

**(Those in bold are considered most serious)**

**Comments on the failure to appropriately communicate with faculty**

- **My first comment has more to do with the process that was followed than with the proposed revisions. Those revisions are clearly designed to make it easier for administrators to fire or cut the salaries of Faculty, even tenured faculty. However, the process through which the Faculty were made aware of these revisions deserves a great deal of scrutiny. At most UA campuses, the proposed revision appears not to have been given to Faculty, perhaps only to Chancellors and Deans. Faculty only received the document after a few who saw it contacted the media, which generated bad publicity for the UA system. The UA system administration has acted in bad faith with respect to the Faculty.**

Specific Comments on the Text of the Proposed Revisions

Page 1

- The first paragraph no longer stipulates an effective date for the policy to take effect. It should.
- The first paragraph should stipulate whether it applies to faculty who were hired when the previous Board Policy 405.1 was in effect. Otherwise it may be subject to legal appeal.
- The second paragraph has 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." It is imperative that the institution not hide this policy from its faculty, particularly its new faculty. Otherwise it may be subject to legal appeal.
- **Appointment paragraph should retain the term "contract". For some number of years, the institution has stopped providing contracts which require signatures of both parties. As such, the appointments have not constituted a legally binding contract. More recently the institution has not even been providing Appointment letters before the beginning of the fiscal year. Sometimes they have been delayed for several months. This should not be tolerated, particularly when salary amounts are specified. Language in this paragraph should indicate that the institution must provide letters of Appointment on July 1 or earlier or be subject to class action lawsuit demanding a substantial penalty equivalent to faculty salaries for the intervening time period.**
- **Cause paragraph suggests that faculty lacking the ability to perform duties or responsibilities to the University may be fired. What if the faculty member in question suffers a stroke or accident that renders them disabled? Long term disability would seem like the most appropriate action. Dismissal of such faculty would certainly constitute grounds for a lawsuit.**
- **Cause paragraph item (2) suggests harassment or retaliation are grounds for firing. Harassment is too vaguely defined. I have myself been falsely accused of harassment and**

have been subject to retaliation on the part of administrators. I believe Policy 405.1 should be equally applied to all administrators, including faculty administrators.

- Cause paragraph item (3) specifies unethical conduct related to fitness to engage in teaching, research, service/outreach and/or administration.... This is far too vague and will have a chilling effect on academic freedom. What constitutes unethical conduct, particularly with respect to teaching? At the very least, some examples should be provided.

Page 2

- Cause paragraph item (4) specifies misuse of appointment or authority to exploit others. Again this is too vague and could be too broadly interpreted, and it should also be applied to administrators.
- Cause paragraph item (6) stipulates unwillingness to work productively with colleagues. In many cases such unwillingness would be justified and should not be penalized. The wording is too vague and subject to abuse by chairs or administrators.
- Cause paragraph item (7) stipulates retaliatory conduct, which has already been specified in item (2). As in that item, Administrators should also be subject to dismissal for these causes.
- Cause paragraph item (8) is poorly worded. "Substantially related to performance of faculty responsibilities or fitness to serve the University" should be struck. In effect, that qualification would seem to allow other violations of university policy or state or federal law to be permissible. Most probably this is designed to protect those who have violated the law from being fired, but this legal-sounding language is far too confusing.
- Dismissal paragraph should make more clear the distinction between Dismissal and Termination in terms of consequence to the faculty member.
- Faculty paragraph should stimulate tenure track rather than tenured track in the last line.

Page 3

- Suspension paragraph stipulates with or without pay, depending on the circumstances. This is too vague, particularly since the two outcomes are so different for the faculty member and thus would alter the nature of an individual's appointment. Circumstances that lead to suspension without pay should be specified.
- Tenure paragraph: "Salaries for tenured faculty may be adjusted based on job duties and performance." Should be struck. Salaries should be considered independent of promotion, tenure, non-reappointment and dismissal, in some separate document. Placement here suggests it is a way for administrators to degrade the meaning of tenure, particularly for more senior faculty. Linking salary to performance permits administrators to reduce salary for higher paid individuals who do not yet wish to retire. This will expose the institution to

lawsuits contending age discrimination. Its placement here should only be permitted in terms of a bonus for award of a grant or other accomplishment, rather than a salary adjustment.

