

Dr. Joseph E. Steinmetz
Chancellor, University of Arkansas, Fayetteville
1 University of Arkansas
ADMN 425
Fayetteville, AR 72701

Chancellor Steinmetz:

Thank you for the opportunity to review and respond to proposed changes to Board of Trustees (BoT) Policy 405.1, *Appointments, Promotion, Tenure, Non-Reappointment, and Dismissal of Faculty*. The Executive Committee of the Faculty Senate of the University of Arkansas, Fayetteville prepared the following comments, which reflect both verbal and written feedback provided by the faculty at large. The discussion includes requests of the System Administration, addresses concerns expressed with both the process related to the proposed changes and the content of the proposed changes, and identifies potential consequences stemming from the adoption of certain proposed changes.

Requests to the University of Arkansas System Administration.

Based on consideration of the proposed changes to BoT Policy 405.1 and comments received from the faculty of the University of Arkansas, Fayetteville, two actions are respectfully requested of the U of A System Administration:

1. That the System Administration **convene an *ad-hoc* panel consisting of current faculty leadership from each UA campus and from the UA System office of legal counsel** to consider concerns and issues raised by UA faculty for possible improvements to the proposed changes to Policy 405.1.
2. That the System Administration **issue a statement of support to its faculty** to allay concerns and fears related to tenure and academic freedom. Such a statement will also serve as a strong message to future faculty candidates recruited by U of A campuses regarding the U of A's commitment to its faculty.

Specific Concerns Related to Proposed Changes to Board of Trustees Policy 405.1

Process-Related Concerns. The faculty recognize that policy 405.1 is a Board of Trustees policy – and thus, it is not subject to the agreement or approval by any U of A campus body, nor is the BoT required to provide proposed changes for any prior review. However, an article published by *The Chronicle of Higher Education* on October 27, 2017 contained the following statement:

“A spokesman for the university system, Nate Hinkel, said in an email that the proposed changes were part of a broader effort in recent years

to update the Board of Trustees' policies so they align with "current law and best practices." The general counsel's office drafted the changes in the promotion and tenure policy, and sent them to the system's campuses in mid-September **to get feedback from faculty members** and administrators, he wrote."¹ (*emphasis added*)

Further, in President Bobbitt's letter to the Board of Trustees, included in the BoT agenda for its November 8-9 meeting, he stated:

"Initial proposed revisions to the policies were sent to the Chancellors in mid-September with instructions to circulate them on their campuses for broader feedback."

Thus, it appears that the UA System administration intended to seek feedback from its faculty. The faculty appreciates and supports this intent. However, comments from the UA-Fayetteville, UALR, and UAMS campuses agree that faculty were *widely* informed about the proposed changes only after publication of related stories on October 24th in an online blog² and by the *Arkansas Times*³. Because there may have been breakdowns in communication on each of these three campuses that delayed or prevented faculty from learning of the proposals, the faculty has not had sufficient time to study or fully discuss these proposed changes as originally intended.

It is noted and greatly appreciated that the System Administration subsequently decided to delay Board of Trustees consideration of proposed policy changes to allow additional time for feedback by its campuses and faculty.

Content-Related Concerns. We recognize that the now-widely-disseminated "redline" version of the proposed changes to BoT Policy 405.1 represents a thorough and comprehensive review of the policy. As such, there are numerous proposed changes. Many of these changes are welcomed by the faculty, i.e. the revised table of faculty titles in Section I which clearly defines and standardizes titles across the system. We also appreciate the apparent intent of some of the changes to promote faculty productivity and collegiality.

There are, however, a number of proposed changes to BoT Policy 405.1 which have generated widespread and significant concern among the faculty. These issues are detailed in the listing which follows.

