TO: Regent Laws & Policies Stakeholders

FROM: Michael Lightner, Vice President for Academic Affairs
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DATE: March 2, 2018

RE: Recommended Changes to Article 5 and Related Policies, Second Draft

Background

The regent laws and policies review project is driven by the guiding principle that laws should capture only high-level statements on governance and policies should include the necessary elaborations of law. The goal is to focus on the powers and responsibilities of the Board of Regents while assigning operational procedures to APS or campus policy. This goal will be pursued while keeping in mind protections currently afforded to the faculty.

The laws and policies under the main purview of academic affairs are being reviewed in a comprehensive manner. In this case, draft revisions of laws and policies related to faculty (currently Article 5 and policies 5A-5M) are being presented together.

Revision and Review Process

As part of a larger effort to review all Regent laws and policies, the administration, in collaboration with the faculty, has undertaken a thorough review of Article 5 and the related policies. In September 2017, an initial document was released to solicit input on substantive changes that were being considered for Article 5. This document addressed broad principles, but did not present draft policy language. It was widely shared with the university community and posted on a public website. The proposed changes were discussed with the Faculty Council, the Faculty Council Educational Policy and University Standards (EPUS) committee, and the faculty governance groups on each campus. The first draft of Article 5 and Policies 5A through 5G was developed with consideration given to the feedback received from faculty governance groups and individual faculty members. The first draft was released on December 8, 2017 and faculty and other interested parties were given 60 days to provide comment. That feedback was considered in developing the second draft. Over 150 different, and occasionally contradictory, recommendations were received.

The revised version of Article 5 and the related policies currently presented is the second draft. There will be 30-day review period during which faculty and other interested parties can provide feedback. In order for comments to be considered in drafting the final document, they must be received by April 2, 2018. The final document will be then developed and submitted to the Board of Regents Governance Committee for consideration. If the Governance Committee endorses the recommendations presented at that time, the document will go to the full board for consideration.

The evaluation of all comments received, development of suggested responses, and development of the second draft, was conducted by a team including the provosts of each campus, specific advisory personnel for the provosts, and members of the system office of academic affairs.
It is likely that the changes ultimately adopted by the Board of Regents will require changes to existing Administrative Policy Statements (APSs) and the creation of new APSs. This work will be completed before the approved changes to regent law and policy will take effect. Any changes affecting tenure and promotion will only apply to faculty hired after the laws and policies and administrative policy statements are officially in effect. Additionally, it is likely that changes will be needed in the Faculty Senate constitution.

This memo outlines the substantive changes to the first draft of Article 5 and related policies that are being proposed in the second draft. It does not attempt to capture recommendations that were presented with the release of the first draft. The second draft is a redlined version of the first draft.

**Proposed Revisions to Draft 1 of Article 5 and Policies 5A through 5G**

**Article 5, Part A: Faculty Governance**

- **5.A.1 Principle of Shared Governance**
  - Reword 5.A.1(B) to clarify faculty responsibilities and state that the development of academic policies should be a collaborative effort between faculty and the administration. Retain the assertion that tenured and tenure track faculty are ultimately responsible for decisions described in this section, but indicate that other faculty should be involved in the decision process.
  - Revise 5.A.1(C) to indicate that teaching modality shall be addressed in collaboration with the faculty.

- **5.A.2 Faculty Government**
  - Simplify 5.A.2(A) that defines the Faculty Senate. Eliminate reference to the representative body, allowing the Faculty Senate to fully determine its structure and operations.
  - Add subsections to 5.A.2 (A) to:
    - Affirm that the president of the university is the president of the Faculty Senate, language that exists in current Regent Law.
    - Define voting membership in the Faculty Senate, which is also defined in current Regent Law, although it is defined differently.
      - Recommend extending voting privileges to all faculty with an appointment of .5FTE or greater, regardless of title. Current regent law defines membership by percent time (50% or greater) and specific faculty title.
      - Recommend eliminating the voting rights granted to certain administrators by current regent law.
  - Simplify 5.A.2(B) on the purpose of the Faculty Senate constitution.
  - Modify 5.A.2(C) to indicate that the Faculty Senate spokesperson need not be a single individual for all issues, allowing the Senate to select an individual as appropriate for the topic at hand. For that reason, also eliminate the
recommendation in draft 1 that the spokesperson must be a tenured faculty member.

- Eliminate statement that requires each school/college have a faculty governance body. The Faculty Senate Constitution currently addresses this.

**Article 5, Part B: Academic Freedom**

- Revise structure and provide a statement that affirms academic freedom as a core principle of the university.
- Explicitly state that all members of that university community have the right to free expression, but that it is distinct from academic freedom.
- Clearly state that all members of the university community engaged in teaching, scholarly, or creative work, within the scope of their responsibilities, have the right to academic freedom and the right to grieve perceived violations of academic freedom.

