

## FACULTY TENURE

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### PREAMBLE

The Board of Regents adopts these regulations with the conviction that a well-defined statement of rules is essential to the protection of academic freedom and to the promotion of excellence at the University of Minnesota. A well-designed promotion and tenure system ensures that considerations of academic quality will be the basis for academic personnel decisions, and thus provides the foundation for academic excellence.

Tenure is the keystone for academic freedom; it is essential for safeguarding the right of free expression and for encouraging risk-taking inquiry at the frontiers of knowledge. Both tenure and academic freedom are part of an implicit social compact which recognizes that tenure serves important public purposes and benefits society. The people of Minnesota are best served when faculty are free to teach, conduct research, and provide service without fear of reprisal and to pursue those activities with regard for long term benefits to society rather than short term rewards. In return, faculty have the responsibility of furthering the institution's programs of research, teaching, and service, and are accountable for their performance of these responsibilities. Additionally, a well-designed tenure system attracts capable and highly qualified individuals as faculty members, strengthens institutional stability by enhancing faculty members' institutional loyalty, and encourages academic excellence by retaining and rewarding the most able people. Tenure and promotion imply selectivity and choice; they are awarded for academic and professional merit, not for seniority. The length and intensity of the review leading to the grant of tenure ensures the retention only of well-qualified faculty committed to the University's mission.

The ideal attributes of the collective faculty of any unit are scholarly creativity, professional competence and leadership, intellectual diversity, the ability and desire to teach effectively and the willingness to cooperate with other units in promoting the work and welfare of the University as a whole. The administration and faculty should ensure, within each unit, not only a proper balance among these activities but also the maintenance of each at the highest level, together with accountability and suitable recognition of individual achievement and service.

The tenure regulations provide a comprehensive set of policies dealing with the relationship between the University and its faculty. The regulations classify the faculty as tenured, probationary and term. They provide for annual performance reviews of all faculty, as well as especially thorough reviews before the granting of tenure, on promotion in rank, and when the performance of a tenured faculty member is alleged to be substandard. They provide for the reassignment of faculty in case of the reorganization of the University or changes in its scholarly direction, and for discipline when a faculty member fails to meet prescribed standards of conduct.

### DEFINITIONS

For the purposes of this policy, the terms defined in this section have the meanings given them.

\* (a) an "academic unit" is a department or similar unit. A school, college or division that is not further subdivided is also an academic unit.

\* (b) "faculty member" means every faculty member employed by the University of Minnesota System.

\* (c) the "head" of an academic unit is the academic administrator immediately responsible for it, such as a chair, head or director.

\* (d) a "collegiate unit" or "college" is a major academic entity of the University. It may be a college, school, institute or campus.

\* (e) the "dean" of a collegiate unit is the academic administrator immediately responsible for it, such as a dean or director or (on a campus that is not subdivided into colleges) a vice-chancellor.

\* (f) a "senior academic administrator" is an officer who has final administrative review authority on academic personnel decisions, and who reports directly to the president and regents, such as a vice president, chancellor, or provost. The president will designate one or more senior academic administrators and define their respective jurisdictions.

\* (h) the "senior vice president for academic affairs" is the officer (of whatever title) holding primary responsibility for the development of University-wide academic policy. This officer may also serve as senior academic administrator for some or all of the University, if so designated by the president.

\* (i) "tenured faculty" are those faculty who hold indefinite tenure.

## FACULTY TENURE

### **Section 1. Academic Freedom.**

**1.1 Principles.** Every member of the faculty is entitled to due process and academic freedom as established by academic tradition and the constitutions and laws of the United States and the state of Minnesota and as amplified by resolutions of the Board of Regents. The Board of Regents hereby reaffirms its commitment to academic freedom and tenure as reflected in its resolution of January 28, 1938, and in the statement of December 14, 1963, which are set forth in the appendix to these regulations. The policies of the Board of Regents regarding academic freedom are currently stated in the board's statement of September 8, 1995, which provides:

The Regents of the University of Minnesota reaffirm the principles of academic freedom and responsibility. These are rooted in the belief that the mind is ennobled by the pursuit of understanding and the search for truth and the state well served when instruction is available to all at an institution dedicated to the advancement of learning. These principles are also refreshed by the recollection that there is commune vinculum omnibus artibus -- a common bond through all the arts.

Academic freedom is the freedom to discuss all relevant matters in the classroom, to explore all avenues of scholarship, research and creative expression and to speak or write as a public citizen without institutional discipline or restraint. Academic responsibility implies the faithful performance of academic duties and obligations, the recognition of the demands of the scholarly enterprise and the candor to make it clear that the individual is not speaking for the institution in matters of public interest.

**1.2 Protection Of Faculty.** Denial of faculty appointment or reappointment or removal or suspension from office or censure or other penalty must not be based upon any belief, expression or conduct protected by law or by the principles of academic freedom.

## **Section 2. Applicability Of Regulations And Continuity Of Appointments.**

**2.1 Employment Contracts.** These regulations govern the relationship between the Board of Regents and faculty members, except as inconsistent with the provisions of collective bargaining agreements. These regulations are part of the contract between the Board of Regents and faculty members.

**2.2 Continuation Of Existing Appointments.** On the effective date of these regulations, every person holding a faculty appointment governed by the 1945 regulations concerning faculty tenure as amended, will hold the same kind of appointment under these regulations, whether or not their appointments are appropriate for such status under these regulations.

## **Section 3. Faculty Ranks And Types Of Appointments.**

**3.1 In General.** The faculty ranks are professor, associate professor, assistant professor, and instructor. Faculty appointment is appropriate only if the individual is engaged in teaching or research as defined in section 7.11. Appointment at these ranks are either regular tenured or tenure-track appointments or term appointments. An appointment must be designated as a regular or a term appointment when it is made.

**3.2 Regular Appointments.** A regular appointment is either with indefinite tenure or is probationary, leading to a decision concerning indefinite tenure within a specified period of time. A faculty member with indefinite tenure is entitled to retain that position until retirement in accordance with University regulations or until the appointment is terminated pursuant to the provisions of sections 10 or 11.

A faculty member on probationary appointment:

1. is entitled to consideration for indefinite tenure; and
2. is entitled to timely notice of termination in accordance with Section 6.

A regular appointment may only be held in an academic unit of a degree-granting college, or similar unit. A regular appointment must be for two-thirds time or more over the academic year.

**3.3 Term Appointments.** A term appointment is date-specific; that is, the appointment terminates at the end of a period specified in the appointment without further notice to the appointee. The senior academic administrator for the campus or area must give every person appointed to a term faculty position a statement in writing setting forth the conditions of the appointment, including the fact that it terminates without further notice.

No number of renewals of a term appointment creates a right to further renewals or to a decision concerning tenure. Every renewal of a term appointment for the seventh or succeeding year must be reported to the Tenure Committee with a justification of the reasons for the continuation of term status.

**3.4 Appropriate uses of term appointments.** Term appointments are appropriate and may be used provided one or more of the following conditions is met:

\* (1) the duration, the percentage of time, or both require less than service for two-thirds time for the academic year;

\* (2) the appointment is designated a Visiting appointment because the faculty member is from another educational institution or is a qualified professional from a government or private agency on a leave of absence to accept a temporary appointment at this University;

\* (3) the appointment is designated a clinical appointment because the faculty member is a clinician in the community who gives service to the University part-time;

\* (4) the appointment concerns a faculty member who principally is engaged in and primarily is supported by clinical activities or by discipline-related service.[1]

\* (5) the appointment is designated an adjunct appointment because the faculty member's primary employment is outside the University or is in another unit of the University;

\* (6) the appointment extends courtesy faculty rank without salary;

\* (7) the position is subject to the joint control of the University and another institution;

\* (8) the specific funding for the position is subject to the discretion of another agency;

\* (9) the funding for the position is for a limited time;

\* (10) the appointment is in a unit or program that is experimental or otherwise restricted in duration; and

\* (11) the person is enrolled in a University of Minnesota degree program. A regular faculty member on a probationary appointment may transfer to term status during enrollment in such a program if the faculty member and the senior academic administrator agree. This transfer suspends the running of the maximum period of probationary service, but the faculty member retains other rights of regular appointment, including annual review, the right to timely notice and a terminal appointment period as provided in Section 6.

**3.5 Administrators' Appointments.** Academic administrators may hold regular or term faculty appointments. Administrative titles and duties are distinct and severable from such individuals' faculty appointments. Removal from an administrative position does not impair any rights the individual holds as a faculty member. Upon leaving an administrative position, the individual returns to faculty status, with salary and term of appointment reduced by the amount of the administrative augmentation, if any.

**3.6 Special Contracts.** These regulations do not bar a faculty appointment pursuant to a special contract specifying terms or conditions of employment which are different from those prescribed in these regulations. All other provisions of these regulations apply to such appointments. Every special contract must be in writing and must state that it is a special contract entered into pursuant to this subsection. It must be signed by the faculty member concerned, by the dean of the collegiate unit in which the faculty member will be employed and by the senior academic administrator and must be authorized by the Board of Regents or its expressly authorized delegate. In addition, the senior academic administrator will annually report to the Tenure Committee the terms of all special contracts and the reasons for their use.

A special contract may be used to reduce the minimum time of a regular appointment to one-half time in order to permit a faculty member to devote more time to family responsibilities. Such a contract must provide for the mutual responsibilities of the faculty member and the academic unit, including the type and percent time of the appointment, if any, to which the faculty member is entitled at the expiration of the special contract. In the case of a probationary faculty member, the contract will regulate the length of the probationary period, but the total probationary period may be extended by no more than a total of two years pursuant to this Section and subsection 5.5.

#### **Section 4. Terms Of Faculty Employment.**

**4.1 Written Notice Of Appointment.** Each faculty appointment or change of status is specified in a written notice of appointment issued by or on behalf of the Board of Regents. The notice must include the following:

1. Whether the appointment is regular or term;
2. Whether it is full or part-time and the percentage of time involved;
3. If for a fixed term, its expiration date;
4. If regular, whether it is probationary or with indefinite tenure;
5. Whether it is on a twelve-month, academic year or other specified annual basis;
6. The rank of appointment;
7. The academic unit or units to which the individual is being appointed;
8. The recurring salary; and
9. Additional salary as described in Section 4.4.

The notice is only evidence of the appointment; clerical or computer errors in a notice of appointment do not affect the terms of the appointment unless the faculty member reasonably relied upon the mistake and suffered an injustice because of that reliance. Notices required by this section should be delivered before the effective date of the appointment or change of status, or as soon thereafter as is administratively feasible. A probationary appointee must also be given notice of the applicable maximum probationary period.

**4.2 Action By The Board Of Regents.** Faculty appointments and renewals or changes of status become effective when approved by the Board of Regents or its authorized delegate.

**4.3 Changes In Terms Of Appointment Other Than Faculty Compensation.** Except for raises in rank and except for action expressly authorized by these regulations, no changes of (1) through (7) items listed in subsection 4.1 may be made during the term of an appointment except with the agreement of the faculty member and the Board of Regents or its authorized delegate.

**4.4 Faculty Salaries.** Each faculty member shall receive a recurring salary, and may also receive an additional salary which may be for special awards or for activities in addition to regular faculty responsibilities such as clinical practice, administrative service, overload duties, summer school teaching and summer research support and similar activities.

Recurring salary will not be decreased except by action expressly authorized in this section or in Sections 7a, 10, 11, or 14 of these regulations or with the agreement of the faculty member. If a faculty member's recurring salary is decreased, the amount of the decrease and the reason therefor shall be set forth in a written notice and provided to the faculty member. No decrease in recurring salary shall occur in violation of the academic freedom of the faculty member.

At the time an appointment is made, the offer and written notice of appointment shall separately state the recurring salary and any additional salary, as described above, that the faculty member will receive. In each subsequent year, the faculty member shall be provided with a written notice separately stating any changes in recurring salary and any changes in additional salary for the following academic year. A faculty member's recurring salary shall consist of the initial recurring salary adjusted by any subsequent increase or decrease in recurring salary provided for in a subsequent written notice. Increases will be presumed to be in recurring salary unless otherwise identified. For a faculty member employed when this section takes effect, the initial recurring salary will be the faculty member's recurring salary at the time this section takes effect, exclusive of any additional salary designated as special awards or designated as being for activities in addition to regular faculty responsibilities such as clinical practice, administrative service, overload duties, summer school teaching, summer research support and similar activities.

A faculty member whose recurring salary has been decreased may petition for review of that action under Section 15 of these regulations.

**4.5 Reduction Or Postponement Of Compensation.** If the University or a collegiate unit is faced with financial stringency that does not amount to a fiscal emergency, the president may propose a temporary reduction or postponement in compensation to be allocated to faculty in accordance with a mathematical formula or similar device. If approved by the Faculty Senate or the appropriate collegiate assembly, respectively, and the Board of Regents, the recurring salary of all faculty members in the University or in the designated collegiate units shall be reduced temporarily in accordance with the formula or device. The reduction may not continue for longer than two years, unless renewed by the same procedure.

#### **Section 5. Maximum Period Of Probationary Service.**

**5.1 General Rule.** To give the University ample opportunity to determine the qualifications of those faculty members whom it is considering for regular appointments with indefinite tenure, the maximum period of probationary service of a faculty member is normally six academic years, whether consecutive or not. The faculty assembly of a collegiate unit may propose to alter the maximum probationary period for all of that college, or for certain units within it, to no more than nine years. The tenured faculty of a college, by simple majority vote taken by secret ballot, may adopt such a change, with the approval of the dean and of the senior academic administrator. Any such change in the maximum probationary period applies to all probationary faculty hired in that college (or those units) after the decision, but any incumbent probationary faculty member may choose to be considered under the new rule. At the end of this probationary period, the faculty member must either be given a regular appointment with indefinite tenure or a one-year terminal appointment.

**5.2 Early Decisions Permitted.** These regulations do not prevent the granting of indefinite tenure prior to the expiration of the maximum period of probationary service and do not prevent a decision to terminate an appointee's probation prior to the end of the appointee's maximum probationary service, if timely notice is given.

**5.3 Definition Of Academic Year.** A faculty member is considered to have served an academic year if the appointee serves at least two-thirds time for three quarters or full-time for two quarters of the nine month academic year or any equivalent combination. An academic year during which the faculty member serves for less than this amount is not counted in computing the number of years for purposes of this section.

Unless otherwise agreed in writing, periods during which a faculty member is on paid leave for professional development (single quarter leave, sabbatical furlough, etc.) or on leave to teach or conduct research at another academic institution count as service, but periods in which the faculty member is on sick or disability leave or on leave in some non-faculty capacity do not count as service.

If a faculty member transfers to a position in the non-regular faculty, the time spent in the non-regular position does not count for the purpose of this section.

#### **5.4 Prior Service.**

**5.41 In This University.** Every academic year during which a faculty member has previously served at least two-thirds time under a regular appointment at this University reduces the maximum period of probationary service by one year.

**5.42 Elsewhere.** If a faculty member has previously served in regular faculty positions, as defined in these regulations, in one or more accredited universities or colleges, every academic year of such service (not exceeding three) reduces the maximum period of probationary service by one year.

**5.43 Exceptions Permitted.** If the prior service was in a different discipline, was in an academic unit or institution with teaching or research goals not comparable to those of the present appointment, or was too long ago to provide good evidence of the appointee's current professional development, the Board of Regents or its expressly authorized delegate may make an exception in writing at or near the beginning of the probationary period.

**5.5 Exception For New Parent Or Caregiver.** The maximum period of probationary service will be extended by one year at the request of a probationary faculty member:

1. On the occasion of the birth of that faculty member's child or adoptive/foster placement of a child with that faculty member; or
2. When the faculty member is a major caregiver for a family member<sup>[2]</sup> who has an extended serious illness, injury, or debilitating condition. A faculty member may use this provision no more than two times.

The request for extension must be made in writing within three months of the events giving rise to the claim and no later than June 30 preceding the year a final decision would otherwise be made on an appointment with indefinite tenure for that faculty member.

### **Section 6. Tenure Of Faculty On Regular Probationary Appointments.**

**6.1 In General.** A regular probationary appointee is a candidate for indefinite tenure. A probationary appointment continues until it is superseded by an appointment with indefinite tenure or until terminated by timely notice or by resignation. Regular probationary appointments are generally made at the rank of assistant professor, but may be made at any rank.

