

**Resolution of Faculty Council Concerning Faculty Hearing Committee
(as amended February 19 2019)**

Pursuant to Paragraph 13 of the Statement of Principles Governing Faculty Relationships, ("Statement of Principles"), the Faculty Council hereby constitutes the Faculty Hearing Committee ("FHC").

1. Purpose. The FHC is to arrange and preside at a hearing, the purpose of which is to make findings of fact and recommendations to a Dean, Executive Vice President for Health Affairs, Provost, or President as to whether the employment of a faculty member should be terminated, suspended, or transferred. The findings and recommendations are intended to inform the decision of the Dean, Executive Vice President for Health Affairs, Provost, or President in personnel matters in which there is a serious allegation that a faculty member is subject to sanction under Paragraph 12C of the *Statement of Principles*, is at risk of having employment terminated under Paragraph 15 of the *Statement of Principles*, or has been suspended, terminated, or transferred. While the Dean, Executive Vice President for Health Affairs, Provost, or President is the decision-maker or recommender in each case, the findings and recommendations of the FHC carry great weight and, it is anticipated, will usually provide the basis for actions of the Dean, Executive Vice President for Health Affairs, Provost, or President.

2. FHC Membership

- A. The FHC shall consist of five members of the tenured faculty, chosen by the Executive Committee of the Faculty Council in consultation with the Provost.
1. No more than one member shall be appointed from any one academic unit.
 2. Each member shall be appointed for a term of five years. Upon the expiration of the term, the member may, with the approval of the Executive Committee of the Faculty Council, in consultation with the Provost, serve an additional term of five years. Once the member has served such an additional term, he or she shall be ineligible for any additional appointment to the FHC.
 3. The five members who were serving on the FHC when the Executive Committee of the Faculty Council adopted Paragraph 2.A.2 will be deemed to have initial appointment terms that will terminate pursuant to the following schedule: Starting at the end of the 2018–2019 academic year, the initial terms of these members will terminate at the rate of one term per academic year, such that all of their initial terms will have terminated by the end of the 2022–2023 academic year. The order for terminating their initial terms will be based on their respective years of service on the FHC, beginning with the senior-most member and ending with the junior-most member. Upon the expiration of the initial term of each of these members, a member may, with the approval of the Executive Committee of the Faculty Council, in consultation with the Provost, serve an additional term of five years. Once the member has served such an additional term, he or she shall be ineligible for any additional appointment to the FHC.
 4. If a member resigns from serving on the FHC before his or her term of appointment has ended, the Executive Committee of the Faculty Council, in consultation with the Provost, shall expeditiously appoint a replacement member, who will serve for the duration of the replaced member's unfinished term. Upon the expiration of the term, the member may, with the approval of the Executive Committee of the Faculty Council, in consultation with the Provost, serve an additional term of five years. Once the replacement member has served

such an additional term, he or she shall be ineligible for any additional appointment to the FHC.

5. Any new member appointed under Paragraph 2.A.2 and 2.A.4 shall be selected from an academic unit that is unrepresented on the FHC at the time of the appointment.
6. The members of the FHC shall select one member to serve as Chairperson.
7. No member of the FHC may take part in hearing any dispute involving his or her academic unit.

- B. Whenever any member of the FHC is unable for any reason to participate in a hearing, the Executive Committee of the Faculty Council, in consultation with the members of the FHC, will appoint another tenured faculty member to serve as a replacement for that case only. In doing so, the Executive Committee shall not appoint anyone who is a faculty member of the affected academic unit.

3. Invocation of Jurisdiction

- A. Any Dean, the Executive Vice President for Health Affairs, or Provost having cause to believe that a faculty member's employment is subject to termination, suspension, or transfer for reasons set forth in Paragraph 12C or Paragraph 15 of the *Statement of Principles* may, before making such final determination, invoke the jurisdiction of the FHC to conduct a hearing in the matter. The Dean, Executive Vice President for Health Affairs, or Provost shall invoke the jurisdiction of the FHC by delivering to the Chairperson of the FHC a written statement that he/she has cause to believe that a faculty member's employment should be terminated, suspended, or transferred pursuant to Paragraph 12C or Paragraph 15 of the *Statement of Principles*. The written statement will set forth the reasons with reasonable specificity. The Dean, Executive Vice President for Health Affairs, or Provost shall simultaneously deliver a copy of the written statement to the faculty member. The permissible means for delivering the written statement include sending an electronic copy of the written statement by email to the Emory University email addresses of record for the Chairperson and the faculty member.
- B. If a faculty member has been suspended, terminated or transferred by a Dean, Executive Vice President for Health Affairs, or Provost prior to the hearing contemplated in Paragraph 3A the faculty member may invoke the jurisdiction of the FHC by delivering to the Chairperson of the FHC a written statement that he/she believes that his/her appointment has been terminated or suspended or that he/she has been transferred in violation of University policies and procedures. The written statement will set forth with reasonable specificity the basis for the faculty member's assertion that the decision of the Dean, Executive Vice President for Health Affairs, or Provost was improperly made. The faculty member shall simultaneously deliver a copy of the written statement to the Dean, Executive Vice President for Health Affairs, or Provost whose decision is the basis for the invocation of jurisdiction. The permissible means for delivering the written statement include sending an electronic copy of the written statement by email to the Emory University email addresses of record for the Chairperson and the Dean, Executive Vice President for Health Affairs or Provost.
- C. Nothing in this procedure prohibits the Dean, Executive Vice President for Health Affairs, or Provost, in appropriate cases, from terminating the employment of or transferring a faculty member immediately, suspending the employment of the faculty member, with or without pay, pending official resolution and, further, in appropriate cases, from banning the faculty member from presence on the campus (except, of course, for attending the FHC hearing). Prior to the exercise of the power recognized in this paragraph the Dean, Executive Vice President for Health Affairs, or Provost shall consult with the General Counsel of the University, or his/her designee to assure that this power is not being exercised in a manner that is arbitrary, capricious, or in

