

**From:** Joshua Silverstein [mailto:jmsilverstei@ualr.edu]  
**Sent:** Monday, October 23, 2017 5:39 PM  
**To:** 'FACFOCUS@UALR.EDU'  
**Subject:** Proposed Changes to UA System Rules Are Grave Threat to Tenure and Academic Freedom

Colleagues:

Last week, the faculty senate received proposed changes to the UA System rules regarding tenure (Board of Trustees Policy 405.1), employment periods (Policy 405.4), and university and distinguished professorships (Policy 470.1). This email concerns the proposed changes to policy 405.1. As the subject of my email indicates, I believe that the proposed changes are a grave threat to tenure and academic freedom within the entire UA System. Most importantly, the revisions dramatically expand the grounds justifying termination for cause. They do so by (1) effectively establishing collegiality as a basis for termination, and (2) permitting dismissal after a single unsatisfactory rating in an annual review. In addition, the revisions critically weaken the procedural protections available at university committee hearings regarding terminations. If these changes are adopted, the damage to the University of Arkansas will be wide-ranging and likely permanent. It is thus imperative that we speak out about the threat.

Attached to this email is a redline of the proposed alterations to 405.1. I created the redline myself. The faculty senate was only provided a clean .pdf copy of the proposal. To create the redline, I had to convert the current rule and the proposal from .pdf to Word, and then run a compare using Word. Converting documents from .pdf to a word processing format is not an entirely reliable process. Thus, my redline may not be 100% accurate. As a result, I have also attached a clean copy of the proposed changes to 405.1. In addition, the current rule is available at the Board of Trustees website [here](#). (Note also that I converted the word redline back to .pdf so it will show up the same on all computers, phones, and other machines. This final conversion did not alter the document in any way.)

Note also that I have used the functionality of Microsoft Word to (1) insert comments into the redline regarding several of the proposed changes, and (2) highlight in yellow the specific language to which my comments refer.

Please keep in mind that I only received the proposal on Saturday night. Thus, my review has not been comprehensive. There may be other problems that I missed.

The rest of this email discusses some of the proposed changes and one other issue. Note that some of the material below is restated or expanded upon in the comments I inserted in the redline.

One final introductory point: if you have colleagues on other UA System campuses, please consider forwarding this email to them.

### **1. The University may not retroactively alter tenure rights.**

In my opinion, the proposed changes to 405.1 cannot retroactively alter the rights granted under existing tenure contracts. Well-established principles of contract law and constitutional law

firmly support this conclusion. Thus, the changes to 405.1, if adopted, will only apply to faculty not yet tenured. However, I have not conducted exhaustive legal research on this point. In addition, while nothing in the proposal suggests that the university believes it can—or intends to—apply the changes retroactively, an express admission on these points is the only way we can be sure of the thinking of the Board of Trustees and the rest of the central administration.

Even if the changes are applied solely in a prospective manner, that only modestly reduces the damage that the new rules will cause. For example, all new hires will be subject to the revised standards. That is a serious problem. The changes will make it more difficult to hire the best entry-level and lateral faculty. And those who are hired will possess weakened tenure protections and more limited academic freedom, both of which will result in numerous harms to teaching, research, and service within the UA system.

## **2. The proposal dramatically expands the scope of what constitutes “cause” for purposes of terminating faculty.**

### **a. Introduction.**

Let me start by highlighting the critical textual changes to the definition of “cause.” The current definition is set forth in section I of Policy 405.1 (which is on page 2 of the policy):

“Cause” is defined as conduct which demonstrates that the faculty member lacks the ability or willingness to perform his or her duties or to fulfill his or her responsibilities to the University; examples of such conduct include (but are not limited to) incompetence, neglect of duty, intellectual dishonesty, and moral turpitude.

Compare that to the revised definition, set out in section I of the proposal on pages 1-2 (and on pages 1-2 of my redline):

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, 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

I have highlighted two pieces of the revised definition. First, I highlighted the addition of “unsatisfactory performance” near the beginning of the definition. Second, I highlighted certain language in item 6. Section 2.b. of this email addresses item 6. Section 2.c. of this email

addresses the insertion of “unsatisfactory performance.” There is additional language in the proposal relating to the two pieces of the definition that I highlighted. That language is discussed in the sections below corresponding to the highlighted language.

**b. Establishing collegiality as a basis for termination dramatically reduces tenure protections and academic freedom.**

The language I highlighted in item 6 is very dangerous. “Pattern of disruptive conduct” is a deeply subjective standard. “Unwillingness to work productively with colleagues” is worse. These standards create a serious potential for abuse. It takes little imagination to see how the standards could be employed to stifle academic freedom by dismissing or otherwise punishing tenured faculty on the pretextual grounds that they are “disruptive” and/or “uncollegial.” Note that including a collegiality requirement in tenure standards violates AAUP principles. This change would thus move the UA System out of compliance with the AAUP. See *On Collegiality as a Criterion for Faculty Evaluation* at page 1 (and throughout), available [here](#).

The importance of the changes in item (6) is highlighted by the fact that the “work productively” collegiality standard is repeated in the section of 405.1 that concerns academic freedom. The proposal amends section IV.A.14.c, on page 10 by inserting the following language: “Faculty are expected to work productively with colleagues in carrying out the mission of the University.” By adding this to the academic freedom section, it is clear that the drafters intend the language to circumscribe the scope of academic freedom everywhere within the University of Arkansas.

**c. The proposal permits termination after a single unsatisfactory rating in an annual review; this also dramatically reduces tenure protection and academic freedom.**

Under the current standard, termination for performance issues may result only from “incompetence,” “neglect of duty,” or the like. Under the proposed standard, a mere finding of “unsatisfactory performance” in a *single* annual review is sufficient grounds to warrant termination. That is a profound change.

To elaborate, the proposal inserts new standards regarding annual reviews in section V.A.9. Here is the pertinent language:

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.

