

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

IN THE MATTER OF THE RECOMMENDED DISMISSAL OF PROFESSOR KING-JAU
("SAM") KLNG, A TENURED FACULTY MEMBER AT UW-MADISON

DECISION AND ORDER

NAMES AND ADDRESSES OF THE PARTIES

Professor King-Jau ("Sam") Kung, 1409 W. Skyline Dr, Madison, WI 53705-1185.

Chancellor Rebecca Blank, University of Wisconsin-Madison, represented by Senior University Counsel, Rachel Jeris, Office of Legal Affairs, University of Wisconsin-Madison, 361 Bascom Hall, Madison, WI 53706..

STATEMENT OF THE CASE

This matter is before the Board of Regents of the University of Wisconsin System ("Board of Regents" or "the Board") upon the recommendation of Chancellor Rebecca Blank that Professor Kung, a tenured faculty member in the Soil Science Department at UW-Madison, be dismissed from his position.

Any person having a tenured appointment may be dismissed only for just cause and only after due notice and hearing. See Regent Policy Document 20-23; See Wis. Adm. Code § UWS 4.01. The decision of the Board of Regents with respect to such matters is final, subject only to judicial review under Wis. Stat. ch. 227.

Whenever the chancellor of an institution within the University of Wisconsin System receives a complaint against a faculty member which the chancellor deems substantial and which, if true, might lead to dismissal of the faculty member, the chancellor shall within a reasonable time initiate an investigation. See Wis. Adm. Code UWS 4.02(1).

On May 8, 2014, Soil Science Department Chair William Bland filed a complaint with then-Provost Paul DeLuca¹ regarding Professor Kung. The complaint alleged that Professor Kung refused a teaching assignment, has refused to participate fully in post-tenure reviews since 2008, has not been attending meetings of the Soil Science Department's Executive Committee, has made little effort in the training of graduate students, and has low research productivity. Specifically, the complaint stated: "In summary, Professor Kung is not meeting the standards expected of a faculty member at the University of Wisconsin-Madison. He is derelict in his duties by every measure, insubordinate, and is negatively impacting the departmental climate. I look forward to a campus-level review of Professor Kung's disregard for his obligations as a faculty member. "

Provost Mangelsdorf first directed Professor Kenneth Potter, Department of Civil and Environmental Engineering, to investigate the allegations in the complaint, but Professor Kung refused to talk with Professor Potter. Professor Potter still prepared a report and the Provost responded with a decision to dismiss Professor Kung. Professor Kung responded by sending a letter appealing the dismissal to the Chair of the Committee on Faculty Rights and Responsibilities.

Provost Mangelsdorf then decided the case would benefit from an investigation in which Professor Kung agreed to participate. Both Provost Mangelsdorf and Professor Kung agreed that Professor Emerita Mary Anderson would conduct an investigation regarding the allegations against Professor Kung which included: (1) refusal to teach Soil Science 322 in the Spring Semester of 2014; (2) refusal to fully participate in the post-tenure review process since 2008; (3) refusal to participate in departmental governance; (4) failure to fulfill his responsibility to train graduate students; and (5) failure to fulfill his responsibility to engage in scholarly

¹ Provost Paul DeLuca retired after the complaint was filed and he was succeeded by Provost Sarah Mangelsdorf.

research. Professor Anderson investigated accordingly and submitted her report and findings on September 1, 2015. Of the five allegations Professor Anderson was charged with investigating, she confirmed three of the allegations and stated that the other two allegations were "not confirmed, with reservations."

In response to Professor Anderson's findings and in accordance with UWS 4.07(1), Wis. Adm. Code, Provost Mangelsdorf offered Professor Kung the opportunity to discuss the matter. She met with Professor Kung, and his attorney, on February 12, 2016, to conduct a voluntary, confidential settlement discussion pursuant to FPP 9.06.C.3. Ultimately, a settlement was not reached as Professor Kung emailed Provost Mangelsdorf on Saturday, February 13, 2016, withdrawing his request that Provost Mangelsdorf speak with individuals in the College of Agricultural and Life Sciences (CALS), and stated he would take up his case with the Committee on Faculty Rights and Responsibilities.

