SYSTEM POLICIES
12.01 Academic Freedom, Responsibility and Tenure Approved February 27, 1995 (MO 44-95) Revised July 26, 1996 (MO 169-96)

The following policies on Academic Freedom, Responsibility and Tenure apply separately, but equally, to each of the institutions of The Texas A&M University System.

1. ACADEMIC FREEDOM

1.1 Institutions of higher education exist for the common good. The common good depends upon an uninhibited search for truth and its open expression. Hence, it is essential that each faculty member be free to pursue scholarly inquiry without undue restriction, and to voice and publish individual conclusions concerning the significance of evidence that the faculty member considers relevant. Each faculty member must be free from the corrosive fear that others, inside or outside the university community, because their vision may differ, may threaten the faculty member’s professional career or the material benefits accruing from it.

1.2 Each faculty member is entitled to full freedom in the classroom in discussing the subject which he or she teaches but is expected not to should not introduce controversial matters which have has no relation to the classroom subject. Each faculty member is also a citizen of the nation, state and community; and when speaking, writing or acting as such, must be free from institutional censorship or discipline, subject to academic responsibility. In such instances, the faculty member should make it clear clearly state that he or she is not speaking for the institution.

Notes:
1. What constitutes “undue” restriction is subject to interpretation. Best leave it out…Implies a “due restriction;” protections rest in quality of faculty member’s ability to publish.

2. Whether something is made clear depends on the listener as well as the speaker. The speaker can, however, be expected to make a statement.

2. ACADEMIC RESPONSIBILITY OF FACULTY MEMBERS

The concept of academic freedom for faculty must be accompanied by an equally demanding concept of academic responsibility. Faculty members have a responsibility to the institution, their profession, their students, and society at large. The rights and privileges of faculty members extended by society and protected by governing boards
and administrators through written policies and procedures on academic freedom and tenure, and as further protected by the courts, require reciprocally the assumption of certain responsibilities by faculty members. Some of those are:

2.1 The fundamental responsibilities of faculty members as teachers and scholars include maintenance of competence in their field of specialization and the exhibition of professional competence in the classroom, studio or laboratory and in the public arena through activities such as discussions, lectures, consulting, publications and participation in professional organizations and meetings.

2.2 The exercise of professional integrity by faculty members includes recognition Faculty members must recognize that the public will judge their profession and institution by their statements. Hence, faculty members should at all times strive to be accurate in their statements, exercise appropriate restraint, show respect for opinions of others, and make every effort to indicate that they are not speaking or acting for the institution when they are speaking or acting as private persons. Therefore, faculty members should strive to be accurate, to exercise appropriate restraint, to be willing to listen to and show respect to others expressing different opinions, and to avoid creating the impression that they speak or act for their college or university when speaking or acting as a private person.

2.3 The constitutionally protected rights of faculty members, as citizens, to freedom of expression on matters of public concern must be balanced with the interest of the state, as an employer, in promoting the efficiency of the educational services it performs through its employees. A faculty member's comments are protected even though they may be highly critical in tone or content, or erroneous, but such statements are not protected free speech if they either substantially impede the faculty member's performance of daily duties or materially and substantially interfere with the regular operation of the institution, or if they are part of a continuing pattern of expression of such nature as to destroy the harmony and morale of a division department or college. False statements made with knowledge of their falsity or in reckless disregard of the truth are not entitled to constitutional protection, and public statements may be so without foundation as to call into question the fitness of the faculty member to perform his or her professional duties.

2.4 Faculty members should be judicious in the use of controversial material in the classroom and should introduce such material only as it has clear relationship to their subject field.

Note:
1. This appears to be so vague that it leaves the door open to fire faculty merely because they complain. And who decides what kinds of statements “either substantially impede the faculty member's performance
of daily duties” or “materially and substantially interfere with the regular operation of the institution”, or if they are “part of a continuing pattern of expression of such nature as to destroy the harmony and morale of a division”? Faculty at some TAMUS institutions allege that this clause has been misused.

2. This is a repetition of paragraph 1.2.

2.45 Faculty members should be professional in their conduct in the classroom and in relationships with students. They should maintain respect for the student and for the student's posture as a learner and should be appropriately available to students for consultation on course work.