On the surface, this provision appears to provide that termination is only permissible after two unsatisfactory ratings. In the first yellow block, the provision states that “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 . . .” (Emphasis added.) That *suggests* that two unsatisfactory ratings are required. But now consider the last sentence of the language I quoted, also highlighted in yellow: “Again, such period of time for remediation assumes the **active cooperation and engagement** of the faculty member; **otherwise, a shortened timeframe may be utilized.**” (Emphasis added.) This means that if the university, in its subjective judgment, determines that a person is not being sufficiently “cooperative” or “engaged” in the remediation plan, termination is possible well before the end of the first academic year after the unsatisfactory rating. In short, a single unsatisfactory rating, combined with a judgment of insufficient “cooperation” or “engagement,” can result in termination.

That is a dramatic change from the existing rule. To repeat, the current standard requires “incompetence,” “neglect of duty,” or something comparable. Those words denote performance that is *considerably* worse than suggested by a mere finding of “unsatisfactory.” Indeed, “incompetence” and “neglect of duty” are much worse than *multiple* findings of unsatisfactory performance.

This change also violates AAUP standards. For example, in a report regarding Greenville College in Illinois, the AAUP said this:

As the writers of the 1958 *Statement on Procedural Standards* had assumed, most institutions have indeed developed their own standards of what constitutes adequate cause for dismissal. They most commonly tend to be “incompetence,” “professional misconduct,” “gross neglect,” and the like. In comparison, Greenville’s standard of “unsatisfactory service” not only is nebulous and subjective, but also sets too low a bar for adequate protection of tenure and academic freedom . . . .

*Report, Academic Freedom and Tenure: Greenville College (Illinois)* at page 86, available [here](#).

Likewise, the AAUP’s formal statement on post-tenure review explains that the appropriate standard for “cause” is “incompetence, malfeasance, or failure to perform . . . duties.” *Post-tenure Review: An AAUP Response* at page 230, available [here](#). The report proceeds to explain that if “the standard of dismissal is shifted from ‘incompetence’ to ‘unsatisfactory performance,’ . . . then tenured faculty must recurrently ‘satisfy’ administrative officers rather than the basic standards of their profession,” which fatally undermines academic freedom. *See id.*

As these AAUP documents make clear, the proposed change of the cause standard from “incompetence” and “neglect of duty” to mere “unsatisfactory” performance is fundamentally inconsistent with core principles of academic freedom. And that would be true even if the proposal required multiple findings of unsatisfactory performance. As I explained, however, a single finding of unsatisfactory performance can justify termination under the proposal (when combined with a finding that the faculty member is not sufficiently cooperative or engaged in remediation of the unsatisfactory performance).

### **3. The proposal critically weakens procedural protections.**

Section IV.C. of 405.1 concerns the procedures for dismissing a tenured or tenure-track faculty member. Part of the termination process is a hearing before an impartial committee. The proposal revises section IV.C.5., on page 14, to strip away the committee's ability to grant procedural protections equivalent to those afforded in a court of law. See comment j7 on page 12 of the redline, which explains this point in more detail.

\* \* \*

Note that the redline contains a few other substantive comments.

As I said, this proposal is a striking attack on academic freedom and tenure. It is thus imperative that we make our voices heard.

Josh

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*From the desk of*  
**PROFESSOR ROBERT STEINBUCH**

Dear Colleagues,

The proposed changes to Board Policy 405.1 are the single most systemic attack I have ever seen against tenure rights and academic freedom. The **most** damaging and caustic changes are:

1. Redefining “cause” to fire faculty, remarkably, as including: **“disruptive conduct”** and **“unwillingness to work productively with colleagues.”** §I (“Cause”), §IV.A.14.c. This is a very poorly disguised direct violation of the AAUP policy prohibiting “collegiality” mandates in tenure rules. This proposal tells faculty, “you better go along to get along, or else!”
2. Eliminating the ability to actually confront witnesses during a termination hearing. §IV.C.5. Indeed, the proposed rule brazenly adds the University’s *interest* in an “efficient” hearing to fire faculty. I don’t think faculty are concerned with increasing how cheaply and easily the University can get rid of you! And,
3. Allowing the school to fire faculty after one unsatisfactory evaluation. §V.A.9.

One can perceive University Counsel’s involvement here. They have previously sought unsuccessfully to demand elements of what’s in this proposal. It seems that “efficiency” has taken precedence over fairness, academic freedom, and tenure rights. If anything, faculty should have an even greater say in the appeal process to better reflect faculty governance.

University Counsel recently lost its battle to reduce the Freedom of Information Act rights of faculty/public. These rules also are not in the best interest of the public. That’s unfortunate.

Rob Steinbuch  
Professor of Law

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.<sup>2</sup> 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.



## Executive Committee of the Faculty Senate

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TO : D. Bobbitt, President, University of Arkansas System  
FROM: University of Arkansas at Little Rock Faculty Senate Executive Committee  
SUBJECT: Changes to Board Policies 405.1, 405.4, 470.1  
DATE: October 30, 2017  
Cc: A. Rogerson, Faculty Senate  
NUMBER: FSM-2017-3

On behalf of the faculty of the University of Arkansas, Little Rock, the Faculty Senate has the following comments on the draft of revisions to Board Policies 405.1, 405.4, and 470.1, which we received on Friday, October 20, 2017.

### **I. Concern Over Lack of Faculty Input**

The UA Little Rock campus has acted quickly to review these documents; however, the small window of time that was provided is not sufficient to provide an in-depth review. It has been communicated to us further that changes to the proposal are expected from feedback gathered at system campuses, and no time has been provided to review those changes prior to the November Board meeting. Because of the significant impact of these changes to these policies, the Board of Trustees would be unwise to act on these changes at the November Board meeting.

A primary concern regards faculty governance. Higher education in the United States has a long tradition that faculty have primary responsibility over educational and faculty personnel matters. This tradition is reflected in the AAUP policy that states, “faculty are generally regarded as having a primary role to play in determining faculty status, including dismissal.” (AAUP Statement on Governance of Colleges and Universities, Redbook, 221), also reflected in the values of the Association of Governing Boards, and the American Council on Education.

