

UW SYSTEM TENURE POLICY TASK FORCE

1220 Linden Drive, 1820 Van Hise Hall
Madison, WI
Thursday, August 20, 2015
12 noon

Meeting Minutes

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

I. Welcome, Introductions and Logistics

Regent Vice-President John Behling called the meeting to order.

II. Task Force Charge, Including Why New Policy is Needed

Regent President Regina Millner addressed the task force. UW System President Ray Cross commented on the charge of the committee.

III. Discussion of the Charge, Expected Products, and Timeline

John Behling restated the charge of the task force and discussed his expectations for the committees.

IV. Overview and Discussion of State Statutes, Administrative Rules, and UW Policies on Tenure

UW System General Counsel Tom Stafford presented the overview of state statutes, rules and policies governing tenure. Legal Counsel Anne Bilder provided an outline of processes and points to be examined. UWSA staff Tou Her provided some insight into the initial research of other states.

Tom Stafford discussed the history of tenure policy in Wisconsin. He told the task force that the Wisconsin was unique in having tenure policy in statute and that it much more common to have it in policy.

Tom Stafford then offered a review of statute and current policy. He stated that the board converted statute to policy to make a seamless transition during and after the budget and that this

was meant as a temporary solution. He stated that there was outdated and mismatched language that needed to be addressed in policy as a result.

Robert Smith raised a question about what impact of conversion statutory language to board policy was. Tom Stafford responded that the board policy would have the same impact as law.

Patricia McManus asked if the policy had the same legal weight of policy and Tom Stafford replied that yes, it has the same weight.

Jonathan Shailor asked why legislators took the action of removing tenure policy from statutes and Tom Stafford replied that it was possible they were looking for increased flexibility.

Lopa Basu asked how easy is it to change board policy and Tom Stafford replied that it is difficult but similar in some ways to changing statute.

Overview of Tenure

Tom Stafford outlined the current process to obtain tenure and the fact that the dismissal for cause language had not been changed. He then moved on to the layoff language. He stressed that the right to due process had not been changed and the System has never in their history laid off a tenured individual. There were layoffs in 1973-75, but they were connected to a 5% funding cut and were put into place pre-merger. Courts had upheld legal challenges to these layoffs.

Tom Stafford pointed out that former statute only stated financial emergency and did not set any criteria on declaring a fiscal emergency. He added that there were also no guidelines on who decides what programs are modified and discontinued or on how that decision is made.

Tom Stafford then moved on to a discussion about UWS 5 was changed, with financial emergency language struck. He reiterated that the due process rights are still in code and that the new section 36.22 would need policy to fill gaps and implement.

Kathy Heyning asked about the inclusion of academic staff in these discussions and Tom Stafford responded that there were no real changes to how academic staff operate.

Dean Van Galen pointed out that the legislature used broad language to create this new authority and Tom Stafford concurred.

Dorothy Farrar Edwards asked about campus concerns about balancing new policies with existing campus policies. Tom Stafford responded by saying that was a major focus of this task force.

Post Tenure Review

Anne Bilder pointed out that Regent Policy Document 20-9 was developed in 1992 and included a review every 5 years. Anne Bilder explained the process for determining non-performance and for rewarding high performance.

Tou Her from the Board of Regents' office then described the research he put together for the task force, including a description of other policies.

Tom Stafford then responded to concerns raised by task force members about whether merit pay would be a replacement for pay plan by stating that he believed that was not the intention. Tom Stafford also responded to concerns about the broad language in the new statute by saying that policy would determine policy. He added that the existence of the arbitrary and capricious standard in court would also play a role. Tom Stafford also pointed out that the policy would include decision criteria and a set process, something current law did not have.

V. Overview of Tenure Faculty Layoff and Termination Policies in Other States and Recommended Policies from National Organizations

Tom Stafford provided general overview of other policies. Tou Her provided perspectives on initial research.

John Behling and Tom Stafford updated the task force on a conversation they had with AAUP on fiscal emergency and the need for realistic and defined regulation of what constitutes a fiscal emergency.

Tom Stafford then presented overviews of the policies from the University of Michigan, Rutgers and the University of Maryland. Information has been included for the committee.

