TO: Regent Laws & Policies Stakeholders
FROM: Michael Lightner, Vice President for Academic Affairs
        Jill Taylor, Director of Academic Program and Policy Analysis
DATE: December 8, 2017
RE: Recommended Changes to Article 5 and Related Policies, First 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 proposed 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.

This memo outlines the substantive changes to Article 5 and related policies recommended by the administration. It also indicates important statements that the administration suggests be retained in law or policy, and indicates statements that the administration recommends be eliminated from law or policy. In some cases, it is recommended that statements be moved to or retained in APS; these suggestions are also captured in this memo.

Because the proposed revisions represent significant changes to both the structure and content of current laws and policies, a redlined version is unreadable. This memo is intended to provide full transparency regarding the substantive changes being recommended, but it does not capture all editorial changes.
The revised version of Article 5 and the related policies currently presented is a first draft. There will be a 60-day review period during which faculty and other interested parties can provide feedback. Following a review of that feedback, a second draft will be developed and a 30-day review period will be given before a final draft is 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.

It is likely that the changes ultimately adopted by the Board of Regents will require changes to existing Administrative Policy Statements (APSs) and, perhaps, 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.

Proposed Revisions to Article 5 and Policies 5A through 5M

*** At the end of this document, the current structure of laws and policies is provided, followed by the proposed structure, and a crosswalk to indicate the placement of current versus proposed language. ***

Article 5, Part A: Definitions and Titles

- Eliminate from regent law and policy
  - Eliminate definition of the “general faculty.”
  - Discuss the role of faculty in regent law (new 5.C.1) and include faculty categories in regent policy (new Policy 5C), but do not include job titles (thereby eliminating regent approval of faculty titles).

Justification: Defining faculty membership and faculty titles is unnecessary in regent law. Regents are responsible for determining the terms of faculty appointments, and this is addressed in draft policy.

Article 5, Part B: Appointment and Evaluation

- Retain key elements in new Article 5, Part C or Policy 5C.
- Eliminate statement that it is the general policy to recruit faculty mainly in the lower ranks.
- Retain definition of faculty appointments. Use the term “continuous” to describe tenured appointments. (new Policy 5C)
- Retain information on faculty workloads, compensation for faculty governance leaders, sabbatical assignments, and outside work. (new Policy 5C)
  - Eliminate requirement for approval of outside work (while retaining the language that requires it not exceed one-sixth of the faculty member’s time).
- Revise statement on tenured appointments to state that a tenured appointment can only be held by an individual with the rank of professor or associate professor. (new Article 5, Part C)
- Add statement to indicate that tenure resides with the university. (new Article 5, Part C)
  Intra-campus or intercampus faculty transfers must be approved by the receiving unit, but do not require the reconsideration of tenure by the Board of Regents.
• Retain statements regarding standards for tenure. (referenced in new Article 5, Part C, elaborated in new Policy 5D)
  o Add requirement for external validation of outside impact to demonstrate excellence in research or teaching.
  o Add statement that effort cannot be a criterion for excellence or meritorious.
• Retain statements related to the tenure probationary period. (new Policy 5D).
• Eliminate reference to early tenure. The proposed language permits it but does not explicitly address it; however, the ability to shorten the standard probationary period is currently stated clearly in APS 1022.
• Retain statements related to primary unit criteria, evaluation of tenure and promotion, and grievance rights. (new Policy 5D).
  o Revise language so that only negative decisions regarding tenure can be appealed to the President. The chancellor's decision regarding reappointment and promotion is final. Current policy allows a presidential review of a negative decision on reappointment. Current law and policy are inconsistent about whether a negative decision on promotion can be appealed. (new Policy 5D)
• Retain statements regarding annual evaluation of faculty (new policy 5C), comprehensive evaluation of tenure track faculty (new Policy 5D), and comprehensive evaluation of tenured faculty (new Policy 5C).

Justification: The proposed changes better reflect current practices, provide needed clarification, and support the general premise that regent law should be limited to high-level principles.

The additional statements related to tenure make a clear statement regarding the expectations for tenure, which carries a number of rights not awarded to other faculty.

The change relating to the review of decisions on reappointment and promotion addresses inconsistencies in current law and policy and places the final responsibility at the appropriate level.

Article 5, Part C: Dismissal for Cause and Grievances

• Retain dismissal for cause provisions (new Article 5, Part C), with information on notification retained in policy (new Policy 5E). Currently, language in regent law related to notification is repeated in regent policy.
• Retain statements related to faculty grievance rights. (new Article 5, Part D) Move some elements to regent policy. (new Policy 5G)

Justification: It is important to retain in regent law the provisions that define dismissal for cause and define the grievance rights of faculty, but elaboration on these topics is more appropriate to regent policy.

