



## 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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