

☞ **05hr_JC-Au_Misc_pt10e**



☞ Details: Informational Hearing: Employment Practices, University of Wisconsin System

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Joint

(Assembly, Senate or Joint)

Committee on Audit...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (October 2012)

Joe 7/21

- get better handle on audit scope
- back-up posil
- paid leave after resignation
 - how many had b/o appt avail
 - ↳ how many used
 - how many resigned & then on adme

JOCAR

10/05

- No increases until study done
-

How quickly they can jump on that?

→ UW greater impact

AR 7/20

• How many people ^{have} ~~are~~ back-up
what places clause in
what conditions contract

• What do the statutes say
- as it permissable

- Chris holding something over her
- need

Questions to ask ?

1) What is the difference between "taking paid leave" versus using vacation time.

David Walsh 8/18/05

State Statute - cannot discriminate - terminate based on a criminal conviction

① → Ch. III.335?

②

Back-up appt. - tenured or academic staff

→ Stat. define what a limited appointment is (chancellor, v. chand
(Ch. 36) serve at will → if terminated you fall back to a previous faculty position

? WI civil service employees who leave their jobs to come work for a legis - 5 yrs - guaranteed position back

- Committee - Regents - looking at:

- Review peer group used to determine
- per diem
- fall-back

PAR Questions

Regents

- Can only ask
- Give us material -

- Maybe ask co-chairs - UW will respond.
Steinglass - depend on material Univ gives her

↳ outside authenticating body...

"using our definitions"

prob 2-fold

- 1) only UW wants to give - format correctly
- 2) will legs take whatever "they" say
↳ "they" = Univ.

- All serious (Regents) about this

- they really don't know -

... legs an enigma

... don't know what to do

- nobody arrogant

- passionately want to do a good job

- no resources

- Doug Bradley - help regents

Pitt-

Very Very smart

- PAD - Harvard, no-nonsense guy
- think he w/ is a good guy
- new chair - no mtg yet as a chair
- know him to be smart, shrewd & g
- good ~~guy~~

Question - Jan

- Wait priority - public & legal important
- ① Answer moving ahead - Jan
- ② Doing ^{audit} - requesting prelim info
- announces
- making this a public

① look at whole

- policies related to
- numbers & rationale

J.W.

2 components already in place

① Judge - on Barrows

② Regents - systemwide review of

Every 4yr & sample of 2yr.

Policy review

- rules & regs assoc w/ faculty & Admin, etc

- leaves (sick, vacat

accrual of vacation

- back-up appts.

Walsh

benefits,

from

- mindful

Clarity before we move forward

"Fact finding action to define
what we want in our scope"

Infrastructure @ VW is failing/crumbling
- 1,000 back-up apps - not 8??

- 1) sick-leave
- 2) B/O
- 3) consultants - internal
- 4) Sathitichai

• VW Response is very forward looking

• Sick Leave

- 69% conversion - have to be in plan - figures
- 100% conversion - Faculty

AL

ETF - Sick leave conversion - by group

• Job security (back-up positions, paid ^{at the time} concurrent employment)
- lessened, but not ended

9/13

Really -

(1)

- She? - Does our faculty have more authority in governance
i.e. shared governance w/ Board
↳ entrenched in statutes
- ? - Only state in statutes
- believe so (Pat Brady)
- ? - Bump out other faculty members?
↳ not really, sometimes

- Carol? - Paid for time to prepare to re-enter classroom
↳ typically 1st time faculty coming from a PhD program
& have typically prepared during that phase of
career - up to date on discipline
↳ teachers returning may need time to catch up
on discipline . . .
- ? Charged vs convicted of a crime → abhorrent that a
person w/B paid after conviction, paid leave, leave of
absence comments on conviction
↳ happen very, very rarely - also repulsed by
behavior
↳ may be able to use vacation time - right to it, but
not on payroll
↳ law requires a separate investigation if verified &
materially related to their position in order to terminate
↳ also right to appeal
- ? Teachers lose license if convicted
↳ will look at . . .

Carol ? B/O used as a recruitment tool, some haven't, what is the deal. ^{some didn't know they had B/O positions} what

↳ they should know - in contract, tenure gives this

↳ need to (want to) give assurance of job security

↳ contracts rather than b/o appt.

Sam ... ties to system ... right about pub. perception ... need to bring confidence that UWS is moving in rt direction ... disturbed by Wiley's article

? How many of 33K emp are tenured?

↳ 292 of 1092 have faculty tenure from our system

↳ 6,041 tenured or tenure track (legal)

? Tenure - explain

↳ 7-8 yr

↳ can only be removed for cause

Cowels Clarify

Kent ... ? Lyall

↳ not earnings

David O'Lea

↳ finishing 1 yr appt ^{Regent Prof.} ~~consultant~~ for Reilly ... # of work products ... can provide

Linda Weime

↳ consultant (Sr. Advisor) ... works on a number of projects ... includes fundraising for private sources of funding

Roesler? ~~Acctg~~ Acctg system . . . ?

↳ current legacy system makes difficult to change

Kaufert - Other institutions

↳ "b/o" ^{carry} unusual, but giving assurance to

• lost control, understands . . . example of legis appts & guarantee of return to civil service position, paid

• leave in other public offices (police, etc.) - but it takes too long at UW - why?

↳ can be practical barriers toward moving an investigation forward expeditiously

? In private world . . . bought out of contracts (termed Stahl)

Cowels - Do you have an investigative team?

↳ Admins involved, may hire an outsider person to help, like Barrows.

↳ Not fiscally prudent - not that many

? ~~Consulting~~ Consulting issues . . . is the 160 # accurate

↳ no, may be how "consultant" is defined.

→ we would say 41 in unclassified assignments & we do have a number of "outside" consultants like in the APBS project

? Any way for legis ~~to~~ to understand the costs/expens^{es} involved.