For meaningful faculty governance to occur, the process for developing and revising these policies must include faculty governance and governance bodies, and therefore must invite active participation from the faculty. We note that in this matter, there was little effort to invite broad faculty participation, either in the development of the proposed revisions or in the response-time allotted to faculty and faculty governance groups. The UA Little Rock Faculty Senate received the proposed revisions on October 20, 2017 with consideration scheduled for November 8-9, 2017 Board Meeting. The UA Little Rock Faculty Senate, following common practice throughout the system, meets monthly and has no regularly scheduled meeting before the draft policies are to be acted on by the Board of Trustees. Therefore, the recommendations included in this document are made by the Executive Committee of the Faculty Senate on behalf of the Faculty Senate until such time as the Faculty Senate

meets. More examination in these policy revisions is needed to consider the entirety of the legal, academic, and societal consequences of these significant changes.

Faculty at their respective campuses must be able to examine how these potential changes will affect their ability to meet the expectations of the Higher Learning Commission (HLC criteria and core components) so as not to jeopardize accreditation and federal financial aid compliance.

“5.B. The institution’s governance and administrative structures promote effective leadership and support collaborative processes that enable the institution to fulfill its mission.

2. The institution has and employs policies and procedures to engage its internal constituencies—including its governing board, administration, faculty, staff, and students—in the institution’s governance.”

**The UA Little Rock Faculty Senate recommends** a process for open discussion and orderly involvement of all full time faculty, staff, and administrators when all concerns may be addressed. No changes should happen until such time is allowed. In order to ensure fully informed and reasoned policy, the Faculty Senate recommends that the Board of Trustees extend the comment period until this broad review has taken place.

## **II. Concern Over Impact of Proposed Policy Changes**

Board Policies are fundamental to many of our campus policies. When changes are made to this policy, even small changes, there will be a resulting need for action regarding campus-wide governance processes related to the appointment, promotion, tenure, dismissal, and annual review of faculty (UALR Policy 403.15<sup>1</sup>, UALR Policy 403.3<sup>2</sup>, UALR Policy 403.6<sup>3</sup>). These policies require attention and action from all levels within the university governance structure. Such input takes time to implement due to the number of reviews and diverts focus away from pressing priorities on our campus such as an impending HLC accreditation visit, enrolment challenges, changes to the enterprise resource planning software, and changes in the funding formula requiring us to revise our budgetary processes.

One example of the consequences such board level policy changes can make at the campus level, in 2016, the Board of Trustees removed Memorandum 635.1 without input from campuses, throwing system campuses which did not have a local policy out of compliance with Title IV funding requirements. When this matter was revealed in our preparation for HLC accreditation, the faculty had to act with urgency to institute a campus policy (FS\_2017\_6) to maintain eligibility with Title IV.

Once changes are made to board policies, there will be a time delay before all campus policies are updated. Because of the significant number of documents that must be revised, this delay will stretch to several years. During this time, campus policies will not align with board policies. This misalignment will certainly lead to confusion and potential lawsuits over what policy is used in annual review, promotion, tenure, and appeals.

**The UA Little Rock Faculty Senate recommends** that the Board of Trustees set an implementation date at least three years after the policy is approved to allow campus governance to update campus policy.

## **III. Concern Over Dismissal Process for Faculty Not Eligible for Tenure**

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<sup>1</sup> UALR Policy 403.15 from FS legislation, adopted date: 11/5/1980, revised 4/21/2017, 1/28/2011

<sup>2</sup> UALR Policy 403.3 from FS legislation, adopted date: 12/5/1979, revised: 4/21/2017, 4/20/1990

<sup>3</sup> UALR Policy 403.6 from FS legislation, adopted 4/3/1974, revised 10/10/1997, 5/1/1974 and currently under revision

Proposed changes to Board Policy 405.4 has raised concerns over protecting the stability of our campus teaching workforce and program sustainability. The introduction of the term “at will” and dismissal for “convenience” places a significant proportion of our instructors in a vulnerable position with little protection. These faculty are essential for the health of our programs and successful student progress through the majors. With no clear definition of what the criteria for convenience is, the presumption is that these faculty carry the risk of dismissal regardless of workload and responsibility. This proposal will disrupt our ability to fulfil UA Little Rock mission “to develop the intellect of students...and to promote humane sensitivities” (UALR Faculty Senate, 1988). This proposal is insensitive to the diversity and stability of our instructional workforce and the needs of our students.

The proposed 30 day notice for termination of instructors also undermines our educational objectives. This shortened notice period will allow instructors to be terminated in the middle of a semester thus disrupting programs’ ability to complete courses or to offer courses in the following semester until replacement faculty can be hired.

**The UA Little Rock Faculty Senate recommends** that the Board of Trustees continue with the language in current approved Board Policy 405.4.

#### **IV. Concern Over the Expansion of the Scope of “Cause”**

Currently, Board Policy 405.1 restricts the definition of cause to include incompetence, neglect of duty, intellectual dishonesty, and moral turpitude. This language reflects the AAUP principle that cause for dismissal should primarily and substantively be based on incompetence, neglect of duty, insubordination, and immoral or unethical conduct so long as the grounds are “related, directly and substantially” to the “fitness of the faculty members in their professional capacities as teachers or researchers.” (AAUP Recommended Institutional Regulations on Academic Freedom and Tenure, 2014).

The proposed revision to the definition of “cause” reaches far beyond the established and recommended definition. The revised language introduces new grounds including “pattern of disruptive conduct”, “misuse of appointment or authority to exploit others,” and “unwillingness to work productively with colleagues” without any attempt to define those subjective and ambiguous clauses. We find lack of clarity to be troubling in that it creates a serious potential for abuse such as discrimination for race, gender identity, sexual orientation, and political or religious beliefs. Similarly, the current policy language includes “moral turpitude” which also is not defined or operationalized.

Finally, inherent in the proposed policy is the lack of due process including the ability to appeal such allegations. Individuals who express divergent or unpopular views may be unjustly targeted. The appended document from the UA Little Rock Governance Committee articulates further viewpoints on this matter.

**The UA Little Rock Faculty Senate recommends** that the Board of Trustees reject this proposed expansion of the definition of cause and continue with the language in the current approved Board Policy 405.1 modified to delete the reference to moral turpitude.

#### **V. Concern Over Appointment of Department Chair/Unit Head**

The revised policy language states that “Consistent with longstanding policy and practice...Appointments as department head or chair, or as director of an academic program or center, are made by the dean, in consultation with the chief executive officer or chief academic officer, and serve at the pleasure of the dean.” We contend that not only is this not longstanding policy or practice, but that it is poor practice that undermines the role of the faculty in the governance of their units.

