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Faculty Senate Resolution 05-03

Louisiana State University and Agricultural & Mechanical College

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**LSU Faculty Senate Resolution 05-03:
“Informing faculty of developments
regarding PM-35, PS-109, and related issues.”**

First read September 9, 2004
by Charles N. Delzell

1. *Whereas* on November 11, 1999, an initial draft of the LSU System’s PM-35 was presented to the Faculty Senate for discussion, and the only opinion expressed by senators was disapproval, on the grounds that PM-35 links periodic faculty performance reviews with dismissal-for-cause proceedings, thereby in effect weakening the tenure-system; and
2. *Whereas* the LSU System officially issued PM-35 on November 22, 1999, with no changes; and
3. *Whereas* on January 18, 2000, the Faculty Senate adopted Resolution 00-05 in support of the tenure-system; and
4. *Whereas* on May 1, 2000, the Faculty Senate adopted Resolution 00-14 recommending the retraction of PM-35, followed three weeks later by the LSU System’s issuance, on May 23, 2000, of a second, even harsher version of PM-35; and
5. *Whereas* on July 17, 2003, former Chancellor Mark Emmert issued PS-109, entitled “Annual Departmental Reviews for Faculty and PM-35 Implementation Procedure,” despite the Faculty Senate’s refusal in the spring of 2003 to vote on a preliminary draft of PS-109; and
6. *Whereas* a questionnaire distributed in the spring of 2003 by Faculty Senator Larry Crumbley to the entire LSU faculty found that 97% of respondents wanted the Faculty Senate to get legal opinions on the legality of PM-35 and PS-109; and
7. *Whereas* on December 4, 2003, former Chancellor Emmert told the Faculty Senate that he considered parts of PM-35 to be “unworkable,” and invited the Faculty Senate to discuss with him and with Provost Palm how PM-35 “needs to be modified, in small or in large ways,” and promised “to champion whatever the result was in the System Office”; and
8. *Whereas* on March 18, 2004, in response to the above invitation, the Faculty Senate adopted Resolution 04-10, recommending the replacement of PM-35 by a new PM that would, among other things, contain no explicit or implicit linkage of annual faculty performance reviews to dismissal-for-cause proceedings; and on March 17, 2004, the LSU College of Arts and Sciences Faculty Senate adopted a similar resolution; and on March 16, 2004, both the Executive Committee of the LSU Chapter of the American Association of University Professors, and the Executive Committee of the Louisiana State Conference of the American Association of University Professors, also adopted resolutions similar to the LSU Faculty Senate’s Resolution 04-10; and
9. *Whereas* a petition, in which LSU faculty were able to vote on the question of whether former Chancellor Emmert should rescind PS-109, received responses from 317 faculty members, with 94% voting in favor of rescission of PS-109; and on May 19, 2004, Faculty Senator Robert Tague presented this petition to the former Chancellor; and

10. *Whereas* in the fall of 2003, a group of LSU faculty members founded the Tenure-Restoration Coalition (www.TenureRestoration.org), whose mission is to uphold the substance of Senate Resolutions 00-14 and 04-10 regarding PM-35, as well as to raise donations from faculty to defray the legal expenses involved in this action; and

11. *Whereas* there may be a five-year liberative prescription (i.e., statute of limitation) on an action to seek a legal determination of whether PM-35 constitutes merely a procedural change to LSU faculty contracts formed before 2000, or a substantive change that is detrimental to faculty members' tenure; and

12. *Whereas*, whether or not there is a statute of limitations on seeking a legal determination as in paragraph 11 above, the ongoing developments related to PM-35, PS-109, and the tenure-system are of central importance to all LSU faculty;

Therefore be it resolved that the Faculty Senate directs the Faculty Senate Executive Committee to continue to keep the Senate and the LSU faculty informed, in a timely manner, of the status or progress of any actions or developments regarding the issues related to PM-35, PS-109, or any other policy affecting the tenure-system at the LSU A&M campus or in the rest of the LSU System.

Also sponsored by the following Senators:

1. Larry Crumbley
2. Kerry Dooley
3. Wayne Gauthier
4. Dominique Homberger
5. Robert Perlis
6. John Pizer
7. Paul Wilson



Louisiana State University System

3810 West Lakeshore Drive
Baton Rouge, Louisiana 70808

Office of the President

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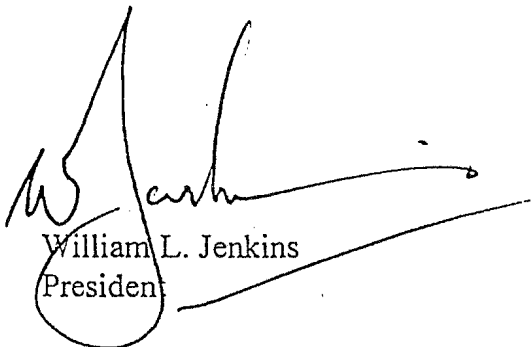
November 22, 1999

PM-35

Memorandum to: Chancellors Cavanaugh, Costonis, Emmert, Marsala, Nunez,
O'Brien, Richardson, Trail, and Director Bouchard

Subject: PM-35: Review of Faculty Ranks

The following new PM-35 was developed to provide an appropriate set of guidelines for review of faculty ranks. Please duplicate and distribute to those persons on your campus or in your area you believe should have a copy of the new PM-35.



