

UNIVERSITY OF WISCONSIN SYSTEM
TENURE POLICY TASK FORCE

1220 Linden Drive, 1820 Van Hise Hall
Madison, Wisconsin
Thursday, September 17, 2015
9:30 a.m.

AGENDA

- I. Welcome and Logistics -- *Regent Chair John Behling*
- II. Review of Discussion/Minutes from Last Meeting – *Regent Chair John Behling*
- III. Topics and Questions to Guide Discussion
 - A. Board policy language that was imported from state statute:
 1. Are any changes necessary as the policies permanently move into Board policy?
 - B. Post-tenure review:
 1. What kind of procedures, timelines and standards should a system-wide policy on post-tenure review include?
 2. What kind of procedures and standards should be in place to determine when a faculty member is eligible for merit pay?
 - C. New statutory language regarding faculty layoff due to budget or program decisions:
 1. What procedures and timelines should be used by a UW System institution as they determine program changes that result in faculty layoffs?
 2. What criteria should be used by a UW institution to determine budget or program changes that result in a faculty layoff?
- IV. Meeting Summary
- V. Goals and Plans for Upcoming Meeting(s)
- VI. Adjourn

**SUMMARY OF UW INSTITUTIONS' POST-TENURE REVIEW POLICIES AND PROCEDURES
as of September 15, 2015**

UW INSTITUTION AND POLICIES REVIEWED	PURPOSE OF POST-TENURE REVIEW	STRUCTURE FOR CONDUCTING POST-TENURE REVIEW	POST-TENURE REVIEW CRITERIA/PROCEDURES	SUMMARY VERIFIED BY INSTITUTION
<p>UW-Eau Claire</p> <p>Post-Tenure Review, http://www.uwec.edu/AcadAff/upload/FASRP.pdf, pages 53 to 57 and pages 64 to 66.</p>	<p>Post-tenure review is one of the five phases of periodic review. The other four phases are Salary Review, Reappointment Review, Tenure Review, and Promotion Review. All five phases consider the same performance criteria which include, but are not limited to, teaching effectiveness; academic advising ability; scholarly activity; and service to the university, the profession, and the public.</p> <p>Information gathered through the various phases of periodic review of tenured faculty is used to ensure continuing growth and development in professional skills; to encourage faculty to explore new ways to promote academic excellence; and to identify areas for improvement and provide solutions for problem areas.</p> <p>Post-tenure review is to be both summative and formative in nature with the express purpose of both evaluating past performance and facilitating improvement in future performance.</p>	<p>Policy directs each department to establish a post-tenure subcommittee constituted by members of the Department Personnel Committee. Members of the subcommittees must hold the same or higher rank as those being reviewed.</p> <p>If there are less than three members in the subcommittee, and unless the Department Evaluation Plan specifies other procedures, the Department Chair in conjunction with the faculty eligible for membership on the subcommittee function as the post-tenure review subcommittee.</p>	<p>Post-tenure review is performed during the fifth year following tenure or promotion, whichever is more recent, and then during every subsequent fifth year.</p> <p>The Post-Tenure Review Subcommittee must give the faculty member at least 20 days advance written notice of the start of the post-tenure review process.</p> <p>For faculty below the rank of Professor, the evaluation must include explicit discussion of the faculty member's progress toward promotion to the next rank. For faculty at the rank of Professor, the evaluation must include explicit discussion of the faculty member's growth and professional development. The written evaluation must not contain any recommendations as to the administrative action to be taken as a result of the review, nor any salary recommendation.</p> <p>The subcommittee must also give a notice to the faculty member when the review has been completed along with a copy of the written report. This notice must indicate that the faculty member has the right to discuss the report with the Department Chair and the right to submit to the Department Chair a written response to the report within 5 days of the notice.</p> <p>After reviewing the submitted materials, the Department Chair may attach an</p>	<p>Awaiting response.</p>

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			additional written response to the subcommittee report and return the evaluation and any responses to the faculty member.	
<p>UW-Green Bay</p> <p>Guidelines for Tenured Faculty Review and Development (in Faculty Handbook), http://www.uwgb.edu/sofas/rules/facultyhandbook.pdf, page 99.</p>	<p>Tenured faculty members undergo performance reviews (conducted every other year) and post-tenure reviews.</p> <p>Post-tenure review may be conducted as part of the merit review process or as a special review and should be a formative process with the goal of faculty development.</p> <p>The review is not a re-tenuring process and does not invoke continuation or loss of tenure as an outcome of the process.</p>	<p>Reviews are conducted by the units, employing procedures to be determined by the unit. The results are shared with the appropriate Dean(s).</p> <p>The review is performed by either the unit executive committee or by a review committee agreed to by the executive committee.</p>	<p>Post-tenure review is based on a professional development proposal which the faculty member has prepared in concert with the unit. In this proposal, the faculty member is asked to set forth his or her professional development, including teaching, scholarship, outreach and service. If the review determines that the faculty is not effectively pursuing the professional development proposal agreed to by the faculty member and the unit, the faculty member and the unit will develop a plan designed to assist the faculty member in doing so.</p> <p>The review is both prospective as well as retrospective with the faculty member encouraged to present his or her plans and priorities for upcoming years as well as accomplishments since the preceding review. In addition to the professional development proposal, documentation for the review includes all materials prepared for merit reviews and promotions since the previous review.</p> <p>Units assess the faculty member's professional development proposal and accomplishments and, if specific needs for improvement are identified, a plan for this purpose is developed jointly by the faculty member and the unit executive committee.</p> <p>The review takes place on a regular schedule as determined by the academic</p>	<p>Awaiting response.</p>

