

1-21-2016

## Regent Policy Document 20-XX: Procedures Relating to Financial Emergency or Program Discontinuance Requiring Faculty Layoff and Termination.

### Scope

This policy applies to all University of Wisconsin System institutions and faculty.

### Purpose

The purpose of this policy is to establish procedures for University of Wisconsin System institutions in the event that a financial emergency or program discontinuance requires faculty layoffs.

### Policy Statement

Tenure is the keystone for academic freedom and excellence and is awarded for academic and professional merit. Tenure is an essential part of the guarantee of academic freedom that is necessary for university-based intellectual life to flourish. The grant of indeterminate tenure to faculty members represents an enormous investment of university and societal resources, and those who receive this investment do so only after rigorous review which established that their scholarship, research, teaching and service meet the highest standards and are congruent with the needs of the university. It is therefore expressly recognized that the awarding and continued enjoyment of faculty tenure is of vital importance to the protection of academic freedom and to the overall academic quality of the University of Wisconsin System institutions.

Accordingly, faculty layoff will be invoked only in extraordinary circumstances and after all feasible alternatives have been considered. Additionally, faculty layoff shall not be based on conduct, expressions, or beliefs on the faculty member's part that are constitutionally protected or protected by the principles of academic freedom.

As provided in Wis. Stat. s. 36.21 and Wis. Stat. s. 36.22, and Chapter UWS 5 of the Wisconsin Administrative Code, the Board of Regents of the University of Wisconsin System (Board) has authority, with appropriate notice, to terminate through layoff a faculty appointment when necessary in the event of a financial emergency, or a program decision resulting in program discontinuance. The Board is permitted by Wis. Stat. s. 36.21 to adopt procedures relating to faculty layoff. Consistent with Chapter UWS 5 and Wis. Stat. s. 36.22, this Board policy sets forth those procedures. Faculty layoffs at University of Wisconsin System institutions may be undertaken only in accordance with this policy, Chapter UWS 5, Wis. Stat. s. 36.21, and Wis. Stat. s. 36.22.

**Comment [TS1]:** This sentence is from the University of Minnesota's faculty layoff policy.

**Comment [TS2]:** The preceding sentences are from the University of Michigan's Principles of Tenure.

**Comment [TS3]:** This sentence is based in part on language in the University of Maryland's faculty layoff policy.

**Comment [TS4]:** The "all feasible alternatives" language is from the American Association of University Professors (AAUP) Recommended Institutional Regulations (RIR) on Academic Freedom and Tenure.

## Definitions

**Comment [TS5]:** The definitions are taken primarily from UW-Madison's draft FPP Chapter 10, with certain of the definitions based on the statutory definitions in s.36.22(1), and on the AAUP RIR.

- A. For the purposes of this policy, “program” shall mean a related cluster of credit-bearing courses that constitute a coherent body of study within a discipline or set of related disciplines. When feasible, the term shall designate a department or similar administrative unit that offers majors and has been officially recognized by the UW institution. Programs cannot be defined ad hoc, at any size, but should be recognized academic units. Programs shall not be defined to single out individual faculty members for layoff. For UW-Extension, the term “program” also shall include the substantial equivalent of an academic department that may or may not provide credit-bearing credentials.
- B. For the purposes of this policy, “program discontinuance” as described in Wis. Stat. ss. 36.21 and 36.22 shall mean formal program elimination or closure.
- C. For the purposes of this policy, “financial emergency” is defined and may be declared as described in s. UWS 5.02 of the Wisconsin Administrative Code.
- D. For the purposes of this policy, “educational considerations” shall not include cyclical or temporary variations in enrollment. Educational considerations must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by a program’s discontinuance.
- E. For the purposes of this policy, “layoff” is the indefinite suspension or involuntary reduction in services and compensation of a faculty member’s employment by the University of Wisconsin System. Wis. Stat. s. 36.22(1)(a). A laid off faculty member retains the rights specified in Wis. Stat. ss. 36.22(11) to 36.22(15).
- F. For the purposes of this policy, “termination” is the permanent elimination of a faculty member’s employment by the University of Wisconsin System. Wis. Stat. s. 36.22(1)(c). A faculty member whose position has been terminated retains the rights specified in Wis. Stat. ss. 36.22(13) and (14).

### I. Faculty Layoff for Reasons of Financial Emergency

**Comment [TS6]:** This section is based on Chapter UWS 5 (faculty layoff for financial emergency), Wisconsin Administrative Code, and related provisions in Wis. Stat. s.36.22.

- A. Notwithstanding RPD 20-23 (Regent Policy Document on Faculty Tenure), a tenured faculty member, or a probationary faculty member prior to the end of his or her appointment, may be laid off in the event of a financial emergency. Layoff for reasons of financial emergency may occur only in accordance with this policy, UWS 5.01 through UWS 5.07 of Chapter UWS 5 of the Wisconsin Administrative Code, and Wis. Stat. s. 36.22. A nonrenewal, regardless of reasons, is not a layoff or termination under this policy.
- B. The faculty of each UW System institution shall designate or create a faculty committee to consult with the chancellor as described in s. UWS 5.04 in the event a declaration of financial emergency is being considered. The faculty committee shall participate in the decision at the institutional level regarding whether to recommend to the Board that a financial emergency be declared. The chancellor shall provide the faculty committee with access to information

and data relevant to the proposed declaration of financial emergency. The chancellor shall consult with and take into serious consideration advice from the faculty committee at least three months before making any recommendation to the Board as described in s. UWS 5.05(1).

