

October 6, 1998

**Joint
Council on Instruction / Faculty Advisory Council
Report**

Faculty Personnel Issues

Purpose

In response to faculty termination process concerns brought before the Faculty Advisory Council (FAC) to the State Regents, the FAC recommended that *“a committee of State Regents’ staff, faculty, and academic administrators...review and spotlight best practices and assist institutions, as necessary, in strengthening their policies.”*¹ A joint committee of Council on Instruction (COI) and FAC members was appointed to review each institution’s faculty personnel policies. As a result of legislative and public interests, the charge was expanded to include four areas: faculty evaluation, development, termination, and sabbaticals. The joint committee concluded that to best fulfill its charge it would identify key attributes for policy development in these four areas.

Shared Governance

The governance of public institutions of higher education is a complex task shared among the governing board, the institutional administration, and the faculty. The state coordinating board and students also play key roles in institutional governance. Governance of an academic institution occurs within a two-tiered framework and under the concept of shared authority. The first tier, general governance, involves the institution’s financial, personnel, and planning needs, including the employment and dismissal of faculty and staff. The second tier, academic governance, involves the control of academic affairs and policies, including degree requirements and curricular standards. The concept of shared authority, in which a governing board delegates authority to operate a university to both the president and the faculty, has evolved in recognition that lay governing boards cannot effectively govern an institution alone.²

The governance of an academic institution requires effective communication among all parties. Governance of an institution can take a variety of forms. In some instances, the president will make a preliminary recommendation subject to review by the faculty; in other situations the faculty may recommend a policy subject to the approval of the president and the governing board. Regardless of form, the interdependence among the governing board, administration, and faculty requires that each group work together for the benefit of the institution.³

Shared Governance and its role in Accreditation

The North Central Association of Colleges and Schools Commission on Institutions of Higher Education (NCA) has identified 24 General Institutional Requirements (GIRs) that describe the requirements for affiliation with the Commission. In regard to the role that the faculty play in shared governance, GIR 11 states that *“[an institution’s] faculty has a significant role in*

developing and evaluating all of the institution's educational programs. Faculty not only provide instruction and advise students, but are also involved in institutional governance..."⁴

NCA criterion two states that *"in determining appropriate patterns of evidence for [accreditation], the Commission considers evidence such as [whether] the institution has effectively organized the human, financial, and physical resources necessary to accomplish its purposes."* When reviewing the accreditation status of an institution, an NCA evaluation team considers the existence of shared governance procedures and the involvement of faculty organizations in decision making as evidence that an institution is "effectively organized" under criterion two. The *NCA Handbook of Accreditation, 2nd Edition* cites the following benchmark as an example: *"Because the higher education community places a high value on shared governance, it will be difficult for an institution with no structures for appropriate faculty role in institutional decision-making to claim that it is effectively organized."*⁵

The American Association of University Professors and Shared Governance

The American Association of University Professors (AAUP) *Statement on Government of Colleges and Universities* declares that faculty status and related matters are primarily a faculty responsibility. These areas include faculty appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. Faculty responsibility for such matters is based upon the premise that the faculty's judgement of competence or professional capability is fundamental to the maintenance of the college or university's academic programs. Faculty are the resident experts on these matters, and the governing board or the president should exercise the ability to make final decisions without faculty consultation only in exceptional circumstances and for reasons communicated to the faculty.⁶

The Association of Governing Boards of Universities and Colleges on Governance

The Association of Governing Boards of Universities and Colleges (AGB) recently issued a draft report suggesting that because of changes in higher education over the last 30 years, institutions are now required to exercise more efficient decision making processes than ever before.² The report cites growing legislative and public pressure for accountability, increased reliance on part-time faculty, and increased competition between institutions for students as reasons why governing boards must move away from traditional notions of shared governance and implement more streamlined approaches for decision making. For example, in reference to the awarding of tenure, the draft clearly states a long recognized but seldom articulated fact: *"the ultimate responsibility for the institution rests in its governing board" and that boards "may wish to reserve the ultimate decision on the granting of tenure."*³

I. Faculty Evaluation and Development Policies

Background:

Faculty evaluation and development are integral processes for assessing professional performance and charting new objectives. Through effective evaluation procedures, faculty receive valuable feedback to identify areas ripe for professional growth and to build upon existing strengths to improve the quality of teaching, research, and service to the university.

