

2.13 Separation

The college [university] or individual faculty members may find it necessary to sever their contractual relationships. To protect the interests of both parties, categories of separation are here defined, and the policies and procedures related to each are set forth.

- a. resignation (2.13.1)
- b. retirement (2.13.2)
- c. non-reappointment of probationary faculty (2.13.3)
- d. separation due to prolonged mental or physical illness (2.13.4)
- e. layoffs (2.13.5)
- f. discipline and/or dismissal for cause (2.13.6)

2.13.1 Resignation

Resignation is an action by which faculty members announce their intention to sever their relationships with the college [university].

2.13.1.1 Resignation Effective at the End of a Contract Period

Ordinarily a resignation is an announcement by a faculty member that he or she will be leaving the college [university] at the end of the current contract year. Because of the importance of planning for a replacement, faculty members should provide written notice of resignation to the provost, with a copy to the associate provost and academic dean [and/or the dean of the School of Theology] and the department chair, at the earliest possible time, but no later than the deadline for the return of contracts for the following year (as described in Section 2.2.4).

2.13.1.2 Resignation Effective before the End of a Contract Period

Although extremely rare, it is possible for a faculty member to seek to be released from a contract with the college [university] before its completion. A faculty member seeking release from contract should make a written request to the provost, with a copy to the associate provost and academic dean [and/or the dean of the School of Theology] and the department chair, at the earliest possible date. All such resignations are subject to

approval by the college [university]. In light of the extreme hardship such resignations cause, they are approved only in highly unusual circumstances.

2.13.1.3 Resignation of Benedictines of Saint Benedict's Monastery [Saint John's Abbey]

Faculty members who are sisters of Saint Benedict's Monastery [monks of Saint John's Abbey] are subject to reassignment by the prioress [abbot] to duties outside of the college [university]. A ranked faculty member so reassigned may request a leave from the college [university] in accord with Section 2.11.4. If the reassignment lasts longer than the maximum allowable time for such leaves, the sister [monk] resigns, but may be reappointed by the president at a later date, regaining previous faculty status. Such reappointment is subject to the usual procedures for preferential hiring, as described in Sections 2.3.3 and 3.1

2.13.2 Retirement

In accord with federal law, retirement occurs at the option of the faculty member, who should give due notice to the provost. After retirement, any appointments to the faculty are on a term-appointment basis (see Sections 2.1.3 and 2.1.4) and are mutually agreed upon by the individual faculty member and the associate provost and academic dean [and/or the dean of the School of Theology], in consultation with the appropriate department chair.

A description of the status and privileges of retired faculty members is contained in Section 2.12.3.

2.13.2.1 Early or Gradual Retirement

The college [university] occasionally develops extraordinary procedures both for early retirement and for a gradual reduction in teaching obligations for faculty members nearing retirement. Interested faculty members should contact the provost for details.

2.13.3 Non-reappointment of Probationary Faculty

Even though probationary contracts are renewable annually (in accord with Sections 2.2.1.2 and 2.6.1), legitimate reasons for non-reappointment of a probationary faculty member may include but are not limited to the following:

- a. unfavorable reviews of the faculty member's performance based on the expectations identified in Sections 2.5 and/or 2.10,

- b. cancellation of or change in a program (as defined in Section 2.13.5.1.1),
- c. declining enrollment,
- d. need for reduction in staff, and/or
- e. incongruence between the teaching interests of the faculty member and the educational goals of the college [university].

Following completion of the evaluation process (described in Section 2.6) appropriate for the probationary faculty member that year, any decision not to reappoint such a faculty member is made by the president, following consultation with the department chair, the associate provost and academic dean [the dean of the School of Theology if appropriate], and the provost, and acting in accord with the college's [university's] policy on nondiscrimination (see Section 2.0.1).

2.13.3.1 Notice of Non-reappointment

Notice of non-reappointment of a probationary faculty member must be given in writing by the following dates:

- a. in the first academic year of service, on or before March 1 (or at least 90 calendar days prior to the expiration of an initial, one-academic-year appointment, if it expires during an academic year);
- b. in the second academic year of service, on or before December 15 (or at least 180 calendar days prior to the expiration of the appointment if it expires during an academic year); or
- c. in the third or a subsequent year of service, on or before April 1 of the year prior to a final contract year, with the following exception: pending completion of a third-year review process, notice must be given by May 1.

In the event of a decision by the president not to renew a probationary appointment, the faculty member must be informed of the decision in writing. Upon subsequent written request to the provost within 30 days of the issuance of the president's decision, the faculty member must be advised in writing of the reasons which contributed to that decision, with such reasons being given within 30 days of the faculty member's written request.

