

Comments on Policy 405.1 revision by Abdallah Hayar, Chair of Academic Senate Communication Committee (10/2/2017)

Summary and general Comments

Although this policy has not been revised since 2001, faculty do not understand the real purpose behind the extensive revision and they were not provided with any justification why such a revision is necessary. In particular, the faculty feel that this revision would diminish support for faculty tenure and shared governance and restrict freedom of expression. There are several serious issues, the most important ones are the general statement that salary of faculty can be adjusted based on duties and performance. The faculty think that such statement should not be part of this policy and salaries should be determined according to a clear and fair compensation plan designed for each campus or college. The second major issue is the recommendation for dismissal of a faculty based on one year (or less) of unsatisfactory evaluation. This process would be quite unfair for faculty who think that it is the responsibility of the chairs to continually provide them with help and support to improve in areas of underperformance. The third main major issue is the restriction of faculty freedom of expression to only specific areas within their assigned scholarship/teaching duties. Please find below our point-by-point comment on each revision.

-Page 1, parag.2: The following statement has been deleted: “Care shall be taken to insure that each faculty member is familiar with its contents, and the department chairperson or other appropriate official shall supply a copy to each new member.”

We feel it is appropriate to keep this statement because faculty candidates and newly-recruited faculty need to be aware of rules and regulations governing the policies of appointments, promotion, tenure, non-tenure, and dismissal of faculty.

-Page 1: Definition of Terms: Appointments. The word “contract” has been replaced by “notice”.

We feel that the word “contract” should be kept because it is more legally binding (since a salary and period are specified), and it will assure newly-recruited faculty of the commitment of the University toward continuous employment if it is beneficial for both parties. The word “notice” would give the impression of a temporary or casual appointment which is usually offered to non-academic staff and would indicate that the University is free to terminate the appointment of the faculty at any time.

-Page 1: Definition of Terms: Appointments. The following has been deleted “Appointment is valid only when Notice of Appointment is signed by the individual being appointed and returned to the specified University official.”

We feel it is important to keep this statement to make sure that the individual being appointed has read and accepted all terms and conditions of the appointment.

-Page 3, parag.1: The word “contract” has been replaced by “appointment”.
As previously mentioned the word “contract” would be more appropriate.

-Page 4: parag.1: The following sentence was added regarding the appointment of non-tenure track positions: “but not to exceed five years, under merit-based campus procedures approved by the President”.

This might be interpreted that non-tenured faculty should be dismissed after 5 years. This statement needs to be clarified or deleted.

-Page 5: parag. 2: The following sentence was added “Non-tenure track faculty with a term appointment for a specified term of years do not have a right to an appointment beyond the appointment period.”

This might be interpreted that non-tenure faculty will be terminated at the end of their term without the possibility of being offered a successive appointment. This statement needs to be clarified or deleted.

-Page 5, new added paragraph “Administrative Appointments”:

A clarification is needed whether tenured faculty who are offered an administrative appointment would lose their tenure status.

-Page 5 bottom: The following sentence has been added: “Except at institutions that do not offer tenure, no person shall be promoted to the rank of associate professor or higher without also being granted tenure.”

This sentence would imply that all faculty (tenure-track and non-tenure track) who were not awarded tenure with any of the first six academic year or fiscal year appointments must be terminated. Extending this rule to non-tenure track faculty (some of them have already been promoted based on qualification) would mean that non-tenure track faculty will be stuck in the Assistant Professor position throughout their career. This creates an injustice toward this category of faculty and one question will arise regarding those non-tenured faculty who were already promoted to Associate of Full Professor. Will they lose their promotion? Therefore this rule creates injustices and is not in the best interest of the institution. We suggest deleting it.

-Page 9 last parag. Section 14: The following sentence has been added: “Subject to all provisions of this and other applicable University policies, mere expressions of opinions related to the faculty member’s scholarship and assigned teaching duties, . . . shall not constitute cause for dismissal”

It seems that this statement restricts the faculty freedom of expression to one particular field “*the faculty member’s scholarship and assigned teaching duties*” whereas any other types of expression of opinions such as those related to shared governance, faculty affairs, and University policies, might be prohibited or potentially lead to sanctioning and dismissal of the faculty. We believe that freedom of expression should not be limited to certain academic areas, otherwise it would not be considered freedom anymore. Therefore, the phrase “*related to the faculty member’s scholarship and assigned teaching duties*” should be deleted because it restricts faculty freedom of expression according to the Universal Declaration of Human Right and US constitution. Freedom of academic expression should be guaranteed especially if the intent of the faculty is to seek academic reform that will help the institution go forward in achieving its goals.