Page 4

- Year paragraph is too confusing and should be reworded to indicate more clearly through June 30 of the next calendar year and for an academic year whether the year denoted is the same as the fall semester or the spring semester of that fiscal year.
- Appointments, first General paragraph specifies a grammatically incorrect “that purposes”; purpose should be singular.
- Appointments, second General paragraph should indicate possible titles for chief academic officers and chief executive officers in parentheses, such as Provost, Chancellor, etc.

Page 5

- **Appointments, third General paragraph stipulates “The faculty, through its governance structure”. Some campuses have only an Academic Senate, which does not qualify as a true governance structure since it is merely advisory to the Chancellor. A true faculty governance structure distinct from the Academic Senate should be put into place, or the constitution of such Academic Senates should be amended to include a separate faculty governance role.**
- Successive Appointments paragraph title should be indented as for Initial Appointment title.
- **Successive Appointments paragraph should not include “Salaries for tenured faculty may be adjusted based on job duties and performance.” See second comment made for page 3.**
- Successive Appointments paragraph should not include “Non-tenured faculty do not have a right to a next successive appointment” unless “Non-tenured faculty” is changed to “Non-tenure-track faculty”. Denying that right to tenure-track faculty will seriously diminish the University’s ability to recruit high quality faculty.

Page 6

- **Third Promotion paragraph stipulates “The faculty, through its governance structure”. See first comment previously made for page 5.**

Page 7

- Paragraph 2. Appears to be in conflict with the first Promotion paragraph on the previous page, which stipulates that no faculty will be promoted to associate professor without being awarded tenure. This may require rewording to suggest this applies only to faculty coming from other institutions or who had not previously been awarded tenure here.
- **Paragraph 2. should specify under what conditions a change from a non-tenure-track position may be made to a tenure-track position.**
- Paragraph 2.'s wording of "Academic administrators not appointed to a teaching or research unit" is confusing. It gives the impression that Academic administrators appointed to such units are ineligible to receive tenure. The university should not want to treat administrators in those positions in such units as second class citizens relative to administrators in more central administrative positions.
- Paragraph 3.'s wording appears to conflict with paragraph 2.'s wording with respect to tenure rights are not awarded in any administrative position, since paragraph 2 appears to indicate they are eligible for tenure as faculty, although not as administrators. This distinction should be clarified.
- Paragraph 4. does not mention those who switch from non-tenure-track to a tenure-track position, and whether the clock starts ticking from the first faculty appointment as instructor, as assistant professor, or from the first appointment as assistant professor in the tenure track.

Page 8

- First paragraph, item (e): What about a faculty member in the National Guard who is deployed overseas? Shouldn't (e) be amended to include the employee?
- Third paragraph: the discussion of salary does not belong in policy 405.1, which should not consider ANY salary issues.
- Paragraph 5. has an improper indent, and the last sentence indicates the same procedure, but how will senior leadership positions outside a department consult with departmental faculty?

Page 9

- **Paragraph 7. states "The faculty, through its governance structure." See first comment previously made for page 5.**
- Paragraph 10. does not indicate the status of a faculty member who has been awarded tenure which has not yet become effective. What safeguards are there to prevent such a faculty member from being terminated prior to tenure being effective?

- Paragraph 13.'s use of "unsatisfactory performance" is far too vague and prone to abuse of interpretation by a single administrator. More safeguards must be put in place, preferably including a committee of faculty peers.
- Paragraph 14. may need to consider recently enacted concealed carry provisions enacted at most UA system campuses. Worry about being shot clearly abridges academic freedom and freedom of speech in general. This may not belong in among promotions, appointments, dismissals, etc., and it is unclear what could be done to address this concern.
- Paragraph b.'s use of the term "inappropriate" is quite subjective and may require more stringent definition.

- **First paragraph at top uses "work productively with colleagues". This is subject to interpretation, and it is within a section of the document entitled Tenure, Non-reappointment, and Dismissal. This could be seriously abused in any evaluation process.**
- **The whole section B. Non-Reappointment sends a chilling message to new recruits. There must be stronger protections in place for junior tenure-track faculty. There aren't even any standards indicated according to which non-reappointment would be justified. Standards should be indicated or the entirety of section B. should be eliminated.**
- Final paragraph of the page indicates such short windows for requests that the faculty member would scarcely have time to obtain legal advice. A month window would be more reasonable for the initial request for a meeting, and two weeks for request for a subsequent meeting with the chief academic officer.

