

UW SYSTEM TENURE POLICY TASK FORCE

1220 Linden Drive, 1820 Van Hise Hall
Madison, WI
Thursday, October 22, 2015
1:00 p.m.

Meeting Minutes

Present: Lopa Basu, John Behling, Dorothy Farrar Edwards, Katy Heyning, Sarah Mangelsdorf, Patricia McManus, Ken Menningen, Steve Meyer, Regina Millner, Christine Roth, James Schmidt, Bradley Seebach, Jonathan Shailor, Kristene Surerus, Dean Van Galen, Alan White, and Greg Wise.

Unable to Attend: Greg Diemer, Gary Miller, Mittie Nimocks Den Herder, and Robert Smith.

I. Welcome and Logistics

John Behling indicated that he would like the task force to meet once more and that the last meeting would include a continued discussion of recommendations as well as any added suggestions from institutions.

II. Review of Discussion/Minutes from Last Meeting

No corrections were suggested.

III. Discussion of Draft Recommendations

Jonathan Shailor asked if the task force could review the resolutions received and discuss the UW-Madison efforts, which seem to be in conflict with the BOR position. John Behling agreed to add this item to the agenda. John Behling then asked for comments on each of the bullet points in the draft recommendations.

a. UW System Policy on Faculty Layoffs

Steve Meyer asked whether discussion of faculty layoff is restricted to layoff for reasons of program discontinuation. John Behling confirmed that the draft recommendations being discussed pertain to layoff for reason of program discontinuation only.

- *Include an opening statement on purpose of policy recognizing the hope that this policy will be rarely invoked, the purpose of providing adequate notice and*

protections for affected faculty members should these tough decisions have to be made.

No comments were made.

- *Include Appropriate Definitions.*

Lopa Basu asked if there will be a clear definition of layoff versus termination. John Behling responded that definitions are critical and will be included.

- *Define criteria to identify when 1) a financial emergency/exigency exists, and 2) when a program or budget decision is such that layoffs are warranted; the development of these criteria should reflect the shared-governance process.*

Ken Menningen said he has heard that AAUP's definition of financial exigency is burdensome to institutions and that AAUP is considering revising their definition of financial exigency. He asked whether UW System will take that into account. Tom Stafford responded that AAUP has published a document on the role of faculty in conditions of financial exigency which discusses this issue and that AAUP may be developing a modification. Dorothy Farrar Edwards added that UW-Madison has incorporated AAUP's definition of financial exigency into its faculty policies and procedures.

Christine Roth added that she was happy to see shared governance mentioned but was disappointed that it was mentioned only once here and shared governance should be included in other bullet points on faculty layoff.

Sarah Mangelsdorf stated that other universities' policies on program discontinuance include language to the effect that every effort will be made to find appropriate tenured positions for the affected faculty members, and asked if similar language will be included in this policy. Behling agreed that the task force could look at language regarding that concern.

- *Identify who the decision-maker(s) is for the case of 1) financial emergency/exigency, and 2) program or budget decision resulting in layoffs (here also consider existing frameworks on campuses for closing and modifying programs.)*

Christine Roth commented that this would be a good point at which to add references to shared governance, as shared governance should be part of the decision-making process. Lopa Basu agreed with Christine Roth and encouraged language calling for consensus by the decision makers. Jonathan Shailor echoed Christine Roth's call for shared governance involvement in decision-making. UW-Parkside's rules for program discontinuation involved four different bodies from campus.

Kristine Surerus expressed the need for clear criteria or standards for a process for program discontinuation. Tom Stafford commented that many of our peer institutions have criteria that we can borrow from. Christine Roth added the need for campus flexibility.

Katy Heyning raised the point about how quickly a program should be terminated for a fiscal reason when it has a commitment to allow students to finish their degree. John Behling agreed that this should be addressed. Regina Millner added that this is a Regent policy and that subsequent to a Regent policy there are Faculty Policies and Procedures. This issue and many other issues raised can be addressed through the Faculty Policies and Procedures developed by each campus. Steve Meyer indicated that at UW-Green Bay, students have a voice in these decisions. Sarah Mangelsdorf added that it is customary for students to have a voice and to not close a program until each student who has enrolled in the program has graduated.

Dorothy Farrar Edwards questioned whether existing institutional policies on program closure that were developed based on UW System academic policies will need to be changed as a result of this new Regent policy. John Behling answered that we wouldn't know for sure until the task force finishes its work and that is something we need to keep in mind moving forward.