**6.2 Notice Requirements.** Except as provided below, a probationary appointment may be terminated at the end of any academic year by giving notice of termination (in the form provided in Section 17) not later than May 15 of the preceding academic year. The notice must inform the faculty member of the right to request a hearing before the Judicial Committee and must advise the faculty member of the applicable time limit for making such a request

**6.21 Associate Professors And Professors On Probationary Appointments.**

An initial probationary appointment at the rank of associate professor or professor may specify in writing that it is for a minimum period of three years. In that case, the earliest time at which notice of termination can be given is before May 15 of the second year of service, to take effect at the end of the third year of service.

**6.22 Instructors On Probationary Appointments.** An initial probationary appointment at the rank of instructor may specify in writing that it is only for a minimum period of one year. The appointment may be terminated at the end of the first year by notice given not later than March 1 of that year, or at the end of the second year by notice given not later than December 15 of that year. In all other respects such appointments are governed by subsection 6.2. A promotion of an instructor to the rank of Assistant Professor without a grant of tenure does not affect the operation of this subsection.

**6.3 Promotions.** The promotion of a probationary appointee to the rank of associate professor or professor must be accompanied with an appointment with indefinite tenure. A promotion to assistant professor does not affect the faculty member's tenure status.

**6.4 Rank Of Appointees With Indefinite Tenure.** The grant of tenure to an instructor must be accompanied with a promotion to assistant professor. Since the standards for granting tenure are ordinarily at least as rigorous as those for promotion to associate professor, the granting of tenure to an assistant professor will ordinarily be accompanied by a promotion to associate professor. Otherwise, a grant of indefinite tenure need not be accompanied with a promotion in rank.

**6.5 Effect Of Failure To Comply With This Section.** No one is entitled to an appointment with indefinite tenure merely because the University failed to comply with this section. If an individual is given an extension of appointment beyond the maximum probationary period or is not given timely written notice, the University may either:

1. Grant an appointment with indefinite tenure;
2. Grant a further probationary appointment, if this would not exceed the maximum probationary period; or
3. Grant a terminal appointment ending at the end of the first full academic year which follows the May 15th after proper notice is given.

**Section 7. Personnel Decisions Concerning Probationary Faculty.**

**7.1 Criteria For Decisions.**

**7.11 General Criteria.** The basis for awarding indefinite tenure is the determination that the achievements of an individual have demonstrated the individual's potential to continue to contribute significantly to the mission of the University[3] and to its programs of teaching, research, and service over the course of the faculty member's academic career.[4] The primary[5] criteria for demonstrating this potential are effectiveness in teaching[6] and professional distinction in research,[7] outstanding discipline-related service contributions[8] will also be taken into account where they are an integral part of the mission of the academic unit. The relative importance of the criteria may vary in different academic units, but each of the criteria must be considered in every decision.[9]

**7.12 Departmental Statement.** Each academic unit must have a document that articulates with reasonable specificity the indices and standards which will be used to evaluate whether candidates meet the criteria of subsection 7.11. The

document must comply with those standards, but should make their application more specific. Each such document is subject to review by the dean or other appropriate academic administrator and by the senior academic administrator and by the senior vice president for academic affairs. Each academic unit must provide each probationary faculty member with a copy of the document at the beginning of the probationary service.

**7.2 Annual Review.** The tenured faculty[10] of each academic unit annually reviews the progress of each probationary faculty member toward satisfaction of the criteria for receiving tenure. The head of the unit prepares a written summary of that review and discusses the candidate's progress with the candidate, giving a copy of the report to the candidate.

**7.3 Formal Action By The Faculty.** The tenured faculty of the academic unit may recommend that a probationary faculty member be granted indefinite tenure or that the appointment be terminated. If it does neither, it is presumed to recommend a renewal of the appointment. In the final probationary year, if the tenured faculty does not recommend an appointment with indefinite tenure, it must recommend termination of the appointment. The recommendation is made by a vote of the regular faculty with indefinite tenure in the unit. The presiding officer is not disqualified from voting merely because of office.

**7.4 Procedures For Taking Formal Action.** The academic unit must observe University procedures established as provided in subsection 16.3. These procedures will provide the following.

\* (a) A good faith effort is made to gather all relevant information necessary to the decision. The academic units have the primary obligation to assemble the file, but the faculty member also has the right to add any material the faculty member considers relevant.

\* (b) The decision is made by vote, by written unsigned secret ballot, at a meeting of the regular faculty who have indefinite tenure in the academic unit. The rules may provide for absentee ballots by informed absent faculty members.

\* (c) Persons who have or have had a family or similar relationship to the candidate do not participate in the decision. The procedures may establish methods for raising and ruling on such questions in advance of the decision.

\* (d) Action is to be taken by majority vote. An academic unit may adopt a uniformly applicable rule that a motion to recommend tenure must achieve a specified exceptional majority in order to constitute an affirmative recommendation of that unit. In such case a motion which achieves a majority, but not the required exceptional majority, must be sent forward for review by the appropriate review process despite the absence of the unit's affirmative recommendation.

\* (e) The unit shall report the vote of the faculty, together with the reasons for the action taken. This statement of reasons must take the form of a summary of both majority and minority views which have substantial support which were expressed in the course of formal consideration of the action. All statements must be made without personal attribution. A preliminary draft is open to members of the faculty eligible to vote so they may comment and suggest changes. The final draft is sent to the affected faculty member and is open to the faculty eligible to vote.

\* (f) Before submitting a formal recommendation for an appointment with indefinite tenure or for termination of a probationary appointment, the head of the academic unit informs the appointee of the recommendation and gives the

appointee a copy of the final report. The appointee may submit any comments upon the report to the academic administrator who will review the report, with a copy to the head of the academic unit.

**7.5 Nondisclosure Of Grounds For Recommendation Of Termination.**

The reasons for a recommendation to terminate a probationary appointment may not be disclosed, except as part of the review process, unless the faculty member requests such disclosure or makes a public statement concerning the reasons for termination.

**7.6 Review Of Recommendations.** Recommendations of academic units to grant indefinite tenure or to terminate probationary appointments are reviewed at the collegiate and university levels.

**7.61 Procedures.** The review must be conducted according to University procedures, established as provided in subsection 16.3. These procedures must provide for review and recommendations by the head of the academic unit, by the dean of the collegiate unit, by faculty committees at the collegiate or University level, and, when appropriate, by other academic administrators. The review must be conducted on the basis of the standards and criteria established by subsections 7.11 and 7.12 and the applicable rules and procedures. The rules may permit an administrator to refer the matter back to the unit for reconsideration, but if the administrator and the unit do not agree after such reconsideration, both the recommendation and the administrator's comments must be sent forward for final administrative action. A copy of each review or recommendation must be supplied to the faculty member. The faculty member may comment thereon in writing to those who will review the matter further.

**7.62 Conflict Of Interest.** No one may participate both in an initial recommendation by an academic unit and in a subsequent review of that recommendation, except that the head of the academic unit may make the initial administrative review. No one who has participated in a recommendation or review may thereafter serve as a member of the Judicial Committee in further consideration of that case.

Members of the Judicial Committee may not serve on collegiate or University review committees. Members of the Judicial Committee may participate in initial recommendations by their own academic units, but are disqualified from thereafter participating in Judicial Committee consideration of those decisions.

**7.63 Final Administrative Action.** The University may not act contrary to the recommendation of the academic unit which made the initial recommendation except for substantive reasons which must be stated in writing by the senior academic administrator to the faculty member, to the members of the academic unit which made the recommendation, and to the president. The fact that participants in the review process have recommended against the unit's initial recommendation is not, by itself, a substantive reason.

The senior academic administrator takes the steps necessary to make the necessary appointment or to give notice of termination.

**7.7 Improper Termination Of Probationary Appointments.** A person holding a regular probationary appointment who has been given notice of termination may petition the Judicial Committee to review that action. The Judicial Committee will not base its ruling on the merits of the decision itself, but will review allegations that the decision was based in significant degree upon any of the following:

1. Personal beliefs, expressions or conduct which fall within the liberties protected by law or by the principles of academic freedom as established by academic tradition and the constitutions and laws of the United States and the state of Minnesota;
2. Factors proscribed by applicable federal or state law regarding fair employment practices;
3. Substantial and prejudicial deviation from the procedures prescribed in subsections 7.4 and 7.6 and the procedural rules promulgated pursuant to those subsections;
4. Failure to consider data available at the time of decision bearing materially on the faculty member's performance;
5. Demonstrable material prejudicial mistakes of fact concerning the faculty member's work or conduct;
6. Other immaterial or improper factors causing substantial prejudice; or
7. Other violation of University policies or regulations.

Such proceedings are governed by Section 15.

#### **Section 7a. Review Of Faculty Performance**

**7a.1. Goals And Expectations.** The faculty of each academic unit must establish goals and expectations for all faculty members, including goals and expectations regarding teaching, scholarly productivity, and contributions to the service and outreach functions of the unit. The factors to be considered will parallel those used by the unit in the granting of tenure, but will take into account the different stages of professional development of faculty. The goals and expectations will be established in accordance with standards established by the University Senate. They can provide for flexibility, so that some faculty members can contribute more heavily to the accomplishment of one mission of the unit and others to the accomplishment of other missions. The goals and expectations shall not violate the individual faculty member's academic freedom in instruction or in the selection of topics or methods for research. They shall include reasonable indices of acceptable performance in each of the areas (e.g., teaching contributions and evaluations, scholarly productivity, service, governance and outreach activities). The dean reviews the goals and expectations of each unit and may request changes to meet the standards of the University and of the collegiate unit.

**7a.2. Annual Review.** Each academic unit, through its merit review process (established in accordance with the standards adopted by the senate), annually reviews with each faculty member the performance of that faculty member in light of the goals and expectations of the academic unit established under section 7a.1. This review is used for salary adjustment and faculty development. The faculty member will be advised of the evaluation and, if appropriate, of any steps that should be taken to improve performance and will be provided assistance in that effort. If the head of the unit and a peer merit review committee elected for annual merit review within that unit both find a faculty member's performance to be substantially below the goals and expectations adopted by that unit, they shall advise the faculty member in writing, including suggestions for improving performance, and establish a time period (of at least one year) within which improvement should be demonstrated.

**7a.3. Special Peer Review In Cases Of Alleged Substandard Performance By Tenured Faculty.**

If, at the end of the time period for improvement described in the previous paragraph, a tenured faculty member's performance continues to be substantially below the goals and expectations of the unit and there has not been a sufficient improvement of performance, the head of the academic unit and the elected peer merit review committee may jointly request the dean to initiate a special peer review of that faculty member. Before doing so, the dean shall independently review the file to determine that special peer review is warranted. (in the case of an academic unit that is also a collegiate unit, the request shall be made to and the review conducted by the responsible senior academic administrator.) The special peer review shall be conducted by a panel of five tenured faculty members of equal or higher rank, selected to review that individual. The faculty member under review shall have the option to appoint one member. The remaining members shall be elected by secret ballot by the tenured faculty of the unit. The members of the special review panel need not be members of the academic unit. The special review panel shall provide adequate opportunity for the faculty member to participate in the review process and shall consider alternative measures that would assist the faculty member to improve performance. The tenure subcommittee may adopt rules and procedures regulating the conduct of such reviews. The special review panel shall prepare a report on the teaching, scholarship, service, governance, and (when appropriate) outreach performance of the faculty member. It will also identify any supporting service or accommodation that the University should provide to enable the faculty member to improve performance. Depending on its findings, the panel may recommend:

\* (a) that the performance is adequate to meet standards and that the review be concluded;

\* (b) that the allocation of the faculty member's expected effort among the teaching, research, service and governance functions of the unit be altered in light of the faculty member's strengths and interests so as to maximize the faculty member's contribution to the mission of the University;

\* (c) that the faculty member undertake specified steps to improve performance, subject only to future regular annual reviews as provided in Section 7a.2;

\* (d) that the faculty member undertake specified steps to improve performance subject to a subsequent special review under Section 7a.3, to be conducted at a specified future time;

\* (e) that the faculty member's performance is so inadequate as to justify limited reductions of salary, as provided in Section 7a.4;

\* (f) that the faculty member's performance is so inadequate that the dean should commence formal proceedings for termination or involuntary leave of absence as provided in Sections 10 and 14; or

\* (g) some combination of these measures.

The panel will send its report to the dean, the head of the academic unit, and the faculty member. Within 30 work days of receiving the report, the faculty member may appeal to the Judicial Committee, which shall review the report in a manner analogous to the review of tenure decisions (see Section 7.7).

**7a.4. Salary Reductions.** If the special review panel recommends that the faculty member's performance is so inadequate as to justify limited reductions of recurring salary, the head of the academic unit, with the approval of the dean,

may reduce the faculty member's recurring pay, subject to the following limitations:

\* (a) the amount of the decrease will not exceed 10% of the faculty member's recurring salary on the basis of any one special review;

\* (b) recurring salary may not be reduced by more than 25% from the highest level of recurring pay ever held by the faculty member;

\* (c) at least six months' notice of the decrease must be given;

\* (d) any decrease in recurring salary may be restored by the annual review process provided in Section 7a.2.

Within 30 work days of notice of the decrease, the faculty member may appeal this action to the Judicial Committee, which shall review the action and the recommendation leading to it in a manner analogous to the review of tenure decisions (see Section 7.7). This review may not reconsider matters already decided by the Judicial Committee under Section 7a.3. Any decrease in recurring pay beyond the limits specified in this subsection can only be imposed pursuant to Sections 4.5, 10, 11, and 14.

**7a.5. Peer Review Option.** Upon application to it by the dean and faculty (or the elected faculty assembly) of a collegiate unit, the Faculty Senate may adopt a system of peer review of performance of faculty of that unit different from the system set forth in Sections 7a.1 through 7a.4 if in the Faculty Senate's judgment so proceeding is in the University's interest.

#### **Section 8. Improper Refusal Of A New Appointment To A Term Faculty Member.**

A person holding a term faculty appointment who has been refused a renewal of that appointment or has applied for and been refused a regular or a different term faculty appointment within six months of the end of that appointment may petition the Judicial Committee to review the refusal, but only on the ground that the decision was based in significant degree upon one or more of the following:

1. Personal beliefs, expressions or conduct which fall within the liberties protected by law or by the principles of academic freedom as established by academic tradition and the constitutions and laws of the United States and the state of Minnesota;
2. Factors proscribed by applicable federal or state law regarding fair employment practices;
3. Essential and substantial written misrepresentation of the nature of the original appointment; or
4. Other violation of University policies or regulations.

Such proceedings are governed by Section 15.

#### **Section 9. Appointment Of Associate Professors And Professors With Indefinite Tenure.**

Initial appointments with indefinite tenure may only be made at the rank of associate professor or professor. Such appointments may be made only after

receiving the recommendation of the regular faculty holding indefinite tenure in the academic unit concerned.

## **Section 10. Unrequested Leave Of Absence For Disability And Disciplinary Action**

**10.1 Unrequested Leave Of Absence For Disability.** A faculty member who is physically or mentally unable to perform reasonably assigned duties may be placed on unrequested leave of absence. The faculty member is entitled to sick pay and disability insurance payments in accordance with University policy. The faculty member has a right to return to the faculty upon termination of the disability or upon cessation of disability payments.

### **10.2 Disciplinary Action.**

**10.21. Termination Or Suspension Of A Faculty Appointment Before Its Expiration.** A faculty appointment may be terminated or suspended (except under Section 10.22) before its ordinary expiration only for one or more of the following causes;

\* (a) sustained refusal or failure to perform reasonably assigned duties adequately;

\* (b) unprofessional conduct which severely impairs a faculty member's fitness in a professional capacity;

\* (c) egregious or repeated misuse of the powers of a professional position to solicit personal benefits or favors;

\* (d) sexual harassment or any other egregious or repeated unreasonable conduct destructive of the human rights or academic freedom of other members of the academic community; or

\* (e) other grave misconduct manifestly inconsistent with continued faculty appointment.

**10.22 Procedure For Minor Disciplinary Actions.** Minor sanctions, such as a letter of reprimand in the faculty member's file, or the like, may be imposed for significant acts of unprofessional conduct. For minor sanctions, the dean may impose the sanction after providing the faculty member notice of the proposed action and of the reason that it has been proposed and giving the faculty member an opportunity to respond. If the faculty member files a grievance under the University grievance policy to challenge a minor disciplinary matter, the sanction shall be held in abeyance until the conclusion of the proceeding. The grievance panel shall have jurisdiction to consider all claims raised by the faculty member, and if the case goes to arbitration, the arbitrator shall be an individual with experience in academic matters.