Roesler? any scope questions

↳ refer to Reports . . . our unal 4/3 helpful for LAB . . .

may be other areas

2 main? - ① Are they appropriate ② Compliance w/ policies

Reeder? coming back to us w/ these reports? (from Reguts)
↳ W/B presented to Reguts in Nov - certainly you'd get a copy of report

Ext. Rpt. - Outside Legal Counsel

Jan
Dan. Clancy

Sue - Legal Counsel at District (WICS) level to . . .
↳ position removed

Kentman -

Cole (MATIC)

Sue? Why so high @ MATIC?
↳ larger than other T.C. - more complex issues
↳ higher litigation costs - more litigious in
~~the~~ SEWI than other area of state

12:55

MATIC

- LAB overview since last hearing (Kate Wade)
- Clancy/Foy
- ? MEC - How much tax dollars? How many businesses
 - ↳ 20K - 100 businesses
 - ↳ give break on rents - 1st yr
 - ↳ since 1987 -> is gone out & very successful

Cole - MATC

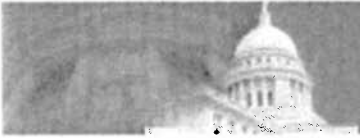
FSET eligibility
 → has contacted the County to come
 28%? receive SHARES

- Bell

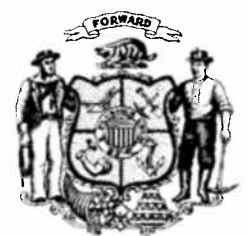
- program not utilized the way it might
 ↳ some students don't want to use Child Care
 Center for program because not convenient
 to students (already working at other child
 care facilities)

- Dong

→ all students are required to put in "some"
 time in at MATC Center...
 → will be using Centers more - not as dire as
 Bell ~~was~~ characterized



WISCONSIN STATE LEGISLATURE



12:19

Room 112

Felony

↳ threatened to ^{not} vote for package

↳ didn't get

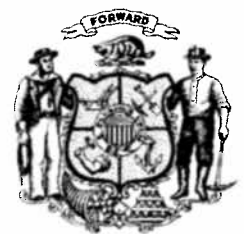
• (Tom) internal auditor
(like SWB - answerable to Board & Sir)

• coming back w/ agreement w/ governance players -
wanted October → w/B New Board!
↳ look at this... on what was passed - give input on it

• B/O - timing of consultation w/ governance gpps.
↳ whose power?
↳ how change



WISCONSIN STATE LEGISLATURE



9/9/05

Review of Employment Policies and Practices

BUSINESS AND FINANCE COMMITTEE

Resolution I.2.c.

The Board of Regents recognizes the need to review and reform the employment policies and procedures within the University of Wisconsin System. Given that recognition, no new concurrent or "back-up" appointments will be granted until the Regents are satisfied that processes are in place to ensure two principles are being followed: 1) No one will be paid for not working; and 2) People will be paid at a rate commensurate with their current job, not any prior one.

Therefore, upon the recommendation of the President of the UW System and the Business and Finance Committee,

(1) The Board of Regents supports the President's suspension of the practice of granting administrative back-up appointments for new employees and the granting of further indefinite academic staff back-up appointments unless approved by the UW System President. This suspension will remain in effect until lifted by the Board of Regents. With input from appropriate governance groups, position titles designated as limited appointments shall be reviewed, and the practice of negotiating fixed-term contracts for administrators in lieu of limited term appointments shall be considered. A report on that assessment will be presented to the Board of Regents no later than its November, 2005 meeting; *- Peggy wanted due date to be Oct*

(2) Because the Board of Regents shares the deep concerns of citizens of the state and legislators over the criminal activity of any of our employees, the Board of Regents directs and requires that the UW System Administration determine and establish policies and procedures to assure to the public and the Legislature that any employee charged with a felony will be immediately investigated and disciplinary action, if any, will be determined in a timely manner. In the event such policies and procedures are precluded by applicable law, the Board of Regents and the UW System President will work with the Legislature to enact appropriate changes to the law to effectuate the intent of this resolution. Nothing herein shall preclude institutions from otherwise following normal disciplinary procedures; *- only in b/c PAR threatened not to vote for any of this wasn't in...*

(3) All UW institutions shall be required to seek approval from the UW System President for any settlement involving the termination of a limited appointee. Such settlements shall be reported to the Board of Regents;

(4) UW System Administration shall revise its policy such that when administrators return to their faculty position, they will be compensated at a salary rate consistent with other faculty members of the same rank in the department (when considering years of service, previous salary as a faculty member, length of time served as an administrator and other factors normally considered when setting faculty salaries). The UW System

Office of Human Resources shall approve all such salaries along with appropriate justification prior to implementation;

(5) All UW institutions shall require that employees who are returning to the faculty from an administrative position, and are being offered transition time to prepare to teach, shall provide the equivalent of a sabbatical proposal and subsequent report of work accomplished during the transition. The transition period should be no longer than one academic semester unless the person has served in a limited position for five or more years, whereby two academic semesters may be allowed;

(6) UW System Administration, in consultation with UW institutions, shall develop a revised sick leave policy by October 1, 2005 that specifies the time period after which a health professional's certification for use of sick leave will be required;

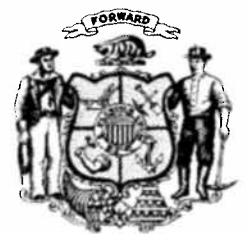
(7) The Board of Regents shall review and approve as appropriate the total compensation package for the President and each Chancellor; and

(8) In light of Sarbanes-Oxley regulations, the President shall review and prepare for the Board a recommendation on whether the internal audit function is sufficient and whether the System Auditor shall report directly to the President and the Board.

↳ PAR & TL asked for this - similar to SWIB



WISCONSIN STATE LEGISLATURE





Board of Regents of the University of Wisconsin System
Office of the Secretary
1860 Van Hise Hall
Madison, Wisconsin 53706
(608)262-2324

August 31, 2005

TO: Each Regent

FROM: Judith A. Temby

PUBLIC MEETING NOTICE

RE: Agendas and supporting documents for the meeting of the Board to be held at the Washington County Fair Park, 3000 Hwy PV, West Bend on September 8, 2005, and at the Washington County Cooperative Extension Office, 333 E. Washington St, West Bend, Wisconsin on September 9, 2005.

Thursday, September 8, 2005

- 9:30 a.m. – Tours to view community based education and applied research programs
Departing from Washington County Cooperative Extension Office
- 11:30 a.m. – Lunch – Washington County Fair Park, Rooms 118, 119 and 120
- 12:15 p.m. – Board of Regents Meeting
Washington County Fair Park, Room 112
- 1:15 p.m. – Business and Finance Committee
Washington County Fair Park, Room 112
All Regents Invited
- 2:30 p.m. – Education Committee
Washington County Fair Park, Room 112
- Business and Finance Committee
Washington County Fair Park, Room 114
- Physical Planning and Funding Committee
Washington County Fair Park, Room 117
- 6:00 p.m. – Reception
Washington County Courthouse Museum
320 S. Fifth Ave.

Friday, September 9, 2005

9:00 a.m. – Board of Regents Meeting
Washington County Cooperative Extension Office, Rooms 1113A and B

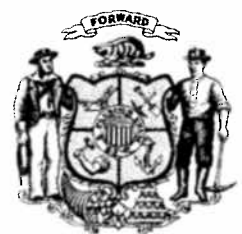
Persons wishing to comment on specific agenda items may request permission to speak at Regent Committee meetings. Requests to speak at the full Board meeting are granted only on a selective basis. Requests to speak should be made in advance of the meeting and should be communicated to the Secretary of the Board at the above address.