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			unit but within the five-year requirement in Regent policy.	
UW-La Crosse	<p>Departmental by-laws serve as a faculty member's guide regarding specific faculty responsibilities of teaching, scholarship and service, merit evaluation, and faculty personnel review as it relates to retention, promotion, and tenure. The by-laws template outlines the key policies and procedures associated with faculty functions under the guidance of UW System and Wisconsin state statutes and regulations and UWL's Faculty Senate. The by-laws template for UWL provides the following guidance regarding post-tenure review:</p> <p>"Must have a policy regarding a written post-tenure review in line with UW Regent Policy Document 20-9 that indicates 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."</p>			Yes.
<p>UW-La Crosse Biology Department Bylaws, http://www.uwlax.edu/uploadedFiles/Academics/Colleges_Schools/Science_and_Health/Biology%20Bylaws%202014.pdf, Section 6 and Appendix D.</p>	<p>Tenured faculty members undergo annual merit review and post-tenure review.</p> <p>The purpose of post-tenure review is to determine whether performance is satisfactory in each of the areas of faculty responsibility. This review is based on the results of the annual review for the five preceding years.</p>	<p>Post-tenure review is conducted by the Department Chair.</p>	<p>Post-tenure review is conducted at least once every five years, and is based on results of the annual merit review for the five preceding years.</p> <p>For each annual merit review, faculty members receive a composite performance rating of Satisfactory or Unsatisfactory. Faculty members who receive Exceptional (E), Good (G), or Satisfactory (S) performance ratings for all five years receive a composite rating of Satisfactory. Faculty members who received three or more Unsatisfactory composite performance ratings over the five-year review period or two or more Unsatisfactory composite performance ratings in any one category over the five-year review period are considered to have an Unsatisfactory performance rating for the five-year post-tenure review period, pending further review by the Committee-of-the-Whole (COTW).</p> <p>If the COTW determines that a faculty member's performance is Unsatisfactory, the Chair will establish a Faculty Development Plan Committee to develop a</p>	Yes.

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			<p>faculty development plan to remedy areas of concern identified by the COTW. The faculty member is given two annual evaluation periods (two years) to remedy the areas of concern.</p> <p>The Faculty Development Plan Committee meets with the faculty member to discuss progress annually. If the Faculty Development Plan Committee determines after the second annual meeting that areas of concern have not been remedied, results of the post-tenure review and the Faculty Development Plan are forwarded to the Dean for consideration of further action.</p>	
<p>UW-La Crosse Psychology Department Bylaws, http://www.uwlax.edu/uploadedFiles/Academics/Colleges_Schools/CLS/PSY%20Bylaws%2020130315.pdf, Section VI.C, page 22.</p>	<p>Faculty members are reviewed every year for merit. One purpose of the annual review is to determine how merit pay is to be distributed. During post-tenure review, data gathered from annual merit reviews can be used as a continuous quality improvement tool for tenured faculty. One part of the post-tenure review is aimed at detecting areas of concern.</p>	<p>Annual merit reviews are conducted by the Peer Evaluation and Merit Review (PEM) Committee. PEM Committee members are comprised of three psychology faculty members, one of whom is the Department Chair, and a fourth person chosen by the faculty candidate. Three committee members must be tenured.</p> <p>Post-tenure review is conducted by the Department Chair.</p>	<p>Faculty members are reviewed every year for merit. Post-tenure review is conducted once every five years.</p> <p>At post-tenure review, the Chair reviews the faculty member's past five years of merit review and writes a letter providing general trends in the areas of teaching, scholarship, and service. Copies of the letter are provided to the faculty member and the Dean's office.</p> <p>An area – teaching, scholarship, and service – is deemed an area of concern if the faculty member is not performing the expected activities at a satisfactory level.</p>	<p>Yes.</p>

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<p>UW-Madison</p> <p>Faculty Legislation II-106 Policy on Review of Tenured Faculty, https://www.secfac.wisc.edu/743.htm#106</p>	<p>The purpose of the review of tenured faculty is to assess periodically each faculty member's activities and performance, in accordance with the mission of the department, college, and institution in such a way as to determine that the faculty member is meeting his or her obligations to the university and the State of Wisconsin. The review is to be appropriately linked to the merit process.</p>	<p>Policy directs each department's executive committee to establish written criteria and procedures.</p> <p>Review is to be carried out by one or more tenured faculty members. No individual shall serve as a reviewer if the faculty member under review formally objects to his or her service in that capacity.</p> <p>In the case of a faculty member with appointments in more than one department, the department chairs of the affected departments determine procedures for the conduct of the review.</p>	<p>Post-tenure review is to occur at least once every five years. Post-tenure review may be incorporated into the annual merit review process or combined with promotion or other reviews. In the case of combined reviews, the department may require supplementary documentation from the faculty member.</p> <p>Review procedures must include:</p> <ol style="list-style-type: none"> 1. A review of qualitative and quantitative evidence of the faculty member's performance over at least the previous five-year period. The evidence should include a current curriculum vitae, annual activity reports, teaching evaluations or summaries of evaluations, and other materials providing evidence of the faculty member's accomplishments and contributions that the department or the faculty member feel are relevant to the review. 2. Discussion with the faculty member about his or her contributions to the profession, the department and the University if either the reviewers or the faculty member so desire. 3. Appropriate consideration of a faculty member's contributions outside the department to interdisciplinary and other programs, governance, and administration. <p>The reviewers can consider other steps that would be useful in making a fair and informed judgment, including but not limited to consultation with individuals</p>	<p>Yes.</p>

