

Regents' Bylaws 5.09/5.10 Working Group Town Hall

North Campus AA Town Hall, January 23, 2020

What are Regents' Bylaws 5.09/5.10?

Specify process by which TT faculty can be fired and lose tenure (5.09) and receive one year of compensation after termination (5.10).

Instituted in McCarthy era to ensure strong protections for academic freedom.

Are mostly unchanged since written.



Regents considering changes to RB 5.09/5.10

Our current Bylaws dictate:

- A two-tiered process that is complicated, ambiguous, and long. ←
- Faculty receive full compensation until 5.09 process concludes with termination, regardless of egregiousness of alleged misconduct. ←
- In most cases, terminated faculty members receive one year of severance pay, regardless of egregiousness of alleged misconduct.

As written, our 5.09 process applies to the type of egregious misconduct that was *never meant to be afforded the protections of tenure.*



Regents considering changes to RB 5.09/5.10

In response, the three Provosts (AA, Flint, Dearborn) appointed a faculty working group to recommend changes in the Bylaws for consideration by the Regents.



5.09/5.10 Working Group Members

- Sharon Glotzer (Chair), Professor and Chair, Chemical Engineering (Ann Arbor)
- Bruce Maxim, Professor, Engineering and Computer Science, (Dearborn)
- Lynda Oswald, Professor, Ross School of Business (Ann Arbor)
- David Potter, Professor, Classical Studies, LS&A (Ann Arbor)
- Sarah Rosaen, Professor, Communication Studies, Arts and Sciences, (Flint)
- Richard Simon, Professor & Vice Chair for Faculty Affairs, Internal Med (Med School)
- Twila Tardif, Professor, Psychology, LS&A (Ann Arbor)
- Kentaro Toyama, Professor, School of Information (Ann Arbor)
- Camille Wilson, Professor, School of Education (Ann Arbor)

Support from the General Counsel's Office and AA Office of the Provost:

James Burkel, Christine Gerdes, Gloria Hage



Provosts' Charge to Working Group

Part I – draft completed and seeking feedback on key points from the faculty

- To gather information and assess the current state of similar policies at peer institutions;
- To develop recommendations for additions/amendments to RB 5.09 and 5.10 that **allow for expedited proceedings and interim measures in cases involving manifestly egregious misconduct;**

Part II – ongoing and seeking input from the faculty

- To comprehensively review RB 5.09 and RB 5.10;
- To make recommendations for revisions to RB 5.09 and RB 5.10 that reflect our community values, protect our commitment to due process, and promote the fair, transparent, and efficient resolution of cases.



WG Guiding Principles, Values & Touchstones

- Academic freedom, fairness and protection of due process, welfare of university community, protection of university mission, reflection of our shared values, responsible stewardship
- Efficient but fair and transparent process for tenure removal is good both for accused faculty member and for university
- Our recommendations should aspire to strengthen the protections of tenure



Key Changes We Are Proposing (Part I)

In cases of “**manifestly egregious misconduct,**”

No expedited process (no change)

- All 5.09 cases should have the same (efficient & fair) process.

Possible pay suspension process (new!)

- Pay suspension should be extremely rare.
- Pay suspension should have a high bar.
- Pay suspension should not prejudice tenure removal hearing.

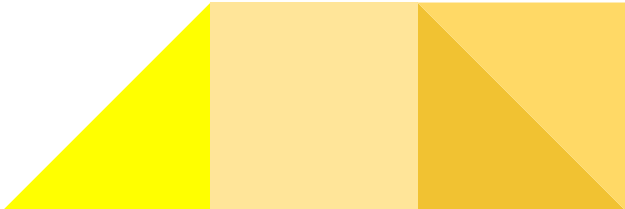


Part II

***By being good stewards of public funds,
we strengthen tenure.***



Recommended Pay Suspension Process for 5.09

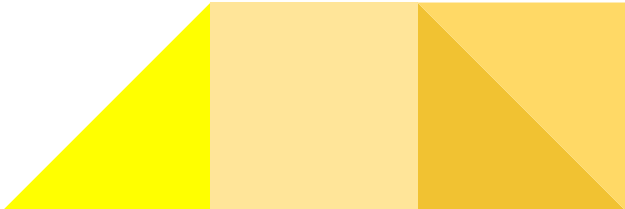
- Triggered by president for “manifestly egregious misconduct”
 - Pay Suspension Committee of five faculty
 - 3 appointed by SACUA 2 chosen by unit and provost
 - Firewall between PSC and tenure removal hearing
 - Due process afforded accused faculty member
 - **High bar:** 4 of 5 members must find “clear and convincing evidence” to recommend immediate pay suspension
 - Decision within 60 days
 - Benefits would continue
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Dissents on Part I

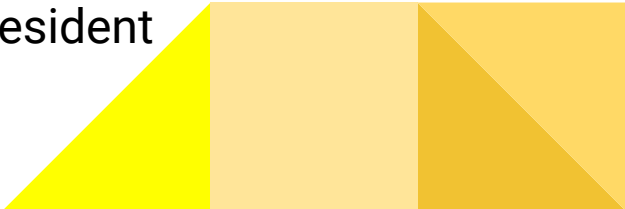
Oswald and Toyama dissented with majority recommendation.
Both object to pay suspension prior to a finding of misconduct.

1. *De facto* removal of tenure
2. May hinder the accused faculty member's ability to mount a defense
3. May prejudice the 5.09 hearing committee
4. Of 29 peer institutions, only MSU has a similar policy

Toyama has additional objections.

5. Diverges from AAUP recommendation
 6. Scapegoats faculty when contributory causes may be administrative
 7. Violates “innocent until proven guilty”
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In Response to Dissents, the Majority Argue...

1. Not *de facto* tenure removal: faculty member retains honorific titles & research grants are not closed
 2. If pay suspended and accused faculty member does not lose tenure, withheld pay fully restituted
 3. Firewall between PSC and 5.09 hearing + SACUA, so no prejudice
 4. U-M should set precedent for explicit and transparent pay suspension procedure – *crafted by faculty for faculty* – in cases of manifestly egregious misconduct
 5. It is ok for UM to diverge from the AAUP recommendation
 6. Only possible if already suspended from duties by president
 7. Due process both in tenure removal process AND in pay suspension process
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5.09 cases are rare

Egregious misconduct 5.09 cases are exceedingly rare

The majority's recommendations *seek to strengthen the privilege of tenure* by preserving the ability of tenure to protect those activities for which it was intended.



Key Changes We Are Proposing (Part II)

- A single, timely and unambiguous 5.09 process
- 5+ person Hearing Committee
 - 3 from SACUA-appointed **Judicial Standing Committee**
 - minimum of 2 chosen by Unit EA (e.g. Dean).
- Hearing completed within 84 calendar days of notification
 - Option for procedural review by SACUA and/or written comments
- Process completed* within ~ 150 calendar days (21 weeks) or less)

* ordinarily



Questions for Faculty from the Working Group (WG)

- What are your thoughts on the WG's draft recommendations as summarized?
- Do the draft recommendations align with stated principles and values?
- Are there things the WG is overlooking in its potential recommendations?
- Do you have any feedback regarding the current language of RB 5.10, which provides for severance pay following dismissal?
- Do you have any other feedback you would like to provide to the WG?

Provide your written comments through our survey

[link here.](#)