Persons with disabilities requesting an accommodation to attend are asked to contact Judith Temby in advance of the meeting at (608) 262-2324.

Information regarding agenda items can be found on the web at <http://www.uwsa.edu/bor/meetings.htm> or may be obtained from the Office of the Secretary, 1860 Van Hise Hall, Madison, Wisconsin 53706 (608)262-2324.
g:\regents\agenda\09_August\covltr



WISCONSIN STATE LEGISLATURE



BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

REPORT OF THE COMMITTEE ON RETREAT FOLLOW UP SEPTEMBER 8, 2005

Regent President David Walsh asked us to consider the broad-ranging discussion among Regents, Chancellors, and senior UW System staff at the Regents' retreat held in July 2005, and report to the full Board and the Chancellors on initiatives and strategies the Board of Regents might want to pursue during the coming year. President Kevin Reilly's statement is a helpful starting point for this task. He reminds us that "our job as a public university is to be Wisconsin's premier developer of advanced human potential, of the jobs that employ that potential, and of the flourishing communities that sustain it."

If that is the role the UW System is to play, we believe the Board of Regents should focus its attention in the coming year on four primary themes.

1. Improve Access To the UW System

- Talent, creativity and drive are not the exclusive purview of wealthy families. We need to keep higher education affordable for all qualified Wisconsin people to help them develop their potential.
- As a public institution of higher education, we should examine the current level of cost sharing for a higher education between Wisconsin students and their families on the one hand, and state taxpayers on the other.
- We should establish clear and convincing goals for an appropriate division between taxpayer support and tuition, and those goals should keep in mind our commitment to Plan 2008.

2. Do Our Share to Increase Baccalaureate Degrees in Wisconsin

- An educated citizenry is a benefit for society at large and for the individuals who obtain the education. Moreover, the evidence establishes a link between a region's economic development and the number of its baccalaureate degree holders.
- We should seek ways to creatively manage our resources, and make the case for additional resources if needed, to produce more baccalaureate degree holders in Wisconsin while maintaining the quality of the degrees awarded by our campuses. This should include creative ways to attract and retain non-traditional students.
- We should coordinate our efforts to achieve this goal with Wisconsin's other system of public higher education, the Wisconsin Technical College System.

3. Improve the Quality of the Student Experience On Our Campuses

- We should develop strong theory- and evidence-based policies for appropriate student-faculty ratios and student support services on our campuses.
- We should then develop a clear and convincing plan for how we can efficiently allocate existing resources, and make the case for additional resources if needed, to implement these policies.

4. Strengthen and Build Relationships with Our Stakeholders

- We should clearly define the roles that Regents, the System President, and our Chancellors should play in communicating with our stakeholders.
- This process must be a two-way communication: we should be good listeners first and then strong advocates for the goals that we have established.

Respectfully submitted,

Regent Mark Bradley
Regent Danae Davis
Senior Executive Vice President Donald Mash
Regent Charles Pruit
Regent Michael Spector

Rielly

(2)

- Solid, fair, progressive system - proud of it
- complex
- advise on any stat. changes
- asked campuses to seek advice ^{from us or counsel} on any settlements, monitoring, or otherwise.

↳ challenges:

↳ fix what's broken, not break what's fixed

- Pat Brady - overview of memo

? Bradley - non-statutory should be main focus?

? " - are there guidelines from the board to the campuses on exercising authority

↳ no

? Walsh - nothing to do ~~with~~ with tenure - many other issues, but not tenure → other related policies/parts of employment

- no "back-up" appointment defined in stat/policy

- same as a "contract"

- good business sense

- publicity -

- came out of

- need better understanding so can explain to the public

- our challenge to do that

? Walsh - anything that keeps us from immediately investigating

↳ no, but open to a supplemental contract review

- all cases in media - that investigation

↳ as a practical matter, not always practical

- Pruitt - due process - why not forfeit position of convicted

↳ our own system, by stat / Admin Rule, 14 Admin / mt issues

↳ doesn't mean we can't punish for mis-conduct

- Loftis - disagrees w/ System on

? - Attachment 11 - this contradicts our position that this is common practice

↳ not as policy, but as situations arise

- in WI we have codified these, others don't

- we have gone way past what we should on giving these "back-ups"

? - 5/14 for Administrators only - high level.

- Peggy - understands why we've done this, in general sounds like not unusual around the country.

- 40% of people have these - why? so high

- not all "high level" people - ~~should~~

? How did we get here & how to get out?

- B Smith - Anything internal we can see criticism?

? are there any?

↳ there are basic criteria / suggestions for policy

↳ Straight forward in the System Admin. - 1st yr - no backup - after 1 yr, have option to give 1 yr at a time

1. write policies / procedures - would like

- Loftus - do any have more than a 1 yr back-up
 - ↳ depends on length
- Crain - diff. in campuses?
 - ↳ campuses have ability to make policies - subject to Regent approval
- ? Great variation?
 - ↳ not really

- Davis - Gap between appt & back-up →
 - A) any criteria for transition
 - B) if - where are they
- ↳ typical for 1 yr - if going back to teaching
 - also need to report on what doing to prepare

• We think, but we don't know if actually doing anything

- ? Generally speaking, what criteria to keep paid leave
 - ↳ usually brief during investigations - cases are unique - potential for litigation etc need to be taken into

- Pzygaj - Our policy that relates to admin → classroom...
 customary to have 1 yr ... "customary" in policy?
 - ↳ No

- ? Regents could set a policy to be used across the board... do we have the broad auth to do this?
 - ↳ yes, but important to take governance groups input into

- ? How do we get sub-governance on this?
 - ↳ system of shared governance - only for all campuses

Peggy - If legis doesn't like, can they change - just for the purpose of "back-up" appts only?
↳ they could do that

Connolly-Keebler

- Non-stat back-ups - can the Regs ask to have rules tightened by those other governance bodies?

Sallas

- Need to start focusing on restoring public confidence
- the non-statutory positions - need to direct the Campuses, not ask them to "tighten" up.
- don't wait for the Audit, need to
- what do we want to look at & get to it

Lofus

- what statutory authority
↳ general auth
? what frozen
↳ outside statutory auth.
? all in

Walsh

- Prob is that limited term appointments are "at will"
This is about job security. No contracts

Specter?

