

Post-Tenure Review: An AAUP Response

The following report, approved in June 1999 by the Association's Committee A on Academic Freedom and Tenure, was adopted that month by the Council and endorsed by the Eighty-fifth Annual Meeting.

Introduction

The Association's existing policy on post-tenure review, approved by Committee A and adopted by the Council in November 1983, is as follows:

The Association believes that periodic formal institutional evaluation of each postprobationary faculty member would bring scant benefit, would incur unacceptable costs, not only in money and time but also in dampening of creativity and of collegial relationships, and would threaten academic freedom.

The Association emphasizes that no procedure for evaluation of faculty should be used to weaken or undermine the principles of academic freedom and tenure. The Association cautions particularly against allowing any general system of evaluation to be used as grounds for dismissal or other disciplinary sanctions. The imposition of such sanctions is governed by other established procedures, enunciated in the 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* that provide the necessary safeguards of academic due process.

By the mid-1990s, new forms of post-tenure review were appearing: a significant number of legislatures, governing boards, and university administrators were making such reviews mandatory; others were in various stages of consideration. For this reason it has become necessary not only to *reaffirm* the principles of the 1983 statement, but also to provide standards that can be used to assess the review process when it is being considered or implemented. This report accordingly offers practical recommendations for faculty at institutions where post-tenure review is being considered or has been put into effect.

The principles guiding this document are these: Post-tenure review ought to be aimed not at accountability, but at faculty development. Post-tenure review must be developed and carried out by faculty. Post-tenure review must not be a reevaluation of tenure, nor may it be used to shift the burden of proof from an institution's administration (to show cause for dismissal) to the individual faculty member (to show cause why he or she should be retained). Post-tenure review must be conducted according to standards that protect academic freedom and the quality of education.

Definition of Terms

Because post-tenure review is used to mean many things, it is important to define our understanding of the term. Lurking within the phrase are often two misconceptions: that tenured faculty are not already recurrently subject to a variety of forms of evaluation of their work, and that the presumption of merit that attaches to tenure should be periodically cast aside so that the faculty member must bear the burden of justifying retention. Neither assumption is true. Although it would perhaps be best to utilize a term other than post-tenure review, most alternative expressions (such as periodic evaluation of tenured faculty) do not clearly enough dispel the misconceptions, and the more familiar term has become so widely adopted in academic parlance that it would only create additional confusion were it not used here.

Post-tenure review is a system of periodic evaluation that goes beyond the many traditional forms of continuous evaluation utilized in most colleges and universities. These traditional forms of evaluation vary in their formality and comprehensiveness. They include annual reports for purposes of determining salary and promotion, reviews for the awarding of grants

and sabbaticals, and reviews for appointment to school and university committees, graduate faculties, interdisciplinary programs, and professorial chairs and learned societies. More narrowly focused reviews include course-by-course student teaching evaluations, peer review and wider public scrutiny of scholarly presentations and publications, and both administrative and collegial observation of service activities. Faculty members are also evaluated in the course of the program reviews required for regional or specialized accreditation and certification of undergraduate and graduate programs.

What post-tenure review typically adds to these long-standing practices is a formalized additional layer of review that, if it is not simply redundant, may differ in a number of respects: the frequency and comprehensiveness of the review, the degree of involvement by faculty peers, the use of self-evaluations, the articulation of performance objectives, the extent of constructive "feedback," the application of innovative standards and principles, and the magnitude of potential sanctions. At its most draconian, post-tenure review aims to reopen the question of tenure; at its most benign, it formalizes and systematizes long-standing practices. In this report, we use the term post-tenure review to refer to the variety of practices that superimpose a more comprehensive and systematic structure on existing processes of evaluation of tenured faculty.

