

**FLORIDA BOARD OF GOVERNORS
NOTICE OF PROPOSED NEW REGULATION**

DATE: 2/22/2023

REGULATION NUMBER AND TITLE: 10.003, Post-Tenure Faculty Review

SUMMARY:

The 2022 Legislature passed Senate Bill 7044, which amends section 1001.706, Florida Statutes, adding that the Board of Governors may adopt a regulation requiring tenured State University System faculty to undergo a comprehensive post-tenure review every five years. The bill provides that the regulation must address accomplishments and productivity; assigned duties in research, teaching, and service; performance metrics, evaluations, and ratings; and recognition and compensation considerations, including improvement plans and consequences for underperformance.

FULL TEXT OF THE REGULATION IS INCLUDED WITH THIS NOTICE.

AUTHORITY TO PROPOSE REGULATION(S): Section 7(d), Art. IX, Fla. Const.; BOG Regulation Development Procedure dated March 23, 2006.

THE BOARD OF GOVERNORS' OFFICIAL INITIATING THE PROPOSED REGULATION: Dr. Christy England, Vice Chancellor, Academic and Student Affairs

COMMENTS REGARDING THE PROPOSED REGULATION SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. The comments must identify the regulation on which you are commenting:

General Counsel, Board of Governors, State University System, 325 W. Gaines Street, Suite 1614, Tallahassee, Florida 32399, (850) 245-0466 (phone), (850) 245-9685 (fax), or generalcounsel@flbog.edu.

10.003 Post-Tenure Faculty Review

(1) Each board of trustees shall adopt policies requiring each tenured state university faculty member to undergo a comprehensive post-tenure review to accomplish the following.

- (a) Ensure high standards of quality and productivity among the tenured faculty in the State University System.
- (b) Determine whether a faculty member is meeting the responsibilities and expectations associated with assigned duties in research, teaching, and service, including compliance with state laws, Board of Governors' regulations, and university regulations and policies.
- (c) Recognize and honor exceptional achievement and provide an incentive for retention as appropriate.
- (d) Refocus academic and professional efforts and take appropriate employment action when appropriate.

(2) Timing and Eligibility

- (a) Each tenured faculty member shall have a comprehensive post-tenure review of five years of performance in the fifth year following the last promotion or the last comprehensive review, whichever is later. For faculty hired with tenure, the hire date shall constitute the date of the last promotion.
 1. In the first year following the effective date of this regulation, 20% of tenured faculty ~~with the most longevity in rank~~ will be evaluated, in addition to faculty in the fifth year under (2)(a).
 2. In each of the second, third, fourth, and fifth years following the effective date of this regulation, 20% of tenured faculty ~~who have the most longevity in rank and~~ who have not received a comprehensive review will be evaluated in addition to faculty who are in the fifth year under (2)(a).
 3. Beginning with the sixth year following the effective date of this regulation, the process outlined in (2)(a) shall be followed.
- (b) Tenured faculty in administrative roles, such as department chairs or directors, shall be evaluated annually by the appropriate college dean based on criteria established by the university. Such evaluations shall include a review of performance based on all assigned duties and responsibilities and professional conduct. Such evaluations shall also include the following, if applicable: performance of academic responsibilities to the university and its students; non-compliance with state law, Board of Governors' regulations, and university regulations and policies; ~~any violation of section 1000.05(4), Florida Statutes~~; and substantiated student complaints.
- (c) Policies and regulations adopted by the boards of trustees may include exceptions to the timing of the comprehensive post-tenure review for extenuating, unforeseen circumstances. Exceptions granted to tenured faculty members shall be disclosed in the chief academic officer's report to the university's president and board of trustees on the outcomes of the

comprehensive post-tenure review outlined in Section (6) below.

(3) Review Requirements

(a) The comprehensive post-tenure review shall include consideration of the following.

1. The level of accomplishment and productivity relative to the faculty member's assigned duties in research, teaching, and service, including extension, clinical, and administrative assignments. The university shall specify the guiding documents. Such documents shall include quantifiable university, college, and department criteria for tenure, promotion, and merit as appropriate.
2. The faculty member's history of professional conduct and performance of academic responsibilities to the university and its students.
3. The faculty member's non-compliance with state law, Board of Governors' regulations, and university regulations and policies.
4. Unapproved absences from teaching assigned courses.

~~5. Any violation of section 1000.05(4), Florida Statutes.~~

~~6.5.~~ Substantiated student complaints.

~~7.6.~~ Other relevant measures of faculty conduct as appropriate.

(b) The review shall not consider or otherwise discriminate based on the faculty members' political or ideological viewpoints.

(4) Process Requirements

(a) The faculty member shall complete a university-designated dossier highlighting accomplishments and demonstrating performance relative to assigned duties and submit the dossier to the appropriate department chair.

(b) The faculty member's department chair shall review the completed dossier, the faculty member's personnel file, and other records related to professional conduct, academic responsibilities, and performance.

(c) The faculty member's department chair shall add to the dossier the following.

1. Additional records related to professional conduct, academic responsibilities, and performance concerns.
2. A letter assessing the level of achievement and certification that the letter includes, if applicable, any concerns regarding professional conduct, academic responsibilities, and performance during the period under review.

(d) The faculty member's department chair shall forward the dossier, including all records and the chair's letter, to the appropriate college dean for review.

(e) The dean of the college shall review all materials provided by the faculty

member's department chair.

