




Board of Regents

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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University of Wisconsin System by unanimously adopting a tenure policy replicating the language contained in the now-repealed section on faculty tenure and probationary appointments. The resolution provided that the policy would be effective once the original statutory language was repealed.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

**STATUTORY LANGUAGE ON TENURE AS AFFECTED
BY THE 2015 WISCONSIN ACT 55 (THE STATE BUDGET BILL)**

~~36.13 — Faculty tenure and probationary appointments.~~

~~(1) DEFINITIONS. In this section:~~

~~(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.~~

~~(2) 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 sub. (5) and s. 36.21.~~

~~(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.~~

~~(3) 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.~~

~~(4) 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 sub. (2).~~

~~(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.~~

~~(5) 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. The board and its several faculties shall develop procedures for the notice and hearing which shall be promulgated by rule under ch. 227.~~

~~(6) LIMITATION. Tenure and probationary appointments are in a particular institution. A tenure appointment is limited to the institution in which the appointment is held.~~

~~—History: 1973 c. 335; 1983 a. 189; 1985 a. 332 s. 251 (1); 1987 a. 403 s. 256; 1989 a. 31; 1991 a. 39, 118.~~

~~Cross-reference: See also chs. UWS 3, 4, 5, 6, 7, and 19, Wis. adm. code.~~

~~The due process rights of a tenured professor who was alleged to have resigned were not protected by a hearing to determine eligibility for unemployment compensation. *Patterson v. University Board of Regents*, 119 Wis. 2d 570, 350 N.W.2d 612 (1984).~~

~~The board did not have authority to grant tenure without the affirmative recommendation of the appropriate academic department. *Trojan v. Board of Regents*, 128 Wis. 2d 270, 382 N.W.2d 75 (Ct. App. 1985).~~

~~This section specifically authorizes the board to adopt termination procedures and the board has adopted administrative rules that lay out the process to be applied in faculty dismissal cases. While sub. (5) provides that dismissal decisions are reviewed under ch. 227, other provisions of ch. 227 do not apply to faculty dismissal cases and the administrative rules do. *Marder v. Board of Regents of the University of Wisconsin System*, 2005 WI 159, 286 Wis. 2d 252, 706 N.W.2d 110, 03-2755.~~

~~A nontenured teacher who is not rehired has no constitutional right to a statement of the reason for not renewing his or her contract nor to a hearing on the matter. *Board of Regents v. Roth*, 408 U.S. 564.~~

36.17 Limited appointments. (1) An appointment to a position listed in sub. (2) shall be a limited appointment and the appointment shall be at the pleasure of the board. A faculty member who has been granted tenure or a person holding a tenured or an academic staff appointment under ss. 36.13 and s. 36.15 shall not lose that appointment by accepting a limited appointment.

(2) Limited appointments apply to the following positions: president, provost, vice president, associate vice president, assistant vice president, chancellor, vice chancellor, associate chancellor, assistant chancellor, associate vice chancellor, assistant vice chancellor, college campus dean, secretary of the board, associate secretary of the board, assistant secretary of the board, trust officer and assistant trust officer and such other administrative positions as the board determines at the time of the appointment.

History: 1973 c. 335; 1997 a. 237.

Cross-reference: See also chs. UWS 15 and 19, Wis. adm. code.

36.21 Lapse of appointments Termination due to certain budget or program changes.

Notwithstanding ~~ss. 36.13 (4) and s. 36.15~~, the board may, with appropriate notice, terminate any faculty or academic staff appointment when ~~a financial emergency exists 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.

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 appropriate 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. (a) 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 evidence, and transmit the record and summary along with its recommended findings of law and decision to the board.

(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) (a), the chancellor may appoint a committee of faculty members to provide this function.

**ADOPTED BY THE UW SYSTEM BOARD OF REGENTS
6/5/2015**

Adoption of Regent Policy
Document on Tenure

Resolution I.1.c.

That, upon the recommendation of the Vice President of the University of Wisconsin System Board of Regents and the President of the University of Wisconsin System, the Board affirms its support for the importance of tenure for ensuring academic freedom and approves the attached new Regent Policy Document on tenure, contingent upon and effective upon the date that s. 36.13, Wis. Stats., is repealed. The new Regent Policy Document maintains the provisions currently codified in s. 36.13, Wis. Stats., and shall be construed in accordance with applicable state law. This new Regent Policy Document will sunset on the date that the Board adopts a tenure policy as a result of the work of the Tenure Policy Task Force, which shall not be later than April 11, 2016. The Board shall direct the Tenure Policy Task Force to specifically review provisions affecting layoffs.



Regent Policy Document 20-23

Faculty Tenure

▲ This Regent Policy Document will sunset on the date that the Board adopts a tenure policy as a result of the work of the Tenure Policy Task Force, which shall not be later than April 11, 2016.

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. 36.21, 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

History: Res. 10xxx, adopted 06/05/2015, created Regent Policy Document 20-23.

OFFICE OF THE BOARD OF REGENTS

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Regent Policy Document 20-9

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.

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**UNIVERSITY SYSTEM/INSTITUTION POLICIES AND POLICY LANGUAGE ON
FACULTY LAYOFF OR TERMINATION DUE TO PROGRAM DISCONTINUATION**

SYSTEM/INSTITUTION	POLICY	POLICY EXCERPTS
SYSTEMS/UNIVERSITIES IN MIDWESTERN STATES		
Northern Illinois University Board of Regents	Regulations of the Board of Trustees, Section II – Faculty and Administrative Employees (http://www.niu.edu/board/regs/sectionII.shtml) Termination due to reduction in or elimination of a department is addressed in Subsection G.	1. REDUCTION IN OR ELIMINATION OF A DEPARTMENT OR SIMILAR ACADEMIC UNIT Upon the bona fide reduction in or elimination of a department or similar academic unit and in a condition other than a financial exigency, Northern Illinois University shall give notice to faculty members who are to be displaced. In the case of a tenured faculty member, the university shall give notice at least 12 months before the end of the academic year in which the individual is to be terminated and shall seek to find an assignment for which the individual is, or may become, professionally qualified. In the case of untenured faculty, the university shall be responsible only for providing notice as soon as reasonably possible after the decision has been made to reduce or eliminate the department or similar academic unit.
Southern Illinois University (Carbondale)	Tenure Policies and Procedures (http://policies.siu.edu/personnel_policies/chapter3/ch3-faps/tenure.html) Termination due to program discontinuation is addressed in Section VI.C.	C. Formal Discontinuance of Programs: Termination of tenured appointments may occur because of bona fide formal discontinuance of a program or unit of instruction. The following standards and procedures shall apply: 1. The recommendation to discontinue formally a unit of instruction or program shall be made primarily by a faculty body appropriate to the issue under discussion. Such discussions shall be undertaken only for the purpose of enhancing the educational mission of the university. 2. Before sending termination notices to faculty because of the formal discontinuance of a program or unit of instruction, the institution shall make every effort to place the faculty concerned in other suitable positions. If placement in other positions would be facilitated by a reasonable period of training, financial and other support for such training shall be offered. If no positions are available within the institution, with or without retraining, the faculty appointment then may be terminated and the faculty concerned will be given a year's notice. 3. Neither the merging of two or more basic academic units nor the splitting of existing basic academic units shall be construed as discontinuance of program.
Iowa State University	Tenure and Non-Tenure Appointments (http://opsmanual.uiowa.edu/human-resources/faculty/tenure-and-non-tenure-	(d) Programmatic change or discontinuance for academic reasons (when approved by the President of the University and the Board of Regents) which cannot reasonably be accomplished without terminating the tenure of faculty in the particular program. No faculty