violation of University Policy. In the event that the General Counsel for the University or his/her designee determines that the Dean, Executive Vice President for Health Affairs, or Provost is proposing to act in a way that is inappropriate under the circumstances he/shall inform the President of the University, simultaneously with the Dean, Executive Vice President for Health Affairs, or Provost who is proposing to act. The President shall decide whether the Dean, Executive Vice President for Health Affairs, or Provost shall be allowed to proceed as proposed.

4. Conduct of the Hearing

- A. Within a reasonable time after receiving the written statement initiating the hearing, the Chairperson of the FHC shall arrange for the hearing. While all reasonable efforts shall be made to accommodate the schedules of the parties and witnesses, the FHC has ultimate authority for scheduling the hearing. The hearing shall be transcribed stenographically at University expense. Upon request, the faculty member shall be provided a copy of the transcript free of charge.
- B. The Faculty member shall be permitted to have counsel of his/her choosing present at the hearing, and shall also have the right to produce witnesses and relevant evidence at the hearing, and where practicable, to cross-examine witnesses appearing for the academic unit. Counsel may be a practicing attorney, an employee of Emory University who does not hold administrative office in the University, or, if approved by the FHC, someone who is not an employee of Emory University. The faculty member is solely responsible for payment of the counsel of his/her choosing.
- C. The academic unit shall be permitted to have counsel present at the hearing, and shall also have the right to produce witnesses and relevant evidence at the hearing, and where practicable, to cross-examine witnesses for the faculty member. If the faculty member testifies at the hearing, the academic unit shall have the right to cross-examine the faculty member. If the faculty member chooses to be represented at the hearing by a practicing attorney or by a person holding the LL.B. or J.D. degree, or their equivalent, the academic unit shall have the right to retain a practicing attorney to represent it at the hearing. If the faculty member chooses to be represented at the hearing by counsel other than described in the preceding sentence, the academic unit counsel described in the first sentence of this paragraph may not be a practicing attorney or a person holding the LL.B. or J.D. degree of their equivalent. In the event the academic unit is represented by a practicing attorney, the Provost's Office will be responsible for payment of the academic unit's counsel fees.
- D. Any witnesses at the hearing may retain a practicing attorney in his/her discretion and at his/her expense. Such counsel may, in the discretion of the FHC, attend that portion of the hearing at which the witnesses testify: in that event, the counsel may confer with the witness, but may not ask questions or otherwise participate in the hearing.
- E. In the event that both the faculty member and the academic unit are represented at the hearing by a practicing attorney or by a person holding the LL.B. or J.D. degree, or the equivalent, the direct and cross-examination of witnesses, including the faculty member, if testifying, will be conducted by those persons. The FHC will be mindful to rules of decorum and civility, and shall have the authority to ensure that no questioning or presentation becomes abusive. Members of the FHC may also ask questions of any witness.
- F. At the hearing, the rules of evidence and rules of procedure applicable in a court of law will not apply. The FHC will hear the evidence it considers relevant, but has complete discretion to determine that evidence will not be heard for any reason, including but not limited to the grounds that such evidence is cumulative or that its prejudicial impact outweighs its probative value, and to determine the order of proof. The FHC has discretion to order that witnesses be sequestered from hearing other witnesses testify and to provide for the order and timing for the

appearance of witnesses. Notwithstanding any decision to sequester witnesses, the faculty member, counsel for the faculty member, one representative of the academic unit and counsel for the academic unit shall be allowed to be present, throughout the evidentiary portion of the hearing. In addition, the FHC may consider any written material and may permit affidavits in lieu of testimony. While it is envisioned that neither the faculty member nor the academic unit will have more than one counsel present, the FHC, in its discretion, may permit either or both sides to have two counsel present.

- G. At the hearing, it shall be the responsibility of the academic unit to procure the attendance of witnesses on its behalf. It shall be the responsibility of the faculty member to procure the attendance of witnesses on his/her behalf. The FHC shall have the authority to demand attendance of witnesses employed at Emory, and where practicable, shall assist the parties in procuring the attendance of any such witness.