- *Clarify how individual decisions to layoff faculty members are made (seniority, rank, area of discipline, etc.).*

Jonathan Shailor stated that there was a robust discussion on this issue at the recent UW-Parkside faculty meeting. There was no consensus, but the faculty did agree to establish a subcommittee to draft a campus policy on this. He wondered if a subcommittee formed to review this exact issue is time well spent. John Behling responded that this task force is the clearinghouse for efforts like that so those efforts are helpful.

- *Clearly state that no faculty member can be laid off or terminated solely because of his or her rights as protected by the First Amendment or principles of Academic Freedom.*

Christine Roth expressed concern about how this bullet point was written. It reads as through you cannot be laid off because of your rights. She also asked that the word solely be removed. Sarah Mangelsdorf agreed.

- *Ensure adequate notice period for those who will be placed in layoff status; potentially different periods for probationary faculty and tenured faculty (also, the statute covers academic staff).*

Katy Heyning asked why probationary and tenured faculty would have different notice periods. Tom Stafford responded that currently there is not a difference,

but the impression he got from the group was that this task force wanted to focus on tenured faculty.

Katy Heyning added that by treating tenured and probationary faculty differently we will be creating a two-tier system, and suggested that the word “faculty” be used instead. Regina Millner agreed with Katy Heyning for the reason that when a program is discontinued, tenured or probationary faculty should be treated the same way in the notification process.

Dorothy Farrar Edwards stated that UW-Madison makes a clear distinction between tenured and probationary faculty when it comes to layoff, and Patricia McManus and Bradley Seebach both raised similar concerns. Bradley Seebach added that he sees a distinction between the order of layoff and the notice period, and suggested that we create a one year notice because it is common already throughout campus.

Dorothy Farrar Edwards, Sarah Mengeldorf, and Lopa Basu all expressed agreement that tenured faculty should be treated differently in the order of layoff. Tom Stafford added that state statute lays out seniority as the rule for the order of layoff, but statute also allows campus flexibility in defining seniority.

Jonathan Shailor questioned whether statutory language allows for a campus to use either tenure or length of employment to define seniority. Tom Stafford responded that the statute leaves the determination of seniority to the faculty at each institution.

- *Provide a process to have an individual or body review, at the request of a faculty member subject to layoff, the layoff decision and clearly identify the Board Review process and timeline.*

John Behling referenced an AAUP concern that Michigan’s policy does not clearly allow for an appeal to the full Board. He would strongly recommend including a full appeal process in this Board policy and Jonathan Shailor agreed.

Bradley Seebach added that the affected faculty member and the shared governance body representing the faculty member should both be able to request an appeal.

Ken Menningen agreed that the appeal process ends at the Board of Regents but stressed that the process should start at the department.

Jonathan Shailor asked to change this bullet recommendation to include complete review/appeal process through shared governance.

Lopa Basu stated that Stout has a faculty employment termination committee and asked how that process would be affected by this. Both Regina Millner and Dean

Van Galen stated that each campus should have the ability to manage their internal appeal process.

Sarah Mangelsdorf stated that termination for cause and program discontinuation are handled differently on their campus. There is a separate committee for each.

Dorothy Farrar Edwards added the Faculty Rights and Responsibilities handles both program closing and faculty termination for cause.

Greg Wise clarified that there is a specific committee to review the program decision and the faculty impact.

Jonathan Shailor stated that when Parkside eliminated its teacher education program, that decision went through shared governance.

Greg Wise said we need to make sure we have faculty appeal separate from programmatic appeal.

- *Describe what rights a laid-off faculty member retains including, rights to reinstatement, options at other System institutions, retraining, etc. and for how long those rights are held by the faculty member.*

Tom Stafford stated that there is statutory language guiding this point.

John Behling questioned the idea of training provision and asked for feedback and input from the group.

Ken Menningen agreed that retraining could be confusing and instead discussed reassignment as a better option.

Lopa Basu asked Tom Stafford how long rights were retained and he responded it's usually 3 years. Bradley Seebach clarified that current law seems to be three years, which is in line with program discontinuation.

Ken Menningen questioned the meaning of financial assistance referenced in section 36.22 of the state statute. John Behling acknowledged the need for clarity within statutes.

Regina Millner called for the use of assignment rather than reassignment.

Lopa Basu called for something positive in this section to respond to some concerns about the negative tone.

Regina Millner, Patricia McManus and John Behling discussed differences between reinstatement, reassignment, and assignment. John Behling offered to bring forth some other ideas to address these concerns.

