

TO: Andrew Rogerson, Chancellor
Andrew Wright, President, University Assembly and Faculty Senate

FROM: UA Little Rock Faculty Governance Committee

DATE: October 27, 2017

RE: Proposed changes to policies of the Board of Trustees

As members of UA Little Rock's Faculty Governance Committee (an elected Standing Committee of the Faculty Senate), we feel a special duty to comment on some of the proposed changes to UA system policies 405.1 and 405.4, disseminated to our Faculty Senate on 10/20/2017. Faculty governance and shared governance in higher education are principles at the heart of higher education in the United States. Since 1920 the American Association of University Professors has provided strong guidance regarding shared governance as well as open communication between governing boards, administration. UA Little Rock since its inception as a part of the University of Arkansas System has operated on this model and such shared governance permeates our institutional culture.

At the current time we are especially troubled by a lack of due process, both in changes proposed in the document regarding dismissal of tenured faculty and full-time faculty (which we will address below), and in the manner these proposed changes were written and disseminated to the campuses. If faculty members are not consulted in a timely manner when changes of this magnitude are proposed, then their voices, thoughts, and expertise remain excluded from the process and they are effectively being governed by whomever crafted the changes rather than participating in a shared governance structure. An open dialogue is especially important with issues like tenure and dismissal of faculty.

We outline below our major points of concern, which echo those we've heard and read in faculty discussions across our campus.

1. Policy 504.1, section on Tenure

Quote from the proposed changes, Section I. (Definition of Terms):

Cause - Cause is defined as conduct that demonstrates the faculty member lacks the willingness or ability to perform duties or responsibilities to the University. A faculty member may be disciplined, or dismissed, for cause on grounds including but not limited to unsatisfactory performance or (1) professional dishonesty or plagiarism; (2) discrimination, including harassment or retaliation, prohibited by law or university policy; (3) unethical conduct related to fitness to engage in teaching, research, service/outreach and/or administration, or otherwise related to the faculty member's employment or public employment; (4) misuse of appointment or authority to exploit others; (5) theft or intentional misuse of property; (6) incompetence or, job abandonment, pattern of disruptive conduct or unwillingness to work productively with colleagues, or refusal to perform reasonable duties; (7) threats or acts of violence or retaliatory conduct; or (8) violation of University policy, or state or federal law, substantially related to performance of faculty responsibilities or fitness to serve the University.

Our concern with the proposed changes to “cause” is primarily that ‘unsatisfactory performance’ is not defined in any way and seems purposefully vague. Retaliation is mentioned twice in (2) and (7). Is this needed / intentional? (4) needs to be reworded since no one has “authority to exploit others” and this is assumed to not be the intent here. (6) seems now to include lack of collegiality as a potential cause for dismissal. We will first address (6) and will turn to the cause of “unsatisfactory performance” next in our discussion of the Annual Review section.

While the word collegiality is not used outright, the phrasing “unwillingness to work productively with colleagues” means the same thing. If this is not the intent, then the wording should be clarified to explain more fully what constitutes this. This very wording is repeated in section IVA.14c: “Faculty are expected to work productively with colleagues in carrying out the mission of the University.”

The AAUP’s guidance regarding the criterion of “collegiality” makes it clear that normal expectations for collaboration and participation are already part of a faculty member’s regular performance expectations and are captured under teaching, service, and research: “A faculty member may legitimately be called upon to participate in the development of curricula and standards for the evaluation of teaching, as well as in peer review of the teaching of colleagues. Much research, depending on the nature of the particular discipline, is by its nature collaborative and requires teamwork as well as the ability to engage in independent investigation. And committee service of a more general description, relating to the life of the institution as a whole, is a logical outgrowth of the Association’s view that a faculty member is an “officer” of the college or university in which he or she fulfills professional duties”. Further, they argue that “the separate category of “collegiality” should not be added to the traditional three areas of faculty performance. Institutions of higher education should instead focus on developing clear definitions of teaching, scholarship, and service, in which the virtues of collegiality are reflected.² Certainly an absence of collegiality ought never, by itself, constitute a basis for nonreappointment, denial of tenure, or dismissal.”

<https://www.aaup.org/report/collegiality-criterion-faculty-evaluation>

Regarding criterion (6), a lack of clarity is also evident here. What constitutes “disruptive behavior” and what constitutes a “pattern” of it? What kinds of disruption are at issue here (disruptive to what or to whom)? Who would make a determination of “disruptive behavior”? Is there any recourse to such a determination? The vague wording in this clause could result in use of it to stifle academic freedom through other means or to initiate dismissal proceedings (which are shortened considerably in time-length) against a faculty member who, for example, questions the direction of the university under its administrative leaders. Could this not be used as a back door to retaliatory action against a faculty member by an administrator?

