

FAU Provost Perry's Draft "Sustained Performance Evaluation" Policy: A Response
from the UFF-FAU Executive Committee

September 13, 2015

The UFF-FAU Executive Committee strongly opposes the Provost's proposal to undermine FAU's tenure policy. By attempting to justify dismissing tenured faculty for reasons other than just cause (incompetence or misconduct), the Provost's draft policy grossly oversteps his contractual authority in the Collective Bargaining Agreement that protects tenure and the associated core university values of academic freedom, due process and job security.

To summarize our further objections below, the proposal creates a policy that largely ignores faculty rights and marginalizes faculty participation. The proposal largely ignores existing departmental and college faculty committees and faculty-developed criteria for tenure and promotion in favor of a process dominated by academic managers. The proposal employs language that is vague, imprecise, contradictory, and out of touch with faculty work and realities. Unlike the Post Tenure Review policies at most other research universities in Florida and elsewhere, this proposal emphasizes the punitive and authoritarian dimensions of post tenure reviews and neglects the possibilities for professional development of senior faculty, one of the most precious resources in the university.

Below we have analyzed the provost's proposed policy in detail to demonstrate the unnecessary problems it causes.

What is most striking about this proposal is its difference from the Post Tenure Review (PTR) policies at most other research universities. (The term "Sustained Performance Evaluation" [SPE] seems to be used only or largely in Florida.) Here is a sample of those policies from other SUS institutions:

FSU: <http://www.fda.fsu.edu/Faculty-Development/Sustained-Performance-Evaluation-SPE-Procedures>

FIU:

http://r.search.yahoo.com/_ylt=AwrBT0e3XOpVSIaAa9VXNyoA;_ylu=X3oDMTEyMWRpcWo2BGNvbG8DYmYxBHBvcwMxBHZ0aWQDQjAzNDFFMQRzZWMDc3I-/RV=2/RE=1441451320/RO=10/RU=http%3a%2f%2facademic.fiu.edu%2fdocs%2fSustained-Performance-Evaluation-Guidelines.docx/RK=0/RS=_EFKLi07uMpfobc0IJJu0tLLgSk-

UWF: <http://uwf.edu/offices/academic-affairs-division/resources/sustained-performance-evaluation/>

UF: <http://www.clas.ufl.edu/hr/tenure/spe.html>
http://clas.ufl.edu/hr/forms/SPE_Guidelines_2014.pdf
http://www.uflib.ufl.edu/pers/cdh/cdh_sustained.html
(and other units at UF)

UCF: <http://facultyrelations.ucf.edu/files/2014/06/SPE-PROCEDURES-2013-2014.pdf>

At none of these other Florida public universities is there a written SPE policy which is explicitly punitive as is the provost's proposal, combining a process dominated by deans and other administrators with the following statement: "While an unsatisfactory SPE by itself is not grounds for disciplinary action by the University, an unsatisfactory annual evaluation received for not meeting the annual or long-term targets or requirements of a Performance Improvement Plan is just cause for disciplinary action for poor performance and/or incompetence, with sanctions up to and including dismissal from the University." (G.3.). http://www.fau.edu/ufsgov/Files/2015_2016/Aug_2015/sustained-performance-8-26-15.pdf. All of the other SUS institutions seem to have a general SPE policy that is consistent with their opening statements about helping tenured faculty to improve their performance, respecting academic freedom, due process and faculty rights, and recognizing that the SPE policy must abide by the provisions of the Collective Bargaining Agreement (CBA). In contrast, after making such promises at the beginning, the provost's proposal outlines a punitive and authoritarian process in contradiction to the opening paragraph, as this analysis will demonstrate.

Furthermore, post-tenure review may be a productive way to clarify post-tenure

performance criteria and sustain quality research and teaching among tenured faculty, but only if it is designed and implemented with major faculty participation rather than imposed from above, and especially if it is seen as fair and equitable by faculty and constructed to reward rather than simply punish. The 1999 AAUP policy statement on PTR, an authoritative source, puts it this way: “The principles guiding this document are these: Post-tenure review ought to be aimed not at accountability, but at faculty development. Post-tenure review must be developed and carried out by faculty. Post-tenure review must not be a reevaluation of tenure, nor may it be used to shift the burden of proof from an institution’s administration (to show cause for dismissal) to the individual faculty member (to show cause why he or she should be retained). Post-tenure review must be conducted according to standards that protect academic freedom and the quality of education.” <http://www.aaup.org/report/post-tenure-review-aaup-response>

Following is an analysis of the most problematic parts of the proposal:

A.5 One of the stated main objectives of the SPE is to “recognize and reward sustained excellence in scholarship, research, teaching, public service, or academic leadership.” The policy needs to explicitly state what such rewards might be. Otherwise, the document only specifies punitive measures, such as dismissal, without taking into consideration that a majority of faculty will be performing well and should be accordingly rewarded.