VI. Group Discussion

John Behling asked Task Force members to share their thoughts as to what should be included in Board policies on tenure or where the task force should land.

Christine Roth said that she was concerned about the general language on budget and program changes and hoped that the group can talk more about academic freedom and protecting faculty rights.

James Schmidt stated that he liked to see that the policy to be developed addresses the circumstances of layoff, contains a rigorous process, meets AAUP guidelines, and guarantees academic freedom.

Lopa Basu said that the definition of tenure should be foundation for policies of layoff and post tenure review.

Regina Millner added that there was a need to differentiate fact and fiction. For 78 years the system was governed by policy. The concept of academic freedom evolved in policy and can be accomplished. Follow through on the policies is critical.

Katy Heyning said the policy must be clear and concise to guide the campuses but flexible enough to allow campuses to use policies in place to govern on their campus. Uniformity at System ensures compliance with law.

Dean Van Galen stressed the preservation of academic freedom. Balance of system policy and campus policy is key. Step towards building trust in many directions. Help public understand the important work of faculty.

Mittie Nimocks Den Herder added that tenure and academic freedom need to be secured for recruitment and that she witnessed the need to do so first hand.

Sarah Mangelsdorf said the Task Force needs to overcome perceptions and to focus on definitions for 36.21.

Greg Wise stressed the need for an inclusive, collaborative due process.

Jonathan Shailor said that the board should create thorough language connected to 36.22 on discontinuance, etc. Michigan's language is very thorough. Examine cases related to policies would be helpful.

Steve Meyer pointed out that program discontinuance is main concern on UW-Green Bay campus. Process must be very transparent. Mistrust needs to be overcome.

Gary Miller reiterated that a commitment to academic freedom and tenure is key to American higher education. Overcome trust issue through strong commitment to academic freedom and tenure.

Greg Diemer encouraged the importance of examining other existing policies that are accepted.

Ken Menningen said that a strong post tenure review process may be helpful in rebuilding relationship with legislature.

Kristene Surerus added that a transparent and inclusive process in developing policy will help and Robert Smith said an "A" grade is meaningful participation of committee. Bradley Seebach said this is a chance to reaffirm primary role for faculty in academic decision making.

Alan White told the task force that the post Tenure Review process has been very helpful and is important. UW Colleges experience financial challenges. He also spoke about a fear of regionalization and the need for specific language that shows that decisions arriving at dismissal have a clear standard.

Patricia McManus warned that adopting peer institution policies is a step down for us and that UW is made by its stronger commitment to academic freedom. She expressed concern that Regents are political appointees and she stressed that legal security in policy is a priority.

Dorothy Farrar Edwards said there needs to be a careful policy definition on processes around 36.22 language. She reiterated that academic freedom is key to retaining underpaid staff. She asked to look at how Michigan policies were used in eliminating programs at university. While no uniform procedure for post tenure review exists, she said the policy is fine.

John Behling asked the task force what pieces of Michigan policy they did not like and offered that as topic for next meeting. He added that he thought the policy was best written of those examined.

Ken Menningen added that the Michigan policy indicates that every effort will be made to relocate tenured faculty when a program is discontinued.

Lopa Basu asked if weakened shared governance be strengthened through these policies and Jonathan Shailor stated that he had worked through shared governance to discontinue teaching program. Jonathan Shailor added that the process allowed for participation and helped with understanding.

Katy Heyning expressed concern over why the shared governance task force was disbanded. Regina Millner responded that the decision was hers and President Cross'. Regina Millner explained the purpose of committees and the way the budget developed. She added that Regents have maintained their support of shared governance.

Alan White asked if there is a policy on talking to press and John Behling said the minutes and notes will be compiled and circulated. He stressed that the committee is open and public.

VII. Planning for Upcoming Meetings

John Behling announced that an email will be sent today about future dates for meetings.

Lopa Basu asked if substitutes be used for committee or call in. John Behling responded that the preference is for the appointee to attend. John Behling added that appearance in person is preferred but calling in is understandable.

VIII. Adjourn

John Behling thanked the task force and adjourned the meeting.