At UA Little Rock, we have a long tradition of faculty participating in the recommendation of the department chair to the dean who then submits the recommendation to the chancellor for approval and appointment. The chair appointment is defined by multiple year terms which can be subsequently renewed. The presumption is that this process allows the chair to act in the best interest of the departmental faculty, its programs, and students independently from the dean, provost and chancellor. The chair's term allows some protection for the chair to disagree with the dean while also able to complete their term without fear of being forced to resign the chair.

The academic department chair is one of the most consequential roles at any academic institution as it is estimated that the chair makes 80% of the departmental academic decisions (Gmelch & Miskin, 2011). These decisions directly influence the organizational culture and climate of the department, faculty instructional effectiveness and productivity, and student recruitment and academic success. Suggesting that the chair serves at the pleasure of the dean inserts an element of instability in such a critical role. The department chair must have the confidence and trust of the unit faculty and thus the recommendation for that role must come from the faculty. Across all disciplines, academic deans serve on average close to 6 years (Gmelch, 2013, Wolverton, 2017), varying by discipline and institutional type. This suggests that linking academic department chair appointments to the dean potentially leads to a systemic leadership void.

**UALR faculty recommends** that the line be modified to read “chair appointed by chief academic officer at the recommendation of the academic unit faculty and the college dean to a specified term to be determined through the campus governance process.”

#### **VI. Concern Over the Changes to Post-tenure Review**

The proposed language in Board Policy 405.1, suggests that a single evaluation on an annual review will lead to a post-tenure review that may lead to dismissal for faculty. The term ‘unsatisfactory’ in annual review is poorly defined. Given the consequences, post-tenure review should require a significant threshold to achieve such scrutiny.

Given the expanded definition of “cause” that is proposed in the revised policy, the shortened time-frame for remediation resulting from post-tenure review is especially troubling. The new language, “...such period of time for remediation assumes the active cooperation and engagement of the faculty member, otherwise a shortened timeframe may be utilized” may truncate the remediation process based on a subjective determination by an unspecified party. Both AAUP and the US courts view dismissal of a tenured faculty member as a measure of last resort and only after sufficient opportunities of remediation have been provided to the faculty member. If a faculty member is granted tenure, there is a presumption of competence and a continuation of employment that may be overridden only if specified conditions are met (AAUP Recommended Institutional Regulations on Academic Freedom and Tenure, 2014). Faculty are assets to the university and every action should be taken to restore the faculty member to a performance level of satisfactory.

**UALR faculty recommends** that the Board of Trustees either restore the previous language or include some definition of what is considered an ‘unsatisfactory’ review.

In conclusion, we are concerned that the proposed changes to 405.1, 405.4, and 470.1 will result in consequences that will undermine faculty governance, academic freedom, and our ability to fulfil the mission of this university. The concerns listed above are reflected in both campus-wide discussions and system-wide informal conversations. While we see these concerns as the most consequential, this is not an exhaustive list.

“The integrity of higher education rests on the integrity of the faculty profession. To meet the standards and expectations appropriate to higher education, faculty need to incorporate teaching, scholarship, and service in their work, whether they serve full time or less than full time. The academic freedom that enlivens and preserves the value of academic work is protected by a responsible and reasonable commitment between the university or college and the faculty member. For the good of higher education and the good of society as a whole, this commitment must be preserved for all faculty. But the majority of faculty members now work without such a commitment from their institutions, and therefore without adequate protection of academic freedom.” (AAUP, Report on Contingent Appointments and the Academic Profession, 2014).

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**Presentation to the Board of Trustees  
University of Arkansas System  
November 9, 2017**

**By**

**Joshua M. Silverstein  
Professor of Law  
University of Arkansas at Little Rock  
William H. Bowen School of Law**

Let me start by expressing my thanks to the board for seeking faculty feedback at this meeting. My name is Josh Silverstein and I am a professor at the UA Little Rock Bowen Law School. In my brief comments, I would like to make four basic points.

First, this proposal cannot apply retroactively—meaning that this proposal cannot apply to any faculty member who currently has tenure, and arguably not even to any person currently on the tenure track.

Second, the proposal critically undermines tenure and academic freedom in multiple ways.

Third, undermining tenure and academic freedom will seriously damage the University of Arkansas and our entire state.

Fourth, the process for considering whether to amend 405.1 has been, to date, unacceptable.

**Point One: Retroactivity.**

The proposed changes to 405.1 constitute significant reductions in tenure protections. But those of us with tenure already have contracts with the university. It is a bedrock principle of contract law that one party to an agreement cannot impose a modification on the other party. And caselaw from around the nation explicitly establishes that substantive changes to faculty tenure contracts cannot be imposed retroactively.

Therefore, if any substantive changes are made to 405.1, language should be added clearly expressing that the new policy does not apply to anyone with tenure. Indeed, everyone already on the tenure track should be grandfathered as well.

**Point Two: Undermining academic freedom and tenure.**

Multiple submissions to the board—including my memo and letters from the faculty senates at UA Fayetteville, UAMS, and UA Little Rock—have outlined many of the ways that the proposal undermines tenure and academic freedom. Today I will review three of the most significant.

**First**, under the proposal, a single unsatisfactory finding by a single administrator is sufficient for termination, if the administrator determines that the faculty member is not being sufficiently “cooperative” in trying to remedy the situation.

The AAUP has made it clear that using “unsatisfactory” as a standard is not sufficient to protect academic freedom. The word is highly subjective. And thus it is easily prone to abuse.

For example, faculty at my institution have been found to have performed their teaching duties unsatisfactorily merely because they used more multiple choice questions in their tests than preferred by the dean and did not spread the students grades across as broad a range as the dean felt was proper.

It may be appropriate to permit administrators to make satisfactory and unsatisfactory rulings for

purposes of annual reviews and merit raises. But permitting termination over a single unsatisfactory finding seriously undermines tenure and academic freedom.

**Second**, under the proposal, collegiality is a standalone basis for termination. The policy refers to “working cooperatively with others.” Once again, the AAUP has explained time and again that collegiality requirements have no place in tenure decisions. Such requirements have a long and documented history of abuse in academic settings.