William L. Jenkins
President

xc: System Administrators
System's Council of Chief Academic Officers ✓

PM-35 Review of Faculty Ranks

Tenure is a means of protecting faculty members from political intrusions into academic decisions. Tenure grew out of some notable intrusions of powerful people into academic personnel decisions. A notable example was the firing of an Economics professor at Stanford University in the early 1900's because the widow of Leland Stanford Jr. disagreed with the faculty member's economic theories. This kind of interference continued until well into the 1920's at various universities around the country. These arbitrary actions led to the creation of tenure as a means to protect faculty from unfair treatment. It was never intended to be a grant of lifetime employment. The Board of Supervisors for LSU A&M approved tenure on June 8, 1931.

Tenure, with its many benefits, demands greater responsibility on the part of the academic community to monitor its utilization. Hence all universities must provide an adequate process of review for faculty that are applicants for tenure and those who have attained tenure. The objective of this PM is to provide an appropriate set of guidelines for each of the LSU System campuses to use for their review process. The process for a two-year campus may be slightly different the one adopted by a research oriented campus. However each should include the items listed below.

ACADEMIC REVIEW OF FACULTY MEMBERS

All faculty members will be reviewed at least every other year. A campus may institute more frequent reviews. The reviews should be based on the faculty member's job assignment.

Tenured faculty will be provided a more extensive peer-review process after two unsatisfactory regular reviews. Under unusual circumstances this may be delayed until after another unsatisfactory review.

This more extensive peer-review will include evaluations from faculty members located outside the college of which he or she is a member. The faculty members selected to participate in this review should be from departments appropriate to review the academic area of the faculty member.

If the more intensive peer review indicates deficiencies in the faculty member's performance, the Chancellor of the campus or his/her designee will appoint a committee of peers to assist the faculty member in developing a positive plan to improve those areas where there was a deficiency.

After three years of assistance by this committee, the faculty member will be reviewed again by a committee that includes faculty from outside the college in which he or she resides.

If this review, after a three-year period of positive guidance, is negative the Chancellor will institute proceedings for removal for cause including proper due process.



Louisiana State University System
3810 West Lakeshore Drive
Baton Rouge, Louisiana 70808

Office of the President

May 23, 2000

225 / 388-2111
225 / 388-5524 fax

Memorandum to: Chancellors Cavanaugh, Costonis, Emmert, Marsala, Nunez, O'Brien, Richardson, Trail, and Executive Director Bouchard

Subject: Revision of PM-35

This memorandum supercedes PM-35 dated November 22, 1999.

REVIEW OF FACULTY RANKS

A nationally recognized university depends on faculty excellence in research, teaching, and service. To promote excellence, all members of the faculty should undergo evaluations to ensure that their academic performance is commensurate with their rank and status, and that they remain accountable for their academic performance to the University and the larger community.

The objective of this PM is to provide a set of guidelines for each of the LSU System campuses to use for reviewing faculty performance. The process may appropriately vary from campus to campus but each campus shall adopt its own procedure for the review process within the framework of this policy and each such campus procedure should be coordinated with existing campus policies and procedures.

The extent to which this policy will be applied to conduct occurring prior to its effective date may be determined by the Chancellor. Unsatisfactory performance or non-performance by a faculty member occurring and/or arising, in whole or in part, prior to the effective date of this policy, may be considered in connection with a decision to seek removal for cause.

ACADEMIC REVIEW OF FACULTY MEMBERS

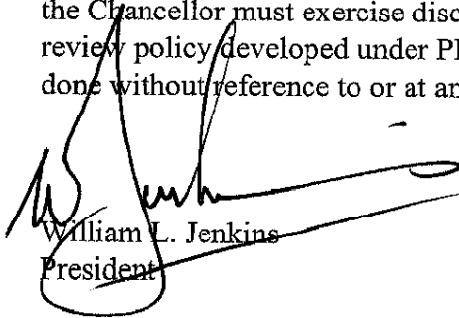
Campus policies should include the following basic elements:

1. Statement that all faculty members should be reviewed at least annually by the Department Chair/Head. The reviews should be based on the faculty member's job responsibility.
2. Provision for review by tenured faculty members (at or above the faculty member's rank) once there have been multiple unsatisfactory reviews by the Department Head/Chair.

