that do not require a decision by the Preliminary Screening Committee).

5) Challenges of Panel Members

See section 3(e) concerning notification of possible conflicts of interest made by CAFRT members. All challenges must relate to the ability of a panel member to render an unbiased decision. The mere existence of friendships or other contacts between a panel member and other individuals does not necessarily constitute bias. Should a side wish to challenge a panel member, the challenge must be made in writing at least seven (7) calendar days prior to the pre-hearing conference, with copies sent to the other side and the hearing officer.

6) Pre-Hearing Conference

At least fourteen (14) calendar days prior to the full CAFRT hearing date, the hearing officer will conduct a pre-hearing conference according to the following guidelines:

- a) Both the chair and vice chair of the CAFRT may be present at the pre-hearing conference.
- b) As stated in *University Rule 12.01.99.M2, sections 9.4.6 and 9.5.2*, the CAFRT shall be self-governing and adopt such rules and procedures as it deems appropriate (described herein); it is not necessary for CAFRT hearings to follow the formal rules of court procedure.

- c) Each side shall provide the other side and the hearing officer with a list of witnesses during the pre-hearing conference. The list of witnesses should include each witness's name, institutional and departmental affiliation, work related position, and a brief description of the nature of her/his testimony.
- d) Amendments to the lists of witnesses may be made prior to the full CAFRT hearing by permission of the hearing officer. At the hearing, witnesses may be added to the lists only by the permission of the CAFRT panel.
- e) Requests to have witnesses submit written statements or present their testimony other than in person must be presented at the pre-hearing conference and will be decided upon by the hearing officer. See also section 7(g).
- f) Each side shall provide the other side and the hearing officer with hard copies of all pieces of documentation it plans to present to the CAFRT panel, organized as exhibits and supporting materials in clearly labeled binders. At least seven (7) calendar days prior to the date of the hearing, each side shall deliver to the Dean of Faculties or designee the requisite number of binders containing copies of all pieces of documentation for distribution to the members of the hearing panel. All expenses incurred in the production of the respective documentation will be borne by each side. The Dean of Faculties or designee will be responsible for distributing all documents to the CAFRT panel members and the opposing sides.
- g) The hearing officer may allow additional materials to be added subsequent to the pre-hearing conference. To request a subsequent addition, a copy of the material must be given to the other side and to the hearing officer along with a request that the material be approved for addition by the hearing officer.
- h) The faculty member requesting the hearing will inform the University representative and the hearing officer of her/his decision to have an open or closed hearing.
- i) The hearing officer will render decisions on any challenges to the members of the hearing panel. See section 5.
- j) The hearing officer will inform both sides how the hearing will be recorded and the procedures for obtaining copies of the recording. See section 8.
- k) The hearing officer will review the procedures for the full CAFRT hearing.
- l) If the hearing officer concludes that a participant is disrupting the pre-hearing conference to such an extent that the conference cannot proceed (e.g., by repeatedly refusing to move to the next point, by making ad hominem attacks), the hearing officer may adjourn the pre-hearing conference. In that case, the hearing officer will inform the President of the circumstances surrounding the adjournment of the proceedings and provide recommendations concerning how the impasse might be resolved.

7) The CAFRT Hearing

The full CAFRT hearing will be conducted according to the following guidelines:

- a) The Dean of Faculties or designee is responsible for making sure that a hard copy of every piece of documentation each side presents to the CAFRT panel is distributed to the other side, to the hearing officer, and to each member of the panel. See also section 6(f) above.
- b) As stated in *University Rule 12.01.99.M2, sections 9.4.6 and 9.5.2*, the CAFRT shall be self-governing and adopt such rules and procedures as it deems appropriate (described herein); it is not necessary for CAFRT hearings to follow the formal rules of court procedure.
- c) Both the faculty member and the University representative shall have the right to be represented by one individual serving as legal counsel.
- d) Each side shall be allowed to have one “assistant” attend the hearing. This individual may not speak during the hearing or discuss particulars of the appeal with panel members, witnesses, or the other side.
- e) In advance of every individual hearing session, each side shall provide the other side and the hearing officer with a list of witnesses s/he intends to call during that session.
- f) All members of the hearing panel and the principals involved in the appeal must be physically present during the entire hearing.
- g) Normally, witnesses shall testify in person unless they are located outside the state of Texas on the dates of the hearing. All requests for a witness to present written statements or present testimony other than in person must be submitted at the pre-hearing conference and will be decided upon by the hearing officer. See section 6(e) above.
- h) Closed or Open Hearings
 - i) CAFRT hearings are closed unless the faculty member making the appeal requests an open hearing during the pre-hearing conference.
 - ii) A closed hearing is restricted to the members of the CAFRT hearing panel, the faculty member making the appeal (and her/his counsel and assistant, if any), and the University representative (and her/his counsel and assistant, if any). Concerning the attendance of non-vocal assistants, see section 7(d) above.
 - iii) An open hearing may be attended by any interested persons, with the exception of witnesses for either or both the faculty member or the administration.