**Third**, under current 405.1, comprehensive free speech rights for faculty extend to all subjects. Under the proposal, such rights would extend only to teaching and research. That is a dramatic change and it is fundamentally inconsistent with the principles of faculty governance that are central to higher education.

Faculty have three responsibilities: teaching, research, and service. If our service-related speech does not receive full protection, then we cannot perform our service responsibilities with the same care and vigor as with teaching and research.

Under principles of faculty governance, faculty have an obligation to publicly criticize administrators and each other over issues of university governance. If such criticism is not protected in full, then faculty members can be terminated for such criticisms.

There are many other aspects of the proposal that improperly undermine tenure and academic freedom, but those three examples are among the most serious threats.

### **Point Three. The Impacts.**

**First**, the proposal will severely damage faculty recruitment and retention.

When candidates ask us about tenure in this state, we will be legally and morally obligated to explain to them that their tenure rights will be heavily circumscribed in comparison to those at other universities.

And faculty who are here will be much more likely to leave, causing a brain drain, as other states have experienced in similar circumstances.

**Second**, faculty will be restricted in their activities. In particular, we will be far less willing and able to research, teach, and perform public and university service relating to controversial subjects.

When academic freedom and tenure protections are undermined, it becomes easy for administrators to find legally plausible pretexts to punish faculty for protected speech in research, teaching, and service. To illustrate, the proposal permits termination if a faculty member is not sufficiently “cooperative.” It takes little imagination to see how such a standard will be used to deem faculty “uncooperative” if they express unpopular views in their teaching, research, and service.

Likewise, by limiting full speech protections to teaching and research, our service work can be used as a pretext for termination when the real motivation is controversial research or teaching.

If tenure and academic freedom protections are not robust and broad enough to cover every aspect of our jobs, then any area not fully protected can be used as a vehicle to silence or terminate faculty with unpopular opinions.

One might respond by saying that no administrator or faculty body would ever abuse their authority granted by the proposal. History indisputably demonstrates otherwise. Hence the clear and present danger in watering down tenure and academic freedom.

**Third**, the impacts under points one and two will be felt most keenly by minorities—racial minorities, religious minorities, and political minorities. That’s what happens when individual rights are limited

as in the proposal, whether in higher education or other institutional settings.

**Fourth**, both the process for considering these changes and the actual changes raise accreditation issues for units within the UA System.

**Fifth**, all of these problems together will critically damage the University of Arkansas. The education of our students will be diminished in countless ways. The research we produce will be less helpful to society. And this weakening of teaching and research will injure our entire state—a state starved for college graduates who learned to think critically from faculty who can speak freely.

**Point Four. The Defective Process.**

One of the most problematic aspects of the 405.1 proposal is the process surrounding its drafting and circulation.

Many of the submissions have highlighted specific ways this process has gone wrong.

In my view, the biggest problems are that, for over a year, non-academic attorneys have been working behind the scenes in violation of long-standing principles of faculty governance. Those are fatal defects.

In addition, university counsel has not presented any evidence or legal analysis indicating that any of their restrictive changes are needed or even might have benefit.

When we amended the grading policy at the law school where I teach, I wrote a 50-page report with 15 pages of data. And then the faculty debated it through our committee structure and faculty-wide for a year.

The tenure policy for the entire UA system is infinitely more important than the grading policy at a single college within a single campus. Yet this proposal has not received one tenth the vetting of the grading proposal I wrote.

I respectfully submit that 405.1 should remain as is and the trustees should end this process entirely. But if there is support for moving forward, the process should start from scratch and use the following model.

Representatives from every system campus should be selected for a joint committee that certainly can include one or two representatives from the counsel's office and/or the system office.

After the committee spends at least six months researching and analyzing tenure generally and within the UA system, the committee should produce a tentative rough draft. That draft should be circulated to every professor and administrator on every UA campus for careful feedback from both individuals and campus governance bodies, with a time limit for review of no less than four to six months.

After the committee gets feedback from these constituencies, it should prepare another draft over several months, and then circulate the new draft to every campus once again.

This back and forth, collaborate process should continue until the faculty senates of every UA system campus approve of the policy.

Only then should any proposal be submitted to the trustees for final approval. And if the trustees have concerns, as you are entitled to have and are obligated to raise as the fiduciaries of the system, then your feedback should go to the committee and to the campuses for additional rounds of discussion and drafting.

**Conclusion.**

Let me sum up.

The proposed changes to 405.1 are substantively damaging to every element of the UA System and have been written via a process that is defective.

No basis has been offered for the proposition that 405.1 needs significant changes, let alone that it should be amended to eviscerate tenure and academic freedom in the state of Arkansas.

I recommend that the revision of 405.1 be shelved entirely.

But if the process is to continue, it should be a process driven by academic experts—by faculty—who are committed to the academic enterprise of free inquiry and uninhibited truth seeking.

And at the very least, any substantive changes should grandfather all existing tenured faculty and should even grandfather all tenure-track faculty.

Thank you for listening. I greatly appreciate your giving us this opportunity to address the board.

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# Free Speech on Campus and Academic Freedom Under Attack in Arkansas

NOV 21, 2017



Robert Steinbuch ■ Joshua Silverstein

Comments

The state of Arkansas is facing an existential threat to academic freedom.

That threat, however, is of a type that normally doesn't receive public attention. The press typically writes about speech codes and political interference with research on controversial subjects, but as serious as those threats are, they are nothing compared to that posed by central administrators.

In our state, lawyers working for the University of Arkansas are rewriting the rules governing tenure in ways that fatally undermine academic freedom.

The purpose of academic freedom is to protect freedom of speech, thought, and expression in the university setting so that learning and knowledge can flourish. Tenure is the primary mechanism by which academic freedom is ensured. It prohibits the termination of faculty for any reason that could plausibly be used to stifle academic speech and inquiry. These protections recognize the critical role of professors as truth-finders and truth-tellers.

Tenure and academic freedom have been bedrock principles in higher education for a century.

Unfortunately, in recent decades some university administrators have engaged in an all-out assault on academic freedom by seeking to (1) replace outspoken full-time faculty with part-time adjuncts, and (2) gut the rules governing academic freedom and tenure.

