

01/28/2016

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

I.1. Reconvening of the Education Committee

Friday, February 5, 2016
Time: After the Full Board meeting
Union South, Varsity Hall II
UW-Madison
Madison, Wisconsin

I.1.f Report of the Tenure Policy Task Force:

1. Revisions to Regent Policy Document 20-23, "Faculty Tenure;"
[Resolution I.1.f.(1)]
2. Revisions to Regent Policy Document 20-9, "Periodic Post-Tenure Review in Support of Tenured Faculty Development."
[Resolution I.1.f.(2)]
3. Creation of a new Regent Policy Document, "Procedures Relating to Financial Emergency or Program Discontinuance Requiring Faculty Layoff and Termination;"
and
[Resolution I.1.f.(3)]

Revision of Regent Policy Document 20-23, “Faculty Tenure”

EDUCATION COMMITTEE

Resolution I.1.f.(1):

That, upon the recommendation of the Chair of the University of Wisconsin System Tenure Policy Task Force and the President of the University of Wisconsin System, the Education Committee recommends adoption of the proposed revision of RPD 20-23, “Faculty Tenure,” by the full Board on March 10, 2016.

Revision and Renaming of Regent Policy Document 20-9,
“Guidelines for Tenured Faculty Review and Development”

EDUCATION COMMITTEE

Resolution I.1.f.(2):

That, upon the recommendation of the Chair of the University of Wisconsin System Tenure Policy Task Force and the President of the University of Wisconsin System, the Education Committee recommends adoption of the proposed revision of RPD 20-9 by the full Board on March 10, 2016, with the policy to be called “Periodic Post-Tenure Review in Support of Tenured Faculty Development.”

New Regent Policy Document,
“Procedures Relating to Financial Emergency or Program Discontinuance
Requiring Faculty Layoff and Termination”

EDUCATION COMMITTEE

Resolution I.1.f.(3):

That, upon the recommendation of the Chair of the University of Wisconsin System Tenure Policy Task Force and the President of the University of Wisconsin System, the Education Committee recommends adoption of the proposed new RPD, to be called “Procedures Relating to Financial Emergency or Program Discontinuance Requiring Faculty Layoff and Termination,” by the full Board on March 10, 2016.

UW SYSTEM BOARD OF REGENTS TENURE POLICIES

BACKGROUND

Since the time of merger in the 1970s, both the Wisconsin Statutes and the Wisconsin Administrative Code have provided for faculty tenure rights within the University of Wisconsin System. On March 5, 2015, the President of the UW System Board of Regents (Board of Regents) and the President of the UW System announced the creation of a UW System Tenure Task Force. This pre-emptive action was prompted by a legislative proposal at that time to remove tenure from state statutes. The Wisconsin Legislature eventually enacted 2015 Wisconsin Act 55, effective July 14, 2015, which (1) removed the statutory provision governing faculty tenure and probationary appointments, and (2) modified the conditions under which tenured and tenure-track faculty members' appointments may be terminated due to certain budget or programmatic changes. Further, a new section codifies in Wisconsin Statutes faculty due process and reappointment rights in the event of layoff due to certain budget or programmatic changes. The new statutory language is provided in Appendix A.

On March 20, 2015, the President of the Board of Regents and the President of the UW System appointed 17 members of the Tenure Policy Task Force and named Regent Vice President Behling to lead the Task Force. The Task Force members were later increased to 19 (Appendix B). Task Force members include chancellors, provosts, a chief business officer, deans, department chairs, and tenured professors, in addition to the Vice President and President of the Board of Regents. All UW System institutions, except UW-Superior, have at least one representative on the Task Force.

On July 23, 2015, the charge to the Tenure Policy Task Force was issued by the Regent President Millner, who directed the Task Force to: (1) review and recommend revisions to current Regent policy on faculty tenure, (2) review and recommend changes to current Regent policy on tenured faculty review (post-tenure review), (3) review the new statutory language regarding faculty layoff, and (4) provide recommendations for necessary Regent policy changes (Appendix C). President Millner articulated her expectation that faculty academic freedom would be clearly and expressly protected.

At its June 2015 meeting, the Board of Regents reaffirmed its commitment to the importance of tenure within the University of Wisconsin System by adopting a tenure policy replicating the language contained in the since-repealed section on faculty tenure and probationary appointments [Regent Policy Document (RPD) 20-23, "Faculty Tenure"].

At the Board's meeting on February 5, 2016, recommended changes to RPD 20-23, a new policy on faculty layoff, and a revised policy on Post-Tenure Review will be presented to the Education Committee, with all Regents invited, for discussion and approval. The proposed policies will be brought back to the full Board for approval during its March 2016 meeting.

REQUESTED ACTION

1. Adoption of Resolution I.1.f.(1), accepting the proposed revision of RPD 20-23, “Faculty Tenure,” and recommending adoption by the full Board on March 10, 2016.
2. Adoption of Resolution I.1.f.(2), accepting the proposed revision of RPD 20-9, “Guidelines for Tenured Faculty Review and Development;” accepting the renaming of the policy; and recommending adoption by the full Board on March 10, 2016.
3. Adoption of Resolution I.1.f.(3), accepting the proposed new RPD, “Procedures Relating to Financial Emergency or Program Discontinuance Requiring Faculty Layoff and Termination,” and recommending adoption by the full Board on March 10, 2016.

DISCUSSION

The Task Force, chaired by Regent Vice President Behling, met on August 20, September 17, October 22, November 30, and December 23, 2015. After significant discussion among Task Force members and review of drafts, Vice President Behling transmitted to the Task Force on January 22, 2016, three draft policies, which: (1) amend existing RPD 20-23, “Faculty Tenure;” (2) revise RPD 20-9 and rename it “Periodic Post-Tenure Review in Support of Tenured Faculty Development;” and (3) create a new Regent policy, “Procedures Relating to Financial Emergency or Program Discontinuance Requiring Faculty Layoff and Termination.” Each of these is described below.

Amendments to RPD 20-23

At its March 2015 meeting, the Board of Regents adopted a resolution stating that if the state legislature adopted the Governor’s proposal to remove shared governance and faculty tenure from the statutes with an effective date earlier than July 1, 2016, the Board would adopt policies that reflected existing statutory language. The Joint Finance Committee’s action did remove faculty tenure and amended the shared governance statute. In anticipation that the Joint Finance Committee action would stand as the budget progressed through the Assembly and the Senate, the Board adopted at its June 2015 meeting RPD 20-23, “Faculty Tenure,” which replicates the language of s. 36.13, Wis. Stats.

The Task Force recommends keeping the existing RPD 20-23 language, with the following two changes:

1. Include references to a new statutory section, s. 36.22, Wis. Stats. This new section provides for a faculty member to be laid off or terminated due to certain budget or program changes and establishes the process for faculty members being laid off or terminated.
2. Delete obsolete language. The current policy, which replicates the repealed s. 36.13, Wis. Stats., contains a provision on how an individual who was not a ranked faculty member on

August 15, 1991, and an individual who held an unranked or probationary appointment under Chapter 37, 1971 Stats., prior to July 10, 1974, should be treated after the merger. According to UW System Administration's Office of Human Resources and Workforce Diversity, there are no longer any UW employees meeting these criteria.

The marked and final versions of RPD 20-23 are attached as Appendices D and E.

Revised Regent Policy on Periodic Post-Tenure Review

The Board adopted RPD 20-9, "Guidelines for Tenured Faculty Review and Development," in May 1992 (Appendix F). Existing RPD 20-9 does not provide for an overarching tenured faculty review process, a common process for rewarding high performing tenured faculty, and a common process to address tenured faculty performance which does not meet expectations, as specified in the charge to the task force.

The proposed revised policy (Appendix G) requires UW institutions to perform periodic review of tenured faculty at least once every five years. The five-year requirement remains unchanged from the current policy. However, under the proposed policy, UW institutions would be required to differentiate periodic, post-tenure review governed by the proposed policy from other reviews of tenured faculty, such as annual reviews, which may not lead to the identification of deficiencies and the development of plans to remedy the identified deficiencies.

