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DOC 2002-03 Suspending the "Tenure Clock" for Tenure Track Faculty Members Eligible for Family or Medical Leave

University of Dayton. Faculty Affairs Committee

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PROPOSAL TO THE ACADEMIC SENATE

TITLE: Suspending the “Tenure Clock” for Tenure Track Faculty Members Eligible for Family or Medical Leave

SUBMITTED BY: Faculty Affairs Committee

DATE: October 11, 2002

ACTION: Legislative

REFERENCE: Faculty Policies-- Academic Freedom and Tenure, Regulations §2(a)--Final Form Approved by Faculty, Approved by Board of Trustees, Effective August 15, 1996

DESCRIPTION OF PROPOSAL

Introduction

The University policy already allows a faculty member who takes such leave, or leave for a serious illness, or to care for a parent, spouse or child with a serious illness to stop the tenure clock for the period of such leave (if such leave is one semester or more).^[1] In fact, the University’s policy automatically stops the tenure clock in such circumstances unless the faculty member specifically requests in writing that the clock not be stopped.^[2]

The Faculty Affairs Committee of the Academic Senate (“the Committee” or “FACAS”), as part of an ongoing review of University policies on maternity and paternity leave, has determined the above policy ought to be extended to those faculty members who are eligible for this type of leave, but choose not to take it. It also has determined that the University’s policy on suspending the tenure clock should be amended to provide for the placement of a child with a faculty member for foster care as a grounds for stopping the tenure clock. Finally, the Committee has determined that the terms in the current policy should be given definitions and that those definitions should come from the regulations under the Family and Medical Leave Act of 1993.

Rationale

The reality for many faculty members is that they cannot afford to take unpaid family or medical leave and attempt to “tough it out” by continuing to carry out their teaching, research and service obligations as best they can. These faculty members are, arguably, in even greater need of having the tenure clock stopped than faculty members who actually take leave. Given their pressing family or medical needs, their research agendas and duties are even more likely to suffer than faculty members who are on leave.

The burden of trying to juggle academic duties and family or medical exigencies falls particularly heavily on tenure track women faculty members who are pregnant. For this reason, the American Association of University Professors’ Committee on the Status of Women in the Academic Profession and its Subcommittee on Academic Work and Family specifically recommend that the tenure clock be stopped for faculty members who are eligible for family or medical leave, but do not actually take leave.^[3] These considerations have led the Committee to make its recommendation to amend Section 2(a) of the the University’s Faculty Policies-- Academic Freedom and Tenure, Regulations to allow tenure track faculty members who are eligible for family or medical leave, but do not actually

take the leave, to stop the tenure clock for the period for which they would have been eligible to take leave. The FACAS proposes to make this change by adding new Section 2(a)(4) to the current Policy on Academic Freedom and Tenure, Regulations.

The new section proposed by the Committee also requires that faculty member in such a position be required to give notice of his or her wish to stop the tenure clock in the same time frame that he or she would be required to give notice of their desire to take leave. In making this recommendation, the Committee was motivated by a desire to avoid administrative complexities and to treat persons who were eligible for but did not take leave, in much the same manner as their counterparts who decided to take leave.

The FACAS also recommends the adoption of two minor changes to the current Faculty Policies–Academic Freedom and Tenure, Regulation. First, the Committee proposes that section 2(a)(1) of that document be amended to recognize placement of a child with a faculty member for foster care as a grounds for suspending the tenure clock. The existing University policy attempts to track as grounds for suspending the tenure clock, the grounds contained in the Family and Medical Leave Act of 1993 and the regulations under that Act. Those regulations currently recognize the placement of a child for foster care as a grounds for invoking family or medical leave. The University’s current policy does not expressly deal with that situation. The Committee believes that the placement of a child with a faculty member for foster care does justify stopping the tenure clock whether the faculty member chooses to take leave or not. Therefore, the Committee recommends adding its proposed language to section 2(a)(1) to accomplish that objective.