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			who have knowledge of the faculty member's work.	
<p>UW-Milwaukee</p> <p>Tenured Faculty Review (in Policies and Procedures), http://www4.uwm.edu/secu/policies/faculty/upload/May2015P-P.pdf, Section 4.05 (2) (b).</p> <p>S-52.75, http://www4.uwm.edu/secu/docs/other/S52.75.htm,</p>	<p>Tenured faculty reviews are intended as collegial assessments and provide an opportunity for faculty to review progress made on past performance plans and to propose future plans.</p>	<p>Post-tenure reviews are conducted on a three to five year prospective timeline by the Executive Committee of the tenure home department.</p>	<p>Review of tenured faculty must use the criteria and procedures outlined in S-52.75.</p> <p>Procedures in S-52.75 call for all tenured faculty to develop a written 3 to 5 year Faculty Development Plan. The plan must include planned activities in teaching, research and service/outreach. The Department Executive Committee will then review the Faculty Development Plan with each faculty member for the (1) assessment of the individual's progress and (2) modification of individual plans as needed.</p> <p>The Executive Committee can use the Faculty Development Plans in their reviews for compensation.</p>	<p>Yes.</p>
<p>UW-Oshkosh</p> <p>FAC 6.3, Post-Tenure Review (in Faculty Handbook), http://www.uwosh.edu/provost/Main%20Highlight/handbooks/online-faculty-staff-handbook/faculty/faculty-chapter-six/faculty-performance-review/fac-6-3-post-tenure-review</p>	<p>The purpose of tenured faculty review is to appraise performance.</p>	<p>Policy requires each college to identify a process for post-tenure review.</p>	<p>All tenured faculty members who have not been promoted in rank in the past four years must participate in a performance appraisal.</p> <p>Policy requires each college's process for post-tenure review to include:</p> <p>(1) General guidelines for the collection and assessment of evidence of quality teaching, professional and scholarly growth, and service. These guidelines must be consistent with the collection and assessment of such evidence in the merit process and in the promotion process.</p> <p>(2) A process for providing written feedback to faculty members being evaluated and for face-to-face feedback</p>	<p>Awaiting response.</p>

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			<p>with the unit head and/or personnel committee representative.</p> <p>(3) A process for identifying those faculty members whose performance does not meet professional expectations in the areas of teaching, professional and scholarly growth, and service. For faculty who are not meeting expectations, a faculty development plan should be developed. The faculty development plan should outline major goals to be attained in order to eliminate the deficiencies.</p> <p>(4) Provision for using the results of the post tenure review in determining merit pay adjustments without conducting a separate merit review.</p> <p>(5) Provision for filing summaries of evaluations with the Provost and Vice Chancellor's Office.</p> <p>Tenured faculty members with identified deficiencies could be required to develop a faculty development plan.</p>	
<p>UW-Parkside</p> <p>6.10 Post-Tenure Reviews (in Faculty Handbook), http://www.uwp.edu/explore/offices/governance/uwpfchapter6.cfm#</p>	<p>Post-tenure review is not a re-tenuring process, but is a modification of the periodic review process with a component of faculty development. It is linked to the department program review cycle.</p>	<p>Faculty prepares the dossier and submits it to the department executive committee (or designee) to review. The dossier and the evaluations of the department executive committee are forwarded to the Dean for review.</p>	<p>The policy calls for post-tenure reviews to be conducted once every six years with an "update" half-way through the review period.</p> <p>The faculty prepares the post-tenure review dossier, which should include:</p> <p>(a) Current curriculum vitae.</p> <p>(b) Annual summaries for the period since the last review or since tenure. Evidence of accomplishments in teaching, research or creative activity, and service, as appropriate.</p> <p>(c) Previous post-tenure review evaluation (where applicable).</p>	<p>Yes.</p>

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			<p>(d) Faculty member's statement of accomplishments during the review period.</p> <p>(e) Faculty member's development plan of activities for the upcoming period. The plan should identify personal goals in the context of departmental/institutional missions and goals.</p> <p>Rating for post-tenure reviews falls into three categories:</p> <p>(a) Approval (meets expectations or exceeds expectations).</p> <p>(b) Qualified approval (below expectations).</p> <p>(c) Approval withheld (below expectations, proposal for corrective action required).</p> <p>Proposal for corrective action is required for faculty members whose ratings fall in the Approval Withheld category.</p>	
<p>UW-Platteville</p> <p>Section 8 – Post Tenure Review (in University Rank, Salary, and Tenure (URST) Procedures, 2013-14), http://www.uwplatt.edu/files/bilsa/crst_guidelines.pdf</p>	<p>Post-tenure review may be conducted simultaneously with the faculty annual merit review. It is considered a supplement to the normal merit review. The purpose of the review is to encourage and support the growth and development of faculty that positively contributes to the mission and goals of the department, the college and the university. Post-tenure review is not a re-tenuring process.</p>	<p>Post-tenure review is conducted by the Department Chair and the Dean.</p>	<p>Post-tenure review is conducted on a five-year cycle.</p> <p>The faculty member completes Form 2, which includes a personal plan for continuing growth and development, and submits it to the Department Chair. The faculty member then meets with the Department Chair to address development needs of the faculty member</p> <p>Results of the post-tenure reviews are then transmitted by the Department Chair to the college Dean.</p> <p>If the faculty member's review reveals a need for significant improvement, the</p>	<p>Awaiting response.</p>