- C. It shall be the responsibility of the faculty committee to recommend criteria to be used by the faculty committee and the chancellor to determine program evaluations and priorities as described in s. UWS 5.05(2). It also shall be the responsibility of the faculty committee to recommend to the chancellor and Board of Regents those areas within the overall academic program where layoffs may occur. The faculty committee shall prepare a report regarding the proposed declaration of financial emergency that shall be shared with the faculty senate, the chancellor and the Board, as described in s. UWS 5.05(1m). A decision to declare a financial emergency shall be made in accordance with the best interests of students and the overall ability of the institution to fulfill its mission.
- D. If a chancellor decides to recommend that the Board declare a financial emergency for the chancellor's institution, as described in s. UWS 5.06, the chancellor shall provide his or her recommendation to the System president and the Board, accompanied by a report that shall include data demonstrating the need to declare a financial emergency; identification of the programs in which faculty reductions will be made, with data supporting those choices; any report created by the faculty committee; and a report of any action of the faculty senate on the matter.
- E. The Board may declare a financial emergency for a UW System institution if the Board determines the existence of the conditions set forth in s. UWS 5.02, Wisconsin Administrative Code. It is recognized that the Board should exercise its authority adversely to the faculty recommendation with respect to declaration of financial emergency only for compelling reasons which should be stated in detail.
- F. If the Board declares a financial emergency for the institution, the tenured faculty in the affected departments and programs shall have responsibility for recommending which faculty will be laid off. These recommendations shall follow seniority unless a convincing case is made that program or budget needs dictate other considerations. Additionally, the faculty at each institution shall determine the form of seniority that is to be used as described in Wis. Stat. s. 36.22(3).
- G. A faculty member whose position is recommended for layoff shall receive the notification provided in Wis. Stat. s. 36.22(4) and shall be entitled to the notification period provided in Wis. Stat. s. 36.22(5). The faculty member also shall be entitled to the due process hearing and appeal procedures, reappointment rights, and other rights and protections in Wis. Stat. s. 36.22. As provided in Wis. Stat. s. 36.22(12), institutions shall devote their best efforts to securing alternative appointments for faculty laid off under this section, and also shall provide financial assistance for readaptation of faculty laid off under this section where readaptation is feasible.

**Comment [TS7]:** This sentence contains language from the AAUP/ACE Statement on Governance.

## II. Faculty Layoff for Reasons of Program Discontinuance

- A. The maintenance of tenure-track and tenured faculty, and of essential instructional and supporting services, remains the highest priority of the university. To promote and maintain high-quality programs, the institutions of the UW System may over time develop new programs and discontinue existing programs. Accordingly, and notwithstanding RPD 20-23 (Regent Policy Document on Faculty Tenure), a tenured faculty member, or a probationary faculty member prior to the end of his or her appointment, may be laid off in the event that educational considerations relating to a program require program discontinuance. Educational considerations may include strategic institutional planning considerations such as long-term student and market demand and societal needs. Layoff for reasons of program discontinuance may be made only in accordance with this policy and Wis. Stat. s. 36.22. A nonrenewal, regardless of reasons, is not a layoff or termination under this policy.
- B. Program review and adjustment to the curriculum according to professional and educational standards and accreditation requirements is part of routine institutional planning. Educational considerations are related in part to regular program review, and reflect a long-range judgment that the educational mission of the institution as a whole will be enhanced by program discontinuance. This includes the reallocation of resources to other programs with higher priority based on educational considerations. Such long-range judgments generally will involve the analysis of financial resources and the needs of the program and any related college or school.
- C. A proposal to discontinue a program due to educational considerations that will result in faculty layoff may be initiated by faculty in the program, faculty in the college or school that contains the program, the faculty senate, the dean, the provost, or the chancellor. The proposal shall be in writing and shall contain appropriate information and analysis regarding the educational considerations, including programmatic and financial considerations, supporting the proposed program discontinuance. The proposal shall be provided for review to the faculty in the affected program, to the faculty senate, to the academic staff shared-governance body and other governance bodies at the institution, and to the chancellor. A proposal to discontinue a program that will not result in faculty layoff shall follow the standard program review process in place at each institution, and shall not be required to follow the process outlined in this policy.
- D. The faculty committee designated or created under Section I of this policy shall review and evaluate any proposal to discontinue a program that will lead to faculty layoff. The committee's review and evaluation may be based on the following considerations, where relevant:
1. The centrality of the program to the institution's mission;
  2. The academic strength and quality of the program, and of its faculty in terms of national ratings if applicable;
  3. Whether the work done in the program complements that done in another essential program;

**Comment [TS8]:** A number of universities have policy or guidance language relating to academic program discontinuance and other changes and associated faculty layoffs, including Rutgers University (Academic Freedom policy recognizes that tenured faculty can be terminated if their academic program is terminated); the University of Colorado at Boulder (policies provide for faculty layoff due to program discontinuance as a result of educational, strategic or financial considerations); the University of Maryland (policies provide for faculty layoffs due to reduction, consolidation, transfer or discontinuance of program); the University of Michigan; the University of Utah; the University of Tennessee and the Tennessee Board of Regents System; Iowa State University; University System of Georgia; and the Nevada System of Higher Education; Additionally, faculty collective bargaining agreements relating to the California State University System, the University of Maine System, the MnSCU System, the Connecticut State University System, and the Pennsylvania State System of Higher Education contain provisions permitting layoffs for bona fide financial or programmatic reasons separate from fiscal emergency.