On February 26, 2016, Provost Mangelsdorf sent a letter to Professor Kung regarding her review of Professor Anderson's report. Provost Mangelsdorf concluded, based upon her review of the department's complaint and supporting materials, along with the report provided by Professor Anderson, and other consultations, that just cause existed to pursue Professor Kung's dismissal from his faculty appointment pursuant to FPP 9.03. Provost Mangelsdorf concluded that the evidence demonstrated that he did not carry out the responsibilities expected of him as a faculty member and his repeated refusal to participate in the post-tenure review process constituted a willful and protracted violation of University policies.

The Faculty Rights and Responsibilities Committee met to consider evidence and hear testimony on the allegations on May 6-8, 2016, and the Committee issued its report on May 23, 2016. The Committee concluded that the Provost had met her burden with regard to the charges for refusal to teach Soil Science 322, refusal to fully participate in the post-tenure review

process, refusal to participate in departmental governance, and failure to fulfill his responsibility to engage in scholarly research. Accordingly, the Committee recommended unanimously that Professor Kung be dismissed.

Chancellor Rebecca Blank met with Professor Kung on June 8, 2016 to discuss the matter. On June 24, 2016, Chancellor Blank forwarded her recommendation for Professor Kung's dismissal through President Cross to President Millner and the Board of Regents for formal action. The matter was referred to the Personnel Matters Review Committee (PMRC) for its recommendation to the full Board as to whether Professor Kung should be dismissed. Under UWS 4.01, Wis. Adm. Code, and Regent Policy 20-23, a tenured faculty member may be dismissed only for just cause and only by the Board of Regents.

The PMRC reviewed the record, received briefs from Professor Kung and Chancellor Blank, and heard oral argument on the matter on October 12, 2016. The PMRC unanimously determined that there is just cause for Professor Kung's termination.

On November 10, 2016, at a closed session of the Board, the chair of the PMRC reported the Committee's findings and recommended decision to the Board. The Board then voted to adopt the recommended findings and decision of the PMRC and to dismiss Professor Kung.

Based upon the record, the written submissions of Professor Kung and counsel for UW-Madison, oral arguments, and the recommendation of the PMRC, the Board makes the following

Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. UW-Madison is the flagship institution of the University of Wisconsin System and a major research institution located in Madison, Wisconsin. Faculty at UW-Madison perform three main job duties -- teaching, research and service.

2. In 1986, Professor Kung was hired as an assistant professor in the Department of Soil Science. In 1990 and 1992, Professor Kung published highly regarded and influential research in the field of Soil Science. He was then promoted to associate professor with tenure on the recommendation of the Department in 1992.
3. In 1998, Professor Kung completed a post-tenure review and the Department also considered whether to recommend his promotion to full professor. A subsequent department vote ultimately resulted in a unanimous recommendation that Professor Kung be promoted to full professor.
4. In 2000, Professor Kung published a second outstanding and highly influential piece of research in the field of Soil Science. However, during his post-tenure review in 2003, other faculty members contributed anonymous comments, in accordance with department practice, regarding criticisms of Professor Kung's performance.
5. In August, 2005, Department Chair Steve Ventura canceled a section of Soil Science 324 taught by Professor Kung because an online version of the class was offered simultaneously due to a scheduling error. Enrollments and student feedback led the Department to determine that it would be best to only offer the online version of Soil Science 324.
6. Over the nine-year period of 2007-2016, Professor Kung published two papers, both cowritten with students.
7. During Professor Kung's 2008 post-tenure review, in accordance with department practice, faculty members again wrote anonymous comments that were critical of Professor Kung's performance.