**Article 5, Part C: Faculty Appointments**

- 5.C.3 Dismissal for Cause
  - Revise to 5.C.3(A)(1) to provide context on discrimination, sexual misconduct, and fiscal misconduct (must be in violation of university policies which define what constitutes discrimination and misconduct), and add “material or repeated” to modify neglect of duty.

**Article 5, Part D: Faculty Grievance**

- 5.D.1 Grievance Rights
  - Clarify grievance rights (5.D.1(A) through 5.D.1(C)).
  - In 5.D.1(B), define “academic rights” in terms of those delineated in regent law or policy. The term was previously undefined.

**Policy 5A: Faculty Governance**

- 5.A.1 Principle of Shared Governance
  - Add language to 5.A.1(A) to clarify the board’s role in governing the university and its recognition of the role of the faculty.
  - Reword 5.A.1(B) to clarify faculty responsibilities and state that the development of academic policies should be a collaborative effort between faculty and the administration. Retain the assertion that tenured and tenure track faculty are ultimately responsible for decisions described in this section, but indicate that other faculty should be involved in the decision process.
  - Revise 5.A.1(B)(3) to allow for the fact that some units, particularly smaller units, rely on faculty outside the primary unit to help conduct faculty evaluations.
  - Eliminate the original language in 5.A.1(C)(4) and rely on new section (4), which was 5.A.1(D) in draft 1, to describe the role of faculty in preparing budgets.
  - Revise 5.A.1(E) (subsection (D) in draft 1) to eliminate the ambiguous modifying language on the policy changes that require consultation with faculty governance.
Policy 5B: Academic Freedom

- 5.B.1 Associated Rights
  - Add to language in 5.B.1(A) to define academic freedom within the scope of a faculty member’s responsibilities. Recognize the ability to do creative work. Change wording from “discipline” to “field” to recognize the fact that many fields are interdisciplinary.
  - Reinsert language in 5.B.1(A) stating that exposure to conflicting opinions is the best insurance against error (as found in current regent law).
  - Add statement in 5.B.1(B) that the board and administration shall not attempt to pressure or influence the work of faculty members (in addition to resisting outside influence).
  - Modify 5.B.1(C) to make it clear that rights associated with academic freedom apply to all faculty, not just tenured and tenure track faculty.
  - Modify 5.B.1(D) with less restrictive language while maintaining the general premise that faculty may be bound by some parameters established for the course (parameters addressed in 5.B.2(C)).

- 5.B.2 Associated Responsibilities
  - Reinsert language in 5.B.2(A) relating to faculty members acting with integrity (as similarly stated in current regent law).
  - Add a statement, 5.B.2(C), to indicate that faculty members may need to recognize certain established parameters when teaching a course.
  - Modify 5.B.2(D) on the introduction of controversial matter in the classroom to state that material introduced into the classroom should be justifiable relative to the curriculum and student learning.

Policy 5C: Faculty Appointments

- 5.C.1 Terms and Conditions
  - Add 5.C.1(C) to state that all faculty titles and associated responsibilities will be provided in an Administrative Policy Statement (APS).

- 5.C.2 Tenured and Tenure Track Faculty Appointments
  - Combine what were two separate sections in draft 1.
  - Modify 5.C.2(A) to recognize that faculty responsibilities in some academic units differ from the standard description (e.g. may include librarianship, clinical activity).
  - Modify 5.C.2(D) to clarify that transfer of a faculty member, under any circumstances, is subject to the approval of the faculty in the receiving unit.
  - In 5.C.2(F), eliminate mention of the specific exceptions related to tenure review that exist for the Schools of Medicine, Pharmacy, and Public Health and reference Regent Policy 5.D.
  - Add a statement allowing the administration to determine the required qualifications and processes to promote a faculty member to full professor (5.C.2(G)).
• Modify 5.C.2(I) to remove ambiguous language related to the goals of post-tenure review.

• 5.C.3 Instructional, Research, and Clinical Faculty Appointments
  o Create a new section that combines information from the sections in draft 1 that address the terms of appointment and general responsibilities of instructional, research, and clinical faculty.
  o Eliminate statements from draft 1 that attempted to describe the more specific responsibilities of each group of faculty.
  o Job titles and responsibilities will be provided in an APS to be developed (as noted in 5.C.1(C).
  o Maintain statement that a faculty member may negotiate a differential workload to accommodate professional development. Eliminate references to the type of faculty that are eligible (draft 1 referred to senior instructional track faculty) and address this in APS to ensure all appropriate groups or titles are included.
  o Maintain statement that campuses are encouraged to provide multi-year contracts to high performing faculty as resources allow. Eliminate references to the type of faculty that are eligible (draft 1 referred to instructional track faculty) and address this in APS to ensure all appropriate groups or titles are included.
  o Eliminate the statement requiring three faculty ranks in the instructional faculty track. Address this in APS. The administration remains committed to providing an additional promotional opportunity, but it is more appropriate to address this in APS since the more detailed discussion of faculty categories and titles will be moved to APS.

