

UW SYSTEM TENURE POLICY TASK FORCE

**December 23, 2015, 2:00 p.m.
1220 Linden Drive, 1820 Van Hise Hall
Madison, Wisconsin**

- I. Welcome and Logistics – *Regent Chair John Behling*

- II. Review of Discussion/Minutes from Last Meeting – *Regent Chair John Behling*

- III. Discussion of Draft Policies
 1. UW System Policy on Faculty Layoff
 2. UW System on Post Tenure Review

- IV. Meeting Summary

- V. Next Step in Policy Development Process

- VI. Adjourn

**DRAFT/FOR REVIEW BY TENURE POLICY TASK FORCE AT DECEMBER 23
MEETING/DRAFT**

**Regent Policy Document _____ : 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

Tenure is the keystone for academic freedom and excellence, and is awarded for academic and professional merit. Tenure is a means to achieve freedom of teaching and research and of extramural activities, and a sufficient degree of economic security to make the profession attractive to persons of ability. 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 due to a budget or 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]: This sentence is based on AAUP guidance.

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 AAUP 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.

1. 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.
2. For the purposes of this policy, “program discontinuance” as described in Wis. Stat. s.36.21-22 shall mean formal program elimination or closure.
3. For the purposes of this policy, “curtailment” as described in Wis. Stat. s.36.21-22 shall mean a reduction in the size of a program.
4. For the purposes of this policy, “modification or redirection” as described in Wis. Stat. s.36.21-22 shall mean program restructuring.
5. For the purposes of this policy, “financial emergency” is defined and may be declared as described in Chapter UWS 5.02 of the Wisconsin Administrative Code.
6. 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.
7. 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)-36.22(15).
8. 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)-(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.

1. Notwithstanding RPD 20-23 (Regent Policy Document on 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 requiring program discontinuance, curtailment, modification or redirection. 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.

2. The faculty of each UW System institution shall designate or create a faculty committee to consult with the chancellor as described in 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 UWS 5.05(1).

3. 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 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 UWS 5.05(1m). A decision to declare a financial emergency that requires discontinuance, curtailment, modification or redirection of a program shall be made in accordance with the best interests of students and the overall ability of the institution to fulfill its mission.

4. If the chancellor decides to recommend that the Board declare a financial emergency for the chancellor's institution, as described in 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.

5. The Board may declare a financial emergency exists for a UW System institution if the Board determines the existence of the conditions set forth in 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**.

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

6. 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).

7. 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.

II. Faculty Layoff for Reasons of **Program Discontinuance**

1. 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 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 financial or 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.

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.

2. 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.

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.

3. 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 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

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

proposed program discontinuance. The proposal shall be provided for review to the faculty in the affected program, to the faculty senate 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.

4. 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;
- (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.

5. The faculty committee shall request and review comments and recommendations on the proposed program discontinuance from faculty in the program, faculty in the affected college or school, students in the program, the appropriate student government body, 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.

6. The chancellor shall offer to consult with the faculty committee and the faculty senate before making any recommendation to the Board.

7. 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

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.

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.

8. 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.

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

9. 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).

10. 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.

III. Safeguards for Students

UW 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 [TS14]: This section is based in part on the University of Michigan policy.

Oversight

Each institution shall submit to the Board of Regents for approval the institutional policy developed in accordance with this policy.

**DRAFT/FOR REVIEW BY TENURE POLICY TASK FORCE AT DECEMBER 23
MEETING/DRAFT**

**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 passed, 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 any 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

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, 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. Those who must have a role in the review include peer faculty members and the dean of the college or school (as applicable). The relative importance and proportion of these roles in the review will be set by the institution through its normal governance process.
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.

Option 1:

- a. Exceeds expectations. This category is 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.
- b. Meets expectations. This category is awarded to those tenured faculty members whose performance reflects the expected level of accomplishment.

Comment [TS1]: These options are for the Task Force's consideration and further discussion at the next scheduled meeting. It is not intended that the completed policy would contain options.

- c. 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.

Option 2:

- d. Meets expectations. This category is awarded to those tenured faculty members whose performance reflects the expected level of accomplishment.
 - e. 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.
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, 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 a meeting between the reviewing individual or body and the faculty member to discuss the identified deficiencies;
 - c. Provision for a remediation plan to be developed by the faculty member in consultation with the reviewing individual or body to assist the faculty member in addressing those deficiencies identified in the review, and for the remediation plan to be submitted to the dean, and the chancellor (or designee), as applicable, for approval;
 - d. Provision for a performance remediation process that is developmental and provides the faculty member with adequate support from the reviewing individual or body, the dean and other university units to address deficiencies;
 - e. Provision stating that the dean, in consultation with the reviewing individual or body and the faculty member, examine the remediation plan and determine progress at least once each semester, and document progress, or lack thereof, in the faculty member’s personnel file;
 - f. Provision for a mechanism for determining how and when the faculty member will be determined by the dean in consultation with the reviewing individual or body and faculty member to have satisfied the expectations of the remediation plan; however,

all elements of the plan must be satisfied within a reasonable time period commensurate with the identified deficiencies and as determined by the dean, not to exceed eighteen (18) months;

- g. 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.
- h. Provision for a review of the determination of “does not meet expectations” by the dean at the request of the faculty member.
 - 1. A requirement that the faculty member request a review within 14 days of receipt of the determination.
 - 2. Following the request, the dean will conduct the review and make a determination. If the determination overturns the departmental decision, remediation is not necessary and the result will be communicated to the faculty member and the department.
 - 3. If the determination supports the departmental decision, the result is communicated to the faculty member and the department. The faculty member may request a final review by the chancellor (or designee) within 14 days of receipt of the dean’s determination.
 - 4. The chancellor (or designee) shall decide whether performance remediation is warranted. The chancellor (or designee) shall communicate that determination to the faculty member, dean, and the department.
 - 5. In any case where remediation is warranted, it shall be subject to the provisions noted above.
 - 6. The initial review, dean’s recommendation, and chancellor’s (or designee’s) decision are not subject to the institutional grievance process;
- 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 departmental, college or school, or university personnel or bodies, and

Comment [TS2]: The University of Maryland at College Park uses a similar process to that described in this paragraph.

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.

Oversight

Each institution shall submit to the Board of Regents for approval the institutional policy developed in accordance with this policy.

DRAFT