8. As a result of the issues with the 2008 post-tenure process, Department Chair Ventura, in accordance with CALS rules, required a subsequent one-year additional post-tenure review. Professor Kung did not participate in the process that was to have occurred in 2009.²
9. During the period from 2009-2016, Professor Kung also did not participate in Executive Committee or Department meetings, except for one meeting in January, 2010.
10. In 2012, the Department asked Professor Kung to make recommendations for improving the post-tenure review process, and Professor Kung submitted his recommendations.

Professor Kung then did not participate in a 2013 post-tenure review process.³

11. Late in 2013, Professor Kung stated that he would not teach Soil Science 322 (SS 322) in the Spring semester of 2014.⁴ He had previously co-taught the course in each of the preceding three years with Professor Birl Lowery, but Professor Lowery retired in 2014 and was no longer available to co-teach the course with Professor Kung. Through this arrangement, Professor Kung provided approximately 80% of the course instruction and Professor Lowery provided the other 20%, which was mostly comprised of fieldwork.

² On April 9, 2009, Professor Kung emailed CALS Interim Dean Irwin Goldman: "My concerns on whether there are objective criteria and whether the criteria have [sic] uniformly applied to all faculty have not [sic] resolved. I confirm that I will not participate in another post-tenure review process and will not submit/update any material." ³ On February 26, 2013, Professor Kung emailed Soil Science Department Chair Bland: "As I mentioned previously, I will not engage in any new post-tenure review until my 2008 post-tenure review was [sic] fairly evaluated."

⁴ Professor Kung stated he would not teach Soil Science 322 in the spring semester of 2014 in the following emails: Professor Kung emailed the Department Chair on April 17, 2013, "I have never agreed to continue to teach SS322 until I retire;" again on November 13, 2013, "I will not teach SS322 in 2014 spring semester;" again on November 18, 2013: "Because I will not accept your adjustment and will not teach SS322, please save our time and move the case forward. I will defend my case in court against the Soil Science Department and the CALS;" and again on November 26, 2013, "I will not teach SS322."

12. In response to the assignment to teach SS 322 independently, Professor Kung requested that Professor Arriaga co-teach the course with him. The Department stated that

Professor Arriaga was not available to co-teach the class with Professor Kung because of his obligations to UW-Extension.

13. Professor Kung testified that he had several reasons for refusing to teach SS 322 independently. First of all, he testified that he did not have access to the equipment he would need to provide the fieldwork component of the course. Second, Professor Kung testified that students enjoyed the fieldwork portion of the class and he didn't believe he could deliver that portion as effectively as other instructors. In turn, Professor Kung feared that the student evaluations would be less favorable without the enhanced fieldwork, and that such a result could be used against him by the Department. On a related note, Professor Kung also stated that academic freedom supported his request to teach the course the way he thought was best, as a co-teaching arrangement.
14. Professor Bland testified that Professor Kung did not communicate any specific reasons for refusing to teach SS 322. According to the evidence, Professor Kung did not ask about the availability of the equipment or state that he could not teach the course due to a lack of equipment. Professor Lowery testified that he had set the equipment aside for Professor Kung's use and that it was available for him, however, Professor Lowery did not specifically recall telling Professor Kung about the availability of the equipment.
15. Professor Kung acknowledged that he could have taught SS 322 by himself, but testified that he was faced with the dilemma of either having to simplify the course, which challenges students because it relies heavily on math and physics, or risk negative student evaluations. He felt it was important to incorporate the math and physics aspects, but he feared the Department would not let him teach the course in the future if evaluations were low.
16. On December 10, 2013, a meeting took place that included Dean VandenBosch,

Associate Dean Straub, then-Vice Provost Steve Stern, then Soil Science Department Chair Bland, and Professor Kung to discuss teaching SS 322 and the status of Professor Kung's post-tenure reviews in 1998, 2003, 2008, and 2013. The meeting did not resolve the issues and on December 23, 2013, Professor Bland warned Professor Kung that if he did not agree by January 10, 2014 to teach SS322 "starting with the upcoming semester and into future semesters," Professor Bland would have no choice but to file a complaint with the Provost. Professor Kung replied by email that he would not teach the course and Professor Bland filed a complaint with the ProVost on May 8, 2014.