As such, the evaluation process is an essential component in faculty professional development. Effective development policies encourage faculty professional growth by providing the time and resources for the improvement of professional skills and, in turn, benefit the institution by ensuring that its faculty remain vital and committed to their fields of instruction. Examples of institutional initiatives supporting faculty development include: teaching and course enhancement programs, faculty discussion groups, professional development seminars, and mentoring programs for junior faculty members.

Tenure is a continuous appointment granted following evaluation by the faculty member's academic department and peers, review by appropriate administrators, and approval by the operating Board of Regents. A decision to award tenure is based on a thorough evaluation of a faculty member's contribution to the college or university, including achievements in teaching, research, and service. The review must be consistent with the nature of the appointment. The AAUP's 1940 *Statement of Principles on Academic Freedom and Tenure* provides that faculty members should have permanent or continuous tenure upon successful completion of a tenure review process, which should occur at the end of probationary period not to exceed seven years.⁹ The appointment of a tenured faculty member should be terminated only for adequate cause, defined as moral turpitude, incompetence, neglect of duty, serious and apparent misuse of university property, academic dishonesty, etc., and under extraordinary circumstances such as financial exigency. ¹⁰

The policy of post-tenure review, an evaluation policy under which tenured faculty members undergo formal, regular, and rigorous performance reviews, has gained momentum in recent years. Many institutions across the nation have adopted post-tenure review policies in response to the growing external scrutiny of faculty work patterns, increasing pressures for accountability, and the goal of improving faculty performance. Proponents of post-tenure review argue that the policy can help preserve the institution of tenure by ensuring that senior faculty members maintain active and vital professional lives. Those skeptical of post-tenure review claim that existing faculty evaluation policies are sufficient to maintain faculty accountability and levels of professionalism, and that post-tenure review will only impose an additional bureaucratic requirement that might distract faculty from more important tasks such as teaching, undermine faculty morale, and threaten academic freedom.¹¹

At its June 1998 meeting, the AAUP adopted a new policy on post-tenure review, which acknowledges the reality that post-tenure review is likely here to stay. The new policy provides institutions with recommended guidelines for establishing post-tenure review policies and cautions that post-tenure review should “*not be used as reevaluation or revalidation of tenured status.*” If an institution wishes to revoke the tenure of a faculty member, it should use a separate process, where the burden is on the institution to prove that a tenured professor is incompetent. The guidelines also call for faculty members to be involved in designing and conducting the reviews.¹²

Key Attributes for Policy Development:

A model faculty evaluation system is a continuous and progressive process. The annual review/evaluation is an integral component of a faculty member's record, which will also be used to chart a tenure-track faculty member's progress toward tenure. This evaluation is designed to build a record documenting faculty performance and professional achievements

from year-to-year and is generally used to reward deserving faculty with promotions, salary increases, and to determine reappointment. Recommended faculty preparation for the annual evaluation includes conducting a self-assessment of performance over the past year and developing a statement of goals and areas of emphasis for the next year. After reviewing the faculty member's self-assessment and statement of goals, the supervisor will complete an assessment of the faculty member's performance over the past year, identify areas for professional improvement, and develop a list of proposed goals for the next year. Finally, the faculty member and the supervisor should meet to discuss the past year's performance and to agree upon goals for the next year. Annual performance evaluations should be conducted for both tenured and non-tenured faculty.

The annual evaluation process not only builds a record of performance and professional growth; it also feeds directly into the formal review of tenure-track and tenured faculty. In addition to the annual evaluation, the academic and professional performances of each tenure-track and tenured faculty member should be reviewed every three to five years. The formal review process provides a documented basis for the recognition of faculty work and personnel decisions such as the award of tenure, promotion, reappointment, termination, or sabbatical leave.

Evaluation and development procedures should encourage open communication between faculty and administration and provide an assessment of an individual faculty member's ability to develop as a teacher and scholar. Additional components of a model evaluation policy include:

- A statement describing how annual evaluations bear upon the reappointment of non-tenured faculty;

- A statement acknowledging that annual evaluations should accurately reflect a faculty member's progress toward tenure and promotion, as well as other bench-marked decisions;

- A written statement of the purposes, expectations, and criteria for both the annual evaluation and other review processes, which should be provided to a faculty member at initial appointment;

- A written statement of common standards for reappointment, promotion, or termination, tailored to fit each academic department;

- Evaluations should be consistent with the nature and workload of the individual faculty appointment, i.e., teaching and/or research, tenure or non-tenure, adjunct or full-time, two-year college or comprehensive university;

- Annual evaluations and other reviews should include an opportunity for self-assessment, peer review, student evaluations, and other evaluations of teaching, scholarship, and service;

- Faculty should be provided written copies of annual evaluations and summaries of the results of other reviews;

- Faculty should be afforded the opportunity to meet with their respective department chairs to discuss their evaluations and to chart goals and objectives; and

- A copy of the evaluation bearing the signature of the department chair and the faculty member should become a part of the faculty member's official personnel record.