2.13.3.2 Appeal of Non-reappointment

A probationary faculty member who has not been reappointed may initiate a grievance in accord with Sections 2.15 and 4.1. The grounds for such a grievance are limited to those identified in Section 2.15.3.

2.13.4 Separation Due to Prolonged Mental or Physical Illness

When a mental or physical illness becomes prolonged, the department chair and the associate provost and academic dean [and/or the dean of the School of Theology] consult with the faculty member in an attempt to assist with the problem, including investigating the possibility of a formal leave. The college [university] may terminate a faculty contract in situations where a prolonged mental or physical illness or disability prevents the faculty member from fulfilling all or a substantial part of faculty responsibilities.

Upon request from the college [university], the faculty member shall present medical evidence of his or her state of health to the provost. Upon written request from the faculty member to the provost, the Rank and Tenure Committee will review the situation and send its recommendation concerning termination to the provost and the candidate. This recommendation becomes part of the provost's eventual report to the president.

In all such cases, the college [university] will make every effort to work within the disability program to ease the burden of any such termination as far as is contractually possible.

2.13.4.1 Prolonged Illness of Non-tenured Faculty

In the event that a non-tenured faculty member is unable to perform all or a substantial part of faculty responsibilities for a period in excess of six months, the college [university] may terminate the appointment, ordinarily effective at the end of the contract period. During the period of the prolonged illness, the absence will be coordinated with the faculty member's accrued sick leave, the provisions of the Family Medical Leave Act, and other applicable state or federal laws, rules, and regulations on leaves.

Termination of the contract of a non-tenured faculty member before the end of a contract period must be based upon medical evidence that the faculty member is and will be unable to perform the terms, conditions, and normal duties of the contract despite reasonable accommodation by the college [university]. The faculty member or

his or her representative must be informed in writing of the reasons for the proposed action and must be afforded an opportunity to respond. After appropriate consultation, the president makes a final decision on the matter.

2.13.4.2 Prolonged Illness of Tenured Faculty

If a tenured faculty member is unable to perform all or a substantial part of his or her responsibilities for a period of more than six months, he or she may request a leave of absence without pay, following the regular procedures and time limits in Section 2.11. If sufficient recovery does not occur before the end of those time limits, the college [university] may terminate such a continuous contract at the end of a contract period. During the period of the prolonged illness the absence will be coordinated with the faculty member's accrued sick leave, the provisions of the Family Medical Leave Act, and other applicable state or federal laws, rules, and regulations on leaves.

The decision to terminate is made by the Executive Committee of the Board upon recommendation of the president and following appropriate consultation during which the faculty member or his or her representative has been informed of the reasons for the proposed action and has been afforded an opportunity to respond. The president makes a recommendation on the matter to the Executive Committee of the Board of Trustees [Regents], which makes the final decision.

2.13.4.3 Appeal of Termination Due to Illness

A faculty member whose contract has been terminated by the college [university] due to prolonged mental or physical illness may initiate a grievance in accord with Sections 2.15 and 4.1. The grounds for such a grievance are limited to those identified in Section 2.15.3.

2.13.5 Layoffs

Layoff is a separation action by which the college [university] terminates the appointment of a ranked faculty member without prejudice as to his or her performance. Although probationary faculty members may face non-reappointment in accord with Section 2.13.4 for the same reasons cited in this section, the pervasive effects of the forces causing layoffs ordinarily call for the broader policy considerations in this section to govern the layoff of both tenured and probationary faculty.

2.13.5.1 Reasons for Layoff

2.13.5.1.1 Major Academic Changes

Layoffs of tenured or non-tenured faculty may occur as the result of a major academic change, including discontinuation of a curricular requirement, an academic program or a department in whole or in part. A program is a coherent sequence of courses and/or education activities which offers a student an in-depth study of a field, discipline, or interdisciplinary focus, e.g., the Honors Program. Decisions about such major changes are made by the president upon receiving recommendations from the provost and the Faculty-Staff [Faculty] Assembly in accordance to Section 2.14.

2.13.5.1.2 Financial Emergency

Financial emergency is a rare and serious institutional crisis that requires urgent action on the part of the college [university] to reduce expenditures in response to reduced revenues. The Board of Trustees [Regents] establishes and reviews the criteria for determining a financial emergency. The Board, upon recommendation of the president, who will have consulted with the faculty assembly, formally declares a financial emergency if the Board judges a financial crisis meets the criteria. Because of the severity of the effects of financial emergency, the Board, president, and provost should make every effort to involve the faculty in the deliberation process leading up to such a declaration.