17. In response to the complaint filed by Professor Bland, the Provost charged Professor Kenneth Potter, Department of Civil and Environmental Engineering, to investigate the Complaint, but Professor Kung refused to talk with Professor Potter. Professor Potter still prepared a report and the Provost responded with a decision to dismiss Professor Kung.
18. Professor Kung then sent a letter to appeal the dismissal to the Chair of the Committee on Faculty Rights and Responsibilities. Provost Mangelsdorf testified that she wanted to give Professor Kung "the benefit of the doubt" so she accepted Professor Kung's recommendation to appoint Professor Emerita Mary Anderson to investigate the allegations in the complaint on basis that Professor Anderson was well qualified based on her work in Geoscience and the case would benefit from an investigation in which Professor Kung agreed to participate.
19. Provost Mangelsdorf then charged Professor Anderson with investigating the following allegations and Professor Anderson's findings submitted in her September 1, 2015 report are as follows:
 - a. The allegation that Professor Kung refused to teach Soil Science 322 in the Spring semester of 2014 as assigned by his department, in violation of FPP 8.02.A.

Finding: Professor Anderson confirmed that Professor Kung refused to teach Soil Science in the Spring semester of 2014 as assigned by his department in violation of FPP 8.02.A.

- b. The allegation that Professor Kung refused to fully participate in the post-tenure review process since 2008, which is required by College and University policy.

Finding: Professor Anderson confirmed that Professor Kung refused to fully participate in the post-tenure review process since 2008, which is required by College and University policy.

- c. The allegation that Professor Kung has not participated in departmental governance, in that he is alleged to have rarely attended departmental Executive Committee meetings for at least the past decade, in violation of FPP 8.02.B.

Finding: For the time period of May 2009-present, Professor Anderson confirmed that Professor Kung has not participated in departmental governance, but she did not confirm this allegation for the time period of January 2003-March 2009.

- d. The allegation that Professor Kung has not fulfilled his responsibility to train graduate students, as expected by his department and the University, in violation of FPP 8.02.A.

Finding: Professor Anderson could not confirm this allegation, but expressed reservations in that since Professor Kung was hired in 1986, Professor Kung had fulfilled his obligation to train graduate students, but it is a matter of judgment whether he has trained a sufficient number of graduate students. Professor Anderson noted that Professor Kung trained graduate students via his instruction in SS 622. In addition, he completed the training of two graduate students who received degrees under his sole direction and he started the training of six other

graduate students, four of whom completed degrees under other faculty and two of whom left the university prior to degree completion. He also co-advised three graduate students to degree completion and served on other graduate student advisory committees. However, Professor Anderson found that since 1994, Professor Kung had not mentored a graduate student to degree completion as a major advisor. According to Professor Anderson, the number of graduate students Professor Kung has advised to degree completion is low in comparison to two other UW-Madison faculty with similar areas of research and length of service.

- e. The allegation that he has not fulfilled his responsibility to engage in scholarly research, as expected by his department and the University, in violation of FPP 8.02A.

Finding: Professor Anderson could not confirm this allegation, but expressed reservations in that while there was evidence that Professor Kung had engaged and currently was engaging in scholarly research, since 2007 there have been few products of Professor Kung's scholarly research in the form of journal articles.

Since 2007, Professor Kung has published only two journal articles, which is a record of low productivity and over the last five years, Professor Kung published only one article where the average number of publications in the department over the same five-year period was 13.5.

