

4. **U. T. System Board of Regents: Discussion and appropriate action regarding proposed revision to Regents' Rules and Regulations, Rule 31002, Section 1 (Notice to Nontenured Faculty); Rule 31007 (Tenure); Rule 31008 (Termination of a Faculty Member); and Rule 31102 (Evaluation of Tenured Faculty) and additional action to comply with state law**

RECOMMENDATION

The Chancellor, the Executive Vice Chancellors for Academic Affairs and Health Affairs, and the Vice Chancellor and General Counsel recommend the Board take the following actions to assure compliance with Senate Bill 18, Texas Legislature, 88th Regular Session, codified as *Texas Education Code* [Section 51.942](#), amended effective September 1, 2023, and retitled as Faculty Tenure:

- a) Revise Regents' Rule 31002 at the last sentence of Section 1 as follows:

Sec. 1 Notice to Nontenured Faculty.

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The notice required by this ~~Section~~ Subsection is not applicable where termination of employment is for good cause as defined in under Rule 31008, ~~Section 4~~ of the Regents' *Rules and Regulations*.

- b) Amend Regents' Rule 31007 to add additional language to Sections 1 and 6 as follows:

Sec. 1 Granting of Tenure. Tenure denotes a status of continuing appointment as a member of the faculty at an institution of The University of Texas System. The granting of tenure means the entitlement of a faculty member of an institution of higher education to continue in the faculty member's academic position unless dismissed by the institution for good cause in accordance with Regents' Rule 31008. The granting of tenure may not be construed to create a property interest in any attribute of a faculty position beyond a faculty member's continuing employment, including the faculty member's regular annual salary and any privileges incident to the faculty member's status as a tenured professor.

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Sec. 6 Board Approval. The award of tenure may be granted only by ~~is subject to approval of the Board of Regents,~~ on the recommendation of the institutional president and the Chancellor.

- c) Amend Regents' Rule 31008 as follows and renumber prior Section 4 and the remaining sections as appropriate:

Sec. 1 Termination for Good Cause. Termination by an institution of the employment of a faculty member who has been granted tenure and of all other faculty members before the expiration of the stated period of appointment, except as is otherwise provided in Rule 31007, Section 5, and *Texas Education Code* [Section 51.943](#),

or by resignation or retirement, will be only for good cause shown, as further detailed below.

Such termination may be made at any time after providing the faculty member with appropriate due process in conformance with the institution's policies, on a determination that:

(a) the faculty member has engaged in one of the following forms of conduct and the faculty conduct is serious or egregious in nature such that the president determines it is in the best interest of the institution to separate the implicated faculty:

(1) exhibited professional incompetence;

(2) continually or repeatedly failed to perform duties or meet professional responsibilities of the faculty member's position;

(3) failed to successfully complete any post-tenure review professional development program;

(4) engaged in conduct involving moral turpitude that adversely affects the institution or the faculty member's performance of duties or meeting of responsibilities;

(5) violated laws or university system or institution policies substantially related to the performance of the faculty member's duties;

(6) been convicted of a crime affecting the fitness of the faculty member to engage in teaching, research, service, outreach, or administration;

(7) engaged in unprofessional conduct that adversely affects the institution or the faculty member's performance of duties or meeting of responsibilities; or

(8) falsified the faculty member's academic credentials;

(b) there is actual financial exigency or the phasing out of the institution's programs requiring elimination of the faculty member's position as determined following Regents' Rule 31003 and any relevant institutional policy; or

(c) there is other good cause as defined in the institution's policies, which are subject to approval by the Chancellor, Executive Vice Chancellor for Academic Affairs or Health Affairs, and the Vice Chancellor and General Counsel.

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Sec. 3 Response to Allegation. If the president determines that the allegations are supported by evidence that justifies the initiation of termination procedures, the president will meet with the faculty member, explain the allegations and

supporting evidence, and give the faculty member a reasonable amount of time, as determined by the president to respond either orally or in writing.