2.56 Faculty members have the responsibility to provide timely and adequate notice of their intention to interrupt or terminate institutional services.

3. WRITTEN TERMS OF EMPLOYMENT

3.1 All new faculty members shall be provided with an appointment letter stating the initial terms and conditions of employment. Any subsequent modifications or special understandings in regard to the appointment, which may be made on an annual basis, should be stated in writing and a copy given to the faculty member. All faculty members, unless the terms and conditions of their appointment letter state otherwise, are expected to engage in teaching, scholarship, and service. Essential job functions for a position may vary depending upon the nature of the department in which the faculty member holds expertise, external funding requirements attached to the position, licensing or accreditation requirements, and other circumstances. It is therefore important that essential job functions for each faculty position be listed in the initial appointment letter. For example, all of the following that are applicable should be listed: teaching responsibilities, responsibilities for advising students, independent and/or collaborative research responsibilities, engaging in patient care, committee assignments, conditions imposed by external accrediting agencies, conditions for holding a named professorship or endowed chair, or a position that combines academic and administrative duties, and any other specific essential functions for the position in question. All appointment letters must indicate whether the appointment being offered is with tenure, tenure-accruing, or non-tenure accruing.

3.2 The institution shall notify faculty members annually, in writing, of their salary. Any other changes or additions to the appointment also should be included.

3.3 Faculty members are expected to fulfill the terms and conditions of employment for the following year unless they resign prior to 30 days after receiving notice of the terms.

4. TENURE POLICY
Tenure means the entitlement of faculty members to continue in their academic positions unless dismissed for good cause. Tenured faculty who remain in good standing shall continue to enjoy the rights and privileges customarily afforded to faculty members who hold tenure. These rights and privileges include but are not limited to an expectation of continuing employment, appropriate compensation, a suitable office and workspace, the right to conduct research, the right to teach classes, the right to administer grants, the right to participate in the governance system of the institution, and the right to represent oneself at conferences and elsewhere as a tenured professor at his or her institution.¹ A grant of tenure shall not be construed as creating a property interest in any attributes of the faculty position beyond an annual salary for nine months, or its equivalent, regardless of the source of funding.² A specific system of faculty tenure should undergird the integrity of each academic institution. In System institutions, this tenure system should have these components:

Notes:

1. The AAUP Red Book, p. 3, says: “Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities and (2) a sufficient degree of economic security to make the profession attractive to people of ability.” Defining tenure in terms of the legal minimum (i.e., a nine month salary) fails to meet these criteria, and will make it very difficult to recruit faculty of the highest caliber. Sustaining that kind of damage to our Vision 20-20 aspirations seems a high price to pay for the purpose of making it easier for the system to deal with rare cases in which TAMUS might prefer to be obligated to only the legal minimum requirement. Inasmuch as TAMUS has the option of offering a policy that is more generous than the legal minimum, we believe that TAMUS should do just that.

2. This statement to the effect that faculty members who are placed on administrative leave are only entitled to their customary salary has been included in section 5, which pertains to administrative leave. Moreover, reducing a faculty member’s salary to nine months amounts to taking punitive measures while the investigation is ongoing.

4.1 Beginning with appointment to a tenure-track position, the probationary period for a faculty member shall not exceed seven years. This period may, at the institution’s option, include appropriate fulltime service at other institutions of higher education, even if the inclusion of such service extends the total probationary period in the academic profession beyond the normal maximum of seven years; however any credit for prior service included within the seven-year probationary period shall be agreed upon in writing at the time of employment. Tenure is granted only by the affirmative action of the Board of Regents upon recommendation of the president of the institution. At the conclusion of the probationary period, unless appropriately informed otherwise, the faculty member shall not have tenure. Prior to the beginning of the last year of the probationary period, the faculty member who has not received notice of a decision relating to
receipt of tenure should make a written request for such a decision from the administration, and the administration should promptly respond. **Administration shall notify the faculty member in writing of a decision regarding the granting or denial of tenure.** If the decision is not to award tenure, the faculty member is entitled to serve for one additional contract year following the term or semester in which the notice is received.

**Note:**
1. Here, the burden should be on the administration of the institution, not on the individual.

4.2 Notice of non-reappointment, or of intention not to reappoint a faculty member, should be given in writing in accord with the following standards:

(1) not later than March 1 of the first academic year of probationary service, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination;

(2) not later than December 15 of the second year of probationary service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination; and

(3) at least twelve months before the expiration of a probationary appointment after two or more years in the institution.

