

October 10, 1996

The Honorable Wendell Anderson
The Honorable Julie Bleyhl
The Honorable William Hogan
The Honorable Jean Keffeler
The Honorable Hyon Kim
The Honorable Warren Larson
The Honorable H. Bryan Neel
The Honorable William Peterson
The Honorable Jessica Phillips
The Honorable Thomas Reagan
The Honorable Stanley Sahlstrom
The Honorable Patricia Spence

Dear Regents:

Thank you for sending me a copy of the proposed new Tenure Policy for the Law School. As Dean of the Law School, I know that an appropriate tenure policy is an important part of attracting and retaining excellent faculty. As a resident in this academic community, I know the tension that discussions of this issue have produced over the past several months. As Dean of the only unit to which this policy would apply, I would like to express my view with respect to the proposal. Let me emphasize that this is my personal view; because I only received the latest proposal in the last 24 hours, I have not had an opportunity to engage in any formal consultation with the faculty in the Law School on this issue.

As you know I was appointed dean of the Law School 15 months ago, so some of the underlying controversy is new to me. I have been in the academic world for 18 years, both as a teacher and as a dean for 8 years. I have taught as a faculty member at five research universities. I also was a trial attorney before becoming a faculty member, so I know directly some of the considerations facing your legal counsel. I think that I understand your concerns of protecting the financial integrity of the institution and promoting change; I also understand faculty concerns about academic freedom and due process. I am very concerned that the present exchanges may be damaging to the University as a whole and to the Law School in particular.

I think we all agree that there is a need to get beyond the present impasse and avoid brinkmanship. With the October 9th proposal there is reason to believe that the positions of the parties are coming closer together. Clearly, this is an issue where more common sense must prevail. The stakes are too high: we all agree that our University is the intellectual and economic engine of the state of Minnesota. We all must keep this in mind as we move forward. No one wins if we continue on this present course. As a dean, I can tell you we already are confronting serious faculty recruitment and retention issues as a result of this tenure controversy.

Therefore, I would like to suggest a new approach to some of the issues. I would hope that these would meet the needs of the University as perceived both by the Regents and by the faculty. This proposal would build on the portions of the proposal that the Regents and the Faculty Senate have in common, but suggest new (or combined) language and approaches for other issues. In brief outline:

The need to accommodate change and promote financial flexibility can be met by a combination of measures. These include:

- A sharing of the risk of programmatic change between the University and the affected faculty member, under which the faculty member would accept the obligation to perform other tasks or accept a severance package, while the University would have the ability to recoup part of the faculty member's salary.

- A potential for University-wide (or possibly college-wide) pay cuts in cases of financial stringency that do not amount to a financial emergency under the Policy.

These goals can be accomplished on the basis of provisions already in the current code and in the drafts circulating. My enclosed proposal articulates an approach to this question.

The sections involving discipline and discipline-related procedures. To this end, I would propose:

- Adding a single new "gross misconduct" standard to the grounds for removal, thus reaching cases of blatant misconduct which arguably are not covered by the current policy, without creating dangerous ambiguities.
- Add an express provision for the imposition of lesser disciplinary sanctions, but limit those sanctions, assure due process, and protect academic freedom.
- Other changes in structures and procedures should be studied more carefully before enactment. Based on my experience in the administrative law area, I urge the adoption of carefully designed provisions.

I am enclosing a preliminary draft of proposed language for several sections of the proposed Policy that I believe could accomplish your goals and those of the faculty simultaneously. I ask you to consider it. Other provisions of the proposal will need to be altered to correspond to them.

Sincerely,

E. Thomas Sullivan

Dean

c: President Nils Hasselmo
Steven Bosacker

PROGRAMMATIC CHANGE/FINANCIAL INTEGRITY ISSUES

My proposal in this regard builds on parts of several documents that already are in place, including the Faculty Senate proposal and the various drafts put forward by the Regents' consultants.

In brief, it would emphasize the obligation of any faculty member involved in programmatic change to accept a reasonable assignment. This is drawn from the interpretation in the Faculty Senate proposal, but I would place it in the Tenure Policy itself. It would then propose separation from the University, if the faculty member declined a reasonable assignment. This is drawn from the Regents' draft.

The key provisions would be two new subsections of section 12, which are reproduced on the following page.

To ensure financial flexibility, I would suggest that greater visibility be given to a provision already in the present Tenure Regulations. In times of financial stringency that did not constitute a "financial emergency," the President could propose temporary pay cuts for all faculty on an across-the-board basis. These would take effect only if approved both by the Faculty Senate and by the Board of Regents. I would move this provision from section 11, which it is currently located, to section 4, providing a clearer relationship to base pay issues.

With these two tools, we could meet foreseeable programmatic changes and financial challenges.

Certain other changes also would need to be made to correct cross-references, etc. (I would be happy to provide you with a complete proposal.)

Section 12. Add two new subsections, 12.3 and 12.4 to the existing Code:

12.3 REASSIGNMENTS. IN CASES OF PROGRAMMATIC CHANGE, AN OFFICER DESIGNATED BY THE PRESIDENT WILL MAKE THE REASSIGNMENT OR OFFER 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 FACULTY MEMBER'S ACCEPTANCE OF THE ASSIGNMENT, ANY DISPUTE ABOUT THE REASONABLENESS OF REASSIGNMENT MAY BE TAKEN TO THE JUDICIAL COMMITTEE, AS PROVIDED IN SECTION 15.