SYSTEM/INSTITUTION	POLICY	POLICY EXCERPTS
	<p>appointments)</p> <p>Faculty termination due to program discontinuation is addressed in 10.1. c (2) (d).</p> <p>Faculty Handbook http://www.provost.iastate.edu/sites/default/files/uploads/fh/Faculty%20Handbook%20-%20August%202014%20final.pdf)</p> <p>Termination due to elimination of programs is addressed in Section 3.4.2.2.</p>	<p>member may be terminated because of programmatic change or discontinuance unless, following the good faith efforts of the University and the faculty member, the faculty member cannot be transferred to another college or department where the professional services of the faculty member can be used effectively.</p> <p><u>[Faculty Handbook]</u></p> <p>3.4.2.2 Termination of Appointment Due to Elimination of Academic Programs The rationale for the elimination of an academic program must be based primarily on academic or educational reasons (e.g., long-term decline in number of majors or graduates, loss of accreditation, centrality to mission of university) as determined primarily by the faculty or an appropriate committee thereof (see FH Section 10.8). Alternatives to eliminating academic programs should first be considered. These include (1) merging similar programs, (2) refocusing an existing program, and (3) reducing the size of the program.</p>
Kansas State University	<p>Discontinuance of Academic Programs or Other Units with Tenured Personnel (http://www.k-state.edu/provost/universityhb/fhxk.html)</p>	<p>I. Considerations and Criteria in Selecting Programs for Discontinuance</p> <p>1. Relationship of discontinuance decisions to educational goals of university</p> <p>Kansas State University, as an institution with important missions in instruction, research, extension, and public service, sponsors a wide range of programs appropriate to the varied nature of its commitments. Just as programs are created from time to time in response to recognized needs, it sometimes becomes necessary to terminate programs. This may result from the reformulation of established educational objectives, modification of existing objectives, decline in quality of a given program without reasonable likelihood of restoration, reprioritization in view of long-range projections of demand or resource availability, or other reasons. In any of these events the integrity of the university will best be fostered through a prescribed program discontinuance policy based on a thoughtful and orderly assessment of performance capabilities coincident with our stated goals. Criteria used must reflect long-range judgments that the teaching, research, extension, and public service missions of the university as a whole will be significantly enhanced by the discontinuance. Program discontinuance should then reflect a methodical appraisal of long-term goals and resources required to attain them and should not be a response to cyclical or temporary variations in enrollments or finances. It is necessary to the maintenance of the academic quality of the university that proposed changes be evaluated in terms of their significance or the integrity of the academic commitments of the university as well as their consequences for faculty, students, and the public which the university serves.</p>

SYSTEM/INSTITUTION	POLICY	POLICY EXCERPTS
University of Michigan	Standard Practice Guide Policies 601.02 – Discontinuance of Academic Programs (http://spg.umich.edu/policy/601.02)	<p>Discontinuance of Academic Programs</p> <p>The continuing intellectual vigor and distinction of the University will depend in some measure upon our capacity to provide critical and timely reviews of all existing programs and to adapt them in the light of changing intellectual interests, professional developments, social needs, and relative academic strengths and priorities. In a period of financial stringency, such review becomes of particular importance, not least because most new programs will have to be developed by replacement rather than addition, and partly because it becomes difficult to strengthen weak or limited programs by accretional funding.</p> <p>Our success in withstanding the financial adversity of the last few years has been due in part to our willingness to make hard decisions involving differential cuts and allocations, not only among different units of the same School or College, but also among the Schools, Colleges, Centers and Institutes themselves. It is our intention to strive to maintain the distinction of the University by continuing this system of careful scrutiny, judicious planning, and careful budget allocation. Only in this way can we preserve and enhance the quality of our various programs.</p> <p>From time to time during this process of review, evaluation, and planning we shall find that a particular program raises concerns which may appear to justify its reduction or even its elimination. It is for this reason that we now offer the following procedures which will apply in cases of program termination.</p> <p>If it is decided that a program should be considered for elimination, then procedures and policies are needed to answer four different questions:</p> <ul style="list-style-type: none"> • What criteria should be used in making these decisions? • Who should decide which programs to eliminate? • What safeguards should be given to tenured and non-tenured faculty, and other employees, if a program is eliminated? • What safeguards should be given to students in the program?
Minnesota State Colleges and Universities System	<p>Faculty Collective Bargaining Agreement (http://www.hr.mnscu.edu/contract_plans/documents/IFO_CBA_2013_2015_FINAL.pdf?_ga=1.115710593.685614136.1433957543)</p> <p>Retrenchment is addressed in Article 23.</p>	<p>Subd. 1. Defined. A retrenchment is the layoff of tenured or probationary faculty members due to System or university budget reductions, budget reallocations, expenditure freezes, or unfunded increases in operating costs, resulting from action by either the Legislature, the Governor, or MnSCU, or program changes, or enrollment shifts, or legislative mandate.</p> <p>Subd. 2. When retrenchment is first discussed within the Administration, the President shall discuss the topic with the Association at the next meet and confer, in accordance with Article 6. In connection with such duty to meet and confer, the President shall give the reason(s) for considering retrenchment and shall provide information of anticipated attrition, and statistics and financial data having a bearing on any such retrenchment. The President shall consult with the Chancellor before the issuance of layoff notices.</p>

SYSTEM/INSTITUTION	POLICY	POLICY EXCERPTS
LARGE SYSTEMS/UNIVERSITIES		
California State University System	<p>California Faculty Association Collective Bargaining Agreement (http://www.calstate.edu/LaborRel/Contracts_HTML/CFA_CONTRACT/2014-2017/)</p> <p>Layoff is addressed in Article 38.</p>	<p>38.1 The necessity for layoff of faculty unit employees shall be determined by the Employer on the basis of whether there exists, on a particular campus, a lack of work or lack of funds, or a programmatic change. Upon such a determination, the procedures of this Article shall apply.</p> <p>38.2 Considerations in making such a determination shall include but not be limited to student enrollment data and projections, available funds, and scheduled curricular and program changes.</p>
University System of Georgia	<p>Board of Regents Policy Manual -- 8.3 Additional Policies for Faculty (http://www.usg.edu/policymanual/section8/C245/)</p> <p>Faculty termination or layoff due to program modification is addressed in Section 8.3.7.10.</p>	<p>8.3.7.10 Termination/Layoff of Tenured Personnel due to Program Modification</p> <p>As part of its broad constitutional authority to manage the USG, the Board of Regents may exercise its authority to modify programs at various USG institutions. Such modification may result from a significant change of institutional mission or academic priorities that may be influenced by long-term declines in degree program productivity or financial exigency as noted in Section 8.5 of this Policy Manual.</p> <p>These changes may result in permanent termination of academic programs or permanent and significant reduction in size thereof. A program modification of such magnitude that requires the termination of tenured faculty members will be implemented only after completion of a study, with institutional administrative and faculty participation, by the Chancellor's staff. The Chancellor will report the results of that study to the Board along with recommended guidelines under which program modification will be effected. The USG chief academic officer shall issue procedures on program modification (BoR Minutes, 1982-83, p. 254; January 2008).</p>
University of Tennessee System	<p>Policies Governing Academic Freedom, Responsibility, and Tenure http://bot.tennessee.edu/policies-acad.html</p> <p>Program discontinuation is addressed under Tenure in Section H.1.(b).</p>	<p>(b) Extraordinary Circumstances</p> <p>Extraordinary circumstances warranting termination of tenure may involve either financial exigency or academic program discontinuance. In the case of financial exigency, the criteria and procedures outlined in the Board-approved Financial Exigency Plan for each campus shall be followed. In the case of academic program discontinuance, the termination of tenured faculty may take place only after consultation with the faculty through appropriate committees of the department, the college, and the Faculty Senate.</p> <p>If termination of tenured faculty positions becomes necessary because of financial exigency or academic program discontinuance, the campus administration shall attempt to place each displaced tenured faculty member in another suitable position. This does not require that a faculty member be placed in a position for which he or she is not qualified, that a new position be created where no need exists, or that a faculty member (tenured or non-tenured) in another</p>

