



The Faculty Senate

TO : University of Arkansas Board of Trustees
FROM: The UA Little Rock Faculty Senate

SUBJECT: Proposed Changes to Board Policies 405.1, 405.4, 470.1

DATE: February 26, 2018

NUMBER: FSM-2017-4

On behalf of the faculty of the University of Arkansas, Little Rock, the Faculty Senate has the following comments and recommendations on the draft of revisions to Board Policies 405.1, 405.4, and 470.1, which we received on Thursday, February 15, 2018. Our response to the initial proposed changes, which were given to us on October 20, 2017, framed our concerns across six issues:

- the dismissal process for faculty not eligible for tenure,
- the expansion of the scope of “cause,”
- changes to how the institution appoints the department chair/unit head,
- reduction in remediation time in post-tenure review,
- lack of broad faculty input,
- the impact of the proposed policy changes on the institution’s resources.

We have reviewed the revised proposal in the context of these concerns, and we have noted improvements relative to those original concerns.

The UA System did seek input from the Faculty/Academic Senate heads at all of the system campuses with the intent of improving the document. The Faculty Senate appreciates the Board’s invitation to comment so that the result can be more productive and less costly. Some of these changes have made the overall document healthier.

We have further recommendations for the new draft, especially in areas where our concerns were not fully addressed.

I. Concern Over Dismissal Process for Faculty Not Eligible for Tenure - Not Addressed

The UA System's revisions did not address our concerns related to the proposed changes to Board Policy 405.4, which creates a new type of dismissal for full-time, non-tenure-track instructors: "dismissal for convenience," and which reduces the required notice period from 60 to 30 days.

The proposed changes raise concerns over protecting the stability of our campus teaching workforce and program sustainability. The introduction of the terms "at will" and dismissal for "convenience" places a significant proportion of our instructors in a vulnerable position with little protection. The lack of clarity regarding the criteria for "convenience" will create a serious potential for abuse (such as discrimination for age, race, gender identity, sexual orientation, and political or religious beliefs). 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 fulfill the 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.

Termination for convenience treats non-tenure track full-time faculty like contingent faculty rather than members of the teaching faculty with the rights and responsibilities awarded to them as members of a university assembly. UA Little Rock relies on this type of faculty in areas where the teaching area of the tripartite is more important than research and service. This change will reduce their access to participation and representation in the governance of the institution.

UA Little Rock's current practice allows non-tenure track faculty to complete the semester in which they started prior to dismissal. Under the proposed revision, this protection would be replaced with a 30-day notice, with the result that a unit may find itself unable to complete delivery of courses for which students have paid and on which they are relying to progress to graduation, and the unit may be unable to offer courses in the subsequent semester unless it can find replacements in a shortened time frame.

The UA Little Rock Faculty Senate recommends that the Board of Trustees adopt the following language for 405.4, Section 2, Part C:

"(C) Faculty members and other academic employees in positions for which tenure may not be awarded (part-time faculty in the ranks of assistant professor, associate professor, professor, distinguished professor, and University professor; clinical, research, adjunct, or visiting faculty; research associates or research assistants; instructors, assistant instructors, master lecturers and lecturers; and faculty in clinical attending positions at the University of Arkansas for Medical Sciences notwithstanding that such faculty may be designated as assistant professor, associate professor or professor) may be terminated at any time, or dismissed for cause under the procedures of Board Policy No. 405.1. Termination is effected through the giving of a notice, in writing, of that action at least sixty days in advance of the date the employment is to cease."

II. Concern Over the Expansion of the Scope of “Cause” - Partially Satisfied

The explanatory memo states, “The additions in the “Cause” definition in the revised policy are intended to more clearly provide the type of circumstances in which a faculty member might face dismissal or discipline.” Eleven out of the twelve causes listed under Section I. Definition of Terms (“unsatisfactory performance,” “professional dishonesty or plagiarism,” “discrimination, including harassment or retaliation prohibited by law or university policy,” “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,” “misuse of appointment or authority to exploit others,” “theft or intentional misuse of property,” “incompetence,” “job abandonment,” “refusal to perform reasonable duties,” “threats or acts of violence or retaliatory conduct,” or “violation of University policy, or state or federal law, substantially related to performance of faculty responsibilities or fitness to serve the University”) are specific and clear.

The remaining cause (“pattern of conduct that is detrimental to the productive and efficient operation of the instructional or work environment”) is ambiguous and does not appear to add anything that is not covered by the other eleven more specific causes for dismissal. The explanatory memo states that the reasons for the proposed definition of cause “are in keeping with case-law and prior practice of the UA System.” However, the UA System administration has not cited any of these cases that support adding this language.

