



Making Decisions About Post-tenure Review

An Issues Brief by the
Higher Education
Program and
Policy Council



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Foreword

THIS REPORT IS ADDRESSED to the faculty union leader faced with responding to, or developing, an evaluation procedure most often known as post-tenure review. The label of post-tenure review has been applied to faculty evaluation policies with very different purposes, procedures and outcomes. Most often, though, post-tenure review signifies a periodic, multiyear evaluation process—one that is expected, in some way, to go “deeper” than traditional evaluations and to focus on the faculty member’s long-term goals and performance.

Given the great variety of approaches to post-tenure review, the local union’s stance has to be based on precisely what is being proposed, the purposes for which it is intended, the union’s philosophy and the way in which the proposal fits with other issues on campus. Thus, there is no one answer to the question of whether post-tenure review is good or bad, no one template that should be followed. But if there is no one template, there is usually a predictable set of issues the local will encounter, a distinct series of crossroads to be faced. This report outlines the key issues and clarifies their implications, offering an appendix of illustrative contract language to help locals evaluate their options.

The Accountability Context

THE EMERGENCE OF POST-TENURE REVIEW arises against the background of an increasing debate about the “accountability” of public colleges and universities. AFT’s Higher Education Program and Policy Council has published a statement on this subject, *Accountability in Higher Education*, which states:

“Taxpayer-supported colleges and universities have a basic obligation to answer to the public authority—to government officials and boards of trustees, as well as to students and their families.... Colleges must assume responsibility...for explaining simply and clearly, “how they operate, how they measure success and how well they do in achieving their goals....” Therefore, we both recognize and embrace the concept of accountability.”

The report goes on to propose seven commonsense guidelines for strengthening accountability:

1. The place to start talking about accountability is the institution, not the individual. All elements of the institutional community should work together on a periodic basis to develop clear, broadly supported institutional objectives, goals and strategies.
2. Once objectives are set, institutions should establish a regular procedure for communicating with the governor, the legislature, boards of trustees and the general public about the institution’s plans. The criteria that will be used to evaluate success should be explained clearly, while data on successes and failures should be honestly displayed.
3. The criteria for evaluating the accountability of the institution’s employees should flow directly from the institutional objectives. Institutional leaders should start with the simple, respectful idea that faculty and other campus employees are highly capable and want to do a good job. Evaluation systems should be designed to motivate and support the employees. It is particularly important to encourage and support professional development. A system based on a philosophy of “you-may-be-deadwood” is sure to engender defensiveness and distrust.

4. Tenure is the bulwark of accountability and quality. It ensures that the institution's curriculum, teaching, research and other academic programs will be framed by trained and motivated professionals who possess a deep, lasting commitment to the institution. That is exactly what we want in employees. Designing ways to weaken tenure, or to deny people its protection, makes no sense.
5. To keep the institution vital, opportunities must be provided for new faculty to move their way up the tenure ranks. The overreliance on non-tenure track faculty should be ended. At the same time, the wages, working conditions and evaluation criteria faced by non-tenure track faculty should be strengthened dramatically to attract the best personnel and enable them to function more effectively.
6. The myth that tenured faculty are "untouchable" or unaccountable must be abandoned. Tenured faculty are, in fact, subject to multiple forms of evaluation throughout their careers.
7. **No new form of evaluation should be implemented unless it fits into a constructive evaluation strategy. Additional forms of review may be acceptable only if they enhance—not simply add to—what is already in place, and only if they are found to be truly cost-effective in terms of money, time and effort."**

Post-tenure Review

POST-TENURE REVIEW has generally been instigated by the state legislature, the state higher education agency or the board of trustees, rather than the college administration. It may even be prompted by an accreditation review. The procedure is often presented in the political process as an alternative to eliminating tenure altogether. Some post-tenure review procedures are many years old, especially in community colleges, but the practice is spreading widely.

In 1996, it was reported that 61 percent of public and private four-year colleges had a post-tenure review policy, with another 9 percent under development. In an early 1990's survey, 70 percent of a sample of two-year colleges served by the North Central Association of Colleges of Higher Education (NCACHE) were found to have evaluation procedures akin to post-tenure review. It was also reported that 28 states were considering initiating or expanding post-tenure review policies. In Virginia and South Carolina, for example, the legislatures moved to make the implementation of post-tenure review a condition for receiving state aid. Recent reports from organizations such as the American Association of State Colleges and Universities confirm the trend.

The post-tenure review process may be applied to all tenured faculty, or only to those identified as being in trouble or needing some kind of help. The evaluation may be conducted by administrators, or by faculty peers, or a combination of both. There are major differences among colleges in terms of what happens during the review, what kinds of help are available to faculty members in difficulty, and most important, what adverse consequences, if any, can flow from a negative review. Some procedures are more judgmental and punitive than others—these are often called summative post-tenure review policies. Other procedures focus more on encouraging good performance by identifying strengths and weaknesses; these are called formative post-tenure review policies.