II. Faculty Termination Policies

Background:

The observance of effective evaluation procedures, as previously described, provide valuable feedback to faculty members as they strive to improve performance, as well as offer timely notice of personnel decisions. Evaluation and formal review procedures reduce the likelihood that faculty members will be surprised by personnel decisions and, in most cases, eliminate potential conflicts that might arise in the nonrenewal or termination of faculty appointments.

Generally, faculty members have a right to a fair hearing whenever a personnel decision deprives them of a “property interest” or a “liberty interest” under the Fourteenth Amendment’s Due Process Clause. Property interests can arise from legislative statute, from faculty handbooks, and from contracts that provide certain benefits and support claims of entitlement to those benefits. Employment contracts can create and define a property interest. However, such contracts can also specifically provide that a faculty member’s employment will terminate on a certain date without giving rise to a property interest sufficient to require an institution to grant the employee a hearing.¹³

A liberty interest arises when a faculty member’s “good” name, integrity, or professional reputation is at stake. For example, if an institution made public charges against a faculty member in the course of nonrenewal of an employment contract or attached some form of stigma that damaged a faculty member’s reputation or standing in the community, such actions might create a liberty interest that would require the institution to grant the employee a hearing.¹⁴

In *Guidelines for Good Practice, Part-time and Non-Tenure-Track Faculty*, the AAUP recommends that timely notice of non-reappointment should be extended to all faculty regardless of length of service. The AAUP’s 1980 report on part-time faculty recommends that part-time faculty who have been employed for six or more terms, or consecutively for three or more terms, should receive at least a full term’s notice of non-reappointment. Although it may be impossible to give a full term of notice to faculty members employed for less than three terms, the AAUP recommends that every effort be made to notify faculty at the earliest possible opportunity, but in no case later than four weeks prior to the commencement of the next term.¹⁵

Key Attributes for Policy Development:

A. Tenure and Tenure Track Faculty:

Issues likely to arise in nonrenewal of faculty employment contracts include: 1) whether the institution provided written notification of the decision not to renew the contract; 2) how much advance notice was given to the faculty member; and 3) whether specific cause was given for nonrenewal. Careful attention must be paid to the usage of the language “for cause” or “specific cause” when discussing the nonrenewal or termination of a full-time, permanently budgeted faculty employment contract. Not all full-time, permanently budgeted faculty hold tenure, which is a continuous appointment granted following evaluation by the faculty member’s academic department, review by appropriate administrators, and approval by the governing board.

Tenured faculty members can be removed only “for cause.” “For cause” reasons generally include: incompetence, conviction of a felony, moral turpitude, bona fide necessity for financial retrenchment, and serious and intentional misuse of university property and resources. “For cause” dismissal proceedings may give rise to legal issues

such as the adequacy of procedures for carrying out dismissal; the adequacy of standards for defining and determining “cause;” and the types of evidence required to sustain the dismissal. However, the AAUP’s 1976 *Recommended Institutional Regulations on Academic Freedom and Tenure* acknowledges “adequate cause” as an appropriate standard for dismissal of tenured faculty.⁴⁶

Like tenured faculty, non-tenured and tenure-track faculty members are only subject to termination of employment **during** their contract period under the “for cause” provisions. However, a decision **not to renew** an employment contract of a full-time, non-tenure track faculty member or nonreappointment of a tenure-track faculty member to another “term of years” does not require “for cause” reasons. Such decisions generally are announced by written notification of the decision not to reappoint from the institution by three to four months prior to the expiration of the current contract. The failure to reappoint may be without specific reasons, although some institutions do afford faculty the option to obtain reasons for nonrenewal in a confidential form of their choosing. Key attributes of a model termination policy for tenure and tenure track faculty include: Faculty should be provided written notification of a nonrenewal or termination decision. Institutions should observe a specified period of time to provide written notice to faculty members, prior to the expiration of the appointment.

Faculty should be afforded the opportunity to meet with their respective department chairs to discuss nonrenewal or termination decisions.