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			<p>Department Chair will report such to the college Dean. The Dean and the Chair will assist the faculty to find resources to fund appropriate future development plans of the faculty member.</p>	
<p>UW-River Falls</p> <p>4.5.1 Post Tenure Review of Professional Activities of Faculty (in Faculty and Academic Staff Handbook, Chapter IV), https://www.uwrf.edu/FacultySenate/Handbook/Chapter4/Handbook4s5.cfm#CP_JUMP_153582</p>	<p>The purpose of post-tenure review is to inform each faculty member of his or her performance. The review may be conducted simultaneously with merit review or with promotion review.</p>	<p>The academic units determine whether a committee of its tenured faculty or the Chair will conduct the review.</p>	<p>Post-tenure review is conducted once every five years.</p> <p>Criteria for post-tenure are the same criteria used for renewal and nonrenewal of probationary appointments, which include effectiveness in teaching; professional involvement and accomplishments in research/scholarly/creative activity; and contributions at the department, college, university, community, state, national, or international level.</p> <p>The reviewer must review the teaching portfolio, the personal reflective statement and other pertinent data submitted by the faculty member, and discuss with the faculty member under review his or her performance in continuing to meet the review criteria.</p> <p>If the faculty member's review reveals a need for significant improvement in performance, the chair will report such to the academic Dean. The Dean and the Chair, in consultation with the faculty member, will recommend a retraining or redevelopment program to the Provost and Vice Chancellor for Academic Affairs, who shall assist the Dean to find resources to fund such a program. This program may include, but is not limited to, additional coursework, referral to the</p>	<p>Awaiting response.</p>

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			<p>Employee Assistance Program, participation in professional meetings in the discipline, and/or appointment of a peer mentor.</p> <p>The faculty member may challenge the summary report before the reviewer(s) and/or before the tenured faculty of his or her department. Subsequently, the faculty member may take the matter to the University Faculty Hearing, Grievance, and Appeals Committee.</p>	
<p>UW-Stevens Point</p> <p>Procedures for Post-Tenure Review and Development (in Handbook, Chapter 4B, Section 3), http://www.uwsp.edu/acadaff/Handbook/CH4B%2014-15.pdf, page 20</p>	<p>Tenured faculty members are evaluated for the purpose of general review, development, recognition and merit.</p> <p>A faculty member seeking promotion in rank may use review and evaluation for promotion in place of post-tenure review if the promotion is sought in the same year or sooner than the faculty member's scheduled post-tenure review.</p> <p>The outcome of the evaluation may be used as one basis for determining institutional support from the department, college, and division for professional development proposals submitted by individual faculty. The support may be used to correct deficiencies or advance goals. At the discretion of the reviewed faculty member, the review file may serve as the merit file for the annual merit review.</p>	<p>Policy requires each department to establish procedures for post-tenure review. Review is conducted by a significant number of the faculty member's tenured colleagues.</p>	<p>Policy directs each department to:</p> <ul style="list-style-type: none"> • Evaluate tenured faculty members at least once every 5 years. • Include evaluating how past individual-based and department-based performance objectives have been met and to set such objectives for the next evaluation period. • Address each of the three criteria -- teaching ability, scholarship, and general educational service -- and any individually-based objectives. • Include consideration of activities done in support of undergraduate education. • Include, if applicable to the individual, consideration of activities done in support of graduate education. <p>Where suggestions for improvement are indicated, a plan for responding to those suggestions is established for the faculty member under review. If the faculty member's performance does not show satisfactory improvement with the time</p>	<p>Yes.</p>