- *Make clear at what point a probationary faculty member or tenured faculty member is “terminated” as a result of a layoff.*

Ken Menningen asked for clarification on whether this bullet recommendation is meant to say “at what point in time.” John Behling clarified that this was the case.

Christine Roth questioned what terminated means. John Behling responded that terminated, in this case, means when all rights are terminated.

- *Promote consistency and uniformity of this policy across the System.*

Sarah Mangelsdorf raised a question about when a campus-specific policy can be adopted. John Behling read statements made by himself, Regina Millner, and President Cross to the task force about their commitment to a system-wide policy that will then allow campuses to develop and adopt implementation practices and procedures.

Greg Wise asked if John Behling thought it was premature for a campus to develop faculty policies and procedures. John Behling responded by saying that while it is appropriate for campuses to begin to review their processes and provide feedback to the task force, the Board will not approve any faculty policies and procedures brought before the full board until the board has an umbrella policy in place. Doing so before then would be inconsistent with what the Board and this task force and Board leadership have said on the subject.

Regina Millner echoed what John Behling said. She added that the debate about tenure being removed from statute has been harmful and that the work that is being done now can help reverse that. She stressed that tenure has been a policy issue at the University of Wisconsin institutions, not a statutory issue, for most of Wisconsin’s history.

John Behling asked for final comments on the draft recommendations.

Bradley Seebach said he wanted to revisit the option of laid off faculty to transfer to other institutions if possible.

Patricia McManus asked about program discontinuation due to accreditation issues and Sarah Mangelsdorf stated that this is very uncommon. Dorothy Farrar Edwards added that AAUP guidelines already address this.

Katy Heyning asked why the phrase “due process” isn’t included in this document. John Behling responded that this is the very definition of due process and Tom Stafford agreed and stated 36.22 is largely about due process as well.

b. UW System Policy on Post Tenure Review

- *Opening statement that the purpose of post-tenure review is to recognize outstanding achievement and to help identify and remedy, from a developmental point of view, any deficiencies.*

Ken Menningen asked that language referencing rewarding good performance be added and clarified.

Kristene Surerus and Katy Heyning asked for additional language on sustained/solid/continuing performance.

Regina Millner added that we want to recognize outstanding performance from post-tenure review.

- *Establish a consistent time at which this occurs (every 3, 4, or 5 years following the awarding of tenure).*

Christine Roth mentioned that if we are going to tie merit to post-tenure review, and if this is potentially the only way to get a pay raise tied to performance, we need to limit the time in between reviews.

Dean Van Galen stated that he would advocate for a five-year or longer timeline so it is not a burden.

Lopa Basu pointed out that a post-tenure review is valid for five years and other ongoing reviews can produce merit opportunities during that time.

Steve Meyer said that UW-Green Bay is looking at an annual merit review that would be used to determine when and if merit pay is awarded.

Dorothy Farrar Edwards stated that UW-Madison is proposing a post-tenure review occur every five years and separating it from the annual merit review process.

Greg Wise said that UW-Extension's practice is to have a post-tenure review every 5 years and doing more would be burdensome.

Regina Millner stated that we would need to detach merit pay from post-tenure review and allow for some other type of reward including equipment, monetary, etc. in post-tenure review.

Ken Menningen mentioned that post-tenure review is a workload concern, but a reward is necessary to make post-tenure review meaningful to the employee.

Behling indicated that a five year requirement seemed to be consensus.

- *Define what standard of review is: “adequate,” “satisfactory,” “excellence.*

Jonathan Shailor questioned the difference between adequate and satisfactory and stated that we would also need a category of unsatisfactory.

- *Define consistent criteria to be applied in performing the review.*

Lopa Basu questioned what consistent criteria means, as each campus is different. Steve Meyer added that the same can be said of programs and departments within the institution. Patricia McManus agreed with Lopa Basu and Steve Meyer.

Greg Wise said we should be able to come up with some criteria to guide us. Tom Stafford said we can all agree with the main three points and using the statutory language on what the overarching standards should be.

Katy Heyning questioned whether it would be more appropriate for the System policy to require each institution to define the criteria. Ken Menningen asked whether it would be enough to just say in the policy that the criteria for post-tenure will be consistent with the criteria to award tenure. Bradley Seebach said he would argue against using the same criteria, as criteria change between tenure review and post-tenure review, and advocated for allowing each institution to manage the specifics.

Consensus was to go with the three major areas and allow for faculty policies and procedures to address specifics.