Evaluation of “conduct” will be subjective, whereas the other statements refer to documented actions (e.g., theft, sexual harassment, job abandonment). Ambiguity creates a potential for discrimination due to age, race, gender identity, sexual orientation, and political or religious beliefs, which exposes the system to liability.

It is not clear what the policy intends on violations of state or federal law. Should dismissal wait until the violation has been adjudicated?

The UA Little Rock Faculty Senate recommends that the Board of Trustees reject the clause “pattern of conduct that is detrimental to the productive and efficient operation of the instructional or work environment” from the definition of cause.

III. Concern Over Appointment of Department Chair/Unit Head - Not Addressed¹

We recognize that there is no singular department chair model shared across the UA System. Campuses vary in how department chairs/heads are appointed and in their role once appointed.

¹ Subsequent to the Faculty Senate meeting, the System counsel proposed the following language, “Appointments as department head or chair, or as director of an academic program or center, may be made pursuant to criteria and procedures developed at the campus, provided such criteria and procedures allow for input from the appropriate faculty bodies and academic leadership. Further, any such criteria and procedures developed must be submitted to the dean, the chief academic officer of the campus, the Chancellor of the campus, and the President for approval. In the absence of any campus process, the appointment 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.” The Faculty Senate Executive Committee viewed this language as an improvement.

At UA Little Rock, institutional practice has followed the model prevalent at the majority of four-year public institutions across the United States,² where the faculty are actively engaged in recommending candidates to the deans and Chief Academic Officer (CAO) in a departmentally determined democratic process.³ Following the deans' and/or CAO recommendation, the candidate is appointed by the Chancellor. These processes are described in UA Little Rock departmental governance documents and faculty handbook.

At UA Little Rock, the department chair is fundamentally a member of the faculty, with an expectation for teaching, service, and scholarship, albeit modified to accommodate the administrative load. This model results in the department chair's ability to engage in challenging work with the knowledge of the confidence and buy-in of the faculty. The chair is better able to represent faculty and departmental interests in college and university-wide initiatives.

The proposed language denies a diversity of campus cultures across the system, and, for those campuses that follow the typical model, this language will force a negative culture shift and undermine the current governance structure.

The UA Little Rock Faculty Senate recommends that the language,

“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.”

be modified to read

“Appointments as department head or chair, or as director of an academic program or center, are made by the chancellor or designee following procedures developed through the campus governance process.”

IV. Concern Over the Changes to Post-tenure Review - Partially Satisfied

Our concern about the shortened time-frame (from a minimum of four years to a minimum of two years) for remediation after an unsatisfactory performance review has been partly addressed by footnote 9: “Each campus shall include criteria and procedures for determining “Unsatisfactory performance” in their campus policies governing faculty annual reviews.” Placing the responsibility of developing the remediation plan and the oversight of that plan on the unit faculty will ensure the fidelity of the principle of peer evaluation. We are still concerned that this time frame may not be sufficient to correct deficiencies, especially in research.

There are a couple of editing issues with the proposed revision. In footnote 9, a reference to section V.B.9 should be citing section V.A.9.

² Cipriano, R., & Riccardi, R., (2017). The department chair: A decade-long analysis. *Department Chair*, 28(1), 10-13.

³ For example: “The evaluation and advice of the faculty shall be systematically obtained and considered prior to the appointment of deans and chairpersons.” University of Alabama Faculty Handbook Appendix A

Section V.A.9 seems to be missing an “overall” which could lead to lack of clarity or a complete change of intent. The intent of the section seems to mean that a candidate will be brought to “an overall satisfactory performance rating” rather than “a satisfactory performance rating” which could mean any category (teaching, research, service) could be brought to satisfactory and the remediation plan would be satisfied. The section should read (underline for emphasis):

“The remediation plan shall be developed by the faculty member’s academic unit in consultation with the faculty member and shall include remedial measures designed to address the overall performance deficiencies, with the expectation that carrying out the plan will lead to a[n] overall satisfactory performance rating.”

Section V.A.9. seems to be missing an “overall” which could lead to lack of clarity or a complete change of intent. The intent of the section seems to be that an overall unsatisfactory performance rating has begun the post-tenure remediation plan; however, the current language would lead to dismissal “If, in the next annual review following any unsatisfactory performance rating, ...” occurs. This section presumably means “If, in the next annual review following any overall unsatisfactory performance rating. . . .” The section should read (underline for emphasis):

If, in the next annual review following any overall unsatisfactory performance rating, the faculty member fails either to attain an overall satisfactory performance rating or to demonstrate meaningful progress in remediating the overall performance deficiencies, the faculty member may be issued a notice of dismissal on twelve months’ notice as provided for in this policy, and subject to the procedures contained in Section IV.C. “

The UA Little Rock Faculty Senate recommends the consistent use of the term “overall” in reference to unsatisfactory performance and the reference to “V.B.9” be changed to “V.A.9.”

