

## MEMORANDUM: ATTACHMENT 2

To: Faculty Senate  
From: Jonathan Carlson  
Date: November 3, 1999

Re: Senate Agenda Attachment 2: Proposed resolution regarding promotion and tenure standards to be applied when standards were changed after the faculty member's initial appointment or promotion to current rank.

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This memorandum provides some background information about the proposed policy on promotion and tenure standards, as well as a suggestion of my own concerning a possible amendment. The Council's proposal appears on p. 4 of this memorandum.

### *I. History and Description of the Issue*

Sometimes tenure or promotion standards will be changed by a department between the time of a faculty member's initial appointment or promotion and the time at which the tenure or promotion decision is made. The Operations Manual is inconsistent in its identification of which tenure and promotion standards should apply to a faculty member when such a change has occurred.

The basic provisions on tenure and promotion state that a faculty member will be evaluated under the standards "that were in effect at the time of the faculty member's *most recent* appointment, promotion, or reappointment." (See Operations Manual III-10.1a(4)(c) & 10.2.) Because non-tenured faculty are generally 'reappointed' in the middle of their probationary period, this means that the standards applied to their tenure and promotion might be different than those that were in place when they were first hired if there was a change in standards following the initial appointment.

The Faculty Dispute Procedures state a different rule to be applied by a panel that is evaluating the propriety of a denial of tenure or promotion. A dispute panel is directed to apply the tenure and promotion standards "that were in effect at the time of the faculty member's appointment, unless other standards by which the faculty member would be judged were stated in a written communication made to the faculty member by the departmental executive officer or collegiate dean at that time." The phrase "at the time of the faculty member's appointment" could be interpreted to refer to the 'initial appointment,' and has been so interpreted by panels in the past. Thus, the standards at the time of the initial appointment appear to be the applicable standards, even if they have since changed. This is inconsistent with the earlier-quoted Operations Manual provisions.

The Faculty Dispute Procedures do provide for exceptions to the rule that the initial

standards apply. In particular, the Dispute Procedures provide that "later-formulated" standards will be used instead of the initial standards if the later-formulated standards were established more than 7 years before the tenure/promotion decision. The Dispute Procedures also allow a panel to consider later-formulated standards if such consideration does not disadvantage the faculty member. In other words, the Dispute Procedures appear to call for application of the standards in effect at the time of initial appointment, unless those standards were subsequently superceded and the faculty member has had 7 years to adjust to the new standards or unless later-formulated standards benefit the faculty member in question.

This discrepancy between the tenure and promotion portions of the Operations Manual and the Faculty Dispute Procedures was noticed by a judicial commission panel hearing an appeal from a tenure denial. In response to that panel's request, the Chair of the Faculty Judicial Commission asked the President of the University to consider how the Operations Manual might be made consistent on this issue. The Faculty Council and Senate were then asked by the University administration to examine the matter and to make a recommendation.

## *II. The Council's Proposal*

The Council made a proposal on this matter to the Senate at its September 21 meeting. The Senate rejected that proposal, because it did not adequately deal with situations in which more than one set of tenure/promotion standards might conceivably apply to a particular tenure/promotion decision.

The Council now comes forward with a new proposal, which is attached. The new proposal addresses the problem of changes in tenure and promotion standards by giving faculty members the option to be evaluated under any tenure and promotion standards which were applicable to the faculty member during his or her time at the University. However, the faculty member is NOT entitled to choose standards which were superceded more years ago than the normal time in rank. In other words, if the faculty member has had at least 6 years to adjust to new tenure/promotion standards (assistant professors) or 7 years to adjust to new promotion standards (associate professors), the faculty member is not entitled to be evaluated under the older, superceded standards. If there are two sets of standards which could be applied under this rule, the choice of applicable standards is left to the faculty member. (See attached proposal.)

## *III. Carlson's Suggestion for a Change to the Council's Proposal*

One issue that troubled the Faculty Council was what to do about situations in which the faculty member and the appropriate academic officers have made special arrangements about the applicable tenure standards at the time of the faculty member's appointment. This issue is addressed in the Faculty Dispute Procedures by a provision which provides, in effect, that if "other standards by which the faculty member would be judged were stated in a written communication made to the faculty member by the departmental executive officer or collegiate dean" at the time of initial appointment or promotion, then those standards "shall govern the

case.” For example, it sometimes happens that an offer letter will contain special tenure and promotion standards to govern a faculty member who is appointed to more than one department (e.g. by specifying that the faculty member must meet the standards of both departments). In such cases, it seems that the standards stated in the offer letter should govern. The Council did not include a provision covering this situation in the proposed policy because it found it difficult to include such a provision without creating additional difficulties, and because it felt that a special written agreement would govern in any case, regardless of what the Operations Manual said.

I (Carlson) agreed with that judgment at the time, but think in retrospect (and after speaking with others) that we (the Council) may have been wrong.

If, in fact, the standards in a “written communication” from an appropriate University official are sometimes the governing standards in tenure/promotion cases (as opposed to the otherwise applicable departmental standards), then the Operations Manual ought to say so. The reason for “saying so” in the Operations Manual is so that decisionmakers can know what they are supposed to do when they evaluate the records of tenure/promotion candidates. Judicial Commission panels must, of course, be told what standards to apply when hearing appeals from tenure/promotion denials. By the same token, however, faculty peer groups ought to know what standards they are expected to apply when they make their peer group recommendation, which is generally the most significant step in the tenure/promotion process. If the Operations Manual fails to mention that the standards in offer letters may govern, then faculty may be misled into applying written departmental standards when their obligation is actually to apply the standards stated in the offer letter. Unless the Operations Manual addresses this, a peer group might say: “we don’t care what the letter says, the Operations Manual tells us to apply our departmental standards.”

Thus, I believe that the Senate should consider the possibility of adding the following sentence to the Council’s recommended policy statement:

*“If other standards by which the faculty member would be judged were stated in a written communication made to the faculty member by the departmental executive officer, collegiate dean or provost at the time of the initial appointment or most recent promotion, then those standards shall govern the case.”*

I would recommend that this sentence be added in the fifth line of the proposed recommendation, after the sentence that ends with the word “elects,” and before the sentence that starts with the word “however.”

Council Recommendation Regarding Standards To Be Applied When Standards Have Changed Since Faculty Member's Initial Appointment or Promotion to Current Rank

*Resolved that: Operations Manual Sections III-10.1a(4)(b); III-10.1(a)(4)(c); III-10.2; III-29.5f(2)(b) should be amended to conform to the following policy:*

1           “A candidate for tenure and/or promotion may elect to be evaluated under the relevant,  
2 clearly defined standards of the faculty member's academic unit that were in effect at the time of  
3 the faculty member's initial appointment or promotion to the rank currently held, any such  
4 standards in effect since that time, or any such standards currently in effect, whichever the  
5 faculty member elects. However, no standards may be applied if they were superceded more  
6 years ago than the time specified as normal time at rank (adjusted to account for any extension,  
7 family leave or illness leave granted to the faculty member). For assistant professors, the normal  
8 time in rank is six years and for associate professors, seven years (see Operations Manual, III-  
9 10.5). The faculty member shall make an election under this section by the end of the academic  
10 year prior to the academic year in which the faculty member is considered for promotion.”