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			frame specified in the plan, appropriate action will be taken.	
<p>UW-Stout</p> <p>Unclassified Handbook, http://www.uwstout.edu/hr/upload/Unclassified-Handbook-Master.pdf.</p> <p>Post-tenure review is addressed in Chapter IIIB, Personnel Rules for Faculty, starting on page 113.</p>	<p>Post-tenure review is a component of the performance evaluation of faculty members. The basis for performance evaluation is the “definition of meritorious performance” in regards to (1) the degree of accomplishment of the faculty member’s individual performance objectives and (2) overall performance in relationship to professional expectations as listed in the faculty member’s job description.</p>	<p>Each faculty member’s immediate supervisor is responsible for reviewing the faculty member’s performance objectives.</p> <p>It is expected that there will be an evaluation of each tenured faculty member every five years.</p>	<p>Performance objectives for tenured faculty are to give appropriate weight to the importance of teaching within the tripartite faculty members’ responsibilities of teaching, research, and service.</p> <p>The faculty member’s immediate supervisor is responsible for assigning the faculty member one of the following performance ratings:</p> <p>a. Meritorious Performance (above): Performance is judged to be above expectations acceptable to the position.</p> <p>b. Adequate Performance (within): Performance is judged to be within expectations acceptable for this position.</p> <p>c. Inadequate Performance (below): Performance is judged to be below expectations acceptable for this position.</p> <p>If the faculty member under review receives a rating of Inadequate Performance, the immediate supervisor will review the performance objectives with the faculty member. The immediate supervisor and the faculty member will hold at least one interim meeting to discuss progress and to possibly revise the objectives.</p>	<p>Yes.</p>
<p>UW-Superior</p> <p>7.4.6 Post Tenure Review (in Unclassified Staff Handbook, Chapter 7, Personnel Policies), https://www.uwsuper.edu/hr/u</p>	<p>Tenured faculty members undergo annual performance review and post-tenure review.</p> <p>Results of the annual review are used to determine salary increase,</p>	<p>The Department, in consultation with the Dean of Faculties, determines the procedures and timetable for the review.</p>	<p>Review is conducted once every five years.</p> <p>Each reviewee presents a thorough summary and evaluation of his/her work across the previous five years in teaching/advisement, scholarly activities,</p>	<p>Yes.</p>

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<p>nclassified-staff/handbook/upload/Chapter-7-Personnel-Policies.pdf</p> <p>Post-Tenure Review and Development Procedures, https://www.uwsuper.edu/provost/resources/faculty/upload/PostTenureReviewProcess.pdf</p>	<p>and to provide information for retention, promotion, and post-tenure review decisions.</p> <p>The post-tenure review is a goal-setting and development process. It is not a salary review or performance evaluation.</p>		<p>and service. The Departmental Personnel Committee will come to consensus about the materials presented and hold a formative discussion with the reviewee about accomplishments, deficiencies and future goals.</p> <p>If significant deficiencies are identified in the review, a specific timeline and plan for remediation will be outlined.</p>	
<p>UW-Whitewater</p> <p>Post-Tenure Review, http://www.uww.edu/policies/post-tenure-review</p>	<p>The purpose of Post-Tenure Review (Tenured Faculty Review and Development) is to assure that the talents of each faculty member are being utilized in ways that best serve the interests of the students, the institution, the academic discipline and the individual.</p>	<p>Post-tenure review is conducted by tenured faculty members in each unit. Reports are forwarded to the Dean and Provost for review.</p>	<p>Post-tenure review occurs once every four years and is scheduled to coincide with the end of the merit period. Data gathered for use in merit reviews can be used in post-tenure review.</p> <p>The units are to assess the faculty member's professional development proposal and accomplishments. If specific needs for improvement are identified, a plan is developed jointly by the faculty member and the unit.</p>	<p>Yes.</p>
<p>UW Colleges</p> <p>Faculty Personnel Policy #506, Tenured Faculty Review and Development, http://uwc.edu/sites/uwc.edu/files/imce/uploads/employees/senate/policies/fpp506_tenured_faculty_review_and_development_2014-01-22.pdf</p>	<p>Post tenure review and development is not a re-tenuring process but rather a review of performance, and provides the opportunity to plan for developmental activities and identify strategies by which these activities may be implemented.</p>	<p>Post-tenure review conference involves the faculty member, the campus Dean, and the Department Chair.</p>	<p>Tenured faculty members are reviewed during the academic year following every five academic years of service. The review process is based on evidence of sustained performance consistent with the criteria in FPP #501, which includes teaching, professional development, and service.</p> <p>Where review reveals deficiencies, the plan for development is to focus on remedying the problem. If the deficiency is so serious that it cannot be addressed within the review and development program, the procedures of FPP #508, Ineffective or Inactive Performance, are</p>	<p>Awaiting response.</p>

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			<p>utilized.</p> <p>Under FPP #508, if the Dean and/or the Chair conclude that remedial efforts to resolve problems are not successful, the Dean and/or Chair, in consultation with their appropriate faculty committees, can submit the matter to the Chancellor by either (1) filing a formal complaint recommending specific course of action, or (2) requesting an information investigation under the provisions of UWS 4.01 (Dismissal for Cause).</p>	
<p>UW Extension</p> <p>Unclassified Personnel Guidelines #12, University of Wisconsin-Extension Tenured Faculty Review and Development Policy, http://www.uwex.edu/human-resources/policies/UW-Extension-UPG12.pdf</p>	<p>The purposes of the Tenured Faculty Review and Development Policy are:</p> <ul style="list-style-type: none"> • to recognize and foster the scholarly work of its faculty; • to assure that faculty members commit their talents to best serve the interests of students, colleagues, clients, the institution, the academic discipline, and their own intellectual growth; • to assist tenured faculty in their continuing professional development; and • to provide guidance and support for addressing any deficiencies identified in the current review. <p>The goals of the Tenured Faculty Review and Development process are to:</p> <ul style="list-style-type: none"> • ensure continuing scholarly growth and development of 	<p>Policy directs each academic department to develop and implement a tenured faculty review and development policy. Departmental policies must be approved by the Faculty Senate, and must include these elements:</p> <ul style="list-style-type: none"> • a concise report, reflective of accomplishments, impacts, challenges, and future directions, written by the faculty member; • input from sources external to the department but within UW-Extension, and external to UW-Extension (students, colleagues, clients, partner agencies, etc.); • review and assessment by a departmental review committee, consistent with department guidelines; • a meeting of the departmental review committee and the faculty member to review progress, accomplishments, and proposed scholarly growth and professional 	<p>Review is conducted once every five years and covers performance for the previous five years. A faculty member may request a new review after two years. Criteria for evaluation include:</p> <ul style="list-style-type: none"> • evidence of continuing scholarship in research, integration, outreach/engagement, and teaching; and • continuing professional development as demonstrated by: personal intellectual growth – acquisition of new job-related skills, ideas, and experiences; contributions to the profession; contributions to the university – including faculty governance; program development and implementation; and administration/leadership of educational and/or research programs. <p>For a faculty member whose review reveals significant developmental needs, a remediation review team is appointed to work with the faculty member to develop a mutually-agreed-upon action plan. At the conclusion of the 12-month-long</p>	<p>Yes.</p>