B.1. Why a five-year cycle? Many universities use a seven-year cycle, and the cycle for tenure (which is what’s at stake here) is six years. Shorter cycles just mean more faculty time spent producing portfolios rather than research. If administrators are suspicious that faculty are getting away with something (and have good evidence for such a suspicion), why not have a seven year cycle combined with an SPE triggered by three consecutive years of unsatisfactory annual evaluations in one of the areas of the faculty member’s assignment: scholarship, teaching and service?

B.4. Three months notice to prepare SPE files? Isn’t there a regular yearly schedule for such files? This schedule should be like tenure files; everyone knows years in advance

when it's due, with a reminder from the dean's office one year, *then* three months in advance.

B.5. Again, why do all Associate Professors have to go through an initial SPE in their fourth year after receiving tenure just because a small number of them might not be as productive as they were before receiving tenure? A trigger SPE, designed and implemented fairly with full faculty participation, can deal with the rare cases that need attention. Of course this will mean that chairs and deans (and faculty) will have to give greater attention to the performance patterns evinced by annual evaluations. But they can do that already without creating more paperwork for faculty.

B.11. Why would this policy be retroactively enacted for Associate Professors who were tenured after August 2011? Since this policy requires the development of new criteria, it cannot be implemented until a year after its approval as stated explicitly in the CBA.

D.2. Peer Evaluation Committee. As at most other universities, the SPE should be designed and implemented by the tenured faculty of the unit, using the same tenure and promotion committees who are elected by the faculty to represent them. Already-existing faculty governance processes can simply be extended to include the SPE. Under no circumstances should a new committee be constituted by the dean or any other administrator who might introduce unfairness as well as additional unnecessary work into the process.

D.5. The faculty committee will prepare a written SPE report that compares the faculty member's performance with the unit's criteria and guidelines for SPE. If the faculty member's performance has exceeded unit expectations as codified in the criteria and guidelines, that should be noted and rewarded accordingly. Such rewards should also be made explicit in the document. If the faculty member's performance has not met those expectations, the specific differences between expectations and performance must be recorded. Current language is vague and imprecise.

D.6. As noted elsewhere, this is one of the places where the provost's proposal reveals its unfortunate priorities. Unlike virtually all the other published PTR and SPE policies of other research universities, this proposal ignores the result of SPEs for the vast majority of tenured faculty – satisfactory, excellent or distinguished performance. Instead of focusing on faculty development, it moves directly to its real target, the faculty member who does not meet faculty performance expectations and now deserves punishment. While the provision for “specific reasons” for the committee's findings is laudable, it is inadequate. To be meaningful, the reasons must be based on the faculty-developed unit criteria and guidelines, transparently produced, disseminated and applied. They cannot be just any old reasons that someone thinks up. For faculty to be accountable for their performance, those faculty and managers developing and applying the criteria for such performance must be equally accountable. In order for the process to be fair, evaluators, both faculty and administrators, must specify clearly and consistently their criteria for evaluation. The document ignores this crucial dimension of any workable policy, thereby inviting the abuses that characterize a carelessly crafted policy.

E.1. Weingarten and contractual rights specify that faculty members have the right to union representation at any meeting with a supervisor that they believe might result in disciplinary action. Obviously that applies here, and must be specified to insure fairness and transparency. And it applies to all meetings between faculty being evaluated and their supervisors.

E.2. Since the committee's report concerns the faculty member's past performance, the meeting with an administrator should at least begin with discussion of that performance before moving on to future professional development. And if the goal of enhancing meritorious work is to be discussed, there should be an accompanying discussion of the institution's enhanced commitment to supporting and rewarding meritorious work.

Equally important, the last phrase, “in areas identified by the Committee or the Chair, Director or Associate Dean,” invites conflicts and mixed signals. Clarity in defining the expectations for past and future faculty performance is crucial here. Unfortunately, the

word “or” in the final phrase of E.2. suggests that there is no necessary connection between what the committee says and what the relevant administrator says. This is a big problem here and several other places in the proposal. This process can only contribute positively to faculty development if the evaluations by a faculty committee and by relevant administrators are both based on pre-existing clear and concrete criteria that have made it clear to the faculty member what is expected of her or him. Neither administrators nor the faculty committee can require faculty to meet standards that have not been specified at the outset of the process, and the messages the faculty member receives from supervisors and committee must be consistent and if possible as identical as possible, since they are based on applying the same criteria agreed upon previously.

Also, as stated in the CBA, the SPE should be a peer review process driven by the faculty. Any comments supplied by the Dean, Director, Chair or Associate Dean should be based upon the faculty committee’s report.

E.3. A faculty member can see the Committee’s report AT the meeting?! Is there any one who cannot see the unfairness of this? The faculty member should have the report a minimum of five working days before the meeting.