The proposed policy provides criteria and result categories for evaluating tenured faculty performance and procedure components to address tenured faculty performance which does not meet expectations. This will ensure a more consistent five-year-cycle, post-tenure review process and a process for remedying identified deficiencies that has a definite time period.

The proposed policy also requires UW institutions to provide opportunities to faculty members who receive a result of meets or exceeds expectations, as applicable, and to provide assistance to all faculty members to support their professional development at any time in their careers.

In addition, the proposed policy provides a process for faculty members who receive an unsatisfactory performance result to be given an opportunity to request a review by the Dean followed by a review by the Chancellor (or designee), and establishes a reporting process to ensure that the periodic, post-tenure review of each tenured faculty member is completed during each review cycle. Under the proposed policy, department chairs or their organizational equivalent are required to report annually to the dean and chancellor (or designee) that all periodic, post-tenure reviews in that cycle have been completed.

Draft Regent Policy on Faculty Layoff and Termination Due to Certain Budget or Program Changes

Prior to the enactment of 2015 Wisconsin Act 55, faculty could be laid off for reasons of financial emergency only. Wisconsin Act 55 created a new statutory section, s. 36.22, Wis. Stats., permitting faculty layoff or termination due to certain budget or program changes. The

new statutory language defines program changes to mean program discontinuance, curtailment, modification, or redirection. However, the proposed policy identifies program discontinuance as the only additional circumstance under which faculty layoff can occur.

The proposed policy (Appendix H) delineates when a faculty member can be laid off by the university and provides the needed procedures for making a determination of financial emergency or program discontinuance which may result in faculty layoff at the campus level. It further provides procedural language for how the chancellor forwards the campus decision to the President of the UW System and the Board of Regents for approval.

The proposed policy recognizes the importance of tenure to the protection of academic freedom and achievement of excellence, and makes explicitly clear that faculty layoff will be invoked only in extraordinary circumstances and after all the feasible alternatives have been considered. Under the proposed policy, a faculty member would only be laid off for reasons of financial emergency and for reasons of program discontinuation.

Procedures for faculty layoff for reasons of financial emergency are those laid out in Chapter UWS 5 of the Wisconsin Administrative Code and will continue to apply regardless of the proposed policy changes under consideration. The proposed policy references the applicable sections of the code.

As stated above, the proposed policy draws a distinction between program discontinuation and program curtailment, modification, and redirection for faculty layoff. Under the proposed policy, faculty may be laid off only when a program is discontinued. Procedures for discontinuing a program that will result in layoff entail:

- submission of written proposal to the faculty committee designated or created specifically for faculty layoff;
- evaluation of the proposal by the faculty committee based on certain considerations, including recommendations from faculty in the academic program, faculty in the affected college or school, students in the academic program, the appropriate student body, or other appropriate individuals;
- submission of a report to the chancellor;
- the chancellor consulting with the faculty committee and the faculty senate before making a recommendation to the UW System President and the Board of Regents; and
- Board approval to discontinue the academic program.

The procedures also specify a timeframe for when the faculty committee must submit its report to the chancellor and when the chancellor must submit his/her recommendation to the UW System President and the Board.

The proposed policy makes explicitly clear that a faculty member whose position is recommended for layoff under this policy is entitled to a due process hearing, appeals procedures, reappointment rights, and other rights and protections as guaranteed in state statutes.

The proposed policy does not specify procedures for laying off faculty because these procedures are sufficiently detailed in s. 36.22, Wis. Stats.

RELATED REGENT POLICIES

RPD 20-23, “Faculty Tenure”

RPD 20-9, “Guidelines for Tenured Faculty Review and Development”

ate notice, lay off or terminate any faculty member when such an action is deemed necessary due to a budget or program decision requiring a program change.

(b) Any layoff or termination of a faculty member under par. (a) may be made only in accordance with the provisions of this section and implies the retention of rights indicated in this section. A faculty member who is laid off retains the rights specified in subs. (11) to (16) and a faculty member who is terminated retains the rights specified in subs. (13) and (14).

(c) Nonrenewal of an appointment, regardless of the reason, is not a layoff or termination under this section.

(3) SENIORITY. (a) In the case of layoffs of faculty members due to a budget or program decision requiring a program change, layoffs shall follow seniority unless a clear and convincing case is made that program or budget needs dictate other considerations such as the need to maintain diversity of specializations within a department.

(b) The faculty of each institution shall determine the form of seniority that is to be considered. This determination shall be effective uniformly throughout the institution. Seniority may be defined in the following, or in other, ways:

1. Without regard to rank, with seniority established by total years of service in the institution.

2. By rank, and within rank according to total years of service in the institution.

3. By rank, and within rank, according to length of service in the institution at that rank.

(4) NOTIFICATION. (a) Each faculty member who is to be laid off shall receive prompt written notification from the chancellor. Prior to issuing a layoff notification, the chancellor shall offer to consult with, and seek advice from, a faculty committee designated or created by the faculty of the institution.

(b) The notification under par. (a) shall include all of the following:

1. A summary of the reasons supporting the need for the layoff.

2. A statement of the basis on which the individual position was selected for elimination and one of the following:

a. If the position was selected for elimination on the basis of seniority, the criterion used and data supporting the choice.

b. If the position was selected for elimination on a basis other than seniority, the data and reasons supporting that choice.

3. A statement of the date on which the layoff is to be effective.

4. A copy of the statutes regarding layoff of faculty due to a budget or program decision requiring a program change and such other information or procedural regulations as the chancellor deems appropriate.

(5) NOTIFICATION PERIOD. (a) In the case of the layoff of faculty due to a budget or program decision requiring a program change, notification must be given at least 12 months in advance of the effective date.

(b) During the 12-month period under par. (a), and prior to entering layoff status, the chancellor may offer as appropriate, and the faculty member may accept, any of the following:

1. Terminal leave and early retirement.

2. Relocation leave accompanied by resignation.

(c) Acceptance of either option under par. (b) terminates the faculty member's association with the system at the end of the leave period.

(6) FACULTY HEARING COMMITTEE. The faculty of each institution shall establish a committee or designate an existing committee to serve as a hearing committee for the purposes of this section. The committee shall consist of faculty members of the institution chosen by the faculty in a manner to be determined by the faculty. This standing faculty committee shall conduct the hearing, make a verbatim record of the hearing, prepare a summary of the evi-

36.21 Termination due to certain budget or program changes. Notwithstanding s. 36.15, the board may, with appropriate notice, terminate any faculty or academic staff appointment when such an action is deemed necessary due to a budget or program decision requiring program discontinuance, curtailment, modification, or redirection. No person may be employed at the institution within 2 years to perform reasonably comparable duties to those of the person whose appointment was terminated without first offering such person a reappointment. The board, after consultation with the faculty and chancellor of each institution, shall adopt procedures to be followed in the event of termination of academic staff under this section and the board may adopt procedures, consistent with s. 36.22, to be followed in the event of termination of faculty under this section and s. 36.22.

History: 1973 c. 335; 2015 a. 55.

36.22 Layoff or termination of faculty member due to certain budget or program changes. (1) DEFINITIONS. In this section:

(a) "Layoff" means an indefinite suspension or involuntary reduction in services and compensation of a faculty member's employment by the system.

(b) "Program change" means program discontinuance, curtailment, modification, or redirection.

(c) "Termination" means the permanent elimination of a faculty member's employment by the system.

(2) LAYOFF OR TERMINATION DUE TO CERTAIN CIRCUMSTANCES.

(a) The board may, under this section and s. 36.21, with appropri-

dence, and transmit the record and summary along with its recommended findings of law and decision to the board.

NOTE: Sub. (6) was created as sub. (6) (a) by 2015 Wis. Act 55 and renumbered to sub. (6) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(7) REVIEW HEARING. (a) A faculty member who has been notified of layoff is entitled to a hearing before the faculty hearing committee as to the appropriateness of the decision to lay off that particular individual. The budget or program decisions made to discontinue, curtail, modify, or redirect a program are not subject to review in the hearing.