- This doesn't
- Public view - source of money - perception is prob.
- Don't over-react

Peggy

- Felons → survey of other institutions → what do other institutions do

↳ not asked in survey

*

? Do we have the auth or is there a stat. to prevent us from defining "cause" - dismissals of cause for ev
↳ state law prohibits

Gratzy = People don't understand due process for cause.

- What bring to board tomorrow - clearly fixing prob.
- need to fix what the small test says is broken

Committee mtg

• Pruitt

- no pay for not working, & paid for all work they do
- ⊕ Clearly send signal to campuses that employees need to be investigated as early as possible

⊕ What happens

- former admin's salary should be similar to other ^{faculties in dept.}
- not 85% standard in past
- transition period
- policy not more than semester long - non-like sabbatical process

some
Jaffer

~~issue~~ - suspension of b/o not be unfrozen unless board of Regents approves
↳ would free something to be brought to us

- Need more assurances tomorrow are doing a job of work & vac. & sick leave used appropriately

? What does need to be "at will" - some may not need to be but others may need to be

- important to pay attention to the strand governance rights

= Some of the old ones have these rights

Wiley - a number of positions need to be "at will" & a number of them come from "civil service" status & wouldn't take an Admin position w/o some job security

Walsh - Ex: Coaches get "bought out" of their contracts
is public doesn't like paying somebody & keeping in the system in a nothing job -

OWL - Thinks system works - only a few bad apples
- Don't think you can have one set of rules for all campuses.

Wiley - multiyear, rolling horizon, ^{intermittent} academic apps are reviewed annually - policy that was approved

Pruitt -

Lofrus - Was in legis when stat. passed - passed to protect ^{academic} status

Ashford - need to be competitive our salaries double digits behind

Stevens - Only system worked in that had b/c appts - other systems may lower position, buy out - surprised here (4 systems worked in)

OWM - 4th Univ system - there seen a system like OW's, but never worked at a system w/ only 30 men of job security, caught in breeze, ok, confident in stability, but don't move forward across country - is a risk

- came here 2 mo ago, issue is trust, reputation of the system

Lofrus - Most employees have a life contract (IN) - UW had 1300 position descriptions - are they? Categories look at at same time - where do they fit in

Perry - in scope of audit
- press resolution report plan

- Salaries/benefits - s/b a part of this discussion

Loftus - Start of the "Reform" process

- > give Gov & Regis confidence in OW for next budget cycle
- > access, efficiency & excellence are what we are after

• Don't think Pres has tools to deal w/this - needs more

Wiley - Benefits to System, good thing, OW-Mad fought now O.K. -

quite difficult for Pres at System level to manage

-> doesn't think blanket system rules work

Loftus - think we can

Reilly - Continuing freeze... complicates negotiations... going through

Regent could be even more difficult

Reyes - Have to deal w/ felonies

- When we find out - immediate investigation

- law is very clear must do sep investigation

- when convicted - if substantial related to job can force

↳ constitutional

Wom - sick-leave policy? - how much earned/used

↳ no current policy requiring Dr. note

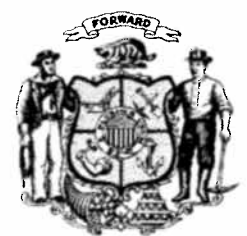
- 9/83 - all details of Bonner's settlement made public

+ Avg sal of 527 - most get 52%

+ Reducing salary loan liability? or!



WISCONSIN STATE LEGISLATURE



August 31, 2005

To: Regents
From: Patricia Brady
General Counsel
Re: UW System Personnel Policies and Practices

In connection with your review of various appointment and job security issues, President Reilly has asked that I provide you with background information on UW System personnel policies and practices.

1. History and Structure of Personnel System

The UW System operates under a very complex personnel structure. All university employees are also state employees, and all are considered to be part of the Wisconsin state civil service. The state civil service system is itself divided into two categories:

- The *unclassified* service consists of specifically designated positions, such as elected officers, gubernatorial appointees, and state agency division administrators. The unclassified service also includes UW System faculty, academic staff, and administrators, s. 230.08(2)(cm) and (d), Wis. Stats.
- The *classified* service consists of "all positions not included in the unclassified service," s. 230.08(3)(a), Wis. Stats.

The terms and conditions of employment for members of the *classified* staff are governed by union contracts, statutes and rules that are interpreted and implemented by the Office of State Employment Relations (OSER) in the Department of Administration. The classified system is similar to civil service systems found in many governmental agencies, at both federal and state levels. An essential feature of such systems is that employees have the opportunity to attain "permanent status in class" following successful

completion of a probationary period.¹ Employees having permanent status may be removed, suspended without pay or discharged *only for just cause*. They also retain certain rights to be restored to the classified service following separation, or to be reinstated following service in an unclassified position. (See, generally, s. 230.28, et seq., Wis. Stats.)

While the personnel system for UW System *unclassified* staff contains some elements that parallel those of the classified system, it is based on policies and practices specific to academia that have been incorporated in the statutes, administrative rules and institutional policies applicable to the university. Because the Board of Regents has primary responsibility for implementing the statutes and setting the rules and policies governing unclassified employment, this memorandum focuses on the *unclassified* staff personnel structure within the UW System.

a. *Academic personnel model: AAUP policies and merger legislation*

The UW System's unclassified staff personnel structure is established by state law under ch. 36, Wis. Stats., and is further elaborated upon in administrative rules adopted by the Board (Chapters UWS 1-22, Wis. Adm. Code), and in Board-approved campus personnel policies.² There are, in addition, Regent Policy Documents (RPDs) and administrative Unclassified Personnel Guidelines (UPGs) that deal with many other details of personnel administration. This interrelated group of statutes, rules and policies follows a personnel model specific to academia that developed in response to events in the late nineteenth and twentieth centuries.

Historically, at the turn of the nineteenth century, employment protections for university staff around the country were minimal, and most individuals served at the pleasure of university boards of trustees. A series of incidents in which university professors were subjected to attempted discipline or dismissal for speaking out about controversial topics--including the famous trial of Richard Ely³ here at the University of Wisconsin--eventually led to the creation of the American Association of University Professors (AAUP) in 1915. A primary concern of the AAUP, from the beginning, was to safeguard the academic freedom of university teachers by means of a system of tenured employment.⁴ In its 1940 *Statement of Principles on Academic Freedom and*

¹ The usual probationary period is six months for Wisconsin classified civil service appointees, s. 230.28(1), Wis. Stats.

² The Board's administrative rules were first adopted in 1975, pursuant to ch. 227, Wis. Stats. Under the Board's rules, UW institutions were delegated additional authority to adopt institution-specific personnel policies in identified areas. These must be approved by the Board of Regents.