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		<p>department be terminated in order to provide a vacancy for a displaced tenured faculty member. The position of any tenured faculty member displaced because of financial exigency or academic program discontinuance shall not be filled within three years, unless the displaced faculty member has been offered reinstatement and a reasonable time in which to accept or decline the offer.</p>
<p>University System of Maryland</p>	<p>Regents Bylaws Section II, Policy Number II-8.00 – Policy on Faculty Entrenchment (http://www.usmd.edu/regents/bylaws/SectionII/II800.html)</p> <p>Consolidated USM and UMD Policies and Procedures -- II-8.00(A) – University of Maryland at College Park Procedures for Reduction, Consolidation, Transfer, or Discontinuance of Programs (http://www.president.umd.edu/policies/2014-ii-800a.html)</p>	<p>[Regents Bylaws]</p> <p>49.0 II-8.00 - POLICY ON FACULTY RETRENCHMENT</p> <p>In fulfilling their educational roles and missions, the constituent institutions of the University of Maryland System must make optimal use of their faculty resources. Optimum utilization may call for a reduction in or a reallocation of faculty at various times and for various reasons; e.g. shifting enrollment patterns, changing program directions, restricted funding. If reassignment and/or reallocation is inadequate to effect such changes, an institution may find it necessary to terminate the appointment of tenure-track or tenured faculty members.</p> <p>In order to insure the protection of rights of the faculty members, each institution will develop internal retrenchment procedures consistent with that institution's governance structure and with Sections I.C.9, I.C.10, I.C.13 and I.C.17 of the 1989 University System Policy on Appointment, Rank and Tenure of Faculty and corresponding sections of earlier faculty appointment agreements still in effect. As a part of those procedures, each institution will establish a retrenchment appeals committee. Following review for form and legal sufficiency by the Office of the Attorney General, these procedures must be submitted to the Chancellor for review and approval.</p> <p>[Consolidated USM and UMD Policies and Procedures]</p> <p>II-8.00(A) UNIVERSITY OF MARYLAND AT COLLEGE PARK PROCEDURES FOR REDUCTION, CONSOLIDATION, TRANSFER, OR DISCONTINUANCE OF PROGRAMS</p> <p>The review of a department, program, school, or unit for discontinuance or modification involves primarily academic considerations and is part of the normal administrative cycle. Whenever reasonably possible, the following procedures shall pertain:</p> <p>1. When the President of the University of Maryland at College Park declares that there may be a necessity for the consolidation, transfer, discontinuance, or significant reduction of a department, program, school, or other academic unit or subunit on campus, and that these measures are likely to entail the termination or the transfer of faculty, the matter will be</p>

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		submitted to the Academic Planning Advisory Committee ("APAC"). APAC will review the proposal and its effect on faculty, students, and staff.
The Pennsylvania State System of Higher Education	<p>Faculty Collective Bargaining Agreement (http://www.apscuf.org/documents/members.faculty.contract.0615.pdf)</p> <p>Retrenchment is addressed in Article 29.</p>	<p>A. 1. Notice of the possibility of retrenchment will be sent electronically by the respective PASSHE University to the local APSCUF Chapter President with a copy to the State APSCUF President no later than August 1 for any retrenchment(s) that may occur effective at the end of the subsequent academic year.</p> <p>2. The STATE SYSTEM/UNIVERSITIES shall meet and discuss with APSCUF or its designee regarding changes in finances, program curtailment, elimination of courses, or the elimination of duties or services provided by FACULTY whose basic responsibilities lie outside the classroom, which may lead to retrenchment, and thereby impact wages, hours and terms and conditions of employment, as required by Section 702 of Act 195. In connection with such duty to meet and discuss, accurate information, statistics or financial data related to any such proposed change shall be made available to both State and Local APSCUF as well as to the affected University and the STATE SYSTEM, so that all parties are prepared to engage in a discussion of the relevant issues. This shall not be construed to require the STATE SYSTEM/UNIVERSITIES to compile such material in the form requested which is not already compiled in that form, unless mutually agreeable.</p> <p>B. Retrenchment because of changes in finances, program curtailment, elimination of courses or the elimination of duties or services provided by FACULTY whose basic responsibilities lie outside the classroom shall be applied as hereinafter set forth.</p>
Tennessee Board of Regents	<p>Academic Tenure for Universities: 5:02:03:06 (https://policies.tbr.edu/policies/academic-tenure-universities)</p> <p>Program discontinuation is addressed in Section IV.F.</p>	<p>F. Termination of Tenure for Curricular Reasons</p> <p>1. The employment of a tenured faculty member may be terminated because:</p> <p>a. An academic program is deleted from the curriculum; or</p> <p>b. Because of substantial and continued reduction of student enrollment in a field or discipline.</p>
OTHER SYSTEMS/UNIVERSITIES		
University of Alaska	<p>United Academics Collective Bargaining Agreement (https://www.alaska.edu/labor/unac/UNAC-2014-2016-CBA.pdf)</p> <p>Program discontinuance is addressed in Article</p>	<p>10.2 Discontinuance of Program</p> <p>When a decision is made to discontinue a program, a good faith effort shall be made to place tenured unit members in another program where appropriate. The chancellor or the chancellor's designee shall notify unit members of the decision to terminate employment in writing on the following schedule based upon consecutive years of uninterrupted service within the University of Alaska.</p>

SYSTEM/INSTITUTION	POLICY	POLICY EXCERPTS
	<p>10.2.</p> <p>Reduction in program is addressed in Article 10.3.</p>	<p>10.3 Reduction in Program</p> <p>When a decision is made to reduce a program pursuant to University Regulation 10.06.01, a good faith effort shall be made to retain tenured unit members qualified in the discipline (as defined in Article 9) in preference to non-tenured unit members, to place in another program those tenured unit members qualified in the discipline (as defined in Article 9) in the MAU where appropriate, or to compose a workload for qualified unit members from activities assigned to part-time faculty in the program.</p>
University of Colorado System	<p>Policy 4H: Program Discontinuance (http://www.cu.edu/regents/policy-4h-program-discontinuance)</p>	<p>Introduction</p> <p>In order to promote and maintain high quality academic programs, the university may over time develop new academic degree programs or discontinue existing programs. The Board of Regents may decide to discontinue an academic program for educational, strategic, realignment, resource allocation, budget constraints, or combinations of educational, strategic, and/or financial reasons. In the case of program discontinuance, tenured or tenure track faculty appointments may need to be terminated. A decision to terminate an academic program should be made after consultation with the appropriate faculty groups and in accordance with the policies outlined below.</p> <p>1. Definitions of Program Discontinuance Program discontinuance is the formal termination of a degree program, department or division of instruction, school or college, or other program unit by the Board of Regents for educational reasons, strategic realignment, resource allocation, budget constraints, or combinations of educational strategies and financial reasons. Separate policies apply in cases of program transfer.</p>
Florida A&M University	<p>University Regulations Chapter 10 –Personnel.</p> <p>Layoff is addressed in Section 10.113 (http://www.famu.edu/regulations/Regulation10.113LayoffandRecallofFacultyAdministrativeandProfessionalandUSPSEmployees.pdf)</p>	<p>10.113 -- Layoff and Recall of Faculty, Administrative and Professional and University Support Personnel System Employees.</p> <p>(2) Scope -- The Layoff and Recall of Faculty, Administrative and Professional and University Support Personnel System employees, shall be made in accordance with these provisions and/or applicable collective bargaining agreements as appropriate. Employees who are represented by one of the following collective bargaining agreements with the University Board of Trustees shall be governed by the provisions of their respective agreement: United Faculty of Florida (UFF), American Federation of State, County and Municipal Employees (AFSCME), and Police Benevolent Association (PBA).</p> <p>(3) Conditions of Layoff -- An employee may be laid off at any time as a result of adverse financial circumstances; reallocation of resources; or reorganization of the degree or curriculum offerings or requirements; reorganization of academic or administrative structures,</p>

