

Chapter 6 Separation

Section I. Termination of Tenure or Tenure-Track Faculty Procedures
(found within the Towson University Policy on Appointment, Rank and Tenure of Faculty, TU 02-01.00)
<https://www.towson.edu/about/administration/policies/02-01-00-policy-appointment-rank-tenure-faculty.html>

Section II. Policy on Procedures for Appeals to University System of Maryland (USM) Board of Regents of Decisions to Terminate Tenured or Tenure-Track Faculty Members (USM 11-1.04)
<http://www.usmd.edu/regents/bylaws/Section1I/II104.pdf>

Section III. Towson University Retrenchment Policy and Procedures

A. Preamble

The University System of Maryland (USM) Board of Regents Policy on Faculty Retrenchment, II-8.00 (hereafter known as "the Policy") requires that the University make optimal use of its faculty resources which may require that the University reallocate and/or reassign faculty for various reasons including, but not limited to, shifting enrollment patterns, changing program directions and restricted funding. The Policy further provides that if faculty reassignment and/or reallocation are inadequate to effectuate optimal use of faculty, the University may terminate the appointment of tenure-track or tenured faculty members (Faculty Retrenchment). Faculty Retrenchment, however, is but one option among several to make optimal use of faculty resources; accordingly, Faculty Retrenchment will be implemented only after other options are considered and found by the president to be inadequate.

To comply with Board of Regents Policy on Faculty Retrenchment, the University adopts the following retrenchment procedures. To the extent that the University's internal governing procedures conflict with these retrenchment procedures, these retrenchment procedures shall prevail.

B. Definitions

1. Faculty retrenchment

The termination of a faculty appointment as authorized in the November 29, 1990, USM Board of Regents' "II-8.0 Policy on Faculty Retrenchment."

2. Restricted funding

- a. the lack of appropriations or other funds with which to support the appointment as set forth in the USM Policy on Appointment, Rank and Tenure, Section I.C.9 or
- b. such other meaning set forth in corresponding sections of earlier faculty appointment agreements still in effect.

3. Retrenchment unit

The Retrenchment Unit is the college or academic department.

C. Application

These retrenchment procedures apply to appointments to the ranks identified or permitted in the USM policy on the Appointment, Rank and Tenure of Faculty, (Section 11.1.00) of the USM by-Laws, Policies and Procedures of the Board of Regents, as amended from time to time.

These retrenchment procedures are in addition to and in limitation of (1) USM and University policies and procedures on faculty appointment, and (2) USM and University policies and academic program review.

D. Authority of the President

The president has sole authority, subject to the Board of Regents' authority, to initiate retrenchment. The president shall initiate retrenchment when the president determines that retrenchment is necessary, consistent with USM and Towson University policies on Appointment, Rank and Tenure. In addition to the recommendations of the Faculty Retrenchment Committee established under Paragraph E of this policy, the president may seek the advice of any individual, group or office. The president may adopt recommendations of the Faculty Retrenchment Committee, adopt them with modifications or reject and make substitutions for them.

The president shall have the right to adjust any schedule referenced in these retrenchment procedures except for those pertaining to the notice for termination and to the appeal process. Effort will be made to give advance

notice of any such adjustment. Failure to comply with such schedules shall not be grounds for appeal under these retrenchment procedures.

E. Retrenchment Committee

There shall be a Faculty Retrenchment Committee consisting of one tenured faculty representative from each college, and two, at large, non-tenured faculty members. The tenured and non-tenured faculty shall serve staggered terms of three years. One-half of the faculty representatives shall be elected and one-half shall be appointed by the president from nominations made by the Executive Committee of the University Senate. After three years an elected faculty seat shall rotate on an appointed faculty seat and vice versa. The Chairperson of the University Senate shall be responsible for establishing the staggered terms and for supervising the alternation of elected and appointed terms. If faculty decline to elect faculty members in a timely manner, or if faculty decline to serve, the president shall appoint the committee members required to serve, including non-faculty members, if necessary.

The following persons shall serve on the Committee: the provost, Senior Vice President and Chief Fiscal Officer, and the Associate Vice President for Academic Programs. Ex officio, non-voting members shall be the Fair Practices Officer, the Associate Director of Institutional Research, Enrollment Management, & Planning, and the President of the AAUP Faculty Association. The chairperson shall be a faculty representative.

