To:       Board of Regents Governance Committee
From:    Michael Lightner, Vice President for Academic Affairs
Re:    Remaining questions on Article 5 and Article 7
Date:    August 9, 2018

ARTICLE 5

Process-to-date

Article and Policy 5 went through a very long and detailed review and revision process:

- Initially, proposals for revisions/changes were generated by the Provosts and System personnel – hereafter referred to as the administration.
- These proposals were sent to faculty governance groups and other campus leadership groups (Deans, etc.) and posted on the university website.
- Comments were gathered from these sources and a first draft was generated by the administration.
- This draft was again shared with faculty governance and other leadership groups and posted online.
- VP Lightner visited EPUS, Faculty Council and campus Faculty Assembly meetings to explain the suggested changes and get feedback.
- The feedback and suggestions led to a second draft by the administration.
- The second draft went through a similar public comment process and VP Lightner again visited a variety of shared governance groups explaining what was intended and gathering suggestions.
- A final Version 1 was generated by the administration. Version 1 was shared with the broad university community and reviewed with the Regents Governance committee and then presented for first reading to the full Board.

Current status

Although there were many comments generated across the different drafts and the final version, dedicated work by EPUS and Faculty Council together with the administration have reduced these to three concerns. Also, there is a specific concern that has been raised by the regents. Finally, there are a number of editorial and clean-up items that have been generated since Version 1 was first presented.

Our goal in this document, and then at the Governance committee meeting, is to focus on these remaining items. We hope this document will help with your deliberations and would appreciate knowing if there are other aspects of Article and Policy 5 you would like to discuss.

Joanne Addison, the new Faculty Council chair, and David Thompson, the chair of EPUS, will be at your meeting to provide the perspective of shared governance.
**Regent Concern**

Article 5.B.1. Academic Freedom and A Liberal Education

The current law, under the Academic Freedom clause, states that “The University of Colorado was created and is maintained to afford individuals a liberal education...” In thinking about revising Article 5 it was noted that we have a large campus that is strictly focused on professional education – Anschutz. Additionally, all graduate level work has a deep disciplinary focus. Upon further inquiry the following was determined: In the state Constitution and state statute there is no mention of liberal education as a purpose for the University of Colorado. In all the Regent Laws and Policies as well as all the Administrative Policy Statements the word liberal occurs once – in a statement contextualizing academic freedom. Finally, after some research, it was determined that the sentence in question was added to Article 5 by the Regents in 1958. It was thus determined that the statement was not based on the historical purpose of the university, did not reflect our professional campus or our robust graduate programs and therefore the suggestion to remove ‘liberal’ from the phrase was made. This was not among the final concerns brought forward by shared governance bodies.

**Suggestion:** If the governance committee or Board feels that there is value in returning this word to 5.B.1.A, it is easily accomplished with no consequence in the remaining document.

**Faculty Council Concerns**

Policy 5.F Termination of Faculty Appointments Following Program Discontinuance

If a currently operating academic program is approved for discontinuance by the Board, key details need to be considered. First, the schedule for discontinuance must be such that students currently in the program are given reasonable opportunity to complete their degrees. Second, the termination of faculty must be managed. The current policy states no faculty with tenure will be terminated until all appointments of faculty without tenure have been considered for termination. As might be imagined, this is a complex issue.

In considering faculty termination as a result of program discontinuance there are two extreme positions. One is that tenured faculty are the last to be terminated. Two, that all instructional and tenured/tenure track faculty are treated equally, and the only concern is what is required to see the current students through their degree. Clearly, neither of these choices is necessarily appropriate. Instructional faculty may have been at the university as long as tenured faculty. Additionally, they may have specific skills and expertise that are required for elements of the degree program. However, many instructional faculty may also be part time employees, some with less than a 50% appointment. On the other hand, tenured faculty have a special relationship with the institution and that needs to be given careful consideration. Finding the correct balance between the two extremes that supports the program needs and respect all the faculty in the program is the issue.