Faculty should be given the option to request the reasons for nonrenewal during the meeting with their department chairs or other appropriate officials or through a written petition within a specified period of time following the meeting, all in a manner specified by institutional policy. Reasons should not be inconsistent with the faculty member’s annual evaluation(s).

Faculty should be afforded specified appeals procedures to termination decisions.

* For those institutions without tenure systems, these key attributes of a model termination policy are recommended for full-time faculty.

B. Temporary Faculty

As a matter of sound employment policy and professional courtesy, the initial appointment of temporary faculty should clearly specify the assigned responsibilities and the duration of the appointment. Temporary faculty include part-time, visiting, lecturer, and adjunct faculty whose appointments are for a specified contract period with no commitment by the institution for continued employment. For example, the employment contract of an adjunct faculty member working under a nine-month contract should clearly specify the assigned duties (e.g. instruction), and that the faculty member has no justifiable expectation of continued employment beyond the nine-month contract period.

III. Sabbatical Leave Policies

Background:

A sabbatical leave is a valuable contribution to a faculty member’s academic service. A sabbatical leave is a compensated leave of absence for one year or a fraction of a year, for

purposes of study, research, or professional development. The objective of a sabbatical leave is the professional improvement and advancement of faculty members; thus, it is a benefit that enhances faculty vitality and increases their value to the institution. However, sabbatical leave also places obligations on the institution and the faculty member's department, because it requires the expenditure of funds to provide teaching without a loss of quality.

The Oklahoma Conference of the AAUP and the Northeastern State University chapter expressed concern that some sabbatical leave policies make it difficult financially for faculty to take sabbatical leave. In May 1998, the FAC received a request asking the committee to consider revising sabbatical leave policies.¹

Key Attributes for Policy Development:

Key attributes of sabbatical leave policy include:

Eligibility for sabbatical leave following no more than six-years of full-time employment;
For faculty on 12 month contracts a leave of absence for one-half year (6 months) at full salary or one calendar year (12 months) at one-half salary;

For faculty on 9 month contracts a leave of absence for one semester at full salary or two semesters at one-half salary;

Acceptance of the sabbatical leave by a faculty member creates an obligation to serve the institution for a specified term following return from leave;

Eligibility to apply for sabbatical leave is established by no more than six years of service following the return from previous sabbatical leaves; and

An explanation of the institutional policy for the allocation of funds for sabbatical leave.

IV. Recommendation:

The Oklahoma State System of Higher Education is comprised of very diverse institutions. Although it is neither feasible nor responsible to craft a "one-size-fits-all" policy formula, every effort has been made to suggest policy principles that will be applicable to all institutions. The document will, it is hoped, provide a vehicle for open and productive interchange in each institution. As current personnel policies are revised, these principles may well be applied in a variety of forms. The test of the value of this document will be the fidelity of institutional practices to these principles.

It is recommended that the various key attributes of faculty personnel policies in these four areas be presented for information to the Council of Presidents, Council on Instruction, and Faculty Advisory Committee. It may also be used with members of the legislature and public as needed.

¹ Faculty Advisory Committee, Statement of Position and Recommendations, April 1998

² Cynthia S. Ross, "Governance in Higher Education: A Historical Overview," chap. in A History of Governance at Oklahoma State University. Stillwater: Oklahoma State University, 1992.

³ Ibid.

⁴ NCA Handbook of Accreditation, Second Edition, page 22, September 1997.

⁵ Ibid., p.36.

⁶ American Association of University Professors (AAUP) *Statement on Government of Colleges and Universities*.

[7](#) Association of Governing Boards of Universities and Colleges (AGB), “AGB Statement on Institutional Governance”.

[8](#) Ibid.

[9](#) AAUP’s *1940 Statement of Principles on Academic Freedom and Tenure*

[10](#) Ibid.

[11](#) Christine M. Licata, *Post-Tenure Review: At the Crossroad of Accountability and Opportunity*. American Association for Higher Education, June 1998, Volume 50, Number 10, page 3.

[12](#) Courtney Leatherman, “*AAUP Offers Guidance on Post-Tenure Reviews*,” *The Chronicle of Higher Education*, June 26, 1998.

[13](#) The Law of Higher Education, 3rd Edition

[14](#) Ibid.

[15](#) AAUP’s *The Status of Non-Tenure Track Faculty*

[16](#) *AAUP Policy Documents and Reports 1990*, pp.21-30.

[17](#) Letter from NSU faculty member addressed to Professor Chuck Ziehr of the FAC