V. New Concerns Resulting from the Revised Proposal

A. Concern over the use of “generally” in the context of recommendations for promotion, tenure, raises, etc.

The newly revised proposal includes the word “generally” in the language under Section V. Annual Review to read (underline for emphasis):

“The annual review of each faculty member shall generally provide the primary basis for the chairperson’s recommendations relating to salary, promotion, granting of tenure, successive appointment, non-reappointment, and dismissal.”

The introduction of that word suggests that annual review does not have to be the primary basis for such recommendations and introduces the notion that *something else* might serve that function. This is troubling in that it introduces an unknown element into the equation of promotion, tenure, and successful performance that

can create a serious potential for abuse (such as discrimination for age, race, gender identity, sexual orientation, and political or religious beliefs) by the authority (chairperson or dean, see section V.C.1) who will make these recommendations. Introducing such an ambiguous element into the process makes it difficult for faculty to appeal recommendations and be ensured due process in the matter.

The UA Little Rock Faculty Senate recommends eliminating the word “generally” from Section V. Annual Review.

B. Concern over use of “general practice” in sections II, II. A. 1, III, and V. A

Several places in the document related to appointment, promotion and tenure, and annual review, introduce the phrase “general practice” with regard to approvals of documents by the campus governance structure. This introduces the possibility that the campus governance structure can be bypassed. This can be used to undermine faculty governance.

The UA Little Rock Faculty Senate recommends deletion of “general practice” on sections related to faculty governance, for instance section II, section III, and section V. A (underline for emphasis):

Section II: As a general practice, the faculty, through its governance structure, will initiate the process; the deans and chief academic officer of the campus will then have an opportunity to give their advice regarding these criteria and procedures; thereafter, these criteria and procedures must be submitted to the Chancellor of the campus and the President for approval.

Section II. A. 1: As a general practice, the faculty, through its governance structure, will initiate the process; the deans and chief academic officer of the campus will then have an opportunity to give their advice regarding these criteria and procedures; thereafter, these criteria and procedures must be submitted to the Chancellor of the campus and the President for approval.

Section III: As a general practice, the faculty, through its governance structure, will initiate the process; the deans and chief academic officer of the campus will then have an opportunity to give their advice regarding these criteria and procedures; thereafter, these criteria and procedures must be submitted to the Chancellor of the campus and the President for approval.

Section V. A. 1: As a general practice, the faculty, through its governance structure, will initiate the process; the deans and chief academic officer of the campus will then have an opportunity to give their advice regarding these criteria and procedures; thereafter, these criteria and procedures must be submitted to the Chancellor of the campus and the President for approval.

C. Concern over proposed language eliminating the requirement of an annual review meeting.

Section V.A.6 is revised in the most recent revision to read (underline for emphasis),

“Prior to the chairperson’s making a recommendation in any year: (a) the opportunity, if requested by the faculty member, for a meeting between the chairperson and faculty member to discuss all issues relating to the review. . . .”

The revision absolves the chairperson from the responsibility of providing mentoring, guidance, and leadership in the success of the faculty member in his or her unit. It shifts the responsibility to the faculty member, who may not be aware that s/he can request the meeting or who may not feel sufficient agency to assert the right. This may particularly be true with a pre-tenure faculty member, who may feel that requesting the meeting may require him/her to meet a higher standard of scrutiny. Requiring these meetings helps assure that problems are raised early, when they can be more easily resolved, rather than after the concern has been raised at later stages in the process.

The UA Little Rock Faculty Senate recommends rejecting the proposed phrase “if requested by the faculty member” from Section V Annual Review, Subsection A.6.

D. Concern over limitation of speech in section IV. A. 14

Service can include both on and off campus activities, including service to professional associations and to the community. It is unclear what restriction is intended by “University employment-related service activities,” but speech in service to profession and community, for instance, should be protected, even if this service is not necessarily employment-related.

The UA Little Rock Faculty Senate recommends changing “and University employment-related service activities” to “ and service.”

E. Concern over funding sources - 405.1

The sentence “Salaries for tenured faculty may be adjusted based on job duties and performance, as well as changes in funding sources.” does not appear to have a place in a policy on appointments, promotion and tenure. It is not clear how this will be implemented, especially if it is used to reduce salaries. It is not clear how funding sources relate to salary.

The UA Little Rock Faculty Senate recommends striking “Salaries for tenured faculty may be adjusted based on job duties and performance, as well as changes in funding sources.”

VI. Concern Over Impact of Proposed Policy Changes - Not Satisfied

Neither the cover memo from President Bobbit nor the commentary associated with the revised proposal acknowledges the costly administrative impact the proposed changes will have at the campus level. We reiterate our concern and recommendation from our original memo.