(b) A hearing must be requested within 20 days of the receipt by the faculty member of notification of layoff. The request shall state with particularity the grounds to be relied upon in establishing the impropriety of the decision. Relevant information supplementary to that contained in the notification statement may be requested. The question to be considered in the review is whether one or more of the following improper factors entered into the decision to lay off:

1. Conduct, expressions, or beliefs on the faculty member's part that are constitutionally protected, or protected by the principles of academic freedom.

2. Factors proscribed by applicable state or federal law regarding fair employment practices.

3. Improper selection of the individual to be laid off.

(c) For purposes of par. (b), "improper selection" has occurred if material prejudice resulted from any of the following:

1. The procedures required by the board were not followed.

2. Available data bearing materially on the role of the faculty member in the institution were not considered.

3. Unfounded or arbitrary assumptions of fact were made.

4. Immaterial or improper factors other than those specified in par. (b) entered into the decision.

(d) The committee shall determine whether one or more of the improper factors under par. (b) entered significantly into and affected the layoff decision on the basis of the evidence presented. If the committee believes that one or more improper factors may have entered into the layoff decision but is convinced that the same decision would have been reached had the error or errors not occurred, the committee shall find the layoff decision to have been proper. The committee shall report its findings and recommendations to the chancellor and the faculty member.

(8) HEARING PROCEDURE. (a) If the faculty hearing committee requests, the chancellor shall provide legal counsel to the committee for a hearing under sub. (7). The hearing shall be closed unless the faculty member who has been notified of layoff requests an open hearing, in which case it shall be open.

(b) The faculty hearing committee may, on motion of either party, disqualify any one of its members for cause by a majority vote. If one or more of the faculty hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of other members of the faculty equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the rules and procedures adopted by the faculty establishing the hearing committee under sub. (6). No faculty member who participated in the decision to lay off or who is a material witness may sit in on the faculty hearing committee.

(c) The faculty member shall be given at least 10 days' notice of the hearing. The hearing shall be held not later than 20 days after the request for hearing except that this time limit may be extended by mutual consent of the parties or by order of the faculty hearing committee.

(d) The faculty member shall have access to the evidence on which the administration intends to rely to support the decision to lay off, and shall be guaranteed all of the following minimal procedural safeguards at the hearing:

1. A right to be heard on his or her own behalf.

2. A right to counsel or other representatives or both, and to offer witnesses.

3. A right to confront and cross-examine adverse witnesses.

4. A verbatim record of the hearing, which might be a sound recording, provided at no cost.

5. Written findings of fact and decision based on the hearing record.

6. Admissibility of evidence as described in s. 227.45 (1) to (4).

(e) Adjournments shall be granted to enable either party to investigate evidence as to which a valid claim of surprise is made.

(9) RECOMMENDATIONS AND REVIEW BY THE BOARD. The layoff decision of the chancellor and the recommendations, if any, of the faculty hearing committee, shall be transmitted to the president and to the board and acted upon as follows:

(a) If the faculty member has not requested a hearing before the faculty hearing committee, the chancellor's decision shall be deemed proper and shall be reported for information to the president and the board.

(b) If the faculty member has requested a hearing and the faculty hearing committee has found the decision to be proper, the report of the faculty hearing committee shall be forwarded to the president and board by the chancellor with a recommendation. The faculty member may request a review by the board, and the board review panel may at its option grant a review. Unless the board review panel grants the request for review, the recommended findings of fact and decision of the faculty hearing committee shall be the final decision of the board.

(c) If after a hearing, the faculty hearing committee's recommended findings of fact and decision are that the initial decision was improper, the chancellor shall review the matter and give careful consideration to the committee's finding. If the chancellor accepts the committee's findings, the chancellor's decision shall be final. If the chancellor contests the recommended findings that the decision was improper, the verbatim record, a summary of the evidence, and the recommended findings of law and decision shall be forwarded to the board review panel. The chancellor and the faculty member shall be furnished with copies of this material and shall have a reasonable opportunity to file written exceptions to the summary and proposed findings and decision and to argue with respect to them orally and in writing before the board review panel. The board review panel shall hear and decide the case and the decision of the board review panel shall be final.

(10) BOARD REVIEW. A review panel shall be appointed by the president of the board, and shall include 3 members of the board, and 2 nonvoting staff members from the academic affairs office of the system. The panel shall review the criteria and reasoning of the chancellor and the findings and recommendations of the faculty hearing committee in each case forwarded for its review, and shall reach a decision on the recommendation to be approved. The decision shall be final and binding upon the chancellor and the faculty member affected unless one or more of the board members of the review panel request that the decision be reviewed by the full board, in which case the record shall be reviewed and a decision reached by the full board.

(11) LAYOFF STATUS. (a) A faculty member whose position has been eliminated or reduced in accordance with the provisions of this section shall, at the end of the appropriate notice period, be placed on layoff status, unless the layoff notice has been rescinded prior to that time.

(b) The faculty member whose notice period has expired, and who is placed on layoff status, shall remain on layoff status until any of the following occurs:

1. The period of the faculty member's appointment has expired under its own terms.

2. The faculty member is reappointed to the position from which he or she was laid off. Failure to accept a reappointment terminates the faculty member's association with the system.

3. The faculty member accepts an alternative continuing position in the system. Failure to accept an alternate appointment does not terminate the faculty member's association with the system.

4. The faculty member resigns.

5. The faculty member, while on layoff status, fails to notify the chancellor by December 1 of each year as to his or her location, employment status, and desire to remain on layoff status. Failure to provide this notice of desire to remain on layoff status terminates the faculty member's association with the system.

(12) ALTERNATIVE EMPLOYMENT. Each institution shall devote its best efforts to securing alternative appointments within the institution in positions for which faculty laid off under this section are qualified under existing criteria. In addition, the system shall provide financial assistance for one year for faculty who are designated for layoff to readapt within the department or within another department of the institution, where readaptation is feasible. Further, the system shall devote its best efforts to ensure that faculty members laid off or terminated in any institution are made aware of openings within the system.

(13) REAPPOINTMENT RIGHTS. Each institution shall establish administrative procedures and policies to ensure that where layoffs or terminations occur due to a budget or program decision requiring a program change, no person may be employed at that institution within 3 years to perform reasonably comparable duties to those of the faculty member laid off or terminated without first offering the laid off or terminated faculty member reappointment without loss of seniority and other rights. The 3-year period shall be computed from the effective date of layoff as specified in the original notice.

(14) RETENTION OF RANK AND SALARY. Any faculty member reappointed within 3 years after layoff or termination shall be reappointed with a rank and salary at least equivalent to the rank and salary when laid off or terminated, together with such other rights and privileges that may have accrued at that time. Any faculty member relocated within an institution or within the system shall not have either rank or salary adversely affected except by consent at the time of relocation.

(15) RIGHTS OF FACULTY MEMBERS ON LAYOFF. A faculty member on layoff status in accord with the provisions of this section has the reemployment rights guaranteed by subs. (13) and (14), and has all of the following minimal rights:

(a) The right to participate in fringe benefit programs as is allowed by state statutes and rules governing rights of laid off state employees.

(b) The right to continued use of campus facilities as is allowed by policies and procedures established by the department and institution.

(c) The right to participate in departmental and institutional activities as is allowed by guidelines established by the department and institution.

(16) SYSTEMWIDE TENURE. The commitment to systemwide tenure within the institutions formerly governed under ch. 37, 1971 stats., shall be honored by those institutions for those eligible under s. 36.13 (4), 1973 Stats., in the event of layoff or termination under the provisions of this section.

(17) LACK OF FACULTY ACTION. If the faculty of an institution is given due notice but does not establish or designate a hearing committee under sub. (6), the chancellor may appoint a committee of faculty members to provide this function.

NOTE: The cross-references to sub. (6) was changed from sub. (6) (a) by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of s. 36.22 (6) (a), as created by 2015 Wis. Act 55.

History: 2015 a. 55; s. 13.92 (1) (bm) 2.