UW INSTITUTION AND POLICIES REVIEWED	PURPOSE OF POST-TENURE REVIEW	STRUCTURE FOR CONDUCTING POST-TENURE REVIEW	POST-TENURE REVIEW CRITERIA/PROCEDURES	SUMMARY VERIFIED BY INSTITUTION
	<p>faculty professional skills;</p> <ul style="list-style-type: none"> • encourage faculty exploration of new ways to promote academic excellence; • identify areas for improvement; and • provide support for that improvement. <p>The Tenured Faculty Review and Development process is linked with the merit process.</p>	<p>development activities; and</p> <ul style="list-style-type: none"> • written feedback, in the form of a summary report prepared by the departmental review committee that includes a mutually agreed-upon plan for scholarly growth and professional development. 	<p>remediation period, the remediation review team prepares a report on the outcomes of the remediation effort.</p> <p>For a faculty member who fails to meet the requirement of the remediation action plan, the institution may proceed with discipline or, in extreme instances where the facts warrant it, dismissal for cause.</p>	

Office of the Board of Regents, 9/15/2015



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

FROM: Tom Stafford *TS*
General Counsel

Anne E. Bilder *AB*
Senior System Legal Counsel

DATE: September 9, 2015

RE: Judicial Decisions on College and University Layoffs

At the request of members of the Tenure Task Force, you have asked our office to provide a brief summary concerning judicial decisions relating to layoffs of college and university faculty members. Relative to the number of cases involving terminations and nonrenewals, there are very few judicial decisions involving faculty layoffs¹. The dearth of cases likely reflects the fact that very few faculty layoffs occur, and even fewer such layoffs are challenged in court.

Two of these decisions involve UW System institutions. The first, *Johnson v. Board of Regents of the University of Wisconsin System* (1974),² involved decisions by the Board of Regents to eliminate a number of tenured faculty positions on the campuses in light of a severe budget reduction. At the time there was no statutory provision governing layoffs, nor were there any procedures for managing such layoffs. The Wisconsin District Court examined the issues of whether the Board had the authority to lay off tenured faculty, whether the tenured faculty members had a "property interest" in their employment, and if so, what procedures were due to them prior to layoff. Broadly speaking, to have a "property interest" in one's employment means that one has a right in that employment, such that it cannot be taken away without "due process." Such rights are protected by the U.S. Constitution.

The Court found that the tenured faculty members did have a sufficient property interest in their continued employment that gave rise to minimal due process prior to their separation from the University. This property interest stemmed from a statute that granted such faculty members a right to continue in their positions permanently "during efficiency and good behavior . . . [and their employment could] not be terminated involuntarily, except for cause upon written charges." Thus, the Court concluded that the faculty members were entitled to some process

¹ Note that not all cases involving faculty layoffs are referenced here; instead only a sampling is provided. Moreover, only the two Wisconsin cases cited would be legally binding on the University.

² For ease of readability, the precise citations to the cases have been omitted. The appendix, however, provides the full citations for the cases; should you require the pinpoint citation, please let us know.

protections prior to being laid off. In determining whether the process which the faculty members was afforded by the Board was appropriate, the Court noted the more “impersonal” nature of a layoff for budgetary reasons, as compared to termination for misconduct, and ultimately concluded that a tenured faculty member in a public institution is protected only from termination or layoff “for a constitutionally impermissible reason (such as earlier exercise of First Amendment freedom of expression, or race or religion,) and from termination or lay-off which is wholly unreasonable.” The protection thus afforded is “a fair opportunity to claim this ‘substantive’ protection.” In applying this reasoning to the case at hand, the Court found the process used by the University—giving each faculty member about one-year’s notice of the lack of funding necessitating the layoff, a reconsideration process offering written reasons and the ability to appear before a faculty committee, and a final decision by the chancellor—was constitutionally adequate. As the Court stated:

[T]hese minimal procedures include: furnishing each plaintiff with a reasonably adequate written statement of the basis for the initial decision to lay-off, furnishing each plaintiff with a reasonably adequate description of the manner in which the initial decision had been arrived at; making a reasonably adequate disclosure to each plaintiff of the information and data upon which the decision-makers had relied; and providing each plaintiff the opportunity to respond.

