

Office of the Provost
Notes on Terminations of Faculty Appointments
for Program or Department Discontinuance in Response to
the Academic Affairs Program Prioritization Process

These notes clarify the process and procedures for terminating a tenured or other faculty appointment based on discontinuance of a program or department of instruction, research or service. *Faculty Manual*, III.F.3. These notes provide guidance only. *Faculty Manual* provisions control in the event of conflict or ambiguity.

This document is organized into a general section that applies to all faculty terminations based on program discontinuance, followed by specific instructions for each of three types of faculty members (fixed-term, pre-tenure tenure track and temporary faculty without terminal dates, and tenured faculty). Please read the appropriate guidelines before proceeding with any discussions of termination.

Decisions on the discontinuance of a program or department must be reviewed by the Faculty Senate Steering Committee and Faculty Affairs Committee or their designees and comments sent to the Provost and Executive Vice President. Approval communicated via the Office of the Provost is required before any unit may proceed with discontinuance of a program or department. Consultation with the Office of the Provost and Office of the Attorney General is available regarding general and specific questions, as well as negotiation processes with individual faculty members.

Faculty members may ask to participate in their separation from WSU. Approved separation packages (often involving purchase of tenure) for individual faculty members must be in the best interest of the University. Additionally, separation letters may provide settlement options for some categories of faculty members. Detailed discussion of option negotiation is beyond the scope of this document. Please contact the Office of the Provost or Office of the Attorney General to discuss particular issues as they arise.

Generally Applicable Provisions

“Discontinuance of a program or department of instruction, research, or service” can result in termination of any type of faculty appointment. *Faculty Manual*, III.F.3.

Discontinuance of a program must be reviewed by the Faculty Senate Steering Committee and the Faculty Affairs Committee before proceeding. “The criterion will be long-range institutional considerations.” *Faculty Manual*, III.F.3. The Faculty Senate committees will send advisory comments to the Provost.

“Before an appointment is terminated because of discontinuance of a program of instruction, research, or service, the institution will make reasonable and good faith efforts to transfer the affected faculty member to a suitable position for which he or she is qualified.” *Faculty Manual*, III.F.3. This is a mandatory provision.

When a program is discontinued, the vacated position cannot be refilled in the next 3 years unless the terminated faculty member is offered “suitable reappointment and a reasonable time to accept the position.” *Faculty Manual*, III.F.3.

No action should be taken concerning a faculty member’s appointment without consulting the faculty member’s initial letter of offer, any modifications/promises made to the faculty member subsequently, and the current PAF. Although WSU has attempted to regularize appointments, some appointments may still contain unusual aspects that modify the application of the guidelines listed below.

No action should be taken concerning a faculty member’s appointment without prior discussion among the Department Chair, Dean, and Vice Provost for Faculty Affairs. Legal advice from the Office of the Attorney General is available and recommended.

Faculty members subject to discontinuance are entitled to review of the action by the Faculty Status Committee. Procedures for this review are set forth in the *Faculty Manual*, III.F.3.

Any faculty member who has received notice of termination based on program discontinuance but secures other employment before the notice period expires must immediately inform WSU of the new employment, including the effective date of the new employment. *Faculty Manual*, III.F.3. Notice periods required for resignation will be waived. *Id.*

Separation packages that result from program termination may be negotiated on an individual basis within limitations imposed by law and policy. Any such settlement must be formalized in a contract. The Office of the Attorney General prepares such contracts incorporating the provisions upon which the parties have agreed. The faculty member has the opportunity to consult with his/her attorney, tax advisor or other person, if desired.

Again, individual faculty members who are not affected by program termination may ask to participate in the termination process. Such requests must be approved by the Department Chair, Dean, and Provost. Approved separation packages (often involving purchase of tenure) must be in the best interest of the University. A buyout (also called a settlement or package) is done by contract and in accordance with law. The faculty member is provided time to consider the document, consult with his/her own tax advisor and/or own attorney, and otherwise ensure for him or herself that the document is in his/her best interest.

Fixed-term (Non-tenure track) Faculty Members

Employment of a fixed-term faculty member ends on the terminal date of his or her contract without cause, subject to “reminder” (notice) provisions. *Faculty Manual*, V.J.1. Faculty members can be terminated before that end date when a program is discontinued. *Faculty Manual*, V.J.3.

Under ordinary circumstances, nonreappointment requires 60-days to 6-months advance notice according to the following rule: “In cases where a temporary appointment to the same position has been extended previously, without a break in service, the University must remind the temporary faculty member in writing of nonreappointment at least sixty days prior to the end of the current appointment. If the employee has been in the same temporary position continuously for five years or more, he or she must be afforded a written reminder of nonreappointment six months prior to the end of the current appointment.” *Faculty Manual*, V.J.1. Note that “[c]ontingency appointments always end on the designated terminal date unless the specified contingencies are satisfied.” *Id.*

However, this period can be reduced in cases of program termination. When discontinuance of a program or department occurs, termination of the appointment may be upon sixty (60) days’ notice or at the time of the appointment’s conclusion, whichever comes first. *Faculty Manual*, V.J.3. “If a decision to discontinue a program is rendered during the summer months and a verbal expectation of employment has been given to a temporary faculty member, notice will be delivered in writing as far in advance as possible that employment will not be available for the coming school year.”