³ In exonerating Professor Ely of the charges against him, the Board of Regents affirmed its commitment to academic freedom, stating, "Whatever may be the limitations which trammel inquiry elsewhere, we believe that the great state university of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found." See, Curti & Carstensen, *The University of Wisconsin, A History*, Vol. I (University of Wisconsin Press, Madison, Wisconsin 1949), pp. 508-527.

⁴ For an interesting description of the events leading to the development of the AAUP, see Menand, *The Metaphysical Club* (Farrar, Straus and Giroux, New York, New York 2001), pp. 409-433.

Tenure ("1940 Statement"), the AAUP articulated a set of principles defining academic freedom, and establishing tenure as the primary mechanism for its protection.

The 1940 Statement, together with subsequent interpretative comments and recommended institutional regulations, sets forth the essential elements of an academic personnel system. The key components include:

- Provision for a probationary period not exceeding seven years, leading to the grant of tenure.
- Termination of a tenured appointment, or of a probationary term appointment before the end of the specified term, only upon a showing of just cause and with due process.
- Suspension from duties during the dismissal process only if immediate harm is threatened; any suspension from duties during dismissal proceedings to be with pay.
- Protections for "academic staff" other than faculty (a group to be defined by the institution), ensuring that dismissal before the end of a fixed term of employment must be accompanied by an explanation of the reasons for the action and an opportunity to be heard before a duly constituted committee.

These principles, while different from employment practices in the private sector and in governmental civil service systems, including the Wisconsin classified system, are widely followed in higher education.⁵ The basic elements of the AAUP principles were incorporated in the statutes and administrative code at the time of the 1971 UW System merger and have been continued since then. Attached, for reference and comparison purposes, are copies of the 1940 Statement, the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*,⁶ ss. 36.05, 36.13, 36.15 and 36.17, Wis. Stats., and chs. UWS 3, 4, 10, 11 and 15, Wisconsin Administrative Code. (Attachments 1-8.) As can be seen from the documents, the UW System provisions directly parallel the AAUP recommended procedures. Except as applied to members of the academic staff (discussed below), the UW's unclassified personnel structure, as reflected in these provisions, has not been substantively altered since merger.

b. Types of unclassified appointments in the UW System, and related employee rights and protections

The three principal types of unclassified staff appointments, and the legal rights associated with each under applicable statutes and rules, are as follows:

⁵ Nearly all public research, doctoral and comprehensive institutions of higher education have in place tenure systems, U.S. Department of Education, National Center Education Statistics Survey of Postsecondary Faculty (1999).

⁶ AAUP Policy Documents and Reports (9th Edition, 2001).

- (1)
- *Faculty.* Section 36.05, Wis. Stats., defines "faculty" to include those who hold the rank of professor, associate professor, assistant professor or instructor in an academic department. Faculty appointments are either tenure or probationary appointments. A "probationary appointment" is an appointment held by a faculty member during the period which may precede the grant of tenure. A "tenure appointment" is "an appointment for an unlimited period granted to a ranked faculty member." See, s. 36.13(1), Wis. Stats.

Any person having tenure may be dismissed only for just cause, and only after notice and hearing, s. 36.13(5), Wis. Stats. The hearing process is prescribed in detail in ch. UWS 4, Wis. Adm. Code.

Probationary faculty members are employed on a series of term contracts, during the probationary period. They may be dismissed *prior to the end of any contract term* only for just cause and after hearing, under the same procedures applicable to tenured faculty. If their term contracts are not renewed at the conclusion of the specified term, they have appeal rights as specified in ch. UWS 3, Wis. Adm. Code. A nonrenewal is not considered a dismissal, and just cause for nonrenewal is not required. UWS 4.01, Wis. Adm. Code.

While dismissal proceedings are pending, a faculty member is not normally suspended or relieved of duties, unless after consultation with the faculty, the chancellor determines that substantial harm to the institution may result if the faculty member is continued. In such a case the faculty member may be suspended, but his or her salary must be continued until the Board decides on termination. See, generally, UWS 4, Wis. Adm. Code, and UWS 4.09, Wis. Adm. Code.

- (2)
- *Academic Staff.* UW System "academic staff" are defined as "professional and administrative personnel with duties, and subject to types of appointments, that are primarily associated with higher education institutions or their administration," s. 36.05(1), Wis. Stats. Academic staff members hold a wide array of positions, some of which are administrative or managerial in nature (noninstructional academic staff), and others which are in instructional and research disciplines with responsibilities that include aspects of the work of faculty members (instructional academic staff).

An academic staff appointment may be "fixed term," "probationary," or "indefinite," as provided under s. 36.15, Wis. Stats.

- A "fixed term" appointment is for a specified contract term, renewable solely at the option of the employing institution and carrying no expectation of reemployment beyond the stated term, UWS 10.03(1), Wis. Adm. Code.

- A "probationary" appointment is one that precedes review and a decision as to whether an "indefinite" appointment should be granted.
- An "indefinite" academic staff appointment confers a status similar to that of a tenured faculty member.
- Fixed term and probationary academic staff members are entitled to notice that their contracts will not be renewed, UWS 10.05, Wis. Adm. Code. Nonrenewal does not constitute dismissal, and does not require a showing of just cause. Dismissal of fixed term or probationary staff *prior to the end of the appointment term*, however, must be only for just cause, and only after notice and hearing, s. 36.15(3), Wis. Stats. The dismissal is effective upon a determination of just cause by the dean or director. If the appeal process is not concluded before the end of the contract term, the staff member may elect to have the proceedings concluded, but is not paid beyond the expiration of the appointment term. UWS 11.11, Wis. Adm. Code.
- Indefinite appointees may be dismissed only for just cause and only after notice and hearing, s. 36.15(3), Wis. Stats. During the pendency of a dismissal action, indefinite academic staff--like faculty--are to be continued in pay status, even if relieved of duties, UWS 11.08, Wis. Adm. Code.

- ③ • *Limited appointments.* A limited appointment is, in essence, an "at will" employment in which the employee serves "at the pleasure of" the appointing official, s. 36.17(1), Wis. Stats., and may be removed at any time.⁷ Under s. 36.17(2), Wis. Stats., certain enumerated positions, including the UW System president, chancellors, provosts, and other top administrators *must* be limited appointments.

Also under the statute, a person "holding a tenured or academic staff appointment under ss. 36.12 or 36.15 [Wis. Stats.] *shall not lose that appointment* by accepting a limited appointment." Thus, individuals who already hold tenured or academic staff appointments within the UW System when they accept a limited appointment, cannot lose that existing tenured or academic staff appointment by accepting the limited appointment.