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		programs, or functions; or curtailment or abolishment of one or more programs or functions; shortage of work; a material change of duties or such reasons as provided in the policy statement herein. The layoff may be at an organizational level of the University such as a division, college, school, department, area, program, or other level of organization of unit as the President or President's designee deems appropriate. In designating the makeup of the layoff unit, the President or President's designee may consider the special qualifications and relevant experiences required for specific positions and exclude such positions from layoff.
University of Florida	<p>Collective Bargaining Agreement http://www.uff-uf.org/wp-content/uploads/2013/09/2013-2016-CBA-formatted.pdf</p> <p>Layoff is addressed in Article 30.</p>	<p>30.1 Layoff</p> <p>(a) When a layoff is to occur as a result of adverse financial circumstances; reallocation of resources; reorganization of degree or curriculum offerings or requirements; reorganization of academic or administrative structures, programs, or functions; or curtailment or abolition of one or more programs or functions; the University shall notify the UFF no less than thirty (30) days prior to taking such action.</p> <p>(b) Layoff Unit. The layoff unit may be at an organizational level of the university, such as a campus, division, college/unit, school, department/unit, area, program, or other level of organization as the University deems appropriate.</p>
University of Hawaii	<p>Collective Bargaining Agreement http://www.uhpa.org/contracts/contract-2009-2015/article-xvi-retrenchment/</p> <p>Retrenchment is addressed in Article XVI.</p>	<p>A. GENERAL</p> <p>Retrenchment refers to the termination of the employment of any Faculty Member during any appointment as a result of lack of work or other legitimate reason in accordance with §89-9(d), H.R.S., such as fiscal exigency; reallocation of resources; reorganization of degree or curriculum requirements; reorganization of academic or administrative structures or programs; curtailment of one (1) or more programs.</p>
University of Maine System	<p>Collective Bargaining Agreement http://www.afum.org/documents/AFUM_K_2013-2015_Complete.pdf</p> <p>Retrenchment is addressed in Article 17.</p>	<p>A. "Retrenchment" shall mean the discontinuance of a unit member with a tenured appointment or continuing contract from a position at any time or a probationary or fixed length appointment before the end of the specified term for bona fide financial or program reasons including temporary or permanent program suspension or elimination.</p>
University of Montana	<p>Collective Bargaining Agreement http://mus.edu/hr/cba/002_CBA.pdf</p> <p>Retrenchment is addressed in Article 18.500.</p> <p>Curtailment is addressed in Article 18.510.</p> <p>Discontinuance is addressed in Article 18.520.</p>	<p>18.500 RETRENCHMENT</p> <p>Retrenchment is the termination of tenured faculty members for financial or programmatic reasons. The necessity for retrenchment shall be determined by the Board of Regents, based upon recommendations by the President of the University, a Review Committee, and the Commissioner of Higher Education in accordance with the procedures detailed in this section.</p> <p>In determining whether retrenchment is necessary and in selecting the areas where the terminations will occur, consideration shall be given to the University's responsibility to offer</p>

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		<p>an appropriate range of courses and programs and to maintain a balanced institutional effort that is responsive to the needs of the students and the state.</p> <p>18.510 CURTAILMENT</p> <p>The necessity for retrenchment may be determined to exist in any one or any combination of the following instances:</p> <p>18.520 DISCONTINUANCE</p> <p>The Board of Regents may initiate discontinuance through the Commissioner of Higher Education consistent with the procedures of this section.</p>
Nevada System of Higher Education	<p>Nevada System of Higher Education Code, Chapter 5 – Personnel Policy for Faculty (http://system.nevada.edu/tasks/sites/Nshe/assets/File/BoardOfRegents/Handbook/T2CH05PersonnelPolicyforFaculty.pdf)</p> <p>Faculty layoff due to curricular reasons is addressed in Section 5.4.7.</p>	<p>5.4.7 Curricular Reasons for Lay Off</p> <p>A faculty member may be laid off because an administrative unit, project, program or curriculum has been discontinued, reduced in size or reorganized for bona fide reasons pertaining to the missions of the System institutions, resulting in the elimination of the faculty member's position. Bona fide curricular reasons may include, but are not limited to, low or declining student demand, changes in the mission of a system institution, or adverse financial conditions forcing a system institution to prioritize its projects, programs and curricula. Such curricular revisions shall come as a consequence of the academic planning process as established in writing, after consultation with the faculty senate regarding each of the matters set forth below in this subsection. The said academic planning process must be approved by the presidents of the member institutions affected, and may be set forth in the institutional bylaws.</p>
Rutgers	<p>Academic Freedom (http://policies.rutgers.edu/sites/policies/files/60.5.1-current.pdf)</p> <p>Program discontinuance is addressed in Section 5.C.</p>	<p>C. Except as set forth in paragraph K below, paragraphs C through J shall apply. In the case of tenure-track faculty, after the expiration of a probationary period, faculty members should have permanent or continuous tenure, and their service should be terminated, except in the case of retirement for age, only (1) for adequate cause as defined in section D (formerly section 3.94); or (2) under extraordinary circumstances because of financial exigencies; or (3) when the teaching, research, extension program, or clinical program in which the faculty member is involved is terminated and said faculty member cannot be properly prepared for alternative duties.</p>
University of Utah	<p>Policy 6-313: Terminations and Program Discontinuance (http://regulations.utah.edu/academics/6-313.php)</p>	<p>Section 5. Procedures Governing Terminations Because of Bona Fide Program Discontinuance for Academic Reasons</p> <p>A. Purpose. This section specifies the procedures to be followed in discontinuing a program for academic reasons. It also specifies the procedures for termination, should that be necessary,</p>

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	Terminations because of bona fide program discontinuance is addressed in Section 5.	of the faculty and staff of a program when the program is discontinued for any reason. B. Definitions. 1.1. Program discontinuance means the termination of a program, center, institute, department, school, or college for reasons based upon educational and academic considerations. For the purpose of this section, educational and academic considerations do not include cyclical or temporary variations in enrollment, but must reflect long-range judgments that the basic educational mission of the university will be strengthened by the discontinuance of the program, center, institute, department, school or college. This does not preclude the reallocation of resources to other academic programs with higher priority based on academic and educational considerations.
University of Vermont	Collective Bargaining Agreement (http://www.uvm.edu/~facsrcs/FT%20Agreement_Master.pdf) Retrenchment is addressed in Article 15.	15.4 Retrenchment Due to Reasons Other than Financial Exigency. a. Faculty members may also be retrenched due to academic reorganization or the elimination of departments or other academic units or other bona fide academic or programmatic reasons that do not follow a declaration of financial exigency. In such cases, the University shall follow all protocol or procedures for program review or alteration or termination of academic units that may be adopted and in effect pursuant to customary governance or otherwise applicable institutional requirements. Prior to terminating faculty for reasons other than financial exigency, the University will consider reasonable alternatives including reductions in FTE (e.g. reduced workload and reduced salary), temporary or permanent reassignments within the institution, and other options that may obviate or lessen the need for faculty terminations.
Central Washington University	Collective Bargaining Agreement (http://www.cwu.edu/hr/sites/cts.cwu.edu.hr/files/documents/CWU-UFC_Agreement_9-1-13-8-31-17.pdf) Discontinuance or reduction of program is addressed in Article 25.2.	[NOTE: This is the agreement with United Faculty.] 25.2 Discontinuance or Reduction of Program 25.2.1 The University will meet with the Union before implementing discontinuance or reduction of an academic program. Upon written request, the Union shall be provided with the available information regarding the potential program reduction or discontinuance, including a list of faculty whose positions are under consideration for elimination or assignment change.

ACADEMIC DUE PROCESS

Recommended Institutional Regulations on Academic Freedom and Tenure

The *Recommended Institutional Regulations on Academic Freedom and Tenure* set forth, in language suitable for use by an institution of higher education, rules that derive from the chief provisions and interpretations of the 1940 *Statement of Principles on Academic Freedom and Tenure* and of the *Statement on Procedural Standards in Faculty Dismissal Proceedings*. The *Recommended Institutional Regulations* were first formulated by Committee A on Academic Freedom and Tenure in 1957. A revised and expanded text, approved by Committee A in 1968, reflected the development of Association standards and procedures. Texts with further revisions were approved by Committee A in 1972, in 1976, in 1982, in 1990, in 1999, in 2005, in 2006, in 2009, and in 2013. Three particularly noteworthy changes since the last edition of *Policy Documents and Reports* are the new definition of “financial exigency” in Regulation 4c, the elimination of a regulation entitled “Termination Because of Physical or Mental Disability,” which is further explained in the report “Accommodating Faculty Members Who Have Disabilities,” and the addition of Regulation 13 entitled “Part-Time Faculty Appointments.”