Doing so, according to the Court, would permit the faculty member to show that the true reason for his or her layoff was a constitutionally impermissible reason, or that the ultimate decision was wholly arbitrary or unreasonable. The Court further characterized this as a “non-adversary” proceeding.” In concluding, the Court also upheld the authority of the chancellors to make the layoff decisions.

Graney v. Board of Regents of the University of Wisconsin System (1979) was an extension of the *Johnson* case in that a number of the tenured faculty members laid off as a result of the financial emergency described in the *Johnson* case brought suit against the Board on a number of legal theories. The plaintiffs were ultimately unsuccessful, but the decision is relevant for several reasons. First, the Court noted that while:

[t]he Board of Regent’s authority to terminate employees for reasons of financial exigency is not expressly granted by the statutes³, [] this authority is implied under the general powers of the board for state universities governed by ch. 37, Stats. (1971,) which provide that, “The board of regents shall possess all other powers necessary or convenient to accomplish the objects and perform the duties prescribed by law.”

The Court described how the intrinsic power of the Board to terminate or layoff faculty members was balanced by the protections inherent in tenure which, in the words of the Court, is “concern[ed] [] with arbitrary or retaliatory dismissals based on an administrator’s or a trustee’s distaste for the content of a professor’s teaching or research, or even for positions taken completely outside the campus setting.” Like the *Johnson* Court, the *Graney* Court cited other

³ This case related to actions taken before the passage of § 36.21, Wis. Stats., which provides for termination of faculty appointments due to financial emergency.

cases highlighting the “impersonal” nature of layoffs or dismissals for financial exigency and thus do not “threaten the values” that are protected by tenure.

These and the other decisions reflect several important themes which might be of interest to the Tenure Task Force as it develops policy governing the circumstances under which the Board may be required to lay off faculty members in the UW System. Some of these themes are as follows:

- The UW System Board of Regents and other like institutions have the inherent authority to layoff faculty members, including tenured faculty members, particularly in cases of financial exigency (absent law or a collective bargaining agreement to the contrary). (*Johnson, Graney, The Board of Community College Trustees for Baltimore County v. Adams, Texas Faculty Association v. University of Texas at Dallas*)
- Tenured faculty members in public institutions have a “property interest” in their continued employment which can be abridged only after “due process” is afforded the affected individual. (*Johnson, Graney, Refai v. Central Washington University, Adams, Christensen v. Washington State University, Milbouer v. Keppler*)
- The notion of “due process” is defined by the nature of the deprivation; layoffs for financial exigency or due to the elimination of programs do not require an adversary process. (*Johnson, Graney, Texas Faculty Association, Jones III v. Board of Supervisors of the University of Louisiana System*) Courts focus on the basic requirements of notice and an opportunity to be heard. (*Texas Faculty Association*)
- The measure against which the decision to lay off a faculty member is made whether it is arbitrary, capricious, without rational basis, retaliatory, or based on constitutionally protected rights or characteristics. (*Johnson, Graney, Adams, Milbouer, Pace v. Hymas*); another formulation is that (1) the instructor was not terminated for constitutionally impermissible reasons, (2) the administrator’s actions were taken in good faith, and (3) objective criteria were employed and fairly applied in determining whom, from among the faculty at large, to terminate. (*Texas Faculty Association*;) “As long as the process of selecting the person(s) to be terminated complies with any institutional requirements and is otherwise fair and reasonable, such terminations are matters of policy and generally not the business of the judiciary.” (*Adams*.) “When an instructor is discharged from a tenured position because of a financial crisis, the educational institution has the burden of proving both the following: (1) that a genuine financial exigency existed at the institution, and (2) that a uniform set of procedures were used by the institution in determining what faculty members should be discharged. (*Milbouer*)
- Courts are loath to second-guess both the articulated basis for the layoff and the procedures developed by Universities. (*Texas Faculty Association, Refai*;) Many of the procedures developed by the Universities went beyond what was required by due process (*Texas Faculty Association*)

- The University should follow its own rules, but its failure to follow the rules is not always a per se violation of procedural due process—only if it violates minimal due process (*Christensen*)

These themes are offered not to limit the work of the Tenure Task Force, but rather to be instructive as to how courts around the country, that have been faced with this issue, have approached the legal issues. Universities are generally free to make policy decisions in support of their missions and in the best interests of their staff and students as long as it does not conflict with legal requirements.

Please do not hesitate to ask if you have any questions on this matter or are in need further assistance.

Appendix

cc: Ray Cross
Jane Radue
David Ward
Jeff Buhrandt
Carmen Faymonville
Tou Her

Appendix

Board of Community College Trustees for Baltimore County—Essex Community College v. Adams, 117 Md. App. 662 (Ct. Sp. App. 1997)

Christensen v. Terrell, 51 Wash. App. 621 (Ct. App. Wash. 1988)

Graney v. Board of Regents of the University of Wisconsin System, 92 Wis.2d 745 (Ct. App. 1979)

Johnson v. Board of Regents of the University of Wisconsin System, 377 F.Supp. 227 (W.D. Wis. 1974)

Jones III v. Board of Supervisors of the University of Louisiana System, 58 F. Supp.3d 670 (W.D. Louisiana 2014)

Milbouer v. Keppler, 644 F.Supp. 201 (D. Idaho 1986)

Pace v. Hymas, 111 Idaho 581 (S.Ct. Idaho 1986)