2. Policy 504.1 section on Annual Review

Quote from the proposed change (Section VA.9):

In order to ensure a high quality and productive educational environment, annual review procedures adopted at the campus level must provide for prompt, meaningful and effective means of addressing unsatisfactory faculty performance. Any campus procedures regarding post-tenure review shall not allow greater than one academic year, with active cooperation from the faculty

member, for an overall unsatisfactory performance rating to be substantially remedied prior to a recommendation of dismissal on the basis of unsatisfactory performance. In other words, if a faculty member's overall performance is evaluated as unsatisfactory for an academic year, any improvement plans or other remedial measures are expected to result in a satisfactory evaluation by the end of the following academic year; if not, the faculty member may be issued a notice of dismissal on twelve months' notice as provided for in this policy. Again, such period of time for remediation assumes the active cooperation and engagement of the faculty member; otherwise, a shortened timeframe may be utilized.

Our concern here is at several levels. Based on Section IV.C.1a. (Dismissal), a chair or dean may initiate proceedings to dismiss a tenured faculty member based on 'cause,' including 'unsatisfactory performance' (which is an addition to the language of the section on Tenure already quoted above). We are troubled by the timeline provided for faculty performance remediation and by the fact that a shortened timeframe may be utilized if the faculty member is judged as not actively cooperating. Who would create the remediation plan? Why would only one year be allowed (we note that publication in many fields regularly takes more than 1 year from submission of completed article/book to actual publication date)? Who makes the determination that the faculty member is not "actively cooperating" and upon what grounds is this judgment made? If a faculty member is neglecting their duties or performing them with incompetence, there are already procedures available to initiate dismissal for cause in the current policy (see "cause" as defined in current 504.1). Why is "unsatisfactory performance" deemed something different, and, if it is different than the 8 enumerated grounds for cause in Section I., what motivates separating this as a different ground? Finally, what is its actual definition? Can "unsatisfactory" be determined "at will" by any administrator in the line of evaluation with or without relying on the standards of the academic unit in which the faculty member is employed?

We are troubled by the lack of clarity in these changes and the considerable difference between the current policy and the proposed revisions. The very heart of what faculty do and love (teaching, research/creative activity, and service) is at issue here, and thus we are rightfully alarmed at the lack of faculty consultation and participation in crafting policy revisions across the UA system campuses.

Policy 405.4: Section on instructor dismissal

In revisions proposed to policy 405.4, a new type of dismissal for full-time, non-tenure-track instructors is listed: "dismissal for convenience." This, too, lacks clarity. What does "convenience" mean? Convenient to what or to whom? Dismissal due to financial exigency already has a policy and process, so what convenience is there that is not tied to financial circumstances? Could someone be terminated in the middle of a semester or year because the chair has found a different instructor willing to perform the job for a cheaper salary? Non-tenure track full-time faculty take the risk that they can be terminated before they finish the end of a semester without cause (convenience is not cause), and this would put those instructors in a very precarious position. This is ultimately detrimental to students. Why would someone take a full-time instructor position at a UA campus under such conditions? This policy may chase away qualified candidates. Further, current non-tenure-track full-time faculty may be reluctant to serve on committees where their opinions and ideas could be a matter of "inconvenience" to

someone in the department or the administration if they feel this could be a reason to dismiss them. Firing non-tenured full-time faculty for “convenience” and without recourse is at best counter-intuitive to a professional relationship between faculty and the institution and could well be a threat not only to academic freedom but also to a unit’s ability to assure instruction in courses for which students have paid and on which they are relying to satisfy graduation requirement. Such potentially capricious action significantly undermines the System’s avowed commitment to improving graduation rates and ensuring quality instruction for UA students.

There seems to be no appeal process for convenience firing. The other forms of dismissal have an appeal process outlined; why is this not an option for someone dismissed for convenience? Termination for convenience seems to be an attempt to treat non-tenure track full-time faculty as if they are freelance contractors rather than a part of the teaching faculty and the shared governance body at the university.

As a reminder, the AAUP states that “a close positive relationship exists between the excellence of colleges, the strength of their faculties, and the extent of faculty responsibility in determining faculty membership.” Furthermore, a “well-organized institution will reflect sympathetic understanding by trustees and teachers alike of their respective and complementary roles. These should be spelled out carefully in writing and made available to all. Trustees and faculty should understand and agree on their several functions in determining who shall join and who shall remain on the faculty.”

<https://www.aaup.org/report/statement-procedural-standards-faculty-dismissal-proceedings>

One additional area of significant concern is the new process outlined for appointment of chairs of departments and other academic units. It is critical to effective leadership at the department level that the unit’s faculty participate in the selection of candidate(s) to recommend to the Dean for appointment to a term as specified within the approved governance documents of the department.

In sum, should the proposed language in these two drafts of 405.1 and 405.4 become UA System policy, recruitment and retention of highly qualified, committed faculty will likely diminish quickly.

We, therefore, respectfully request that the Board of Trustees establish a process for review and potential revision of these policies that includes faculty representatives from each of the campuses of the UA System offering tenure, additional faculty representing the institutions that do not offer tenure and other system personnel deemed appropriate by the Board. Such a process engaging faculty and administrators has been utilized effectively in the past to develop and to modify Board policies and we believe it is critical to this situation.