The current text, adopted by the Council as AAUP policy, is based upon the Association’s continuing experience in evaluating regulations actually in force at particular institutions. It is also based upon further definition of the standards and procedures of the Association over the years. The Association will be glad to assist in interpretation of the regulations or to consult about their incorporation in, or adaptation to, the rules of a particular college or university.

Foreword

These regulations are designed to enable the [named institution] to protect academic freedom and tenure and to ensure academic due process. The principles implicit in these regulations are for the benefit of all who are involved with or are affected by the policies and programs of the institution. A college or university is a marketplace of ideas, and it cannot fulfill its purposes of transmitting, evaluating, and extending knowledge if it requires conformity with any orthodoxy of content and method. In the words of the United States Supreme Court, “Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and

understanding; otherwise our civilization will stagnate and die.”

1. Statement of Terms of Appointment

- a. The terms and conditions of every appointment to the faculty will be stated or confirmed in writing, and a copy of the appointment document will be supplied to the faculty member. Any subsequent extensions or modifications of an appointment, and any special understandings or any notices incumbent upon either party to provide, will be stated or confirmed in writing, and a copy will be given to the faculty member.

- b. With the exception of special appointments clearly limited to a brief association with the institution, and reappointments of retired faculty members on special conditions, all full-time faculty appointments are of two kinds: (1) probationary appointments; (2) appointments with continuous tenure.
- c. Except for faculty members who have tenure status, every person with a teaching or research appointment of any kind will be informed each year in writing of the renewal of the appointment and of all matters relative to eligibility for the acquisition of tenure.

2. Probationary Appointments

- a. Probationary appointments may be for one year, or for other stated periods, subject to renewal. The total period of full-time service prior to the acquisition of continuous tenure will not exceed ____ years,¹ including all previous full-time service with the rank of instructor or higher in other institutions of higher learning, except that the probationary period may extend to as much as four years, even if the total full-time service in the profession thereby exceeds seven years; the terms of such extension will be stated in writing at the time of initial appointment.² Scholarly leave of absence for one year or less will count as part of the probationary period as if it were prior service at another institution, unless the individual and the institution agree in writing to an exception to this provision at the time the leave is granted.
- b. The faculty member will be advised, at the time of initial appointment, of the substantive standards and procedures generally employed in decisions affecting renewal and tenure. Any special standards adopted by the faculty member's department or school will also be transmitted. The faculty member will be advised of the time when decisions affecting renewal or tenure are ordinarily made and will be given the opportunity to submit material believed to be helpful to an adequate consideration of the faculty member's circumstances.
- c. Regardless of the stated term or other provisions of any appointments, written notice that a probationary appointment is not to be renewed will be given to the faculty member in advance of the expiration of the appointment as follows: (1) not later than March 1 of the first academic

year of service if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination; (2) not later than December 15 of the second academic year of service if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination; (3) at least twelve months before the expiration of an appointment after two or more years of service at the institution.

- d. The institution will normally notify faculty members whose appointments are being renewed of the terms and conditions of their renewals by March 15, but in no case will such information be given later than ____.³
- e. When a decision not to renew an appointment has been reached, the faculty member involved will be informed of that decision in writing by the body or individual making the decision; the faculty member will be advised upon request of the reasons which contributed to that decision. The faculty member may request a reconsideration by the body or individual making the decision.
- f. If the faculty member so requests, the reasons given in explanation of the nonrenewal will be confirmed in writing.
- g. Insofar as the faculty member alleges that the decision against renewal was based on inadequate consideration, the committee⁴ that reviews the faculty member's allegation will determine whether the decision was the result of adequate consideration in terms of the relevant standards of the institution. The review committee will not substitute its judgment on the merits for that of the body or individual that made the decision. If the review committee believes that adequate consideration was not given to the faculty member's qualifications, it will recommend reconsideration by the body or individual that made the decision, indicating the respects in which it believes the consideration may have been inadequate. It will provide copies of its findings to the faculty member, the body or individual that made the decision, and the president or other appropriate administrative officer.

3. Termination of Appointment by Faculty Members

Faculty members may terminate their appointments effective at the end of an academic year,

provided that they give notice in writing at the earliest possible opportunity, but not later than May 15, or thirty days after receiving notification of the terms of appointment for the coming year, whichever date occurs later. Faculty members may properly request a waiver of this requirement of notice in case of hardship or in a situation where they would otherwise be denied substantial professional advancement or other opportunity.

4. Termination of Appointments by the Institution

- a. Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may be effected by the institution only for adequate cause.
- b. If termination takes the form of a dismissal for cause, it will be pursuant to the provisions specified in Regulation 5.

*Financial Exigency*⁵

- c. (1) Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur under extraordinary circumstances because of a demonstrably bona fide financial exigency, i.e., a severe financial crisis that fundamentally compromises the academic integrity of the institution as a whole and that cannot be alleviated by less drastic means.

[Note: Each institution in adopting regulations on financial exigency will need to decide how to share and allocate the hard judgments and decisions that are necessary in such a crisis.

As a first step, there should be an elected faculty governance body, or a body designated by a collective bargaining agreement, that participates in the decision that a condition of financial exigency exists or is imminent and that all feasible alternatives to termination of appointments have been pursued, including expenditure of one-time money or reserves as bridge funding, furloughs, pay cuts, deferred-compensation plans, early-retirement packages, deferral of nonessential capital expenditures, and cuts to noneducational programs and services, including expenses for administration.⁶

Judgments determining where within the overall academic program termination of appointments may occur involve

considerations of educational policy, including affirmative action, as well as of faculty status, and should therefore be the primary responsibility of the faculty or of an appropriate faculty body.⁷ The faculty or an appropriate faculty body should also exercise primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated. These criteria may appropriately include considerations of length of service.

The responsibility for identifying individuals whose appointments are to be terminated should be committed to a person or group designated or approved by the faculty. The allocation of this responsibility may vary according to the size and character of the institution, the extent of the terminations to be made, or other considerations of fairness in judgment. The case of a faculty member given notice of proposed termination of appointment will be governed by the following provisions.]

- (2) Before any proposals for program discontinuance on grounds of financial exigency are made, the faculty or an appropriate faculty body will have opportunity to render an assessment in writing of the institution's financial condition.

[Note: Academic programs cannot be defined ad hoc, at any size; programs should be recognized academic units that existed prior to the declaration of financial exigency. The term "program" should designate 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 should designate a department or similar administrative unit that offers majors and minors.]

- (i) The faculty or an appropriate faculty body will have access to at least five years of audited financial statements, current and following-year budgets, and detailed cash-flow estimates for future years.
- (ii) In order to make informed recommendations about the financial impact of program closures, the faculty or an appropriate faculty body will have access to detailed program, department, and administrative-unit budgets.

- (iii) Faculty members in a program being considered for discontinuance because of financial exigency will promptly be informed of this activity in writing and provided at least thirty days in which to respond to it. Tenured, tenure-track, and contingent faculty members will be informed and invited to respond.
 - (3) If the administration issues notice to a particular faculty member of an intention to terminate the appointment because of financial exigency, the faculty member will have the right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in this hearing may include the following:
 - (i) The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of a faculty committee in a previous proceeding involving the same issue may be introduced.
 - (ii) The validity of the educational judgments and the criteria for identification for termination; but the recommendations of a faculty body on these matters will be considered presumptively valid.
 - (iii) Whether the criteria are being properly applied in the individual case.
 - (4) If the institution, because of financial exigency, terminates appointments, it will not at the same time make new appointments, except in extraordinary circumstances where a serious distortion in the academic program would otherwise result. The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.
 - (5) Before terminating an appointment because of financial exigency, the institution, with faculty participation, will make every effort to place the faculty member concerned in another suitable position within the institution.
 - (6) In all cases of termination of appointment because of financial exigency, the faculty member concerned will be given notice or severance salary not less than as prescribed in Regulation 8.
 - (7) In all cases of termination of appointment because of financial exigency, the place of the faculty member concerned will not be filled by a replacement within a period of three years, unless the released faculty member has been offered reinstatement and at least thirty days in which to accept or decline it.
- Discontinuance of Program or Department for Educational Reasons⁸*
- d. Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur as a result of bona fide formal discontinuance of a program or department of instruction. The following standards and procedures will apply.
 - (1) The decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations, as determined primarily by the faculty as a whole or an appropriate committee thereof.