Article 5, Part D: Principles of Academic Freedom

• Separate the concept of academic freedom from the right to free speech. Address free speech elsewhere in regent law.
• Retain high-level statements in law (new Article 5, Part B); move associated rights and responsibilities to regent policy (new Policy 5B).
Separate rights and responsibilities associated with academic freedom but retain much of the existing language.

- Add a statement to clarify that academic freedom does not permit a faculty member to stray from curricular bounds set by the responsible faculty body. (new Policy 5B)
- Add a statement that faculty members have wide latitude in defining their scholarly activities, but they will be evaluated according to primary unit criteria. (new Policy 5B)

**Justification:** Academic freedom and free speech are distinct concepts that are currently conflated in regent law. Academic freedom is afforded by the board of regents and pertains to the teaching and scholarly work of faculty. Free speech expression is a constitutional right that applies to all members of the university community and should be addressed more broadly. The proposed changes will provide clarification without impinging upon rights.

Additions to this section are intended to recognize the rights of an individual faculty member, while respecting the rights of the faculty, as a collective body, to make decisions around course curriculum and standards for faculty evaluation, as set out in shared governance.

**Article 5, Part E: Faculty Government**

- Retain general statements about the Faculty Senate (new Article 5, Part A), but revise statement about the structure of faculty government, allowing the Faculty Senate to determine the structure within some broad parameters.
  - Require a faculty governance body at each school/college.
  - Require the chair of the faculty government to be a tenured member of the faculty.
- Eliminate definition of the “general faculty” and, in doing so, eliminate the definition of Faculty Senate membership in regent law and policy.
- Retain statements affirming the principles of shared governance (new Article 5, Part A), and move details ("Principles of Participation") to regent policy. (new Policy 5A)
  - Retain statement that faculty have the primary responsibility in selecting faculty and making decisions related to academic policy; however add a statement that assigns tenured and tenure track faculty the lead role.
  - Define course scheduling and course modality as internal operations, thereby giving the administration the lead role in such matters.
  - Clarify the role of faculty in evaluating faculty.
  - State the role of faculty in selecting and evaluating department chairs and administrators below the level of dean versus the role of faculty in selecting and evaluating deans and administrators at higher levels.
  - Eliminate statements relating to the responsibilities of deans, as they are outlined in Regent Policy 4A.
  - Retain language requiring faculty collaboration in the development of recommendations related to budgets or resource allocation; however, eliminate specific reference to the review of degree proposals, program review, and program discontinuance. While these have budgetary implications, they are academic decisions and the faculty are given the primary responsibility for such decisions.

**Justification:** Proposed changes are intended to affirm the principles of shared governance, while clarifying the role of the faculty government organizations versus the faculty as a whole.
The changes would also provide the faculty greater flexibility in determining their representative structure.

**Policy 5A: Approval of Sabbatical Assignments**
- Retain statements about sabbatical eligibility in regent policy (new Policy 5C) and maintain other information in APS 1024.

  **Justification:** Regent policy should allow for sabbatical assignments and address eligibility, but the specific rules and procedures are more appropriate to APS.

**Policy 5D: Additional Remuneration for Extra Work**
- Eliminate. Statements are currently repeated in Regent Policy 11B: Faculty Salary. Eliminate language in Policy 5D and retain in the faculty salary policy (to be reviewed later).

  **Justification:** Current language is repeated in the faculty salary policy and it seems more appropriate to maintain it in the salary policy.

**Policy 5E: Additional Remuneration for Consultative Services**
- Eliminate. Current language is largely redundant with language in Article 5. Retain key elements of both law and policy in regent policy (new Policy 5C).

  **Justification:** It makes sense to consolidate this with the statement about outside work and the “one-sixth” rule.

**Policy 5F: Faculty Leave of Absence while Candidate for or Serving in Public Office**
- Eliminate.

  **Justification:** Inappropriate for regent policy. This can be addressed in APS or campus policy.

**Policy 5G: Application of Teaching Excellence Award to Base Salary**
- Eliminate.

  **Justification:** Inappropriate for regent policy. Terms of participation in the President’s Teaching Scholars Program are appropriately managed by the administration and can be captured in an APS.