First, it's important to understand that faculty have plenty of good reasons to be wary of post-tenure review; the loudest advocates of post-tenure review are often the same people who like to characterize faculty as lazy, uninterested and out of control. In fact, some faculty perceive the very term "post-tenure review" to mean a top-down, under-the-thumbs of management approach to accountability. To them, the term implies an unnecessarily precarious view of tenure. A number of institutions now use different names—such as career

development program or career support review—to delineate what they see as a developmental process.

Some locals oppose any form of post-tenure evaluation at the bargaining table, considering it an unacceptable threat to the tenure and academic freedom of their members. Most locals, however, negotiate evaluation in all its forms, including post-tenure review. In an analysis of post-tenure review policies nationwide, we found, not surprisingly, that procedures developed through collective bargaining are generally more supportive of faculty rights than policies imposed from without.

Despite their differences, all faculty unions are likely to agree on one point: **Post-tenure review must never be used to replace the discipline process, or to reduce the obligation of management under that process to prove “just cause” in taking adverse action against a faculty member.** As we will see later on, some post-tenure review policies allow the material generated by the review to be used by management in a personnel action, while others do not. But either way, severe sanctions such as dismissal must always be justified in relation to the criteria for faculty performance contained in the collective bargaining agreement, or in institutional policy documents such as the faculty handbook. The burden of proof must remain with management, not with the individual. In the case of institutions that are not unionized, the faculty member must be afforded the full procedural safeguards set forth in AAUP’s Recommended Institutional Regulations on Academic Freedom and Tenure, which includes, among others, the opportunity to confront and cross-examine adverse witnesses.

As already noted, there are a number of predictable crossroads in the post-tenure review process, junctures where different approaches can produce different results. What follows are some of the key issues likely to confront locals that negotiate post-tenure review.

The purpose: Positive or “add-on”

At an institution where tenured faculty members already are subject to multiple evaluations, adding one more form of review, unless it serves a different and positive purpose, may turn out to be a duplicative and burdensome waste of time. Many post-tenure review procedures have been initiated in this careless manner. On the other hand, attempts have been made on some campuses to give post-tenure review a unique role by, among other things, focusing on long-term planning, “safe” individual improvement (in private and without sanctions) and/or professional development. The union may challenge the administration to demonstrate that the new procedure fills an important gap in the current evaluation program and that it is worth the additional time and money required.

High-stakes evaluation or professional growth

A crucial crossroads in post-tenure review policy is whether it will be focused more on high-stakes evaluation or on professional development.

Some post-tenure review processes focus primarily on making judgments about faculty members and imposing sanctions if performance is found lacking. Not surprisingly, most faculty leaders approach procedures of this type with great distrust. They know that there is no shortage of negative sanctions already in place on campus. They are concerned that post-tenure review can be used to attach a negative label to some faculty members—including people who are simply disliked or may need help—and make it easier to take personnel action against them. In any case, post-tenure review should never be a de facto re-tenuring or de-tenuring process. Tenure and academic freedom become meaningless if the faculty is subjected to the equivalent of a full-blown re-tenuring process every few years, under shifting standards and with the prospect of discipline and removal hanging over their heads.

As a result, many locals negotiating post-tenure review push to focus on providing positive incentives and effective support for professional development. After all, many institutions do not have a very good procedure, if any, for allowing faculty members to turn to colleagues and receive support to strengthen their performance. Usually, what emerges from negotiations is a hybrid of the two approaches.

Who gets evaluated

One question is whether to conduct periodic reviews of all faculty members, or only to single out particular individuals for review. In the latter case, the individuals are identified by one or another process (such as a series of negative annual evaluations) as requiring a special review. Some locals favor the targeted approach because it is far less disruptive to the faculty as a whole. On the other hand, who gets to pick the targets for review and on what basis? Obviously, there is a potential for favoritism and unfairness in this approach. Is such a process doomed to be punitive from the start? Most post-tenure review procedures focus on all faculty.

Who does the evaluating

Another issue is whether the review should be conducted by a manager or a peer committee, or by some combination of the two. Some locals would rather leave the review to management, believing that it is not good to have peers casting judgment on other peers, possibly putting them at professional risk. Peers reviewing peers, they contend, may be so uncomfortable for the faculty that the practice is unfeasible.

Other locals have chosen to have the evaluation conducted primarily by peers. They argue that it is quite usual for peers to review and critique each others' performance in the academy, and that the best way to bring about better performance is to get peers working together in a non-threatening environment.

There are plenty of post-tenure review procedures that use management evaluators, plenty that use peers—although community colleges are more likely than four-year colleges to give

management the primary evaluative role. A number of peer-driven processes give the faculty member a chance to participate in the choice of committee members, while others offer training and release time for peer evaluators.

