Motion to the Faculty to Amend the Faculty Handbook Language Concerning Non-Reappointment

Background: The current handbook language for non-reappointment of tenure-track probationary appointments (“Notice Contracts”) is ambiguous and potentially open to erroneous interpretations. Specifically, the language and relation of 2.3.3.1.2 “b” and “c” could be interpreted as guaranteeing not only a third but also a fourth year of employment to any faculty member who has not been given notice of nonrenewal prior to December 15 of his or her second year. Moreover, the language of this section is not clearly in-line with AAUP best practices in this area and leaves an important aspect of employment under-defined.

Moreover, the language of 2.3.3.3 “Review of Decision Not to Issue a Notice Contract” and 2.2.3.4 “Appeal of Tenure Decision” is ambiguous as regards the basis for an appeal. In an apparent effort to prevent appeals from reaching the substance of the Personnel Committee’s tenure-review process, it describes the relevant provisions as “procedural,” when this is not clearly an apt descriptor for the provisions of 2.3.3.3 b). As-is, the language could be interpreted as only allowing Faculty Council to review compliance with the Faculty Handbook (3), leaving academic freedom and discrimination appeals [(1) and (2)] unprotected by a review process. Finally, Faculty Council’s duties are unclear in this section.

Motion: To change sections 2.3.3.1.2, 2.3.3.3, and 2.2.3.4 of the Faculty Handbook to clarify the provisions relating to notification of non-reappointment of probationary faculty members and the procedures for appeal of such decisions.

Key Changes: Faculty Council recommends the following changes to the handbook which:

- Clarify the timing and procedure for the nonrenewal of probationary faculty during the second and subsequent years of service.
- Better align Westmont Faculty Handbook policy for nonrenewal with AAUP best practices.
- Clarify the permissible basis for a non-renewal appeal and the role of Faculty Council in the appeals process.

Current Language:

2.3.3.1.2 Notice Contracts (Probationary Appointments)

When a notice contract will not be offered, written notification will be given to the faculty member in advance of the expiration of the current contract as follows:

- a) not later than March 1 of the first academic year of service;
- b) not later than December 15 of the second academic year of service;
- c) not later than the end of the spring semester of the third and subsequent years of service. In cases where a notice contract is not offered in the third or subsequent years of service, the faculty member will be given a terminal contract with duties to be assigned at the discretion of the Provost.
Proposed Changes:

2.3.3.1.2 Notice Contracts (Probationary Appointments)

When a notice contract will not be offered, written notification of non-reappointment will be given to the faculty member in advance of the expiration of the current contract as follows:

a) not later than March 1 of the first academic year of service;
b) not later than December 15 of the second academic year of service;
c) not later than the end of the spring semester of the third and subsequent years of service. In cases of non-reappointment after December 15 of the second year of service and where a notice contract is not offered in the third or during subsequent years of service, the faculty member will be notified of non-reappointment not later than the end of the spring semester and will be given a terminal 12-month contract with duties to be assigned at the discretion of the Provost.¹

Current Language

2.3.3.3 Review of Decision Not to Issue a Notice Contract

This section provides recourse when a faculty member wishes to contest any negative decision concerning renewal of contract, including a negative tenure decision (Section 2.2.3.4 Appeal of Tenure Decision).

a) A faculty member who has been notified of a decision not to offer a new notice contract may make written appeal to the Faculty Council. Such a faculty member bears the responsibility for establishing a prima facie case and assumes the burden of proof in support of the appeal.

b) Bases for appeal are: (1) violation of academic freedom, (2) discrimination based on race, color, sex, national origin, age, disability, disabled, or Vietnam Era Veterans’ Status, and (3) failure by the College to abide by institutional policies stated in the Faculty Handbook.

c) The faculty member may choose to confer with others, not including members of the Faculty Council, in marshalling evidence and writing the appeal.

d) If the Faculty Council is convinced that a prima facie case has been established, it is incumbent on those who decided not to issue a new contract to communicate in writing to the Faculty Council

¹ In “clean” prose, section c) would read:
“In cases of non-reappointment after December 15 of the second year of service and during subsequent years of service, the faculty member will be notified of non-reappointment not later than the end of the spring semester and will be given a terminal 12-month contract with duties to be assigned at the discretion of the Provost.”
their procedural compliance with the provisions of Section 2.3.3.3 b). The Faculty Council will determine if procedural compliance has occurred.

e) In cases where discrimination is alleged, legal counsel will be sought on behalf of the College prior to making any verbal or written response to the faculty member.

f) The decision of the Faculty Council will be rendered as a recommendation made through the Provost to the President, and will be reported in writing directly to the faculty member.

g) When the Faculty Council is unable to determine that procedural compliance has occurred, the effect is not to recommend the issuance of a new notice contract, but to recommend a review of the case by those who decided not to issue a new contract.