**10.3 Procedures.** A faculty member may be placed on unrequested leave of absence or a faculty appointment may be terminated or suspended for these reasons only in accordance with the procedures set forth in Section 14.

## **Section 11. Fiscal Emergency.**

**11.1 Faculty Rights.** The Board of Regents, if faced with the necessity of drastic reduction in the University budget, has the power to suspend or abolish positions, or even entire departments, divisions, or other administrative units. If confronted with such adverse contingency, the board will consult with and secure the advice of faculty representatives, as provided in this section. Faculty

members have the right to full access to information about the situation and the alternatives being considered. In effecting retrenchment because of financial necessity, the regents will make reductions in faculty positions only to the extent that, in their judgment, is necessary after exploring various alternative methods of achieving savings. The regents fully intend that the tenure system as a whole and the tenure rights of each individual faculty member be protected in every feasible manner during periods of such retrenchment.

**11.2 General Principles Of Priority.** The following general principles of priority apply in any financial crisis.

\* (a) first, the University must fully utilize all means consistent with its continued existence as an institution of high academic quality to reduce expenses or to increase income which do not involve the termination of faculty positions or the impairment of faculty rights.

\* (b) second, the University may consider alternatives which involve only the temporary reduction or postponement of faculty compensation or the reduction of fringe benefits.

\* (c) only thereafter may the University suspend or terminate faculty positions in accordance with the section.

**11.3 First Stage: Alternative Approaches.** If there has been a serious reduction in the University's income, the president will report the matter to the Senate Consultative Committee. The president will identify the magnitude of the shortfall, the measures which might be taken to alleviate it (which must not involve impairment of faculty rights), and alternative measures which have been rejected. The president will give the committee full access to all available information and will respond specifically to additional proposals suggested by the committee. At this stage, the University will consider reductions in other expenses. It will also consider increases in tuition, sales of assets, and borrowing. These steps will be implemented by the president or the Board of Regents as is appropriate.

**11.4 Second Stage: Reduction Or Postponement Of Compensation.** If the University has implemented all of the measures which are required to be considered in the first stage, which are consistent with its continued operation as an institution of high academic quality, and they are inadequate to meet the shortfall, the president may, after consultation with the Faculty Consultative Committee, propose the temporary reduction or postponement of faculty compensation for a predetermined period not to exceed one year, according to a mathematic formula or similar device. The Faculty Consultative Committee will report on the adequacy of the steps taken in the first stage and make its recommendations on the proposal. If the Faculty Senate approves the proposed action (or any modification of it) by an absolute majority of its membership or by a two-thirds vote of the members present and voting (a quorum being present), the Board of Regents may take that action (or any less stringent action) and, to that extent, modify the terms of the appointments of all faculty members. The Board of Regents may rescind the action at any time thereafter. Such action may be repeated by the same procedures.

**11.5 Third Stage: Fiscal Emergency.** If there has been a reduction of the University's income which is so drastic as to threaten its survival, and this threat cannot be alleviated by the measures specified above, the Board of Regents may declare a fiscal emergency. During such an emergency, the Board of Regents may terminate or suspend faculty appointments as provided in this section.

**11.51 Preliminary Procedures.** Before recommending to the Board of Regents that it declare a fiscal emergency, the president must meet with the Senate Consultative Committee to examine alternatives to and consequences of such a declaration. The president must provide the committee access to all available information. The president must provide a written report identifying the dollar amount to be saved by reducing faculty positions. This report must also identify the dollar amount proposed to be saved by any other measures to be taken, including the level of any concurrent reductions in non-faculty staff during the emergency. The Faculty Consultative Committee will prepare a written report on the president's proposal, to which the Senate Consultative Committee may add additional comments. The Faculty Senate will first consider and act on the proposal and reports. Thereafter, the University Senate may consider them. The president must attend both senate meetings to explain the proposal and to answer questions.

After receiving the president's recommendation and the resolutions of the senates, the Board of Regents may declare a state of fiscal emergency. Before action contrary to the recommendation of the University Senate is subsequently taken, the president must report in writing and in person the reasons for this action to the Senate Consultative Committee. The Board of Regents' resolution states the maximum amount to be realized from termination or suspension of faculty appointments.

**11.52 Duration.** A fiscal emergency lasts no longer than 12 months unless renewed by the same procedure. A fiscal emergency may be rescinded at any time by the Board of Regents.

**11.53 Allocation Of Shortfall.** After consultation with the Faculty Consultative Committee and the Senate Consultative Committee, the president proposes an initial allocation of the shortfall to the various collegiate units, which need not be prorated. The committee must obtain the views of the faculty in the affected units and must hold an open meeting at which anyone may comment upon the proposed action. It may also request the assistance of other University or Senate committees in studying all or particular aspects of the educational policies and priorities involved in the action. The colleges and campuses then allocate the shortfall to the various academic units after similar consultation with the representative bodies and academic units in the colleges and similar open meetings. The plans must reflect the principles and priorities established in subsection 11.6. The colleges and campuses return their plans to the senior vice president for academic affairs, who prepares a comprehensive plan for the University, including a list of the persons whose appointments will be suspended or terminated. This plan is submitted to the University Senate and the Faculty Senate for their recommendation. The recommendations of the senates and the senior vice president's plan will be presented to the president and the Board of Regents for action.

## **11.6 Principles Governing Termination Or Suspension.**

### **11.61 General Principles.**

\* (a) Savings achieved through resignations, retirements, renegotiations of contracts, inloading or other measures must be credited to the assigned shortfall before terminating or suspending faculty appointments.

\* (b) A good faith effort should be made to use temporary suspensions or voluntary furloughs rather than terminations. In this third stage, the Board of Regents may impose the temporary or permanent reduction of faculty compensation or the reduction of fringe benefits, in excess of those approved in the second stage. Suspensions without pay for one quarter in any year may be

ordered in accordance with objective criteria, provided that faculty members are given at least six months notice.

\* (c) Terminations may not be used in case of a short-term financial crisis, but only if the circumstances are such that the shortfall is reasonably expected to continue over a substantial number of years.

\* (d) A good faith effort must be made to cover as much of the shortfall as possible by allowing non-regular appointments to lapse and by giving notice to probationary faculty in accordance with the terms of their appointments.

\* (e) A good faith effort must be made to cover as much of the shortfall as possible by transferring faculty members to other positions for which they are qualified or by offering them retraining for available positions.

\* (f) The selection of faculty members within an academic unit for termination must be made on objective criteria. It may not involve a comparative evaluation of the relative merits of individuals or a repetition of the tenure-granting process.

#### **11.62 Priorities.**

(a) Unless the unit can demonstrate that essential functions could not otherwise be performed:

1. all non-regular faculty within an academic unit must be suspended or terminated before any regular faculty may be suspended or terminated in that unit; and
2. all probationary faculty within an academic unit must be suspended or terminated before any tenured faculty may be suspended or terminated in that unit.

(b) Care must be taken to protect the employment of women and minorities entitled to affirmative action. The senior vice president for academic affairs must insure that for the University as a whole the plan which is submitted does not reduce the proportion of appointments with indefinite tenure held by women or minorities entitled to affirmative action, and does not reduce the proportion of non-regular appointments held by women or minorities entitled to affirmative action.

**11.63 Notice And Severance Pay.** A faculty member whose appointment is to be terminated or suspended is entitled to a minimum of one full academic year's notice or to one year's salary as severance pay in lieu of notice, unless the appointments would otherwise expire earlier.

**11.64 Reemployment Rights.** The University will not fill any faculty position for which a faculty member with indefinite tenure who has been terminated is qualified for five years after notice of termination, unless it first offers the position to each such faculty member and gives a reasonable time for the faculty member to accept or reject it.

**11.7 Judicial Committee Report.** A faculty member whose appointment is terminated or suspended may make a written request for review by the Judicial Committee. The review will be conducted in accordance with Section 15. The Judicial Committee will not reexamine the determination that a fiscal emergency exists, nor will it reexamine the educational policies and priorities pursued unless it finds a substantial failure to follow the procedures established in this section. It will only examine whether the action was taken in accordance with the procedures and standards set forth in this section, whether the action was based on a violation of academic freedom or constitutional or legal rights, or was

substantially based on immaterial or improper factors. It may consolidate cases involving common issues for a single hearing.

**Section 12. Programmatic Change.**

**12.1 Programmatic Change.** The University and faculty recognize that changes in academic programs are an essential part of the development and growth of the institution. These changes should be based on academic considerations and on long-term policy and planning, and may be undertaken only after consultation with the faculty, including the appropriate governance structure.

**12.2 Faculty Rights And Duties.** In the event that programmatic change leads to discontinuation of a program in which a member of the faculty is employed, the University recognizes its obligation to continue the employment of regular faculty in accordance with the terms of their employment, and to continue the employment of non-regular faculty for the term of appointment. In case of fiscal emergency, the provisions of Section 11 apply.

Regular faculty members who are so retained have the responsibility to accept teaching or other assignments for which they are qualified, and to accept training to qualify them for assignment in other fields. The University has the responsibility to assign such faculty members to responsibilities as closely related to their original field of tenure as is practicable, to allow them time in which to continue scholarship in their original field if they wish, and to recognize scholarly contributions in that field as valuable in assessing their contribution to the University for pay, promotion and other purposes.

In addition to the steps mentioned above, the University has the right to offer inducements to faculty members voluntarily to change fields of study, to seek employment elsewhere, or to accept early retirement.

**12.3 Reassignments.** In cases of programmatic change, an officer designated by the president will make the reassignment or offer of training. The officer will consult with the faculty member and the receiving unit and will seek a mutually satisfactory assignment. If agreement cannot be reached, the University officer will assign new responsibilities after consultation with the individual.

The University may give the faculty member other assignments only if assignments to teaching in the faculty member's discipline are not feasible. For example, faculty might be assigned

- \* to teach in another field in which the individual is qualified
- \* to perform professional or administrative duties, including professional practice in a field in which the individual is qualified.
- \* to transfer effort, by assignment in a suitable professional capacity, at another educational institution or similar entity, while retaining University tenure, compensation, and benefits.

A faculty member must accept any reasonable reassignment or offer of retraining. Following the assignment, any dispute about the reasonableness of reassignment may be taken to the Judicial Committee, as provided in Section 15. The faculty member shall perform the reassignment pending resolution of the dispute, unless the president on the recommendation of the chair of the Judicial Committee determines that provisional measures are appropriate.

**12.4 Termination Of Appointment.** A faculty member who chooses not to accept a reasonable reassignment or retraining opportunity shall receive:

1. Assistance in locating other employment;

2. A minimum of one full academic year's notice or one year's salary as severance pay in lieu of notice, unless the appointment would otherwise expire earlier.
3. Continuation of the University's contribution to health benefits for one year after the date of the termination of the appointment.

In place of the severance payment provided by this section, a faculty member may select another severance program for which the faculty member is otherwise eligible at the time the appointment is terminated.

### **Section 13. Judicial Committee.**

**13.1 Membership.** The Judicial Committee is composed of at least nine members of the regular faculty. The number of members and manner of appointment is governed by the University Senate bylaws.

**13.2 Procedures.** Proceedings before the Judicial Committee will be conducted in conformity with these regulations. The Judicial Committee may adopt additional rules with the approval of the Tenure Committee, as provided in Section 16.3.

In every case before the Judicial Committee the senior academic administrator may designate the academic administrator who will represent the University as respondent. If the case involves two or more campuses or areas, the president or the senior vice president for academic affairs may designate the respondent.

**13.3 Duty To Testify.** Faculty members and administrators have an obligation to appear before the Judicial Committee to give testimony in matters pending before it.

**13.4 Panels.** The Judicial Committee may sit in panels to hear individual cases. In cases under Sections 10 and 14, the panel must consist of at least five members. In all other cases, the panel must consist of at least three members. The rules of the Judicial Committee will establish the respective functions of the committee as a whole and of the individual panels.

**13.5 Legal Officer.** The Judicial Committee shall have its own legal officer, appointed by the Judicial Committee with the approval of the president. The Judicial Committee also may, with the approval of the president, appoint a deputy legal officer, or a substitute legal officer for a particular case, as necessary. At the direction of the committee, the legal officer may preside at hearings of Judicial Committee panels or regulate the procedure in Judicial Committee cases. The legal officer may be present and participate in the deliberation of a panel, but shall have no vote.

### **Section 14. Procedures In Cases Of Unrequested Leave Of Absence Or Termination Or Suspension Of A Faculty Appointment For Cause.**

**14.1 Preliminary Proceedings.** Only a dean or an academic administrator specially designated by the senior vice president for academic affairs or by the senior academic administrator may initiate preliminary proceedings under this section leading to unrequested leave of absence or to suspension or removal or to temporary or permanent reduction in rank. The dean[11] must first attempt to discuss and resolve the matter with the faculty member involved.

The dean must then submit the matter to the tenured faculty of the academic unit involved for their recommendation.

If the senior vice president for academic affairs and the Faculty Senate have expressly approved the submission of allegations of the violation of a specified policy to another body for preliminary recommendation, in place of submission to the tenured faculty of the academic unit, the dean must submit the matter to that body for its recommendation.

Both the dean and the faculty member may submit their views, in person or in writing, to the body making the recommendation, but neither of them may participate in the deliberation or vote. The body making the recommendation does so by secret ballot and makes a written report to the dean within 40 days of submission of the issue to it, indicating the number of votes for and against the proposed action and the reasons articulated. A copy of the report shall be sent to the senior academic administrator and to the faculty member.

**14.2 Formal Action.** Within 40 days after receiving the recommendation of the tenured faculty or other body, the dean must decide whether to proceed with formal action. Before taking formal action, the dean must consult with the senior academic administrator. If the dean does not proceed within 40 days, the charges are dropped and the faculty member and the academic unit are so notified in writing. If the dean decides to proceed with formal action, the dean must give written notice to the faculty member. The notice must specify the action proposed, identify the specific ground upon which it has been taken, and summarize the evidence in support. It must inform the faculty member of the right to request a hearing before the Judicial Committee and advise the faculty member of the applicable time limit for making such a request.

If the faculty member does not request a hearing within 30 days, the president may take the action proposed in the dean's notice, without further right to a hearing.

**14.3 Judicial Committee Hearing.** The faculty member may request a hearing before the Judicial Committee by written request to the chair of the committee, filed within 30 days of the notice. The Judicial Committee may extend the 30 day period for good cause. The dean will be responsible for presenting the case. The dean has the burden of proving the case for the proposed action by clear and convincing evidence and also has the burden of demonstrating the appropriateness of the proposed action, rather than some lesser measure.

The Judicial Committee makes written findings of fact, conclusions, and a recommendation for the disposition of the case. If the committee finds that action is warranted, it may recommend action that is less severe than that requested in the written notice, including but not limited to, permanent or temporary reduction in salary or rank. It may not recommend more severe measures than those proposed in the dean's notice.

The Judicial Committee sends its report to the president with copies to the faculty member, the dean and the senior administrator.

**14.4 Action By The President.** The president shall give the faculty member and the dean the opportunity to submit written comments on the report. In determining what action to take, the president may consult privately with any administrators, including attorneys, who have had no previous responsibility for the decision at issue in the case and have not participated in the presentation of the matter to the Judicial Committee. The president may not discuss the case with any administrator who was responsible for the decision at issue in the case or who participated in the presentation of the matter to the senate Judicial Committee. Such administrators may communicate with the president in writing, but only if the full text of the communication is given to the faculty

member and the faculty member is given a reasonable opportunity to respond to it.

The president shall not take action materially different from that recommended by the panel unless, prior to the action, the president has consulted with the committee. Parties and their representatives shall not be present at any meeting between the president and the committee nor shall their consent be required for such meeting.

In addition, the president may request the Judicial Committee to make further findings of fact, to clarify its recommendation or to reconsider its recommendation. The reconsideration will be made by those who have heard of all of the evidence in the case, but the full Judicial Committee may consult with them on questions of general policy.

The president may impose the action recommended by the committee, or any action more favorable to the faculty member. The president may impose action less favorable to the faculty member only for important substantive reasons, which must be stated in writing, with specific detailed reference to the report of the Judicial Committee, the evidence presented, and the policies involved. The president's written statement must be given to the parties and to the Judicial Committee. If the Judicial Committee decides that the president has imposed an action that is less favorable to the faculty member than it had recommended, it shall inform the faculty by publication of the president's action in the docket of the Faculty Senate. If the faculty member waives rights to confidentiality, the full text of the statement will be published. Otherwise a summary of the statement will be published without identification of the faculty member or information that may indirectly identify the faculty member.