Employees joining the UW System for the first time as limited appointees may negotiate for faculty or academic staff appointments to which they might be assigned upon the termination of their limited positions. In addition, there are many instances in which it is a requirement of a particular position, codified in

⁷ Although the statute refers to the fact the these appointments are at the pleasure of the Board, the Board's administrative rule, UWS 15.01, refers to service at the pleasure of the "authorized official" who made the appointment, reflecting the fact that the Board has delegated many personnel decisions to other university officials.

institutional faculty personnel rules approved by the Board, that the appointee be tenurable as a faculty member at the institution. Most common are situations in which the limited appointment is to a high-level academic administrative post such as a dean, provost or chancellor. In such cases, tenured faculty status is granted by the Board, typically in consultation with the institution, at the time the limited appointment is made. Alternatively, the System President may approve a conditional tenure appointment until the Board officially grants tenure as part of the budget cycle. See, UPG 5.03(7).

2. Employment Security for UW System Unclassified Staff

As the above discussion indicates, the UW's unclassified personnel system affords faculty and academic staff of the UW System employment protections that parallel the academic model endorsed by the AAUP. While the faculty tenure protections as applied within the UW System are quite straightforward, some additional discussion is necessary to an understanding of the evolution of protections for academic staff and limited appointees.

a. Academic staff employment security

At the time of merger, many concerns were raised about job security for members of the academic staff. In part, these concerns were related to the fact that the academic staff were not granted the right to participate in institutional governance. As originally provided under the merger statutes, governance involved the chancellors, faculty and students, but not academic staff members. In addition, there were concerns about equity of treatment as between academic staff, particularly those serving under fixed term, no-intent-to-renew contracts, and classified staff members having permanent status in class.

The drafters of the merger legislation apparently believed that the chancellors and faculty could, in their discretion, allow participation in governance by the academic staff and that this, together with the statutory provisions under s. 36.15, Wis. Stats., constituted "full provision[s] . . . for insuring job security of academic staff." (Comments of Regent Frank Pelisek, Minutes of the March 9, 1973 Regular Meeting of the Board of Regents.) Concerns about the status of academic staff continued to be raised, however, and in 1984 the legislature amended s. 36.09, Wis. Stats., by adding subsection (4m), which specifically provides academic staff a role in the institutional governance process.

During that same period of time, 1983-84, the Board of Regents undertook a broader review of the academic staff category and concerns of the academic staff. As a result of that review, the Board directed, in relevant part, that institutions should:

...

7. Review noninstructional academic staff appointments to identify positions in which need, funding source and quality of performance of the employee

support the grant of additional job security through such mechanisms as multiple year, rolling-term, or indefinite appointments.

8. Review the criteria for probationary and indefinite appointments to make certain that these appointments are used as programmatic need and budgetary resources permit. (Minutes of the April 4, 1984 Regular Meeting of the Board of Regents, Resolution #3022.)

Subsequently, in 1989, then-UW System President Kenneth Shaw issued specific guidelines, now codified in UPG 3.05 (Attachment 9), to assure academic staff job security. Among other items, President Shaw's directives required that institutions provide extended notice periods prior to termination of the fixed-term contracts for long-serving academic staff members, increase due process protections for academic staff having more than seven years of service, and regularly review long-serving staff to determine whether indefinite status or multiple year appointments would be more appropriate.

Responding to these directives, institutions developed policies and practices that expanded job protections for academic staff members, granting longer fixed-term appointments and liberalizing use of indefinite status. As a consequence of the more common use of indefinite academic staff appointments, many academic staff members attained protections similar to those granted tenured faculty and permanent status classified staff.

b. Security for limited appointees: "concurrent" and "back-up" appointments for limited appointees

As noted above, Wisconsin statutes do provide express job protection for those UW System faculty and academic staff employees who accept limited appointments. Under s. 36.17(1), Wis. Stats., those individuals "*shall not lose*" their existing appointments when they accept a limited appointment. As a result, while limited appointees serve in their limited positions at the pleasure of the appointing authority, they retain their pre-existing UW System rights in the status they held when they accepted the limited appointments. The underlying tenured faculty or academic staff rights granted under the statute are sometimes referred to as "concurrent" appointments, since the employees continue to hold the rights while serving in a limited position. More loosely--and at times more confusingly--these rights are also sometimes referred to as "back-up" appointments. Though the descriptive terminology is not as precise as it might be, it is clear that those employees who have gained faculty tenure status or hold an academic staff position in the UW System have a *statutory right* to retain those positions during the limited appointment.

More complicated is what occurs when an employee from outside the UW System accepts a limited appointment at a UW institution. In some cases, job security may be negotiated by a candidate; in others, notably the key academic leadership positions discussed above, institutional personnel policies may require that the successful candidate

Chief Academic appnts at some campuses.
- Chancellor
- Provost

be tenurable. These arrangements, whether resulting from negotiation or as a result of specific job requirements, are typically labeled "back-up" appointments, since they only come into play if the limited appointment is terminated. Employees in such arrangements, whatever called, have a *contractual right* to be placed in the specified appointment described in the contract, in the event of termination from the limited position.

The specific types of concurrent or back-up positions held are, of course, specific to each person and his or her individual circumstances. Those having the *statutory* right to retain a current position under s. 36.17(2), Wis. Stats., hold, in essence the same kinds of positions they were in prior to accepting the limited appointment. So, for example, a tenured faculty member continues to hold tenure at the same rank in his or her tenure home department; a fixed-term academic staff member continues to hold an appointment for the same contract term as was in effect at the beginning of the limited appointment; and an indefinite academic staff appointee continues to hold indefinite status.⁸

Those limited appointees having a *contractual* right to another position upon the conclusion of a limited appointment would return to the position for which they negotiated, or which was required. A dean or chancellor, for example, who was recruited under a policy requiring that he or she be tenurable, would hold a tenured position in an appropriate department. A non-academic administrator might have the right to invoke a one-year fixed-term contract in an academic staff appointment with duties, title and salary range assigned at the time the limited appointment ends.

The salary for administrators who leave a limited appointment to return to the faculty is determined in accordance with UPG 4.04(5), which establishes a salary range bounded by the average salary of faculty at the same rank in the tenure home department and 82% of the final salary in the limited appointment. Negotiated salaries outside that range require the advance approval of the UW System President. Salaries for academic staff members who leave limited appointments are set within the ranges to which their academic staff positions are assigned, UPG 4.04(6). (See, Attachment 10.)

Providing this sort of employment protection for administrators is not unusual in higher education. As reflected in Attachment 11, a number of institutions allow for the negotiation of some sort of protection for administrators. The terminology is somewhat variable, including such terms as "retreat" rights or restoration rights. The idea, however, is the same: to provide some protection for individuals who serve in "at will" positions.