The administration proposed, in the current Version 1, that:

- One year’s formal notice will be provided to tenured and tenure-track faculty members whose appointments are to be terminated.

- One year’s formal notice will be provided to full-time (1.0 FTE) instructional faculty members with at least seven years of continuous service to the university whose appointments are to be terminated.

- Unless there is a compelling academic reason to do otherwise, no tenured faculty member will be considered for termination until the appointments of faculty members in the unit
without tenure have been considered for termination. This provision is consistent with current regent policy.

Faculty Council Statement: "Faculty Council issues two specific recommendations:

- One year's formal notice be given to all faculty (including instructional, clinical and research) with at least a 0.5 FTE appointment, i.e., not limiting it to only tenured and tenure-track and full-time instructional faculty.

- In the case of program discontinuance requiring faculty termination, all faculty members without tenure will be terminated prior to tenured faculty. (It should be noted that this recommendation is consistent with current APS. However, the APS is not consistent with current Regent Policy.) Faculty Council considers the change being recommended by administration diminishes a protection for our tenured faculty, as does another modification being recommended to an article 5-associated policy that removes retraining opportunities for displaced tenured faculty members (currently included in policy 4 appendix 4.1.3): Retraining for faculty members during the Notice Year should be provided under the sponsorship of the campus where the program is discontinued if, in the judgment of the university and the faculty member, such retraining will prepare the faculty member for another suitable University of Colorado position."

Administration Recommendation: The administration prefers the flexibility offered in Version 1 to be able to effectively manage the termination of a program. However, termination of a functioning academic program is an extremely rare event at the university. Thus, if the regents desired a different balance among the competing factors, that balance could be managed.

Policy 5.D.2.B Standards for Tenure

Current standards for tenure in Policy 5M state "...candidates must demonstrate excellence in either teaching or research/creative work..." Additionally, current Policy 5M states:

"Primary units develop criteria that explicate the teaching, research and leadership and service expectations for faculty, such as expectations for articles, books, and/or research grants, measures of clinical excellence, etc., in terms of their scholarly field. These primary unit criteria, once reviewed for rigor, fairness and consistency with regent requirements and approved by the dean and vice chancellor for academic affairs, are included in the candidate's dossier and shall guide evaluation at every level of review. Candidates are entitled to see review committees' letters of evaluation but may not see letters from external evaluators, which are treated as confidential. Upon the completion of the review process, the candidate should be informed of the outcome as expeditiously as possible."

These two paragraphs set two key benchmarks for evaluating performance for tenure. First, the primary unit criteria are the defining standards. Second, although not explicit, external letters are key to evaluating the impact of faculty scholarship.

What is not clear in these two paragraphs is the lack of uniformity across our campuses. ALL campuses depend on external reviewers to provide an analysis of the level of scholarly contribution of a candidate for tenure. This evaluation, within the context of the primary unit criteria, is used to judge whether a candidate's scholarship has reached a level that can be judged excellent.

However, our campuses differ in evaluating excellence in teaching. Boulder requires external letters, in the context of the primary unit criteria, to provide evidence of excellence in teaching and
pedagogy. Our other general campuses do not require evidence of external impact to judge excellence in teaching and pedagogy.

In the evaluation of potential changes to Article and Policy 5, serious consideration was given to recognition of instructional faculty not on the tenure track and fostering a clearer differentiation between tenure-track faculty requirements and the performance of our instructional faculty. Specifically, we have senior instructors who have superb records in the classroom and, although not required, still maintain a level of scholarship in their field. The question is how do we distinguish these individuals from tenure-track faculty who are being judged for excellence in teaching as their rationale for tenure?

The uniform recommendation of the administration is to require, within the context of the primary unit criteria, that a judgement of excellence in teaching and pedagogy include evidence of external impact beyond the institution. Depending on the discipline, evidence of external impact beyond the institution can be accomplished in many different ways. As in excellence in research, this was left up to the primary unit.

