

Frequently Asked Questions III¹

Regarding the Implementation of an Instructor Tenure System at CU-Boulder

Biographical note: Suzanne Hudson, an instructor for the Program for Writing and Rhetoric, is an elected member of the Boulder Faculty Assembly (BFA). Don Eron, a senior instructor for the Program for Writing and Rhetoric, is a formerly elected member of the BFA who now serves on the Faculty Benefits and Compensation Committee. Hudson and Eron are elected officers of the American Association of University Professors (AAUP), CU-Boulder chapter. Eron serves as the AAUP representative to the BFA. They have co-founded the Association of Teaching Faculty at CU-Boulder (ATF-CU).

Timeline:

- In January 2007, Hudson and Eron wrote a proposal on behalf of the CU-Boulder chapter of the AAUP to implement a tenure system for contingent faculty. That proposal was patterned on the AAUP's "Recommended Institutional Regulations on Academic Freedom and Tenure."
- That spring, two committees of the BFA—Faculty Affairs and Faculty Compensation and Benefits—approved the proposal, but the Executive Committee declined to send it to the Assembly for a vote.
- In April 2007, the AAUP CU-Boulder chapter conducted a referendum polling 889 members of the ATF-CU. Of the 308 votes cast, 279 were in favor of a resolution that the BFA endorse the proposal to implement an instructor tenure system; 29 voted against the resolution.
- In May 2007, the BFA voted to ask the administration to appoint a task force to study instructor issues, paying particular attention to the AAUP initiative for instructor tenure approved by the ATF-CU.
- Throughout the 2007-08 academic year, the Provost's task force deliberated. In the spring of 2008 the task force issued recommendations for improving the working conditions of contingent faculty. The task force's recommendations did not address the issue of instructor tenure.
- During the 2008-09 academic year, the Faculty Benefits and Compensation Committee reconsidered the proposal for instructor tenure. They recommended several clarifications to the 2007 resolution approved by the ATF-CU, unanimously approved the revised resolution, and sent it to the Executive Committee for approval.
- In February 2009, the BFA Executive Committee sent the resolution back to the Benefits and Compensation Committee for further clarification.
- In March 2009, the Benefits and Compensation Committee unanimously approved a re-revised resolution and sent it to the Executive Committee.

¹ In 2007, the AAUP-CU published a set of Frequently Asked Questions for the benefit of contingent faculty who were eligible to vote in the April 2007 referendum. A second FAQ was sent to BFA members on March 30. This is a third FAQ, published for the benefit of BFA members who will vote on the motion for instructor tenure at the April 30 meeting of the General Assembly.

- On March 16, 2009, the Executive Committee voted 6 to 3 to reject the proposal.
- On March 17, 2009, Suzanne Hudson notified the chair of the Assembly that she would exercise the option afforded by the BFA bylaws to submit the resolution approved unanimously by the Benefits and Compensation Committee directly to the General Assembly.
- On April 2, 2009, Suzanne Hudson presented a notice of motion, as amended by BFA member Mark Squillace, attached, to be voted on at the April 30 meeting of the General Assembly (attached).

Questions:

1. *To whom does instructor refer?*

The term refers generically to all teaching faculty who are contingent—that is, not on the tenure track. While the term *instructor tenure* is a bit of a misnomer, it is less oxymoronic than *non-tenure track tenure* or *contingent tenure*.

2. *What percentage of faculty at CU-Boulder are contingent?*

According to the U.S. Department of Education Integrative Post Education Data System (IPED), as reported by the AAUP in the 2006 AAUP Contingent Faculty Index, CU has 705 tenured professors, as well as another 248 faculty on the tenure track. This amounts to 953 tenured, or tenure-track, faculty. The data also report 1,121 professional faculty with teaching responsibilities who teach off the tenure track.

In other words, of our 2,074 professional faculty with teaching responsibilities, 54%, are not on a tenure track. All 1,121 of these professional faculty serve at-will.

We use the term *professional* teaching faculty because we do not include the 1,207 graduate students who have teaching responsibilities. We also do not include the 1,501 at-will research faculty who have no teaching responsibilities.

While the Department of Education IPED does not account for credit hours, according to data provided by CU and reported by the *Rocky Mountain News* (January 22, 2007), instructors and part-time faculty account for 60% of the credit hours taught.