Adjunct professors have virtually no job protections. Indeed, rather than serving as employees of the schools where they work, they are independent contractors hired to teach a specific course or courses. Because of this, adjuncts are far less likely to engage with controversial subjects. And they virtually never speak out publicly or even internally about issues of university governance. After all, a single comment disapproved of by college administrators can cost adjunct faculty their jobs—and we have seen it happen.

The second type of attack is rule changes. Some administrators are pushing for definitions of tenure that provide no assurance that dismissal will be limited to causes unrelated to the content of a professor's research, teaching, or public service.

The assault on academic freedom in Arkansas is of this latter variety, and it is being directed by the in-house attorneys for the University of Arkansas. They have circulated a [proposal](#)—drafted without any input from faculty—that would eviscerate tenure and academic freedom in this state.

Consider three of the most problematic changes they recommend.

First, under the proposal, a lack of “collegiality” is a standalone basis for termination. The policy states that failing to “work cooperatively with others” justifies instantaneous dismissal. This means that uncollegial behavior would be one of several emergency-type grounds for *immediately* firing professors. It places such behavior on the same plane as “threats or acts of violence.”

The American Association of University Professors (AAUP) has long rejected collegiality requirements in tenure determinations of any type, including decisions to grant tenure or to terminate a teacher, because such requirements have a documented history of abuse in academe.

Second, under the proposal, a *single* unsatisfactory annual evaluation by a *single* administrator is sufficient for dismissal, if the administrator determines that the faculty member is not being sufficiently “cooperative” in trying to remedy the “unsatisfactory” performance. So, again, the University’s Counsel—who, it so happens, is the chief prosecutor in faculty dismissal proceedings—wants to leverage “cooperation” as a tool to eject tenured professors.

The upshot of this change is striking: if a faculty member resists a single negative review, appeals that decision internally, or objects to colleagues or administrators about that review, he can be fired for lack of “cooperation.”

This incredible danger to the very foundations of the academic enterprise reveals why the AAUP has made it clear that using “unsatisfactory” as a standard is not sufficient to protect academic freedom. The word is highly subjective, making it prone to manipulation by administrators displeased with any aspect of a faculty member’s work, including dissent regarding school operations.

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A professor could be fired merely for commenting publicly or internally about a school’s alleged financial improprieties or admission practices.

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Third, under the current rules, comprehensive free speech rights for faculty aptly extend to all subjects. Under this proposal, however, such rights encompass only teaching and research—eliminating protections for speech associated with public and university service. This means, for example, that a professor could be fired merely for commenting publicly or internally about a school’s alleged financial improprieties or admission practices.

The proposal constitutes a major constriction of academic freedom. If adopted, what impact would it have?

First, faculty recruitment and retention will be severely damaged. When candidates ask about tenure and academic freedom in Arkansas, hiring officials will be legally and morally obligated to explain to them that their tenure rights are heavily circumscribed in comparison to those at other colleges. And faculty currently working for the university will be more likely to leave, causing a brain drain, as other schools have experienced in similar circumstances, such as the [University of Wisconsin](#).

Second, faculty will be restricted in their activities. In particular, Arkansas professors will be far less willing and able to research, teach, and perform public and university service relating to controversial subjects.

That is because when academic freedom and tenure protections are undermined, it becomes easy for

administrators to find legally plausible pretexts to punish faculty for protected speech in research, teaching, and service. Recall that the proposal permits termination if a faculty member is not sufficiently “cooperative.” It takes little imagination to see how such a standard will be used to deem professors “uncooperative” if they express unpopular views in any domain of their work.

One might respond by saying that no administrator or faculty body would ever abuse the authority granted by the proposal. History indisputably demonstrates otherwise.

Third, the impact of the changes will be felt most keenly by minorities—racial minorities, religious minorities, and political minorities. That is what happens when individual rights are limited as in the proposal, whether in higher education or other institutional settings. Thus, one of our greatest fears is that the proposal will put conservative faculty in the cross-hairs because they are a distinct minority on campus.

All of those problems together will critically damage the University of Arkansas. Most importantly, the education of our students will be diminished in countless ways. And the research we produce will be less helpful to society. This weakening of teaching and research will injure our entire state—a state starved for college graduates who learned to think critically from faculty who can speak freely.

Given the dramatic harm the proposal will cause, why are the university attorneys pushing for these changes?

They claim that the school needs more flexibility so that it can dismiss ineffective faculty rapidly. That is both false and disingenuous. The university has already admitted the following: (1) over many years, it has confronted only a tiny number of ineffective faculty—meaning that the vast majority of Arkansas professors are fully effective, and (2) the current tools have successfully removed ineffective teachers.

Has the university somehow recently hired a critical mass of yet-undiscovered incompetent professors, requiring a gross diminution of tenure and academic freedom rights? Not a shred of evidence supports such a conclusion.

Let us present an alternative theory. Undermining tenure and academic freedom will make the lives of University Counsel easier. In particular, the proposal grants the school and its lawyers a plethora of excuses to fire professors who “rock the boat” in ways disapproved of by central administrators. The proposal also removes due process rights ensured by the current rules, emasculating termination hearings.

Last but not least, by eliminating protections for service-related speech, the proposal enables the school to quash faculty commentary regarding university operations.

The assault on tenure and academic freedom in America is part of a long-standing trend toward the consolidation of power within university central administrations. College officials all too often prefer a compliant faculty who teach, write, and speak only on uncontroversial subjects. But that fundamentally contradicts the essence of higher education.

Unfortunately, attorneys for the University of Arkansas appear set on dragging our state back to the 19th century, a period when universities were all too often marked by the imposition of [stultifying conformity](#).



AUTHOR  
**Robert  
Steinbuch**

## Free Speech on Campus and Academic Freedom Under Attack in Arkansas

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## The Faculty Senate

TO : D. Bobbitt, President, University of Arkansas System  
FROM: The Faculty Senate of the University of Arkansas at Little Rock  
SUBJECT: Changes to Board Policies 405.1, 405.4, 470.1  
DATE: December 15, 2017  
Cc: A. Rogerson, Faculty Senate  
NUMBER: FSM-2017-3

On behalf of the faculty of the University of Arkansas, Little Rock, the Faculty Senate has the following comments on the draft of revisions to Board Policies 405.1, 405.4, and 470.1, which we received on Friday, October 20, 2017.