4.3 Good cause for dismissal of a faculty member with tenure will relate directly and substantially to the performance of professional duties, and may include, but shall not be limited to, the following:

(1) professional incompetence;

(2) continuing or repeated failure to perform duties or meet responsibilities to the institution or to students or associates;

(3) failure to successfully complete a post tenure review professional development program;

(4) moral turpitude adversely affecting the performance of duties or the meeting of responsibilities to the institution, or to students or associates;

(5) violation of System Policies, System Regulations, university or agency rules, or laws substantially related to performance of faculty duties;

(6) conviction of a crime substantially related to the fitness of a faculty member to
engage in teaching, research, service/outreach, and/or administration;

(7) unprofessional conduct adversely affecting to a material and substantial degree the performance of duties or the meeting of responsibilities to the institution, or to students or associates;

(8) falsification of academic credentials;

(9) bona fide financial exigency or the phasing out of institutional programs requiring reduction of faculty (see Paragraph 9, below); or

(10) the reduction or discontinuance of institutional programs based on educational considerations and requiring the termination of faculty members (see Paragraph 9, below).

4.4 A faculty member with tenure shall not be dismissed until he or she has received reasonable notice of the cause for dismissal and, except as specified in Paragraph 8 and in the suspension provision in Paragraph 5 of this policy, only after an opportunity for a hearing pursuant to procedures established in accordance with Paragraphs 5 and 8.

5. ADMINISTRATIVE LEAVE

Faculty members may be placed on administrative leave with pay by the faculty member’s Dean with the concurrence of the Dean of Faculties (or the institutional equivalent Provost if there is no Dean of Faculties) pending an investigation into matters pertaining to the faculty member’s job performance, including but not limited to, fiscal matters and improper conduct in teaching, research, or service. Notification shall be given in writing; both the reasons for placing the faculty member on administrative leave and the terms of the leave, including the duration, must be specified. A faculty member placed on administrative leave with pay may appeal being placed on leave, or the terms of the leave, to the Provost at any time during the leave. A request for reconsideration by the Dean by submitting such a request for reconsideration to the Provost in writing within three (3) business days of being placed on administrative leave with pay. The Dean Provost may will conduct the reconsideration in consultation with the presiding officer of the faculty senate or an elected member of the faculty senate designated by the presiding officer, and may appoint a person or persons to assist the Dean Provost in the reconsideration. The investigation process is not stayed by an appeal a request for reconsideration. The reconsideration should be completed within five (5) business days of the receipt of the request for reconsideration appeal. This provision is separate from and in addition to distinct from suspension during the pendency of termination proceedings. Placing a faculty member on administrative leave is justified only if the welfare of the faculty member or that of students, colleagues or other institutional employees is threatened by continuance, or if the continued presence of the faculty member would be materially and substantially disruptive of the regular operations of the institution. Any such leave should be with pay and with appropriate provisions for useful duties, including appropriate access to

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classrooms, laboratories, libraries and other facilities, whenever possible. A tenured faculty member who has been placed on administrative leave after appropriate due process shall be entitled only to his or her customary annual salary, or its equivalent, regardless of the source of funding.

Notes:
1. This action should not be taken by the Dean acting alone, simply because a mistake can do so much damage to a faculty member’s career.
2. Written notice, including the reasons for and terms of the leave would seem to be the minimum that courtesy alone, much less due process, would require.
3. Due process should offer an appeal to an authority higher than the individual who made the first decision. How likely is the Dean (or anyone else) to reverse himself/herself on appeal? Placing a time limit on the appeal request serves no clear purpose.
4. There should be a presumption of innocence. Hence, the professional life of the faculty member should be disrupted as little as possible. Part of this language is taken from section 6.3, which pertains to suspensions during pendency of termination proceedings; why should a pending investigation be more onerous than a suspension pending termination?

6. FACULTY DISMISSALS FOR CAUSE

Institutions shall establish proper procedures for dismissal of faculty for cause. These dismissal procedures shall apply only to a faculty member who has tenure or whose term appointment has not expired at the time of the dismissal. Such procedures shall have the following components:

6.1 A bona fide effort by appropriate administrative officers and/or other persons or committees should be made to achieve a satisfactory resolution of difficulties through preliminary inquiry, discussion or confidential mediation.

