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PM-35 CAMPUS IMPLEMENTATION PROCEDURE

I. INTRODUCTION

The present Policy Statement 109 is a companion to and supplements Policy Statement 36-T entitled ***Tenure-Track and Tenured Faculty: Appointments, Reappointments, Promotions, Tenure, Annual Reviews, and Enhancement of Faculty Performance*** and applies only to tenured faculty. See Glossary of PS 36-T for definitions of terms used but not defined herein.

Section II of PS-109 establishes the procedure for when a chair has repeatedly found a faculty member's job performance to be unsatisfactory. The LSU System's Permanent Memorandum 35, entitled ***Review of Faculty Ranks***, authorizes each campus of the System to establish such a procedure.

II. A FINDING OF UNSATISFACTORY JOB PERFORMANCE; PM-35

II.A. Preamble

PM-35 requires each campus of the LSU System to establish a procedure for when a chair has found a tenured faculty member's job performance to be unsatisfactory in two consecutive reviews or in three reviews in a five-year period. The present Section II establishes that procedure for LSU. By means of a peer committee, it provides a check on the chair's finding, assistance to the faculty member, and a means to avert the consideration of dismissal for cause. This procedure must precede any consideration of dismissal for cause based on unsatisfactory performance evaluations issued after July 16, 2003, if the grounds consist solely of unsatisfactory job performance. Unsatisfactory performance or non-performance by a faculty member occurring and/or arising in whole or in part, prior to July 17, 2003, will be addressed in accordance with PM-35 and procedures provided for in this policy will be used to the extent appropriate based upon the point during the process the policy was implemented. If, nevertheless, the consideration of dismissal for cause is initiated later, all protections of the faculty member's rights as stated in Policy Statement 104 entitled ***Dismissal for Cause*** will remain in full force.

Nothing about PS-109 will be construed to diminish the right of a faculty member or group of faculty members to challenge the legality of any University policy or action, or to diminish any other legal rights of faculty.

II.B. General Provisions

As used herein, the term **unsatisfactory** is defined and restricted as follows: For a finding of unsatisfactory job performance to be made, the deficiencies must be serious. That is, they must be so substantial that if they were to persist after the faculty member receives adequate notice, and after a reasonable time is allowed for improvement, then grounds would exist for the consideration of dismissal for cause under the provisions of PS-104. The chair, if he or she finds that a faculty member's job performance is unsatisfactory, will explicitly state in the chair's evaluation that it is "unsatisfactory as defined in Section II of PS-109."

A finding of unsatisfactory job performance is called a **new finding** unless it is a **repeated finding** as defined in Section II.D. below.

II.C. A New Finding

In conjunction with the annual review defined in PS 36-T, Section XI, when the chair concludes that a faculty member's job performance has been unsatisfactory, the chair will offer, with a recommended two weeks' notice, to hold a conference with the faculty member to discuss the finding and all related issues. The faculty member is free to waive the conference. If it is held, the chair will attach a record of the conference to the chair's evaluation. The final steps of the annual review process will then be completed, and the following additional requirements will apply:

1. The dean, whenever he or she receives a file that contains a finding of unsatisfactory job performance, will write a recommendation, advisory to the provost, in support of or in disagreement with the finding.
2. HRM, whenever it receives a file that contains a finding of unsatisfactory job performance, will circulate the file to the provost and to the Advisory Board as defined in Section II.F. below.
3. Whenever the provost receives a file that contains a finding of unsatisfactory job performance, he or she may, after consulting the dean and the Advisory Board, overrule the finding. Henceforth, in that case, the finding will be of no effect and will not count as a new finding nor as a repeated finding of unsatisfactory job performance under this policy. However, the underlying conduct may be considered if relevant. The provost's statement will be sent to the Advisory Board, the dean, the chair, and the faculty member, and a copy will become part of the file.

II.D. A Repeated Finding

A **repeated finding** is said to occur when the chair, in conjunction with the PS 36-T annual review, makes a finding of unsatisfactory job performance with regard to a faculty member for the second consecutive year or for the third time in five years. When such a finding occurs, the chair will offer, with a recommended two weeks' notice, to

hold a conference with the faculty member to discuss the finding and all related issues, and to explain the pertinent provisions of the present Section II. The faculty member is free to waive the conference. If it is held, the chair will attach a record of the conference to the chair's evaluation. A Peer Review Committee, herein called the Committee, will be selected as provided in II.E. The Committee has two functions described in detail below. The Committee evaluates the faculty member's performance. If a repeated finding is upheld by the provost, this same committee is expanded and works with the faculty member during the period of time allowed for improvement.

1. Acting independently of the chair, the Committee will review the file and the chair's evaluation; offer, with a recommended two weeks' notice, to hold a conference with the faculty member; gather additional information at its discretion; and write an evaluation of the faculty member's job performance, including specific suggestions and advice for any needed improvement, to become part of the file.
2. If the Committee's report does not support the chair's finding of unsatisfactory job performance, then the chair is free either to withdraw the finding or revise the chair's evaluation accordingly, or to persist therein. In either case, the annual review process will be completed as provided in Section XI. in PS-36-T.
3. At this point, items 1, 2, and 3 related to a new finding apply.
4. If the provost overrules the finding, then the Committee is dismissed. Items 5 through 10 below will not apply.
5. The provost, if in agreement with the finding, may elect to appoint one or two additional members to the Committee, increasing the number to four or five. They must be faculty at or above the rank of the faculty member. The provost must afford the faculty member the right to challenge, for cause, each appointment of a new member.
6. The faculty member will prepare a plan for improvement, hereafter referred to as the **plan**, including a description of resources that he or she may require to achieve the plan's objectives. If requested by the faculty member, the Committee will advise and assist him or her in the preparation of the plan, and will confer with him or her on all matters at issue, seeking mutual agreement. In its interactions with the faculty member, the Committee will observe the principles of academic freedom and professional self-direction. It is suggested that the faculty member submit the plan to the Committee within six weeks after being notified by the provost that the Committee has been appointed, and that the Committee and the faculty member complete any further discussions that may be desired within a further three weeks.
7. The Committee will write a report on its interactions with the faculty member. The report will comment on the plan and make recommendations about the requested resources. The report will include specific advice as to what the faculty member must do to restore satisfactory job performance. The Committee will then send the plan and the

report to the chair, the faculty member, and through the dean to HRM, who will transmit them to the provost and the Advisory Board. A copy will become part of the file.

