

DRAFT

**Proposed Changes to University of Arkansas System
Board Policy 405.1**

March 16, 2018

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BOARD POLICY 405.1

APPOINTMENTS, PROMOTION, TENURE, NON-REAPPOINTMENT, AND DISMISSAL OF FACULTY¹

This policy supersedes all existing policies concerning appointments, promotion, tenure, non-reappointment, and dismissal of faculty. The Board of Trustees has the right to amend any portion of this policy at any time in the future, subject to the retroactivity provision contained in section VII.

This policy shall be included without change or inter-lineation in the Faculty Handbook for each campus.

To the extent any provision in this policy conflicts with a campus policy, this policy shall control.

I. Definition of Terms

For purposes of this policy, the following definitions shall apply:

Appointment - An appointment is a written notice ("Notice of Appointment") that initiates the contractual relationship between the Board of Trustees and the faculty member. An appointment is valid only when approved and signed by the President of the University, the Chancellor of the respective campus, the Vice President for Agriculture, the Chief Executive Officer of the respective unit, or their designee, in accordance with authority delegated by the Board of Trustees. Such appointment is subject to all applicable policies of the Board of Trustees, the University of Arkansas System, and the respective campus, division, or unit

Cause – Cause for the imposition of any form of discipline (up to and including dismissal of a faculty member) is limited to the following grounds:²

¹ In most cases, academic units are organized into colleges with deans, chairpersons, and faculty. The normal order is for appointment, promotion and tenure processes to utilize this structure in making recommendations. Where colleges are not present, the normal order shall follow a pattern that closely mirrors the typical structure. For example, in Schools without departments, the recommendations shall start with the faculty and move to the director, if applicable, and then to the dean. For the purpose of this policy, and in reference to items involving professional librarians, extension specialists, instructional development specialists, or museum curators, the terms "chairperson," "administrative officer," and "administrator" refer to the director or head librarian.

² **Comment:** As we pointed out in our response to the Counsel's Office's FAQ, many schools do not use

- (1) job abandonment;
- (2) a pattern of Unsatisfactory performance that meets all of the requirement of section V.A.9 below, concerning annual review;³
- (3) academic dishonesty or plagiarism, where such dishonesty or plagiarism is admitted or has been found to exist by a two-thirds vote of an independent panel of professors with at least half the panel being tenured, full-time faculty;⁴
- (4) discrimination, including harassment or retaliation, prohibited by law, where such discrimination is admitted or proved before a court of competent jurisdiction or the non-University administrative hearing body established to hear such matters.⁵
- (5) serious violations of law that are admitted or proved before a court of competent jurisdiction or the non-University administrative hearing body established to hear such matters, preventing the faculty member from satisfactory fulfillment of professional duties or responsibilities;⁶
- (6) theft or repeated and intentional misuse of university property, where such theft or misuse is admitted or proved before a court of competent jurisdiction;
- (7) explicit threats of physical violence or acts of physical violence that violate the criminal law or tort law, where such threats or acts are admitted or proved before a court of competent jurisdiction;
- (8) mental incapacity that prevents a professor from fulfilling his or her job responsibilities;
- (9) documented threats of or actual withholding of resources from a faculty member by another faculty member holding an administrative position because of the former

a comprehensive listing of items that constitute cause for discipline. A good example is the University of Texas. *See* Board of Regents’ Rules and Regulations, Rule 31102, Part 2, § 5.3, available [here](#) (providing that the permissible grounds for termination are “incompetence, neglect of duty, or other good cause.”). Nonetheless, in the interests of compromise, we have adopted the comprehensive list concept proposed by the Counsel’s Office. However, we made substantive changes to the list that will ensure the protection of academic freedom while also achieving every goal the Counsel’s Office could reasonably have with respect to the cause definition.

³ Each campus shall include criteria and procedures for determining “Unsatisfactory performance” in their campus policies governing faculty annual reviews. In order for a tenured faculty member to be dismissed for unsatisfactory performance, the requirements set out in V.A.9, as well as any corresponding campus policy must first be followed. **Comment:** We believe that this language is too important to be in a footnote and that some of the language should be in the annual review section below. While we are not deleting the footnote at this time, we have made changes consistent with our view expressed in this footnote.

⁴ **Comment:** The University should not have the power to unilaterally decide whether a faculty member engaged in academic dishonesty or plagiarism. Accordingly, we have borrowed from the University of Oklahoma tenure policy the notion that wrongdoing must either be admitted by the faculty member or adjudicated by an unbiased body. *See* University of Oklahoma Regents’ Policy Manual (“Oklahoma”) § 2.3.5, available [here](#).

⁵ **Comment:** *Compare* Oklahoma § 2.3.5(e) (“Serious violations of law that are admitted or proved before a court of competent jurisdiction or the administrative hearing body established to hear such matters . . .”).

⁶ **Comment:** This is taken verbatim from the Oklahoma cause definition. *See* § 2.3.5(e).

faculty member's expression of disagreement with the administrator; or⁷

(10) repeated shouting down of another faculty member at University meetings preventing the other faculty member from speaking when so entitled pursuant to Robert's Rules of Order or other governing procedural rules; the discipline for such action shall be initially restricted to no greater than barring the violating faculty member from such meetings until such time as the faculty member is willing to comply with the relevant procedural rules.⁸

Dismissal - Dismissal is severance from employment for cause, as defined above, and after administrative due process as provided in this policy and Board of Trustees Policy 405.4. Expiration of appointment and non-reappointment are not a dismissal (see further).