APPENDIX B


Tenure Policy Task Force Directory

Name	Title	Institution
John Behling	Regent Vice President, Task Force Chair	
Lopa Basu	Associate Professor, English and Philosophy; Director, Honors College	Stout
Greg Diemer	Vice Chancellor for Business Affairs	Stevens Point
Dorothy Farrar Edwards	Professor and Chair, Kinesiology	Madison
Katharina (Katy) Heyning	Dean, College of Education and Professional Studies	Whitewater
Sarah Mangelsdorf	Provost and Vice Chancellor for Academic Affairs	Madison
Patricia McManus	Professor and Chair, Plant Pathology	Madison
Ken Menningen	Professor, Physics and Astronomy	Stevens Point
Steve Meyer	Associate Professor, Natural and Applied Sciences	Green Bay
Gary Miller	Chancellor	Green Bay
Regina Millner	Regent President	Board of Regents
Mittie Nimocks Den Herder	Provost and Vice Chancellor for Academic Affairs	Platteville
Christine Roth	Professor, English; Director, English Graduate Program	Oshkosh
James Schmidt	Chancellor	Eau Claire
Bradley Seebach	Associate Professor, Biology	La Crosse
Jonathan Shailor	Professor, Communication; Director, Center for Ethnic Studies, UW-Parkside Prison Outreach	Parkside
Robert Smith	Associate Professor, History	Milwaukee
Kristene Surerus	Associate Professor, Biochemistry	Milwaukee
Dean Van Galen	Chancellor	River Falls
Alan White	Professor, Philosophy	Colleges
Greg Wise	Director, Professor, and Community Development Specialist, Center for Community and Economic Development	Extension
Task Force Staff:		
Anne Bilder	Senior System Legal Counsel	UW System Office of General Counsel
Jeff Buhrandt	Special Assistant for State Relations	UW System Office of University Relations
Carmen Faymonville	Director of Academic and Faculty Policies	UW System Office of Academic and Student Affairs
Tou Her	Program and Policy Analyst	UW System Office of the Board of Regents
Tom Stafford	General Counsel	UW System Office of General Counsel



DATE: July 23, 2015

TO: Regent Vice President John Behling, Chair, Tenure Policy Task Force

FROM: Regent President Regina Millner 

RE: Tenure Policy Task Force Charge

As you know, since the time of merger in the 1970's, both the Wisconsin Statutes and the Wisconsin Administrative Code have provided for faculty tenure rights within the University of Wisconsin System.

Recent legislative changes to the Wisconsin Statutes removed the statutory provision governing faculty tenure and probationary appointments and modified the conditions under which tenured and tenure-track faculty members' appointments may be terminated due to certain budget or programmatic changes. Further, a new section codifies in Wisconsin Statutes faculty due process and reappointment rights in the event of layoff due to certain budget or programmatic changes. The new statutory language is provided in **Attachment A**.

At its June 2015 meeting, the Board of Regents reaffirmed its commitment to the importance of tenure within the University of Wisconsin System by unanimously adopting a tenure policy replicating the language contained in the now-repealed section on faculty tenure and probationary appointments. The resolution provided that the policy would be effective once the original statutory language was repealed. *See, Attachment B*. The repeal of the tenure statute was effective July 14, 2015, so the Regent tenure policy now is in effect and will remain in effect until a new policy is adopted. *See, Attachment C*.

In light of the above, I ask that the recently-appointed University of Wisconsin System Tenure Policy Task Force undertake the following:

1. Review the current Board policy (replicates former statutory language) and recommend revisions, if needed;
2. Review Regent Policy Document (RPD) 20-9, "Guidelines for Tenured Faculty Review and Development" (*see, Attachment D*) and existing UW System institutional "post-tenure" review processes, and make recommendations to revise them, as necessary and appropriate, to:
 - a. Craft an overarching tenured faculty review process for adaptation by individual institutions within the UW System;
 - b. Create a common process for rewarding high-performing tenured faculty (though not a common reward); and

- c. Create a common process for effectively addressing tenured faculty performance which does not meet expectations for teaching, research and public service.
3. Review the new statutory language regarding faculty layoff due to budget and/or program decisions and recommend Regent policy language relating to:
 - a. The criteria to be used by a UW institution to determine budget or program decisions that require program changes resulting in faculty layoffs; and
 - b. The procedures to be used by a UW institution to develop a recommendation to the Board of Regents regarding program changes resulting in faculty layoffs.
4. Provide recommendations regarding any additional Regent policy changes or additions that may be necessary in light of recent legislative changes relating to tenure.

I encourage the Task Force to consider the tenure policies, processes, and procedures adopted by similar or comparable higher education institutions or systems (*see, e.g., Attachment E*), as well as the American Association of University Professors' (AAUP) "*Recommended Institutional Regulations on Academic Freedom and Tenure.*" *See, Attachment F.*

I also expect that faculty academic freedom will be clearly and expressly protected.

The Board's June 2015 tenure resolution requires the Task Force to complete its work on or before April 11, 2016. Thank you again for your willingness to lead this important effort.

Attachments

cc: Members of the Tenure Policy Task Force
Members of the Board of Regents
UW System President Ray Cross
President's Cabinet
Chancellors
Provosts
Faculty Representatives
Academic Staff Representatives
University Staff Representatives
Student Representatives

RPD 20-23, Faculty Tenure, *Changes Marked*

Scope

This policy describes the authority of the University of Wisconsin System Board of Regents to grant faculty tenure.

Purpose

The purposes of this policy are to define who may be granted tenure, establish conditions under which a faculty member having tenure may be dismissed; and require UW System institutions to develop procedures for dismissal notice and hearing.

Definitions

For the purpose of this policy, the following definitions are used:

- (a) "Probationary appointment" means an appointment by the board held by a faculty member during the period which may precede a decision on a tenure appointment.
- (b) "Tenure appointment" means an appointment for an unlimited period granted to a ranked faculty member by the board.

Policy Statement

The Board of Regents shall provide tenure appointments within the following parameters:

1. APPOINTMENTS

- (a) Except as provided under par. (b), the board may grant a tenure appointment only upon the affirmative recommendation of the appropriate chancellor and the appropriate academic department or its functional equivalent. Neither the chancellor nor the academic department or its functional equivalent may base a tenure recommendation upon impermissible factors, as defined by the board by rule.
- (b) The board may grant a tenure appointment without the affirmative recommendation of the appropriate academic department or its functional equivalent if all of the following apply:
 - 1. The board has the affirmative recommendation of the appropriate chancellor.
 - 2. A faculty committee authorized by the board by rule to review the negative recommendation of the academic department or its functional equivalent finds that the decision of the academic department or its functional equivalent was based upon impermissible factors, as defined by the board by rule.

3. The board has the affirmative recommendation of a committee appointed according to the policies and procedures of the appropriate institution to review the individual's record with reference to criteria for tenure published by the institution under procedures established by the board by rule. No person may be appointed to the committee under this subdivision unless the person is knowledgeable or experienced in the individual's academic field or in a substantially similar academic field. No member of the committee appointed under this subdivision may be a member of the academic department, or its functional equivalent, that made the negative recommendation. The committee appointed under this subdivision may not base its tenure recommendation upon impermissible factors, as defined by the board by rule.

(c) A tenure appointment may be granted to any ranked faculty member who holds or will hold a half-time appointment or more. The proportion of time provided for in the appointment may not be diminished nor increased without the mutual consent of the faculty member and the institution subject only to Section 4, "Procedural Guarantees," and ~~s-ss.~~ 36.21 and 36.22, Wis. Stats.

(d) A probationary appointment shall not exceed 7 consecutive academic years in a full-time position in an institution. A leave of absence, sabbatical or a teacher improvement assignment does not constitute a break in continuous service and shall not be included in the 7-year period. The board may promulgate rules specifying additional circumstances that do not constitute a break in continuous service and that shall not be included in the 7-year period.

2. RULES

The board and its several faculties after consultation with appropriate students shall promulgate rules for tenure and probationary appointments, for the review of faculty performance and for the nonretention and dismissal of faculty members. Such rules shall be promulgated under ch. 227, Wis. Stats.

