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**Secretary of the Faculty & Staff  
and Assistant Vice Chancellor**

To: Karl Martin, Interim Dean, Cooperative Extension

From: UWEX University Committee; Michael Ballweg, Chair

Date: August 7, 2018

Re: Faculty Response to System Legal Statement on Academic Freedom and Faculty Plans of Work

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The UW-Extension University Committee provides this Memorandum to reiterate its position on the role of faculty and their academic freedom. This is in part in response to a memorandum dated April 4, 2018 from UW System Office of the General Counsel, as well as faculty's continued concern over the potential deterioration of its role in creating and maintaining educational programming.

While faculty acknowledges the role of administration, Wisconsin statutes continue to recognize the primary role of faculty in determination of educational activities:

FACULTY. The faculty of each institution, subject to the responsibilities and powers of the board, the president, and the chancellor of such institution, shall have the primary responsibility for advising the chancellor regarding academic and educational activities and faculty personnel matters.<sup>1</sup>

Indeed, in considering the issue of academic freedom, U.S. Supreme Court Justice Frankfurter recognized that faculty have the primary role for academic decisions, including the determination of what should be taught, by whom it will be taught, and the methods of instruction.<sup>2</sup> The cases cited by the Office of the General Counsel do not contradict the fact that faculty have this primary responsibility regarding educational programming. The decision in *Regents v. University of California v. Bakke* involved the University of California Medical Program's affirmative action *admission* policy, and did not discuss development of educational programming.<sup>3</sup> The court did not discuss a division of responsibilities between administration and faculty, or suggest that that the institution, *and not faculty*, holds the right to academic freedom.<sup>4</sup> *Omeosegbon* involved a challenge to a decision to deny a tenure appointment, a process that appropriately began with faculty review of another faculty members' performance. There, the University honored the role of faculty in making personnel decisions.<sup>5</sup> Similarly, in *Keen v. Penson*, faculty were appropriately involved in the process that led to the challenged

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<sup>1</sup> Wisc. Statutes 36.09 (4).

<sup>2</sup> *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (J. Frankfurter, *concurring*).

<sup>3</sup> *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

<sup>4</sup> *Id.*, *n.l.* Conveniently omitted by the Office of the General Counsel is that both the institution and the faculty have the right to academic freedom.

<sup>5</sup> *Omeosegbon v. Wells*, 335 F.3d 668 (7<sup>th</sup> Cir. 2003).

termination of a university professor who wrote an insulting letter and made inappropriate comments to a student in refusing to change a grade. This case did not involve programming or development of curriculum, but involved discipline of a professor for inappropriate conduct towards a student.<sup>6</sup> In fact, most recently, the Wisconsin Supreme Court overruled the termination of a tenured faculty member, invoking the principle of academic freedom.<sup>7</sup>

The university systems involved in the cases cited all recognized the role of faculty in personnel matters, as is required by the Wisconsin statute.<sup>8</sup> As UW Cooperative Extension continues to evolve, the statutory role of faculty must be respected. Faculty have the primary role in advising the chancellor on academic and educational decisions and faculty personnel matters. This includes decisions about the development and offering of academic programming as well as the primary role in faculty reviews.

cc: Sarah Mangelsdorf, Provost, UW-Madison  
Casey Nagy, Vice Provost, UW-Madison  
JulieAnn Stawicki, Interim Associate Dean, Cooperative Extension  
Patrick Robinson, Associate Dean, Cooperative Extension  
Matt Hanson, Assistant Dean, Cooperative Extension  
Steve Smith, Secretary of the Faculty, UW-Madison

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<sup>6</sup> *Keen v. Penson*, 970 F.2d 335 (7<sup>th</sup> Cir. 1992).

<sup>7</sup> *McAdams v. Marquette University*, 2018 WI 88 (July 6, 2018).

<sup>8</sup> *Id.*