**Policy 5H: Faculty Senate Grievance Process**
- Retain statements about faculty grievance rights. (new Policy 5G)
- Retain key requirements of faculty grievance process, including those related to required action by all parties, deadlines, reporting, and limits of authority. (new Policy 5G)
- Eliminate procedural details of the grievance process, allowing the Faculty Senate grievance committee to determine internal processes and procedures.
- Change procedures such that the grievance process for non-dismissal cases end with the president, eliminating the opportunity for these cases to be heard by the Board of Regents.
- Require that the administration provide a written report to the Faculty Senate grievance committee chair stating the action taken, including a rationale for any actions inconsistent with the committee’s recommendation. (new Policy 5G)
Justification: Regent policy should set strict parameters for the grievance process, but the detailed procedures should be determined by the Faculty Senate. Limiting non-dismissal cases to presidential review is appropriate, while board involvement is only necessary for dismissal cases. The proposed change to allow the president to make a final decision on non-dismissal cases leaves such decisions at the appropriate level. Board review is appropriate when the case involves a dismissal.

Policy 5I: Faculty Dismissal for Cause Process

- Align definition of dismissal for cause with the definition in regent law (current law and policy are inconsistent).
- Retain existing information on administrative procedures and deadlines. (new policy 5E)
- Implement changes in the review and approval process. (new policy 5E)
  - Separate dismissal from tenure revocation. Eliminate requirement for board approval of dismissal, but require board approval of tenure revocation when the case involves a tenured faculty member.
  - Allow approval by the chancellor, with the opportunity for the faculty member to appeal to the president (and request a hearing before the president).
    - Allow a final decision by the president for non-tenured faculty members.
    - Chancellor/President decisions to dismiss would be pending approval of tenure revocation by the board if the case involved a tenured faculty member.
    - Retain the right of tenured faculty members to request a hearing before the board.
- Retain statements about faculty grievance rights in cases of dismissal for cause, but incorporate broad statements related to grievance procedures to the faculty grievance policy (new Policy 5G), and eliminate detailed procedural statements, allowing the Faculty Senate grievance committee to determine internal processes and procedures.

Justification: The proposed change separates the dismissal for cause process from the revocation of tenure. It would allow the chancellor to make a decision to dismiss for cause, while retaining a faculty member’s right to appeal that decision to the president. The Board approves the award of tenure but does not approve faculty appointments, therefore Board action is appropriate, and would be required, for the revocation of tenure, but not the termination of an appointment.

The elimination of detailed grievance procedures in regent policy allows the Faculty Senate to determine how hearings will be conducted. The proposed change does not alter faculty grievance rights.

Policy 5J: Intellectual Property on Discoveries and Patents for their Protection and Commercialization

- No changes at this time. Policy to be reviewed later.

Policy 5K: Intellectual Property that is Educational Material

- No changes at this time. Policy to be reviewed later.

Policy 5L: Approved Faculty Titles
• Retain definition of categories of faculty in regent policy, including the types of appointments/contracts permitted to faculty in each category (new policy 5C); however, eliminate all faculty titles from regent policy and move to a new APS. This would eliminate the need for board approval of faculty titles.

• Introduce the term “Teaching Faculty” to encompass faculty whose primary responsibility is to teach (i.e. Senior Instructors, Instructors, Lecturers). (new Policy 5C)
  o Distinguish between instructional track faculty and contingent teaching faculty.
  o Encourage the awarding of multi-year contracts to high performing instructional track faculty.
  o Permit a differential workload to allow for professional development of senior instructional track faculty.
  o Require a minimum of three ranks in the instructional track faculty category.

Justification: Regents are responsible for determining the terms of faculty appointments, but approving specific titles seems unnecessary. Use of standard titles and definitions across the system is needed, but can be accomplished with an APS.

The addition of a Teaching Faculty category recognizes the many faculty members who are hired to support the teaching mission of the university. Current regent policy fails to use an appropriate term to identify this group. Instructional faculty job titles are listed under “Non-tenure Track Faculty” which defines them by their ineligibility for tenure, rather than their role. The current categorization is also problematic because other faculty groups listed in policy (e.g. research, clinical) are also ineligible for tenure but are categorized separately.

There is also a need to identify teaching faculty who serve the university on a regular, ongoing basis versus those who are hired on a course-by-course basis. The added language allows the university to recognize instructional track faculty members by adding an additional promotional opportunity, and encouraging multi-year contracts and professional development.

