University of Wisconsin-Milwaukee University Committee

Position Paper

on

Academic Freedom and Tenure

Source and Process: Initial language and structure for this document were obtained from Regulation 4 (“Terminations of Appointments by the Institution”) within the American Association of University Professors (AAUP) “Recommended Institutional Regulations on Academic Freedom and Tenure”, where AAUP “set forth…rules that derive from the chief provisions and interpretations of the 1940 Statement of Principles on Academic Freedom and Tenure and of the 1958 Statement on Procedural Standards in Faculty Dismissal Proceedings” “in language suitable for use by an institution of higher education.” The language was then adapted to interleave with appropriate sections in Chapter 5 of University of Wisconsin-Milwaukee (UWM) Faculty Policies and Procedures (P&P) and the UWM Academic Approval Matrix (Selected Academic and Administrative Policy 0.5).

Preface: The recent changes in Wisconsin Statutes have authorized the layoff or termination of faculty due to program discontinuation, curtailment, modification, redirection. To best address this possibility, the UWM Faculty have developed this document. These regulations are designed to enable UWM to protect academic freedom and tenure and to ensure academic due process. The principles implicit in these regulations are for the benefit of all (students, faculty, staff, and administrators) who are involved with or are affected by the policies and programs of the institution. A college or university is a marketplace of ideas, and it cannot fulfill its purposes of transmitting, evaluating, and extending knowledge if it requires conformity with any orthodoxy of content and method. In the words of the United States Supreme Court, “Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.”

There are three guiding principles behind these regulations:

1. Program modifications require an affirmative recommendation by the appropriate Faculty Committees

2. Chancellors will not declare a state of financial emergency/exigency without consultation with the appropriate Faculty Committees.
University of Wisconsin-Milwaukee Faculty Document No. 3036, December 17, 2015

3. All policies will be consistent with the AAUP guidelines on tenure and financial exigency.

A. Termination of Appointments for Cause

1. Termination of an appointment with tenure, or of a probationary appoint-
ment before the end of the specified term, may normally be effected by the
institution only for adequate cause and subject to Wisconsin Administrative
Code Chapter UWS 4 and UWM P&P Chapter 5.

2. If termination takes the form of a dismissal for cause, the institution will
follow the provisions specified in UWM P&P 5.21-5.29 and consistent with
Wisconsin Administrative Code Chapter UWS 4.

B. Termination/Layoff of Appointments Due to Declaration of
Financial Exigency

1. Termination/Layoff of an appointment with tenure, or of a probationary
appointment before the end of the specified term, may occur under
extraordinary circumstances because of a demonstrably bona fide financial
exigency (i.e., a severe financial crisis that fundamentally compromises the
academic integrity of the institution as a whole and that cannot be alleviated
by less drastic means). The Chancellor will determine when a declaration
of financial exigency is necessary. Such a declaration will only take place
after consultation with the Faculty Consultative Committee for Financial
Emergencies. The procedures to be followed are presented in Wisconsin
Administrative Code UWS Chapter 5.

2. If termination/layoff takes the form of a dismissal for financial exigency, it
will be pursuant to the general provisions specified in UWM P&P 5.50-5.55
for probationary faculty, 5.60-5.63 for tenured faculty, and those outlined in
items 3-8 below.

3. Before any proposals for program discontinuance on grounds of financial
exigency are made, the Faculty Senate and its committees will have
opportunity to render an assessment in writing of the institution’s financial
condition. [Note: Academic programs cannot be defined ad hoc, at any
size; programs should be recognized academic units that existed prior to
the declaration of financial exigency. The term “program” should designate
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 should designate a department, department-like body, or similar
administrative unit that offers majors and minors.]
a. The Faculty Senate and its committees will have access to at least five years of audited financial statements for the entire University, current and following-year budgets, and detailed cash-flow estimates for future years.

b. In order to make informed recommendations about the financial impact of program closures, the Faculty Senate and its committees will have access to detailed program, department, and administrative-unit budgets.

c. Faculty members in a program being considered for discontinuance because of financial exigency will promptly be informed of this activity in writing and provided at least thirty days in which to respond to it. Tenured and tenure-track faculty members will also be invited to respond.