- 20. On February 26, 2016, in response to Professor Anderson's report, Provost Sarah Mangelsdorf informed Professor King-Jau ("Sam") Kung that she was pursuing dismissal for cause. According to Provost Mangelsdorf, dismissal for cause was based on five separate allegations of Professor Kung's failure to meet his professional obligations as provided in Faculty Policies and Procedures (FPP) 8.02.

21. The relevant portion of FPP 8.02 states:

8.02 FACULTY DUTIES AND RESPONSIBILITIES

A. FUNDAMENTAL RESPONSIBILITIES. The university

faculty are responsible for teaching, research or other scholarly activity appropriate to the discipline, and public service.

Furthermore, every faculty member has an obligation to maintain professional honesty and integrity, to seek knowledge and to share that knowledge freely with others. No member of the faculty shall be absent from his/her classes or other regular duties at the university except by permission of the chancellor or appropriate dean. Faculty members shall avoid a concentration of class hours that is detrimental to effective teaching. It is the responsibility of faculty members to carry out duties assigned by the department, and to share in the governance of the institution as a whole.

B. ATTENDANCE AT MEETINGS. It is the duty of faculty members to attend departmental, school or college, and university faculty meetings.

22. Following Provost Mangelsdorf's decision, the case went before the Committee on Faculty Rights and Responsibilities (CFRR). The CFRR included eight members of the Faculty at UW-Madison and it met in closed session on May 6, 7, and 8, 2016 to hear testimony from each of the parties. The CFRR considered five separate allegations⁵ and decided as follows..⁶

a. By a unanimous 8-0 vote, the Committee found that the Provost established a clear and convincing case that Professor Kung had wrongfully refused to teach

SS 322, in violation of FPP 8.02.A. By a vote of 5 yes and 3 no, the Committee did not find that Professor Kung's refusal to teach SS 322, standing alone, provided a basis for termination. (Per FPP 9.09.B, a finding of just cause for the imposition of discipline or dismissal requires a majority vote with not more than two dissenting votes.) However, the Committee unanimously found that Prof Kung's refusal to teach the class constituted misconduct subject to appropriate sanction.

- b. The Committee concluded by a vote of 7 yes and 1 no that the Provost had established a clear and convincing case that Professor Kung had refused to participate in the post-tenure review process without adequate justification. The Committee also concluded by a majority vote (2 yes, 6 no) that this allegation,

⁵ The allegations are taken from the letter charging Professor Emerita Mary Anderson with investigating five specific allegations against Professor Kung (Dated April 24, 2015).

⁶ The conclusions of the CFRR are taken from the Recommendation of the Committee on Faculty Rights and Responsibilities Hearing Panel Memorandum to Chancellor Rebecca Blank (Dated May 23, 2016).

standing alone, does not establish sufficient grounds for dismissal. Finally, the Committee by unanimous vote concluded that Professor Kung's refusal to participate in post-tenure review, taken alone, warranted the imposition of disciplinary sanctions less severe than dismissal.

- c. The Committee voted unanimously that the Provost had established by clear and convincing evidence that Professor Kung failed to participate in governance without adequate justification. ¹ The Committee also voted unanimously that this allegation, standing alone, does not establish a basis for dismissal. Finally, the

¹ In its decision, the CFRR noted that it found no evidence that any offensive statements occurred after the early 1990s and testimony from other witnesses disputed the existence of an atmosphere of racial prejudice in the department.

Committee voted unanimously that Professor Kung's refusal to participate adequately in shared governance, by itself, constitutes conduct that warrants the imposition of a sanction short of dismissal.

- d. The Committee concluded by majority vote (2 yes, 5 no, 1 abstention) that the Provost failed to establish by clear and convincing evidence that Professor Kung failed to adequately participate in training graduate students.
- e. The Committee found by a vote of 6 yes, 1 no, 1 abstention that the Provost established by clear and convincing evidence that Professor Kung failed to meet his professional obligations with regard to research activity. By a unanimous vote, the Committee concluded that Professor Kung's failure to engage in research activities, standing alone, was not grounds for dismissal. Finally, by a vote of 8-0 the Committee found that Professor Kung's failure to engage in research activities warranted the imposition of a sanction less than dismissal.