¹ http://www.chronicle.com/article/U-of-Arkansas-System/241571?cid=wsinglestory_hp_1

² <http://www.thesavorytort.com/2017/10/policy-proposal-threatens-academic.html?m=1>

³ <https://www.arktimes.com/ArkansasBlog/archives/2017/10/24/tenure-debate-brewing-at-the-university-of-arkansas>

1. *Expansion of the definition of “cause” for discipline and/or dismissal – and the inclusion of collegiality-related language in personnel decisions.*

Section I, “Definition of Terms” includes a new, significantly expanded definition of “cause”, related to the disciplining and/or dismissal of faculty. Two items are particularly troubling to the faculty:

(1) The use of the phrase “unsatisfactory performance” in the definition of ‘cause’, coupled with proposed changes to Section V-A (further discussed below), provides for the dismissal of faculty and/or the initiation of post-tenure review processes based on a single annual review. This is viewed as extremely punitive in nature, and limits the ability of a unit supervisor to work with low-performing faculty to improve performance. The usual probationary period for awarding of tenure is six years, during which a faculty member must demonstrate sustained productivity in teaching, research, and service. We simply request that tenure, earned over this extended period, not be revoked based on an evaluation for a single year.

(2) The inclusion of language related to collegiality as a basis for dismissal (“cause”) is overly broad and highly subjective – and thus, is subject to misinterpretation and/or misuse by supervisors. Phrases such as “...unwillingness to work productively with colleagues...” represent highly subjective standards, and would prove virtually impossible to apply in a consistent manner across units within the University.

In addition, the creation of a collegiality-based criteria as a *separately-delineated* standard included in the definition of ‘cause’ is seen by the faculty as a potentially grave threat to academic freedom. Faculty recognize that Section IV-A-(14) addresses protection of academic freedom. However, newly proposed language circumscribes the limits of that protection to “...the faculty member’s scholarship and assigned teaching duties.” This raises questions concerning who determines the scope of a faculty member’s scholarship, possible inhibitions on interdisciplinary scholarship, and the extent collegiality will affect the important contributions that faculty service makes to student success on campus and throughout the state, especially through our shared governance system. Further, the proposed statement “Faculty are expected to work productively with colleagues in carrying out the mission of the University” is highly subjective, and (too) easily invoked to seek disciplinary measures against a faculty member over simple disagreements.

2. *Significant changes to administrative proceedings related to dismissal.*

Section IV, “Tenure, Non-Reappointment, and Dismissal”, subsection C, “Dismissal” proposes significant changes to the process for dismissal of a tenure-track or tenured faculty member. Two items are particularly notable:

(1) The current initial step in the dismissal process is the empaneling of a faculty subcommittee – the faculty member’s peers – to make an informal inquiry into the situation, attempt to make an adjustment/agreement (if possible), and determine whether formal procedures for dismissal should be instituted. The proposed revisions eliminate this initial faculty subcommittee, and places the decision to proceed solely with the chief executive officer of the campus, based on the statement(s) of the faculty member’s Chair and/or Dean. Faculty see this as a significant reduction in the due process afforded the faculty member.

(2) The current policy related to the Committee conducting the hearing for dismissal states “Formal rules of court procedure need not be followed...” – indicating that the Committee maintains a degree of flexibility regarding the presentation of evidence, examination of witnesses, and other items. The proposed policy states “These are not legal proceedings and formal rules of court procedure *do not apply.*” [*emphasis added*] Faculty are concerned that this is a reduction in the flexibility of the Hearing Committee to provide protections to the faculty member facing dismissal.

3. *Significant changes to personnel actions stemming from annual reviews.*

Section V, “Annual Review”, subsection A, “Faculty”, Item 9 is a new addition to the policy, addressing the subject of post-tenure review stemming from results of the annual faculty evaluations of faculty. The faculty have expressed grave concern over a number of items in the proposed addition:

(1) A post-tenure review process would be initiated after a single annual evaluation of ‘unsatisfactory’. Depending on the metrics used in the annual review process, even highly productive faculty members may suffer a ‘down’ year due to the production schedule of journals or other circumstances that are beyond their control; the description of the process does not provide flexibility to unit heads to account for the natural ebb and flow of faculty productivity. In addition, the significantly expanded, yet only vaguely defined, elements comprising “cause” (detailed earlier) provides highly subjective criteria for a finding of ‘unsatisfactory’.