4. If the administration issues notice to a particular faculty member of an intention to terminate the appointment because of financial exigency, probationary faculty members will have the right to appeal to University Committee for referral to the Faculty Appeals and Grievances Committee (UWM P&P 5.54). Tenured faculty members will have the right to a full hearing before the Faculty Hearing Committee (UWM P&P 5.62). The issues in this hearing may include the following:

   a. The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of the Faculty Hearing Committee in a previous proceeding involving the same issue may be introduced.

   b. The validity of the educational judgments and the criteria for identification for termination; but the recommendations of the Faculty Hearing Committee on these matters will be considered presumptively valid by the administration.

   c. Whether the criteria are being properly applied in the individual case.

5. If the institution, because of financial exigency, terminates appointments, it will not at the same time make new appointments, except in extraordinary circumstances where a serious distortion in the academic program would otherwise result. The appointment of a faculty member with tenure will not
be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.

6. Before terminating an appointment because of financial exigency, the institution, with faculty participation, will make every effort to place the faculty member concerned in another suitable position within the institution.

7. In all cases of termination of appointment because of financial exigency, the faculty member concerned will be given notice or severance salary not less than as prescribed in AAUP Regulation 8 (Recommended Institutional Regulations on Academic Freedom and Tenure). AAUP Regulation 8 states “If the appointment is terminated, the faculty member will receive salary or notice in accordance with the following schedule: at least three months, if the final decision is reached by March 1 (or three months prior to the expiration) of the first year of probationary service; at least six months, if the decision is reached by December 15 of the second year (or after nine months but prior to eighteen months) of probationary service; at least one year, if the decision is reached after eighteen months of probationary service or if the faculty member has tenure.”

8. In all cases of termination of appointment because of financial exigency, the place of the faculty member concerned will not be filled by a replacement within a period of three years, unless the released faculty member has been offered reinstatement and at least thirty days in which to accept or decline it.

C. Termination/Layoff of Appointments Due to Discontinuance of Program or Department for Educational Reasons

1. Termination/Layoff of an appointment with tenure, or of a probationary appointment before the end of the specified term, may occur as a result of bona fide formal discontinuance of a program or department of instruction. The standards and procedures in items 2-5 below will apply.

2. The decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations, as determined primarily by appropriate faculty bodies as outlined in the UWM Academic Approval Matrix process (Selected Academic and Administrative Policy 0.5). Upon approval of such a decision by these faculty bodies, the Chancellor may decide to formally discontinue the program or department in question. [Note: “Educational considerations” do not include cyclical or temporary variations in enrollment. They must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance.]
3. Faculty members in a program being considered for discontinuance for educational considerations will promptly be informed of this activity in writing and provided at least thirty days in which to respond to it. Tenured and tenure-track faculty members will be invited to participate in these deliberations. For probationary faculty, provisions specified in [UWM P&P 5.50-5.55](http://example.com) will apply. [Note: Academic programs cannot be defined ad hoc, at any size; programs must be recognized academic units that existed prior to the decision to discontinue them. The term "program" should designate a defined course of study within a discipline or set of related disciplines." When feasible, the term should designate a department, department-like body, or similar administrative unit that offers majors and minors.]

4. Before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the institution will make every effort to place the faculty member concerned in another suitable position. If placement in another position would be facilitated by a reasonable period of training, financial and other support for such training will be proffered. If no position is available within the institution, with or without retraining, the faculty member’s appointment then may be terminated, but only with provision for notice or severance salary equitably adjusted to the faculty member’s length of past and potential service, an amount which may well exceed but not be less than the amount prescribed in [AAUP Regulation 8](http://example.com) (Recommended Institutional Regulations on Academic Freedom and Tenure). [Note: When an institution proposes to discontinue a program or department of instruction based essentially on educational considerations, it should plan to bear the costs of relocating, training, or otherwise compensating faculty members adversely affected.]

5. A tenured faculty member who contests a proposed relocation or termination/layoff resulting from program discontinuance has a right to a full hearing before the Faculty Appeals and Grievance Committee, per [UWM P&P 5.54](http://example.com). The issues in such a hearing may include the institution’s failure to satisfy any of the conditions specified in item 3 and 4 above. In the hearing, the faculty’s determination that a program or department is to be discontinued will be considered presumptively valid, but the burden of proof on other issues will rest on the administration.

**D. Review by the Board of Regents for Terminations other than for Cause**

1. If termination/layoff of a tenured faculty member is determined by the Chancellor for reasons other than cause, then the provisions specified in [UWM P&P 5.27 (4)-(6) and 5.28](http://example.com) will apply.