23. In sum, the Committee found that the Provost established by clear and convincing evidence four of the five allegations that were brought against Professor Kung:

- a. That Professor Kung refused to teach SS 322 in the Spring semester of 2014;
- b. That Professor Kung refused to fully participate in post-tenure review since 2008;
- c. That Professor Kung refused to participate in departmental governance; and
- d. That Professor Kung failed to perform adequate research activities during the period 2007-2016.

24. The Committee then considered the question of whether these four allegations, taken together, established a case for dismissal. By a unanimous vote of 8-0, the Committee concluded that the Provost had established, by clear and convincing evidence, a case of

dismissal for cause. Accordingly, the Committee therefore recommended that Professor Kung be dismissed from his position as a faculty member at UW-Madison.

25. In response to the Committee's recommendation, Chancellor Blank met with Professor Kung and issued her written recommendation in accordance with UWS 4.07 of the Wisconsin Administrative Code. Chancellor Blank supported the Committee's recommendation, determined there was just cause for Professor Kung's dismissal and forwarded her recommendation for termination to President Cross, for referral to the Board. In her decision, Chancellor Blank stated that she met with Professor Kung and he agreed almost entirely with the substance of the factual bases supporting the charges for refusal to teach SS 322, refusal to fully participate in post-tenure review, and refusal to participate in departmental governance. With regard to the allegation that Professor Kung failed to perform adequate research activities, Professor Kung argued that he had been busy with other things since 2007 and could justify why his papers had not been published. Chancellor Blank, however, concluded that Professor Kung did not meet his obligations to scholarship because scientific progress and scholarship require that ideas be shared through research and publication, and Professor Kung had not published the three meaningful articles he referenced.

26. Prior to the complaint at issue, Professor Kung had not been the subject of any disciplinary proceeding by the University.

ISSUE

The ultimate issue presented to the Board of Regents is whether, based on the record, there is just cause for Professor Kung's dismissal from his tenured faculty position.

CONCLUSIONS OF LAW

1. Professor Kung has been afforded the due process and procedural guarantees required by Chapter UWS 4, Wisconsin Administrative Code.

2. Just cause for the dismissal of Dr. Kung from his position as full professor in the UW-Madison Department of Soil Science has been established by clear and convincing evidence. Safransky v. Personnel Board, 62 Wis. 2d 464, 215 N.W.2d 379 (1974) ("just cause" exists when the individual's conduct reasonably can be said to have a tendency to impair the individual's job performance or the efficiency of the group with which he works).

DISCUSSION

The Chancellor has asserted four grounds supporting just cause for Professor Kung's dismissal: (a) that Professor Kung refused to teach SS 322 in the Spring semester of 2014; (b) that Professor Kung refused to fully participate in post-tenure review since 2008; (c) that Professor Kung refused to participate in departmental governance; and (d) that Professor Kung failed to perform adequate research activities during the period 2007-2016.

First, the evidence supports the Chancellors' assertion that Professor Kung refused to teach SS 322 in the spring semester of 2014. Citing several emails, Professor Anderson's investigation concluded that there was "no doubt or dispute that Professor Kung refused to teach SS322 in [the] spring semester [of] 2014." See Anderson Report at p. 8 (Dated September 1, 2015). Ultimately, the Department had the authority to assign Professor Kung to teach SS 322. If Professor Kung believed he had a basis for refusing to teach SS 322, then he should have engaged in extensive efforts to communicate with the Department to resolve his concerns. Instead, the communications Professor Kung sent were generally limited to his refusal to teach the course. See supra note 4.