3. Application of UW System unclassified personnel rules upon conclusion of a limited appointment, discipline or dismissal

The application of the UW System's personnel rules is never more complex or sensitive than in those instances where there is a change in employment status, voluntary

⁸ Some academic staff members are guaranteed a return to a specific job title and salary range, while others may receive a general academic staff appointment in which the duties, job title and salary range are determined at the time the limited appointment is terminated.

or not; or where it becomes necessary to initiate the disciplinary process, including dismissal, against a member of the unclassified staff. While the underlying personnel structure and principles remain the same, the individual circumstances are always unique. Thus, each situation--from a simple voluntary transition to the faculty by an administrator, to termination of a tenured faculty member for cause--must be addressed and resolved based on the particular facts involved.⁹

Recent media accounts of settlement arrangements and disciplinary matters have highlighted some of the problems inherent in responding to individual cases while meeting institutional needs, and proceeding in compliance with the statutes, rules and policies that comprise the university's personnel structure. Not surprisingly, some of the most difficult issues arise in connection with concluding limited appointments, and in initiating the disciplinary process leading to dismissal.

As reflected in recently publicized cases, the *conclusion of a limited appointment* and the return to a back-up appointment of some type is frequently achieved through a formally negotiated agreement under which the terms and conditions of the individual's new position are set forth. There are a number of elements commonly included in such arrangements:

- The individual holds a "back-up" appointment as a tenured faculty member, either by application of the statutory rights under s. 36.17(1), Wis. Stats., or as a contractual right negotiated at the time of hire, and so has the opportunity to return to the faculty at the conclusion of the limited appointment.
- The resolution includes an agreement under the terms of which the administrative position is relinquished, and the individual returns to the "back-up" position at an agreed-upon salary, as allowed pursuant to UPG 4.04(5).
- Some released time from teaching duties may be granted in order to allow the individual to prepare for his or her return to the classroom. It is important to note that this sort of "leave" from teaching duties does not mean leave from other faculty duties, such as research and public service.
- In a number of instances, the conclusion of such appointments will also involve the individual's release of any alleged legal claims against the university, thus relieving the university of liability for any possible damages arising in connection with the individual's limited appointment position.
- In some situations, the individual may agree to give up the tenured back-up position at a date certain.

⁹ Although beyond the scope of this memorandum, university personnel matters frequently involve questions of constitutional law, and application of state and federal statutes prohibiting employment discrimination on the basis of legally protected status. These issues, too, must be considered when ending a limited appointment or invoking the disciplinary process.

The initiation of the *disciplinary process* against a staff member is similarly complex, particularly where it involves a tenured faculty member. In such cases, it is necessary to follow the procedures prescribed by the statutes, administrative code and institutional policies. This means, in essence, that the individual may not be terminated except for cause, and only after an investigation of charges and an opportunity for a hearing, with the final decision on termination to be made by the Board of Regents. See, s. 36.13, Wis. Stats.; ch. UWS 4, Wis. Adm. Code. In addition, the individual will, in most instances, remain in pay status pending the outcome of the institutional proceedings.

Where criminal misconduct is involved in a discipline or dismissal situation, there are special problems with proceeding under the UW System rules. In some instances, for example, the evidence needed for the internal investigation is in the possession of law enforcement, and cannot be made available to the university. In other circumstances, proceeding with an internal investigation prior to resolution of the criminal matter might interfere with a successful criminal prosecution. In still other instances, the individual might invoke the right not to incriminate himself or herself. Again, these situations must be handled with care. Although we might find the alleged criminal conduct repugnant, both the due process rights to which the individuals are entitled and state law prohibiting discrimination on the basis of arrest or conviction record require that we observe the mandated procedures.

4. Conclusion

In sum, the UW System's personnel structure, founded on the academic model established by the AAUP and codified in Wisconsin law, is one which affords significant protections to its employees. Likewise, it is consistent with UW System peers throughout higher education, which in turn allows the UW System to be competitive in order to attract top-level faculty, staff and administrators. It also allows for equity between UW unclassified staff and the Wisconsin classified staff who enjoy the protections of having permanent status in the civil service system. It is a time-tested system that has been confirmed by legislation, administrative rules and thoughtful processes. As with any system, however, flaws may be revealed by unusual cases and inconsistent application of principles. When such flaws become apparent, appropriate changes should be made to ensure that the system remains fundamentally sound and that best personnel practices are followed.

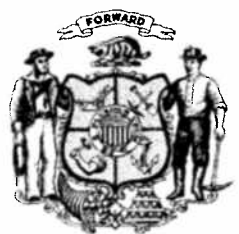
I hope this information will be of assistance to you. Please feel free to contact me should you require further information.

Attachments

cc: President Reilly
Cabinet



WISCONSIN STATE LEGISLATURE



1940 Statement of Principles on Academic Freedom and Tenure With 1970 Interpretive Comments

In 1940, following a series of joint conferences begun in 1934, representatives of the American Association of University Professors and of the Association of American Colleges agreed upon a restatement of principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure. This restatement is known to the profession as the 1940 Statement of Principles on Academic Freedom and Tenure.

The 1940 Statement is printed below, followed by Interpretive Comments as developed by representatives of the American Association of University Professors and the Association of American Colleges during 1969. The governing bodies of the associations, meeting respectively in November 1989 and January 1990, adopted several changes in language in order to remove gender-specific references from the original text.

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to assure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher (The word "teacher" as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties) or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.[1] (Bold-faced numbers in brackets refer to Interpretive Comments which follow.)

Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

ACADEMIC FREEDOM

- a. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
- b. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their

subject.[2] Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.[3]

- c. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.[4]

ACADEMIC TENURE

After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

1. The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.
2. Beginning with appointment to the rank of full-time instructor or a higher rank, [5] the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution it may be agreed in writing that the new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. [6] Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.[7]
3. During the probationary period a teacher should have the academic freedom that all other members of the faculty have.[8]
4. Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges and should have the opportunity to be heard in his or her own defense by all bodies that pass judgment upon the case. The teacher should be permitted to be accompanied by an advisor of his or her own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from the teacher's own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not

involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.^[9]

5. Termination of a continuous appointment because of financial exigency should be demonstrably *bona fide*.

1940 INTERPRETATIONS

At the conference of representatives of the American Association of University Professors and of the Association of American Colleges on November 7-8, 1940, the following interpretations of the 1940 *Statement of Principles on Academic Freedom and Tenure* were agreed upon:

1. That its operation should not be retroactive.
2. That all tenure claims of teachers appointed prior to the endorsement should be determined in accordance with the principles set forth in the 1925 *Conference Statement on Academic Freedom and Tenure*.
3. If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph (c) of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph (a)(4) of the section on Academic Tenure. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

1970 INTERPRETIVE COMMENTS

Following extensive discussions on the 1940 Statement of Principles on Academic Freedom and Tenure with leading educational associations and with individual faculty members and administrators, a joint committee of the AAUP and the Association of American Colleges met during 1969 to reevaluate this key policy statement. On the basis of the comments received, and the discussions that ensued, the joint committee felt the preferable approach was to formulate interpretations of the Statement in terms of the experience gained in implementing and applying the Statement for over thirty years and of adapting it to current needs.