[Note: "Educational considerations" do not include cyclical or temporary variations in enrollment. They must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance.]
 - (2) Faculty members in a program being considered for discontinuance for educational considerations will promptly be informed of this activity in writing and provided at least thirty days in which to respond to it. Tenured, tenure-track, and contingent faculty members will be invited to participate in these deliberations.

[Note: Academic programs cannot be defined ad hoc, at any size; programs must be recognized academic units that existed prior to the decision to discontinue them. The term "program" should designate 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 should design-

nate a department or similar administrative unit that offers majors and minors.]

- (3) Before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the institution will make every effort to place the faculty member concerned in another suitable position. If placement in another position would be facilitated by a reasonable period of training, financial and other support for such training will be proffered. If no position is available within the institution, with or without retraining, the faculty member's appointment then may be terminated, but only with provision for severance salary equitably adjusted to the faculty member's length of past and potential service, an amount which may well exceed but not be less than the amount prescribed in Regulation 8.

[Note: When an institution proposes to discontinue a program or department of instruction based essentially on educational considerations, it should plan to bear the costs of relocating, training, or otherwise compensating faculty members adversely affected.]

- (4) A faculty member who contests a proposed relocation or termination resulting from a discontinuance has a right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in such a hearing may include the institution's failure to satisfy any of the conditions specified in Regulation 4d. In the hearing, a faculty determination that a program or department is to be discontinued will be considered presumptively valid, but the burden of proof on other issues will rest on the administration.

Review

- e. In cases of termination of appointment, the governing board will be available for ultimate review.

5. Dismissal Procedures

- a. Adequate cause for a dismissal will be related, directly and substantially, to the

fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens.⁹

- b. Dismissal of a faculty member with continuous tenure, or with a special or probationary appointment before the end of the specified term, will be preceded by (1) discussions between the faculty member and appropriate administrative officers looking toward a mutual settlement; (2) informal inquiry by the duly elected faculty committee [insert name of committee], which may, if it fails to effect an adjustment, determine whether in its opinion dismissal proceedings should be undertaken, without its opinion being binding upon the president; (3) a statement of charges, framed with reasonable particularity by the president or the president's delegate.
- c. A dismissal, as defined in Regulation 5a, will be preceded by a statement of charges, and the individual concerned will have the right to be heard initially by the elected faculty hearing committee [insert name of committee].¹⁰ Members deeming themselves disqualified for bias or interest will remove themselves from the case, either at the request of a party or on their own initiative. Each party will have a maximum of two challenges without stated cause.¹¹
 - (1) Pending a final decision by the hearing committee, the faculty member will be suspended, or assigned to other duties in lieu of suspension, only if immediate harm to the faculty member or others is threatened by continuance. Before suspending a faculty member, pending an ultimate determination of the faculty member's status through the institution's hearing procedures, the administration will consult with the Faculty Committee on Academic Freedom and Tenure [or whatever other title it may have] concerning the propriety, the length, and the other conditions of the suspension. A suspension that is intended to be final is a dismissal and will be treated as such. Salary will continue during the period of the suspension.
 - (2) The hearing committee may, with the consent of the parties concerned, hold joint prehearing meetings with the parties in order to (i) simplify the issues,

- (ii) effect stipulations of facts,
 - (iii) provide for the exchange of documentary or other information, and
 - (iv) achieve such other appropriate prehearing objectives as will make the hearing fair, effective, and expeditious.
- (3) Service of notice of hearing with specific charges in writing will be made at least twenty days prior to the hearing. The faculty member may waive a hearing or may respond to the charges in writing at any time before the hearing. If the faculty member waives a hearing, but denies the charges or asserts that the charges do not support a finding of adequate cause, the hearing tribunal will evaluate all available evidence and rest its recommendation upon the evidence in the record.
 - (4) The committee, in consultation with the president and the faculty member, will exercise its judgment as to whether the hearing should be public or private.
 - (5) During the proceedings the faculty member will be permitted to have an academic adviser and counsel of the faculty member's choice.
 - (6) At the request of either party or the hearing committee, a representative of a responsible educational association will be permitted to attend the proceedings as an observer.
 - (7) A verbatim record of the hearing or hearings will be taken, and a copy will be made available to the faculty member without cost, at the faculty member's request.
 - (8) The burden of proof that adequate cause exists rests with the institution and will be satisfied only by clear and convincing evidence in the record considered as a whole.
 - (9) The hearing committee will grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.
 - (10) The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The administration will cooperate with the hearing committee in securing witnesses and in making available documentary and other evidence.
 - (11) The faculty member and the administration will have the right to confront and cross-examine all witnesses. Where the witnesses cannot or will not appear, but the committee determines that the interests of justice require admission of their statements, the committee will identify the witnesses, disclose their statements, and, if possible, provide for interrogatories.
 - (12) In the hearing of charges of incompetence, the testimony will include that of qualified faculty members from this or other institutions of higher education.
 - (13) The hearing committee will not be bound by strict rules of legal evidence and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.
 - (14) The findings of fact and the decision will be based solely on the hearing record.
 - (15) Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements and publicity about the case by either the faculty member or administrative officers will be avoided so far as possible until the proceedings have been completed, including consideration by the governing board of the institution. The president and the faculty member will be notified of the decision in writing and will be given a copy of the record of the hearing.
 - (16) If the hearing committee concludes that adequate cause for dismissal has not been established by the evidence in the record, it will so report to the president. If the president rejects the report, the president will state the reasons for doing so, in writing, to the hearing committee and to the faculty member and provide an opportunity for response before transmitting the case to the governing board. If the hearing committee concludes that adequate cause for a dismissal has been established, but that an academic penalty less than dismissal would be more appropriate, it will so recommend, with supporting reasons.

6. Action by the Governing Board

If dismissal or other severe sanction is recommended, the president will, on request of the faculty member, transmit to the governing board the record of the case. The governing board's review will be based on the record of the committee

hearing, and it will provide opportunity for argument, oral or written or both, by the principals at the hearing or by their representatives. The decision of the hearing committee will either be sustained or the proceedings returned to the committee with specific objections. The committee will then reconsider, taking into account the stated objections and receiving new evidence, if necessary. The governing board will make a final decision only after study of the committee's reconsideration.

7. Procedures for Imposition of Sanctions Other Than Dismissal

- a. If the administration believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficiently grave to justify imposition of a severe sanction, such as suspension from service for a stated period, the administration may institute a proceeding to impose such a severe sanction; the procedures outlined in Regulation 5 will govern such a proceeding.
- b. If the administration believes that the conduct of a faculty member justifies imposition of a minor sanction, such as a reprimand, it will notify the faculty member of the basis of the proposed sanction and provide the faculty member with an opportunity to persuade the administration that the proposed sanction should not be imposed. A faculty member who believes that a major sanction has been incorrectly imposed under this paragraph, or that a minor sanction has been unjustly imposed, may, pursuant to Regulation 16, petition the faculty grievance committee for such action as may be appropriate.

8. Terminal Salary or Notice

If the appointment is terminated, the faculty member will receive salary or notice in accordance with the following schedule: at least three months, if the final decision is reached by March 1 (or three months prior to the expiration) of the first year of probationary service; at least six months, if the decision is reached by December 15 of the second year (or after nine months but prior to eighteen months) of probationary service; at least one year, if the decision is reached after eighteen months of probationary service or if the faculty member has tenure.¹²

This provision for terminal notice or salary need not apply in the event that there has been a finding that the conduct which justified dismissal

involved moral turpitude. On the recommendation of the faculty hearing committee or the president, the governing board, in determining what, if any, payments will be made beyond the effective date of dismissal, may take into account the length and quality of service of the faculty member.

9. Academic Freedom and Protection against Discrimination

- a. All members of the faculty, whether tenured or not, are entitled to academic freedom as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*, formulated by the Association of American Colleges and Universities and the American Association of University Professors.
- b. All members of the faculty, whether tenured or not, are entitled to protection against illegal or unconstitutional discrimination by the institution, or discrimination on a basis not demonstrably related to the faculty member's professional performance, including but not limited to race, sex, religion, national origin, age, disability, marital status, or sexual orientation.