**14.5 Appeal To The Board Of Regents.** If the action involves removal or if the action involves a sanction more severe than that recommended by the Judicial Committee, the faculty member may appeal to the Board of Regents. In cases in which the president imposes a sanction more severe than that recommended by the Judicial Committee, the faculty member and the president may present to the board evidence with respect to issues on which the president differs from the recommendation of the Judicial Committee. The request for a hearing must be made to the secretary of the board within ten days of the president's action.

**14.6 Temporary Suspension During Proceedings.** The dean may temporarily suspend a faculty member during the proceedings, but only if there is clear evidence that the faculty member is likely to cause serious harm or injury or is not available for work. The suspension will be with full pay, unless the faculty member is not available for work. Before ordering such suspension, the dean must present the evidence to a special panel of the Faculty Consultative Committee and receive their written report. The faculty member must be given the opportunity to contest the suspension before the panel.

If no final decision has been rendered one year after the commencement of formal proceedings, the faculty member shall be temporarily suspended without pay, unless the parties agree otherwise, or unless the hearing panel of the Judicial Committee extends the time period because of undue delays in the procedure attributable to the action of the University. This provision applies only in a case in which the majority of the tenured faculty of the academic unit concurred in the recommendation to terminate the appointment. If the faculty member is reinstated or if the president determines that the temporary suspension without pay was not warranted, then the president shall order the repayment of back pay to the faculty member with interest thereon from the date it would originally have been paid.

In case of any suspension under this section, the faculty member shall continue to receive full medical insurance and disability benefits without regard to the suspension.

**14.7 Resignation During Proceedings.** A faculty member may submit a written notice of resignation to the president at any time during Judicial Committee proceedings pursuant to this section. Upon the effective date of such resignation, the proceedings will be discontinued unless the faculty member concurrently files a written request with the Judicial Committee that they be carried to completion.

## **Section 15. Appeals To The Judicial Committee.**

**15.1 Right To Review.** Any faculty member who claims that his or her rights or status under these regulations have been adversely affected without his or her consent may seek review before the Judicial Committee. Cases arising under Sections 4, 7, 7a, 8, 10, or 11 or 12 may be brought directly to the Judicial Committee. In other cases, the faculty member must exhaust all other available University remedies before bringing the case to the Judicial Committee; the Judicial Committee will not proceed with such a case until the appropriate University body has either decided it or has refused to consider it.

**15.2 Procedure For Securing Review.** A written request for review must be filed with the chair of the Judicial Committee within 30 days of written notice of the action challenged. The request must specify the action complained of and the remedial action the individual seeks. Within 30 days of filing, the chair of the Judicial Committee must send copies of the request to the head of the academic unit concerned and to the senior academic administrator.

The Judicial Committee, however, may extend the time for filing for review for reasons that seem compelling to the committee, such as mental or physical illness, or serious personal or family problems, or doubt concerning when final action was taken.

**15.3 Hearings Before The Judicial Committee.** The person seeking review has the burden of proving by the preponderance of the evidence that the action complained of was improper unless the Judicial Committee, for good cause, otherwise directs.

The Judicial Committee does not itself decide whether the faculty member is professionally worthy of a faculty position, but only determines whether the action was based in significant degree upon any of the factors specified in subsection 7.7 or Section 8.

In cases involving Section 7, 8, or 11, the Judicial Committee hears the merits of the case, as provided in those sections. In other cases, if there is an appropriate University body to review the matter, the Judicial Committee will only determine whether that body has given the faculty member due process and whether, on the basis of the facts found by that body, there has been a violation of these regulations or of the faculty member's academic freedom. If there is no appropriate University body to hear such a case, or if the Judicial Committee finds that the body which heard the case did not provide due process, the Judicial Committee may hear the merits or may appoint an ad hoc tribunal to hear them.

**15.4 Action By The Judicial Committee.** The Judicial Committee makes written findings of fact, conclusions, and a recommendation for the disposition of the case.

If the Judicial Committee finds that the action complained of was improper, it also specifies the respects in which it finds the action to have been improper and recommends appropriate remedial action.

If it recommends reconsideration, it may specify the manner in which reconsideration will be undertaken to avoid the influence of improper factors. If a probationary faculty member has reached the maximum probationary period, the committee may recommend a non-regular appointment for an additional academic year to provide for reconsideration.

The Judicial Committee sends its report to the president with copies to the faculty member and the administrator who appeared as respondent.

**15.5 Action By The President.** The president must give the faculty member and the administrator the opportunity to submit written comments on the report. In determining what action to take, the president may consult privately with any administrators, including attorneys, who have had no previous responsibility for the decision at issue in the case and have not participated in the presentation of the matter to the Judicial Committee. The president may not discuss the case with any administrator who was responsible for the decision at issue in the case or who participated in the presentation of the matter to the senate Judicial Committee. Such administrators may communicate with the president in writing, but only if the full text of the communications is given to the faculty member and the faculty member is given a reasonable opportunity to respond to it.

The president shall not take action materially different from that recommended by the panel unless, prior to the action, the president has consulted with the committee. The parties and their representatives shall not be present at any meeting between the president and the committee nor shall their consent be required for such meeting.

In addition, the president may request the Judicial Committee to make further findings of fact, to clarify its recommendation or to reconsider its recommendation. The reconsideration will be made by those who have heard all of the evidence in the case, but the full Judicial Committee may consult with them on questions of general policy.

The president may impose the action recommended by the committee or any action more favorable to the faculty member. The president may impose action less favorable to the faculty member only for important substantive reasons, which must be stated in writing, with specific detailed reference to the report of the Judicial Committee, the evidence presented, and the policies involved. The president's written statement must be given to the parties and to the Judicial Committee. If the Judicial Committee decides that the president has imposed an action that is less favorable to the faculty member than it had recommended, it shall inform the faculty by publication of the president's action in the docket of the Faculty Senate. If the faculty member waives rights to confidentiality, the full text of the statement will be published. Otherwise a summary of the statement will be published without identification of the faculty member or information that may indirectly identify the faculty member. The president's written statement must be given to the parties and to the Judicial Committee.

**15.6 Actions Requiring Reconsideration.** If the Judicial Committee recommends reconsideration of an action, that reconsideration will be undertaken under the supervision of the senior academic administrator, unless otherwise specified. The Judicial Committee may retain provisional jurisdiction of the matter to review allegations that the reconsideration itself was improper, and may make supplementary findings, conclusions, and recommendations in this regard.

**15.7 Recommendations For Changes In University Policies And Procedures.** As a result of Judicial Committee proceedings, the Judicial Committee, the Tenure Committee or the senior vice president for academic affairs may initiate steps to clarify or improve University rules or policies involved. The changes will not affect the outcome of the case before the committee.

#### **Section 16. Tenure Committee.**

**16.1 Membership.** The Tenure Subcommittee Of The Senate Faculty Affairs Committee (referred to elsewhere in these regulations as the Tenure Committee) is composed of at least seven members of the faculty and such other persons as the University Senate bylaws shall provide. The manner of appointment is governed by the University Senate bylaws.

**16.2 Interpretations.** The senior vice president for academic affairs and the Tenure Committee may propose formal interpretations of these regulations, consistent with their terms. Such interpretations must be reported to the Faculty Senate and the Board of Regents. If adopted by the Board of Regents, such interpretations will be binding in all cases subsequently arising.

**16.3 Procedures.** The senior vice president for academic affairs and the Tenure Committee may jointly adopt the procedures provided by subsections 7.4 and 7.61, and jointly approve the procedures proposed by the Judicial Committee under Section 13.2. Such procedures must be reported to the Faculty Senate and the Board of Regents before they go into effect.

**16.4 Additional Functions.** The Tenure Committee also advises the University and makes recommendations concerning the interpretation and amendment of these regulations, but such advice and recommendations are not binding on the Judicial Committee.

#### **Section 17. Written Notice.**

Notices of termination of a probationary appointment, of suspension or termination of an appointment, or of placement on unrequested leave of absence for disability, must be sent by registered or certified mail to the last known residence address of the faculty member concerned and also by campus mail to the faculty member's campus address, if any. The written notice satisfies the applicable time requirement if it is postmarked at or before midnight of the applicable date.

Failure to comply fully with this section is immaterial if, in fact, the faculty member was not prejudiced by such failure.

#### **Section 18. Publication.**

These regulations, and the interpretations referred to in Section 16, will be published and made available to all faculty members. Every faculty member who holds a regular or non-regular appointment, except for courtesy faculty appointments without salary, must be given a copy of the current regulations and copies of subsequent amendments or published interpretations.

#### **Section 19. Amendment.**

These regulations are subject to amendment by the Board of Regents. Proposed amendments from any source will be submitted to the Faculty Senate for its advice and recommendation before final action by the Board of Regents. The

Faculty Senate will solicit the recommendations of the Faculty Affairs Committee, the Judicial Committee, and the Tenure Committee, before giving its advice and recommendation.

## FOOTNOTES

[1] "Service" means performance within the faculty member's expertise, other than teaching and research as defined in section 7.11.

[2] The term "family member" is meant to include a blood relative, or a marital partner, or a domestic partner (registered with the University), or an adoptive/foster child.

[3] The mission of the University includes, where appropriate, outreach activity that extends a faculty member's teaching, research and service beyond the campus or to nontraditional groups of students and citizens. Not every faculty member will have outreach responsibilities.

[4] For interpretation and possible applications, see the interpretative comment that will be provided in accordance with the provisions of subsection 16.2.

[5] Criteria other than those expressly listed in this sentence must be explicitly stated and justified in terms of the mission of the University. Such additional criteria may not impinge upon the academic freedom of the probationary faculty member.

[6] "Teaching" is not limited to credit-producing classroom instruction. It encompasses other forms of communication of knowledge (both to students registered in the University and to other persons in the community) as well as the supervision or advising of individual graduate or undergraduate students.

[7] "Research" is not limited to the publication of scholarly works. It includes activities which lead to the public availability of products or practices which have a significance to society, such as artistic production or the development of new technology or scientific procedures.

[8] "Service" means performance within the faculty member's academic expertise and the mission of the academic unit. It does not include performance of quasi-administrative functions such as membership on faculty or senate committees or other similar activities; those activities are relevant only to the limited extent set forth in the following paragraph of the text.

Where service is not an integral part of the mission of the academic unit, a faculty member's service may be considered, but is not a prerequisite to the awarding of tenure.

Other exceptions may be made only in exceptional circumstances by means of special contract, as provided in subsection 3.6.

The individual's participation in the governance of the institution and other services to the University and service to the academic unit may be taken into consideration, but are not in themselves bases for awarding tenure.

[9] Indefinite tenure may be granted at any time when the candidate has satisfied the requirements. A probationary appointment must be terminated when the appointee fails to satisfy the criteria in the last year of probationary service and may be terminated earlier if it appears that the appointee is not making satisfactory progress toward meeting the criteria within that period.

[10] As used in this policy, "tenured faculty" means those members of the faculty who hold indefinite tenure.

[11] Throughout this section the word "dean" means the dean of the collegiate unit or other equivalent officer or an academic administrator specifically designated for this purpose by the senior academic administrator or by the senior vice president for academic affairs

## **INTERPRETATIONS**

Dated April 12, 1985; September 8, 1988; March 12, 1993 and October 13, 1985

### **1. Interpretation of Sections 3-9 Promotion and Tenure Decisions Permitted by Provosts and Chancellors during 1995-96.**

Expired.

### **2. Interpretation of Section 4.4: Definition of Recurring Salaries.**

It is expected that any salary increases normally will be added to recurring salary if recurring funds are available for that purpose. Section 4.4 does not give any specific faculty member a legal entitlement or right to an increase in recurring salary.

### **3. Interpretation of Section 4.5: Financial Stringency.**

Financial stringency in section 4.5 is understood to mean financial difficulties that are unusual in extent and require extraordinary rather than ordinary responses. Section 11 may be invoked if the regents are "faced with the necessity of drastic reduction in the University budget," reductions so severe that they may "threaten [the] survival" of the University. It is understood that the financial difficulty that would permit the president to propose temporary reductions or postponements in compensation under section 4.5 is less severe than the "fiscal emergency" outlined in section 11, but it is also understood that "financial stringency" should not be invoked to respond to foreseeable fluctuations in the University's budget and finances.

### **4. Interpretation of Subsection 5.5: Retroactive Application.**

A probationary faculty member may elect to extend the probationary period by one year if

- (1) the member became a parent, by birth or by adoptive/foster placement, within five years before the effective date of subsection 5.5; and
- (2) has not been given notice of termination.

### **5. Interpretation of Subsection 5.5: Major Caregiver Responsibilities.**

A request for extension of the maximum probationary period for major caregiver responsibilities should be made only if those responsibilities are very substantial and continue over an extended period of time. The probationary faculty member must submit a written application to the head of the academic unit, who will forward it for action and approval through the appropriate University channels. If an administrator does not approve the request, the faculty member may file a grievance under applicable University policies.

### **6. Interpretation of Subsection 7.11: Consideration of Factors Other than Primary Tenure Criteria.**

The use of any factor other than teaching, research, and service in making the decision about a probationary faculty member must be specifically stated and justified at the time of the decision. This rule applies both when that factor is a criterion for judging the candidate's progress and when it is an element in establishing or modifying the standard which the faculty member should achieve.

A change in the program of a unit or college may be used as a factor in a decision only when the change has been adopted in accordance with the established procedures of the University, after consultation as required by those procedures. It must be explicitly identified. If such changes affect the prospects of probationary faculty members to achieve tenure, the faculty members should be given the earliest possible notice of the potential impact of such changes.

#### **7. Interpretation of Subsection 7.11: Discipline-Related Service.**

Discipline-related service, as one of the primary criteria for tenure evaluation, is limited to those endeavors specifically related to the individual's academic expertise and faculty appointment in accordance with the academic unit's Mission Statement. This service must be defined in the Mission Statement as central and necessary to the operation of the academic unit. An equivalent term might be "unit mission-related service" — for example, clinical service in a teaching hospital situation that does not involve students directly.

#### **8. Interpretation of Amendment to Subsection 10.2: Faculty Assignments.**

Faculty members are free to choose topics for research or outreach and to discuss all relevant matters in the classroom, in accordance with the principles of academic freedom and responsibility. The head of the academic unit will assign individual faculty members to teach specific courses in accordance with the academic workload statement and other policies adopted by the faculty of that unit. A faculty member may challenge an assignment by showing that it is unreasonable. An assignment is unreasonable if: (a) taken as a whole, it exceeds the workload expected in the workload statement of that unit, (b) the faculty member lacks the basic qualifications to teach the course, or (c) the assignment was made in violation of the faculty member's academic freedom or in violation of another specific university policy. The faculty member should carry out the teaching assignment pending resolution of any grievance, unless the responsible grievance or hearing officer or panel indicates that provisional measures are appropriate.

#### **9. Interpretation of Sections 14 and 15: Working Days.**

The word "days" is interpreted to imply working days, not calendar days.

#### **10. Interpretation of Amendments to Subsections 14.1 and 14.2: Timely Responses in Cases of Unrequested Leave of Absence, Termination, or Suspension.**

The timelines for responses by either the involved faculty member or administrator may be extended by agreement of the parties to the proceeding or for extraordinary circumstances. An agreement of the parties to extend the time limit shall be in writing, signed by both parties or their representatives. If the parties do not agree, either party may apply to the chair of the Senate Judicial Committee for an extension of the time in which to take the steps required in this section. If the faculty member has failed to act within the time limits prescribed in these sections, the responsible administrator may request the chair of the Senate Judicial Committee to set a specific date by which the faculty member must take action; if the faculty member fails to do so, the petition for

review will be dismissed without further proceedings and the requested disciplinary action (or any lesser sanction) may be taken. If the responsible administrator has failed to act within the time limits prescribed in these sections, the faculty member may request the chair of the Senate Judicial Committee to set a specific date by which the administrator must take action; if the administrator fails to do so, the proceedings shall be dismissed and further action can be taken only by reinitiating the entire proceedings.