Post-Tenure Review and Academic Freedom: A General Caution

Post-tenure review should not be undertaken for the purpose of dismissal. Other formal disciplinary procedures exist for that purpose. If they do not, they should be developed separately, following generally accepted procedures.¹

Even a carefully designed system of post-tenure review may go awry in a number of ways of serious concern to the Association. Many, though not all, proponents of post-tenure review purportedly seek to supplement preexisting ways of reviewing the performance of tenured faculty with a system of managerial accountability that could ensure faculty productivity, redirect faculty priorities, and facilitate dismissal of faculty members whose performance is deemed unsatisfactory. Despite assurances by proponents that they do not so intend, the substitution of managerial accountability for professional responsibility characteristic of this more intrusive form of post-tenure review alters academic practices in ways that inherently diminish academic freedom.

The objectionable change is not that tenured faculty would be expected to undergo periodic evaluation. As noted here, they generally do—and they should. Nor is there any claim that tenure must be regarded as an indefinite entitlement. Tenured faculty are already subject to dismissal for incompetence, malfeasance, or failure to perform their duties, as well as on grounds of bona fide financial exigency or program termination. Nor is the issue, as many faculty imagine, simply who controls the evaluation. Faculty members as well as administrators can and do err.

Rather, the most objectionable feature of many systems of post-tenure review is that they ease the prevailing standards for dismissal and diminish the efficacy of those procedures that ensure that sanctions are not imposed for reasons violative of academic freedom. Some proponents of post-tenure review, motivated by a desire to facilitate the dismissal of tenured faculty, seek to substitute less protective procedures and criteria at the time of post-tenure review. But demanding procedures and standards are precisely what prevent dismissal for reasons violative of academic freedom.

If the standard of dismissal is shifted from "incompetence" to "unsatisfactory performance," as in some current proposals, then tenured faculty must recurrently "satisfy" administrative officers rather than the basic standards of their profession. In addition, some forms of post-tenure review shift the burden of proof in a dismissal hearing from the institution to the tenured faculty member by allowing the institution to make its case simply by proffering the more casually developed evaluation reports from earlier years. Effectively the same concerns arise when the stipulated channel for challenging substantively or procedurally unfair judgments in the course of post-tenure review is through a grievance procedure in which the burden of proving improper action rests with the faculty member.

Academic freedom is not adequately protected in any milieu in which most faculty members bear the burden of demonstrating a claim that their dismissal is for reasons violative of their academic freedom. The heightened protection of the tenured faculty is not a privilege, but a responsibility earned by the demonstration of professional competence in an extended probationary period, leading to a tenured position with its "rebuttable presumption of professional excellence."² It chills academic freedom when faculty members are subjected to revolving contracts or recurrent challenge after they have demonstrated their professional competence.

When post-tenure review substitutes review procedures for adversarial hearing procedures, or diverse reappointment standards for dismissal standards, it creates conditions in which a host of plausible grounds for dismissal may cloak a violation of academic freedom. Innovative research may be dismissed as unproven, demanding teaching as discouraging, and independence of mind as a lack of collegiality. The lengthy demonstration of competence that precedes the award of tenure is required precisely so that faculty are not recurrently at risk and are afforded the professional autonomy and integrity essential to academic quality.

We recognize that some tenured faculty members may, nonetheless, fail to fulfill their professional obligations because of incompetence, malfeasance, or simple nonperformance of their duties. Where such a problem appears to exist, "targeted" review and evaluation should certainly be considered, in order to provide the developmental guidance and support that can assist the faculty member to overcome those difficulties. Should it be concluded, however, that such developmental assistance is (or is likely to be) unavailing, the remedy lies not in a comprehensive review of the entire faculty, nor in sacrificing the procedural protections of the tenured faculty member, but in an orderly application of long-standing procedures such as those in the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* (Regulations 5-7) for the imposition of sanctions up to and including dismissal.

In other cases, faculty members may voluntarily agree to redirect their work or to accept early-retirement incentives as a consequence, for example, of a decision to redirect departmental priorities. But the use of sanctions pursuant to individual reviews to induce the resignation of programmatically less "desirable" faculty members or to redirect otherwise competent faculty endeavors may well have deleterious consequences for academic freedom. The prohibition of the use of major sanctions to redirect or reinvigorate faculty performance without a formal finding of inadequacy does not mean that administrators and colleagues have no less demanding recourse to bring about improvement. Although academic acculturation will ordinarily have provided a sufficient incentive, the monetary rewards or penalties consequent on salary, promotion, and grant reviews can and do encourage accommodation to institutional standards and professional values.