10. Complaints of Violation of Academic Freedom or of Discrimination in Nonreappointment

If a faculty member on probationary or other nontenured appointment alleges that a decision against reappointment was based significantly on considerations that violate (a) academic freedom or (b) governing policies on making appointments without prejudice with respect to race, sex, religion, national origin, age, disability, marital status, or sexual orientation, the allegation will be given preliminary consideration by the [insert name of committee], which will seek to settle the matter by informal methods. The allegation will be accompanied by a statement that the faculty member agrees to the presentation, for the consideration of the faculty committee, of such reasons and evidence as the institution may allege in support of its decision. If the difficulty is unresolved at this stage and if the committee so recommends, the matter will be heard in the manner set forth in Regulations 5 and 6, except that the faculty member making the complaint is responsible for stating the grounds upon which the allegations are based and the burden of proof will rest upon the faculty member. If the faculty member succeeds in establishing a *prima facie* case, it is incumbent upon those who made the decision against reappointment to come forward

with evidence in support of their decision. Statistical evidence of improper discrimination may be used in establishing a prima facie case.

11. Administrative Personnel

The foregoing regulations apply to administrative personnel who hold academic rank, but only in their capacity as faculty members. Administrators who allege that a consideration that violates academic freedom or governing policies against improper discrimination, as stated in Regulation 10, significantly contributed to a decision to terminate their appointment to an administrative post or not to reappoint them are entitled to the procedures set forth in Regulation 10.

12. Political Activities of Faculty Members

Faculty members, as citizens, are free to engage in political activities. Where necessary, leaves of absence may be given for the duration of an election campaign or a term of office, on timely application, and for a reasonable period of time. The terms of such leave of absence will be set forth in writing, and the leave will not affect unfavorably the tenure status of a faculty member, except that time spent on such leave will not count as probationary service unless otherwise agreed to.¹³

13. Part-Time Faculty Appointments¹⁴

- a. The terms and conditions of every appointment to a part-time nontenured faculty position will be stated in writing, including the length of service. A copy of the appointment document will be provided to the part-time faculty member.
- b. In a case of dismissal before the end of the period of appointment, the administration will set forth cause for the action, and the faculty member will have the right to a hearing before a faculty committee.¹⁵
- c. In a case of nonreappointment, if a part-time faculty member establishes a prima facie case, to the satisfaction of a duly constituted faculty committee, that considerations that violate academic freedom or governing policies against improper discrimination, as stated in Regulation 10, significantly contributed to his or her nonretention, it is incumbent on those who made the decision to come forward with evidence in support of that decision.
- d. After having been reappointed beyond an initial term, a part-time faculty member who is subsequently notified of nonreappointment will be advised upon request of

the reasons that contributed to the decision. Upon the faculty member's further request, the reasons will be confirmed in writing. The faculty member will be afforded opportunity for review of the decision by a faculty committee.

- e. For part-time faculty members who have served for three or more terms within a span of three years, the following additional protections of academic due process apply:
 - (1) Written notice of reappointment or nonreappointment will be issued no later than one month before the end of the existing appointment. If the notice of reappointment is to be conditioned, for example, on sufficiency of student enrollment or on financial considerations, the specific conditions will be stated with the issuance of the notice.
 - (2) If the faculty member notified of nonreappointment alleges that the decision was based significantly on considerations that violate academic freedom or governing policies against improper discrimination, the allegation will be subject to review in the manner set forth in Regulation 10.
 - (3) When the part-time faculty member is denied reappointment to an available assignment (one with substantially identical responsibilities assigned to another part-time faculty member with less service), if the nonreappointed faculty member alleges that the decision was based on inadequate consideration, the allegation will be subject to review by a faculty body. If this body, while not providing judgment on the merits of the decision, finds that the consideration has been inadequate in any substantial respects, it will remand the matter for further consideration accordingly.¹⁶
- f. Prior to consideration of reappointment beyond a seventh year, part-time faculty members who have taught at least twelve courses or six terms within those seven years shall be provided a comprehensive review with the potential result of (1) appointment with part-time tenure where such exists, (2) appointment with part-time continuing service, or (3) nonreappointment. Those appointed with tenure shall be afforded the same procedural safeguards as full-time tenured faculty. Those offered additional appointment without tenure shall have continuing appointments and shall not

be replaced by part-time appointees with less service who are assigned substantially identical responsibilities without having been afforded the procedural safeguards associated with dismissal as set forth above in section b.

14. Graduate Student Employees

- a. The length, terms, and conditions of every university appointment of a graduate student employee will be stated in writing at the time of the initial appointment. A copy of the appointment document will be supplied to the appointee.¹⁷
- b. The graduate student employee on recurring appointments will be advised at the time of initial appointment of the substantive standards, expectations, and procedures generally employed at the institution in decisions affecting renewal and of any special standards adopted by the graduate student employee's department or school. The graduate student employee will be advised of the time when decisions affecting renewals are made and will be given the opportunity to submit material believed to be helpful to an adequate consideration of his or her circumstances.
- c. In a case of dismissal before the end of the period of an academic or professional appointment, the graduate student employee will be provided with a statement of reasons for the action and will have the right to a pretermination hearing before a duly constituted committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. In such a hearing, the administration will have the burden of showing adequate cause for dismissal.¹⁸ Adequate cause for a dismissal will be related, directly and substantially, to the fitness of the graduate student employee in his or her professional capacity regarding teaching, research, or other academic duties. Dismissal will not be used to restrain graduate student employees in their exercise of academic freedom or constitutional rights.
- d. Written notice of reappointment or nonreappointment will be issued to graduate student academic or professional employees no later than one month before the end of the existing appointment.
- e. Graduate student academic or professional employees who are notified of nonreap-

pointment will be advised upon request of the reasons that contributed to the decision. Upon the employee's further request, the reasons will be confirmed in writing. The employee will be afforded the opportunity for review of the decision by a duly constituted committee.

- f. In a case of nonreappointment, if a graduate student academic or professional employee establishes a prima facie case to the satisfaction of a duly constituted committee that considerations that violate academic freedom or governing policies against improper discrimination based on race, sex, national origin, age, disability, marital status, or sexual orientation significantly contributed to his or her nonretention, it is incumbent on those who made the decision to come forward with evidence in support of that decision.
- g. If a graduate student employee who is denied reappointment to an available academic or professional position alleges that the decision was based on inadequate consideration, the allegation will be subject to review by a duly constituted body.¹⁹ If this body, while not providing judgment on the merits of the decision, finds that the consideration has been inadequate in any substantial respects, it will remand the matter, recommending to the department that it assess the merits once again, this time remedying the inadequacies of its prior consideration.²⁰
- h. Graduate student academic or professional employees will have access to the faculty grievance committee, as specified in Regulation 16.

15. Other Academic Staff

- a. In no case will a member of the academic staff who is not otherwise protected by the preceding regulations that relate to dismissal proceedings be dismissed without having been provided with a statement of reasons and an opportunity to be heard before a duly constituted committee.²¹ (A dismissal is a termination before the end of the period of appointment.)
- b. With respect to the nonreappointment of a member of such academic staff who establishes a prima facie case to the satisfaction of a duly constituted committee that considerations that violate academic freedom or governing policies against improper discrimination as stated in Regulation 10, significantly contributed to

the nonreappointment, the academic staff member will be given a statement of reasons by those responsible for the nonreappointment and an opportunity to be heard by the committee.

16. Grievance Procedure

If any faculty member alleges cause for grievance in any matter not covered by the procedures described in the foregoing regulations, the faculty member may petition the elected faculty grievance committee [here name the committee] for redress. The petition will set forth in detail the nature of the grievance and will state against whom the grievance is directed. It will contain any factual or other data that the petitioner deems pertinent to the case. Statistical evidence of improper discrimination, including discrimination in salary, may be used in establishing a prima facie case. The committee will decide whether or not the facts merit a detailed investigation; if the faculty member succeeds in establishing a prima facie case, it is incumbent upon those who made the decision to come forward with evidence in support of their decision. Submission of a petition will not automatically entail investigation or detailed consideration thereof. The committee may seek to bring about a settlement of the issue(s) satisfactory to the parties. If in the opinion of the committee such a settlement is not possible or is not appropriate, the committee will report its findings and recommendations to the petitioner and to the appropriate administrative officer and faculty body, and the petitioner will, upon request, be provided an opportunity to present the grievance to them. The grievance committee will consist of three [or some other number] elected members of the faculty. No officer of the administration will serve on the committee.

