

The University Senate of Michigan Technological University

Proposal 1-08

(Voting Units: Academic)

Due Process for Imposition of Severe Sanctions on Tenure-Track/ Tenured Faculty Background

In academic year 2005-2006, a tenured faculty member appealed to the Committee on Academic Tenure, Promotion, and Reappointment (CATPR) regarding a severe sanction imposed on the faculty member by the administration. During deliberation of the case, several discrepancies, omissions, and deficiencies became apparent in University policies and procedures on tenure rights. The CATPR made recommendations to the Senate summarized in a memo of May 10th, 2006 for modifications in the policy and procedures governing tenure and grievance. Because the terms of two members of the CATPR had expired, the Senate, in its meeting 443, created an *ad hoc* committee consisting of four members who had earlier considered the case of severe sanction as members of CATPR. It subsequently appointed a member of the Faculty Review Committee (FRC) to the *ad hoc* Tenured Faculty Committee on Sanctions (TFCS) at the request of the FRC. This proposal deals with the proposed modifications in Section 2.2 of the faculty handbook on policy governing tenure, promotion, and reappointment and describes the procedure for resolution of appeals on severe sanction in Appendix M. It does not deal with sanctions covered by other policies that have their own procedures such as scientific misconduct, discrimination, sexual harassment, or conflict of interest.

In cases of imposition of sanctions involving violation of tenure rights, any punitive measure may have a chilling effect on the exercise of academic freedom. To evaluate whether a punitive measure is justified, policies and procedures are needed to assure the University community that academic freedom is protected and that the punitive measure is in response to failure of a faculty member to fulfill responsibilities accompanying tenure. Suspensions, reduction in pay, removal from the classroom, prohibition from use of university facilities in pursuit of professional activities, are all severe sanctions that are not covered by other policies. The ideas described in this paragraph form the basis of the proposed amendment to the tenure policy and the procedure for imposition of severe sanctions that infringe on tenure rights.

Tenured/Tenure-Track Faculty Handbook

Chapter 2. Tenure, Promotion, and Reappointment

2.2 Academic Tenure and Promotion

Academic Tenure

Statement of Intent

It is the intention of the Board of Control to adhere to these policies and procedures insofar as they are not inconsistent with law. Under its legal obligations as the responsible governing board of the University, the Board reserves the right to suspend these policies or implementing procedures or parts thereof, to request the faculty to review or reconsider them, or to deviate from them if conditions beyond its control, such as abrupt declines in enrollment, serious loss of income, or conditions that result in curtailment or abandonment of programs or activities, make it necessary to do so.

Preamble

↑ Tenure is signified by an appointment for an indefinite continuing period subject to the rules set forth in this tenure policy. Tenure entails explicit responsibilities for the administrative officers and for the academic faculty. The administrative officers assure security of appointment to tenured faculty members; tenured faculty members assure competent service, loyalty to and cooperation with the University. Tenure shall not protect a person from loss of faculty appointment for causes such as incompetence, negligence, serious misuse of academic prerogatives, persistent and willful failure to follow established institutional procedures, gross personal misconduct or conscious participation in conspiracy against the Government. Appeals of sanctions that deprive faculty members of their tenure rights and academic freedom will require deliberation and recommendation by a committee of peers.

↑ Introduction

For the purposes of the Michigan Technological University Policy on Academic Tenure and Promotion, the academic faculty is comprised of those individuals holding one of the ranks of assistant professor, associate professor or professor; and who also hold appointments in the University units having a reporting relationship to the Provost (including the Provost); and also whose appointments in the University are three quarters time or more of full-time provided the applicable letter of appointment specifies the position as "tenure track."

The ranks of professor, associate professor and assistant professor are the regular tenure-accumulating faculty ranks; service in these ranks is counted towards the acquisition of tenure, except as specifically noted herein.

The ranks of lecturer and instructor, as well as all positions denominated as adjunct, visiting, research, or part-time, are non-tenured positions; such non-tenured appointments are normally considered annual appointments and viewed as exceptional, being made in accordance with established procedures prepared by the faculty of the school or college concerned, the special condition of which must be explicitly stated in advance of each appointment. Neither time of service in any of these ranks, nor time of service in any rank at another institution, counts toward the acquisition of tenure at Michigan Technological University.

Unless extended according to the provisions stated in this policy, the tenure probationary period for faculty initially appointed at the rank of assistant professor is six years; for faculty initially appointed at the rank of associate professor it is four years; and for faculty initially appointed at the rank of professor it is two years. Unless notice that tenure will not be granted is given prior May 31, of the final year of the tenure probationary period, tenure at Michigan Technological University is acquired automatically when full time paid regular faculty service at one of these ranks extends beyond the tenure probationary period for that rank. When a faculty member is notified, prior to May 31, of the final year of the tenure probationary period, that tenure will not be granted, the faculty member shall receive a one-year terminal appointment.