- *Identify how the review will be conducted, including who will perform the review and what documents constitute the “review” documents (here, need to be sensitive to concerns about making it too onerous, but also recognizing that all other employees are reviewed annually; also need to find out how this intersects with FARs and other ongoing assessment tools).*

Lopa Basu expressed concern about requiring annual faculty evaluations and stated that policy should allow campus discretion. Dean Van Galen asked for a show of hands for how many campuses do annual reviews of their faculty. Almost every campus does an annual/biannual review for merit.

John Behling added that there seems to be consensus that this also should be left primarily to the campuses to develop through the faculty policies and procedures.

Lopa Basu stated that post-tenure review may not have always been done. Greg Wise agreed.

Dorothy Farrar Edwards said that UW-Madison is developing a policy that would require each department head to identify at the beginning of the academic year

faculty members who need a post-tenure review and then provide an annual report on FAR to the Dean, who provides a report to the Provost.

Lopa Basu mentioned that her post-tenure review is coming up and she believes that it really should be her colleagues in the discipline and not just her Dean or Chair alone who conducts the review.

- *Reaffirmation that First Amendment protections and the principles of Academic Freedom will not be infringed upon as part of this review.*

Lopa Basu said this is not robust. Every attempt should be made to protect First Amendment Rights and Academic Freedom.

Christine Roth agreed and said it should be an acclamation of those rights rather than a statement of what we won't do.

John Behling stated that the staff will work to amend the language.

- *Provision of how merit pay will be tied to the review.*

Ken Menningen said that a positive post-tenure review should be used to help determine raises. Dean Van Galen agreed. Sarah Mangelsdorf also agreed but cautioned against inextricably tying post-tenure review to merit, as schools have varying resources.

Greg Wise said that Extension gives a greater weight to post-tenure review when merit is being considered.

Jonathan Shailor said it seemed that it does not have to be an either or, but that there could both merit increases from the annual and mandated successful post tenure reviews.

Jim Schmidt commented that he would like to allow campuses to use post-tenure reviews and annual reviews to determine merit as they see fit.

Patricia McManus warned that the more cutthroat/the higher stakes post-tenure review is, the more campus morale will be negatively impacted.

John Behling said this issue will be discussed again at the next meeting but would like task force members to take this issue back to their respective campuses for suggestions.

- *Provision of how a substandard review will be used initially to assist that faculty member in improving his or her performance.*

Lopa Basu said this is the most controversial bullet point on this list and asked whether termination for nonperformance exists in policies or statutes. Tom Stafford responded that failure to perform your job is a cause for termination right now.

Sarah Mangelsdorf agreed with Tom Stafford, but would not want to have termination right after one substandard review. Jim Schmidt expressed concern that we do not want to wait for another five years.

Kristine Surerus said that the order of this bullet and the bullet before this one are reversed. Jonathan Shailor said a faculty member needs to understand what a substandard review actually means. Regina Millner added that it is important to know what the rules are.

John Behling said this is where we get to a comparable process to the private sector. What we are trying to do is address the deficiency. We need to give them a process.

Lopa Basu raised a question about having an appeal process for a substandard review. Dean Van Galen and Sarah Mangelsdorf said that a written response to the Dean is the usual first step. Dorothy Farrar Edwards added that her department's procedures are for the faculty to go to the Faculty Rights and Responsibilities committee.

Katy Heyning said some guidelines like this would be appreciated because as a Dean she doesn't see a review in most cases.

Lopa Basu would like to see a recommendation on having an appeals process.

Jim Schmidt said that his campus is considering many of these questions, including the best way to handle appeals.

Bradley Seebach proposed that each campus must develop a robust appeals process for negative post-tenure review.

Process for Addressing Underperformance

- *Underperforming faculty, who have been duly informed of the required performance expectations for faculty members as determined by university-wide and shared governance-approved criteria, should be notified in writing by the chief academic officers, given reasons and documentation for their perceived underperformance, and have an opportunity to respond in writing concerning those area(s) of perceived underperformance.*

Christine Roth stated that the chief academic officer would perform this check and balance function and that the word "perceived" in this bullet conveys a need

for review by another individual or another group. John Behling asked how an underperforming faculty member is treated at UW-Oshkosh right now. Christine Roth responded that the faculty member develops an academic performance plan to assist the faculty member in addressing the deficiency.

Lopa Basu said that this is very rare on her campus and when substantial issues arise action is taken.