### **I. Concern Over Lack of Faculty Input**

The UA Little Rock campus has acted quickly to review these documents; however, the small window of time that was provided is not sufficient to provide an in-depth review. It has been communicated to us further that changes to the proposal are expected from feedback gathered at system campuses, and no time has been provided to review those changes prior to presentation at a Board meeting. Because of the significant impact of these changes to these policies, the Board of Trustees would be unwise to act on these changes before they are presented at a Board meeting.

A primary concern regards faculty governance. Higher education in the United States has a long tradition that faculty have primary responsibility over educational and faculty personnel matters. This tradition is reflected in the AAUP policy that states, “faculty are generally regarded as having a primary role to play in determining faculty status, including dismissal.” (AAUP Statement on Governance of Colleges and Universities, Redbook, 221), also reflected in the values of the Association of Governing Boards, and the American Council on Education.

For meaningful faculty governance to occur, the process for developing and revising these policies must include faculty governance and governance bodies, and therefore must invite active participation from the faculty. We note that in this matter, there was little effort to invite broad faculty participation, either in the development of the proposed revisions or in the response-time allotted to faculty and faculty governance groups. The UA Little Rock Faculty Senate received the proposed revisions on October 20, 2017 with consideration scheduled for November 8-9, 2017 Board Meeting. The UA Little Rock Faculty Senate, following common practice throughout the system, meets monthly and had no regularly scheduled meeting before the draft policies were to be acted on by the Board of Trustees. More examination in these policy revisions is needed to consider the entirety of the legal, academic, and societal consequences of these significant changes.

Faculty at their respective campuses must be able to examine how these potential changes will affect their ability to meet the expectations of the Higher Learning Commission (HLC criteria and core components) so as not to jeopardize accreditation and federal financial aid compliance.

“5.B. The institution’s governance and administrative structures promote effective leadership and support collaborative processes that enable the institution to fulfill its mission.

2. The institution has and employs policies and procedures to engage its internal constituencies—including its governing board, administration, faculty, staff, and students—in the institution’s governance.”

**The UA Little Rock Faculty Senate recommends** a process for open discussion and orderly involvement of all full time faculty, staff, and administrators when all concerns may be addressed. No changes should happen until such time is allowed. In order to ensure fully informed and reasoned policy, the Faculty Senate recommends that the Board of Trustees extend the comment period until this broad review has taken place.

## **II. Concern Over Impact of Proposed Policy Changes**

Board Policies are fundamental to many of our campus policies. When changes are made to this policy, even small changes, there will be a resulting need for action regarding campus-wide governance processes related to the appointment, promotion, tenure, dismissal, and annual review of faculty (UALR Policy 403.15<sup>1</sup>, UALR Policy 403.3<sup>2</sup>, UALR Policy 403.6<sup>3</sup>). These policies require attention and action from all levels within the university governance structure. Such input takes time to implement due to the number of reviews, and this effort diverts focus away from pressing priorities on our campus such as an impending HLC accreditation visit, enrolment challenges, changes to the enterprise resource planning software, and changes in the funding formula requiring us to revise our budgetary processes.

One example of the consequences such board level policy changes can make at the campus level, Board Memorandum 635.1 was removed circa 2016. While most campuses have local policy or practice detailing how they generate a credit hour, this change could have significant impact on Title IV compliance.

Once changes are made to board policies, there will be a time delay before all campus policies are updated. Because of the significant number of documents that must be revised, this delay will stretch to several years. During this time, campus policies will not align with board policies. This misalignment will certainly lead to confusion and lawsuits over what policy is used in annual review, promotion, tenure, and appeals.

Even if the System wins the lawsuits due to the new language, the cost of defending them will have to be paid. Anything which increases the potential for lawsuits will increase costs for the System. Further, since the vague language can be applied in a discriminatory fashion, lawsuits over discrimination will likely increase, and these lawsuits may be prosecuted in federal court. The proposed language is not consistent with normal practices throughout higher education. Following nonstandard practices in dismissal will result in either increased lawsuits or increased costs of hiring and retaining faculty.

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<sup>1</sup> UALR Policy 403.15 from FS legislation, adopted date: 11/5/1980, revised 4/21/2017, 1/28/2011.

<sup>2</sup> UALR Policy 403.3 from FS legislation, adopted date: 12/5/1979, revised: 4/21/2017, 4/20/1990.

<sup>3</sup> UALR Policy 403.6 from FS legislation, adopted 4/3/1974, revised 10/10/1997, 5/1/1974 and currently under revision.

Increased dismissal of faculty will result in costs of hiring replacement faculty. Although the costs of hiring are steep (for instance, \$100,000 per faculty hire), the costs of a bad hire are even steeper (\$240,000<sup>4</sup>) with a high cost associated with morale and lost productivity.

**The UA Little Rock Faculty Senate recommends** that the Board of Trustees set an implementation date at least three years after the policy is approved to allow campus governance to update campus policy.

### **III. Concern Over Dismissal Process for Faculty Not Eligible for Tenure**

Proposed changes to Board Policy 405.4 has raised concerns over protecting the stability of our campus teaching workforce and program sustainability. The introduction of the term “at will” and dismissal for “convenience” places a significant proportion of our instructors in a vulnerable position with little protection. These faculty are essential for the health of our programs and successful student progress through the majors. With no clear definition of what the criteria for convenience is, the presumption is that these faculty carry the risk of dismissal regardless of workload and responsibility. This proposal will disrupt our ability to fulfil UA Little Rock mission “to develop the intellect of students...and to promote humane sensitivities” (UALR Faculty Senate, 1988). This proposal is insensitive to the diversity and stability of our instructional workforce and the needs of our students.

The proposed 30 day notice for termination of instructors also undermines our educational objectives. This shortened notice period will allow instructors to be terminated in the middle of a semester thus disrupting programs’ ability to complete courses or to offer courses in the following semester until replacement faculty can be hired.

**The UA Little Rock Faculty Senate recommends** that the Board of Trustees continue with the language in current approved Board Policy 405.4.

### **IV. Concern Over the Expansion of the Scope of “Cause”**

Currently, Board Policy 405.1 restricts the definition of cause to include incompetence, neglect of duty, intellectual dishonesty, and moral turpitude.