- In paragraph a., there is no mention regarding how much notice must be provided for Dismissal.
- In paragraph b., the faculty member being dismissed should specifically have the opportunity to select one or more faculty members. This is not indicated in the paragraph.

- First paragraph. Sufficient time should be specified more explicitly. A month would seem reasonable.

- Second paragraph. A month would be much preferable to two weeks.
- Paragraph 3.'s last sentence regarding without pay requires much more indication of what behavior or circumstances would result in that outcome.
- Paragraph 4. Should make it clear that this Hearing Committee is distinct from the faculty engaged in item 1.b. of Preliminary Proceedings. It is unclear whether the faculty member being dismissed will be permitted an appeal in person to the Hearing Committee. Opportunity for personal appeal would be in accord with a typical justice system approach. While this is outlined in 5. it should be made more clear in 4.

Page 14

- Third paragraph does not indicate more explicitly "sufficient time". This should be at least two weeks.
- Fifth paragraph's use of "the order of proof" is troubling for two reasons: 1) It is not clear to a layman what this means, and 2) proof prejudices the proceedings against the faculty member being considered for dismissal. Charges or evidence would be preferable to proof.
- Last paragraph uses digitally in the last line, but it is not clear whether this is a digital recording device (more complete) or notes on a computer (necessarily less complete). It should be indicated that the digital recording be made available to the faculty member being dismissed should that faculty member wish to lodge an appeal or initiate a lawsuit. This is indicated in 6. later, but would be good to indicate here as well.

Page 15

- First paragraph of item 6 may need to indicate more specifically what "promptly" means, particularly with respect to whether a vote of committee members is taken and whether a majority of members is required to concur or a unanimous decision is required.
- Paragraph 7. should again indicate whether a majority of Trustees or unanimous consent is required.
- Paragraph A. Faculty should not discuss salary within Board Policy 405.1. It may be discussed as part of an annual evaluation, but it should not be part of 405.1.

Page 16

- **In the second paragraph, use of "The faculty, through its governance structure" is problematic. See first comment previously made for page 5.**
- Paragraphs 1. and 2. specify "Within a reasonable period of time", but this is too vague.

- Paragraph 6. should indicate penalties imposed on any chairperson failing to provide either (a), (b) or (c), particularly in (c) including that such a response is permissible and to whom it should be forwarded.

Page 17

- **Paragraph 9.'s specification of only one year to remediate unsatisfactory performance of faculty is entirely too short, particularly where performance in obtaining grant funding in the current funding climate is concerned. This particular post-tenure review requires the same kind of procedural specification as the Dismissal document entails, and that is completely missing. I have been at an institution with post-tenure review, and it was spelled out in infinite detail. That a shortened time frame is indicated in the last sentence may be the greatest abridgement of tenure rights in the entire revised 405.1 document. Faculty recruitment and retention with such a post-tenure review policy will cause our best faculty to leave, badly damage recruitment, and result in more faculty mediocrity, not less.**

#### Additional General Comments

A lawyer I know referred to this action as a direct frontal assault on tenure. I would suppose many lawyers around the state are eager to participate in lawsuits that would certainly accompany any dismissals or related actions that caused harm to faculty as a consequence of this new revised policy that had not allowed adequate opportunity for faculty to respond to.

In addition, there is bound to be significant adverse publicity, not just locally, but nationally. An article in the Chronicle of Higher Education was not complimentary of the revised policy. American Association of University Professors (AAUP) chapters around the state are clearly alarmed, and these include chapters outside the UA system. Blogs and articles have appeared in the Arkansas Times and Arkansas Democrat-Gazette. These clearly indicate that the national organization of the AAUP is paying close attention.

Does the UA system want to earn the distinction of having marginalized tenure? Will this improve its chances for recruitment and retention of excellent faculty? Will this improve faculty morale? Shouldn't the UA system prefer to promote greater faculty participation in shared governance, using discussion of Board Policy 405.1 as a springboard for true shared governance before taking this to the Board of Trustees for approval?

Respectfully,  
Philip Palade, Ph.D.  
Professor  
President, UAMS Chapter of the AAUP