Board Policies are fundamental to many of our campus policies. When changes are made to board policy, even small changes, campus-wide governance documents related to the appointment, promotion, tenure, dismissal, and annual review of faculty (UALR Policy 403.15⁴, UALR Policy 403.3⁵, UALR Policy 403.6⁶) will require adjustment. All levels within the university governance system will be engaged in these changes.

For example, a department governance document is initiated and approved by the faculty, reviewed by the dean, reviewed by the Provost and faculty governance committee, and approved by the Chancellor with input from system counsel. At UA Little Rock, there are over 40 departments.

Such input takes faculty and administrative time, and this effort diverts focus away from pressing priorities on our campus. At the current time, UA Little Rock has an impending HLC accreditation visit, enrollment challenges, changes to the enterprise resource planning software, and changes in the funding formula requiring us to revise our budgetary processes.

The other campuses in the system have similar governance processes, and all of the points of review will be strained under the weight of all campuses in the system revising their documents to be in compliance at the same time and within a year.

When campuses are out-of-compliance with policy related to annual review and dismissal, the potential for lawsuits increases. This unrealistically short time-frame will result in operational problems for all campuses in the system and increased costs.

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.

VII. Concern Over Lack of Faculty Input - Not Satisfied

The cover memo from President Bobbit suggests that meeting with faculty leadership at two meetings in mid-January (one meeting primarily with 4-year campus leaders and one meeting primarily with 2-year campus leaders) is a sufficient attempt at an open dialogue with the more than 2000 faculty across the UA System on such an important matter. We disagree.

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

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

⁶ UALR Policy 403.6 from FS legislation, adopted 4/3/1974, revised 10/10/1997, 5/1/1974 and currently under revision.

The proposed changes will have long-lasting impact on faculty hiring, promotion, tenure, dismissals, appeals, and the overall morale of the faculty. The UA System administration has yet to provide any concrete justification for making these changes. In particular, the System does not indicate what benefits these changes will provide that justify the costs.

The revised proposal introduces new challenges that give rise to additional concerns and the need for further review and discussion.

Despite what is known about the positive influence of faculty on student retention and student outcomes⁷, the proposed policy revisions demonstrate remarkably little acknowledgement of or focus on the positive role of faculty. The revisions seek to problematize faculty work by making it policy to *call out* faculty for appearing to be resistant to change, for not working hard enough, for not teaching effectively enough, and more. We consider the proposed revisions to reflect a prevailing framework that views faculty as a cost to the system and a resistant obstacle to increased productivity, particularly those faculty protected by tenure. Such a framework has led us to adopt a defensive posture and has prohibited the collective from engaging in productive discourse.

We are disappointed that the UA System leadership did not partner with the faculty across the UA System to update these policies. The faculty, as significant players in the state's knowledge economy, are guided and governed by these policies in every area of life, from hiring to advancement to retirement. Several of the proposed changes threaten the stability of the faculty in navigating these benchmarks and compromise faculty engagement in student attainment. Recruiting and retaining talented faculty will become increasingly difficult if these proposed policies are enforced as written. In recent months the UA System received considerable negative statewide and national media attention around this issue, further complicating efforts to recruit and retain faculty.

The UA Little Rock Faculty Senate recommends continued dialogue that allows broader participation across the system. Given the scope of the impact and the intended and unintended consequences of any changes to Board Policy 405.1, broad engagement and deliberate consideration is warranted.

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⁷ Wang, H., Hall, N., & Rahimi, S. (2015). Self-efficacy and causal attributions in teachers: Effects on burnout, job satisfaction, illness, and quitting intentions. *Teaching and Teacher Education, 46*, 120-130.

Rhoades, G. (2012). *Faculty engagement to enhance student achievement*. National Commission on Higher Education Attainment.

Ehrenberg, R., & Zhang, L. (2004). *Do tenured and non-tenure track faculty matter?* National Bureau of Economic Research Working Paper No. 10695.

Jacoby, D. (2006). Effects of part-time faculty employment on community college graduation rates. *The Journal of Higher Education, 77*(6), 1081-1103.

Umbach, P., & Wawrzynsky, M. (2005). Faculty do matter: The role of college faculty in student learning and engagement. *Research in Higher Education, 46*(2), 153-184.

In conclusion, while we acknowledge the UA System Administration has attempted to address some of our initial concerns, we continue to be concerned that certain proposed changes identified in this document will result in consequences that will increase costs, undermine faculty governance, constrain academic freedom, and decrease faculty morale--all of which will inhibit student learning. The recommendations we have made are grounded in empirical evidence of good practice as cited in this document.