

MEMORANDUM

To: University of Michigan Board of Regents, Vice President and Secretary Sally Churchill

From: Tenure, Promotions, and Professional Development Committee of the Senate Assembly

Date: May 1, 2020

Cc: SACUA

Re: Proposed Revisions to Regents' Bylaw 5.09

The Senate Assembly's Tenure, Promotion and Professional Development Committee (TPP) is the panel currently charged with executing tenure removal cases. The TPP has reviewed the 4/13/20 Proposed revisions of the Regents' Bylaw, Sec. 5.09. We agree that the revisions are an improvement over many aspects of the existing policy. However, we raise a few critical issues:

1. There are essentially two parallel hearing processes, one for pay suspension and another for tenure removal. These are fundamentally different in procedure and degree to which they ensure due process, **yet they are tasked with making identical findings**. This in itself is clearly problematic for numerous reasons. Based on overwhelming Town Hall feedback, the Faculty 5.09 Working Group recommended against the parallel pay suspension process, and also noted additional, multiple reasons for why it is impracticable, including: disproportionately impacting faculty from vulnerable populations, the extraordinary double burden on a potentially innocent respondent, and other reasons (please see discussion on p. 20 of the Faculty Working Group's Final Report on 2/16/20).

2. If the pay suspension process is retained in spite of these fundamental problems, we note issues with paragraph 4 of the draft Sec. 5.09. This permits initiation of proceedings for respondents who are "charged with" a felony. **The TPP recommends deleting "charged with"** and retaining only "convicted of", for the following reasons:

A. The provision likely places the respondent in the untenable position of choosing between defending their right to salary by offering evidence that could be used in a criminal proceeding or asserting their Fifth Amendment rights against self-incrimination;

B. By basing the determination on a "clear and convincing" standard of evidence, which is lower than required in criminal court, it effectively promotes the possibility of withholding pay based on incomplete evidence and under-substantiated allegations. Since salary is a material benefit, this may not be legally tenable.

3. "Job abandonment" in paragraph 4 is not defined. The TPP urges that the Provost define this term in the SPG and Academic HR policies as soon as possible.

4. *Proceedings* for tenure removal hearing, Item 1: As noted in Item 2, and following, of this section, the Charge Letter is the basis for evaluating the respondent's alleged misconduct; however, it is not defined in Item 1. The TPP recommends revising the text in Item 1 to read, "...the affected faculty member shall be given written notice in the form of a Charge Letter, stating with reasonable particularity..."

5. *Proceedings*, Item 4: The TPP recommends including a sentence: "The Hearing Committee may require the submission of any specific information or evidence from either party as allowed by law." This is necessary to follow up on important new information that may come to light during the hearing.

6. The TPP recommends adding a preamble stating the purpose and guiding principles. We offer the following:

Purpose: The purpose of tenure is to protect academic freedom. Tenure is a central principle of the academy that is necessary to explore ideas and advance knowledge without fear of discrimination, retaliation, or censorship. Tenure is not an entitlement, and the University must have a procedure for removing a tenured faculty member for extreme misconduct that is unrelated to academic freedom. In particular, a tenured faculty member may be dismissed, demoted, or terminated for the cause of *demonstrated misconduct in teaching or research, substantial and manifest neglect of duty, and/or personal conduct which substantially impairs the individual's fulfillment of institutional responsibilities**. The cause shall be demonstrated by clear and convincing evidence to a panel of the affected faculty member's peers in the course of the procedures described below. These procedures shall at all times follow the accepted principles for *due process*.

*Italicized text from Keast, ed., 1973, *Faculty Tenure: Commission on Academic Tenure* 256, quoted in: [AAUP \(2004\), "Faculty Termination and Disciplinary Issues"](#)