Jonathan Shailor said that the process at UW-Parkside begins at the department, heads to the dean and then to provost. It only goes to the provost once remediation has failed.

Christine Roth stated that the use of the word “perceived” is a problem. “Documented” would be better.

Jim Schmidt said that this needs to be rigorous and that it is already taken seriously. We need to do a better job of telling the story of just how hard it is to actually get tenure.

- *Faculty identified by their peers and university leadership as underperformers must develop a written plan to remedy any perceived deficiencies in conjunction with his or her Department Chair and Dean. Uniform university-wide time restrictions (deadlines) should apply.*

Jonathan Shailor said that clear timelines are critical and Jim Schmidt said that this can be written better.

Lopa Basu stressed that the department peers need to be included in the remediation process.

Ken Menningen mentioned that perceived needs to be replaced with documented here as well.

Bradley Seebach said a minimum timeline would be appropriate.

Greg Wise said his department head works closely with department faculty in remediation process. That should be spelled out.

Jonathan Shailor asked if it was possible to substitute department executive committee/appropriate shared governance group in place of the dean where appropriate.

Jim Schmidt said that ultimately the Chair or Dean is accountable for the remediation and added that at UW-Eau Claire, they are looking at a three-year horizon for this process. Jim Schmidt also expressed concern about adding more work to the department by having peers involved in the remediation. Steve Meyer

concurred with Jim Schmidt's concern, as some of the departments are quite small.

Regina Millner said this could be addressed in faculty policies and procedures. Jonathan Shailor said that shared governance should be involved in developing the process.

John Behling added that the legislature will be watching closely. We need to make sure the timeline makes sense.

Jim Schmidt states that three years is reasonable and defensible.

Katy Heyning said it feels like we are dangling merit to get the dismissal. Why do we have to attach dismissal to post-tenure review? John Behling responded that the Board does not have a choice. The legislature removed tenure from statute and now we have to draft a policy within certain constructs set by that same legislature. If the legislature doesn't see progress on this, if they don't see a clear policy on review and dismissal, they will rewrite the policy on their own.

Regina Millner added that a fair and sensible post-tenure review will encourage faculty to enhance their efforts.

Jonathan Shailor asked that Tom Stafford clarify the distinction between dismissal for just cause and for poor performance. Tom Stafford responded that there are different processes but the same result.

Lopa Basu raised the concern about the short timeline for review of these documents. At least a week is needed. Behling said we will incorporate a deadline for documents when we set the next date.

- *The Dean of the College in which the faculty member is housed will determine progress on the plan at least each semester, for a minimum of xx semesters (or whatever the interval and cycle is for post-tenure review at the institution). Each semester, a letter documenting progress or non-progress will be put in the faculty member's personnel file. If the faculty member under review meets at least X% of the recommended improvement expectations and metrics in any academic year, no further review is necessary.*

Sarah Mangelsdorf raised concerns about the semester timeline and proposed that annually would be better.

Jonathan Shailor proposed that some things can be addressed by semester, others cannot. Patricia McManus agreed.

Jim Schmidt said that we ought to do the right thing but recognize who is watching us. Instead of percentages, we should demonstrate improvement.

Alan White said the judgment should be based in legal preponderance as the standard, rather than percentages.

- *Faculty not meeting at least X% of the recommended improvement expectations and metrics will undergo a semester-by-semester review by the chief academic officer of the institution. Time restrictions (deadlines and “last warning” time posts) apply as well as all other state and federal laws governing employee development and behavior/performance modifications.*
- *If a faculty member does not meet improvement expectations long-term (as defined by a system wide standard, e.g. three post-tenure review cycles), the Chair or Dean may bring a complaint under Chapter UWS 6 for potential disciplinary action.*

Tom Stafford offered some clarity between frequent check-ins with the faculty and actual performance review.

Greg Wise stated that we should indicate that our goal is performance in the preamble and that we will act right away to address poor performance.

c. Review of Existing Regent Policy on Faculty Tenure and Possible Changes

John Behling directed everyone to the draft document that had been prepared by staff and indicated that the group wouldn't have time to look at it today, but wanted everyone to read it.

IV. Meeting Summary

John Behling stated that the group covered a lot and thanked everyone.

V. Next Meeting

The members discussed possible next meetings and timelines. The fourth meeting of the tenure task force will be on November 30th, with documentation due to members by November 20th.

VI. Resolutions and Updates on UW-Madison Effort

John Behling stated that due to insufficient time at this meeting, this item will be included in the agenda for the next meeting.

VII. Adjourn