*"Cause" is defined as conduct which demonstrates that the faculty member lacks the ability or willingness to perform his or her duties or to fulfill his or her responsibilities to the University; examples of such conduct include (but are not limited to) incompetence, neglect of duty, intellectual dishonesty, and moral turpitude.*

This language reflects the AAUP principle that cause for dismissal should primarily and substantively be based on incompetence, neglect of duty, insubordination, and immoral or unethical conduct so long as the grounds are “related, directly and substantially” to the “fitness of the faculty members in their professional capacities as teachers or researchers.” (AAUP Recommended Institutional Regulations on Academic Freedom and Tenure, 2014).

The proposed revision to the definition of “cause” reaches far beyond the established and recommended definition.

*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)*

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<sup>4</sup> Forbes, "The True Cost Of A Bad Hire -- It's More Than You Think", Falon Fatemi, Sep. 28, 2016.

*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.*

The revised language introduces new grounds including “pattern of disruptive conduct”, “misuse of appointment or authority to exploit others,” and “unwillingness to work productively with colleagues” without any attempt to define those subjective and ambiguous clauses. In section IV.A.14.c, the sentence “Faculty are expected to work productively with colleagues in carrying out the mission of the University” is added to the expectations of tenured faculty.

We find lack of clarity to be troubling in that it creates a serious potential for abuse (such as discrimination for race, gender identity, sexual orientation, and political or religious beliefs) by the authority (chairperson or dean, see section V.C.1) who will make this determination. Similarly, the current policy language includes “moral turpitude” which is not defined or operationalized.

Inherent in the proposed policy is the lack of due process, including the ability to appeal such allegations. Individuals who express divergent or unpopular views may be unjustly targeted. This cause for dismissal undermines the basic protection afforded by tenure and, because tenure has value like any other benefit, will either lower the quality of the faculty or increase the cost to hire and retain faculty. Either way, the diversion of resources will lower the quality of education for students throughout the system.

**The UA Little Rock Faculty Senate recommends** that the Board of Trustees reject this proposed expansion of the definition of cause and continue with the language in the current approved Board Policy 405.1 modified to delete the reference to moral turpitude and delete the sentence “Faculty are expected to work productively with colleagues in carrying out the mission of the University.” from section IV.A.14.c.

## **V. Concern Over Appointment of Department Chair/Unit Head**

The revised policy language states that “Consistent with longstanding policy and practice....Appointments as department head or chair, or as director of an academic program or center, are made by the dean, in consultation with the chief executive officer or chief academic officer, and serve at the pleasure of the dean.” We contend that not only is this not long standing policy or practice, but that it is poor practice that undermines the role of the faculty in the governance of their units.

At UA Little Rock, we have a tradition of faculty participating in the recommendation of the department chair to the dean who then submits the recommendation to the chancellor for approval and appointment. The chair appointment is defined by multiple year terms which can be subsequently renewed. The presumption is that this process allows the chair to act in the best interest of the departmental faculty, its programs, and students independently from the dean, provost and chancellor. The chair's term allows some protection for the chair to disagree with the dean while also able to complete their term without fear of being forced to resign the chair.

The academic department chair is one of the most consequential roles at any academic institution as it is estimated that the chair makes 80% of the departmental academic decisions (Gmelch & Miskin, 2011). These

decisions directly influence the organizational culture and climate of the department, faculty instructional effectiveness and productivity, and student recruitment and academic success. Suggesting that the chair “serves at the pleasure of the dean” inserts an element of instability in such a critical role. The department chair must have the confidence and trust of the faculty and thus the recommendation for that role must come from the faculty. Across all disciplines, academic deans serve on average close to 6 years (Gmelch, 2013, Wolverton, 2017), varying by discipline and institutional type. This suggests that linking academic department chair appointments to the dean potentially leads to a systemic leadership void.

**UALR faculty recommends** that the line be modified to read “chair appointed by chief academic officer at the recommendation of the academic unit faculty and the college dean to a specified term to be determined through the campus governance process.”

## **VI. Concern Over the Changes to Post-tenure Review**

The proposed language in Board Policy 405.1, suggests that a single evaluation on an annual review will lead to a post-tenure review that may lead to dismissal for faculty. The term ‘unsatisfactory’ in annual review is poorly defined. Given the consequences, post-tenure review should require a significant threshold to achieve such scrutiny.

Given the expanded definition of “cause” that is proposed in the revised policy, the shortened time-frame for remediation resulting from post-tenure review is especially troubling. The new language, “...such period of time for remediation assumes the active cooperation and engagement of the faculty member, otherwise a shortened timeframe may be utilized” may truncate the remediation process based on a subjective determination by an unspecified party. Both AAUP and the US courts view dismissal of a tenured faculty member as a measure of last resort and only after sufficient opportunities of remediation have been provided to the faculty member. If a faculty member is granted tenure, there is a presumption of competence and a continuation of employment that may be overridden only if specified conditions are met (AAUP Recommended Institutional Regulations on Academic Freedom and Tenure, 2014). Faculty are assets to the university and every action should be taken to restore the faculty member to a performance level of satisfactory.

**UALR faculty recommends** that the Board of Trustees either restore the previous language or include some definition of what is considered an ‘unsatisfactory’ review.

In conclusion, we are concerned that the proposed changes to 405.1, 405.4, and 470.1 will result in consequences that will undermine faculty governance, academic freedom, and our ability to fulfil the mission of this university. The concerns listed above are reflected in both campus-wide discussions and system-wide informal conversations. While we see these concerns as the most consequential, this is not an exhaustive list.

*“The integrity of higher education rests on the integrity of the faculty profession. To meet the standards and expectations appropriate to higher education, faculty need to incorporate teaching, scholarship, and service in their work, whether they serve full time or less than full time. The academic freedom that enlivens and preserves the value of academic work is protected by a responsible and reasonable commitment between the university or college and the faculty member. For the good of higher education and the good of society as a whole, this commitment must be preserved for all faculty. But the majority of faculty members now work without such a commitment from their institutions, and therefore without adequate protection of academic freedom.” (AAUP, Report on Contingent Appointments and the Academic Profession, 2014).*

## References

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