- iv) Witnesses normally may not hear other witnesses' testimony; hence, even in an open hearing, they may attend the hearing only when testifying.
- i) Hearing Format
- i) Because of the difficulty in accommodating the schedules of so many individuals, hearings normally are scheduled for three evenings with an expectation of spending four hours each evening.
 - ii) Each side is entitled to equal amounts of time, with a maximum of four (4) hours, including opening and closing statements (limited to 15 minutes each). The hearing officer or designee is responsible for tracking time usage. Time required for breaks or the questioning of witnesses by members of the hearing panel shall not be included in the time allocated to either side.
 - iii) In exceptional cases, the hearing officer, with the concurrence of a majority of the panel, may extend the length of the hearing.
 - iv) In addition to oral statements and oral testimony, each side may submit written opening and closing statements, as well as charts, handouts, or other visual aids. It shall be the responsibility of each side to distribute before or at the moment of presentation hard copies of such written documents and visual images to the other side and to every member of the CAFRT hearing panel.
 - v) Each side should make every effort to call witnesses in the order appearing on the list submitted to the hearing officer at the pre-conference hearing. However, for practical or strategical reasons (e.g., an individual's inability to appear as a witness at a specific time; changes made by either side in response to the testimony of a particular witness), and in order to accommodate unforeseen scheduling complications that might develop during the hearing, it may be necessary or expedient to change the order in which witnesses are called.
 - vi) The calling of a witness not on the hearing officer's list of witnesses or the recall of a dismissed witness is permitted only with the approval of the CAFRT hearing panel. The CAFRT panel may recall a dismissed witness at any time.
- j) Schedule of Events
- i) Opening statement by or for the side with the burden of proof, i.e., the faculty member in the case of non-renewal, the University in the case of dismissal for cause (maximum of 15 minutes)
 - ii) Opening statement by or for the other side (maximum of 15 minutes)
 - iii) Testimony by witnesses called by the side with the burden of proof

- iv) Testimony by witnesses called by the other side
 - v) Closing statement by or for the side without the burden of proof (maximum of 15 minutes)
 - vi) Closing statement by or for the side with the burden of proof (maximum of 15 minutes)
- k) Protocol for Witness Testimony
- i) Swearing in of the witness by the hearing officer or designee
 - ii) Questioning of the witness by the side calling the witness
 - iii) Cross-examination by the other side
 - iv) Re-direct by the side calling the witness pertaining to the questions asked during cross-exam
 - v) Re-cross by the other side limited to the questions posed during re-direct
 - vi) Questions from members of the CAFRT panel (a 10 minute limit for each witness is strongly recommended)
 - vii) Re-direct by the side calling the witness limited to the questions asked by the members of the CAFRT panel
 - viii) Re-cross by the other side limited to the questions asked by the members of the CAFRT panel
- l) Refreshments should be provided and paid for by the University.

8) Procedures for Recording the Hearing and Obtaining a Copy of the Recording

- a) The chair of the CAFRT hearing panel is responsible for making a recording of the hearing. The Dean of Faculties or designee is responsible for preparing and distributing copies of the hearing to both sides, if requested.
- b) The University will pay for the recording media used to record the hearing (typically CDs).
- c) After the completion of the hearing, the faculty member appealing to the CAFRT and the University representative may obtain electronic copies of the recording by submitting a written request to the Dean of Faculties.

9) Decision and Report of the CAFRT Hearing Panel

- a) The members of the hearing panel shall meet in closed session to discuss the merits of the appeal. Each panelist shall make her/his decision based on the preponderance of the evidence.
- b) The decision of the CAFRT hearing panel shall be determined by a majority vote of the eligible panel members. Only those members who were present for the entire hearing are eligible to vote. The hearing officer (normally the chair of CAFRT) and the vice-chair do not vote.
- c) The hearing officer shall draft a report presenting the judgments and recommendations of the members of the CAFRT hearing panel and their reasons for making them. This draft shall be distributed among members of the panel, who will provide comments and suggestions for refining and/or revising the report.
- d) The final report must be supported by a majority of the panel members eligible to vote. Any panel member(s) who disagree(s) with the final report as written by the hearing officer and approved by a majority of the panel may submit a minority report(s) to the hearing officer.
- e) The hearing officer shall submit the final report along with minority reports, if any, to the President of Texas A&M University, with copies to the faculty member who initiated the appeal, the University representative, the Dean of Faculties, and the CAFRT hearing panel members.
- f) For untenured tenure-track faculty members whose appointments are not renewed whether or not the nonrenewal is a result of a decision to not grant tenure, the President of Texas A&M renders the final decision concerning the appeal after reviewing the CAFRT report(s).
- g) For faculty members being dismissed for cause, and the President of Texas A&M University proposes to terminate the individual, the full report of the hearing committee, the record of the hearing, the President's recommendation, and other relevant documentation available to both the faculty member and the system academic institution shall be delivered to the chancellor of the Texas A&M System, who shall carry out a review of the documentation and make a final determination as to the dismissal (*per System Policy 12.01*).

10) Records

- a) The hearing officer is responsible for maintaining the records of a CAFRT hearing (including the recording of the hearing) while the appeal is unresolved.
- b) Once the appeal is resolved, the chair of the CAFRT will transfer the records of the CAFRT hearing (including the recording of the hearing) to the Office of the Dean of Faculties, which will be responsible for the long-term storage of those records.