3. *What is the AAUP's "Recommended Institutional Regulations on Academic Freedom and Tenure," upon which this instructor tenure plan will be based?*

The "RIR" details procedures for appointment, sanctions, and termination for faculty members for cause and in cases of financial exigency, discontinuance of programs or departments, and physical or mental disability. The essential clause is as follows:

- 1b. With the exception of special appointments clearly limited to brief association with the institution, and reappointment of retired faculty members on special

conditions, all full-time faculty appointments are of two kinds: (1) probationary appointments; (2) appointments with continuous tenure.

The RIR is available in its entirety at <http://aaupcu.org/>. Click on “Instructor Tenure Project.”

4. *How would this instructor tenure system work?*

The proposal is to create an instructor tenure track, entirely distinct from the professor tenure track. Instructors who have completed a probationary period not to exceed seven years must be offered permanent employment.

The protections afforded by instructor tenure will be the same as those afforded by professor tenure. Job descriptions, however, will reflect the current distinctions in pay scale, professional responsibilities, and prestige. Professor tenure, as it does now, will typically require research, teaching, and service. Instructor tenure, typically, will require teaching and (where it is currently required) service.

5. *Why do instructors need tenure?*

As a legal matter, tenure means that the administration cannot fire a faculty member who has exceeded the probationary period without providing him or her with a reason. With tenure, a faculty member who wishes to contest termination is legally entitled to do so, both within and without the institution.

As a practical matter, tenure means that faculty have academic freedom; they can hold students to rigorous standards and teach controversial material in the classroom without fear of retaliation from students or administrators. Similarly, with tenure, instructors can argue positions at faculty meetings without fear of retaliation from colleagues or administrators who may disagree with, or feel inconvenienced by, their opinions.

Faculty without tenure are employed at-will, according to Colorado state law (CRS sections 24-19-104 and 24-19-108). Legally, faculty employed at-will can be fired at any time, for any reason, or for no reason, regardless of their contractual situation. Because *academic freedom* means the freedom to express an opinion, and *at-will* means that one can be fired for expressing an opinion, the two conditions—academic freedom and at-will employment—cannot co-exist. They are mutually exclusive.

6. *Can't at-will faculty achieve excellence without tenure?*

At-will employment stands as a towering institutional disincentive against faculty's fulfilling their professional responsibilities. Certainly among this considerable majority of faculty, many, despite their at-will status, teach rigorous, demanding courses and evaluate students honestly. No doubt a larger group does their best to do so, within the parameters of at-will employment. But the reality is this: If one is far more likely to get fired for teaching a rigorous, demanding course in which students are evaluated honestly, than for

teaching a less demanding course, one will tend to do the latter. Similarly, if faculty members are more likely to get fired for contributing their expertise on curricular or pedagogical matters at faculty meetings, than they are for keeping their heads down, not attending faculty meetings at all, or for vigorously praising whatever views issue forth from the department chair, they are more likely to go into survival mode than to challenge department orthodoxy. When every move that contingent faculty make is a maneuver within the parameters of at-will employment, and when they constitute the considerable majority of our faculty, the ramifications for the quality of education are obvious.

However, even for those at-will faculty who manage to achieve excellence despite the institutional disincentive, there are gradations of excellence. For example, assistant professors who are eligible for tenure must, according to university policy, have demonstrated excellence in two of three areas: teaching, scholarship, or service. But that does not mean that, before receiving tenure, they have reached their highest potential. Indeed, we assume that these professors, armed with the job security that comes with legally protected academic freedom, will reach even higher levels of excellence.

But what of complacency? Some in the general public have held the unexamined view that the problem with higher education lies with the institution of tenure, that it is tenure that gives license to faculty to teach without standards, to remove themselves from the intellectual mix, to eventually become “deadwood.” But as Annette Kolodny, professor of Comparative Culture and Literary Studies at the University of Arizona, notes, “If abuses in the tenure system sometimes protected ‘deadwood’ in the senior ranks, the characteristics of *non* tenured employment guarantee ‘deadwood’ at a far earlier age.”²

7. *Why not call instructor tenure something else, so as not to confuse it with professor tenure, or arouse animosities of politicians opposed to tenure altogether, or of tenured faculty who may understand the constraints of at-will employment, but are possessive of the term tenure and of the accomplishment that they feel the term symbolizes?*

Again, according to state law all CU faculty, with only a handful of exceptions, must fall into one of two categories: *tenured* or *at-will*. There is no third category, no possibility for a middle ground such as “certified” faculty, who might have the same legal protections as tenured faculty, with a less imposing (and contentious) designation.