**Comment [TS9]:** This sentence is taken from the University of Michigan's policy on discontinuance of academic programs.

**Comment [TS10]:** This language is taken in part from the U of Colorado at Boulder's layoff policy.

**Comment [TS11]:** This sentence is based in part on language in the University of Utah faculty layoff policy.

**Comment [TS12]:** This list of considerations is taken in modified form from the University of Maryland's faculty layoff policy. The University of Michigan and the University of Utah have similar lists.

4. Whether the work done in the program duplicates academic instruction and course content delivered in other programs at the institution;
5. Student and market demand and projected enrollment in the subject matter taught in the program;
6. Current and predicted comparative cost analysis/effectiveness of the program; and
7. Other relevant factors that the committee deems appropriate.

- E. The faculty committee shall request and review comments and recommendations on the proposed program discontinuance from faculty and staff in the program, faculty and staff in the affected college or school, students in the program, and other appropriate institutional bodies or individuals. Based on this review and evaluation, the faculty committee shall prepare a recommendation and report regarding the proposed program discontinuation that shall be shared with the faculty in the program, the faculty senate, the college dean, the provost and the chancellor. The faculty committee shall provide its recommendation and report to the chancellor within three months of the date of the faculty senate's receipt of the program discontinuance proposal.
- F. The chancellor shall consult with the faculty committee and the faculty senate before making any recommendation to the Board. It is recognized that the chancellor should make a recommendation adverse to the faculty recommendation with respect to discontinuance of an academic program only for compelling reasons which should be stated in writing and in detail.
- G. If the chancellor decides to recommend that the Board approve discontinuance of a program that will result in the layoff of faculty, the chancellor shall provide his or her recommendation to the System president and the Board, accompanied by a report that shall include information demonstrating the educational considerations supporting program discontinuance, any recommendation and report created by the faculty committee, and a report of any action of the faculty senate on the matter. The chancellor shall provide any such recommendation to the System president and the Board within four months of the date of the faculty senate's receipt of the program discontinuance proposal.
- H. The System president shall provide the Board with his or her recommendation on the program discontinuance proposal. After reviewing the System president's and the chancellor's recommendations and related report, the Board shall make the final decision on whether the program is to be discontinued, resulting in faculty layoffs. It is recognized that the Board should exercise its authority adversely to the faculty recommendation with respect to program discontinuance only for compelling reasons which should be stated in detail.
- I. If the Board approves discontinuance of a program resulting in faculty layoffs at a UW System institution under this policy, the tenured faculty at that institution shall have responsibility for recommending which faculty will be laid off. These recommendations shall follow seniority unless a clear and convincing case is made that program needs dictate other considerations, as described in Wis. Stat. s. 36.22(3)(a). Additionally, the faculty at each institution shall determine the form of seniority that is to be used, as described in Wis. Stat. s. 36.22(3)(b).

**Comment [TS13]:** This section contains language from the AAUP/ACE Statement on Governance.

**Comment [TS14]:** This sentence contains language from the AAUP/ACE Statement on Governance.

J. A faculty member whose position is recommended for layoff shall receive the notification provided in Wis. Stat. s. 36.22(4), and shall be entitled to the notification period provided in Wis. Stat. s. 36.22(5). The faculty member also shall be entitled to the due process hearing and appeal procedures, reappointment rights and other rights and protections in Wis. Stat. s. 36.22. As provided in Wis. Stat. s. 36.22 (12), institutions shall devote their best efforts to securing alternative appointments for faculty laid off under this section, and also shall provide financial assistance for readaptation of faculty laid off under this section where readaptation is feasible.

### **III. Safeguards for Students**

UW System institutions will make every effort to accommodate students adversely affected by discontinuance of an academic program for reasons of financial emergency or because of educational considerations. Discontinuance of a program should be phased in over a reasonable time period to provide students with the opportunity to complete the program or transfer to another program. Completion of a program or transfer to another program cannot be guaranteed by the university.

**Comment [TS15]:** This section is based in part on the University of Michigan policy.

#### **Oversight, Roles and Responsibilities**

UW System institutions shall submit to the Board of Regents for approval any institutional policy developed in accordance with this policy. The chancellor at each institution shall be responsible for implementation of this policy.

#### **Related Regent Policies and Applicable Laws**

Chapter 36, Wis. Stats.  
Chapters UWS 3 and 5, Wis. Admin. Code  
Regent Policy Document 20-23