Second, the evidence supports the Chancellor's assertion that Professor Kung refused to fully participate in post-tenure review since 2008. While Professor Kung acknowledged his refusal to participate in the post-tenure review process, he provided a number of justifications for his actions, namely that the Department relied upon standards that were inappropriately numbers-based and insufficiently specified or disclosed, that his record was not treated fairly during his post-tenure reviews in 2003, 2008, and 2009, and that his proposals for changes to the post-tenure review process were not adopted, thereby resulting in an inappropriate process. The evidence does not indicate that Professor Kung was justified in his refusal to participate in the post-tenure review process. While Professor Kung may have disagreed with the process, he was still subject to having his progress and performance reviewed like all other tenured faculty at UW-Madison.

Third, the evidence supports the Chancellor's assertion that Professor Kung refused to participate in departmental governance. The Board appreciates Professor Kung's position with regard to the inappropriate comments directed at him early in his employment at UW-Madison and does not condone such statements. The evidence indicates that any such statements would have occurred early in Professor Kung's employment (over twenty years ago), while Professor Kung indicated his decision to stop attending committee and departmental meetings occurred in 2009. Professor Kung's decision to withdraw from participation in departmental governance coincides with his dissatisfaction with the post-tenure review process; however, his sentiments towards this process do not justify his refusal to satisfy his obligation as a faculty member under FPP 8.02.B, which requires faculty members to attend departmental, school or college, and university faculty meetings.

Finally, the evidence supports the Chancellor's assertion that Professor Kung failed to perform adequate research activities during the period 2007-2016. The evidence indicates that Professor Kung's research record was consistent and productive prior to 2007. Since 2008,

however, Professor Kung published only two papers, both of which were co-authored with students, and neither has addressed his major area of research. In her report, Professor Anderson acknowledged that Professor Kung's early publications are considered "classics" in the field of soil physics, but she stated that Professor Kung's publication record since 2007 has been "poor." Professor Kung testified that he has been working on a very complex problem over this time period and has engaged in other research activity besides publication. He explained that he has not published the three papers he has completed on the project because he has not yet solved a problem that is central to the related fourth paper. Professor Kung's post-tenure reviews in 2009 and 2013 specifically noted concerns regarding Professor Kung's lack of research productivity. Chancellor Blank and the Department took issue with Professor Kung's publication history on the basis that scientific progress and scholarship require that ideas be shared through research and publication, and Professor Kung's decision to hold off on publishing his first three papers amounted to the withholding of information from the scientific community.

The Board further concludes that discipline less than dismissal is not appropriate here. In light of the numerous issues regarding Professor Kung's conduct and performance over the past several years, namely refusing to teach a class, failing to engage in the required post-tenure review process, avoiding departmental meetings, and failing to engage in adequate research activity, the Board concludes that dismissal is the appropriate discipline. No evidence has been presented to suggest that if the Board were to conclude that something other than dismissal were appropriate, Professor Kung would not resume the same unacceptable behaviors.


For all these reasons, Professor Kung's conduct meets the just cause standard. Safransky v. Personnel Board, 62 Wis. 2d 464, 215 N.W.2d 379 (1974). Of the teaching, service and research criteria that faculty are evaluated on at UW-Madison, Professor Kung has not satisfied

his professional obligation in any of these three areas and, therefore, tennination for cause is supported by the evidence. Id.

ORDER

For the foregoing reasons, the Board of Regents orders that Professor King-Jau ("Sam") Kung be dismissed from his position as a full professor in the UW-Madison Department of Soil Science effective November 11, 2016, the date of this decision and order. This decision may be judicially reviewed by filing a petition for review in the appropriate circuit court, as specified in s.227.53(1)(a)(3), Wis. Stats., within 30 days of the mailing of this order, and must name as a party respondent the Board of Regents of the University of Wisconsin System

Dated at Madison, Wisconsin, this day of November, 2016.



Jane S. Radue
Executive Director and Corporate Secretary
Office of the Board of Regents