8. *Can't we find some other way to protect instructors from unfair treatment?*

The university can have policies against unfair termination, and grievance boards, but state law will always trump university policy. If administrators and grievance boards do not follow policy, or make wrong-headed decisions, at-will employees have no avenue for redress—even a capricious or malicious termination of an at-will employee is legal.

² Annette Kolodny. “‘60 Minutes’ at the University of Arizona: The Polemic Against Tenure.” *New Literary History* 27.4 (1996): p. 699.

Therefore, any protection short of tenure puts faculty in the untenable position of being entirely dependent on the good will of the administration.

9. *Won't this proposal result in the automatic termination of instructors as they approach the tenure mark?*

Denying tenure to qualified candidates runs contrary to the interests of academic units. Such a practice would not only diminish the purchase of a unit within the University structure but would acknowledge that the unit has (1) failed to prepare the instructor to receive tenure and (2) has provided students with inferior teaching over the past seven years. It is similarly not in the University's interest to deny tenure to eligible instructors. To do so would acknowledge that the University has offered inferior instruction. Additionally, if CU were to acquire a reputation for denying tenure, few superior candidates would apply for teaching positions at CU.

Conversely, a great strength of instructor tenure would be that CU's commitment to its teaching faculty will attract the most outstanding teachers in the country.

It is possible, of course, that the administration and influential senior faculty may harbor such animosity to the idea of tenure for their contingent colleagues that they will see to it that few, if any, are ever tenured, by evaluating them unfairly or simply firing them. The antidote to such reactionary measures lies in the hands of the BFA, as a group, and of senior faculty, as individuals. If the administration threatens such actions, the BFA must stand as a body to stop them. Similarly, if senior faculty threaten the employment of qualified instructors who have the audacity to wish for academic freedom, other senior faculty must vigorously oppose such actions.

Instructor tenure will succeed only if most faculty insist that it succeed. If the minority of faculty, who are tenured or on a tenure track, are indifferent to the academic freedom of the majority of the faculty, it stands to reason that the majority of the faculty will find themselves indifferent, if not hostile, to the academic freedom protections of the minority.

10. *What will this new instructor tenure system cost the University?*

Instructor tenure requires no changes to the current pay scale. However, tenure does require the university to commit funds for tenured faculty members' salaries, which is an appropriate commitment. Excellence in instruction is of paramount importance. Besides, instructors' salaries are an excellent investment: instructors teach twice the number of classes that professors teach, for roughly half the pay.

All faculty (tenured or not) can be dismissed in times of bona fide financial exigency, so the university will never be committed to paying salaries it cannot pay.

11. *Doesn't the University need a certain amount of flexibility in the workforce?*

Yes, and that flexibility is maintained in at least three ways:

- All tenured faculty can be dismissed in times of financial exigency.
- The lengthy probationary period that faculty undergo before eligibility for tenure contributes to workforce flexibility.
- Instructors' salaries typically fall in the lower middle-income brackets; therefore, one can expect more attrition from instructors than one expects from professors.

However:

- 54% of the professional teaching faculty currently serve at-will. Surely, the University does not need 54% flexibility over the teaching workforce.
- The fact that non-tenure track faculty traditionally teach most of the core courses—courses least likely to be affected by changing curricular demands—belies the “need for flexibility” argument.

Finally, the need for flexibility can never be so pervasive that it is worth the cost—denying academic freedom and the superior teaching that comes with it, to those who teach the majority of classes at CU.

12. *Given that we are a research university, shouldn't research be required of all tenured faculty?*

According to the Laws of the Regents, teaching is fundamental to the mission of CU. Perhaps that is why, in the brochures that CU sends to prospective students and in other publicity materials, it is never mentioned that the considerable majority of professional teachers that students might encounter during their CU careers are employed at-will, and therefore can hold students to rigorous standards, voice necessary if unpopular ideas, and contribute their expertise at faculty meetings, only at peril to their employment. Nor is this reality of undergraduate education at CU included in the pitches that the administration makes to prospective donors, or to the state legislature.

The research model was amazingly fruitful through the first three-quarters of the 20th century. During that time, research/teaching/service was the dominant faculty model. Since most tenured faculty also had significant teaching obligations, the primacy of the research model and the necessity of academic freedom in the classroom were not incompatible. However, administrations began replacing retiring tenured faculty with contingent faculty who would teach more courses and, because research or scholarship would not be included in their contracts (although they typically did research or scholarship), would warrant only a fraction of the salary. Perhaps that was the time to fight for the research model as the sole tenure model at research universities. Perhaps reduced teaching loads were incentive for tenured faculty to look the other way.