F. Basis for Retrenchment

USM Policy on Appointment, Rank and Tenure of Faculty provides that faculty may be retrenched because of the discontinuance of the department, program, college, school or unit in which the appointment was made, or because of the lack of appropriations or other funds with which to support the appointment. The president has the sole authority within the University, subject to Board of Regents' authority, to initiate retrenchment. The president shall initiate the faculty retrenchment process when the president determines that retrenchment is necessary, consistent with USM and University policies on Appointment, Rank and Tenure. Faculty retrenchment may be required for programmatic and/or budgetary reasons.

Program review is part of routine institutional planning. While such review may be motivated, in part, by financial considerations, review normally occurs as part of ongoing management of the University. Resulting program eliminations provide a basis for faculty terminations without the necessity of showing a lack of appropriations.

Where lack of appropriations or other funds with which to support the appointment is the basis for faculty retrenchment, the retrenchment plan may take into consideration non-financial factors, including institutional mission, long-range educational planning and may call for program reductions, and/or program eliminations. A lack of appropriations exists when, in the president's judgment, there is a fiscal crisis that threatens or endangers the University's ability to carry out its mission as defined in its most recently approved mission statement, and the termination of tenured or tenure track faculty will be less detrimental to the University's ability to fulfill its mission than other forms of budgetary curtailment available to the University.

The President's determination that a fiscal crisis exists is subject to the Board of Regents' review. In the event the Board reviews the president's determination, the president shall provide the Board supporting documentation. The Board may receive comments from the president, representatives of faculty, campus governance bodies, and other interested persons.

G. Retrenchment Committee Duties and Responsibilities

The Faculty Retrenchment Committee shall be responsible for advising the president on matters relating to retrenchment. The president may direct the Retrenchment Committee to gather specific information related to retrenchment and to make recommendations regarding the necessity for retrenchment and, when necessary, to recommend a retrenchment plan. The Retrenchment Committee may also investigate and recommend reasonable alternatives to retrenchment.

H. Initiation of Retrenchment

Where circumstances warrant, the president will charge the Faculty Retrenchment Committee to consider management strategies, including retrenchment. The president's charge shall set forth the specific circumstances which may warrant retrenchment. If possible, retrenchment proceedings should take place during the academic year.

1. Information to be made available to the Retrenchment Committee

Annually each department shall prepare and/or update the "Indicators of Academic Program Cost and Productivity" report and submit it to the Retrenchment Committee. The information in this report shall include but not be limited to:

- a. Credit hour production (CHP) by discipline;
- b. Number of majors by discipline;

- c. Number of graduates by discipline;
- d. Percentage of CHP generated by tenure/tenure-track faculty by level;
- e. Staffing patterns (full-time, part-time) by discipline
- f. Non-instructional productivity including scholarship and service activities.

The Vice President and Chief Fiscal Officer will furnish the committee information on the current budge, the budge in preparation (current year plus one), and the budget in CPS (current year plus two). The Retrenchment Committee may meet yearly to review the above information.

In a situation of possible retrenchment, the Faculty Retrenchment Committee will advise the president regarding deployment of resources. If, in the committee's opinion, management strategies short of retrenchment are sufficient to address the problem, then the Committee shall submit these management strategies in a report to the president. If other management strategies are insufficient to solve the problem in the opinion of the president, the committee shall proceed to make recommendations concerning retrenchment. Deliberations of the Committee shall be confidential, to the extent permitted by law, except insofar as information and recommendations must be shared with individuals and groups involved in the retrenchment process.

The Committee's retrenchment plan will make every reasonable effort not to eliminate programs, departments, or curricular concentrations in response to cyclical or short-term variations of enrollment or budget. However, in response to anticipated long-term or structural changes, the committee may consider strategic cuts, including a significant reduction or elimination of departments.

2. Retrenchment due to enrollment decline or program elimination

Where there is enrollment decline, specific to a program or department, or where, as a result of a program review (whether internal or external), programs are identified for elimination, the Committee may recommend reduction or elimination of those specific departments.

3. Retrenchment due to restricted funding

Where there is restricted funding, the Committee shall consider all colleges, departments, and programs for possible reduction or elimination.

4. Committee recommendations

The Committee shall submit its recommendations and retrenchment plan to the president in the time specified by the University. In the event the Committee recommends reduction or elimination of specific departments, the Committee will advise those departments in which the programs are located at the time the Committee submits its recommendations to the president. Chairpersons and faculty in departments recommended for retrenchment shall have the opportunity to make written responses. The president shall set a timetable for filing of such responses.

The president shall distribute the retrenchment recommendations and plan to the Provost, the Chairperson for the University Senate, and the President of the AAUP/Faculty Association with a specific timeline for response. The Provost shall call a special session of the Provost's Council to discuss the recommendation and plan. The Provost shall then advise the president of any additional recommendations and/or modifications to the plan suggested by the Provost and/or the Provost's Council. Both the Chairperson of the University Senate and the President of the AAUP/Faculty Association shall also can advise the president of any additional recommendations and/or modifications to the plan.