For the purposes of Tenure, Promotion, and Reappointment, periods of continuous appointment as a tenure-track faculty member are included in the total period of service for the tenure probationary period. This will generally include unpaid periods such as summer semester and certain leaves of absence within otherwise continuous employment and service. The tenure probationary period for faculty whose initial appointment commences on or after November 1 is considered to have begun service with the start of the subsequent academic year, unless it is specified otherwise in the applicable letter of appointment. A tenure-track faculty member joining the University prior to November 1 is deemed to have begun service at the beginning of the same academic year. In no case will the probationary period start later than the beginning of the subsequent academic year.

Exceptional circumstances may sometimes effect a prolonged disruption of professional responsibilities during the tenure probationary period, requiring extensive sick leave, unpaid leave, or a substantial formal reduction of professional responsibilities. A faculty member encountering such circumstances may make written request to the Provost for a one year extension of the tenure probationary period. This written request should be made during or immediately following the period of exceptional circumstances, and in no case after November 15 of the final year of the tenure probationary period. It should be accompanied by recommendations from the appropriate department chair and the dean of the college, or from the dean of the school. The request should clearly demonstrate that both of the following conditions are satisfied:

1. The exceptional circumstances requiring the extension were such that normal conduct of professional responsibilities could not reasonably be expected.
2. Exclusive of the period of exceptional circumstances, the faculty member had made good progress toward achieving tenure.

Under this policy, an individual's tenure probationary period at Michigan Technological University may be extended by only one year, regardless of the combination of circumstances. Approval for such extensions will be at the sole discretion of the Provost.

These standard tenure policies are designed to allow untenured faculty sufficient time to develop eligibility for tenure, but granting of tenure after shorter periods of service at this University is not precluded.

Tenure Appointments

Assistant Professor

The initial appointment to the rank of assistant professor shall be for a term of two years. Thereafter, term appointments shall be for not more than two years each. If reappointed after six years of service, an assistant professor shall have tenure unless specifically notified by the department chair (or dean where there is no department chair) prior to May 31 at the end of the sixth year that the seventh year is to be the terminal year. Granting of tenure to a faculty member with the rank of Assistant Professor level carries with it promotion to the rank of Associate Professor.

Associate Professor

An assistant professor at Michigan Technological University who is promoted to the rank of associate professor may be granted tenure at the time of promotion. If reappointed after six years of service at this University an associate professor shall have tenure unless specifically notified by the department chair (or dean where there is no department chair) prior to May 31 at the end of the sixth year that the seventh year is to be the terminal year.

The initial appointment to the rank of associate professor for a person who has not served previously at Michigan Technological University shall be for two years. Thereafter, term appointments shall be for not more than two years each. If reappointed after four years of service, persons initially appointed as associate professors shall have tenure unless specifically notified by the department chair (or dean where there is no department chair) prior to May 31 at the end of the fourth year that the fifth year is to be the terminal year.

Professor

An associate professor at Michigan Technological University who is promoted to the rank of professor shall have tenure from the date of that promotion. The initial appointment to the rank of professor of a person who has not served previously at Michigan Technological University shall be for two years. Upon reappointment, persons holding the rank of professor shall have tenure unless specifically notified by the department chair (or dean where there is no department chair) prior to May 31 at the end of the second year that the third year shall be the terminal year. Granting of tenure by the Board of Control at the time of initial appointment is not precluded.

Administrative Officers

Appointments to administrative positions do not carry tenure and administrative officers continue in their posts as determined by the President and the Board of Control. Those administrative officers holding an academic rank are subject to the provisions applicable to that rank only insofar as their nonadministrative faculty status is concerned. Their appointment to academic rank and their faculty tenure are subject to the same rules as those for all other faculty members.

Academic Promotion

Academic promotion refers to an elevation in academic rank, either from Assistant Professor to Associate Professor, or from Associate Professor to Professor. Academic promotion may be conferred only by the Board of Control. Academic promotion may or may not be simultaneous with the granting of tenure.

It is the promotion policy of Michigan Technological University to maintain uniformity in promotion criteria and consistency in their application to all members of the instructional faculty. However, differences in needs and objectives of the various departments/schools may necessitate variations in promotion criteria among the instructional units. Promotion of faculty will be based on individual merit.

The procedures for Academic Promotion are defined in the Tenure, Promotion, and Reappointment Procedures.

Procedures for Tenure, Promotion, and Reappointment Recommendations

The procedures for implementation of this Tenure and Promotion Policy are the Tenure, Promotion, and Reappointment Procedures. No other procedures shall exist to implement this policy. Only the Board of Control has the authority to grant tenure at Michigan Technological University.