12.4 TERMINATION OF APPOINTMENT. A FACULTY MEMBER WHO CHOOSES NOT TO TAKE OR 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 4. Base Pay. Changes in section 4.4; add a new section 4.5.

4.4 FACULTY COMPENSATION. EACH FACULTY MEMBER SHALL RECEIVE A BASE 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 BASE 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 BASE SALARY SHALL OCCUR IN VIOLATION OF THE ACADEMIC FREEDOM OF THE FACULTY MEMBER.

THE UNIVERSITY MAY ALSO FROM TIME TO TIME PROVIDE A FACULTY MEMBER WITH ADDITIONAL COMPENSATION THAT IS NOT PART OF BASE SALARY. THE ADDITIONAL COMPENSATION 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.

AT THE TIME AN APPOINTMENT IS MADE, THE OFFER AND WRITTEN NOTICE OF APPOINTMENT SHALL SEPARATELY STATE THE BASE SALARY AND ANY ADDITIONAL COMPENSATION, 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 BASE SALARY AND ANY CHANGES IN ADDITIONAL COMPENSATION FOR THE FOLLOWING ACADEMIC YEAR. A FACULTY MEMBER'S BASE SALARY SHALL CONSIST OF THE INITIAL BASE SALARY ADJUSTED BY ANY SUBSEQUENT INCREASE OR DECREASE IN BASE SALARY PROVIDED FOR IN A SUBSEQUENT WRITTEN NOTICE. INCREASES WILL BE PRESUMED TO BE IN BASE SALARY UNLESS OTHERWISE IDENTIFIED. FOR A FACULTY MEMBER EMPLOYED AT THE TIME THIS SECTION TAKES EFFECT, THE INITIAL BASE SALARY WILL BE THE FACULTY MEMBER'S BASE SALARY AT THE TIME THIS SECTION TAKES EFFECT, EXCLUSIVE OF ANY COMPENSATION DESIGNATED AS SPECIAL AWARDS OR 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 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 ALL FACULTY IN ACCORDANCE WITH A MATHEMATICAL FORMULA OR SIMILAR DEVICE. IF APPROVED BY THE FACULTY SENATE AND THE BOARD OF REGENTS, THE BASE PAY OF ALL FACULTY MEMBERS SHALL BE REDUCED TEMPORARILY IN ACCORDANCE WITH THE FORMULA. THE REDUCTION MAY NOT CONTINUE FOR LONGER THAN TWO YEARS, UNLESS RENEWED BY THE SAME PROCEDURE.

DISCIPLINE AND DISCIPLINARY PROCEDURE ISSUES

My proposal in this regard is quite simple. I would urge you to adopt only the changes that are crucial at this time. Issues about the functioning of the Judicial Committee are better addressed in a more comprehensive way, including a discussion of the relationship of those proceedings to other proceedings, such as academic misconduct.

I would propose two changes to section 10. One would augment the standards for removal for cause. The other would make explicit provision for other disciplinary actions, potentially differentiating between serious actions and other actions. Both of these would be responsive to concerns raised by the Regents, but would more limited than what has been seen in the Regents' drafts.

On the removal for cause issue, I would add a provision for removal for "other grave misconduct" as determined by faculty peers. In light of this change, it should be unnecessary to add any provision about "adequate cause," since that would simply be redundant. A proposed version of section 10.21 reflects this approach.

On the issue of "other disciplinary actions," I believe that the affected individual must be given an opportunity for a hearing before a panel of peers. There is little reason to impose the sanction until that hearing has been conducted, if the faculty member requests one. A proposed revision of sections 10.22 and 10.3 reflects this approach.

The other procedural changes to the judicial process require more intensive and dispassionate study than they have been given. I would urge you to adopt neither version of changes to the structure and procedures of the Judicial Committee (except, possibly, the elimination of the preliminary decision by the provost/vice president) until that study can be completed. Thus the proposed amendments to sections 13, 14, and 15 should be tabled at this time.

Delete proposed section 10.2; add two new sections, 10.21 and 10.22

~~10.2~~ **10.21. Termination or Suspension of a Faculty Appointment Before Its Expiration.** A faculty appointment may be terminated or suspended 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;
and

(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 OTHER DISCIPLINARY ACTIONS. OTHER DISCIPLINARY ACTIONS MAY BE IMPOSED WHEN THERE IS A VIOLATION OF A UNIVERSITY POLICY SPECIFICALLY PROVIDING FOR SUCH SANCTIONS OR THERE IS OTHER SERIOUS UNPROFESSIONAL CONDUCT.

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. A DEAN MAY IMPOSE OTHER DISCIPLINARY ACTIONS ONLY AFTER THE FACULTY MEMBER HAS BEEN GIVEN NOTICE OF THE PROPOSED ACTION AND OF THE REASON THAT IT HAS BEEN PROPOSED AND HAS BEEN GIVEN AN OPPORTUNITY TO RESPOND. THE FACULTY MEMBER MAY REQUEST A HEARING ANALOGOUS TO THAT PROVIDED IN SECTION 15. TO REVIEW THE BASIS FOR THE ACTION AND THE PROPORTIONALITY OF THE DISCIPLINE IMPOSED. IF THE FACULTY MEMBER REQUESTS A HEARING, THE DISCIPLINARY ACTION WILL NOT BE IMPOSED UNTIL AFTER THE CONCLUSION OF THAT PROCESS.