Sec. 4. Authorization for Summary Dismissal. ~~In cases of incompetency or gross immorality where the facts are admitted, or in cases of felony conviction, the hearing procedures of Section 4 of this Rule shall not apply, and dismissal by the president will follow.~~ The institutional policies and procedures adopted pursuant to this Rule will include a process for the summary dismissal of a tenured faculty member upon a finding that the faculty member committed serious misconduct, as defined by institutional policies, at any time after providing the faculty member with appropriate due process required by state law, including providing the faculty member with written notice of the allegations against the faculty member together with an explanation of the evidence supporting dismissal and an opportunity for the faculty member to respond to the allegations in a hearing with a designated administrator.

The designated administrator must consider the faculty member's response, must make a written determination of whether the institution will proceed with the summary dismissal, and must promptly provide the faculty member a copy of the written determination. If the decision is in favor of summary dismissal, the written determination must state that clearly and include the effective date of the dismissal and information regarding the faculty member's opportunity for a post-dismissal appeal. If the decision is against summary dismissal, the written determination must state that clearly.

Following a designated administrator's written determination to summarily dismiss a faculty member, the former faculty member must be provided with the opportunity for a post-dismissal appeal in accordance with the institution's policies and procedures.

Institutional policies adopted pursuant to this Rule must be approved by the Chancellor, Executive Vice Chancellor for Academic Affairs or Health Affairs, and the Vice Chancellor and General Counsel.

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d) Amend Regents' Rule 31102, at Subsection 5.2 to add new language as follows:

5.2 Comprehensive Periodic Evaluations. Comprehensive periodic evaluations are required in compliance with *Texas Education Code* [Section 51.942](#).

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(h) Communication of Results. Results of the evaluation will be communicated in writing to the faculty member, the department chair/dean, the chief academic officer, and the president for review and appropriate action.

(i) Uses. Possible uses of the information contained in the report include the following:

- (1) The evaluation may be used to determine salary recommendations, nominations for awards, or other forms of performance recognition.
- (2) For individuals whose performance indicates they would benefit from additional institutional support or a remediation plan, the evaluation shall be used to provide such support or a remediation plan (e.g., teaching effectiveness assistance, counseling, or mentoring in research issues/service expectations). Schools/colleges and/or departments, in consultation with a peer committee, shall monitor individuals receiving such support for evidence of improvement and, if there is insufficient improvement, shall take action under (3) or Section 5.3 below, if appropriate, for termination or other appropriate disciplinary action.
- (3) For individuals who receive an unsatisfactory rating in any area of any evaluation conducted under the comprehensive periodic evaluation policy, the process must provide for a short-term development plan that includes performance benchmarks for returning to satisfactory performance. Such individuals ~~Individuals whose performance is unsatisfactory~~ may be subject to further review and/or to appropriate administrative action. Institutional policies shall provide procedures for appeals.
- (4) If incompetence, neglect of duty, or other good cause is determined to be present, appropriate disciplinary action may be taken under Section 5.3 below.

It is further recommended that the Board of Regents direct the General Counsel to the Board to submit these Rules amendments to the Texas Higher Education Coordinating Board prior to September 1, 2023, and to submit any substantive revisions to these Rules annually, prior to each September 1.

BACKGROUND INFORMATION

Senate Bill 18, which amended *Texas Education Code* [Section 51.942](#), effective September 1, 2023, requires several amendments to current Regents' Rules related to the award of tenure, requirements for the comprehensive periodic evaluation of tenured faculty, and the details associated with termination for cause of a tenured faculty member or a nontenured faculty member during the term of his or her appointment. It is anticipated that institutional policies will be modified with input from faculty and following System guidance to facilitate implementation of these revisions.

The proposed revisions do not impact the full-time equivalent (FTE) employee count systemwide and are budget-neutral.

The proposed Rules changes were reviewed by the institutional presidents and representatives of the Student Advisory Council, the Faculty Advisory Council, and the Employee Advisory Council and were also distributed by the presidents to faculty at each institution for advice and comment.