3. CONTINUATION OF APPOINTMENT

(a) Any person who holds a tenure appointment under ch. 36, 1971 Stats. and ch. 37, 1971 Stats., and related rules on July 9, 1974 shall continue to hold tenure as defined under those chapters and related rules.

(b) Any person who holds the equivalent of a probationary appointment under ch. 36, 1971 Stats., and ch. 37, 1971 Stats., and related rules on July 9, 1974 shall continue to enjoy the contractual rights and guarantees as defined under those chapters and related rules, and may elect to be considered for tenure according to the procedures existing under that appointment or under Section 1, "Appointments."

~~(c) Any person who is not a ranked faculty member on August 15, 1991, and who is also described under subd. 1. or 2. shall be treated as a faculty member with the rank of associate professor for all purposes:~~

~~1. Any person who held an unranked faculty tenure appointment or unranked faculty concurrent tenure appointment under ch. 37, 1971 Stats., prior to July 10, 1974.~~

~~2. Any person who held an unranked probationary appointment under ch. 37, 1971 Stats., prior to July 10, 1974, and who subsequently received an unranked faculty tenure appointment or unranked faculty concurrent tenure appointment.~~

4. PROCEDURAL GUARANTEES

Any person having tenure may be dismissed only for just cause and only after due notice and hearing. Any person having a probationary appointment may be dismissed prior to the end of the person's contract term only for just cause and only after due notice and hearing. The action and decision of the board in such matters shall be final, subject to judicial review under ch. 227, Wis. Stats. The board and its several faculties shall develop procedures for the notice and hearing which shall be promulgated by rule under ch. 227.

5. LIMITATION

Tenure and probationary appointments are in a particular institution. A tenure appointment is limited to the institution in which the appointment is held.

Oversight, Roles and Responsibilities

The Board of Regents delegates to the President of the UW System or his or her designee the authority to issue operational policies to implement and administer this policy. The Board further authorizes the President to delegate to individual chancellors the authority to implement this policy at their respective institutions within the parameters established by Regent Policy Documents, Wisconsin Administrative Code provisions, and University of Wisconsin System policies.

Related Regent Policies and Applicable Laws

Chapter 36, Wis. Stats.
Chapters UWS 3, 4, 5 and 7, Wis. Admin. Code
[Regent Policy Documents 20-9 and 20-XX](#)

History: Res. 10516, adopted 06/05/2015, created Regent Policy Document 20-23.

APPENDIX E

RPD 20-23, Faculty Tenure, *Proposed Final Version*

Scope

This policy describes the authority of the University of Wisconsin System Board of Regents to grant faculty tenure.

Purpose

The purposes of this policy are to define who may be granted tenure, establish conditions under which a faculty member having tenure may be dismissed; and require UW System institutions to develop procedures for dismissal notice and hearing.

Definitions

For the purpose of this policy, the following definitions are used:

- (a) “Probationary appointment” means an appointment by the board held by a faculty member during the period which may precede a decision on a tenure appointment.
- (b) “Tenure appointment” means an appointment for an unlimited period granted to a ranked faculty member by the board.

Policy Statement

The Board of Regents shall provide tenure appointments within the following parameters:

1. APPOINTMENTS

- (a) Except as provided under par. (b), the board may grant a tenure appointment only upon the affirmative recommendation of the appropriate chancellor and the appropriate academic department or its functional equivalent. Neither the chancellor nor the academic department or its functional equivalent may base a tenure recommendation upon impermissible factors, as defined by the board by rule.
- (b) The board may grant a tenure appointment without the affirmative recommendation of the appropriate academic department or its functional equivalent if all of the following apply:
 - 1. The board has the affirmative recommendation of the appropriate chancellor.
 - 2. A faculty committee authorized by the board by rule to review the negative recommendation of the academic department or its functional equivalent finds that the decision of the academic department or its functional equivalent was based upon impermissible factors, as defined by the board by rule.
 - 3. The board has the affirmative recommendation of a committee appointed according to the policies and procedures of the appropriate institution to review the individual’s record with reference to criteria for tenure published by the institution under procedures

established by the board by rule. No person may be appointed to the committee under this subdivision unless the person is knowledgeable or experienced in the individual's academic field or in a substantially similar academic field. No member of the committee appointed under this subdivision may be a member of the academic department, or its functional equivalent, that made the negative recommendation. The committee appointed under this subdivision may not base its tenure recommendation upon impermissible factors, as defined by the board by rule.

- (c) A tenure appointment may be granted to any ranked faculty member who holds or will hold a half-time appointment or more. The proportion of time provided for in the appointment may not be diminished nor increased without the mutual consent of the faculty member and the institution subject only to Section 4, "Procedural Guarantees," and ss. 36.21 and 36.22, Wis. Stats.
- (d) A probationary appointment shall not exceed 7 consecutive academic years in a full-time position in an institution. A leave of absence, sabbatical or a teacher improvement assignment does not constitute a break in continuous service and shall not be included in the 7-year period. The board may promulgate rules specifying additional circumstances that do not constitute a break in continuous service and that shall not be included in the 7-year period.

2. RULES

The board and its several faculties after consultation with appropriate students shall promulgate rules for tenure and probationary appointments, for the review of faculty performance and for the nonretention and dismissal of faculty members. Such rules shall be promulgated under ch. 227, Wis. Stats.

3. CONTINUATION OF APPOINTMENT

- (a) Any person who holds a tenure appointment under ch. 36, 1971 Stats. and ch. 37, 1971 Stats., and related rules on July 9, 1974 shall continue to hold tenure as defined under those chapters and related rules.
- (b) Any person who holds the equivalent of a probationary appointment under ch. 36, 1971 Stats., and ch. 37, 1971 Stats., and related rules on July 9, 1974 shall continue to enjoy the contractual rights and guarantees as defined under those chapters and related rules, and may elect to be considered for tenure according to the procedures existing under that appointment or under Section 1, "Appointments."

4. PROCEDURAL GUARANTEES

Any person having tenure may be dismissed only for just cause and only after due notice and hearing. Any person having a probationary appointment may be dismissed prior to the end of the person's contract term only for just cause and only after due notice and hearing. The action and decision of the board in such matters shall be final, subject to judicial review under ch. 227, Wis. Stats. The board and its several faculties shall develop procedures for the notice and hearing which shall be promulgated by rule under ch. 227.

5. LIMITATION

Tenure and probationary appointments are in a particular institution. A tenure appointment is limited to the institution in which the appointment is held.

Oversight, Roles and Responsibilities

The Board of Regents delegates to the President of the UW System or his or her designee the authority to issue operational policies to implement and administer this policy. The Board further authorizes the President to delegate to individual chancellors the authority to implement this policy at their respective institutions within the parameters established by Regent Policy Documents, Wisconsin Administrative Code provisions, and University of Wisconsin System policies.

Related Regent Policies and Applicable Laws

Chapter 36, Wis. Stats.
Chapters UWS 3, 4, 5 and 7, Wis. Admin. Code
Regent Policy Document 20-9 and 20-XX

History: Res. 10516, adopted 06/05/2015, created Regent Policy Document 20-23.