Policy 5M: Reappointment (to a tenure-track position), Tenure, and Promotion

• Retain information on standards for performance and the role of primary units in establishing criteria. (new policy 5D)

• Retain statements related to the integrity of the process. (new policy 5D)

• Retain statements related to mentoring. (new policy 5D)

• Retain information on the candidate dossier and the levels of review. (new policy 5D)
  o Add a statement to indicate that only tenured faculty may vote on tenure decisions. This is currently stated in APS 1022 but not included in regent policy.
  o Add a statement to indicate that only full professors may vote on decisions to promote another faculty member to full professor. This is common practice, but has not been captured in policy.
  o Revise the statement on third level review to indicate that it applies only to tenure decisions. The current statement allows for a third level review of negative decisions on reappointment.
  o Revise statement regarding presidential review to indicate that the president may convene a faculty advisory committee. Current policy requires it.
• Retain statements regarding faculty grievance rights.

Justification: Proposed changes clarify process, but change little in existing policy or practices. The change relating to the review of decisions on reappointment places the final responsibility at the appropriate level.

Appendix 4.1: Academic Unit or Program Discontinuance

Background: Article 4 of Regent Law includes provisions relating to the discontinuance of academic units and degree programs. The accompanying Policy 4H outlined procedures for discontinuance, including those relating to the termination of tenured and tenure track faculty appointments. When revisions of Article 4 were approved by the Board of Regents in June 2017, there was a stated intent to move procedures related to the termination of faculty appointments to a policy in section 5. As an interim step, those procedures were moved from Policy 4H to an appendix to Article 4 (Appendix 4.1). Appendix 4.1 will remain in effect until Article 5 and the related policies are approved. It is intended Policy 5F will replace Appendix 4.1.

Proposed changes to Appendix 4.1 reflected in Policy 5F:

• Require presidential approval of campus recommendations for the termination of individual faculty appointments (which currently requires board approval).
• Only require Board approval of the revocation of tenure.
• Retain requirement to provide one-year notice to faculty members facing termination; however, eliminate details regarding when the one-year period begins based on contract term. This information is currently in APS 1015.
• Retain requirement to assist faculty members in finding another suitable position; however, eliminate statements related to retraining. This information is currently in APS 1015.
• Retain statements related to severance pay, reinstatement, and eligibility for group insurance. Eliminate details related to severance pay. This information is currently in APS 1015.
• Clarify grievance rights, which are not well articulated in current policy.
• Eliminate statement regarding the role of the Faculty Council Personnel Committee in monitoring efforts to find other opportunities for displaced faculty members.

Justification: The proposed changes allow the president to approve the termination of faculty appointments, which is appropriate given that the Board of Regents will have previously reviewed and approved plans to discontinue the program or unit. Termination of faculty appointments is one step in implementing the approved plan. Tenure renovation still would require board action.

Other proposed changes would refer to APS for details (where they are currently re-stated), while maintaining faculty protections in regent policy.
Current Structure

Article 5
Part A: Definitions and Titles
Part B: Appointment and Evaluation
Part C: Dismissal for Cause and Grievances
Part D: Principles of Academic Freedom
Part E: Faculty Government

Regent Policies
5A: Approval of Sabbatical Assignments
5D: Additional Remuneration for Extra Work
5E: Additional Remuneration for Consultative Services
5F: Faculty Leave of Absence while Candidate for or Serving in Public Office
5G: Application of Teaching Excellence Award to Base Salary
5H: Faculty Senate Grievance Process
5I: Faculty Dismissal for Cause Process
5J: Intellectual Property on Discoveries and Patents for their Protection and Commercialization
5K: Intellectual Property that is Educational Material

 Proposed Structure

Article 5
Part A: Faculty Governance
Part B: Academic Freedom
Part C: Faculty Appointments and Tenure
Part D: Faculty Grievance

Regent Policies
5A: Faculty Governance
5B: Academic Freedom
5C: Faculty Appointments
5D: Reappointment, Tenure, and Promotion
5E: Dismissal for Cause
5F: Termination of Faculty Appointments Following Program Discontinuance
5G: Faculty Grievance
5H: Intellectual Property (to come later; current 5J and 5K remain in effect until then)

Crosswalk

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<tr>
<th>Current Law &amp; Policy</th>
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<td>Article 5, Part A</td>
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<td>Article 5, Part B</td>
<td>Article 5, Part C; Policy 5C; Policy 5D; Policy 5E</td>
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<td>Article 5, Part C</td>
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<td>Policy 5D</td>
<td>Eliminate; information repeated in Policy 11B</td>
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Note: Policy 5B was rescinded in 1978; Policy 5C was rescinded in 1998