**MEMORANDUM**

**TO:** Mary Dempsey  
Chair, Tenure Subcommittee

**FROM:** Carol Chomsky

**DATE:** December 10, 1996

**RE:** Report on Tenure Subcommittee Consideration of Sullivan II

On Friday, December 6, pursuant to the direction of the Faculty Senate, the Tenure Subcommittee met to consider the provisions of the tenure code adopted for the Law School by the Board of Regents on November 7, 1996, known as Sullivan II. The Regents have placed on their docket for December 13 the adoption of Sullivan II (with some minor housekeeping changes) for the Academic Health Center and the Morris Campus, in light of the recent votes by those units not to join the bargaining unit of Twin Cities Faculty. The Regents' Docket refers to the document as Faculty Tenure: Specified Units. For ease of reference, I will continue to sometimes refer to the proposal as Sullivan II.

I was delegated the responsibility to prepare a report of the Subcommittee's responses to Sullivan II as they pertain to the AHC and the Morris Campus for presentation to the Senate Committee on Faculty Affairs and to the Faculty Senate. I have attempted to reflect the discussion and conclusions reached in the Subcommittee meeting of December 6, but the specific language in this report has not been reviewed or formally adopted by the Subcommittee. My report includes (1) proposals for amending several sections of Sullivan II; (2) proposals for interpretations to the Regents' policy on Faculty Tenure: Specified Units, offered for information and comment; (3) descriptions of certain language in Sullivan II that differs in significant ways from the language endorsed by the Faculty Senate on May 30 and June 4, but as to which the Tenure Subcommittee is not presenting a recommendation for change; (3) a proposal for a resolution related to tenure but not proposing to change specific language in the code.

As a preliminary matter, the Subcommittee wishes to articulate again the concern of its members with the undue haste with which the Subcommittee has had to conduct its deliberations. We have made every effort to review all the ways in which Sullivan II differs from the version of the tenure code that passed the Senate on May 30 and June 6, 1996, in order to advise the Faculty Senate adequately, but the speed with which the review has been conducted has precluded the kind of thorough investigation we would have preferred. As a result of the compressed schedule, moreover, the Subcommittee is able to address two significant and potentially troubling provisions only by advising the Senate of its concerns rather than by proposing specific substitute language. In addition, Subcommittee members remain troubled by the prospect of advising the Senate regarding a code that will be adopted only for a portion of the University and by Subcommittee participation in a process that appears to interfere with the choices to be made by faculty currently under a status quo order related to the collective bargaining process. We have done the review requested by the Faculty Senate, but we remain concerned about the problems created by the Regents' expedited schedule regarding tenure issues.

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I. Proposals to Amend the Regents' Policy on Faculty Tenure: Specified Units

**Motion A: Housekeeping Amendment to Footnotes**

*To amend the Regents' Policy on Faculty Tenure: Specified Units by deleting footnote 1: (new language is in CAPS; language to be deleted is contained in brackets)*

Footnote (1): [A "senior academic administrator" is an officer who has final review authority on academic personnel decisions, and who reports directly to the president and regents, such as a vice president, chancellor, or provost. The president will designate one or more senior academic administrators (vice presidents, chancellors, provosts, etc.) to have responsibility for academic matters for all or part of the University, and will define their respective jurisdictions.]

To delete the reference to footnote 1 in section 3.3.

To change references to footnotes 2 through 12 to reflect the removal of footnote 1. (References to footnotes 2 through 12 are contained in sections 3.4(4), 5.5, 7.11, 7.2, and 14.1.)

**Comment:**

In the amendments approved by the Faculty Senate on May 30 and June 6, as well as in Sullivan II, many of the definitions that had previously been in footnotes were moved to the text in Section 2.3 in order to make the code more understandable to readers. The definition contained in footnote 1 as adopted for the Law School on November 7 is virtually identical to a definition of "senior academic administrator" contained in section 2.3(e): "a 'senior academic administrator' is an officer who has final administrative review authority on academic personnel decision, and who reports directly to the president and regents, such as a vice president, chancellor, or provost. The president will designate one or more senior academic administrators and define their respective jurisdictions." The definition in Section 2.3 as adopted by the Regents for the Law School is identical to the definition contained in the Senate-approved amendments. In the docket for its meeting on December 13, the Regents have proposed to move the definitions from Section 2.3 to a position just following the Preamble. That repositioning does not make any substantive change. The change proposed in Motion A will avoid repeating the definition of "senior academic administrator" in two places in the code and therefore contribute to clarity.

**Motion B: Amendment to Section 4.5 on financial stringency**

*To amend section 4.5 as follows: (new language is in CAPS; language to be deleted is contained in brackets)*

**Section 4.5 Reduction Or Postponement Of Compensation.**

If the University or a collegiate unit is faced with financial stringency that does not amount to a fiscal emergency, the president may propose a [temporary] reduction or postponement in compensation to be allocated to faculty **FOR A PREDETERMINED PERIOD NOT TO EXCEED TWO YEARS, in**

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accordance with a mathematical formula or similar device. ANY SUCH PROPOSAL WILL BE PRESENTED TO THE FACULTY CONSULTATIVE COMMITTEE FOR ITS CONSULTATION AND ADVICE. THE PRESIDENT WILL GIVE THE COMMITTEE FULL ACCESS TO ALL AVAILABLE INFORMATION REGARDING THE FINANCIAL STRINGENCY, THE ASSERTED NECESSITY FOR A TEMPORARY REDUCTION OR POSTPONEMENT OF FACULTY COMPENSATION, AND THE ALTERNATIVES THAT HAVE BEEN CONSIDERED TO REDUCTION OR POSTPONEMENT OF FACULTY COMPENSATION. THE PRESIDENT WILL RESPOND SPECIFICALLY TO ADDITIONAL PROPOSALS SUGGESTED BY THE COMMITTEE TO RESPOND TO THE FINANCIAL STRINGENCY. THE FACULTY CONSULTATIVE COMMITTEE WILL REPORT TO THE FACULTY SENATE ITS RECOMMENDATION ON THE PRESIDENT'S PROPOSAL IF THE FACULTY SENATE APPROVES THE PROPOSED ACTION (OR ANY MODIFICATION OF IT) BY AN ABSOLUTE MAJORITY OF ITS MEMBERSHIP OR BY A TWO-THIRDS VOTE OF THE MEMBERS PRESENT AND VOTING (A QUORUM BEING PRESENT), [If approved by the Faculty Senate and] the Board of Regents MAY IMPLEMENT THE REDUCTION AS APPROVED BY THE SENATE (OR ANY LESS STRINGENT ACTION) BY REDUCING TEMPORARILY the base pay of all faculty members in the University or in the designated collegial units [shall be reduced temporarily] in accordance with the formula or device. [The reduction may not continue for longer than two years, unless renewed by the same procedure.]

*Comment:*

Section 4.5 is a new addition to the tenure code, but it draws heavily on provisions already contained in Section 11 on Fiscal Emergency. There are two notable differences between the provisions in 11.4 (Second Stage: Reduction or Postponement of Compensation) and Section 4.5. First, a number of the articulated procedures in Section 11.4 were omitted from Section 4.5. Although any proposal to reduce or postpone faculty compensation under Section 4.5 would have to be approved by the Faculty Senate as well as the Board of Regents, Section 11 has additional provisions calling for consultation with the Faculty Consultative Committee (and the Senate Consultative Committee, with respect to other issues related to financial emergencies) and providing expressly that the Faculty should have access to information to permit it to evaluate the proposals regarding faculty compensation. Section 11 also called for approval by either a simple majority of the entire Senate membership or a super-majority (two-thirds vote) by the members present at the meeting. The proposed amendment to Section 4.5 would add some of those procedural safeguards to the process of deliberating on any proposal offered by the president to reduce or postpone faculty compensation. Also in accordance with the language in Section 11.4, the proposed amendment calls for the president to specify in the proposal itself the duration of the proposed postponement or reduction in compensation, with the period not to exceed two years. As adopted by the Regents, Section 4.5 permits the postponement or reduction to be implemented for no more than two years, but does not indicate whether the president would specify the length of time when proposing the action on compensation. The amendment would make Section 4.5 consistent with Section 11 and would clarify the duration of any proposed action on compensation.

The second major difference between Section 4.5 and Section 11.4 is the scope of the proposed salary action. Under Section 11.4, any temporary reduction or postponement of compensation would apply to all University faculty. In contrast, the temporary postponement or reduction in Section 4.5 may be implemented either for all faculty in the University or for only the faculty in an identified collegiate unit.

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The Tenure Subcommittee views this as a significant change, substantially broadening the power of the administration and Regents to respond to financial exigency. Any postponement or reduction, even for a single collegiate unit, could be enacted only with the approval of the Faculty Senate, which provides substantial protection against abuse of the power. Smaller units with relatively few representatives in the Senate nonetheless might have legitimate concerns about that process. Moreover, whether financial difficulties in a collegiate unit amount to "financial stringency" warranting postponement or reduction of compensation only in that unit seems to be a decision particularly subject to disagreement based on interpretation of data and potential manipulation of financial accounting figures. On the other hand, it has been suggested that having at least this degree of flexibility is of special importance to the Regents in ensuring that some effective management tools exist for responding to true financial exigency in the coming years. Some of the concerns about potentially singling out individual collegiate units may be alleviated if the Regents adopt the procedural protections outlined in this Motion. Beyond that, however, the Subcommittee makes no recommendation whether it is appropriate or desirable to have temporary postponements or reductions in compensation be directed at collegiate units. The Subcommittee wishes to identify the issue and leave it to the Faculty Senate for deliberation and decision.

**Motion C: Amendment to Section 7a.5 on alternative methods of peer review**

*To amend section 7a.5 as follows: (new language is in CAPS; language to be deleted is contained in brackets)*

**7a.5. Peer Review Option.**

Upon application to it by the dean of [an academic unit] **A COLLEGIATE UNIT, AFTER APPROVAL BY THE FACULTY ASSEMBLY OF THAT UNIT**, the Faculty Senate may adopt a system of peer review of performance of faculty of that unit different from the system set forth in Sections 7a.1 through 7a.4 if in the Faculty Senate's judgment so proceeding is in the University's interest.

***Comment:***

The amendment would limit the adoption of different systems of peer review to collegiate rather than academic units. It seems more appropriate to vary the peer review system only for "a major academic entity of the University . . . a college, school, institute or campus" rather than for "a department or similar unit." (See definitions of "collegiate unit" and "academic unit" currently in Section 2.3.) The amendment also adds a requirement that any proposal made to the Faculty Senate for adoption of a different system of peer review have been approved by the Faculty Assembly as well as the dean for that collegiate unit. Such approval is required for proposals to change the probationary period for tenure-track faculty under Section 5.1, and a similar mechanism seems appropriate for a proposal to change the peer review system for a unit.

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**Motion D: Amendment to Section 12.3 on Reassignments**

*To amend section 12.3 as follows: (new language is in CAPS; language to be deleted is contained in brackets)*

**12.3 Reassignments.**

In cases of programmatic change THAT LEADS TO THE DISCONTINUATION OF A PROGRAM, an officer designated by the president will make the reassignment or offer of training. The officer will consult with the faculty member and the receiving unit and will seek a mutually satisfactory assignment. If agreement cannot be reached, the University officer will assign new responsibilities after consultation with the individual. THE ASSIGNMENT WILL BE AS CLOSELY RELATED TO THE ORIGINAL APPOINTMENT AS PRACTICABLE. THE FORMAL ASSIGNMENT WILL BE IN WRITING AND WILL INDICATE THE CONTINUING NATURE OF THE FACULTY MEMBER'S TENURE.

The University may give the faculty member other assignments only if assignments to teaching in the faculty member's discipline are not feasible. For example, faculty might be assigned

- \* to teach in another field in which the individual is qualified
- \* to perform professional or administrative duties, including professional practice in a field in which the individual is qualified.
- \* to transfer effort, by assignment in a suitable professional capacity, at another educational institution or similar entity, while retaining University tenure, compensation, and benefits.

IF SUCH ASSIGNMENTS ARE MADE, THE UNIVERSITY WILL ENDEAVOR TO PROVIDE AN OPPORTUNITY FOR THE FACULTY MEMBER TO CONTINUE RESEARCH IN THE ORIGINAL FIELD.

A faculty member must accept any reasonable reassignment or offer of retraining. [Following the faculty member's acceptance of the assignment, any] ANY dispute about the reasonableness of reassignment may be taken to the Judicial Committee, as provided in Section 15. THE FACULTY MEMBER SHOULD CARRY OUT THE REASSIGNED RESPONSIBILITIES PENDING RESOLUTION OF THE DISPUTE, UNLESS THE JUDICIAL COMMITTEE INDICATES THAT PROVISIONAL MEASURES ARE APPROPRIATE.

***Comment:***

Section 12.3 as adopted by the Regents is based on and enacts into the Code language from a formal Interpretation of Section 12 adopted by the Tenure Subcommittee and forwarded to the Senior Vice President for Academic Affairs on June 7, 1996 after presentation to the Faculty Senate. The proposed amendments restore to Section 12.3 some additional language that further clarifies the procedures for reassignment:

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(1) The addition of "that leads to the discontinuation of a program" in the first line of the Section clarifies that the reassignment described in that section is applicable only when a program is discontinued, as is also made clear in Section 12.2 ("In the event that programmatic change leads to the discontinuation of a program in which a member of the faculty is employed.....").

(2) The amendment would add language to Section 12.3 to provide explicitly that any reassignment will be "as closely related to the original appointment as practicable." Section 12.2 already notes that the University "has the responsibility to assign [reassigned] faculty members to responsibilities as close to their original field of tenure as is practicable." The addition of this language in 12.3 reiterates that responsibility as the section details the nature of the particular reassignment that may be made.

(3) The amendment adds a requirement that the University memorialize the reassignment in writing and make clear the continuing nature of the faculty member's tenure after reassignment.

(4) The amendment adds language to clarify that the University should endeavor to provide an opportunity for the faculty member to continue research in the original field. This is consistent with Section 12.2, which already notes that the University "has the responsibility . . . to allow [reassigned faculty] time in which to continue scholarship in their original field if they wish." The language as proposed here differs from the original Interpretation passed by the Faculty Senate, which said the University "will provide" an opportunity to continue research in the original field; the proposed amendment would require only that the University "endeavor to provide" such opportunities, in recognition of constraints that may exist on the University's ability to do so.

(5) The proposed amendment acknowledges that in general a faculty member who wishes to dispute a reassignment should nonetheless carry out the assigned responsibilities while the dispute is taken before the Judicial Committee. The amendment would, however, permit a faculty member to seek provisional relief from the Judicial Committee, for example if the faculty member believed he or she was unqualified to perform the assigned tasks. A similar clause establishing the possibility of provisional relief is already contained in Interpretation 8 as adopted by the Board of Regents on November 7, relating to disputes about teaching assignments.

**Motion E: Amendment to Section 12.4**

*To amend Section 12.4 as follows: (language to be deleted is contained in brackets)*

**12.4 Termination of Appointment**

A faculty member who chooses not to [take or] accept a reasonable reassignment or retraining opportunity shall receive . . .

**Comment:**

The proposed amendment would remove a redundancy that appears in Section 12.4.

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**Motion F: Amendment to Section 14.6**

*To amend section 14.6 as follows: (new language is in CAPS; language to be deleted is contained in brackets)*

**14.6 Temporary Suspension During Proceedings.**

The dean may temporarily suspend a faculty member during the proceedings, but only if there is clear evidence that the faculty member is likely to cause serious harm or injury or is not available for work. The suspension will be with full pay, unless the faculty member is not available for work. Before ordering such suspension, the dean must present the evidence to a special panel of the Faculty Consultative Committee and receive their written report. The faculty member must be given the opportunity to contest the suspension before the panel.

If no final decision has been rendered one year after the commencement of formal proceedings, the faculty member shall be temporarily suspended without pay, unless the parties agree otherwise, or unless the panel extends the time period because of undue delays in the procedure attributable to the action of the University. This provision applies only in a case in which the majority of the tenured faculty of the academic unit concurred in the recommendation to terminate the appointment. If the **FACULTY MEMBER PREVAILS OR THE** president determines that the temporary suspension without pay was not warranted, then the president shall order the repayment of back pay to the faculty member with interest thereon from the date it would originally have been paid.

In case of any suspension under this section, the faculty member shall continue to receive full medical insurance and disability benefits without regard to the suspension.