The recommendation to move much of the information related to instructional, research, and clinical faculty appointments is in no way intended to diminish the importance of faculty members holding these appointments. Comments received in response to the first draft revealed the challenges in identifying common categories, titles, and descriptions to address the various roles and responsibilities of faculty across all campuses and the units within each campus. In addition, although the Board of Regents affords certain rights to all faculty, it is not directly involved in any personnel decisions affecting instructional, research, or clinical faculty. For these reasons, it was deemed more appropriate to address details in APS. The draft APS will be available for review before implementation of Regent Policy 5C.

• 5.C.4 Other Terms and Conditions of Faculty Appointments
  o Edit 5.C.4(B) to eliminate the exception for the Anschutz Medical Campus.
  o Add language to 5.C.4(D) to state that the one-sixth rule applies to both 9-month and 12-month faculty. Remove the ambiguous statement related to the amount of consecutive time that can be spent on outside consulting.
  o Eliminate statement on faculty emeritus status and address in the APS on faculty titles.
Policy 5D: Reappointment (to a tenure track position), Tenure, and Promotion

- 5.D.1 Tenure Probationary Period
  - Modify 5.D.1(A) to clarify the impact of approved leave on the tenure probationary period.
  - Modify 5.D.1(B) to recognize that exceptions to the promotion and tenure process are afforded to the Schools of Medicine, Pharmacy, and Public Health, but refer to APS for specific information (which will be incorporated into APS 1022).
  - Eliminate statement that speaks to when the probationary period begins and address in APS 1022.
  - Eliminate statement that speaks to the ability to count service at other institutions, and address in APS 1022.

- 5.D.2 Standards for Tenure
  - Throughout this policy, replace “research/creative work” with “scholarly/creative work.”
  - In 5.D.2(B), retain the requirement to demonstrate impact beyond the institution to receive tenure based on excellence in teaching or research, however eliminate the requirement for external evidence. Primary units will have discretion in specifying the means by which impact beyond the institution can be demonstrated as part of primary unit criteria.

- 5.D.5 Review process
  - Eliminate specific statements related to the review process and maintain in APS 1022.

- 5.D.7 Appeal of Decisions Regarding Tenure
  - Add statement to 5.D.7(A) that faculty cannot file a grievance until all available administrative appeals have been exhausted.
  - Eliminate statements related to the integrity of the process and maintain in APS 1022.

Policy 5E: Dismissal for Cause

- 5.E.1 General Provisions
  - Revise 5.E.1(A)(1) to provide context on discrimination, sexual misconduct, and fiscal misconduct (must be in violation of university policies which define what constitutes discrimination and misconduct), and add “material or repeated” to modify neglect of duty.
  - Revise 5.E.1(C) for clarity only.

- 5.E.2 Dismissal for Cause Procedures
  - Clearly state in 5.E.2(C)(1) that the chancellor shall give appropriate weight to the recommendations of the Faculty Senate grievance committee and provide a specific rationale for any decision that is inconsistent with the recommendations.
  - Clearly state in 5.E.2(D)(3) that the president shall give appropriate weight to the recommendations of the Faculty Senate grievance committee.
Policy 5F: Termination of Faculty Appointments Following Program Discontinuance

- 5.F.1 Academic Unit or Degree Program Discontinuance
  - Add statement to ensure long-serving instructional faculty are provided one-year's notice of termination (5.F.1(E)).
  - Remove ambiguous reference to “specified rights” in 5.F.1(G)(3) and refer to the relevant section of the grievance policy.

Policy 5G: Faculty Grievance

- 5.G.1 Grievance rights
  - Modify 5.G.1(C) and create section 5.G.1(D) to clarify who can grieve violation of academic rights (all members of the Faculty Senate) and who can grieve violations of academic freedom (all members of the university community who are afforded academic freedom according to regent law).

- 5.G.2, 5.G.3, 5.G.4
  - Restructure for more logical discussion of Faculty Senate Grievance Processes. Combine into one main section (Faculty Senate Grievance Process – 5.G.3) and include Jurisdiction (formerly “Limits of Authority”), Time Limits for Filing a Grievance, and Grievance Proceedings as sub-sections.

- 5.G.2 Faculty Senate Jurisdiction (formerly Faculty Senate Authority)
  - Eliminate subsection that speaks to the grievances of administrators. Current statement suggests grievance process could apply in some circumstances, but administrators are not able to grieve under the faculty grievance process. If an administrator holds a faculty appointment, they can file a grievance related to rights or privileges associated with that appointment. This does not need to be called out.
  - Clarify language in 5.G.3(A)(5).