8. The provost, after consulting with the Advisory Board, will prepare a memorandum to the faculty member. The provost will define the period of time allowed for improvement, herein called the **term**. The term will begin on the date of the memorandum and run for two years; except in the case of exceptional circumstances, Section III may apply, allowing the provost certain discretion in setting the term. The memorandum will also state the University's commitment to provide adequate resources to support the plan. The provost will transmit the memorandum to the faculty member, with copies to the Committee, the dean, and the chair. A copy will become part of the file.

9. The Committee will continue to advise and assist the faculty member and monitor his or her progress throughout the term. Each year, the Committee will write a report to be placed in the file during the annual review process. The chair will also make an assessment of progress as part of the chair's evaluation.

10. If the Committee and the chair both conclude that the faculty member has failed to make a good faith effort as called for by this procedure or, if at the end of the term, they both conclude that the faculty member's progress is inadequate, then the provost will ask the chancellor to initiate consideration of dismissal for cause. If the provost concludes adequate progress has been made, the provost will notify all parties and place a statement to that effect in the file. In that event, if there is a subsequent finding of unsatisfactory job performance, the first subsequent finding of unsatisfactory performance will be regarded as a new finding.

II.E. Selection of a Peer Review Committee

A panel will select the Peer Review Committee in accord with the following procedure. However, if the provost determines that the panel (item 1 below) cannot be constituted or cannot function as provided, or if the selection of the Committee has not been completed within 30 days from the chair's notification (item 2 below), then the provost will perform the role of the panel in selecting the Committee, in accord with item 3 below, and will do so in consultation with the Advisory Board.

1. The body with authority to select a Peer Review Committee, herein called the **panel**, comprises all the tenured faculty with primary appointment in the same academic unit and at the same or higher rank as the faculty member in question, but not including the chair or the faculty member, except that the rules of the unit may delegate this authority to a more restricted, standing body which has been elected. The panel may already have a presiding officer, but if not, will select its own.

2. The chair will notify the panel when a Peer Review Committee must be selected, and must at that time relay any pertinent communications from the faculty member (see 3b and 3c below). The chair will send a copy of the notification to the provost through the dean.

3. The panel will meet, discuss the case, and elect the Peer Review Committee, which will comprise three tenured faculty members whose primary appointment is in the department and whose rank is at least that of the faculty member in question. These restrictions and exceptions apply:

(a) In electing the Committee, the panel must exclude the chair, the faculty member in question, and others who the panel believes would have a conflict of interest.

(b) The Right to Challenge with Cause. Before the panel elects the Committee, the faculty member has the right to name any person or persons who he or she believes ought to be excluded and to state reasons such as conflict of interest, demonstrated lack of objectivity in a pertinent matter, or other sufficient cause. The panel must then give due consideration to such reasons. The faculty member will again have that right if the panel later fills a vacancy on the Committee.

(c) The faculty member has the right to instruct the panel that the Committee must include at least one tenured faculty member, with the same or higher rank, whose primary appointment is outside the department, or even outside the college. The panel itself must do so if a Committee of three cannot otherwise be constituted. Item 3e below applies.

(d) The faculty member may exercise the rights stated in items 3b and 3c by writing a memorandum, in timely fashion, to the presiding officer of the panel directly or through the chair.

(e) If there are to be outside members, they will be nominated by the panel but are subject to approval by the provost. Before granting approval, the provost must afford the faculty member the right to challenge a nominee for cause.

II.F. The Advisory Board

The Advisory Board will comprise three tenured full professors, serving for staggered three-year terms. No one person may serve for more than a total of six years. No one with an administrative rank of chair or higher may serve. No more than one person from any one college or school may serve at one time. The provost will make appointments to the Advisory Board after consultation with the Faculty Senate Executive Committee. The functions of the Advisory Board will be as follows:

1. To review faculty members' files and plans for improvement as provided herein
2. To monitor the functioning of the processes on the campus related to findings of unsatisfactory job performance

3. To consider issues of fairness and faculty rights as well as the effectiveness and benefit of these processes
4. To give guidance and advice to chairs and to Peer Review Committees with regard to their duties under Section II
5. To make recommendations for the improvement of the pertinent policies and practices

III. ILLNESS AND OTHER EXCEPTIONAL CIRCUMSTANCES

In the event that a faculty member suffers from physical or emotional illness, or other condition, to such a degree that a job performance improvement plan cannot reasonably proceed in disregard thereof, the period of time allowed for improvement may be lengthened at the discretion of the provost. Because of legal restrictions on the handling of medical information, such exceptions are not subject to review by or reports to the Advisory Board. See also Policy Statement 59 entitled ***Employee Assistance Program***.

IV. PRIVACY RIGHTS

The files generated under PS-109 are personnel records in the sense of PS-40, the Policy Statement entitled ***Employee Records Confidentiality***. Every effort should be made to ensure confidentiality in the processes of PS-109.