After two (2) consecutive unsatisfactory regular reviews or three (3) unsatisfactory reviews in a five (5) year period, tenured faculty shall be reviewed by tenured faculty in the department. If the number of departmental faculty is insufficient, tenured faculty members from outside the department shall be selected to participate in this review. Appointments of faculty from outside the department require the approval of the Chief Academic Officer.

3. Referral of the matter to a higher administrative level if both the Department Head/Chair and the tenured faculty evaluators find the performance unsatisfactory. If the faculty evaluators concur with the assessment of the Department Chair/Head the matter should be referred with a recommendation for remediation through the Dean to the Chief Academic Officer. If the faculty evaluators do not concur with the Department Chair/Head, the Department Chair/Head may reconsider and revise his/her assessment or refer the matter through the Dean to the Chief Academic Officer with a recommendation for further review and remediation.
4. Development by the faculty, in consultation with the Department Head/Chair and the faculty member, of a plan for improvement. If the Chief Academic Officer concurs with the recommendation for remediation, she or he will appoint a committee of peers numbering three (3) to five (5) to assist the faculty member in developing a positive plan to improve those areas where there are deficiencies. The plan should be mutually agreeable to the faculty member and it should respect academic freedom and professional self-direction. Resources adequate to support the performance improvement plan should be provided by the campus administration.
5. Provision for review by the Department Chair/Head and tenured faculty in the department after a reasonable period under the plan for improvement. After two (2) years of assistance by the peer review committee, the faculty member will be reviewed again by the Department Chair/Head and tenured faculty (at or above the faculty member's rank). The peer review committee's assessment of the faculty member's performance should be considered in this review. If this review is negative, the Chief Academic Officer shall recommend that the Chancellor or his/her designee institute proceedings for removal for cause including proper due process.

Each campus must have a separate policy or practice providing due process for tenured members of the faculty for whom it becomes necessary to consider dismissal for cause. In certain cases, the Chancellor must exercise discretion as to whether to refer the matter to the performance review policy developed under PM-35 or to the separate dismissal for cause policy. This may be done without reference to or at any time during the procedures described in this policy.



William L. Jenkins
President

Faculty Senate Resolution SR00-14 (Amended)
The Questionable Legality of PM-35
Adopted by the Faculty Senate May 1, 2000

The issuance of PM-35 by LSU System President Jenkins on November 22, 1999, is considered illegal because of the following reasons:

1) The Louisiana Revised Statutes (R.S. 17:3351) provide for tenure (to educators) as a protected employment status in the State of Louisiana.

2) Louisiana Court Decision Precedents:

a) A case decided by District Judge Downing (publicly reported in 1997), reaffirmed the status of academic tenure as a property right.

b) The case interpretation by Judge Plotkin (La. App. 4 Cir. 1989, LA 553 So.2d, 2009) added “The tenured status of a teacher is a legislatively-created exception to the Louisiana employment-at-will doctrine. *Thorne v. Monroe City School Board*, 5542 So.ed 490 (1989). The protection of academic freedom from arbitrary or repressive dismissal is the historic purpose of tenure and ... teacher tenure laws, noting that the laws were meant to promote good order and the welfare of the state and school system by preventing the removal of capable and experienced teachers because of political or personal whims. *Id.* at 494. Additionally, the status of tenure creates a classification that assures teachers that they will not be dismissed on the basis of their ideas or political beliefs.”

3) Court decisions from the U.S. Appellate Courts and the U.S. Supreme Court have indicated that the protections of the Fifth (“property protection”) and the Fourteenth Amendments (“due process of law”) DO APPLY to the protection of Academic Freedom and Tenure. At this time, I am searching for the best cases to use for documentation. However, my reading of numerous cases indicate that the decisions are based, wholly or in part, on the protection of private property from taking by government without due process or just compensation (the “takings” clause of the Fifth Amendment to the U.S. Constitution). These protections serve to disallow the government (or a branch of government such as a state university) to do by regulations (i.e. remove the protections of tenure) when those protections cannot be removed by legal taking (i.e. constitutional removal with due process and just compensation).

RESOLUTION: Resolved: The LSU Faculty Senate recommends the retraction of PM-35 pending the clarification of the ramifications for tenured faculty members regarding the restriction of Academic Freedom and Tenure.