Chairpersons and faculty in departments newly recommended for retrenchment at this stage shall have the opportunity to make written responses, with the president setting a timetable for filing of such responses. The president shall consider any additional recommendations and/or modifications to the plan and shall implement a retrenchment plan as provided in Section A.

I. Confidentiality

To the extent allowed by law, deliberations about specific personnel decisions of any committee shall be confidential.

J. Plan of Retrenchment

The president has final authority regarding the retrenchment plan. If retrenchment is to be implemented, the president shall identify the unit(s) of retrenchment and the order of retrenchment and inform the USM Chancellor of the University's retrenchment plan. The plan must be implemented consistent with the Board of Regents' Policy on Faculty Retrenchment and Sections I.C.9, I.C.10, I.C.12 and I.C.16 or 17 of the 1989 "University System Policy on Appointment, Rank and Tenure of Faculty," relevant sections of the "Towson University Policy on

Appointment, Rank and Tenure of Faculty," and corresponding sections of earlier faculty appointment agreements still in effect.

The president shall report the retrenchment plan to the Faculty Retrenchment Committee, the University Senate, and the University in its entirety in a timely manner. The president's report will explain what steps were taken and how they will solve the existing problem.

1. Order of retrenchment

The order of retrenchment shall be based on seniority. However, when determining the faculty appointments to be included in the retrenchment unit, the only faculty members to be included are those whose appointments are made within the college or department in which the retrenchment unit is located. The list shall not include faculty members assigned to the retrenchment unit but whose appointment is in another college or department.

Seniority is defined first in terms of the usual order of termination as described below. Within the individual categories of the usual order of termination, seniority is defined as the length of continuous service at the University since the effective date of the initial full-time faculty appointment; included are approved leaves of absence without pay and sabbatical leave. For faculty who moved from full-time visiting appointments to full-time tenure-track or tenured appointments (with continuous service), seniority shall be calculated from the effective date of the initial full-time visiting appointment.

The usual order of faculty termination shall be as follows:

- a. Part-time, adjunct, and visiting contractual faculty
- b. Tenure-track faculty
- c. Tenured faculty

Deviations from the order of termination may be made when the termination of the appointment of a particular faculty member would significantly impede the ability of the institution or retrenchment unit affected by retrenchment to fulfill its mission and goals, or to fulfill commitments under grants and contracts, as determined by the provost.

The reason and basis for making a decision to deviate from the order of termination shall be documented.

2. Notice of termination

Every reasonable effort shall be made to find faculty members scheduled for retrenchment another suitable position within the University. If such efforts fail, the president shall give written notice of termination to each faculty member whose appointment is to be terminated pursuant to these retrenchment procedures. The termination notice shall include:

- a. notification that the appointment is being terminated pursuant to these retrenchment procedures;
- b. the applicable notice period;
- c. the effective date of termination;
- d. a statement that System Administration shall send, for a period of one-year, written notice of faculty openings within the system to the last address that the faculty member has on record with the institution;
- e. notification of the right of the faculty member to appeal the termination of the appointment and a copy of these retrenchment procedures;
- f. if applicable, a statement that deviation was made from the order of termination and the reasons for the deviation.

3. Notification periods

For the purpose of these retrenchment procedures, the applicable termination notice period is determined by the status of the faculty at the time the notice of termination is given.

- a. Non-tenure track faculty, as defined in the "University System of Maryland Policy on Appointment, Rank and Tenure of Faculty," shall be given written notice not less than 30 days prior to the date of termination of appointment.
- b. Non-tenured, tenure-track faculty shall be given notice of termination not less than one year prior to the date of termination of appointment.
- c. Tenured faculty members shall be given notice as set forth in the "University System of Maryland Policy on Appointment, Rank and Tenure of Faculty," Section I.C.9, or corresponding sections of earlier faculty appointment agreements still in effect, as applicable.

Notice of termination shall be effective on the date the notice is mailed by U.S. certified or registered mail, return receipt requested, to the last address that the faculty member to be terminated has on record with Towson University.

For a period of three years following termination of the faculty appointment, the University shall offer to a tenured faculty member whose appointment is terminated pursuant to these retrenchment procedures any new positions with equivalent duties and responsibilities within the retrenchment unit prior to hiring any other person.