Today, when tenured or tenure-track faculty are in the minority, to insist that only research faculty warrant the protections of tenure and are entitled to academic freedom, is to argue that university teachers, as the pursuers and transmitters of knowledge, no longer play a unique role in the survival of our society, and therefore do not require unique

protections. It is to argue for the increasing irrelevancy of both our institution and our profession.

13. *What is the significance of the BFA's vote on instructor tenure?*

This vote is significant from multiple perspectives. First, it stands as a statement as to whether the faculty government considers access to academic freedom to be necessary for the considerable majority of our faculty. Second, this vote constitutes the view of the CU faculty government as to whether academic freedom, the original and central justification for tenure, remains viable today as a justification for tenure.

From a third perspective, this vote, if ratified by the administration, will enhance considerably the quality of undergraduate education at CU. It will mean that instructors at CU will have the essential tools necessary to achieve their full potential in the classroom and to contribute their expertise to pedagogical discussions during faculty meetings.

From a fourth perspective, this vote has profound implications for shared governance at CU. When the majority of the faculty can be fired for expressing their opinions, it follows that the majority of the faculty are silenced from meaningful participation in shared governance; their opinions need not be considered by the administration. Thus the onus for participating in shared governance falls to the diminishing minority.

14. *Didn't the Instructor Task Force, charged by the Provost in 2007 to study the AAUP proposal, decide against recommending instructor tenure?*

Yes. The Instructor Task Force made some excellent recommendations, but failed to remedy the at-will status of the majority of the faculty.

The 279 faculty who endorsed the AAUP proposal in the 2007 referendum, did not ask a task force, whose members were chosen by the Provost, to study the issue of instructor tenure. These 279 faculty asked the General Assembly of the BFA to endorse a plan for instructor tenure, based upon the AAUP's "Recommended Institutional Regulations on Academic Freedom and Tenure." They have been waiting two years for an answer to their request.

15. *How does the current resolution differ from the one approved by contingent faculty in the April 2007 referendum conducted by the AAUP?*

In essence, the resolutions are the same; both call for an instructor tenure plan based upon the AAUP's "Recommended Institutional Regulations on Academic Freedom and Tenure (RIR). However, this resolution contains one significant addition: it calls for the BFA to constitute a standing committee on contingent faculty, whose first task will be to work with the administration to implement an instructor tenure plan, based upon the RIR, by June 1, 2010.

The 2007 resolution included numerous stipulations that have been eliminated. Since 2007, the sponsors of this proposal have encountered tenured faculty who have told us, in good faith, that they couldn't support the measure because they found one or another of the stipulations to be problematic. By leaving the details to a negotiation between the standing committee and the administration, but to be formulated within the strict parameters of the RIR, we believe we have preserved the spirit and intent of the 2007 resolution while clarifying the central question: Given that tenure is the only viable protection of academic freedom, is tenure necessary for the majority of the faculty?

16. *Have similar instructor tenure systems been tried elsewhere?*

No. This will be the first time that a comparable college or university has implemented a tenure system for any rank except that of professor, although a similar proposal has now been launched at Rutgers. We anticipate that CU-Boulder's plan to implement an instructor tenure system, or plans like it, will become the norm at colleges and universities across the country, or else tenure as an institution will disappear, at least in any form that today's tenured faculty might find palatable.

17. *What happens if the BFA votes down the resolution for instructor tenure?*

The State Conference of the AAUP intends to introduce the proposal for instructor tenure at the 2010 session of the state legislature.

RESOLUTION

The Boulder Faculty Assembly Resolves that the Board of Regents Should Create a System for Instructor Tenure at the University of Colorado at Boulder

WHEREAS it is desirable to improve the intellectual climate of the university and the quality of instruction offered at CU Boulder by all faculty, and

WHEREAS academic freedom for teachers is essential for the pursuit of excellence in undergraduate education because without it, instructors are not free to grade rigorously, discuss controversial issues in the classroom, or exercise their professional judgment in determining the content of their courses without being subjected to retaliation from students or pressure from outside forces, and

WHEREAS academic freedom is required for full participation in faculty governance, and

WHEREAS Colorado state laws assert that faculty can have only one of two contractual statuses—at will or tenured—and