***Comment:***

Section 14.6 adds a new set of provisions ordering suspension of a faculty member without pay if after a year there is no final decision resulting from proceedings to impose unrequested leave of absence, suspend, remove, or reduce in rank a faculty member. It is presumably designed to discourage faculty members from unreasonably delaying the progress of the proceedings. Exceptions from suspension without pay are made if the University, not the faculty member, has caused the delays and if the president determines that temporary suspension without pay was not warranted. In the latter case, the faculty member would receive repayment of withheld compensation with interest. The proposed amendment would add that repayment with interest should be made if the faculty member ultimately prevails in the challenge to the disciplinary action. It seems appropriate that a faculty member who establishes that the sanction sought by the dean pursuant to section 14.1 was wrongly imposed should also in effect overturn the decision to suspend him or her without pay.

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**Motion G, Alternative 1: Delete Section 10.22 pending further consultation with faculty committees**

*To strike Section 10.22 from the Regents' policy on Faculty Tenure: Specified Units until the results of the pending union election are known and until the Board of Regents receives further advice and recommendation regarding the provisions of Section 10.22 from the Faculty Senate, the Faculty Affairs Committee, the Judicial Committee, and the Tenure Subcommittee, as envisioned by Section 19.*

**Motion G, Alternative 2: Postpone Implementation of Section 10.22**

*To amend Section 10.22 as follows (new language is in CAPS)*

**10.22 Procedure For Minor Disciplinary Actions.**

Minor sanctions, such as a letter of reprimand in the faculty member's file or a suspension for up to three days, or the like, may be imposed for significant acts of unprofessional conduct. For minor sanctions, the dean may impose the sanction after providing the faculty member notice of the proposed action and of the reason that it has been proposed and giving the faculty member an opportunity to respond. If the faculty member files a grievance under the University grievance policy to challenge a minor disciplinary matter, the sanction shall be held in abeyance until the conclusion of the proceeding. The grievance panel shall have jurisdiction to consider all claims raised by the faculty member, and if the case goes to arbitration, the arbitrator shall be an individual with experience in academic matters. **THIS SECTION SHALL NOT TAKE EFFECT UNTIL THE RESULTS OF THE UNION ELECTION PENDING AS OF DECEMBER 13, 1996, ARE KNOWN AND UNTIL THE BOARD OF REGENTS RECEIVES ADVICE AND RECOMMENDATION REPORTED AFTER DECEMBER 13, 1996, REGARDING THE PROVISIONS OF SECTION 10.22 FROM THE FACULTY SENATE, THE FACULTY AFFAIRS COMMITTEE, THE JUDICIAL COMMITTEE, AND THE TENURE SUBCOMMITTEE, AS ENVISIONED BY SECTION 19.**

***Comment:***

Section 10.22, which establishes a procedure for "minor disciplinary actions," was adopted by the Board of Regents on November 7 without the advice of the Faculty Senate because the possibility of including a provision related to "minor" disciplinary matters was raised for the first time only in the early fall with release of the so-called Reagan/Spence draft. The Tenure Subcommittee is sympathetic to the desire, and perhaps the need, for a provision that allows academic administrators to respond to misconduct that is not serious enough to warrant suspension, removal, or reduction in rank, and yet merits some disciplinary action. We are concerned, however, that Section 10.22 was adopted without serious investigation into the particular kinds of misconduct that are encountered by academic administrators, the kinds of sanctions that may be most effective, whether faculty would view those sanctions as "minor disciplinary actions," and what kinds of procedural protections would be sensible before the imposition of such sanctions. Section 10.22 as written contains some troubling ambiguities in its references to "minor sanctions, such as a letter of reprimand . . . or a suspension up to three days, *or the like*" which may be imposed for "*significant acts of unprofessional conduct.*" Section 10.21 refers to "unprofessional conduct which severely impairs a faculty member's fitness in a professional capacity" as well as other faculty actions that may warrant termination or suspension. The relationship between the acts described in Section 10.21 and "acts of unprofessional conduct" referenced in Section 10.22 is unclear. As written, the

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faculty member has a right to appeal the sanction to a grievance panel, which would have jurisdiction to consider "all claims raised by the faculty member," apparently to permit the faculty member to raise issues of academic freedom that are otherwise not cognizable in a grievance proceeding. There has been no discussion, however, regarding whether a grievance panel is an appropriate venue for such an appeal or how to ensure that the grievance panel, which usually would not hear matters related to academic freedom, would be prepared to respond effectively and reasonably to such a claim.

In short, there is a need to conduct the kind of inquiry that would lead to a reasoned and thoughtful consideration of an appropriate mechanism for imposing minor sanctions for lesser misconduct before a provision of this kind is implemented. This is especially true where the provisions would take effect only for a portion of the University's faculty, so some would be subject to such discipline as written reprimands and short-term suspensions while others would not. It would be appropriate, therefore, either to strike Section 10.22 from the regulations until such time as the Faculty Senate and the appropriate Senate committees can advise the Board of Regents about such a provision or to postpone actual implementation of the provision until that time. These options are presented in Alternative 1 and Alternative 2 of Motion G.

## II. Proposals for Interpretations to the Regents' Policy on Faculty Tenure: Specified Units

### **Interpretation 1: Relating to section 4.5 on financial stringency**

*The Tenure Subcommittee proposes to add the following interpretation of Section 4.5:*

Financial stringency in Section 4.5 is understood to mean financial difficulties that are unusual in extent and require extraordinary rather than ordinary responses. Section 11 may be invoked if the Regents are "faced with the necessity of drastic reduction in the University budget," reductions so severe that they may "threaten [the] survival" of the University. It is understood that the financial difficulty that would permit the president to propose temporary reductions or postponements in compensation under Section 4.5 is less severe than the "fiscal emergency" outlined in Section 11, but it is also understood that "financial stringency" should not be invoked to respond to predictable fluctuations in the University's budget and finances.

#### ***Comment:***

The undefined nature of the "financial stringency" that can lead to postponement or reduction in faculty compensation under Section 4.5 is troubling. Although it is probably not possible to define precisely what circumstances would fall under this category, it seems advisable to attempt some further description that indicates the special circumstances required to invoke this response. Interpretations proposed by the Tenure Subcommittee and the Senior Vice President for Academic Affairs are reported to the Faculty Senate and take effect if adopted by the Board of Regents. This interpretation is offered to the Faculty Senate for comment before final approval by the Tenure Subcommittee.

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**Interpretation 2: Regarding Section 4.4 with respect to base salaries**

*The Tenure Subcommittee proposes to add the following interpretation of Section 4.4:*

Normally, for most faculty, it is expected that any salary increases will be added to the base if recurring funds are available for that purpose. Section 4.4 does not give any specific faculty member a legal entitlement or right to an increase in base salary.

**Comment:**

This interpretation was approved both by the Senior Vice President for Academic Affairs and by the Tenure Subcommittee (on July 3, 1996), after final Faculty Senate action regarding the tenure regulation proposals. Although all other interpretations approved by the Tenure Subcommittee were incorporated into the Sullivan II proposal, and hence into the Regents' policy on Faculty Tenure: Selected Units, this interpretation was omitted. It is a clarification both of the expectation that salary increases will be allocated to base salary when recurring funds are available and a recognition that faculty members do not have a legal right to have salary increases be included in base salary.

**Additional Notes:**

- (1) The Subcommittee also determined that it wished to seek from the Regents a moratorium on further changes in the regulations respecting tenure after the current process of amendment is concluded. It is my understanding that the Faculty Consultative Committee is considering a resolution to that effect, so I have not attempted as yet to draft language seeking such a moratorium.
- (2) The Subcommittee wishes to note for SCFA and the Faculty Senate one additional significant change to the prior regulations respecting tenure, although the Subcommittee does not propose to modify the provisions as adopted by the Regents. In Section 10.21, which specifies the causes that may be cited for termination or suspension of a faculty member, the Regents added a new Section 10.21(e), which permits such action for "other grave misconduct manifestly inconsistent with continued faculty appointment." The aim of subsection e apparently is to provide some additional flexibility to seek these serious sanctions against faculty members whose misconduct, though severe, does not fall within the parameters of the more narrowly defined provisions in subsections (a) through (d). The Subcommittee believes new subsection (e) is acceptable, but believes the Faculty Senate should be aware of the change as it deliberates on its response to Sullivan II.

# Faculty Appointments, Tenure, and the Research University--Issues and Alternatives:

## A Discussion Document

These materials form the basis for a series of faculty-led University-wide forums to discuss faculty appointments and faculty tenure. A brief presentation is scheduled to take place at the Senate meeting, 11 January 1996 in 25 Law Center.

The first forum is scheduled for 25 January, 3:00-5:00 p.m., in the Cowles Auditorium in the Humphrey Center on the West Bank [coordinate campus locations: 305 Selvig Hall/UMC, 323 Kirby Student Center/UMD, Behmler Hall Conference Room/UMM]. A second forum is scheduled for 8 February, 2:00-4:00 p.m., also in the Cowles Auditorium [coordinate campus locations: 305 Selvig Hall/UMC, 355 Kirby Student Center/UMD, Behmler Hall Conference Room/UMM]. All are invited to attend.

The purpose of these forums is to discuss questions and issues facing the University and to identify appropriate modifications to the "Regulations Concerning Faculty Tenure" (the Tenure Code) that would respond constructively. It is hoped that this effort can be completed by mid-1996.

The Tenure Code, which is a Regents' Policy, requires that proposed amendments be considered by the Senate Judicial Committee, the Senate Committee on Faculty Affairs (SCFA), and the Tenure Committee (now a subcommittee of the SCFA). A preliminary discussion of possible changes is planned for the Faculty Senate in February; proposed revisions are scheduled for discussion at the Faculty Senate meeting in April; with action on changes scheduled for the May and June Faculty Senate meetings.

### **Foreword**

Over the past three years, faculty consultative and governance leadership has been working with University administration addressing a series of human resources issues and management problems that affect faculty life and work in carrying out the teaching, research and outreach missions of the University. These efforts coincide with questions inside the University and outside (Legislature, the Governor, the public) asking: How can the University maintain faculty and staff morale and improve performance in accomplishing its diverse missions during an era of persistent underfunding?

This question accompanies two other questions of crucial concern to faculty: (1) under what circumstances can we lay off faculty due to programmatic change brought about as a result of external forces (e.g., budget reductions) or internal shifts in priorities (e.g., the U2000 strategic plan); and (2) under what future circumstances and to what extent might the base pay of a tenured faculty member be reduced? Asking these questions raises several issues and questions.

(1) Some issues center on the full range of University **human resources policies and practices** affecting academic, civil service and administrative personnel. Topics include recruitment and staffing, training and development, dispute resolution, and compensation. A "Working Group on Human Resources Policies" chaired by Charles Denny and Carol Carrier and including faculty representing the Faculty Consultative Committee and the Senate Committee on Faculty Affairs has been meeting bi-weekly since summer 1995.

(2) A second set of questions concerns **management issues** within Academic Affairs and in Finance and Operations. These matters were raised or magnified by the creation of the provostal system for the Twin Cities campus, by a need to improve practices in periodic reviews of administrators, and by a decision to consider various forms of Responsibility Center Management. Others were discussed in a faculty "white paper" addressing the role of the department in carrying out the U2000 agenda. Faculty participation in these efforts has been provided by the Faculty Consultative Committee (FCC), the Senate Committee on Faculty Affairs (SCFA), the Senate Committee on Finance and Operations, the Senate Committee on Educational Policy, and the Senate Committee on Research, among others. Minutes of each of these committees are available to all faculty.

(3) A third set of issues centers on **academic personnel policies and procedures**--appointments, performance reviews, tenure, compensation, termination for cause, and workload policies for faculty within of the research university. Although it is a serious matter any time changes are proposed for the Tenure Code, we regularly have done so when the need arises. For example, we modified the Tenure Code to accommodate faculty on probationary appointments who take time out for parenting and caregiving for family members. In another example, the Subcommittee on Tenure of SCFA provided a temporary interpretation of the Tenure Code to accommodate the provostal structure during 1995-96. A permanent change in the code--perhaps a "neutral" system that will accommodate any future changes in administrative structure without yet another tenure regulation change--awaits action. The Compensation Working Group reported its analysis and recommendations to the Faculty Senate in spring 1995 outlining a compensation policy for academic personnel at the University. Certain types of changes in compensation policy would require changes in the Tenure Code because part of our present compensation policy is contained in the Tenure Code.

Why are we examining personnel policies and considering modifications of the Tenure Code? We recognize that economic and political environments supporting higher education are changing rapidly, and that technologies to support our work are changing even faster. Faculty leadership in FCC and SCFA agreed it was vital for **faculty** to initiate discussion of these matters because they affect us and our work in direct and substantial ways. Nevertheless, as exploration of these questions goes forward, additional questions arise.

How much of this activity is a response to financial difficulties in the Academic Health Center (AHC)? The Chairman of the Board of Regents told FCC that "the Board did not start down this road because of the AHC. The discussion and the concerns that motivated it are much broader. . . .The legislature has asked questions; the public is curious. . . . The Board has had these topics on their list of concerns for a while."

"What's the rush?", some have asked. Is it reasonable to expect to complete this task by mid-1996? We recognize that the proposed schedule is tight, but we will do the best we can to meet schedules we have set out. Any Tenure Code changes agreed upon within the Faculty Senate and forwarded to the Board of Regents for approval will be carefully drawn and widely discussed. The schedule that has been set may be ambitious, but we were assured by its Chairman that "the Board would be understanding if we took somewhat longer than the schedule dictates". He also emphasized that "the Board has no desire to micro-manage the process" by which appropriate changes are drafted, discussed and brought forward for Board approval.

We believe that because the work of the faculty lies at the very core of the University, our faculty must be able, motivated, and prepared to succeed in an increasingly competitive world. What follows is a summary of questions and issues concerning academic personnel appointments and the institution of tenure at the University. It was prepared by a Joint Faculty Governance/Administration Working Group which formed in October 1995 to coordinate

discussions this year regarding tenure and related matters of academic personnel policies and procedures.

Central issues we are considering can be summarized with the following questions:

.. Should faculty tenure be held only in the department? And should faculty members be liable to termination if the size of their department is reduced?

.. Should it be possible for the base salary of a faculty member to be reduced?

.. Should more appointment options be developed--such as tenure for part-time faculty, rolling contracts, etc.--to permit more flexibility in faculty hires?

.. Should the University limit the percentage of faculty in tenured positions?

.. How should the University improve the management of the personnel process?

.. Should any of the above changes apply to present faculty?

We recognize that the State of Minnesota has built and maintained a great University--one that has led a state of only average size to perform in a fashion well above average on many fronts for almost a century and a half. We conclude that it is the faculty's role to assume responsibility for the strength and vitality of the University's academic affairs in the years ahead. In this spirit the following discussion document is offered.

## **Introduction**

In response to plans set in motion by U2000 initiatives, to discussions between faculty and administration during the 1994-95 academic year, to the installation of a provostal system of administration on the Twin Cities campus, and to their own deliberations, the Board of Regents requested an analysis of the definition, status and role of faculty tenure both nationally and at the University of Minnesota. The discussion is being carried out during the 1995-96 academic year and is scheduled to conclude in summer 1996.

The first discussion was held at the 12 October 1995 Regents meeting and focused on national trends and issues and featured a presentation by Dr. Judith Gappa of Purdue University, a prominent national authority on the institution of faculty tenure in higher education. A faculty panel provided responses to her presentation.

A second session held at the 8 December 1995 Regents meeting focused on the tenure process, statistics, and critical issues at Minnesota. Materials presented to the Regents at that time provided a brief overview of the process for awarding or denying tenure, selection statistics showing the breakdown of tenure-track and tenured faculty by college and campus, the rate of tenure, and an issues paper that raised a number of key issues related to our tenure system.

There are approximately 3,500 faculty (professor, associate professor, assistant professor, lecturer, etc.) in the University of Minnesota system. Of the 3,096 faculty on tenure track in 1994-95, 2,588 (84 percent) were tenured and 508 (16 percent) were untenured. Between 1989-90 and 1994-5 the number of new regular faculty hires per year has varied from 171 in 1989-90 to just over 100 in the two most recent years.

