

Review by the Tenure, Promotions, and Professional Development Committee (TPP) on

Regents Bylaws 5.09, 5.10 Revisions Proposed by the Provosts' Working Group

[5.09 Working Group Slides](#) / [Regents' Bylaws 5.09, 5.10](#) / working.group.outreach@umich.edu
[5.09 Working Group Survey](#) - due **Feb 4**

Guiding Principle: *Any revisions to the Bylaws must ensure that falsely accused faculty are fully enabled to be exonerated. Every effort must be made to level the playing field for respondents facing the University in an adversarial position.*

Creation of a new hearing process for suspending pay in “manifestly egregious” cases:
The 5.09 Working Group (WG) is charged to address the issue of accused faculty members being paid high salaries for a long time while their case is being adjudicated. In “rare” cases of “manifestly egregious” misconduct, the proposal is for TWO parallel hearings to occur: one is the existing tenure removal process itself; the second is a new hearing process to determine whether pay suspension is warranted. The pay suspension hearing will not include witnesses. The administration must demonstrate Clear and Convincing evidence to suspend pay. The two hearings would likely take place in parallel.

TPP Position: Problems with the two-hearing process

- It will be difficult logistically if they are concurrent
- It is against AAUP best practice of not suspending pay during investigations
- It doubles the burden on the respondent
- It wastes faculty time and university resources to support 2 very similar hearings
- It will be impossible to firewall the 2 processes as required in the proposal
- It will typically only save a couple months of salary
- It is only motivated by public perception as reflected by the press
- It may generate 2 parallel findings with incompatible determinations.
- It violates “innocent until proven guilty” and many other reasons from the two WG dissenters

Several alternatives can fulfill the charge without introducing a new hearing proceeding. Note that in “manifestly egregious” cases, the respondent is usually suspended from duties by the president.

Alternative 1: A suspended faculty member shall have pay suspended after a fixed time from when the charges are served, e.g., 1 year; or upon resolution of the dismissal process, whichever is first.

Alternative 2: Maintain salary through the hearing proceedings, but eliminate the additional year of severance pay after dismissal (currently in Regents' Bylaw 5.10).

The TPP also has other alternatives that may be offered.

TPP position: The term “manifestly egregious” is problematic and not well defined. That said, this phrase is better than the vague language currently written in 5.09.1. However, it is essential to clarify that “manifestly” refers to the quality of evidence presented, rather than the egregiousness of the unproven allegations.

No separate “fast track” process for “manifestly egregious” cases:

The 5.09 WG is charged to consider such a fast track, but recommends against a separate track, instead expediting the existing track and merging 5.09.4 (rare, unit-specific hearings) and 5.09.5 (normal, general university hearings).

TPP agreement: The TPP agrees that one, single track is the fairest process. In particular, requiring the University to provide all of its evidence at the time of the charges is an important step in enhancing efficiency. Merging 5.09.4 and 5.09.5 is also sensible and more efficient.

Constitution of the 5.09 hearing committee:

SACUA is to form a Judicial Standing Committee from which to draw members of Hearing Committees, Grievance Boards, etc. These faculty will be on notice to serve when needed. 5.09 Hearing Committees are to consist of 3+ members from Judicial Committee and 2+ named by the unit Executive Authority (EA; usually the dean).

TPP position: The unit dean will name almost half the hearing committee, whereas currently the normal (5.09.5) hearing committees are named exclusively by SACUA. This is a significant change that substantially weakens faculty governance, and for no clear reason, since SACUA is capable of naming members from the affected unit. The TPP strongly recommends that SACUA be responsible for the final appointment of all hearing committee members.

A timeline is specified: The hearing will be done in 84 days, and entire process in 150 days.

TPP position: An aspirational time line would help maximize efficiency. It is critical that the hearing committee have several weeks to deliberate and document the rationale for their decision. This is the hearing committee’s fundamental purpose.

All faculty are urged to send feedback to the 5.09 Working Group via the survey or email as soon as possible.

January 29, 2020