Second, the current University Policy contains no definition of terms such as “serious medical condition” or “adoption of a child.” In the interests of clarity and fairness, the Committee believes that these and the other terms in section 2(a)(1) should be defined. The Committee proposes that section 2(a)(1) be amended to adopt explicitly the definitions contained in the Family and Medical Leave Act of 1993 and the regulations thereunder. The Committee did not attempt to develop its own definitions in order to avoid reinventing the wheel. The Committee believes that use of the definitions under the Family and Medical Leave Act of 1993 and its attendant regulations is particularly appropriate given that section 2(a)(1), as now written, attempts to track those sources.

Finally, the Committee believes that its recommended changes will have no fiscal impact whatsoever on the University.

TEXT OF THE PROPOSAL

The Faculty Affairs Committee recommends that the Academic Senate recommend to the faculty and the Board of Trustees of the University that section 2(a) of the Faculty Policies–Academic Freedom and Tenure, Regulations be amended to read as follows:

Note: *Italicized* language is the proposed new language for this policy. No language has been removed from the current policy.

Faculty Policies
Academic Freedom and Tenure, Regulations

2. Probationary Appointments

a. Probationary appointments may be for one year or for other stated periods, subject to renewal. The total period of full-time service prior to the acquisition of tenure will not exceed seven (7) years, including all previous full-time service with the rank of instructor or higher in other institutions of higher learning, except that the probationary period

may extend to as much as four consecutive years at the University of Dayton, even if the total full-time service in the profession thereby exceeds seven years; the terms of such extension will be stated in writing at the time of initial appointment. Time spent on a leave of absence will count as probationary period service except in the following cases:

(1) When a faculty member takes a leave of absence pursuant to Regulation 12 of this document ("Political Activities of Faculty Members"), the time spent on such a leave will not count as probationary service unless otherwise agreed to by the institution and the employee at the time the leave is granted.

(2) A faculty member who takes a leave for at least one semester due to the birth of a child, the adoption *or placement with the faculty member for foster care of a child*, to care for a spouse, parent, son, or daughter who has a serious medical condition, or due to the faculty member's own serious medical condition, may decide not to count as probationary service the academic year in which the leave occurs. Unless the faculty member indicates a contrary choice in writing at the time the leave is taken, the academic year in which the leave occurs does not count as probationary service. *The terms in this subsection shall be defined in accordance with the definitions contained in the Family and Medical Leave Act of 1993 and the regulations promulgated thereunder.*

(3) When the individual and the institution so agree in writing at the time the leave is granted, the academic year in which the leave is taken will not count as probationary service.

(4) If a faculty member is eligible for a leave of absence under subsection 2(a)(2) of this section, but chooses not to take such a leave of absence, the faculty member may choose to have the period for which they would have been eligible for a leave of absence not counted as probationary service. To have such time not counted as probationary service, the faculty member must notify, in writing, their department chair, or if not assigned to an academic department, the dean or other principal academic officer of their unit, that they wish to have the time they would have been eligible for leave not counted as probationary service. Such notice must be provided to the appropriate person no later than the time specified for any notice which must be furnished to establish eligibility for the leave described in subsection 2(a)(2) of this section.

When the probationary period has been interrupted by a leave of absence that does not count as probationary service, *or pursuant to subsection (4) of this section*, subsequent steps in the review process will be delayed by the amount of time excluded from probationary service. Further, in all subsequent reviews, the year in which the leave was taken will be excluded from the faculty member's total years of service in determining the standards governing review of the faculty member. That is, for example, in tenure reviews of faculty members whose tenure "clock" was "stopped" during a leave of absence, the faculty member will not be judged at tenure review as though the "clock" had not been "stopped."

[1] University of Dayton, Faculty Policies--Academic Freedom and Tenure, Regulations §2(a)(2) (effective August 15, 1996) (available at <http://facstaff01.udayton.edu/FacultyH.nsf>).

[2] *Id.*

[3] AAUP. Committee on the Status of Women in the Academic Profession & Subcommittee on Academic Work and Family, Statement of Principles on Family Responsibilities and Academic Work (available at <http://www.aaup.org/statements/REPORTS/re01fam.htm>). The substance of the Statement has also been endorsed by the AAUP's Committee on Academic Freedom and Tenure. *Id.*