6.2 Should these efforts fail to achieve a satisfactory resolution and should the difficulties be considered by the administration to be serious enough to warrant dismissal, the faculty member should be afforded the opportunity for a hearing that meets the requirements set forth in Paragraph 8.

6.3 Unless a faculty member is summarily dismissed pursuant to Paragraph 8.1, a faculty member may be reassigned or suspended during the pendency of termination proceedings; however, suspension of the faculty member is justified only if the welfare of the faculty member or that of students, colleagues or other institutional employees is threatened by continuance, or if the continued presence of the faculty member would be materially and substantially disruptive of the regular operations of the institution. Any such suspension should be with pay and with appropriate provisions for useful duties, including appropriate access to classrooms, laboratories, libraries and other facilities, whenever
Note:
1. Here again, the principle should be to do as little harm as possible, given that there must be a presumption of innocence until the termination proceedings are completed. A point that should be borne in mind is that in the event that the faculty member is ultimately exonerated, damage to the individual is also sustained by the institution.

6.4 In any of these proceedings the faculty member and the administration shall have the right to representation.

7. NONRENEWAL OF NONTENURED TENURE TRACK FACULTY AT END OF TERM CONTRACT

Procedures in cases of non-renewal of non-tenured faculty members at the end of any term contract (other than a one-year only contract which has not been renewed) shall have the following components:

7.1 An institution is not legally required to give a non-tenured faculty member reason for a decision not to reappoint for another contract term or to provide a hearing. Generally all faculty members are entitled under Texas law to see their personnel files and to obtain a copy of the information in these files at their own expense.

7.2 A non-tenured faculty member may present, in person, a grievance over nonrenewal of the faculty member’s employment at the institution. The Board of Regents delegates the authority through the Chancellor to the Chief Executive Officers to designate a member of the institution’s administration to hear the faculty member’s grievance. The institution shall adopt a method of presenting, reviewing and acting on grievances pursuant to this section.

7.3 A non-tenured faculty member may appeal a decision not to reappoint on the basis that the decision was made in violation of the academic freedom of the individual, or for an illegal reason, or for inadequate consideration of the faculty member’s record of professional achievement.¹ For purposes of this section, an illegal reason is defined as a decision based on race, sex, age, national origin, religion, creed, color, or disability unrelated to the performance of duties; or made in retaliation for the faculty member's exercise of protected First Amendment rights. Such an appeal must be filed within thirty (30) ten (10) twenty (20) business days of the date on which the faculty member was given written notice of nonreappointment.

Note:
1. Simple lack of fair treatment should be grounds for appeal, particularly in a tenure consideration.

¹ For purposes of this section, an illegal reason is defined as a decision based on race, sex, age, national origin, religion, creed, color, or disability unrelated to the performance of duties; or made in retaliation for the faculty member’s exercise of protected First Amendment rights.
2. What is the rationale for “10 business days”?

7.4 University appeal procedures shall provide for preliminary consideration within fifteen (15) business days of the faculty member’s notice of appeal of the allegations by a faculty committee to determine whether the faculty member has established a prima facie case that the decision was made in violation of the faculty member’s academic freedom, for an illegal reason, or without adequate consideration of the faculty member’s record of professional achievement. If the preliminary review committee determines that the faculty member has not alleged a prima facie case, the allegations shall be dismissed and the decision not to reappoint shall stand. If the committee determines that the allegations do establish a prima facie case, the matter shall be referred for an evidentiary hearing under established university procedures. A prima facie case for purposes of this subsection means that the faculty member’s evidence, alone and unrebutted, would establish that a violation as defined in 7.3 may have occurred.