K. Exclusions

The procedures and functions of the Retrenchment Committee shall not include authority or control over any of the regular administrative or budgetary functions of the University. However, the Retrenchment Committee may request information on such matters as part of its general process of review and recommendations.

L. Faculty Retrenchment Appeals Procedure

1. Retrenchment Appeals Committee

The Faculty Retrenchment Appeals Committee is mandated by the Board of Regents' "Policy on Faculty Retrenchment" and the "Towson University Faculty Retrenchment Policy," and shall be called into session when a tenured or tenure-track faculty member has his or her faculty appointment terminated due to retrenchment and files an appeal.

The Committee shall consist of: one tenured faculty member from each college with academic departments, and two non-tenured faculty members. Committee members shall serve three year, staggered terms. One half of the faculty representative shall be elected and one half shall be appointed by the president of the University based on a list of nominees established by the Executive Committee of the University Senate. After three years, an elected slot on the Committee shall rotate to an appointed slot, and vice versa.

The Chairperson of the University Senate shall be responsible for setting up the staggered terms, and for supervising the alternation between elected and appointed terms. If the faculty decline to elect faculty members in a timely manner or the faculty decline to serve, the president shall appoint the required number of committee members to serve on the Committee.

2. Appeal procedure

A faculty member whose appointment is terminated under these retrenchment procedures shall have a right to appeal in accordance with these procedures only. No other appeal procedures within Towson University are applicable. However, faculty who believe that the decision to retrench was based on illegal discrimination are encouraged to seek the advice of the University's Fair Practices Officer.

The faculty member must include all grounds for appeal in the written request for appeal.

The filing or consideration of a request for appeal will not alter the effective date of termination of the appointment.

3. Appeal Schedule

- a. A written request for appeal must be filed with the president within 10 working days after the effective mailing date of the notice of termination. Working days are defined as Monday through Friday, inclusive, exclusive of holidays recognized by the University.
- b. If a faculty member appeals, the committee shall inform the faculty member of the date, time and place of the hearing no later than 10 working days after the president's receipt of the written request for appeal. The Committee must schedule the hearing to occur within 30-45 calendar days after the president's receipt of the appeal.
- c. The faculty member must provide to the Committee a statement of facts on which the appeal is based and a list of witnesses and documents to be introduced at the hearing no later than five working days prior to the date of the hearing.

4. Grounds for appeal

The grounds for appeal shall be limited to:

- a. error in the application of the order of termination of appointment;
- b. procedural error;
- c. insufficiency of notice of termination;

- d. whether any deviation from the order of termination was made without reasonable grounds; and
 - e. the termination was otherwise unlawful.
5. Conduct of the hearing
- a. The purpose of the hearing is to provide a fair and orderly forum for the presentation of evidence and views and for the questioning of witnesses by the Committee. The faculty member shall have the burden of proof at the hearing.
 - b. The University will be represented by the Office of the Attorney General or its designee. The faculty member may be represented by legal counsel throughout the appeal proceedings at the faculty member's expense. A representative from the AAUP chapter will be permitted by request of the faculty member or Committee to attend the hearing (including closed sessions, if any) as an observer.
 - c. The faculty member and the University each may call witnesses and present documentary evidence at the hearing. Each member of the Committee may call and question witnesses and request the presentation of documentary evidence. The formal rules of evidence and of judicial procedure shall not apply to the appeal hearing; however, the Committee may exclude irrelevant or repetitious testimony.

The hearing shall be audio-taped, and a copy of the tape shall be made available if requested by the faculty member.

The faculty member's failure to appear at the hearing shall be deemed a voluntary dismissal of the appeal.

The Appeal Committee must make its decision based on the record.

Postponement of the hearing may be granted at the discretion of the Committee upon the written request of the faculty member.
 - d. Within a reasonable period of time after the hearing, the Committee will meet in private session and discuss the evidence and arguments presented at the hearing. Deliberations of the Committee shall be confidential, to the extent permitted by law. The Committee will then render an

opinion by simple majority vote with a quorum of at least seventy-five percent of members present and voting.

- e. The Committee shall within 10 calendar days of the conclusion of the hearing forward its recommendation in writing to the president of the University.

Written minority opinions may also be sent to the president of the University. Although the president shall consider the recommendation of the Committee, the president is not obligated to follow it.

- f. Within 10 working days after receipt of the Committee's recommendation, the president shall issue a final decision and mail a copy to the faculty member by U.S. certified or registered mail, return receipt requested.

A decision by the provost to reallocate a vacant position from one department to another or to hold a vacant position vacant or to abolish a position which is vacant is not appealable to the Retrenchment Appeals Committee.

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