Even on campuses where there is not thought to be a problem with so-called "deadwood" or incompetent faculty members, many proponents of post-tenure review, as well as those who adopt it in the hope of forestalling more comprehensive and blatant attacks on tenure, sometimes envision such review as a means for achieving larger management objectives such as "downsizing," "restructuring," or "reengineering." Individual faculty reviews should, however, focus on the quality of the faculty member's work and not on such larger considerations as programmatic direction. Downsizing may be properly accomplished through long-term strategic planning and, where academically appropriate, formal program discontinuance (with tenured faculty subject to termination of appointment only if reasonable efforts to retrain and reassign them to other suitable positions are unsuccessful).

It might be thought that the untoward impact on academic freedom and tenure may thus be eliminated by implementing a system of post-tenure review that has no explicit provision for disciplinary sanctions. Even here, however, where the reviews are solely for developmental ends, there is a natural expectation that, if evidence of deficiency is found, sanctions of varying degrees of subtlety and severity will indeed follow, absent prompt improvement. Hence, even the most benign review may carry a threat, require protections of academic due process, and inappropriately constrain faculty performance. This point warrants further elaboration.

A central dimension of academic freedom and tenure is the exercise of professional judgment in such matters as the selection of research projects, teaching methods and course

curricula, and evaluations of student performance. Those who have followed recent attacks on faculty workloads know that the issue rapidly shifted from the allegation that faculty did not work enough (which, it turned out, they plainly did) to the allegation that faculty did not do the right sort of work. Some proponents of post-tenure review will thus not be content with the identification of the few "slackers" already known to their colleagues by other means, nor even with the imposition of a requirement of faculty cooperation and institutional loyalty. They also want faculty members to give back some portion of their ability to define their own work and standards of performance. For example, increased emphasis on students' evaluations of teaching may lead to the avoidance of curricular experimentation or discourage the use of more demanding course materials and more rigorous standards. Periodic review that is intended not only to ensure a level of faculty performance (defined by others than faculty) but also to shape that performance accordingly, and regardless of tenure, is a most serious threat to academic freedom.

Another consequence of the misapplication of the managerial model to higher education is the ignoring of another important dimension of academic freedom and tenure: time, the time required to develop and complete serious professional undertakings. Shortening the time horizon of faculty, so as to accord with periodic reviews, will increase productivity only artificially, if at all. More frequent and formal reviews may lead faculty members to pick safe and quick, but less potentially valuable, research projects to minimize the risk of failure or delayed achievement.

By way of summary, then, of the Association's principal conclusions, well-governed universities already provide a variety of forms of periodic evaluation of tenured faculty that encourage both responsible performance and academic integrity. Those forms of post-tenure review that diminish the protections of tenure also unambiguously diminish academic freedom, not because they reduce job security but because they weaken essential procedural safeguards. The only acceptable route to the dismissal of incompetent faculty is through carefully crafted and meticulously implemented procedures that place the burden of proof on the institution and that ensure due process. Moreover, even those forms of post-tenure review that do not threaten tenure may diminish academic freedom when they establish a climate that discourages controversy or risk-taking, induces self-censorship, and in general interferes with the conditions that make innovative teaching and scholarship possible. Such a climate, although frequently a product of intervention by trustees or legislators, may instead regrettably flow on occasion from unduly intrusive monitoring by one's faculty peers.

Comprehensive post-tenure review is thus a costly and risky innovation, which may fail either to satisfy ill-informed critics on the one hand or to protect professional integrity on the other. If managerially imposed, it may be a poor substitute for the complex procedures colleges and universities have crafted over the years to balance professional responsibility and autonomy. On the other hand, if designed and implemented by the faculty in a form that properly safeguards academic freedom and tenure and the principle of peer review, and if funded at a meaningful level, it may offer a way of evaluating tenured faculty which supports professional development as well as professional responsibility. To that end, we offer the following guidelines and standards.