APPENDIX F

RPD 20-9 (formerly Regent Policy Document 92-5), Guidelines for Tenured Faculty Review and Development

Guidelines for Tenured Faculty Review and Development: Each University of Wisconsin Institution will be asked to develop, through the normal governance process, a plan for tenured faculty review and development, to be presented to University of Wisconsin System Administration for acceptance. The purpose of the plan is to ensure continuing growth and development in faculty professional skills, encouraging University of Wisconsin faculty to explore new ways to promote academic excellence, and to identify areas for improvement and provide solutions for problem areas. Each plan should include the following components:

1. Provision for a review, at least once every five years, of each tenured faculty member's activities and performance, in accordance with the mission of the department, college, and institution. Exceptions in the schedule may be made for faculty undergoing evaluation for promotion during this cycle.
2. Effective criteria against which to measure progress and accomplishments of faculty during this review and a description of the methods for conducting the evaluation. These criteria should reflect the mission of the various units (e.g., department, college, institution) and be sufficiently flexible to allow shifts in professional emphasis. The review and methods should include both peer and student evaluations and give appropriate emphasis to activities in support of undergraduate education. The review and methods should fully respect academic freedom.
3. Delineation of responsibilities for conducting reviews. The plans should identify the respective roles of the department, dean, vice chancellor, and any other appropriate review group(s).
4. Means by which the merit process and faculty review and development process will be linked and use to facilitate, enhance, and reward outstanding performance. With the advent of this review procedure, institutions may wish to modify their current merit review process. Consideration should be given to the most efficient and appropriate use of faculty time on the evaluation process.
5. Procedures defining means for remedying problems in cases where deficiencies are revealed. Procedures defining means for remediation should be included in the plan for any faculty member whose review reveals significant deficiencies in performance. Resources should not be removed from existing faculty development programs for programs to remedy deficiencies.
6. Provision for a written record of each faculty review; designation of the location for the personnel file.
7. Description of the accountability measures the institution will use to ensure full implementation of the institutional plan.
8. Nothing in these guidelines is intended to alter the existing rules dealing with tenure termination. The plan for tenured faculty review should not involve the creation of unnecessary additional bureaucracy; it is intended to ensure that either new or existing post-tenure review procedures meet the minimum expectations described in the guidelines. If existing procedures already meet these guidelines and are auditable, they may be submitted as the institutional plan.

Timetable: Because it is important for institutions to shape their own plans to be appropriate for that institution and because it is crucial that the faculty be primarily responsible for the plans, sufficient development time is crucial. Therefore, institutional plans for tenured faculty review and development will be developed during the 1992-93 year and will be submitted to the Office of Academic Affairs in Spring, 1993, for approval and will be implemented during the fall semester, 1993-94.

History: Res. 6118 adopted 5/8/92.

**Regent Policy Document 20-9
Periodic Post-Tenure Review in Support of Tenured Faculty Development**

Note: This draft proposes the revision of the current RPD 20-9 and, if adopted, would replace that policy.

Scope

This policy applies to all UW System institutions and tenured faculty members. The post-tenure review described by this policy is not intended to serve as a substitute for annual or other evaluations of tenured faculty performance that may occur at an institution, nor is it intended as a re-evaluation of tenure.

Purpose

The purpose of this policy is to reflect the Board of Regents' commitment to promoting the continued high-quality teaching, research/scholarship, and service of its tenured faculty, and thereby to enhance the educational environment for its students and the larger community. The primary purpose of the periodic, post-tenure review of tenured faculty is to support tenured faculty development.

Policy Statement

Tenure is an essential part of the guarantee of academic freedom that is necessary for university-based intellectual life to flourish. The grant of indeterminate tenure to faculty members represents an enormous investment of university and societal resources, and those who receive this investment do so only after rigorous review which established that their scholarship, research, teaching, and service met the highest standards and are congruent with the needs of the university.

It is the policy of the Board of Regents that a periodic, post-tenure review of tenured faculty members is essential to promoting faculty development, including recognizing innovation and creativity; enhancing the educational environment for students; and identifying and redressing deficiencies in overall performance of duties through a supportive and developmental remediation process.

Nothing in this policy shall be interpreted to alter or to infringe upon existing tenure rights, as set forth in UW System Board of Regents or UW System policies, nor shall this policy diminish the important guarantees of academic freedom. Specifically, this policy does not supersede administrative rules providing for termination for cause set forth in Chapter UWS 4 of the Wisconsin Administrative Code.

Each institution, through its normal governance process, shall develop and implement a policy for periodic, post-tenure review of tenured faculty members that contains, at a minimum, the following:

1. A definitions section, as needed, that is consistent with the defined terms as they are used in related law and policy.
2. A statement that emphasizes that the overriding purpose of the periodic, post-tenure review is tenured faculty development, and that such review shall not infringe on existing faculty rights and protections, including those of academic freedom.
3. A summary description of the annual or other more frequent tenured faculty evaluation process that is separate and distinct from the post-tenure review process.
4. Provision for review, at least once every five years, of each tenured faculty member's activities and performance. The post-tenure review period begins in the academic year following the granting of tenure. The review may be deferred, only with the approval of the provost, for unusual circumstances such as when it may coincide with an approved leave, promotion review, or other appointment. In such cases, the provost will specify the new review cycle that applies to the faculty member. The periodic, post-tenure review may substitute for annual review in the year a faculty member is scheduled for such review.
5. Provision for notice of the intent to review at least three months before the review is conducted. However, failure to meet this notice deadline does not obviate the requirement to conduct and participate in the review.
6. Identification of criteria by which to evaluate the tenured faculty member's performance that are effective and consistent with the mission and expectations of the department, school or college, and institution, as applicable, and sufficiently flexible to permit shifts in professional emphasis. However any criteria must fall within the three categories of teaching, scholarship/research, and service.
7. Delineation of the roles and responsibilities of those who will conduct or contribute to the review.
8. Delineation of the process by which the review will be conducted, including a timeline.
9. Identification of the following categories reflecting the overall results of the review. In determining the category, the review will consider whether the faculty member under review has discharged conscientiously and with professional competence the duties appropriately associated with the faculty member's position.
 - a. Meets expectations. This category is awarded to those tenured faculty members whose performance reflects the expected level of accomplishment.

- b. Does not meet expectations. This category is awarded to those tenured faculty members whose performance reflects a level of accomplishment below the expected level and which requires correction. All reviews resulting in “does not meet expectations,” unless overturned upon further review, will result in a remediation plan as described below.

An institution may add an additional category of “Exceeds expectations,” which is to be awarded to those tenured faculty members whose performance reflects a significant level of accomplishment beyond what is normal for the institution, college or school, or department.

10. Provision for a written report for each faculty review and the opportunity for the reviewed faculty member to provide a written response to the report. The report should be provided to the faculty member, the department chair, the dean (as applicable), and the provost.
11. A description of any opportunities offered to faculty members who receive a review in the category of meets or exceeds expectations, as applicable, including additional compensation, subject to the availability of resources.
12. A description of the procedures that apply when a faculty member receives a review in the category of “does not meet expectations” that includes the following:
 - a. Requirement that the identification of any deficiencies be described in writing and provided to the faculty member;
 - b. Provision for review by the dean, followed by review by the chancellor (or designee). The faculty member may provide a written statement to accompany these reviews. Following the chancellor or designee’s review, the faculty member will be informed by the chancellor or designee that the faculty member has received a result of “meets expectations,” or that a remediation plan will be developed; and
 - c. Provision for a remediation plan to be developed by the faculty member in consultation with the dean to assist the faculty member in addressing those deficiencies identified in the review.
 - i. The primary focus of the remediation plan shall be developmental and provide the faculty member with appropriate support from the department or dean as applicable.
 - ii. Provision for a mechanism for determining how and when the faculty member will have satisfied the expectations of the remediation plan as determined by the dean in consultation with the chancellor and faculty member; however, all elements of the plan must be satisfied within a reasonable time period, commensurate with the identified deficiencies determined by the dean, not to exceed eighteen (18) months;

- iii. Provision for actions to be taken when the faculty member fails to meet the expectations set forth in the remediation plan, which includes reference to existing faculty complaint processes, and which permits the imposition of discipline, as appropriate, up to and including dismissal for cause under Chapter UWS 4.
13. Provision for assistance prior to and following the review, regardless of the results of the faculty member's post-tenure review, that is available to all faculty members to support their professional development at any time in their careers.
14. Provision for a full, written record to be created containing the results of a faculty member's periodic, post-tenure review and any ensuing actions, as described above, and for the written record to be provided to the dean and chancellor (or designee). Information and documentation relating to the review shall be maintained by the appropriate department, college or school, or university personnel or bodies, and disclosed otherwise only at the discretion, or with the explicit consent, of the faculty member, unless required by business necessity or by law.
15. Provision that department chairs or their organizational equivalent be required to report annually to the dean and chancellor (or designee) that all periodic, post-tenure reviews for tenured faculty in that annual cycle have been completed, and that the chancellor (or designee) has responsibility for ensuring the reviews are completed on schedule.
16. The reviews conducted and remediation plans developed in accordance with this policy are not subject to the grievance process set forth in Chapter UWS 6.02, Wis. Admin. Code.