Three elements are important in considering this change. First, this will apply only to faculty who join the institution after the proposed change becomes effective. Second, if adopted, a tenure-track faculty member who chooses to pursue tenure based on excellence in teaching and pedagogy, would have six years to develop their external impact. This is the same period given to develop a record of excellent scholarship as judged by external reviewers. Third, and most important, the proposed change provides a uniform base standard across our campuses and clearly differentiates tenure-track faculty from our instructional faculty.

Faculty Council Statement: “Faculty Council does not support the proposed change. Its members are concerned that this change significantly increases the standards for tenure even though the need for this change is unclear at best. No evidence has been provided to Faculty Council showing the current criteria established by primary units for teaching excellence are inadequate. The multiple levels of review by administration specified in 5.B.5(C) (dean, chief academic officer, campus-level advisory committee) and policy 5M (dean, vice-chancellor of academic affairs) should protect against (i) the teaching criteria established by a primary unit from being insufficient, and/or (ii) tenure being granted inappropriately to candidates. If there are any issues relating to tenure criteria being insufficient, Faculty Council would appreciate being made aware of the magnitude of the problem and what attempts have already been made to resolve them, such as through changes in the rigor of administration review. Finally, current Regent policy 5L (B. NON-TENURE TRACK FACULTY) already addresses the distinction between Senior Instructors and tenure-track faculty regarding eligibility for tenure and places the onus for making clear distinctions between senior instructors and tenure-track faculty on our schools and colleges in terms of job qualifications, work assignments or expectations.”

Administration Recommendation: The provosts and system administration, with the approval of the Chancellors and President, feel strongly that this clarification and strengthening of the standards for tenure is in the best interest of the University and helps in clarifying the evolving roles and requirements of tenured/tenure-track and instructional faculty. In response to the concern about not specifying a fixed definition of external impact we note that, primary units have developed their criteria for excellence in research without interference from administration and it was considered inappropriate to constrain them in developing appropriate criteria for external impact in teaching and pedagogy.
Other Changes Recommended by Administration

Substantive Changes

- **Policy 5.C.2(J):** Restate the Distinguished Professor criteria related to teaching excellence by adopting language currently found in APS, which provides a broader view of teaching.

  The title of distinguished professor is extended by the Board of Regents to recognize the outstanding contributions of tenured CU faculty members to their academic disciplines. The faculty awarded this title must demonstrate accomplishments in accordance with the following criteria: (1) excellence in the promotion of individual learning and student attainment of knowledge and skills; (2) distinguished performance in scholarly/creative work; and (3) outstanding leadership and service to the profession and to CU and/or affiliate institutions. Further information can be found in the corresponding Administrative Policy Statement.

- **Policy 5.E.2:** Revise statements to recognize that a recommendation to dismiss a faculty member does not become a case for dismissal until the chancellor agrees with the recommendation. This change requires re-stating the timeline for notifying the faculty member.

  If the chancellor concurs with the recommendation to dismiss, the faculty member shall be given written of the decision. The written notice shall state the specific reasons the action is being taken and shall inform the faculty member of the right to file a grievance. (See Policy 5.E. for additional changes stemming from this revision.)

- **Policy 5.F.1:** Revise statement to clarify that the decision to terminate a faculty appointment due to program discontinuance is the responsibility of the chancellor (with the Board approving tenure revocation).

  Decisions on termination of appointments of individual faculty members due to degree program or academic unit discontinuance will be made by the chancellor in consultation with appropriate faculty members and administrators.

- **Policy 5.G.4(B):** Add statement to address the grievance process for the denial of tenure when the President is the one to deny tenure (following a positive recommendation from the campus). The new statement calls for the President to consider findings of the faculty grievance committee but maintains the authority of the President to make the final decision.

  If the grievance case relates to the denial of tenure by the president (following a positive recommendation by the chancellor), the president shall consider the recommendations of the grievance committee, but retains authority for the final decision.

Editorial and Clean-Up Items

- **Article 5A.1(C):** Replace “appropriate teaching modality” with “teaching modalities.”