Proposed Language

2.3.3.3 Review of Decision Not to Issue a Notice Contract

This section provides recourse when a faculty member wishes to contest any negative decision concerning renewal of contract, including a negative tenure decision (Section 2.2.3.4 Appeal of Tenure Decision).

a) A faculty member who has been notified of a decision not to offer a new notice contract may make written appeal to the Faculty Council. Such a faculty member bears the responsibility for establishing a prima facie case and assumes the burden of proof in support of the appeal.

b) Bases for appeal are limited to: (1) violation of academic freedom, (2) discrimination as defined in the college's policy on unlawful discrimination and harassment based on race, color, sex, national origin, age, disability, disabled, or Vietnam Era Veterans' Status, and (3) failure by the College to abide by institutional policies stated in the Faculty Handbook.

c) The faculty member may choose to confer with others, not including members of the Faculty Council, in marshalling evidence and writing the appeal.

d) If the Faculty Council is convinced that a prima facie case has been established,

1) Faculty Council will investigate the merits of the appeal under Section 2.3.3.3 b), collaborating as appropriate with other campus entities with overlapping jurisdiction (e.g. Title IX Officer).

2) It is incumbent on those who decided not to issue a new contract made the non-reappointment decision to communicate with Faculty Council to address any alleged violations of 2.3.3.3 b) (1) and (2), and to demonstrate their communication in writing to
the Faculty Council their procedural compliance with the institutional policies stated in the Faculty Handbook provisions of Section 2.3.3.3 b).

e) The Faculty Council will render a judgment as to the merits of the appeal under 2.3.3.3 b).

determine if procedural such compliance has occurred.

f) When the Faculty Council is unable to determine that procedural compliance under Section 2.3.3.3 b) has occurred, the effect is not to recommend the issuance of a new notice contract, but to recommend a review of the case by those who decided not to issue a new contract.

g) In cases where discrimination is alleged, legal counsel will be sought on behalf of the College prior to making any verbal or written response to the faculty member.

h) The decision of the Faculty Council will be rendered as a recommendation made through the Provost to the President, and will be reported in writing directly to the faculty member.

Current Language

2.2.3.4 Appeal of Tenure Decision

This section provides recourse when a faculty member wishes to contest a negative decision concerning tenure.

a) Procedures:

A negative tenure decision may be appealed to the Faculty Council in accordance with the provisions of Section 2.3.3.3. The appeal must be made within three weeks of notification of the negative tenure decision. The appeal must be based on procedural and not substantive grounds; the Council will consider only procedural issues.

b) Outcomes:

The decision of the Faculty Council will be rendered as a recommendation made through the Provost to the President. When the Faculty Council upholds a faculty member’s appeal of a negative decision regarding tenure, the effect is not to recommend tenure, but to recommend the voiding of the original decision and the mandating of a new tenure review, to be completed no later than the end of the semester following the original decision.
Proposed Language

2.2.3.4 Appeal of Tenure Decision

This section provides recourse when a faculty member wishes to contest a negative decision concerning tenure.

a) Procedures:

A negative tenure decision may be appealed to the Faculty Council in accordance with the provisions of Section 2.3.3.3. The appeal must be made within three weeks of notification of the negative tenure decision. The appeal must be based on the provisions of 2.3.3.3 b) and may not reconsider the substance of a tenure review. The Council will consider only procedural issues.

b) Outcomes:

The decision of the Faculty Council will be rendered as a recommendation made through the Provost to the President. When the Faculty Council upholds a faculty member’s appeal of a negative decision regarding tenure, the effect is not to recommend tenure, but to recommend the voiding of the original decision and the mandating of a new tenure review, to be completed no later than the end of the semester following the original decision.