Oversight, Roles and Responsibilities

Each institution shall submit to the Board of Regents for approval the institutional policy developed in accordance with this policy. Within nine (9) months of the effective date of the policy, each institution shall submit to the Board of Regents their policy. Once the policy has been approved, the chancellor is responsible for implementing the policy and operating the institution consistent with its provisions.

Related Regent Policies and Applicable Laws

Chapter 36, Wis. Stats.
Chapters UWS 3, 4, and 6, Wis. Admin. Code
Regent Policy Document 20-23

APPENDIX H

1-21-2016

Regent Policy Document 20-XX: Procedures Relating to Financial Emergency or Program Discontinuance Requiring Faculty Layoff and Termination.

Scope

This policy applies to all University of Wisconsin System institutions and faculty.

Purpose

The purpose of this policy is to establish procedures for University of Wisconsin System institutions in the event that a financial emergency or program discontinuance requires faculty layoffs.

Policy Statement

Tenure is the keystone for academic freedom and excellence and is awarded for academic and professional merit. Tenure is an essential part of the guarantee of academic freedom that is necessary for university-based intellectual life to flourish. The grant of indeterminate tenure to faculty members represents an enormous investment of university and societal resources, and those who receive this investment do so only after rigorous review which established that their scholarship, research, teaching and service meet the highest standards and are congruent with the needs of the university. It is therefore expressly recognized that the awarding and continued enjoyment of faculty tenure is of vital importance to the protection of academic freedom and to the overall academic quality of the University of Wisconsin System institutions.

Accordingly, faculty layoff will be invoked only in extraordinary circumstances and after all feasible alternatives have been considered. Additionally, faculty layoff shall not be based on conduct, expressions, or beliefs on the faculty member's part that are constitutionally protected or protected by the principles of academic freedom.

As provided in Wis. Stat. s. 36.21 and Wis. Stat. s. 36.22, and Chapter UWS 5 of the Wisconsin Administrative Code, the Board of Regents of the University of Wisconsin System (Board) has authority, with appropriate notice, to terminate through layoff a faculty appointment when necessary in the event of a financial emergency, or a program decision resulting in program discontinuance. The Board is permitted by Wis. Stat. s. 36.21 to adopt procedures relating to faculty layoff. Consistent with Chapter UWS 5 and Wis. Stat. s. 36.22, this Board policy sets forth those procedures. Faculty layoffs at University of Wisconsin System institutions may be undertaken only in accordance with this policy, Chapter UWS 5, Wis. Stat. s. 36.21, and Wis. Stat. s. 36.22.

Comment [TS1]: This sentence is from the University of Minnesota's faculty layoff policy.

Comment [TS2]: The preceding sentences are from the University of Michigan's Principles of Tenure.

Comment [TS3]: This sentence is based in part on language in the University of Maryland's faculty layoff policy.

Comment [TS4]: The "all feasible alternatives" language is from the American Association of University Professors (AAUP) Recommended Institutional Regulations (RIR) on Academic Freedom and Tenure.

Definitions

Comment [TS5]: The definitions are taken primarily from UW-Madison's draft FPP Chapter 10, with certain of the definitions based on the statutory definitions in s.36.22(1), and on the AAUP RIR.

- A. For the purposes of this policy, “program” shall mean a related cluster of credit-bearing courses that constitute a coherent body of study within a discipline or set of related disciplines. When feasible, the term shall designate a department or similar administrative unit that offers majors and has been officially recognized by the UW institution. Programs cannot be defined ad hoc, at any size, but should be recognized academic units. Programs shall not be defined to single out individual faculty members for layoff. For UW-Extension, the term “program” also shall include the substantial equivalent of an academic department that may or may not provide credit-bearing credentials.
- B. For the purposes of this policy, “program discontinuance” as described in Wis. Stat. ss. 36.21 and 36.22 shall mean formal program elimination or closure.
- C. For the purposes of this policy, “financial emergency” is defined and may be declared as described in s. UWS 5.02 of the Wisconsin Administrative Code.
- D. For the purposes of this policy, “educational considerations” shall not include cyclical or temporary variations in enrollment. Educational considerations must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by a program’s discontinuance.
- E. For the purposes of this policy, “layoff” is the indefinite suspension or involuntary reduction in services and compensation of a faculty member’s employment by the University of Wisconsin System. Wis. Stat. s. 36.22(1)(a). A laid off faculty member retains the rights specified in Wis. Stat. ss. 36.22(11) to 36.22(15).
- F. For the purposes of this policy, “termination” is the permanent elimination of a faculty member’s employment by the University of Wisconsin System. Wis. Stat. s. 36.22(1)(c). A faculty member whose position has been terminated retains the rights specified in Wis. Stat. ss. 36.22(13) and (14).

I. Faculty Layoff for Reasons of Financial Emergency

Comment [TS6]: This section is based on Chapter UWS 5 (faculty layoff for financial emergency), Wisconsin Administrative Code, and related provisions in Wis. Stat. s.36.22.

- A. Notwithstanding RPD 20-23 (Regent Policy Document on Faculty Tenure), a tenured faculty member, or a probationary faculty member prior to the end of his or her appointment, may be laid off in the event of a financial emergency. Layoff for reasons of financial emergency may occur only in accordance with this policy, UWS 5.01 through UWS 5.07 of Chapter UWS 5 of the Wisconsin Administrative Code, and Wis. Stat. s. 36.22. A nonrenewal, regardless of reasons, is not a layoff or termination under this policy.
- B. The faculty of each UW System institution shall designate or create a faculty committee to consult with the chancellor as described in s. UWS 5.04 in the event a declaration of financial emergency is being considered. The faculty committee shall participate in the decision at the institutional level regarding whether to recommend to the Board that a financial emergency be declared. The chancellor shall provide the faculty committee with access to information

and data relevant to the proposed declaration of financial emergency. The chancellor shall consult with and take into serious consideration advice from the faculty committee at least three months before making any recommendation to the Board as described in s. UWS 5.05(1).

- C. It shall be the responsibility of the faculty committee to recommend criteria to be used by the faculty committee and the chancellor to determine program evaluations and priorities as described in s. UWS 5.05(2). It also shall be the responsibility of the faculty committee to recommend to the chancellor and Board of Regents those areas within the overall academic program where layoffs may occur. The faculty committee shall prepare a report regarding the proposed declaration of financial emergency that shall be shared with the faculty senate, the chancellor and the Board, as described in s. UWS 5.05(1m). A decision to declare a financial emergency shall be made in accordance with the best interests of students and the overall ability of the institution to fulfill its mission.
- D. If a chancellor decides to recommend that the Board declare a financial emergency for the chancellor's institution, as described in s. UWS 5.06, the chancellor shall provide his or her recommendation to the System president and the Board, accompanied by a report that shall include data demonstrating the need to declare a financial emergency; identification of the programs in which faculty reductions will be made, with data supporting those choices; any report created by the faculty committee; and a report of any action of the faculty senate on the matter.
- E. The Board may declare a financial emergency for a UW System institution if the Board determines the existence of the conditions set forth in s. UWS 5.02, Wisconsin Administrative Code. It is recognized that the Board should exercise its authority adversely to the faculty recommendation with respect to declaration of financial emergency only for compelling reasons which should be stated in detail.
- F. If the Board declares a financial emergency for the institution, the tenured faculty in the affected departments and programs shall have responsibility for recommending which faculty will be laid off. These recommendations shall follow seniority unless a convincing case is made that program or budget needs dictate other considerations. Additionally, the faculty at each institution shall determine the form of seniority that is to be used as described in Wis. Stat. s. 36.22(3).
- G. A faculty member whose position is recommended for layoff shall receive the notification provided in Wis. Stat. s. 36.22(4) and shall be entitled to the notification period provided in Wis. Stat. s. 36.22(5). The faculty member also shall be entitled to the due process hearing and appeal procedures, reappointment rights, and other rights and protections in Wis. Stat. s. 36.22. As provided in Wis. Stat. s. 36.22(12), institutions shall devote their best efforts to securing alternative appointments for faculty laid off under this section, and also shall provide financial assistance for readaptation of faculty laid off under this section where readaptation is feasible.