7.5 In any evidentiary hearing, the burden of proving that the decision was made in violation of academic freedom, or without inadequate consideration of the faculty member’s record of professional achievement, or for an illegal reason shall rest with the faculty member. The burden of proof must be met by a preponderance of the evidence, i.e., that which is more convincing, more credible, and of greater weight than contrary evidence. Both the faculty member and the administration have the right of representation at this hearing. The hearing shall be scheduled completed within sixty (60) calendar days of the notice of appeal from the date that the committee chair is notified of the appeal; the chair of the hearing committee may extend the time for completing the hearing fifteen (15) calendar days for good cause shown. The committee shall complete its report within fifteen (15) days of the completion of the hearing. The importance of conducting the hearing in a prompt manner shall guide the institution and the hearing committee. Scheduling of the hearing shall take precedence over other functions of the institution and hearing committee members, not including teaching and research schedules. Hearing committee members’ departments shall assist as needed to accommodate the scheduling of the hearing.

Notes:
1. Given that there is no way that the institution can guarantee that the accused faculty member and his legal representative will agree to a hearing within 60 days, we fail to see how the institution can be obligated to do more than offer a meeting within a reasonable time.
2. It should be possible for the committee to complete its work within 15 days of the hearing.
3. This requirement would distort the mission of the institution. It is not the primary mission of the institution to conduct misconduct hearings; the primary missions of the institution are teaching and research. Moreover,
to our knowledge, there is no evidence to suggest that teaching and/or research obligations have actually caused any delays. CAFRT hearing are almost always held in the evening so that they will not interfere with the normal activities of the university.

8. DISMISSAL FOR CAUSE HEARINGS

8.1. Summary Dismissal

Each institution must establish procedures for the summary dismissal of faculty for specified causes. Such procedures shall provide the faculty member with notice of the charges, an opportunity to respond to an administrator prior to dismissal, and an opportunity for a post-termination evidentiary hearing appealing the dismissal. Post-termination appeals shall embody the elements set forth in Paragraph 8.2.

8.2 Pre-termination Hearing

8.2.1 Unless summary dismissal procedures are invoked, each institution shall provide a faculty member to be dismissed for cause with notice of the charges and an opportunity for a fair and impartial hearing by a faculty committee. A faculty member requesting a hearing shall submit a notice of appeal to the institution’s chief executive officer within ten (10) business days of receipt of the notice of termination. The chief executive officer shall notify the hearing committee within five (5) business days that the appeal has been filed. The institution shall provide staff support to schedule a hearing. The hearing committee shall complete a hearing schedule a date when the committee can meet within forty-five (45) sixty (60) calendar days of the notice of appeal; the chair of the hearing committee may extend the time for completing the hearing fifteen (15) calendar days for good cause shown. The committee shall complete its report within fifteen (15) days of the completion of the hearing. The importance of conducting the hearing in a prompt manner shall guide the institution and the hearing committee. Scheduling of the hearing shall take precedence over other functions of the institution and hearing committee members, not including teaching and research schedules. Hearing committee members’ departments shall assist as needed to accommodate the scheduling of the hearing. The hearing committee shall formulate explicit findings with respect to each of the grounds for removal presented and shall recommend whether or not, in its judgment, there is good cause for dismissal. The burden of proof is on the institution to establish by a preponderance of the evidence the existence of good cause for dismissal.

Notes:
1. see note 2, section 7.2
2. see note 2, section 7.2
3. see note 3, section 7.2

8.2.2 The committee's findings and recommendation concerning dismissal, or such action as it deems appropriate under the circumstances, shall be conveyed in writing to the CEO and to the faculty member.

8.2.3 If the faculty member's appointment is proposed to be terminated by the chief executive officer, the full report of the hearing committee, the record of the hearing, along with the chief executive officer's recommendation, and other relevant documentation available to both the faculty member and the institution shall be delivered to the Chancellor of the System for recommendations and transmittal to the Board of Regents. If the recommendation of the chief executive officer for termination conflicts with the recommendation of the hearing committee, the Board of Regents shall review the case based on the record of the hearing, with opportunity for argument by the principals or their representatives. If the recommendations of the chief executive officer and the hearing committee are in accord, the Board may choose to limit such review as it may make to a review of the full report of the hearing committee, the record of the hearing, the chief executive officer's recommendation and other relevant documentation available to both the faculty member and the institution.

8.2.4 The Board shall either sustain the decision of the hearing committee or the chief executive officer, or return the matter to the hearing committee for consideration with appropriate instructions. In such case, the committee should promptly reconsider the case within fifteen (15) calendar days of the action by the Board, taking into account the instructions of the Board and receiving new evidence if directed to do so by the Board. Upon reconsideration the hearing committee shall forward its reconsidered recommendation to the CEO and the Board. After review of the hearing committee's reconsideration, the Board shall render its own final written decision with a copy provided to each of the principals.