Frequency of review

If post-tenure review is put into place, the local has to negotiate the length of time between reviews. Ideally, the period should be short enough to make sure the evaluation is timely, but long enough to give the faculty a chance to show progress. Many contracts are clustered in the three- to five-year range.

Evaluation criteria

Locals must negotiate the criteria by which faculty members are to be evaluated. The appendix to this report includes a variety of evaluation criteria in use today. Among them: continued professional development, currency in one's field, classroom teaching observation, student evaluations, discovery of new knowledge, creative activity and length of service. Research and writing output take on greater importance at four-year institutions.

Sometimes, the review process is organized around a set of written goals assembled every few years by the faculty member for the conduct and development of his or her teaching, research and/or service. Some unions favor this approach because it establishes clear expectations. For example, an individual's objectives for the next three-year period might include items such as teaching particular courses or developing a new curriculum, reaching out to local high schools, publishing on a given subject, or engaging in activities to upgrade pedagogical or subject matter skills. Other locals, however, favor a less formal process out of a concern that formal goals can be turned against the faculty member at evaluation time.

Follow-up

Whoever has conducted the evaluation will reach conclusions of some kind. But, what happens next? Under most post-tenure review procedures, the conclusions receive a label such as satisfactory, unsatisfactory or needs improvement. Alternatively, the process may allow for two conclusions: no further action required or a suggested improvement program. Under some contracts, the review ends with recommendations to the individual but no formal findings and no required follow-up. Locals must negotiate the language in which the review conclusions are stated and, not surprisingly, many push to use the most positive, least pejorative terms possible.

If follow-up is required, the procedure may call for the development of a remedial plan that usually includes peer assistance. Success in implementing the plan is reviewed at the end of the remedial period. At this point, many procedures then call for a finding that the individual has, or has not, shown improvement or achieved the plan's objectives.

Some policies permit faculty members to challenge a negative review. As the American Association of University Professors notes, negative findings 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.” To remedy this, a number of contracts permit the individual under review to register written disagreement with any decision of the post-tenure review committee, or to appeal the committee’s decision to an elected faculty grievance committee.

Two points of crucial importance: Faculty must not be held accountable for achieving unrealistic goals, and faculty must receive the institutional support required to reach reasonable objectives. Not uncommonly, institutions may: (a) require a faculty member to commit to a set of goals or a program for improvement; (b) fail to provide enough financial resources or release time to achieve the objectives; and then (c) try to punish the faculty member for not achieving the objectives. This is unacceptable.

Personnel action

The weight of experience has demonstrated that management does *not* often try to use the results of a post-tenure review to institute personnel actions, even if it has the authority to do so. As a result, some observers consider the debate about post-tenure review much ado about nothing. Maine has used the process for 20 years and has uncovered not a single case where dismissal was warranted. Similarly, in Oregon there have been no actions resulting in termination for cause. At the University of Hawaii-Manoa, 618 faculty were reviewed over a five-year period. Problems were identified in 72 cases; of these, only five were not resolved successfully at the conclusion of the study.

Despite this record, the most important question facing the union is what can be done with the ultimate findings of the review. **Can the evidence of a negative final review be used in a subsequent personnel action?**

At many institutions, management is permitted under certain circumstances to use the findings of a post-tenure review, and/or the record on which the finding was based, as evidence in a personnel action. This is somewhat more common at community colleges, where managers generally play a greater role in the evaluation process. Reviews are more often shielded from personnel action at colleges where the evaluation is run by peers—but if the information can be used, a negative finding by a peer committee may carry particular weight.

It may come as a surprise, but some locals do not oppose the restricted use of post-tenure review material. They maintain that the principle of accountability logically requires that a truly serious negative finding of a peer review should be made known to management—but only under very limited circumstances and surrounded by very high walls of due process protection. The very essence of being a profession, they argue, is peer responsibility—set-

ting and upholding standards of responsibility and appropriate behavior.

However, other locals believe just as deeply that the findings and records of a post-tenure review should not be made available to management under any circumstances. Releasing any information, they believe, would be contrary both to the developmental nature of post-tenure review and to the union's responsibility to protect its members; and it would place peers in an untenable position with each other. If a local union is negotiating a post-tenure review policy, the issue of what can be done with the review cannot be avoided, and the local must dig deeply into its own philosophy of representation and peer responsibility, as well as the terms of state and local freedom of information and privacy laws, to stake out its position.

Conclusion

POST-TENURE REVIEW may be relatively benign in practice, it may be a duplicative waste of time or it may be something worse. Properly negotiated, it may even improve professional conditions. Only local unions are in a position to determine the proper stance to take on their own campuses. We hope we have alerted readers to the key issues, shown how others have dealt with them and offered some useful guidelines based on experience.

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