

## **PROPOSED AMENDMENTS TO THE POST-TENURE REVIEW POLICY**

*Last Updated: 3/11/09 @ 4pm*

### ***Amendment 1: (Amended 3/10)***

**Proposed by:** Aaron Tobiason, Graduate Student Senator, College of Arts and Humanities

**Seconded by:** Elise Miller-Hooks, Faculty Senator, College of Engineering

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**Paragraph:** #8

**Original Text:** In a very small number of cases, when prior good-faith efforts to remedy performance have failed, and when other recommendations are deemed inappropriate or not considered likely to produce positive results, the recommendation may be a reduction of a faculty member's base salary, if the faculty member's performance has declined to such an extent as to no longer warrant the base salary that is attached to the position. The salary reduction may be permanent or for such time as the dean (or provost) believes appropriate.

**Proposed Text (Amendment):** In a very small number of cases, when prior good-faith efforts to remedy performance have failed, and when other recommendations are deemed inappropriate or not considered likely to produce positive results, the recommendation may be a reduction of a faculty member's base salary, if the faculty member's performance has declined to such an extent as to no longer warrant the base salary that is attached to the position. *Any such reduction shall be reasonable and appropriate, but will in no cases amount to a reduction of more than 5% of the faculty member's base salary.* The salary reduction may be permanent or for such time as the dean (or provost) believes appropriate. *Because the goal of this policy is improved performance, salary reductions may not be imposed under this policy more than three times over the career of any tenured faculty member.*

**Rationale:** The draft Policy on Annual Performance Reviews of Tenured Faculty does not include any language describing or delimiting potential salary reductions. A maximum of 5% allows the Special Review Committee sufficient leeway when it comes to determining an appropriate figure, permitting a reduction significant enough to be an effective disincentive, yet not one so severe as to constitute an untenable encroachment on the security of the tenure system. Additionally, this revision would set at three the maximum number of reductions that can be imposed over the course of a faculty member's career.

### ***Amendment 2:***

**Proposed by:** Elise Miller-Hooks, Faculty Senator, College of Engineering

**Seconded by:** Elisabeth Smela, Faculty Senator, College of Engineering

**Original Text:** 8. In a very small number of cases, when prior good-faith efforts to remedy performance have failed, and when other recommendations are deemed inappropriate or not considered likely to produce positive results, the recommendation may be a reduction of a faculty member's base salary, if the faculty member's performance has declined to such an extent as to no longer warrant the base salary that is attached to the position. The salary reduction may be permanent or for such time as the dean (or provost) believes appropriate.

**Proposed Text (Amendment):** 8. In a very small number of cases, when prior good-faith efforts to remedy performance have failed, and when other recommendations are deemed inappropriate or not considered likely to produce positive results, the recommendation may be a reduction of a faculty member's base salary, if the faculty member's performance has declined to such an extent as ~~to~~ no longer warrant the base salary that is attached to the position. The salary reduction may be permanent or for such time as the dean (or provost) believes appropriate. *Funds saved through the salary reduction shall be applied solely towards remediating the poor performance, such as by paying for the cost of training, and/or towards mitigating the impact on the unit of the poor performance, such as by paying for an adjunct professor to teach a class that the faculty member would otherwise have taught.*

**Rationale:**

1. *to* as crossed out is a typo.
2. If the funds are to be used for any other purpose, there may be a conflict of interest.

**Amendment 3:**

**Proposed by:** Elise Miller-Hooks, Faculty Senator, College of Engineering

**Seconded by:** Elisabeth Smela, Faculty Senator, College of Engineering

**Original Text:**

6. If, in the Annual Performance Review following the establishment of the development plan, the Annual Review Committee finds that the faculty member's performance remains substantially below the expectations set for that faculty member, and that insufficient progress has been made to achieve the goals of the development plan, and if the unit head accepts this finding, the case will be brought to the attention of the dean...

7. Recommendation for appropriate action after two consecutive reviews in which the faculty member is found to be substantially below expectations may include actions such as more intense efforts to remedy weaknesses in performance, re-assignment of the faculty member's duties, or the reduction of privileges (such as

travel funds). In determining the recommendations for appropriate action, the unit head should consider the needs and responsibility of the unit and the potential to ameliorate the faculty member's performance.

8. In a very small number of cases, when prior good-faith efforts to remedy performance have failed, and when other recommendations are deemed inappropriate or not considered likely to produce positive results, the recommendation may be a reduction of a faculty member's base salary, if the faculty member's performance has declined to such an extent as to no longer warrant the base salary that is attached to the position. The salary reduction may be permanent or for such time as the dean (or provost) believes appropriate.

**Proposed Text (Amendment):**

6. If, in the Annual Performance Review following the establishment of the development plan, *i.e. the third consecutive review*, the Annual Review Committee finds that the faculty member's performance remains substantially below the expectations set for that faculty member, and that insufficient progress has been made to achieve the goals of the development plan, and if the unit head accepts this finding, the case will be brought to the attention of the dean...

7. Recommendation for appropriate action after ~~two~~ *three* consecutive reviews in which the faculty member's *performance* is found to be substantially below expectations may include actions such as more intense efforts to remedy weaknesses in performance, re-assignment of the faculty member's duties, or the reduction of privileges (such as travel funds). In determining the recommendations for appropriate action, the unit head should consider the needs and responsibility of the unit and the potential to ameliorate the faculty member's performance.

8. In a very small number of cases, when prior good-faith efforts to remedy performance have failed (*paragraphs 6 and 7*), and when other recommendations are deemed inappropriate or not considered likely to produce positive results, the recommendation may be a reduction of a faculty member's base salary, if the faculty member's performance has declined to such an extent as to no longer warrant the base salary that is attached to the position. The salary reduction may be permanent or for such time as the dean (or provost) believes appropriate.