  Current draft language implies there can only be one appropriate modality.

  The administration has the principal responsibility for the internal operations and external relations of the university. Issues concerning the academic calendar, course scheduling, and teaching modalities shall be determined in collaboration with the faculty.

- **Article 5.C.3(B):** For consistency with other statements in Law and Policy, replace “teaching” with “instructional” when referring to instructional, research, and clinical faculty.

  The Board of Regents further recognizes that each campus has a distinct role and mission that directly affects the extent and manner to which they employ the expertise of instructional, research, and clinical faculty.
Article 5.C.3(C): First, replace “develop” with “maintain” in the statement that assigns responsibility to the chancellor to maintain appropriate policies for the appointment, reappointment, promotion, and termination of instructional, research, or clinical faculty. This will make the statement more relevant in the long-term. Second, replace “grievance rights” with “rights of appeal” when referring to policies that outline the rights of instructional, research, and clinical faculty. An effort has been made to distinguish administrative appeal from faculty government grievance procedures and this statement should refer to administrative appeal.

The Board of Regents, subject to the framework provided in the corresponding Administrative Policy Statement, delegates to the chancellor of each campus the responsibility to maintain appropriate policies for the appointment, reappointment, promotion, and termination of instructional, research, or clinical faculty. Campus policies shall also include rights of appeal and associated procedures for instructional, research, and clinical faculty. All policies shall be developed in collaboration with the appropriate faculty governance bodies and must adhere to state law, Regent Law and Policy, and any associated Administrative Policy Statements.

Article 5.D.1(C): In the statement referring to the rights of instructional, research, and clinical faculty, replace “may file a grievance” with “may appeal.”

Instructional, research, and clinical faculty members who believe they have been denied reappointment or promotion contrary to campus policies, or have been terminated contrary to campus policies, may appeal in accordance with campus policies. See Article 5.C.3(C). The provisions of Regent Policy 5.G shall not apply.

Policy 5.B.1(A): Revise last sentence for clarity and to provide a more academic framing.

All faculty members, within the scope of their faculty responsibilities, must have freedom to study, learn, and conduct scholarship and creative work within their discipline, and to communicate the results of these pursuits to others, bound only by the control and authority of the rational methods by which knowledge is established in the field. The best method for advancing the state of knowledge is engaging with the broadest range of theories, methodologies, and data.

Policy 5.C.3(A): Consistent with the recommended edit to Article 5.C.3(C), replace “develop” with “maintain” in the statement that assigns responsibility to the chancellor to maintain appropriate policies for the appointment, reappointment, promotion, and termination of instructional, research, or clinical faculty.

As provided in Article 5.C.3(C) of Regent Law, the chancellor of each campus has the responsibility to maintain the appropriate policies for the appointment, reappointment, promotion, and termination, of instructional, research, or clinical faculty. Such policies shall be developed in collaboration with the appropriate faculty governance bodies.

ARTICLE 7

Article and Policy 7 went through a thorough review process:

- A first draft was generated based on proposals for changes generated by the Provosts and System personnel.
- This draft was shared with student and faculty governance groups, as well as other campus leadership, and posted to the university website.
- The feedback and suggestions led to a second draft, which was again shared publicly.
Version 1 was generated and shared with the broad university community and reviewed with the Regents Governance committee and then presented for first reading to the full Board.

**Current status**

The board has requested one addition to Article and Policy 7. The revised law and policy include a new section on academic freedom for students. Article 7 establishes core principles and Policy 7.C outlines the rights and responsibilities associated with student academic freedom, but the draft presented to the Governance committee and the full board does not provide direction for responding to student complaints of academic freedom violations. The board has requested that this be addressed.

In response, the administration has suggested new language for Article 7.C that would require each campus to have policies and procedures to investigate student claims of violations of their academic freedom.

> Each campus shall have policies and procedures to investigate claims of, and remediate confirmed violations of, student rights of academic freedom.