Refai v. Central Washington University, 49 Wash. App. 1 (Ct. App. Wash. 1987)

Texas Faculty Association v. University of Texas at Dallas, 946 F.2d 379 (5th Cir. 1991)

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DATE: September 17, 2015

TO: John Behling
Regent Vice President and Chair of the Tenure Policy Task Force

FROM: Tou G. Her
Policy Analyst

RE: Academic Program Discontinued at University of Michigan

At the last Tenure Policy Task Force meeting, members of the task force expressed interest in learning how the University of Michigan's Standard Practice Guide 601.02, *Discontinuance of Academic Programs*, was applied when some programs were discontinued at the University of Michigan. I conducted a search of the Internet and the University of Michigan's Board of Regents meeting minutes and contacted the University of Michigan Provost's office. The university did discontinue some academic programs. Minutes reviewed do reflect faculty involvement in the discontinuation process or decision. Results of my contact and research are summarized below.

Revisions to SPG 601.02

The current SPG 601.02 was issued in October 1979 and updated in March 1993. When comparing the 1993 and 1979 revisions, the policy remains unchanged except for a few minor formatting changes.

I was not able to locate the policy in force prior to 1979. However, the University of Michigan's Board minutes indicate that the 1979 revision contained three significant changes:

1. Any recommendation for the discontinuance of a program submitted to the Vice-President for Academic Affairs and then to the Regents has prior faculty consultation;
2. A program recommended for transfer to another unit has the approval of the governing faculty of the receiving unit; and
3. Section V is deleted. The minutes do not reveal what section V addresses.

Programs Discontinued

Board minutes show that at least seven programs were discontinued since 1979 when the Board adopted the current policy language on program discontinuation.

1. Geography Department

In June 1981, the Board approved the recommendation to discontinue the Geography Department. Minutes indicate that the University of Michigan was under considerable financial constraints and a number of programs were considered for elimination. The minutes do not reveal whether faculty members were actually laid off. However, minutes do show that the University of Michigan consulted with a faculty review committee, explored other options, and made arrangements for students enrolled in the Department to complete their degrees.

2. Physical Therapy Program

In January 1982, the Board approved the recommendation to relocate the Physical Therapy program from the University of Michigan at Ann Arbor to the University of Michigan at Flint. While this was a recommendation for relocation, the resulting action was that the Physical Therapy program was discontinued at the Ann Arbor campus.

Minutes indicate that the recommendation to discontinue the program at the Ann Arbor campus is not due to the lack of need for physical therapists, but rather the Medical School in which the Physical Therapy was located simply lacked “the resources to continue everything it is doing.” Minutes do not reveal whether faculty members were actually laid off. Minutes do show that faculty were involved in the review process; an analysis of the capacity at the Flint campus was conducted; and accommodation was made for students enrolled in the program at Ann Arbor campus to continue their degrees at the Flint campus.

3. Department of Humanities of the College of Engineering

In September 1983, the Board approved the recommendation to discontinue the Department of Humanities of the College of Engineering. The recommendation for discontinuance was based on financial constraints and a “serious redundancy” between programs offered by the Humanities Department of the College of Engineering and programs in the humanities in the College of Literature, Science, and the Arts.

Minutes show that the College of Engineering committed to “work carefully with each faculty member of the department on an individual basis to explore the possibilities of continued roles either with the College or of transfer to another unit of the college or university.” Minutes also indicate consultation with faculty members from both the College of Engineering and the College of Literature, Science, and the Arts and from students before the final recommendation was brought to the Board.

4. Medical Technology Program

In April 1985, the Board approved the recommendation to discontinue the Medical Technology Program. The basis for the recommendation was the belief that the program is not central to the mission of the University, is relatively costly in terms of other educational and programmatic needs, and that enrollment will decline.

Minutes show involvement of a faculty committee and the University's Faculty Senate Advisory Committee on University Affairs in the review proceedings.

5. Certified Registered Nurse Anesthesia Program

In April 1986, the Board approved the recommendation to discontinue the Certified Registered Nurse Anesthesia (CRNA) program. The rationale for the recommendation was that "the trend among similar programs nationally is to move to a master's degree program" and that the CRNA program "was not compatible with the educational and research missions of the Anesthesiology Department of the Medical School because of differences in background, skills levels and training needs between CRNA students and medical students and anesthesiology students."

Minutes do not contain information as to whether faculty members were actually laid off, but faculty review was conducted as required prior to submitting the recommendation for program discontinuation to the Board.

6. Physical Education Major and Minor, and Health Education Minor

In March 2014, the Board approved the recommendation to discontinue the Physical Education major and minor, and Health Education minor in the School of Kinesiology. Minutes do not indicate the rationale for the recommendation, but the executive committee and faculty of the School of Kinesiology approved the program discontinuance.

7. The Masters of Entrepreneurship Program

In December 2014, the Board approved the recommendation to discontinue the Masters of Entrepreneurship Program in the School of Business and the College of Engineering. The faculty in the School of Business and the Curriculum Committee and Executive Committee in the College of Engineering approved the program discontinuance.

Tenured Faculty Layoff

According to the Provost's office staff, they were not aware of program discontinuation within the last ten years that resulted in tenured faculty being laid off.

Please do not hesitate to ask if you have any questions.