Id.

(Pre-tenure) Tenure Track Faculty and Temporary Faculty Without Terminal (Contract End) Dates

A pre-tenure/tenure-track faculty member or a temporary faculty member without terminal (contract end) date can be terminated at any time without cause (so long as no element of discrimination or other illegal reason is involved), but with adequate notice. *Faculty Manual*, III.F.1.

A faculty member on appointment without terminal date and without tenure has no presumption of reappointment, including reappointment with tenure. Such faculty may be terminated at any time consistent with their employment contracts and this section, with or without cause. A nonreappointed faculty member will be advised in writing by the department chair as soon as it has been decided that the appointment is not to be renewed. This decision shall be made by the department Chair in consultation with the Dean and tenured members of the department involved.

Time lines for nonreappointment of these faculty members are as follows:

- (a) [A]t least three months in advance of the termination of services if in the first year of employment;
- (b) at least six months in advance of the termination of services if in the second year of employment;
- (c) at least twelve months in advance of the termination of services if in the employment of the University for two years or longer.

Id. If the faculty member requests, a written statement of reason(s) for the nonreappointment must be provided. *Id.*

In cases of program discontinuance, the following notification period applies:

Nontenured faculty members shall be entitled to minimum advance notice of termination of services for reasons of financial exigency or elimination of function in accordance with the following:

<u>Type of Appointment</u>	<u>Year of Employment</u>	<u>Minimum Advance Notice in Calendar Months</u>
Annual (twelve-month)	1	3
Annual (twelve-month)	2	6
Annual (twelve-month)	3 or more	12
Academic (nine-month)	1	3*
Academic (nine-month)	2	6*
Academic (nine-month)	3 or more	9*

*Excluding three summer months

Faculty Manual, III.F.3.

WSU may opt to provide less notice than set forth in its policy, but if it chooses this approach, it must compensate the faculty member as follows:

Where less than the required notice is given prior to termination, the faculty member shall be entitled to receive at the time of termination one-twelfth of his or her current annual salary, on an annual appointment, or the faculty on an academic year appointment shall be entitled to one-ninth his or her current annual salary for each month less the required notice. The University may, at its option, make regular monthly severance pay payments from the date of termination until the expiration of the appropriate notice period, commencing the date notice of termination is given, unless there is an agreed settlement on or before the termination date of the total amount of severance pay to be paid to the faculty member.

Id.

The chair and/or dean should also consult the Vice Provost for Faculty Affairs and obtain legal advice from the Office of the Attorney General about these terminations. If a settlement is offered, it must be recommended by the Dean and the Provost or his authorized designee. As in all cases of proposed settlements, faculty members will be encouraged to consult with advisors as desired.

Tenured Faculty

In situations of discontinuance of a program, tenured faculty members are entitled to nine or twelve months notice prior to termination of their appointments based on the nature of the appointment (academic or calendar year), according to the following formula:

Tenured faculty members holding annual (twelve-month) appointments shall be entitled to receive at least twelve calendar months' notice in advance of termination for reasons of financial exigency or elimination of function. Tenured faculty members holding academic-year (nine-month) appointments shall be entitled to at least nine calendar months' notice in advance of termination for reasons of financial exigency or elimination of function, provided that the three summer months, not part of the usual academic year (May 16 to August 15 under the current academic calendar) shall not be included when computing notice requirements.

Faculty Manual, III.F.3.

As with tenure track faculty or temporary faculty without terminal date, WSU is obligated to make payments to tenured faculty members if it gives less than requisite notice prior to termination. *Id.* The formula for each of these categories of faculty is the same:

Where less than the required notice is given prior to termination, the faculty member shall be entitled to receive at the time of termination one-twelfth of his or her current annual salary, on an annual appointment, or the faculty on an academic year appointment shall be entitled to one-ninth his or her current annual salary for each month less the required notice. The University may, at its option, make regular monthly severance pay payments from the date of termination until the expiration of the appropriate notice period, commencing the date notice of termination is given, unless there is an agreed settlement on or before the termination date of the total amount of severance pay to be paid to the faculty member.

Id.

The termination of a tenured faculty member may be accompanied by a financial settlement in lieu of notice or severance payments set forth in the *Faculty Manual*. The agreed settlement may occur, either in the buyout of the notice period, in purchase of tenure and/or for other legally acceptable reasons. All settlements must be recommended by the Dean and approved by the Provost before they are final. A contract will be prepared by the Office of the Attorney General that describes the conditions of the settlement. Again, faculty members will be encouraged to consult with advisors of their choosing, including private attorneys and tax advisors. Please consult with the Vice Provost for Faculty Affairs and Office of the Attorney General regarding settlement options.

Please note: The discussion above does not preclude the University from offering other options or settlements not discussed here. Typical settlement provisions involve acceptance of payment conditioned upon relinquishment of certain rights to employment and acceptance of a release.