Discussion of the materials was led by Daniel Farber (Law School), William Brody (Academic Health Center), Alfred Sullivan (Natural Resources), and John Adams (CLA, representing the Faculty Consultative Committee). Following this presentation, the Board adopted a resolution in which it proposed to:

.. "Develop a working knowledge of the University's Tenure Code with the overarching goal of reshaping it to fit current and future needs;

.. "Gain an understanding of the full span of tenure alternatives and variations available to the University of Minnesota and benefit from the experiences of a broad range of institutions;

.. "Assure the protection of academic freedom;

.. "Provide University decision makers with the flexibility to respond to the institution's changing circumstances, and to shape academic and administrative programs to meet the needs of our teaching, research, and service missions;

.. "Ensure the maintaining of a vital academy through ongoing programs of faculty renewal, including effective tools for development and retention;

.. "Maintain fairness as a central criterion in personnel decisions;

.. "Address the special tenure concerns of the Academic Health Center;

.. "Provide the Board with opportunities for public discussion of eventual revisions in the tenure code. (Board of Regents Resolution, adopted 8 December 1995).

A third session, scheduled for the February 1996 Regents Meeting, will explore possible modifications of the tenure system and their implications.

Faculty Consultative Committee (FCC) Chair Carl Adams joined with Senior Vice President for Academic Affairs E. F. Infante and appointed a "Joint Administration/Faculty Governance Working Group on 16 October 1995 to coordinate discussions this year regarding tenure. The working group is composed of the following individuals:

.. John S. Adams, Professor, Department of Geography, CLA; immediate past chair of FCC.

.. Carol A. Carrier, Associate Vice President for Human Resources.

.. Mary E. Dempsey, Professor, Department of Biochemistry, Medical School; Chair of the Tenure Subcommittee of the Senate Committee on Faculty Affairs.

.. Daniel A. Farber, Professor, Law School; Acting Associate Vice President for Academic Affairs.

.. Paul G. Quie, Regents' Professor, Department of Pediatrics, Medical School.

.. Matthew V. Tirrell, Professor and Head, Department of Chemical Engineering and Material Science.

**The Working Group will guide the discussion of tenure at the University on the basis of the following premises:**

University human resources policies must fully support academic excellence and freedom of inquiry. Faculty tenure is essential for sustaining both. The institution of tenure unquestionably

will continue at the University. Furthermore, as a practical matter, almost all universities maintain a form of tenure, and the University of Minnesota must remain competitive.

Our present system of faculty appointments and of tenure must be reexamined and improved to provide greater flexibility in the allocation of resources, for improved efficiency in the use of resources in support of academic and scholarly activities, and to improve the climate within which faculty work is carried out.

Our present Tenure Code should be revised to state policies in clearer fashion; and to simplify and streamline procedures.

The Working Group prepared the following five-part discussion addressing these topics:

.. I. How faculty tenure forms a bedrock foundation for the effective functioning of a major research university.

.. II. Principles governing employment contracts for faculty at the University of Minnesota.

.. III. Current practices followed in awarding, denying or terminating faculty tenure at the University of Minnesota.

.. IV. Paths toward increased faculty and staff productivity; improved faculty and staff morale; and increased institutional flexibility.

.. V. Conclusion: the inevitability of change in the Tenure Code, and the requirement that changes be designed by faculty working with the administration.

## I. How faculty tenure forms a bedrock foundation for the effective functioning of a major research university

### **How is the mission of a major research university tied to the institution of faculty tenure?**

Faculty tenure (1) protects the freedom of inquiry that is essential for the creation of new knowledge and its transmission--activities that form the core of the mission of a research university; and (2) guarantees a livelihood for faculty as they carry out the work of the university. Guaranteed employment is essential for the exercise of freedom of inquiry. The two go together.

### **Why should the public support the research university?**

Charles M. Vest, president of MIT, discussed "The Pursuit of the Truly Unknown" in his annual report on the state of the university (Chronicle of Higher Education, 15 Dec 1995, p. B5), noting that as we consider the nature of research universities, and continue our dialogue with the public, "we would do well to remember that the ultimate rationale for supporting a university system derives more from the unknown than the known." . . .

"It is a fact of modern life that research universities must increase their connections with the worlds of industry and professional practice. . . . However it is the pursuit of the truly unknown--

of principles, insights, materials, and organisms of which we currently have no inkling--that will yield the greatest rewards for a society that invests in education, scholarship, and research. . . ."

While preparing his report, a sample of MIT faculty members listed questions and puzzles they seek to resolve--a sampling, he says, that "offers more than sufficient justification for investing personal energy and public resources in building individual careers and major institutions devoted to education and research. For example:

.. We don't know which classes of earthquakes are predictable, nor do we understand the processes that produce them; thus we don't know with any reliability how serious an event will occur where and when, which is the level of understanding we need to protect lives and property.

.. We don't know why national economies grow at different rates either at a particular moment, or over time. We know likely factors affecting economic growth, but the relative importance of factors and their interactions in diverse settings are not known with precision even though governments continue to develop and implement policy.

.. We don't know what successful organizations of the coming decades will look like; even the most experienced business leaders cannot predict which companies will thrive and which will go under.

.. We don't know consequences for the nation state of the explosion in networked electronic communications. We don't know whether we'll end up with a society of local and small group networks, or a massive global society.

.. We don't know how vast stores of instantly-available information can or will be understood and used; access alone does not assure that information can be located, understood and used.

.. We don't know how we learn and remember, or how we think and communicate. We don't yet know the chemical or physical nature of storage of information in the brain.

.. We don't understand the relationship between language and thought. Can we have thoughts that cannot be expressed in words?

.. We don't know how to convert solar energy into practical, cost-efficient fuels for a wide variety of applications, to enhance quality of life while sustaining environmental quality.

.. We don't know all the specific genes whose mutations contribute to the development and progression of cancer, nor do we understand the mechanisms by which they do it.

.. We don't know how viruses form their elegant geometric structures from commonly occurring protein building blocks, nor do we understand the role of these structures in the infection process.

.. We don't know how living cells interact with molecules of nonliving materials.

.. We don't know how old the universe is, what it is made of, or what its fate will be.

.. We don't know if stars other than our own sun have earth-like planets capable of sustaining life.

.. We don't know whether antimatter comes from other galaxies.

.. We don't know how to plan a mission to Mars that would not result in a dangerously unhealthy crew. The list goes on and on. These are some of the things we want to know, that we need to know, and that the research university is devoted to tackling (Summarized from Vest, cited above).

The ability to shape good questions is a critical capacity for every teacher and learner in a research university. It is the key to quality education. The better our questions, the better we learn. The more we know, the more we appreciate what we have, and the greater the likelihood we can understand our world, and predict or manage events that control our lives and our future.

The research university produces basic knowledge upon which much of our future is built. By supporting the research university we are simultaneously building our future, and preparing young people to enter it.

Industry, including industrial research and development, is often criticized for its short-term vision and lack of a long term commitment. One of the functions of the research university is to provide a secure setting for a long term research perspective. Faculty often must plan long-term research programs, and need the assurance of secure position as a basis for those plans. Similarly, faculty need to be encouraged to take risks in their research, rather than limiting themselves to safe projects in order to maintain their positions.

Increasingly, society expects the University--and we expect ourselves--to contribute to meeting societal needs. But such contributions often involve the faculty member in politically contentious issues in which some group or vested interest may be unhappy with the questions asked, the analysis or the proposed solutions. If we are to provide an objective source of assistance to society, faculty need to be protected from outside political pressures.

University research positions are often less remunerative than corresponding positions in the private sector. Tenure and increased intellectual freedom are part of a trade-off for lower salaries.

## II. Principles governing employment contracts for faculty at the University of Minnesota.

**What are the principles that govern employment contracts for faculty employed by the University of Minnesota--including freedoms, obligations, protections, limitations, extent and duration of appointments; and compensation?**

### **Freedoms and obligations**

1. Academic personnel ("personnel") includes faculty, academic professionals, academic administrators, and post-baccalaureate students such as graduate assistants and others in professional training programs. This discussion of principles focuses mainly on faculty.

2. Faculty are entitled to academic freedom, as established and guaranteed by Regents Policy, to protect the free inquiry and long-term scholarly commitment that form the essential foundation for academic excellence in a research university.
3. Faculty are bound by Regents Policy on academic responsibility.
4. Faculty may be assigned to duties in accordance with the specific unit's workload policy. These assignments must be reasonable in light of the qualifications, background, and experience of the individual.

### **Protections and limitations**

5. The institution of academic tenure and its judicious implementation form the essential foundation for protecting freedom of inquiry in a research university, and must continue.
6. Faculty are entitled to due process in matters pertaining to their employment contracts.
7. Discipline, suspension or termination of employment must not be based on any belief, expression, or conduct protected by law or by the principles of academic freedom.
8. Faculty who are physically or mentally unable to perform reasonably assigned duties may be placed on unrequested leave of absence.
9. Faculty may be suspended or terminated before the expiration of the employment contract for refusal to perform assigned duties adequately; for unprofessional conduct including conviction for committing a felony; for misusing professional position for personal benefit; or for sexual harassment or other conduct destructive of human rights or the academic freedom of others.

### **Appointments and compensation**

10. Employment contract duration for faculty may be for periods of time ranging from months, to the lifetime of the (fully tenured) faculty member, or any other time period within this range.
11. Employment contracts for faculty may be negotiated for 100 percent of full-time for 12 months; for less than 100 percent of full time; or for fewer than 12 months.
12. Total Compensation for faculty consists of (1) a permanent base salary that depends on academic rank, longevity, percentage of time appointed, and number of months appointed; (2) temporary augmentations to base salary, contractually agreed upon; and (3) non-salary benefits.
13. Base salary for tenured faculty may not be decreased, nor may length of appointment or percentage of time appointed be decreased without the faculty member's consent, unless the Board of Regents declares a fiscal emergency.
14. Faculty on regular probationary and on tenured appointments will be employed for no less than a specified minimum percentage of full time over the academic year. (Currently it's two-thirds time.)
15. There will be a maximum period of probationary service for a faculty member on a regular appointment at the end of which the faculty member must be given a regular appointment with indefinite tenure or a one year terminal appointment.

16. Non-regular faculty appointments are date-specific and may vary in length and percentage of time of service. The use of non-regular faculty appointments is restricted to certain situations (e.g., employment of clinical faculty, adjuncts, and visitors). Non-regular faculty ordinarily may not be retained longer than six years.

17. Long-term, fixed-termination-date contracts could be granted in lieu of lifetime tenured appointments.

18. Faculty may be stimulated and rewarded for efforts successfully undertaken for the common good.

19. Employment contracts for faculty consist of the job description, the annual Notice of Appointment, and all relevant University policies, contracts, or regulations. They could include annual, biennial, or longer term goals negotiated between the faculty member and the department chair/head.

### III. Current practices followed in awarding, denying or terminating faculty tenure at the University of Minnesota

#### Awarding and/or denying tenure

Faculty are hired into tenure-track or tenured positions as a result of national searches.

The major criteria on which tenure is awarded are demonstrated excellence in teaching, research and service.

Faculty who are hired into tenure track positions have a maximum of six years to achieve tenure. If unsuccessful, they are given one "terminal" year to remain employed in their current position. For each of the years until a decision is made to award or to deny tenure, faculty receive an annual appraisal of their performance from their peers and responsible administrator. Strengths and weaknesses must be documented in this appraisal. Faculty who move here from similar institutions can be credited, upon mutual agreement, with up to three years towards the maximum of six years. There is also a provision to stop the "six year clock", for a period not to exceed two years, for purposes of parenting and caregiving.

Peers inside and outside (via letters of evaluation) the institution play a critical role in the award of tenure. Faculty who hold tenure in a department vote on whether to grant tenure to their tenure-track colleagues in their department. Most colleges have a second level of peer review by a committee of tenured faculty members appointed or elected to recommend on all cases in their college in a given year. The decision to award or deny tenure must occur by the sixth year but can occur earlier. Peers outside the institution are always asked to evaluate a candidate's credentials. In addition, should an individual be denied tenure, he or she has access to the judicial process for an appeal if he or she believes that irregularities in *process* but not in *judgments* occurred. This review of the case, if accepted by the Senate Judicial Committee, is carried out by a panel of faculty peers.

Two Documents, the Regulations Concerning Faculty Tenure and the Procedures for Review of Probationary Faculty govern the process. Each academic department also has its own description of criteria that interpret the Regulations criteria for their discipline or field.

Official recommendations on tenure are made at a multitude of levels. The faculty peers in the department, the department chair/head, the college promotion and tenure committee, and the dean all make recommendations. For the 1995-96 academic year, the provost and/or chancellor, with advice from the dean of the Graduate School, then makes the final decision in each case, as interpreted by the Senate Committee on Faculty Affairs (SCFA) Subcommittee on Tenure (pending Tenure Code Amendment in progress). The senior vice president for academic affairs will then transmit these decisions to the Board for final approval.

At all points in the process, which formally begins in late summer or early fall of each year and concludes in May with recommendations to the Board, the faculty member has total access to his or her file and may respond in writing to anything. Because faculty at UMD are covered by a collective bargaining agreement, their procedures are governed by the contract.

Central administrative oversight for tenure policy and procedures rests with the senior vice president for academic affairs in cooperation with the Senate Committee on Faculty Affairs' Subcommittee on Tenure.

### **Termination of Tenure**

**For cause.** The grounds on which a tenured faculty member may have their tenure terminated for cause are the following:

- .. Sustained refusal or failure to perform reasonably assigned duties adequately;
- .. Unprofessional conduct which severely impairs a faculty member's fitness in a professional category;
- .. Egregious or repeated misuse of powers of professional position to solicit personal benefits or favors;
- .. Sexual harassment or other egregious or repeated unreasonable conduct destructive of the human rights or academic freedom of other members of the academic community.

While an administrator must initiate action for termination, a formal recommendation (vote) by tenured peers is required. The senior vice president for academic affairs decides whether to take action or not based on these recommendations. The senior vice president recommends the action to the president who may then carry it out.

**For financial necessity.** Should the Board declare a financial emergency, it may follow a procedure that in its most extreme and final form can lead to the termination or suspension of appointments of tenured faculty. In order to invoke these provisions, the Board must be faced with the necessity of drastic long-term reductions in the overall University budget. Under such circumstances the Board has the power to suspend or abolish positions, or even entire departments, divisions, or other administrative units if survival and integrity of the University is judged to be in jeopardy.

**IV. Paths toward increased faculty and staff productivity; improved faculty and staff morale; and increased institutional flexibility.**

The main goals in the present discussion of faculty tenure and faculty appointments are to discern ways to increase faculty and staff productivity and morale; to increase the attractiveness of the University to present and prospective personnel; and to increase institutional flexibility and responsiveness during a time of environmental uncertainty and serious financial challenge.

Challenges facing the University appear to require some modification in personnel policies governing academic appointments. Strategies for achieving these goals raise serious issues. Suggested strategies and associated issues are discussed below.

**(1) Define the unit within which each faculty member's tenure is held?**

**Issue:** Faculty tenure at the University in practice has not been unit based. To deal with situations that suggest or require a reduction in force, clarification is needed as to where a faculty member's tenure is located--the University, the provostal unit, the campus, the college, the department, and so forth. For most faculty the department may be the appropriate choice.

**Comment:** Present practice leads to waste of money and underutilization of human resources in overstaffed or low priority programs. Future University interests might be advanced if tenure resided in the departmental unit.

Attrition leads to some realignment of personnel with needs, but for tenured faculty without assured retirements, this process often works exceedingly slowly. To avoid administrative abuse--for example, splitting departments or transferring faculty to other departments in order to set them up for termination--it should be possible to design safeguards to prevent such actions, for example, prohibiting the closing of a department within five years of its creation, or discharging faculty within five years of assignment to the unit.

Employment security for faculty in overstaffed or low-priority units is already enhanced by a requirement of mandatory retraining and reassignment as a condition of continued employment in the case of programmatic change. (Tenure Code, Sec. 12.2) Up until now, administrators have been unwilling to enforce this requirement.

**(2) Permit modest flexibility in length of probationary periods for faculty appointments.**

**Issue:** The present Tenure Code requires faculty on tenure track appointments to conclude a probationary period that normally does not exceed six years. For some fields, six years is too short a period, but a maximum probationary period must also be specified, perhaps nine or ten years.

**Comment:** Present rules protect vulnerable faculty from inappropriate treatment that might arise from repeated renewal of short-term temporary appointments, and support the University's basic research and scholarship mission by giving faculty the job protection they need to undertake the long-term scholarly and research commitments that are absolutely indispensable for the long term health of our University. It is this need to encourage and protect basic inquiry that distinguishes our University from all the other post-secondary institutions in Minnesota.

The need to protect the University's research mission through the judicious granting of tenure may require rules that acknowledge important differences among disciplines, fields, and professions. For example, in some areas, six years might be too short a period to permit informed judgments concerning the appropriateness of a tenured appointment.