- (f) The dean of the college shall add to the dossier a brief letter assessing the level of achievement during the period under review. The letter shall include any concerns regarding professional conduct, academic responsibilities, and performance. The letter shall also include the dean's recommended performance rating using the following scale.
 - 1. Exceeds expectations: a clear and significant level of accomplishment beyond the average performance of faculty across the faculty member's discipline and unit.
 - 2. Meets expectations: expected level of accomplishment compared to faculty across the faculty member's discipline and unit.
 - 3. Does not meet expectations: performance falls below the normal range of annual variation in performance compared to faculty across the faculty member's discipline and unit but is capable of improvement.
 - 4. Unsatisfactory: failure to meet expectations that reflect disregard or failure to follow previous advice or other efforts to provide correction or assistance, or performance involves incompetence or misconduct as defined in applicable university regulations and policies.
- (g) The dean of the college shall forward the dossier to the chief academic officer for review.
- (h) The chief academic officer shall review the dossier provided by the dean of the college.
- (i) With guidance and oversight from the university president, the chief academic officer will rate the faculty member's professional conduct, academic responsibilities, and performance during the review period. The chief academic officer may accept, reject, or modify the dean's recommended rating. The chief academic officer may request assistance from a university advisory committee in formulating an assessment. Each faculty member reviewed will receive one of the following performance ratings, as defined in (4)(g) above.
 - 1. Exceeds expectations
 - 2. Meets expectations
 - 3. Does not meet expectations
 - 4. Unsatisfactory
- (j) The chief academic officer shall notify the faculty member, the faculty member's department chair, and the appropriate college dean of the outcome.

(5) Outcomes

- (a) University regulations and policies regarding outcomes of the

comprehensive post-tenure review process shall include recognition and compensation considerations and consequences for underperformance.

- (b) For each faculty member who receives a final performance rating of “exceeds expectations” or “meets expectations,” the appropriate college dean, in consultation with the faculty member’s department chair, shall recommend to the chief academic officer appropriate recognition and/or compensation in accordance with the faculty member’s performance and university regulations and policies. The chief academic officer shall make the final determination regarding recognition and/or compensation.
- (c) For each faculty member who receives a final performance rating of “does not meet expectations,” the appropriate college dean, in consultation with the faculty member’s department chair, shall propose a performance improvement plan to the chief academic officer.
 - 1. The plan must include a deadline for the faculty member to achieve the requirements of the performance improvement plan. The deadline may not extend more than 12 months past the date the faculty member receives the improvement plan.
 - 2. The chief academic officer shall make final decisions regarding the requirements of each performance improvement plan.
 - 3. Each faculty member who fails to meet the requirements of a performance improvement plan by the established deadline shall receive a notice of termination from the chief academic officer.
- (d) Each faculty member who receives a final performance rating of “unsatisfactory” shall receive a notice of termination from the chief academic officer.
- (e) Final decisions regarding post-tenure review may be appealed under university regulations or collective bargaining agreements, as applicable to the employee. The arbitrator shall review a decision solely for the purpose of determining whether it violates a university regulation or the applicable collective bargaining agreement and may not consider claims based on equity or substitute the arbitrator’s judgment for that of the university.

(6) Monitoring and Reporting

- (a) The chief academic officer shall report annually to the university president and Board of Trustees on the outcomes of the comprehensive post-tenure review process consistent with section 1012.91, Florida Statutes.

~~(b) Beginning January 1, 2024 and continuing every three years thereafter, each university must conduct an audit of the comprehensive post-tenure review process for the prior fiscal year and submit a final report to the university’s board of trustees by July 1. The audit shall be performed by the university’s chief audit executive or by an independent, third-party auditor, as determined by the chair of the university’s board of trustees. Each university must conduct annual audits of the comprehensive post-tenure~~

~~review process for the prior fiscal year and submit a final report to the university's board of trustees by February 1. The audit shall be performed by the university's chief audit executive or by an independent, third-party auditor, as determined by the chair of the university's board of trustees.~~

1. The auditor must provide the university Board of Trustees with a report that includes the following.
 - a. The number of tenured faculty in each of the four performance rating categories as defined in (4)(g).
 - b. The university's response in cases of each category.
 - c. Findings of non-compliance with applicable state laws, Board of Governors' regulations, and university regulations and policies.
2. Each university Board of Trustees shall consider the audit report at the next regularly scheduled Board of Trustees meeting after the report's publication date.
 - a. The chief academic officer or the auditor must present the audit report to the Board of Trustees. The Board of Trustees shall not adopt the report as a consent agenda item.
 - b. If the audit report shows that a university is in compliance with applicable state laws, Board of Governors' regulations, or university regulations and policies, a copy of the adopted audit report shall be provided to the Board of Governors consistent with Regulation 1.001(6)(g).
 - c. If the auditor finds that a university is out of compliance with applicable state laws, Board of Governors' regulations, or university regulations and policies, the auditor must present the report to the Board of Governors at its next regularly scheduled meeting.

(7) Following the effective date of this regulation Universities shall not enter into any collective bargaining agreement that conflicts with ~~section 1001.706, Florida Statutes,~~ or this regulation.

~~(8) Notwithstanding the foregoing, if a university does not have a tenure system, the board of trustees must establish a regular, comprehensive review policy for faculty members on contract that meets the requirements outlined in sections (3) and (4).~~

~~(a) Faculty members at these universities must undergo a comprehensive review during subsequent contract extensions or renewals.~~

~~(b) Universities without a tenure system must also comply with all other requirements outlined in this regulation.~~

(9) Nothing in this regulation is intended to prevent a state university from instituting additional evaluation processes, criteria, or standards so long as they meet or exceed the requirements outlined in section 1001.706(6)(b), Florida Statutes, and this regulation.

Authority: Section 7(d), Art. IX, Fla. Const., Section 1001.706(6)(b), Florida Statutes; New XX-XX-23.