

From: Office of General Counsel
To: Provost
Re: Academic Renewal
Date: May 7, 2018

It remains our opinion that the Proposal for Academic Renewal (both March 8 and April 18 versions) is on sound legal footing.

The relationship between the University and its faculty is governed by our Faculty Handbook, which in turn is subject to, and interpreted in light of, other authorities, including both civil law and the By-Laws of the University. Our Faculty Handbook does not provide a prescription or proscription for every action of the University, or its faculty. Rather, it is expressly subject to interpretation and (through the appropriate processes) change.

The University recognizes that our Faculty Handbook does not anticipate or address the precise circumstances it faces today, i.e. a reexamination of the delivery of the academic product combined with a need to increase efficiency. This does not relieve the University Board of Trustees or its officers from fulfilling their reserved responsibilities for the governance and fiscal affairs of the University and their oversight of its operations. Nor does it limit the University to taking those actions expressly anticipated and addressed in our Faculty Handbook. In fact it remains required and empowered to *avoid* situations more drastic than the current circumstances by waiting for, or creating, those outlined by some explicit protocol in the Faculty Handbook, such as financial exigency or discontinuation of academic units.

Fortunately, despite its long history, the University has not faced many judicial challenges to its decisions involving dismissal of faculty, including faculty with tenure. Two such challenges are now leading cases in this area. Neither case involved a circumstance expressly addressed in the Faculty Handbook, yet both courts upheld the actions of the University. One decision actually stemmed from the University's decision in 1969 to cut back its course offerings in Soil Mechanics and Hydrology. Once the court was satisfied the separation of the faculty member, who was both tenured and competent, was based on non-discriminatory purposes and that analogous key processes were honored (e.g., notice and compensation), it upheld the University's decisions.

Based on these authorities and precedent, it is our opinion that the University has the authority necessary to support approval and implementation of the Proposal for Academic Renewal.