**Rationale:**

In the original text, the sequence of events is not sufficiently clear and it might be thought that the penalty is applied before the faculty member has the opportunity to improve his/her performance following the guidelines set forth in the one-year development plan, because the one-year development plan is proposed only after two consecutive reviews in which the faculty member's overall performance has been found to be substantially below reasonable and equitable expectations (paragraph 5).

The addition of “s performance” in 7 is intended to address a minor typo.

***Amendment 4:***

**Proposed by:** Eric S. Kasischke, Geography, BSOS

**Seconded by:** Denny Gluck, CMPS

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**Paragraph:** Paragraph 3 of referenced section

**Original Text:**

3. The Annual Review Committee gives the results of the reviews to the unit head, who, after noting his or her acceptance or non-acceptance of them, conveys them to individual faculty members. Every faculty member should be informed of the result of his or her Annual Performance Review, and should have an opportunity to respond to it.

**Proposed Text (Amendment):**

(Insert after first sentence of part 3:)

If the Annual Review Committee and the Chair disagree in their assessments, an independent committee composed of faculty from the unit of equal or higher rank should review the assessments and make the final determination.

**Rationale:**

Whereas earlier drafts did not give chairs sufficient authority this version seemingly gives too much, since a chair has the power to over-rule assessments of the Annual Review Committee. Thus any favorable review by the ARC could be changed to unsatisfactory by the Chair (and of course vice versa).

***Amendment 5:***

**Proposed by:** Nariman Farvardin, Senior Vice President for Academic Affairs and Provost

**Seconded by:** Willie Brown, Staff Senator, OIT

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**Paragraph:** #8

**Original Text:**

8. In a very small number of cases, when prior good-faith efforts to remedy performance have failed, and when other recommendations are deemed inappropriate or not considered likely to produce positive results, the recommendation may be a reduction of a faculty member's base salary, if the

faculty member's performance has declined to such an extent as to no longer warrant the base salary that is attached to the position. The salary reduction may be permanent or for such time as the dean (or provost) believes appropriate.

Prior to implementing a salary reduction, in order to obtain an independent opinion that there are sufficient grounds for a salary reduction, the dean (or provost) shall appoint a three-member Special Review Committee composed of tenured faculty at or above the rank of the faculty member and knowledgeable of the faculty member's discipline, but not of the same unit as the person under review. The Special Review Committee shall consider the departmental report and may solicit such other information from the unit and the university as it may consider important. The committee shall also offer the faculty member an opportunity to respond in person and/or in writing to the departmental report and recommendations. The committee shall provide the dean (or provost) its written recommendation concerning a salary reduction, namely, whether and why it agrees or not with the recommendation for salary reduction and for the amount and duration of the reduction. The recommendation of the Special Review Committee is advisory to the dean. The decision of the dean (or provost), along with the recommendation of the Special Review Committee, shall be submitted to the provost (or president) for approval. If approved, it shall be communicated to the faculty member, together with a copy of the Special Review Committee's recommendation.

**Proposed Text (Amendment):**

Prior to implementation of a salary reduction approved by the Provost (or President), the faculty member shall have an opportunity to seek a review of the reduction under the faculty grievance procedure, and the following special provisions shall apply:

1. The burden shall be on the University to demonstrate by a preponderance of the evidence that:
  - a. The faculty member's overall performance has been substantially below reasonable and equitable expectations; and
  - b. A salary reduction is reasonable under the circumstances; and
  - c. The amount of the reduction is reasonable under the circumstances.
  
2. The faculty member shall file the grievance directly with the Senate Office within 15 days of receipt of written notification of the Provost's (President's) approval of a reduction in salary. The grievance procedure shall be expedited to begin with consideration of the grievance by the faculty grievance hearing board.

**Rationale:**

The University of Maryland Faculty Grievance Procedure is the established vehicle to contest an action or inaction by an academic administrator that is thought to be unfair, discriminatory, or improperly reached. Permitted grievance issues include matters pertaining to academic freedom and salary.

This amendment (1) confirms the availability of the Faculty Grievance Procedure to challenge a reduction in pay prior to it taking effect, and (2) adopts the AAUP position that when the stipulated channel for challenging a substantively or procedurally unfair judgment in a post-tenure review is through a grievance procedure, the burden of proving an improper action should not rest with the faculty member. The ordinary burden of proof under the Faculty Grievance Procedure is on the faculty member. This amendment reverses that order and puts it on the University in a salary reduction complaint.

The Faculty Grievance Procedure is a multi-stage process with many required informal and formal administrative steps. Typically these take an academic year to navigate. This amendment moves a salary reduction case directly to the final deliberative faculty body.

***Amendment 6:***

**Proposed by:** Nariman Farvardin, Senior Vice President for Academic Affairs and Provost

**Seconded by:** Willie Brown, Staff Senator, OIT

An additional paragraph is added to the end of the proposed policy:

9. This policy on Annual Performance Reviews of tenured faculty is implemented on a trial basis and shall be evaluated by the University Senate five years from the date of its approval by the President of the University. The review shall consider such amendments as experience may deem proper to protect academic freedom and ensure the equitable and efficient operation of the policy.

**Rationale:**

University policies may be reviewed by the Senate at any time. Typically, this occurs on a periodic basis. Because there is concern that a post tenure review procedure may in operation have an unintended effect on academic freedom or similar unforeseen consequence, this amendment serves to confirm the trial nature of the policy and assure its reconsideration. Because the policy requires at least three years of Performance Reviews prior to initiating a salary reduction, Senate review is scheduled in five years, thus permitting experience with the policy before re-evaluation.