↑ Right to Appeal

A faculty member may appeal negative decisions regarding tenure, promotion, and reappointment. The only grounds for such appeals are the failure of a recommending party or parties to follow the Tenure and Promotion Policy, the Faculty Staffing Policy and/or the Tenure, Promotion, and Reappointment Procedures. Procedures for filing an appeal are defined in the Tenure, Promotion, and Reappointment Procedures. Appeals must be filed with the Committee on Academic Tenure, Promotion, and Reappointment within 30 calendar days after notification by the Provost of a negative recommendation to the President. No other route of appeal is permitted.

Severe Sanctions That Infringe on Tenure Rights and Academic Freedom

Infringement on academic freedom or tenure rights such as suspensions, reduction in pay, removal from the classroom, and prohibition from the use of university facilities to pursue professional activities, are all severe sanctions for causes not covered by other policies, namely those that deal with discrimination, sexual harassment, conflict of interest, or scientific misconduct. These sanctions that infringe on tenure rights and academic freedom also differ from minor sanctions that are dealt with in grievance processes. Such minor sanctions might include concerns about salaries, raises, workload, office space, and facilities or space. Academic freedom and tenure rights apply to both teaching and research. A faculty member who has been sanctioned in such a way as to infringe on tenure rights and academic freedom can make a written appeal to the Committee on Academic Tenure, Promotion, and Reappointment regarding what (s)he believes to be an unfair severe sanction. The committee must reply in writing if it considers the sanction a minor sanction that should be addressed through the grievance procedure or if the sanction is a severe sanction that is an infringement on tenure rights and requires additional deliberations.

Dismissal for Cause

Any faculty member may be dismissed at any time for cause, as stated in the Preamble. Either the President or the faculty member concerned has the option of submitting a written request to the Committee on Academic Tenure, Promotion, and Reappointment to conduct a hearing of the case and make suitable recommendations. Appeals for dismissal for cause will follow same procedure as for severe sanctions.

Dismissal for Reasons other than Cause

Dismissal or other removal of tenured faculty for reasons other than cause shall be in accord with Board of Control Policy 13.24.

Committee on Academic Tenure, Promotion, and Reappointment

There shall be a standing joint committee of the academic faculty and administration, known as the Committee on Academic Tenure, Promotion, and Reappointment (CATPR). This Committee functions independent of the University Senate and the administration of the University. Appeals of negative recommendations on tenure, promotion, or reappointment of tenure-track faculty, appeals of negative recommendations on promotion of tenured faculty, appeals on severe sanctions, and appeals for dismissal for cause are under the jurisdiction of the Committee. The composition and responsibilities of the Committee are defined in the Tenure, Promotion, and Reappointment Procedures.

Interpretation

In case of any question in the interpretation of this tenure and promotion policy or in the solution of any tenure problem arising from a situation not specifically covered herein or in the Tenure, Promotion, and Reappointment Procedures, the matter shall be referred to the Committee on Academic Tenure, Promotion, and Reappointment. This Committee, after a thorough study, shall transmit its recommendation to the President of the University through the Provost. In every case, final decision rests with the Board of Control.

Amendments

Amendments to the Tenure and Promotion Policy may be initiated by any member of the faculty, including administrators holding faculty appointments. All proposed amendments shall be submitted in writing to the President of the University Senate. The proposed amendment(s) will be forwarded to the Academic Policy Committee of the University Senate for review and/or revision. The Academic Policy Committee will provide a copy of the proposed amendments to the Committee on Academic Tenure, Promotion, and Reappointment. The Academic Policy Committee will submit its recommendations to the University Senate.

Revisions to the Tenure, Promotion, and Reappointment Policy must be in the form of a Senate proposal. Adoption of any revision shall require approval by the University Senate, approval by a majority of the tenured and tenure-track faculty voting in a university-wide referendum, such vote to be conducted by the University Senate, followed by the approval of the Provost and President. The President will then forward the recommendation to the Board of Control for final approval (Board of Control Policy 16.4).

APPENDIX M: Procedure for Resolution of Imposition of Severe Sanctions

M.1 Informal Resolution

Most faculty and administrator concerns or complaints can be resolved informally through normal collegial communications. Accordingly, faculty members are encouraged to take their complaints to their relevant supervisor in the spirit of faculty problem solving. Administrators are encouraged to discuss performance problems with the faculty member. If a satisfactory resolution cannot be reached through these avenues, the ombudsperson should be brought in as a next step. If no resolution can be reached, the faculty member can appeal to the Committee on Academic Tenure, Promotion, and Reappointment (CATPR) if the matter involves serious sanctions not covered by other policies. Administrators should also refer cases involving serious sanctions not covered by other policies to the CATPR. Cases involving minor sanctions or grievances should be brought before the appropriate grievance committee. Minor sanctions might include concerns about salaries, raises, workload, office space, and facilities or space. Cases involving sexual harassment, scientific misconduct, and conflict of interest have separate policies and procedures which should be followed.