E.5. “If the Committee or the Dean” virtually empowers the Deans as sole evaluators of faculty performance, well beyond their authority in the promotion and tenure process. Combined with the language in Section F, this document provides Deans with extraordinary and unjustified power over the evaluation process.

As with annual evaluations, tenure and promotion decisions, the process works best if faculty committees base their SPE decisions explicitly on the expectations they themselves have encoded in the unit criteria and guidelines, and of which the faculty member being evaluated has been aware from the beginning. The written decisions of faculty committees compare the faculty member’s performance with written criteria, noting any place where the evaluation is not based on such criteria and justifying such failure to follow the unit criteria. Then the dean and other academic managers make their evaluations, also based on unit criteria and specified expectations as well as

recommendations of the faculty committee, and also noting where and why they choose to ignore the unit criteria for SPE. Talk of “reasons” is of little value without reference to what might constitute a valid reason, i.e., the history of faculty definition and administrative review of unit performance criteria. Post-Tenure Review is to be a peer review process, as outlined in the CBA, that guides administrative oversight, which should be kept to a minimum. Deans must base their responses upon the faculty committee’s report; otherwise this is not in good faith a peer review process.

E.7. Once again, as elsewhere, the faculty right of representation must be specified to avoid conflicts with Weingarten and contractual rights when meeting with the Dean, Chair, Director or Associate Dean.

F. Combined with the language in Section E, as elsewhere, this document divorces the process of the creation of the Performance Improvement Plan (PIP) from faculty participation and oversight. The faculty tenure, promotion and SPE committee should be involved in all phases of this delicate and sometimes difficult process, including making sure that administrators are applying the criteria in ways that are fair and consistent with faculty criteria and expectations.

G.1. A good idea, but academic managers or faculty committees cannot impose, through a PIP, new kinds of criteria that are not applicable to other faculty. That is another reason why the SPE and the PIP must be based closely on existing and transparent criteria for annual evaluation and tenure. Once again, a PIP that is the same as or very similar to performance expectations for tenure seems a good model.

G.3. This provision oversteps the boundaries of the CBA and its protections of tenure. It is best understood in relation to the provost’s revealing comment at the September 4 Faculty Senate meeting that (here paraphrased): There are tenured faculty members at this university who should not be working here. In other words, he has already decided that some tenured faculty should be fired, and this policy will give him the power to fire them. As one faculty member noted after the meeting, in his remarks at the meeting the

provost demonstrated exactly why we need tenure: to protect us against prejudgments and arbitrary and capricious decisions by administrators.

Section G.3. not only violates the protections of tenure in the CBA by attempting to justify dismissal of tenured faculty for reasons other than just cause (incompetence or misconduct), it also goes further. As one faculty member noted at the Faculty Senate meeting on September 4, once you have a PIP, one bad annual evaluation and you can be fired. It is no accident that it is difficult if not impossible to find another university in the country that has a similar policy. This makes irrelevant section F.2., specifying a three to five year PIP. Do we really expect faculty with PIPs to produce new and useful scholarship and/or improve their whole approach to teaching in less than one year, which is what G.3. actually entails?

Section G.3. breaks tenure at FAU, especially given the provost's verbal threats and prejudgments. It is unacceptable and does not align itself with the CBA.

I.1. The college faculty assembly does not adopt its college SPE guidelines – the college (and department/school) promotion and tenure committees do so.

I.3. What would constitute a conflict of interest in evaluating a particular faculty member during an SPE?

J. Once again, unit expectations are codified in department or college criteria for annual evaluation, tenure and promotion. The SPE must be explicitly based on these criteria and guidelines.

J. 2. The first subsection, though unnecessarily vague, clearly suggests, as does G.3., that an associate professor can go up for promotion, fail to be promoted, and then immediately be subject to an SPE and a PIP and be fired within a year. More explicitly, it seems to say that all associate professors who fail to make regular progress toward promotion can be judged unsatisfactory on an SPE and a PIP and thus dismissed. If this

is the intention, please justify it. It is one thing to say that professors who fail to produce scholarship for 3-5 years, or whose teaching is unsatisfactory, should develop a PIP in consultation with a faculty committee and appropriate administrators. It is quite another thing to say, or suggest, that every associate professor must be making regular progress toward promotion, or else they deserve a PIP. Do we really want to say, or suggest, that no associate professor can be allowed continued employment without regular progress toward promotion to professor? Is this proposal meant to create a second tenure hurdle at the associate professor rank, with promotion to full professor now an “up or out” process?

If this is not what you mean, what are you trying to say here?

K. Once again, as stated above, there is no reason to subject all associate professors to a third-year SPE. The same end can be accomplished with a trigger SPE after three or four years, enabling newly-tenured associate professors to write the book they were advised against as assistant professors, for example.

L. Many of the problems described above could have been avoided if this document had been developed with full UFF participation.