Comment [TS7]: This sentence contains language from the AAUP/ACE Statement on Governance.

II. Faculty Layoff for Reasons of Program Discontinuance

- A. The maintenance of tenure-track and tenured faculty, and of essential instructional and supporting services, remains the highest priority of the university. To promote and maintain high-quality programs, the institutions of the UW System may over time develop new programs and discontinue existing programs. Accordingly, and notwithstanding RPD 20-23 (Regent Policy Document on Faculty Tenure), a tenured faculty member, or a probationary faculty member prior to the end of his or her appointment, may be laid off in the event that educational considerations relating to a program require program discontinuance. Educational considerations may include strategic institutional planning considerations such as long-term student and market demand and societal needs. Layoff for reasons of program discontinuance may be made only in accordance with this policy and Wis. Stat. s. 36.22. A nonrenewal, regardless of reasons, is not a layoff or termination under this policy.
- B. Program review and adjustment to the curriculum according to professional and educational standards and accreditation requirements is part of routine institutional planning. Educational considerations are related in part to regular program review, and reflect a long-range judgment that the educational mission of the institution as a whole will be enhanced by program discontinuance. This includes the reallocation of resources to other programs with higher priority based on educational considerations. Such long-range judgments generally will involve the analysis of financial resources and the needs of the program and any related college or school.
- C. A proposal to discontinue a program due to educational considerations that will result in faculty layoff may be initiated by faculty in the program, faculty in the college or school that contains the program, the faculty senate, the dean, the provost, or the chancellor. The proposal shall be in writing and shall contain appropriate information and analysis regarding the educational considerations, including programmatic and financial considerations, supporting the proposed program discontinuance. The proposal shall be provided for review to the faculty in the affected program, to the faculty senate, to the academic staff shared-governance body and other governance bodies at the institution, and to the chancellor. A proposal to discontinue a program that will not result in faculty layoff shall follow the standard program review process in place at each institution, and shall not be required to follow the process outlined in this policy.
- D. The faculty committee designated or created under Section I of this policy shall review and evaluate any proposal to discontinue a program that will lead to faculty layoff. The committee's review and evaluation may be based on the following considerations, where relevant:
1. The centrality of the program to the institution's mission;
 2. The academic strength and quality of the program, and of its faculty in terms of national ratings if applicable;
 3. Whether the work done in the program complements that done in another essential program;

Comment [TS8]: A number of universities have policy or guidance language relating to academic program discontinuance and other changes and associated faculty layoffs, including Rutgers University (Academic Freedom policy recognizes that tenured faculty can be terminated if their academic program is terminated); the University of Colorado at Boulder (policies provide for faculty layoff due to program discontinuance as a result of educational, strategic or financial considerations); the University of Maryland (policies provide for faculty layoffs due to reduction, consolidation, transfer or discontinuance of program); the University of Michigan; the University of Utah; the University of Tennessee and the Tennessee Board of Regents System; Iowa State University; University System of Georgia; and the Nevada System of Higher Education; Additionally, faculty collective bargaining agreements relating to the California State University System, the University of Maine System, the MnSCU System, the Connecticut State University System, and the Pennsylvania State System of Higher Education contain provisions permitting layoffs for bona fide financial or programmatic reasons separate from fiscal emergency.

Comment [TS9]: This sentence is taken from the University of Michigan's policy on discontinuance of academic programs.

Comment [TS10]: This language is taken in part from the U of Colorado at Boulder's layoff policy.

Comment [TS11]: This sentence is based in part on language in the University of Utah faculty layoff policy.

Comment [TS12]: This list of considerations is taken in modified form from the University of Maryland's faculty layoff policy. The University of Michigan and the University of Utah have similar lists.

4. Whether the work done in the program duplicates academic instruction and course content delivered in other programs at the institution;
5. Student and market demand and projected enrollment in the subject matter taught in the program;
6. Current and predicted comparative cost analysis/effectiveness of the program; and
7. Other relevant factors that the committee deems appropriate.

- E. The faculty committee shall request and review comments and recommendations on the proposed program discontinuance from faculty and staff in the program, faculty and staff in the affected college or school, students in the program, and other appropriate institutional bodies or individuals. Based on this review and evaluation, the faculty committee shall prepare a recommendation and report regarding the proposed program discontinuation that shall be shared with the faculty in the program, the faculty senate, the college dean, the provost and the chancellor. The faculty committee shall provide its recommendation and report to the chancellor within three months of the date of the faculty senate's receipt of the program discontinuance proposal.
- F. The chancellor shall consult with the faculty committee and the faculty senate before making any recommendation to the Board. It is recognized that the chancellor should make a recommendation adverse to the faculty recommendation with respect to discontinuance of an academic program only for compelling reasons which should be stated in writing and in detail.
- G. If the chancellor decides to recommend that the Board approve discontinuance of a program that will result in the layoff of faculty, the chancellor shall provide his or her recommendation to the System president and the Board, accompanied by a report that shall include information demonstrating the educational considerations supporting program discontinuance, any recommendation and report created by the faculty committee, and a report of any action of the faculty senate on the matter. The chancellor shall provide any such recommendation to the System president and the Board within four months of the date of the faculty senate's receipt of the program discontinuance proposal.
- H. The System president shall provide the Board with his or her recommendation on the program discontinuance proposal. After reviewing the System president's and the chancellor's recommendations and related report, the Board shall make the final decision on whether the program is to be discontinued, resulting in faculty layoffs. It is recognized that the Board should exercise its authority adversely to the faculty recommendation with respect to program discontinuance only for compelling reasons which should be stated in detail.
- I. If the Board approves discontinuance of a program resulting in faculty layoffs at a UW System institution under this policy, the tenured faculty at that institution shall have responsibility for recommending which faculty will be laid off. These recommendations shall follow seniority unless a clear and convincing case is made that program needs dictate other considerations, as described in Wis. Stat. s. 36.22(3)(a). Additionally, the faculty at each institution shall determine the form of seniority that is to be used, as described in Wis. Stat. s. 36.22(3)(b).

Comment [TS13]: This section contains language from the AAUP/ACE Statement on Governance.

Comment [TS14]: This sentence contains language from the AAUP/ACE Statement on Governance.

J. A faculty member whose position is recommended for layoff shall receive the notification provided in Wis. Stat. s. 36.22(4), and shall be entitled to the notification period provided in Wis. Stat. s. 36.22(5). The faculty member also shall be entitled to the due process hearing and appeal procedures, reappointment rights and other rights and protections in Wis. Stat. s. 36.22. As provided in Wis. Stat. s. 36.22 (12), institutions shall devote their best efforts to securing alternative appointments for faculty laid off under this section, and also shall provide financial assistance for readaptation of faculty laid off under this section where readaptation is feasible.

III. Safeguards for Students

UW System institutions will make every effort to accommodate students adversely affected by discontinuance of an academic program for reasons of financial emergency or because of educational considerations. Discontinuance of a program should be phased in over a reasonable time period to provide students with the opportunity to complete the program or transfer to another program. Completion of a program or transfer to another program cannot be guaranteed by the university.

Comment [TS15]: This section is based in part on the University of Michigan policy.

Oversight, Roles and Responsibilities

UW System institutions shall submit to the Board of Regents for approval any institutional policy developed in accordance with this policy. The chancellor at each institution shall be responsible for implementation of this policy.

Related Regent Policies and Applicable Laws

Chapter 36, Wis. Stats.
Chapters UWS 3 and 5, Wis. Admin. Code
Regent Policy Document 20-23