Guidelines for Deciding Whether to Establish a Formal System of Post-Tenure Review

1. It is the obligation of the administration and governing board to observe the principle, enunciated in the Association's *Statement on Government of Colleges and Universities*, that the faculty exercises primary responsibility for faculty status and thus the faculty is the appropriate body to take a leadership role in designing additional procedures for the evaluation of faculty peers. Faculty representatives involved in the development of those procedures should be selected by the faculty according to procedures determined by the faculty.³

2. Any discussion of the evaluation of tenured faculty should take into account procedures that are already in place for that purpose: e.g., annual merit reviews of teaching, scholarly productivity, and service; comprehensive consideration at the time of promotion to professor and designation to professorial chairs; and programmatic and accreditation reviews that include analyses of the qualifications and performance of faculty members in that program. The discussion should elicit convincing data on what it is that existing procedures fail to address. The questions for faculty bodies include:
 - a. What are the problems that are calling for this particular solution? Are they of a degree that requires more elaborate, or more focused, procedures for enhancing faculty performance?
 - b. If the answer to the latter question is yes, would it be possible to devise a system of post-tenure review on the basis of existing procedures—for example, a five-year review that is “piggybacked” onto the annual reviews? It should be noted that this system may serve a constructive purpose for those departments that do not do an adequate job in their annual review.
 - c. Is the projected post-tenure review confined to developmental purposes, or is it being inappropriately projected as a new and easier way of levying major sanctions up to and including dismissal?
3. If the institution does not already have in place standards for dismissal-for-cause proceedings, it should adopt such procedural standards as are set forth in existing Association policy statements rather than move to post-tenure review as an alternative dismissal route.⁴
4. Just as the Association has never insisted on a single model of faculty governance but only on the underlying premises that should guide a college or university in respect to that governance, so here any particular form of post-tenure review will depend on the characteristics of the institution: its size, its mission, and the needs and preferences of the faculty, as well as on the resources that the institution can bring to bear in the area of faculty development. Again, the questions to be asked include, but are not necessarily limited to:
 - a. whether the review should be “blanket” for all tenured faculty or focused on problematic cases;
 - b. whether a review can be activated at the request of an individual faculty member for purposes that he or she would regard as constructive;
 - c. whether a cost-benefit analysis shows that institutional resources can adequately support a meaningful and constructive system for post-tenure review without damage to other aspects of the academic program and to the recognition of faculty merit, since the constructiveness of such a system depends not only on the application of these standards but also on the ability to support and sustain faculty development.
5. Any new system of post-tenure review should initially be set up on a trial basis and, if continued, should itself be periodically evaluated with respect to its effectiveness in supporting faculty development and redressing problems of faculty performance, the time and cost of the effort required, and the degree to which in practice it has been effectively cordoned off—as it must be if it is to be constructive—from disciplinary procedures and sanctions.

Minimum Standards for Good Practice If a Formal System of Post-Tenure Review Is Established

1. Post-tenure review must ensure the protection of academic freedom as defined in the 1940 *Statement of Principles*. The application of its procedures, therefore, should not intrude on an individual faculty member’s proper sphere of professional self-direction, nor should it be used as a subterfuge for effecting programmatic change. Such a review must not become the occasion for a wide-ranging “fishing expedition” in an attempt to dredge up negative evidence.