M.2 Initial appeal to CATPR

Infringement on academic freedom or tenure rights such as suspensions, reduction in pay, removal from the classroom, and prohibition from use of university facilities in pursuit of professional activities are all severe sanctions not dealt with by other University policies.

The party making an appeal to the CATPR shall submit a timeline summarizing key events in the case and include copies of relevant documentation. The opposing party should furnish his/her timeline and documentation within 10 working days of notification from the CATPR of the pending case.

The following procedures should apply.

- (1) The CATPR will hold an initial inquiry with the parties in order to:
 - (i) determine the appropriate jurisdiction of the case,
 - (ii) identify relevant issues,
 - (iii) stipulate facts,
 - (iv) provide for the exchange of documentary or other information, and
 - (v) achieve such other appropriate initial inquiry objectives as will make the hearing fair, effective, and expeditious.

All parties will initially present their evidence to the CATPR in the initial inquiry without the presence of contesting parties.

M.3 The CATPR Decision

- (1) After the initial inquiry, the CATPR should reach one of the following three conclusions.
 - (i) the allegations have sufficient substance to warrant further investigation;
 - (ii) the allegations are without merit, or
 - (iii) the case does not fall within the jurisdiction of the CATPR.

If the faculty member and the Provost reach an agreement within 10 working days of the CATPR decision, then the matter is considered resolved.

If the CATPR decides that the allegations are without merit or it is not within the jurisdiction of CATPR then any further pursuit of the complaint will be conducted through the grievance procedure.

- (2) Necessary support (e.g., recording meetings, gathering requested information, arranging for witnesses, and keeping records) will be arranged by the Provost's Office.
- (3) The faculty member may waive a hearing or may respond to the charges in writing at any time before the hearing. If the faculty member waives a hearing, the CATPR will evaluate all available evidence and rest its recommendation upon the evidence in the record.
- (4) The faculty member will be permitted to have an academic advisor of the faculty member's choice.
- (5) At the request of either party or the CATPR, a representative of Human Resources, Michigan Tech AAUP, or other appropriate University committee will be permitted to attend the hearing as an observer.
- (6) Both parties shall be provided the opportunity to be present at the hearing.
- (7) Hearing sessions with expert witnesses may be conducted either in person or through electronic means such as telephone conference calls. Funding for essential off-campus expert witnesses called by the CATPR shall be provided by the Provost. All evidence that is produced shall be reviewed and secured. The faculty member shall be informed of all evidence against him/her and be provided the right to present evidence and testimony on his/her behalf.
- (8) No legal counsel will be present during this investigation.

- (9) The administration shall make legal counsel available to the CATPR throughout the proceedings.
- (10) An audio and written record of the hearing or hearings will be taken and a typewritten copy will be made available to the faculty member and the administration at their request.
- (11) The burden of proof that adequate cause for severe sanction exists rests with the administration and will be satisfied only by clear and convincing evidence in the record considered as a whole.
- (12) The CATPR will grant adjournments to enable either party to investigate evidence when a valid claim of surprise is made.
- (13) The faculty member and the administrator will be afforded an opportunity to obtain necessary witnesses and evidence. Both parties will cooperate with the CATPR in securing witnesses and making available relevant evidence.
- (14) At the hearing, both parties will have the right to confront and cross-examine all witnesses. Where the witnesses cannot or will not appear, but the CATPR determines the interests of fairness require admission of their statements, the committee will identify the witnesses, disclose their statements, and if possible, provide for interrogatories.
- (15) If the charge is incompetence, the testimony will include that of qualified faculty members from this or other institutions of higher education as approved by the CATPR.
- (16) The CATPR will not be bound by strict rules of legal evidence, and may admit any evidence which is of value in determining the issues involved. Every possible effort will be made to obtain reliable evidence. The CATPR may stop this process of obtaining evidence if it determines it has enough information to make a decision.
- (17) The findings of fact and the decision will be based solely on the hearing record.
- (18) Public statements and publicity about the case by the faculty member, administrative officers, or the CATPR. members will be avoided so far as possible until the proceedings have been complete, including consideration by the Board of Control. The Provost and the faculty member will be notified of the CATPR recommendation in writing and will be given a copy of the record of the hearing.
- (19) If the Provost rejects the CATPR. recommendation, the Provost will state the reasons for doing so in writing to the CATPR and to the faculty member, and provide an opportunity for response in a specified period of not fewer than 15 working days after such notice before transmitting the case, including the CATPR response, to the President and the Board of Control.

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