WHEREAS, according to the American Association of University Professors (AAUP), “[T]enure can be granted at any professional rank. . . . A faculty member whose position focuses primarily on teaching, supported by sufficient opportunity for scholarship and service, is also engaged in tenurable academic work”;³ and

WHEREAS Colorado state laws do not prohibit tenure for instructors, and

WHEREAS at-will employment is inimical to academic freedom, in that at-will employment means that faculty can be terminated at any time, for any reason, including for political or personal reasons or for differences of opinion, or for no reason, and

WHEREAS tenure provides the only workable protection for faculty against violations of academic freedom, and

³ American Association of University Professors. “Contingent Appointments and the Academic Profession.” 2003. (sec. “Academic Freedom”)
<<http://www.aaup.org/AAUP/pubsres/policydocs/contents/conting-stmt.htm>>.

WHEREAS the majority of faculty at CU Boulder,⁴ who teach the majority of classes,⁵ serve at-will, without access to a tenure track, and

WHEREAS the at-will status of these faculty members negates their academic freedom and access to the due process necessary to achieve their potential level of excellence in the classroom and in institutional affairs, and

WHEREAS a tenure system for instructors does not require pay raises or promotions and can therefore be implemented without additional personnel costs to the University; and

WHEREAS the status of “lecturer,” “adjunct,” or “adjoint” (hereafter referred to generically as “lecturer”) is intended to denote individuals who give occasional classes and presentations, not someone in a continuing status, and

WHEREAS there is no need to consider lecturers per se for instructor tenure because this resolution assumes that academic units have been complying with the intent and spirit of the Office of Academic Affairs’ recommendations⁶ in response to the 2007-08 Task Force on Instructors as well as to the Instructor Bill of Rights.⁷ Both of these documents say that lecturers who have served three years or more should be re-rostered as instructors. However, in cases where academic units have kept teaching faculty in lectureships for periods of time exceeding those recommended by the above-mentioned policies, lecturers will be eligible for instructor tenure; and

WHEREAS a tenure system for instructors can be implemented without restructuring many of the systems already in place at CU Boulder,

BE IT RESOLVED that the Boulder Faculty Assembly endorses the implementation of an "instructor tenure" track that is distinct from the "professor tenure" track, and

⁴ American Association of University Professors, "Contingent Faculty Index 2006, Appendix B" <http://www.aaup.org/AAUP/pubsres/research/conind2006.htm#wbc_purpose=Basic&WBCMODE=PresentationUnpublished?PF=1>.

⁵ Berny Morson. “Adjunct College Faculty Growing in State, Nation.” Rocky Mountain News 22 Jan. 2007. <<http://m.rockymountainnews.com/news/2007/Jan/22/adjunct-college-faculty-growing-in-state-nation/>>.

⁶ “As recommended by the task force, where someone has been a lecturer at 50% or more for three years, the unit should consider whether the position should be redefined as a rostered instructor; again, if a long-term relationship between the individual and the campus is desirable, a rostered instructorship should be created; where the position is temporary and contingent, lecturers should be employed.” (December 9, 2008). <http://www.colorado.edu/facultyaffairs/atoz/AA_instructor_response.pdf>.

⁷ “Lecturers who have taught at 50% or more for at least three consecutive years may be considered by their unit for promotion to instructor.” (Boulder Campus Guidelines for the Appointment, Evaluation, and Promotion of Lecturer and Instructor Rank Faculty.) (Instructor Bill of Rights, adopted by Dean’s Council, March 9, 1999). <<http://www.colorado.edu/FacultyGovernance/policies/instbofr.html>>.

incorporates the same differences in workload expectations, job titles, and pay scales that currently exist. The “instructor tenure” track should also follow the model established by the AAUP in its "Recommended Institutional Regulations on Academic Freedom and Tenure."⁸

BE IT FURTHER RESOLVED that the Boulder Faculty Assembly shall constitute a standing committee for at-will faculty whose initial task shall be to work with the CU-Boulder Administration to establish, in an expeditious fashion, but not later than June 1, 2010, the relevant details for implementing an instructor tenure program on the CU-Boulder campus.

From Suzanne Hudson: April 2, 2009
Notice of motion to the BFA: April 2, 2009

⁸ American Association of University Professors. “Recommended Institutional Regulations on Academic Freedom and Tenure.” <<http://www.aaup.org/AAUP/pubsres/policydocs/contents/RIR.htm>>.