(2) The maximum one-year period for a faculty member to remediate an unsatisfactory annual review could prove, in itself, to be problematic depending on the elements cited in the annual review which resulted in the unsatisfactory rating. Further, the proposed criteria allow for a shortened time for remediation, based on the perceived “active cooperation” of the faculty member in the process.

(3) Taking items (1) and (2) together, it is entirely plausible that a tenured faculty member may be dismissed from the University in a time frame between one and two years. A single ‘unsatisfactory’ rating on an annual review, coupled with a vaguely defined finding (by the unit supervisor) that the faculty is not ‘actively cooperative and engaged’ in the process could result in termination.

(4) The previous items display a dramatic shift in the criteria related to the dismissal of a tenured faculty member. Current policy defines criteria for dismissal using terms such as “incompetence”, “neglect of duty”, “intellectual dishonesty”, and “moral turpitude”. Proposed criteria now suggest “unsatisfactory performance” and additional terms related to collegiality provide equal basis for dismissal.

4. *Shift in approach to pre-tenure probationary period extensions.*

Section IV, “Tenure, Non-Reappointment, and Dismissal”, subsection A, “Tenure”, Item 4 proposes additional language related to requests for suspension of the probationary period for tenure-track faculty. Although the section confirms that all Family Medical Leave Act (FMLA) qualifying events will be honored, this federally guaranteed leave is separate from extension requests to the probationary period. The proposed revision includes the statement “A request for a second extension is highly unusual and extraordinary, and will be considered on a case by case basis”. Numerous faculty members have commented that this statement may be easily perceived by both current tenure-track faculty and prospective faculty candidates as biased against individuals seeking to start/grow a family, those with aged parents requiring care, etc. – with a particular chilling effect on female faculty members. Certainly, it is inconceivable that this was the intent of the framers of the proposals; however, the necessity of such a statement is questioned.

Potential Consequences.

There are deep and widespread concerns regarding potential consequences of adopting proposed changes to BoT Policy 405.1 as written. The consensus of the concerns expressed by the faculty centers on the effect of proposed policy changes on faculty retention and recruitment.

- The changes discussed previously provide a definite perception of jeopardizing the faculty's academic freedom and a weakening of related protections provided by the awarding of tenure. The consensus of the faculty is that each of these perceptions will result in **significant** difficulty in faculty recruitment and retention – the world-class faculty currently recruited will not apply to a University at which academic freedom and tenure are weakened. In addition, current tenured and tenure-track high achieving faculty will begin to look at other universities for positions – and will be increasingly susceptible to aggressive recruitment from outside programs.
- Adoption of proposed language characterizing a second request for an extension in the probationary period for tenure-track faculty as “...highly unusual and extraordinary...” will result in significant difficulty in recruiting and retaining highly qualified and high-achieving faculty – particularly female faculty. The University of Arkansas emphasizes its commitment to increasing diversity and inclusion in the faculty ranks, particularly in the STEM fields; however, statements such as this contradict that emphasis.

It must be noted/reiterated that, without fail, faculty comments on the proposed policy changes cited these consequences as the basis for either rejecting these changes outright or substantially altering the language used. Should these consequences be realized with the passage of the proposed changes as written, it will have a crippling effect on the faculty of the University of Arkansas.

We again wish to express our deep appreciation for the opportunity to respond to the proposed changes to Board Policy 405.1, which affects every faculty member across the UA system.

Respectfully Submitted,

Kevin D. Hall, Ph.D., P.E.

Chair, Faculty Senate, University of Arkansas, Fayetteville