8.2.4.1 (4) The Board may not render a final written decision if the CEO, Chancellor, or Board receives relevant and considers additional evidence which is potentially sufficient to reverse the decision beyond that which was presented to the hearing committee. In such case, the Board will forward the additional evidence to the committee, and direct the committee to reconvene and review the additional evidence. The committee will review the additional evidence and reconsider its recommendation. The committee will provide a written recommendation within fifteen (15) calendar days of the date of the Board's action.

8.2.5 Unless otherwise specified by the Board, a faculty member's
termination from employment is effective immediately, **within the constraints of a twelve-month notice**, upon a finding by the Board, pursuant to these procedures, that there is adequate cause for the faculty member’s dismissal.

9. TENURE, FINANCIAL EXIGENCE, AND PHASING OUT OF PROGRAMS

9.1 Cases of bona fide financial exigency or the reduction or discontinuance of an institutional program based on educational considerations may permit exceptions to tenure regulations.

9.2 Definitions

9.2.1 Bona fide financial exigency means a pressing need to reorder the nature and magnitude of financial obligations in such a way as to restore or preserve the financial stability of any component of The Texas A&M University System.

9.2.2 Financial stability means the ability of a component to provide from current income the funds necessary to meet current expenses, including current debt payments and sound reserves, without invading or depleting capital.

9.2.3 Evidence of financial exigency may include but is not limited to **substantially** declining enrollments, **substantial** revenue cutbacks, and **substantial** ongoing operating budget deficits.

9.2.4 Educational considerations that could result in the reduction or discontinuance of a program may include but are not limited to:

(1) a substantial decrease in program enrollment,

(2) the need to shift **substantial** resources to other programs, or

(3) a **substantial** modification or redirection of a unit’s mission.

**Notes:**

1. These criteria seem awfully broad. Again, financial exigency can be almost anything… such a broad definition seems to offer little protection; at the very least, conditions that would lead to dismissal of faculty should be substantial.

9.3 Administration

9.3.1 When the chief executive officer of a component of The Texas A&M University System believes that a state of bona fide financial exigency exists, the
chief executive officer shall inform the Chancellor of The Texas A&M University System. If the Chancellor concurs in this assessment, the Chancellor shall inform the Board of Regents. If the Board of Regents finds that such conditions exist, a state of bona fide financial exigency shall exist in that System component.

9.3.2 When faculty dismissals are contemplated on grounds of financial exigency or program termination or reduction, there should be early, careful, and meaningful sharing of information and views with appropriate faculty representatives on the reasons indicating the need to terminate programs. Recommendations from such faculty representatives shall be sought on alternatives available to the institution to ensure continuation of a strong academic program and to minimize the losses sustained by affected students and faculty members.

9.3.3 Faculty members who are being considered for termination on the basis of a bona fide financial exigency or a program termination or reduction should be given opportunities for appointment in related areas at their component institution provided: (1) they are qualified professionally to teach in those areas, (2) positions are available, and (3) the affected dean and department head or director concur.

9.3.4 Any tenured faculty member or faculty member whose term appointment has not expired, who is selected for termination on the basis of a bona fide financial exigency or the phasing out of an institutional program necessitating a reduction in staff shall be given the following information:

(1) a written statement of the basis for the initial decision to lay off;

(2) a description of the manner in which the initial decision was made; and

(3) information and data upon which the decision makers relied.

9.3.5 The faculty member selected for termination shall be given an opportunity to respond in a hearing before an appropriate faculty committee. In this hearing the burden of proof rests with the institution to demonstrate that a bona fide financial exigency exists or that educational considerations led to the reduction or discontinuance of a program. In such case, the university's decision will be overturned only if the faculty member proves that the decision to terminate was based on unlawful discrimination or was arbitrary or capricious.

9.3.6 Any faculty member reassigned to another position or terminated has the right to reappointment to his or her previous position if it is re-established within two calendar years.

Notes:
1. In effect, this provision merely gives the faculty member a right to apply for
a different position within the institution. One could do that without this provision, so it would seem to offer no real protection.

2. This provision fails to recognize that the administration might simply be wrong.