The committee submitted to the two associations for their consideration the following "Interpretive Comments." These interpretations were adopted by the Council of the American Association of University Professors in April 1970 and endorsed by the Fifty-sixth Annual Meeting as Association policy.

In the thirty years since their promulgation, the principles of the 1940 *Statement of Principles on Academic Freedom and Tenure* have undergone a substantial amount of refinement. This has evolved through a variety of processes, including customary acceptance, understandings mutually arrived at

between institutions and professors or their representatives, investigations and reports by the American Association of University Professors, and formulations of statements by that association either alone or in conjunction with the Association of American Colleges. These comments represent the attempt of the two associations, as the original sponsors of the 1940 *Statement*, to formulate the most important of these refinements. Their incorporation here as Interpretive Comments is based upon the premise that the 1940 *Statement* is not a static code but a fundamental document designed to set a framework of norms to guide adaptations to changing times and circumstances.

Also, there have been relevant developments in the law itself reflecting a growing insistence by the courts on due process within the academic community which parallels the essential concepts of the 1940 *Statement*; particularly relevant is the identification by the Supreme Court of academic freedom as a right protected by the First Amendment. As the Supreme Court said in *Keyishian v. Board of Regents* 385 U.S. 589 (1967), "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."

The numbers refer to the designated portion of the 1940 *Statement* on which interpretive comment is made.

1. The Association of American Colleges and the American Association of University Professors have long recognized that membership in the academic profession carries with it special responsibilities. Both associations either separately or jointly have consistently affirmed these responsibilities in major policy statements, providing guidance to professors in their utterances as citizens, in the exercise of their responsibilities to the institution and to students, and in their conduct when resigning from their institution or when undertaking government-sponsored research. Of particular relevance is the *Statement on Professional Ethics*, adopted in 1966 as Association policy. (A revision, adopted in 1987, was published in *Academe: Bulletin of the AAUP* 73 [July-August 1987]: 49.) [Back to Text](#)

2. The intent of this statement is not to discourage what is "controversial." Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material which has no relation to their subject. [Back to Text](#)

3. Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 *Statement*, and we do not now endorse such a departure. [Back to Text](#)

4. This paragraph is the subject of an interpretation adopted by the sponsors of the 1940 *Statement* immediately following its endorsement which reads as follows:

If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph (c) of the section on Academic Freedom and believes that the

extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph (a)(4) of the section on Academic Tenure. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph (c) of the 1940 *Statement* should also be interpreted in keeping with the 1964 "Committee A Statement on Extramural Utterances" (*AAUP Bulletin* 51 [1965]: 29), which states *inter alia*: "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty member's fitness for the position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."

Paragraph V of the *Statement on Professional Ethics* also deals with the nature of the "special obligations" of the teacher. The paragraph reads as follows:

As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of other obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. When they speak or act as private persons they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary as well as to the tenured teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities.[Back to Text](#)

5. The concept of "rank of full-time instructor or a higher rank" is intended to include any person who teaches a full-time load regardless of the teacher's specific title. (For a discussion of this question, see the "Report of the Special Committee on Academic Personnel Ineligible for Tenure," *AAUP Bulletin* 52 [1966]: 280-82.) [Back to Text](#)

6. In calling for an agreement "in writing" on the amount of credit for a faculty member's prior service at other institutions, the *Statement* furthers the general policy of full understanding by the professor of the terms and conditions of the appointment. It does not necessarily follow that a professor's tenure rights have been violated because of the absence of a written agreement on this matter. Nonetheless, especially because of the variation in permissible institutional practices, a written understanding concerning these matters at the time of appointment is particularly appropriate and advantageous to both the individual

and the institution. (For a more detailed statement on this question, see "On Crediting Prior Service Elsewhere as Part of the Probationary Period," *AAUP Bulletin* 64 [1978]: 274-75.) [Back to Text](#)

7. The effect of this subparagraph is that a decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes a terminal one. If the decision is affirmative, the provisions in the 1940 *Statement* with respect to the termination of services of teachers or investigators after the expiration of a probationary period should apply from the date when the favorable decision is made.

The general principle of notice contained in this paragraph is developed with greater specificity in the *Standards for Notice of Nonreappointment*, endorsed by the Fiftieth Annual Meeting of the American Association of University Professors (1964). These standards are:

Notice of nonreappointment, or of intention not to recommend reappointment to the governing board, should be given in writing in accordance with the following standards:

1. *Not later than March 1 of the first academic year of service*, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.
2. *Not later than December 15 of the second academic year of service*, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.
3. At least twelve months before the expiration of an appointment after two or more years in the institution.

Other obligations, both of institutions and of individuals, are described in the *Statement on Recruitment and Resignation of Faculty Members*, as endorsed by the Association of American Colleges and the American Association of University Professors in 1961. [Back to Text](#)

8. The freedom of probationary teachers is enhanced by the establishment of a regular procedure for the periodic evaluation and assessment of the teacher's academic performance during probationary status. Provision should be made for regularized procedures for the consideration of complaints by probationary teachers that their academic freedom has been violated. One suggested procedure to serve these purposes is contained in the *Recommended Institutional Regulations on Academic Freedom and Tenure*, prepared by the American Association of University Professors. [Back to Text](#)

9. A further specification of the academic due process to which the teacher is entitled under this paragraph is contained in the *Statement on Procedural Standards in Faculty Dismissal Proceedings*, jointly approved by the American Association of University Professors and the Association of American Colleges in 1958. This interpretive document deals with the issue of suspension, about which the 1940 *Statement* is silent.

The 1958 *Statement* provides: "Suspension of the faculty member during the proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member's continuance. Unless legal considerations forbid, any such suspension should be with pay." A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process.

The concept of "moral turpitude" identifies the exceptional case in which the professor may be denied a year's teaching or pay in whole or in part. The statement applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally. [Back to Text](#)

For more information:

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