We already permit extensions of the standard probationary period for child bearing and care-giving. Additional considerations seem to warrant extensions in certain fields. Perhaps longer probationary appointments, or a series of multi-year contracts--something intermediate between annual appointments and lifetime tenure--are appropriate for some faculty during part of their career within some units of the University.

**(3) Reexamine procedures followed in the tenure process, and simplify processes where appropriate.**

**Issue:** The processes we follow in the granting of faculty tenure need to be clarified and strictly observed in all colleges and on all campuses, but any unnecessary bureaucratic procedures currently observed in the granting of tenure need to be removed.

**Comment:** In the future, there may be proportionately fewer academic personnel placed on the tenure track, but for those on the tenure track, procedures to be followed--in the granting of tenure or in the decision to terminate probationary faculty--must be clear, appropriate, and as simple and unambiguous as possible. For example, the practice of requesting letters of evaluation from internal colleagues who also have an opportunity to vote and comment seems redundant.

**(4) Assign financial responsibility to collegiate units and train collegiate and departmental management to handle tenure matters within the collegiate unit.**

**Issue:** A problem of institutional rigidity confronting University planning and budgeting could be partially resolved if tenure were located within the department rather than within the University. A decision along those lines should accompany simultaneous action (a) to define the college as the responsibility center in any Responsibility Center Management scheme, and (b) to inaugurate sustained leadership and management training for deans and department heads.

**Comment:** Technically, at present a faculty member's tenure resides within an academic department, but in practice has been protected within the University system. This long-term practice at the University of Minnesota departs from practice at competitor institutions. When we closed the Waseca campus, the University reassigned tenured Waseca faculty within the University without requiring retraining. Little financial saving was realized in the short term.

The University needs to be able to redirect resources from areas of low priority to areas of high priority. The University needs to be able to close programs that are no longer needed compared with new areas needing support. Locating tenure in the University makes efficient reallocation of faculty resources difficult or impossible. Elimination of mandatory retirement may compound the difficulty of redirecting resources from old to new uses.

If tenure were defined as located as in the departmental unit, then a need would arise to define sharply the boundaries of units within which tenure is held. At present though, within some colleges, efforts are underway to weaken departmental or unit boundaries or to eliminate them altogether. In cases of joint appointments, tenure is sometimes held in more than one unit.

Regardless of where the tenure home is located, deans and department heads currently have more authority to define and to assign tasks to faculty than most deans and department heads know how to exercise, or are comfortable exercising.

Present rules provide for termination or suspension of a faculty appointment before its expiration: viz. "A faculty appointment may be terminated or suspended before its ordinary expiration ... for ... [s]ustained refusal or failure to perform reasonably assigned duties adequately." (Tenure Code, Sec. 10.2)

If tenure were understood as located in the department, then it would become the joint responsibility of the dean and department head to redirect resources from low priority areas to high priority areas by reassigning duties. Under such an arrangement, underutilized faculty who would not or could not be retained and reassigned would be liable to termination.

If the introduction of Responsibility Center Management places resources and responsibility for their use at the college level, then it would become the dean's responsibility--working with department heads--to ensure the effective use of faculty resources, and this would require training in leadership and management skills to address personnel issues that arise.

At present, a good share of our deans and department heads exhibit little formal training in these areas. With better preparation, these administrators might have more skill and confidence in dealing with performance evaluations or other personnel matters. This apparent "training gap" leads to the uninformed assertion that the Tenure Code prevents effective use of faculty personnel when in fact leadership and management deficiencies may be mainly to blame.

**(5) Match each appointment class with appropriate revenues streams.**

**Issue:** The current U of M Tenure Code and associated interpretations limit the University's ability to adjust personnel or compensation levels in the face of sharp drops in revenue, a problem arising from appointment of tenured faculty on non-recurring funds.

**Comment:** This set of issues is currently highlighted in the Academic Health Center (AHC) which lacks sufficient annual cash flow to cover salary commitments to tenured faculty because many tenured faculty are funded on non-recurring funds even though the Tenure Code never provided for regular appointments other than for persons paid on state and tuition funds. (Sec. 3.4(f), (g), (h)) The Medical School leadership ignored this restriction and paid some base salaries from monies received from clinical revenues. The "practice" portion of the salary of many Medical School faculty has always been "at risk" and continues to be so. Here's what happened:

.. When competition for outstanding talent was severe, but the University was receiving an ever increasing flow of funds to compete for personnel (using 0100 funds from the Legislature, gifts and endowments, private-practice income, and hospital revenues), the AHC (and its Health Sciences predecessor) was successful in attracting and retaining faculty talent.

.. Many tenured faculty personnel in the AHC historically received two paychecks--one from University 0100 funds, and another from their share of University-based private-practice income

.. Radical restructuring of hospital/medical operations in Minnesota along with severe competition for patients has cut private-practice income sharply.

.. Soft money from the University's share of private practice income dropped sharply, making it impossible to meet financial obligations to tenured faculty and other P/A personnel whose salaries up to now have been covered in part from that soft money.

.. Base salaries of tenured personnel rose along with market forces since the 1960s because money was increasingly abundant, but no provision exists under present rules for reducing base salaries commensurate with recent and current revenue declines, except with the consent of the faculty member. (Tenure Code, Sec. 4.1)

Private practice payments to faculty in the AHC have already been sharply reduced because revenues have declined and because there was no contractual arrangement in place to guarantee private-practice salary levels.

Reductions in percentage-of-time of appointment is another device for reducing salary commitments, but even if the University and a tenured faculty member were mutually to consent to a major reduction in percentage of time to a level corresponding to hard money availability, present rules require that tenured and tenure track faculty must be appointed for at least 67 percent of full time for the nine-month academic year. (Tenure Code, Sec. 3.4)

On the other hand, if the Tenure Code were revised to permit a tenured faculty member to retain tenure and regular faculty benefits while appointed less than two-thirds time, there may be cases where the financial and professional interests of the faculty member, and the programmatic and financial needs of the University and the AHC could be accommodated.

In general, it seems appropriate and desirable for the University to maintain a fixed lower limit on percentage of time appointments for tenured faculty members (e.g., two-thirds time for a minimum of nine months), and to accommodate other appointments--for a lower percentage of full time, or for periods shorter than nine months--by means of long-term (e.g., 3 or 4 years), annually renewable rolling contracts.

At present no provision exists in the Tenure Code for reducing the base salary or other terms of employment of regular or nonregular faculty except with the agreement of the faculty member and the Board or its delegate. (Sec. 4.1) Any modification of the code to permit nonvoluntary salary reductions and/or percentage of time appointed would have to clearly specify circumstances under which such decreases would be allowable, and would need to contain explicit protections such as no more than X percent reduction in a single year, and no more than Y percent total over a period of years.

#### **(6) Clarify the link between tenure and compensation.**

**Issue:** The link between faculty tenure and various elements of faculty compensation must be better specified. For example, a base-pay component could attach to the permanent tenured appointment, and additional components might be variable in the future, depending on renewable contractual arrangements between the faculty member and the University.

**Comment:** Partial decoupling of compensation from tenure should be examined. A more flexible arrangement than the present one may be needed regarding compensation of tenured faculty to provide for appropriate redirection of resources and to support a more responsible reward system.

It is already standard practice within the University to distinguish between base salary, University-paid benefits, and salary augmentations for various additional assignments: e.g., summer salary for B-base faculty; CE&E pay for overload teaching; Summer Session pay; administrative augmentations for the duration of the administrative appointment; internal consulting; etc.

On the other hand, instability of departmental leadership and management in some colleges, plus retrenchment experiences since the 1970s in which all monies not attached to base salaries have been liable to confiscation, have left faculty and unit administrators understandably wary of salary plans that promise bonuses or contractual augmentations when our experience is that such monies simply will disappear in the future.

In some departments, faculty suggest that a superior use of faculty salary monies that are released through retirement, resignation or termination might be to support teaching specialists, post-docs, graduate assistants, or summer salary for special assignments. Yet even when colleagues agree that such uses might enhance productivity of the unit, the realistic suspicion that such "soft monies" are vulnerable prevents reallocation to new or experimental uses--a view that deans endorse due to repeated experience during retrenchments.

The only solution to this problem is long-term budgeting and stabilized unit and college leadership that faculty trust implicitly in matters of evaluation and accountability. Until such stability and assurance occurs and experience develops to sustain it, rigidities will persist that prevent flexible and more effective use of resources, and faculty will resist separating base and contractual augmentations beyond current practice.

Declines in performance on the part of some faculty, or repeated refusal to perform parts of their jobs--ineffective teaching, noncompetitive research proposals, declines in research productivity, refusal to comply with Regents rules on consulting, refusal to comply with federal and state statutes and administrative rules, refusal to perform institutional service or outreach--lead some to argue that the option of reducing base salaries or cutting the percentage of time of appointment should be permitted under the Tenure Code to compensate for dereliction of duty. But this suggestion arises from the misconception that Academic Freedom includes the freedom to neglect one's duties, which it does not.

**(7) Clarify and redefine classes of academic appointments and rights and obligations associated with each.**

**Issue:** In addition to the fact that the term "non-regular faculty" is itself seen as a problem, academic professionals often perform a mix of duties similar or identical to persons with faculty appointments. We need to clarify distinctions between different categories of academic personnel and to devise improved terms of appointment for each of them.

**Comment:** There is a need to redefine and clarify the various categories of personnel charged with doing academic work and the terms of appointment attached to each. The Working Group on Human Resources chaired by Charles Denny is currently attempting to do so. [At present we have P&A personnel who do work identical to that of some faculty; and P&A personnel who do work identical to that done by civil service personnel. Meanwhile, some personnel are on tenure track or have tenured appointments when contracts of varying length might better serve the long term interests of the University.]

It is often observed in discussions of appointment types that some kinds of appointments are of "higher status" than others. This claim is certainly true, and appropriately so. A tenured full professorship is of higher status in the sense of more security and greater autonomy in defining and carrying work assignments than is the case with a post-doc or a half-time teaching assistant. The issue is not the rank or status of appointments, but rather the proper matching of personnel and terms of appointment to accomplish the short-term and long-term needs of a major research university.

**(8) Clarify criteria for judging non-performance of duties and train administrators to address personnel problems. Respond appropriately and in timely fashion to personnel problems as they develop.**

**Issue:** On occasions when professional performance by a faculty member deteriorates, University resources are wasted and faculty vitality and morale suffer. The University must improve means for addressing personnel problems. We must respond promptly and decisively when incompetence, misfeasance, or malfeasance occurs or is charged on the part of academic personnel.

**Comment:** The public fails to understand why faculty enjoy the privileges of tenure when they themselves normally do not. It is our job to provide a skeptical public with a convincing defense for tenure.

Scandals on campus appear to the public to be difficult for us to detect and to address, and on occasion when faculty behavior appears completely unacceptable, the public cannot comprehend why it is so hard to fire people who seem to deserve it. When an action is brought against a faculty member, proceedings become complex, lengthy and expensive. Judicial Committee proceedings have become increasingly dominated by legal counsel, with one result being mounting delays and inefficiencies. The committee is now spending more for outside legal counsel than it would probably cost to hire a permanent employee.

One proposed solution would be for the Senate to hire a full-time hearing officer for the committee, who would make all the pre-hearing decisions as well as running the hearing itself. Faculty members would remain the ultimate judges of the facts and of applicable legal standards, but the hearings would be run in a professional manner that is currently difficult to impossible.

A further frustration is that a termination or suspension does not take effect until all of proceedings are concluded. Perhaps individuals should immediately go into suspended status without pay once the provost, chancellor, or vice-president has brought formal charges.

Leadership and management skills of deans need to be sharpened and systems improved to detect and to address personnel problems before they reach difficult stages. Improved management skills at the department level are called for in these increasingly complex times--much as we may yearn for a return of simpler days now past. Post-tenure reviews are much discussed as a proven form of constructive intervention, and could be promising tools to ensure cost-effective faculty performance for senior tenured faculty whose performance has been found consistently to be wanting over a period of years. When inflation rates are low, cost-of living adjustments--even if withheld--cannot make up for inadequate performance of duties. Other corrective devices are needed.

When performance problems become serious, such as when a faculty member fails to carry out duties of his or her appointment, then the department head/chair and the dean already have the legal means at their disposal to insist that the work be done or to assign new work. If the faculty member refuses or is incapable of assuming duly assigned duties, or routinely refuses to abide by University, college or departmental rules, then an action can and should be initiated to terminate that faculty member.

The fact that this is more easily said than done is based in part on a local tradition of "looking the other way" when a colleague becomes negligent or inadequate in carrying out his or her duties, as well as the reluctance or the inexperience of essentially "amateur" unit heads/chairs to address these types of personnel management challenges. A further obstacle is the fear of litigation, which is always expensive in time and money. After all, if a department chair this year will leave the post

and rejoin full-time faculty ranks next year, it is often easier to turn attention to other things, recommend no raise, and leave the situation alone.

A clear understanding of the duties of appointment requires an annual goal statement that is aligned with the mission of the unit, the college and the University; agreed-upon outcomes; and fair evaluation procedures. Explicit attention to annual goal setting by faculty, accompanied by improved evaluation of faculty performance would likely increase faculty productivity, raise morale, and foster increased institutional flexibility. This approach to faculty leadership and departmental management means that we need to devise improved systems for anticipating scholarly, scientific and professional trends and continually revitalizing and retraining faculty.

**(9) Make it possible for the University to reduce the fraction of faculty on tenure track and tenured appointments, and to redeploy resources without doing damage to academic personnel morale and productivity.**

**Issue:** The administration would like greater flexibility in redeploying financial and personnel resources to respond to and prepare for radical changes that are overtaking the University.

**Comment:** We need greater flexibility in appointing personnel in clinical departments in the AHC, and elsewhere throughout the University.

Faculty want more vitality and a greater flow of new talent within their ranks, but in many areas of the University the absence of or limitations on "non-tenure track" appointment options for faculty curtail possibilities for flexible staffing to meet changing University needs.

The University has a restricted definition of "faculty", but within faculty ranks, over 80 percent are currently tenured. Because tenure carries with it rigidities that diminish flexibility in deploying University resources, it may be necessary to establish goals as to the proportion of faculty in departments or other units that will be appointed on tenure tracks or who will be tenured.

The proportion of University faculty holding tenured appointments may decline from the present 84 percent to something lower in the future as a result of the unpredictability of University revenues. But with only a 3-4 percent turnover in faculty per year, we would have to design new methods to reach a goal of 60 or 70 percent while meeting University staffing needs while improving faculty development.

The introduction of a "tenure quota" to replace present practice would mean a smaller tenured and tenure-track faculty, or very long probationary appointments. It likely would adversely affect efforts aimed at affirmative action hiring practices. A tenure quota would diminish the attractiveness of the University of Minnesota for the outstanding young faculty we try to recruit.

**(10) Improve the compensation plan to meet faculty needs and University management requirements.**

**Issue:** Present compensation system is "passive-aggressive" in the sense that it fails to take account of declines in performance. In the past we often expected inflation to erode salaries and thereby "fix" problems where they occurred, but this response is often insufficient today.

**Comment:** We need to look more imaginatively at new forms of contracts and benefit packages for different classes of academic personnel appointments.

We especially need to stretch eligibility for our phased-retirements option--perhaps allowing faculty as young as fifty to participate. Such a change would make it more attractive for those whose productivity has declined to reduce their salaries and work commitments to the University so that both are better aligned.

Hiring freezes are a blunt instrument for achieving positive change. Better means are needed to provide for faculty security, faculty productivity, and management flexibility in the face of uncertain financial resources.

## V. Conclusion: Inevitability of change in the Tenure Code, and the requirement that changes be designed by faculty working with the administration.

Financial and programmatic pressures in the AHC represent a foretaste of what other units of the University can expect to descend on them in the near future. Now is a good time to address academic personnel issues facing the University--not just in the AHC, and to make desirable changes in University personnel policies.

It is essential that the University of Minnesota maintain a secure tenure system, but tenure policy and practice must be set within an academic personnel system more flexible than what we currently have.

We should aim to revise the Tenure Code by the end of the 1995-96 academic year, and do it in a way that sensibly supports the University mission, that addresses present and upcoming financial and academic programming challenges, and that can be read and understood by persons outside the University.

It is a regental, administration, and faculty responsibility to clarify and emphasize the benefits that society derives from supporting the system of academic tenure.

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