2. Post-tenure review must not be a reevaluation or revalidation of tenured status as defined in the 1940 *Statement*. In no case should post-tenure review be used to shift the burden of proof from the institution's administration (to show cause why a tenured faculty member should be dismissed) to the individual faculty member (to show cause why he or she should be retained).
3. The written standards and criteria by which faculty members are evaluated in post-tenure review should be developed and periodically reviewed by the faculty. The faculty should also conduct the actual review process. The basic standard for appraisal should be whether the faculty member under review discharges conscientiously and with professional competence the duties appropriately associated with his or her position, not whether the faculty member meets the current standards for the award of tenure as those might have changed since the initial granting of tenure.
4. Post-tenure review should be developmental and supported by institutional resources for professional development or a change of professional direction. In the event that an institution decides to invest the time and resources required for comprehensive or "blanket" review, it should also offer tangible recognition to those faculty members who have demonstrated high or improved performance.
5. Post-tenure review should be flexible enough to acknowledge different expectations in different disciplines and changing expectations at different stages of faculty careers.
6. Except when faculty appeals procedures direct that files be available to aggrieved faculty members, the outcome of evaluations should be confidential, that is, confined to the appropriate college or university persons or bodies and the faculty member being evaluated, released otherwise only at the discretion, or with the consent of, the faculty member.
7. If the system of post-tenure review is supplemented, or supplanted, by the option of a formal development plan, that plan cannot be imposed on the faculty member unilaterally, but must be a product of mutual negotiation. It should respect academic freedom and professional self-direction, and it should be flexible enough to allow for subsequent alteration or even its own abandonment. The standard here should be that of good faith on both sides—a commitment to improvement by the faculty member and to the adequate support of that improvement by the institution—rather than the literal fulfillment of a set of nonnegotiable demands or rigid expectations, quantitative or otherwise.
8. A faculty member should have the right to comment in response to evaluations, and to challenge the findings and correct the record by appeal to an elected faculty grievance committee.⁵ He or she should have the same rights of comment and appeal concerning the manner in which any individualized development plan is formulated, the plan's content, and any resulting evaluation.
9. In the event that recurring evaluations reveal continuing and persistent problems with a faculty member's performance that do not lend themselves to improvement after several efforts, and that call into question his or her ability to function in that position, then other possibilities, such as a mutually agreeable reassignment to other duties or separation, should be explored. If these are not practicable, or if no other solution acceptable to the parties can be found, then the administration should invoke peer consideration regarding any contemplated sanctions.⁶
10. The standard for dismissal or other severe sanction remains that of adequate cause, and the mere fact of successive negative reviews does not in any way diminish the obligation of the institution to show such cause in a separate forum before an appropriately constituted hearing body of peers convened for that purpose. Evaluation records may be admissible but rebuttable as to accuracy. Even if they are accurate, the administration is still required to bear the burden of proof and demonstrate through an adversarial proceeding not only that the negative evaluations rest on fact, but also that the facts rise to

the level of adequate cause for dismissal or other severe sanction. The faculty member must be afforded the full procedural safeguards set forth in the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* and the *Recommended Institutional Regulations on Academic Freedom and Tenure*, which include, among other safeguards, the opportunity to confront and cross-examine adverse witnesses.

Notes

1. These procedures are set forth in the 1940 "Statement of Principles on Academic Freedom and Tenure," the 1958 "Statement on Procedural Standards in Faculty Dismissal Proceedings," and the Association's "Recommended Institutional Regulations on Academic Freedom and Tenure." These documents appear in AAUP, *Policy Documents and Reports*, 10th ed. (Washington, D.C., 2006), 3-11, 12-15, and 22-31.

2. See William Van Alstyne, "Tenure: A Summary, Explanation, and 'Defense,'" *AAUP Bulletin* 57 (1971): 328-33, and Matthew W. Finkin, "The Assault on Faculty Independence," *Academe: Bulletin of the AAUP* 83 (July-August 1997): 16-21.

3. Here, and in other guidelines and standards set forth below, the procedures, in addition to conforming with established AAUP-supported standards, should also conform to the applicable provisions of any collective bargaining agreement.

4. For the applicable policy statements, see note 1.

5. See Regulation 15, "Recommended Institutional Regulations," *Policy Documents and Reports*, 29-30.

6. See Regulations 5-7, "Recommended Institutional Regulations," *ibid.*, 26-28.