-Page 3 Section “Tenure” and Page 5 Parag.2 Section 3: The following sentence has been added in 2 locations: “Salaries for tenured faculty may be adjusted based on job duties and performance.”

This statement is most likely added to penalize faculty who receive unsatisfactory evaluation by reducing their salary. Our academic institution is not a pay-per-performance organization. Nevertheless, it is good to provide a fair basis for increasing compensation based on merit or research funding by creating incentive plans. We believe that each faculty should be paid a market-competitive base salary for a full time job, irrespective of assigned duties. In some circumstances, the faculty may be paid a percentage of the base salary if the faculty agrees to go on a part-time job. Faculty evaluation and annual review of performance should not be used to make decisions regarding a salary cut. They are intended to help faculty clearly define and understand their responsibilities, to suggest ways in which faculty can improve performance, to identify faculty with potential for advancement within the academic institution, and to help the chairmen distribute and achieve departmental goals. Reducing salaries based on lower performance could violate federal guidelines, enforced by the Equal Employment Opportunity

Commission (EEOC), because it is unlawful to knowingly or unknowingly discriminate in pay whenever age or disability become a contributing factor leading to a decrease in performance.

We therefore recommend deleting all statements related to salaries and compensation, which should be determined according to a clear compensation plan in each campus or college.

-Page 8 Section 5: The following sentence has been added: “Immediate faculty tenure may also be granted, under this same procedure, in connection with the hiring of senior leadership positions.”

If a leadership position is an administrative position, this sentence may conflict with another sentence in page5 (Administrative Appointments) with states: “Tenure may only be granted in faculty status and not in an administrative appointment.”. We suggest deleting the sentence on Page 8 Section 5.

-Page 12 continuation of Section C. Dismissal-Subsection-Preliminary Proceedings: The following paragraph has been almost entirely deleted:

“If the faculty member requests it within five working days after receipt of the statement, a subcommittee of faculty members, as determined by procedures developed by each campus, shall be named by the chief executive officer to make an informal inquiry into the situation and to effect an adjustment, if possible. If no settlement is effected, the subcommittee shall determine whether, in its view, formal proceedings shall be instituted to consider the individual's dismissal, and it shall notify the individual concerned, the chief executive officer of the campus, and other appropriate administrators of its conclusion. If the subcommittee recommends that such proceedings be begun, or if the chief executive officer of the campus, after considering a recommendation of the subcommittee favorable to the individual ...”

We think that the right of a faculty to defend his case is very crucial and should not be eliminated from any proceedings even if it is just for the preliminary proceedings. Therefore, it is important for any faculty who has been recommended for dismissal to request that his case will be evaluated by a subcommittee of five faculty members as previously stated in the original version of the Policy. Bypassing the opinion of the subcommittee of faculty will deprive faculty from their right to shared governance and put all the authority in the hand of administrators. All defendants should be granted the right to request the "assistance of counsel" and this is guaranteed by the Sixth Amendment to the U.S. Constitution. The right of an accused faculty to counsel with his peers should be regarded as a constituent of the right to a fair resolution.

-Page 16, Policy last parag.:

The following paragraph has been added:

“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.”

We recommend deleting this entire paragraph as well as any reference to dismissal for unsatisfactory performance (Page 1, Section “cause”; Page 9, Section 13) for the following reasons. The statements in this paragraph set a path to terminate almost every faculty who had an "unsatisfactory" evaluation for 1 year or less with no mention of hearing procedures, grievance, or appeal. In this policy, it is not clear how faculty performance will be assessed, and on which criteria it would be judged

“unsatisfactory”. A faculty performance may fluctuate throughout the years and may decrease due illness, age, disability, or due to family and medically-related issues (see FMLA). It would be discriminatory and unlawful under these circumstances to recommend dismissal.

We believe it is the responsibility of the chairs to continually provide their faculty with a clear path or support to improve in areas where the faculty member has underperformed. If the faculty is lacking in particular area and this a function in which a faculty is expected to excel in order for his performance to be deemed satisfactory, then efforts should be made by the Department or College to provide professional development and training to the faculty. The faculty’s role and function within the University could also be changed with mutual agreement and other duties may be assigned to the faculty within or outside of the faculty’s College to compensate for any shortcoming in duties and performance.