Subsequently, the faculty shall be represented in administrative processes relating to program reorganization and/or the curtailment or termination of instructional programs through the Academic Policies, Standards and Assessment Committee and in other ways listed below. The president and the Board have final authority in all matters related to financial emergency.

2.13.5.2 General Procedures for Layoffs

All deliberations related to the major academic changes or financial emergency described above must consider the mission and goals of the college [university]. In order to protect the academic integrity of the curriculum, the decision-making process concerning layoffs should include tenure, rank, seniority, Benedictine preference, gender and racial composition, and a balance between the college and Saint John's University [the university and the College of Saint Benedict].

In situations requiring layoffs, the provost in consultation with the Academic Policies, Standards and Assessment Committee and the Faculty-Staff [Faculty] Assembly shall recommend action to the president, who will recommend action to the Board for approval. Such action may be to eliminate departments or programs in whole or in part or to distribute layoffs throughout the faculty so as to prevent the elimination of any program or department.

The college [university] will make a good faith effort to assist any ranked faculty member who is laid off in finding employment either at the college [university] or elsewhere. No replacement for such a laid off faculty member will be hired within a period of three years unless the terminated faculty member has been offered reappointment under conditions comparable to those held at the time of layoff, and has been given 60 days after written notice of an offer of reappointment within which to accept in writing. It shall be the duty of any laid off faculty member to keep the college [university] informed of his or her current address for purposes of this section. Notice sent to this address by the college [university] shall be presumed received if sent by certified mail.

2.13.5.3 Specific Procedures Concerning Layoffs

2.13.5.3.1 Notice of Layoff

In the case of layoffs due to major academic changes, probationary faculty must receive notice by the deadlines indicated in Section 2.13.3.1. Tenured faculty must be notified by April 1 of the year prior to their final contract year.

In the case of layoffs due to financial emergency, the appointment of a probationary faculty member may be terminated at the end of the current academic term in progress on the date of the decision of the Board to declare financial emergency. With the exception of the situation described in "Change in Contract Deadlines," Section

2.13.5.3.2 below, tenured faculty must be notified by April 1 of the year prior to their final contract year.

2.13.5.3.2 Change in Contract Deadlines

In the event of an actual or likely financial emergency, where short notices and effective action are necessary, the president, after consultation with the provost and the Academic Policies, Standards and Assessment Committee, may decide to postpone the issuance of contracts until May 31 and to serve notice by April 1 to non-tenured faculty of layoff after the current contract year pending a final decision on the severity of the financial problem. Such layoff of non-tenured faculty will become final only if a declaration of financial emergency is made by the Board by May 31.

In the situation where the issuance of contracts is postponed and the Board declares a financial emergency, tenured faculty members must receive notice of layoff from the president no later than May 31 of the year prior to their final contract year.

2.13.5.3.3 Decisions Concerning Layoffs

Decisions to lay off specific faculty are made by the president after receiving recommendations from the provost, who will have consulted with the associate provost and academic dean, the Rank and Tenure Committee, and appropriate program directors and department chairs, and the prioress [abbot] concerning issues of Benedictine preference.

As a part of the deliberation process leading up to a final decision by the president, the provost shall provide the appropriate committees (and make available to other interested parties) documentation concerning program integrity and the quality of the curriculum, as well as concerning tenure, rank, degrees, and seniority, enrollment and credit hours, gender and racial diversity, Benedictine presence, the locus of faculty appointment (both departmental and institutional), and other relevant issues.

2.13.5.3.4 Order of Layoff within a Department or Program

- a. Prior to involuntary dismissals, the following voluntary measures should be investigated:
 1. If a department must get by with one fewer person, it should consider retaining all faculty members but with a reduced salary and workload for each. Such an alternative should not be implemented without the consent of all affected department members.

2. The possibility of voluntary early or phased retirement should be investigated.
- b. If necessary, involuntary reductions will occur in the following order:
1. In the case of a layoff caused by a major academic change, the first to be laid off within an academic department or program should be any administrators teaching there, except as necessary to avoid serious distortion of program integrity.
 2. Term-appointment faculty members (i.e., those who are neither probationary nor tenured) will be terminated next, except as necessary to avoid serious distortion of program integrity.
 3. Faculty members with probationary contracts are ordinarily terminated next, employing the criteria in the “General Procedures for Layoffs,” Section 2.13.5.2 above.
 4. The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where serious distortion of the academic program would result, employing the criteria in the “General Procedures for Layoffs,” Section 2.13.5.2 above. The provost, in consultation with the associate provost and academic dean, department chairs, and the Rank and Tenure Committee, makes a recommendation concerning extraordinary circumstances to the president who makes the final decision.