5. Findings and recommendations of the FHC.

- A. **When the hearing occurs prior to the decision of the Dean, Executive Vice President for Health Affairs, or Provost.** Within a reasonable time following the conclusion of the hearing, the FHC shall deliver to the Dean, Executive Vice President for Health Affairs, or Provost and to the faculty member its written report, including its findings of fact and recommendations as to personnel action. If the FHC is not unanimous as to any finding or recommendation, the written report shall indicate the number of members dissenting, but the report shall not indicate the identities of the FHC members taking various positions.
- B. **When the hearing occurs after the decision of the Dean, Executive Vice President for Health Affairs, or Provost.** Within a reasonable time following the conclusion of the hearing, the FHC shall deliver to the President, to the Executive Vice President for Health Affairs if appropriate, to the Provost, to the dean, and to the faculty member its written report, including its findings of fact and recommendations as to personnel action. If the FHC is not unanimous as to any finding or recommendation, the written report shall indicate the number of members dissenting, but the report shall not indicate the identities of the FHC members taking various positions.

6. FHC Recommendations made to the Dean, Executive Vice President for Health Affairs, or Provost prior to their personnel decision.

- A. Within a reasonable time after receiving the advisory report of the FHC, the Dean, Executive Vice President for Health Affairs, or Provost shall make his/her decision as to appropriate personnel action. This decision shall be informed by the FHC report, findings and recommendations, and shall be made in writing, with a copy delivered to the faculty member. Should the decision of the Dean, Executive Vice President for Health Affairs, or Provost be contrary to the recommendations of the FHC, the Dean, Executive Vice President for Health Affairs, or Provost shall set forth why he/she reaches such contrary conclusion.
- B. In cases in which the Dean, Executive Vice President for Health Affairs, or Provost orders termination of employment, suspension, or transfer of the faculty member and where the faculty member objects to the action, the Dean, Executive Vice President for Health Affairs, or Provost shall transmit his/her decision to the President of the University, along with a copy of the FHC report and of the transcript of the hearing. The Dean, Executive Vice President for Health Affairs, or Provost shall notify the faculty member immediately that he/she has made such transmittal to the President. No later than 30 days after notice of this transmittal, the faculty member may file a response to the written decision of the Dean, Executive Vice President for Health Affairs, or Provost. After receiving and reviewing all the material in the record, the President shall make his/her recommendation in writing and transmit it, with all material received from the Dean,

Executive Vice President for Health Affairs, or Provost and any response filed by the faculty member, to the Board of Trustees or to its Executive Committee through the Academic Affairs Committee.

- 7. FHC Recommendations made directly to the President after a personnel action by a Dean, Executive Vice President for Health Affairs, or Provost.** In all cases in which the FHC recommends termination, suspension, or transfer of the faculty member, the President shall notify the faculty member that he/she has 30 days within which to file a response to the recommendations of the FHC (unless the faculty member affirmatively indicates his/her acceptance of the action in writing). After receiving and reviewing all the materials in the record, the President shall make his/her recommendation in writing and transmit it, with all material received from the FHC and any response filed by the faculty member, to the Board of Trustees or to its Executive Committee through the Academic Affairs Committee.
- 8. Action by the Board of Trustees.** The Board of Trustees or its Executive Committee shall make the final decision on the matter.
- 9. Suspension of the FHC proceedings.** At any stage of the process, the FHC proceedings may be suspended or postponed by the FHC for any reason, provided, however, that the FHC hearing shall not be unduly delayed.
- 10. Definition of "academic unit."** For purposes of this resolution, Oxford College, the Yerkes Primate Center, the Carter Center, Emory College, the School of Medicine, the School of Law, the Candler School of Theology, the Goizueta Business School, the Nell Hodgson Woodruff School of Nursing and the Rollins School of Public Health, shall each be considered an individual "academic unit." However, in cases involving Emory College and the School of Medicine, the references in Paragraphs 2.A.7 and 2.B of this resolution to "academic unit" shall be considered to refer to the department in which the affected faculty member is appointed.
- 11. Definition of "transfer."** For purposes of this resolution, transfers may be the basis of invoking FHC jurisdiction only when they involve transfer to a position outside of the department in which the faculty member holds primary appointment.
- 12. Confidentiality; retention of records and evidence.** Except as further provided in this paragraph, all discussions of FHC matters shall be kept confidential between the FHC's members. From time to time, the FHC may meet with individuals from the Emory University administration who provide logistical support and procedural information to the FHC as it carries out its duties. In those instances, the FHC may discuss with those individuals the logistical and procedural aspects of the matters before it. The FHC may store records and evidence in secured Emory repositories such as Emory Box. All records and evidence will be retained for six years following the closing of any matter brought before the FHC. As used in this paragraph, "record" means information that is inscribed on a tangible medium or which is stored in an electronic medium and is retrievable in perceivable form.