Respectfully submitted,
Dr. Ron Snider, Professor

Adopted 1-12-2000

**Faculty Senate Resolution: SR 00-05
Policy Statement on Tenure**

Whereas, the institution of tenure has long served the American public and the system of higher education in the United States very well, and

Whereas, the purpose of tenure is sometimes misunderstood, and

Whereas, it is important for faculty to enunciate a position on this issue,

Therefore be it resolved that the LSU Faculty adopts the following statement on tenure:

The LSU faculty strongly supports the institution of tenure. Tenure plays an essential role in guaranteeing academic freedom and institutional integrity, benefitting institutions, students, faculty, disciplines, and society at large.

* Tenure maintains the strength of academic institutions, as it is the permanent faculty that provides leadership and direction. Tenure provides stability and mitigates the effects of fads and fashions.

* Tenure helps to renew academic disciplines by ensuring the continued supply of individuals who will dedicate their careers to advancing those disciplines.

* Tenure helps maintain academic quality by establishing a set of high standards that must be met for continued employment. Standards for ongoing contract renewals are typically less stringent.

* Tenure supports work on significant long-term projects.

* Tenure provides strong protection for free flow of ideas, guaranteeing the right to express views without fear of dismissal.

* Tenure provides the benefit of job security, which helps attract highly talented individuals to teaching and research.

Tenure has played a central role in establishing and maintaining the strength and quality of American higher education. Individual abuses of the tenure system should be addressed directly, rather than by eliminating one of the cornerstones of our educational system.



LOUISIANA STATE UNIVERSITY
AND AGRICULTURAL AND MECHANICAL COLLEGE
Department of Geography and Anthropology

May 19, 2004

To: Mark Emmert, Chancellor
Louisiana State University

From: Robert Tague, Associate Professor
Department of Geography and Anthropology
Louisiana State University

Re: petition on Policy Statement 109

Dear Chancellor Emmert,

Several colleagues and I distributed a petition to faculty at Louisiana State University in which we ask, "Should Chancellor Emmert rescind Policy Statement 109?" The initiative for this petition is derived from: (1) your willingness to discuss with faculty changes to Permanent Memorandum 35 (PM-35) and, by inference, PS-109, and (2) your imminent departure from LSU. The petition organizers would like to see you rescind PS-109 so that the faculty can "negotiate" anew with our next chancellor on the issue of ongoing review of faculty (that is, implementation of PM-35). Nevertheless, we wrote the petition so that faculty could express their opinion either for or against rescission of PS-109. We distributed approximately 1,500 petitions, and the results are as follows.

	<u>Signed petitions</u>	<u>Unsigned petitions</u>	<u>Total</u>
Rescind PS-109	298	21	319
Do not rescind PS-109	19	5	24

We emphasize that these results are of a petition, not a vote. We may have unknowingly failed to provide all faculty with a petition.

As a substantial number of faculty have expressed their interest in this issue by returning a petition, we ask that you send a broadcast e-mail message to faculty concerning your decision with regard to rescission or retention of PS-109. Thank you for considering this matter.

Finally, I feel a responsibility to shred/destroy these petitions after you have made your decision. I will be out-of-town doing research from May 22 to July 4. Can I pick up the petitions from your secretary after I return?

Sincerely,

Robert Tague
telephone: 578-6094
e-mail: rtague@lsu.edu

**LSU Faculty Senate Resolution 04-10:
Principles and Guidelines for a Replacement of PM-35**

Presented February 16, 2004, by Senator Delzell;
adopted March 18, 2004.

Whereas the LSU Faculty Senate has already expressed its strong support for tenure (Senate Resolution 00-05, "Policy Statement on Tenure," adopted January 18, 2000), and

Whereas Chancellor Emmert has said that "PM-35, in many ways, is an unworkable document," and

Whereas no version of PS-36 has ever mentioned dismissal proceedings as a purpose or consequence of annual reviews, and

Whereas annual reviews already guide merit raises and job assignments, thereby encouraging faculty members to excel in their job performance, and

Whereas the Bylaws of the Board of Supervisors and/or PS-104 already provide procedures by which LSU can dismiss faculty for serious nonperformance of duties, and

Whereas any explicit or implicit coupling of annual reviews with dismissal may affect the historical status of LSU's tenure system, and

Whereas LSU has a strategic goal to attract and retain excellent faculty,

Therefore be it resolved that the LSU Faculty Senate recommends that PM-35 be replaced by a new PM that contains no mandatory procedures resulting from annual reviews, and no mention of dismissal. The new PM-35 should be entitled, "Review and Enhancement of Faculty Performance," and should allow each campus to establish a policy for annual reviews of faculty performance, and a policy for voluntary procedures for enhancing faculty performance.

Sponsored by the following Senators:

1. Pratul Ajmera,
2. John Chandler,
3. Larry Crumbley,
4. Charles Delzell,
5. Dominique Homberger,
6. Sarah Pierce,
7. John Pizer,
8. Robert Tague, and
9. Kalliat Valsaraj.