Note on Implementation

The *Recommended Institutional Regulations* here presented will require for their implementation a number of structural arrangements and agencies. For example, the *Regulations* will need support by

1. channels of communication among all the involved components of the institution and between them and a concerned faculty member;
2. definitions of corporate and individual faculty status within the college or university government and of the role of the faculty in decisions relating to academic freedom and tenure; and

3. appropriate procedures for the creation and operation of faculty committees, with particular regard to the principles of faculty authority and responsibility.

The forms which these supporting elements assume will of course vary from one institution to another. Consequently, no detailed description of the elements is attempted in these *Recommended Institutional Regulations*. With respect to the principles involved, guidance will be found in the Association's *Statement on Government of Colleges and Universities*.

Notes

1. Under the 1940 "Statement of Principles on Academic Freedom and Tenure," this period may not exceed seven years. However, the Association's 2001 "Statement of Principles on Family Responsibilities and Academic Work" (AAUP, *Policy Documents and Reports*, 11th ed. [Baltimore: Johns Hopkins University Press, 2015], 339–46) provides that "a faculty member be entitled to stop the clock or extend the probationary period, with or without taking a full or partial leave of absence, if the faculty member (whether male or female) is a primary coequal caregiver of newborn or newly adopted children," that "institutions allow the tenure clock to be stopped for up to one year for each child, and . . . that faculty be allowed to stop the clock only twice, resulting in no more than two one-year extensions of the probationary period."

2. The exception here noted applies only to an institution where the maximum probationary period exceeds four years.

3. April 15 is the recommended date.

4. This committee, which can be the grievance committee noted in Regulation 16, is to be an elected faculty body. Similarly, the members of the committees noted in Regulations 4c(3), 4d(4), 10, and 13 are to be elected. A committee of faculty members appointed by an elected faculty body can substitute for a committee that is elected directly.

5. See "The Role of the Faculty in Conditions of Financial Exigency," *Policy Documents and Reports*, 292–308. The definition of "financial exigency" offered in that report and adopted here is intended to be more responsive to actual institutional conditions and extends the standard of exigency to situations not covered by Committee A's previous definition.

6. See "The Role of the Faculty in Budgetary and Salary Matters," *Policy Documents and Reports*, 289–91, especially the following passages:

The faculty should participate both in the preparation of the total institutional budget and (within the framework of the total budget) in decisions relevant to the further apportioning of its specific fiscal divisions (salaries, academic programs, tuition, physical plant and grounds, and so on). The soundness of resulting decisions should be enhanced if an elected representative committee of the faculty participates in deciding on the overall allocation of institutional resources and the proportion

to be devoted directly to the academic program. This committee should be given access to all information that it requires to perform its task effectively, and it should have the opportunity to confer periodically with representatives of the administration and governing board. . . .

Circumstances of financial exigency obviously pose special problems. At institutions experiencing major threats to their continued financial support, the faculty should be informed as early and specifically as possible of significant impending financial difficulties. The faculty—with substantial representation from its nontenured as well as its tenured members, since it is the former who are likely to bear the brunt of the reduction—should participate at the department, college or professional school, and institution-wide levels in key decisions as to the future of the institution and of specific academic programs within the institution. The faculty, employing accepted standards of due process, should assume primary responsibility for determining the status of individual faculty members.

7. See “Statement on Government of Colleges and Universities,” *Policy Documents and Reports*, 117–22, especially the following passage: “Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy.”

8. When discontinuance of a program or department is mandated by financial exigency of the institution, the standards of Regulation 4c above will apply.

9. For cause relating to physical or mental disability, see “Accommodating Faculty Members Who Have Disabilities,” *Policy Documents and Reports*, 374–78.

10. This committee should not be the same as the committee referred to in Regulation 5b(2).

11. Regulations of the institution should provide for alternates or for some other method of filling vacancies on the hearing committee resulting from disqualification, challenge without stated cause, illness, resignation, or other reason.

12. For renewable term appointments not specifically designated as probationary for tenure, see “The Applicability of the ‘Standards for Notice of Nonreappointment’ to All Full-Time Faculty on Renewable Term Appointments,” *Academe* 81 (September–October 1995): 51–54, which states,

While academic institutions commonly adhere to the Association’s *Standards for Notice of Nonreappointment* with respect to faculty appointments that they recognize as probationary, in many cases they have not considered those standards to be applicable to those full-time faculty members whose service under non-tenure-track appointments has involved more than “a brief association with the institution” and who continue to serve on annual appointments that are indefinitely renewable at the discretion of the administration. Typically, although the terms of their appointments may stipulate that they

are for one year only, the faculty members are given reason to expect that, so long as they perform creditably and so long as enough courses remain available, the appointments will be renewed. Frequently, however, at or near the end of an academic year, these individuals are suddenly notified that their appointments are not in fact being renewed for the following year. Despite what may have been an extended affiliation with the institution, the faculty members are not viewed as entitled to the notice of nonreappointment that would be given to colleagues who hold appointments designated as probationary.

Committee A considers all full-time faculty members holding renewable term appointments, whatever their title or status, to be entitled to notice of nonreappointment as called for in the Association’s recommended standards. We do not view it as necessary, or indeed as equitable, to deprive full-time “non-tenure-track” faculty members of the safeguards that the standards for notice are intended to provide.

13. See “Statement on Professors and Political Activity,” *Policy Documents and Reports*, 39.

14. This regulation does not apply to faculty members with reduced loads who are tenured or probationary for tenure and who have the protections of academic due process which are provided in Regulations 2, 4, 5, 6, 7, and 8. It does apply to all other faculty members whose appointments are less than full-time, whatever their rank or title and whether they are paid on a pro-rata, a per-course, or any other basis.

15. As stated in Regulation 5a, “Adequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens.”

16. See “Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments,” *Policy Documents and Reports*, 94–98, especially the following passages:

It is easier to state what the standard “adequate consideration” does not mean than to specify in detail what it does. It does not mean that the review committee should substitute its own judgment for that of members of the department on the merits of whether the candidate should be reappointed or given tenure. The conscientious judgment of the candidate’s departmental colleagues must prevail if the invaluable tradition of departmental autonomy in professional judgments is to prevail. The term “adequate consideration” refers essentially to procedural rather than to substantive issues: Was the decision conscientiously arrived at? Was all available evidence bearing on the relevant performance of the candidate sought out and considered? Was there adequate deliberation by the department over the import of the evidence in the light of the relevant standards? Were irrelevant and improper standards excluded from consideration? Was the decision a bona fide exercise of professional academic judgment? These are the kinds of questions suggested by the standard “adequate consideration.”

If, in applying this standard, the review committee concludes that adequate consideration was not given, its appropriate response should be to recommend to the department that it assess the merits once again, this time remedying the inadequacies of its prior consideration.

17. Universities assume responsibilities when they accept graduate students with a promise of financial support. Graduate student employees have a legitimate expectation of fulfillment of the promise unless legitimate cause to terminate support is shown. If the cause relates to the graduate student employee's work and/or academic performance or progress, the employee should be given sufficient time and opportunity to redress the concern.

18. According to the Association's "Statement on Collective Bargaining" (*Policy Documents and Reports*, 323–24), "Participation in a strike or other work action does not by itself constitute grounds for dismissal or nonreappointment or for imposing other sanctions against faculty members."

19. For comment on the term "adequate consideration," see note 16, *supra*.

20. Nonreappointment conditioned on inadequate academic performance as a graduate student may be reviewed in the manner provided in Committee A's statement "The Assignment of Course Grades and Student Appeals," in *Policy Documents and Reports*, 29–30.

21. Each institution should define with particularity who are members of the academic staff.