2.13.5.4 Appeal of Layoff

A faculty member whose contract has been terminated due to layoff may initiate a grievance in accord with Sections 2.15 and 4.1. The grounds for such a grievance are limited to those identified in Section 2.15.3. A layoff will not be delayed if an ongoing grievance is not completed by the effective date of the layoff; nor will the grievance procedure be interrupted or denied because a layoff has already occurred.

2.13.6 Discipline and/or Dismissal for Cause

Dismissal for cause is a severance action by which the college [university] terminates its contract with a faculty member for just cause. Any faculty member is subject to action under this section.

Just cause for dismissal must be directly and substantially related to the fitness of a faculty member to continue in his or her professional capacity and shall be determined in each instance by the president in accordance with the procedures outlined below.

Dismissal for cause will not be used to restrain a faculty member's academic freedom. Although affirming academic freedom as a right, the college [university] recognizes that, in some circumstances, the questions of academic freedom become enmeshed in questions of professional incompetence and irresponsibility. In the effort to distinguish between the sometimes confused issues, the guiding principle is that charges of professional incompetence or irresponsibility shall not be used to limit academic freedom; nor shall appeals to academic freedom be acceptable as a shield for professional incompetence or irresponsibility.

2.13.6.1 Grounds for Discipline and/or Dismissal

Dismissal proceedings may be instituted on the basis of the following grounds:

- a. professional incompetence;
- b. continued neglect of academic responsibilities in spite of oral and written warnings;
- c. serious personal misconduct;
- d. deliberate and serious violation of the rights and freedom of other faculty members, administrators, or students;
- e. conviction of a crime directly related to the faculty member's fitness to practice his or her profession;
- f. serious failure to follow the canons and professional ethics of his or her discipline;
- g. falsification of credentials and experience; or
- h. failure to comply with professional or academic policy within the *Faculty Handbook* after oral and written warnings.

[Saint John's University Handbook only: Faculty members who are monks of Saint John's Abbey or who are employed as agents of other religious institutes, or who are Catholic priests, may be dismissed for lack of canonical good standing, as provided in the bylaws of the Order of Saint Benedict (Section VIII, Articles 5 and 6).]

2.13.6.2 Progressive Discipline of Faculty Members

Ordinarily, dismissal for cause will be preceded by a written admonition from the appropriate administrative officer describing the alleged problem and warning that the faculty member's contract status is in jeopardy. (See Section 2.13.6.4, "Urgent Action," for the exception.) The warning must also stipulate a period of time within which the correction of the alleged problem is expected. If the faculty member does not contest the allegation and fulfills his or her duties, the matter is settled. If the faculty member fails to correct the problem, dismissal procedures or a lesser sanction may be applied.

2.13.6.3 Action Short of Dismissal

Depending on the circumstances and the past merits of the faculty member, the president, for one or more causes listed in Section 2.13.6.1, may elect to impose a disciplinary action short of dismissal, such as temporary suspension for up to a year (with total or partial discontinuance of all salaries and benefits), suspension of all promotion and salary increments, or the suspension or withdrawal of all faculty privileges.

2.13.6.4 Urgent Action

In unusual circumstances, the president may take disciplinary action without previous citation or warning. An immediate suspension of a faculty member may occur when it is determined by the president that there is a strong likelihood that the faculty member's continued presence poses an immediate threat of harm to the college [university], to its students, or to other individual members of the college [university] community. Such suspension shall be with pay and shall last only as long as the threat of harm continues or until dismissal for cause occurs.

2.13.6.5 Dismissal Procedures

In every instance, dismissal for cause will include the following steps:

- a. Written notice is provided to the faculty member from the provost that a recommendation of a dismissal for cause will be made to the president. This notice shall contain a written statement of the grounds on which the recommendation is to be made and a brief summary of information supporting such grounds.
- b. A reasonable opportunity is made available for the faculty member to meet with the provost to present his or her defense against the dismissal recommendation before the provost's recommendation is formally made.
- c. A reasonable opportunity is made available for the faculty member to meet with the president to present his or her defense against the dismissal recommendation prior to the president's decision, unless the president has already decided against dismissal.

In any case involving dismissal for cause, the burden of proof that just cause exists shall be on the college [university], which proof shall be by clear and convincing evidence in the record considered as a whole.

The Rank and Tenure Committee shall serve in an advisory capacity to the president and will review cases at the request of the president or the faculty member being disciplined for cause, whether the threatened sanction is dismissal or some action short of dismissal. The president's decision after such a review shall be final.

2.13.6.6 Appeal of Dismissal for Cause

A faculty member subject to action short of dismissal or whose contract has been terminated for cause may initiate a grievance in accord with Sections 2.15 and 4.1. The grounds for such a grievance are limited to those identified in Section 2.15.3.