Faculty - Faculty are employees who hold the academic rank of lecturer, master lecturer, instructor, advanced instructor, senior instructor, assistant professor, associate professor, professor, distinguished professor, University professor or one of the above titles modified by clinical, research, teaching, adjunct, visiting, executive in residence, or professor of practice, (e.g., clinical professor or adjunct assistant professor). Additional appropriate non-tenure track modifiers may be approved by the President. For the purposes of tenure and promotion policy and recommendations, a campus may define which faculty may participate in tenure- and promotion-related decisions. For example, institutions that offer tenure could limit, for tenure and promotion matters, the definition of faculty to tenured and tenure-track faculty.

Individuals holding non-teaching titles (i.e. Director of Libraries, Instructional Development Specialist II, and Curator) will also receive faculty rank. The rank that corresponds with each title is reflected in the chart below. Both the title and the academic rank will be stated in the appointment.⁹

Instructional and Research Ranks	Library	Cooperative Extension Service*	Instructional Development	Museum
Professor Distinguished Professor University Professor	Director of Libraries, Librarian	Extension Specialist IV	Instructional Development Specialist II	Curator
Associate Professor	Associate Librarian	Extension Specialist III	Instructional Development Specialist I	Associate Curator

⁷ **Comment:** We added this based on concerns raised by certain faculty members.

⁸ **Comment:** We added this based on information we received regarding the concerns of certain administrators. While we do not believe this language belongs in a university-wide policy document, we included cause ground (10) in the interests of compromise.

⁹ **Comment:** The chart adopts all changes proposed by the Counsel's Office (though we made some mild suggested formatting changes), with one exception. Throughout its proposals, the Counsel's Office reversed the order of Distinguished and University professor, implying that Distinguished is the higher category. But in our experience, more institutions place University above Distinguished than the opposite. Accordingly, we did not adopt the reversals in the Counsel's Office's draft and we recommend that the University of Arkansas continue with the current structure whereby the highest possible faculty rank is University professor.

Assistant Professor	Assistant Librarian	Extension Specialist II		Assistant Curator
Instructor		Extension Specialist I		

*Academic rank will be granted only if the individual is appointed in an academic unit.

Non-Reappointment - Non-reappointment means that a non-tenured faculty member is not offered a next successive appointment for employment at the end of a stated appointment period. It is effected by a written notice sent in compliance with the time limits hereafter specified (IV.B.).

Probationary Period -The probationary period is the time a faculty member spends under appointments for full-time services in a tenure-track position on one campus of the University of Arkansas prior to being awarded tenure.

Promotion - Promotion is advancement based on merit to a higher rank or title. All promotions must be approved by the Board of Trustees and become effective with the next year's appointment following action of the Board of Trustees, unless a different effective date is approved by the Board.

Resignation - Resignation is voluntary termination of employment by an employee. The dean or director of the unit to which the employee is assigned is authorized by the Board of Trustees to accept the resignation.

Suspension - Suspension is temporarily relieving an employee of duties. A disciplinary suspension or suspension pending an investigation does not alter the nature of an individual's appointment. Suspension may be with or without pay as warranted by the circumstances. If a suspension is disciplinary in nature, the suspension is subject to all of the substantive and procedural protections set forth in this policy that are applicable to any other type of sanction or discipline.

Tenure - Tenure is the right of continuous appointment. It is awarded by the President to eligible members of the faculty upon successful completion by each of a probationary period. Once granted, tenure ceases to exist only by (1) dismissal for cause, as defined in section I and only after compliance with all procedures set forth in this policy, including those contained in Section IV.C., (2) termination as a part of a financial exigency retrenchment, initiated pursuant to, and complying in full with, Board Policy 405.5, because of a demonstrable bona fide financial exigency, (3) termination pursuant to an academic planning retrenchment, initiated pursuant to, and complying in full with, Board Policy 405.5, (4) retirement, or (5) resignation. The probationary period may be waived as provided in Section IV.A.4. NOTE: In addition to the protections provided for in Board Policy 405.5, tenured faculty holding positions eliminated due to financial exigency retrenchment or academic planning retrenchment shall be relocated to other academic units of the campus or to other campuses of the University whenever possible. A position occupied by a tenured faculty member which was eliminated as a result of an academic planning retrenchment may not be reactivated for a period of five academic years. The right to continuous appointment provided by tenure affords faculty members the substantive right not to be dismissed or terminated but for the reasons delineated in this paragraph. In addition to those enforceable substantive rights, tenure affords

faculty the right to administrative due process at the University level. These substantive and procedural rights are separate and co-exist.

The Importance of Tenure. The Board of Trustees recognizes the time-honored practice of tenure for university faculty as a critical protection of (a) free inquiry, (b) open intellectual and scientific debate, (c) unfettered criticism of the accepted body of knowledge, as well as of university officials and actions, and (d) faculty governance. Academic institutions have a special need for practices that protect freedom of expression, since the core of the academic enterprise involves a continual reexamination of ideas. Academic departments and disciplines thrive and grow through critical analysis of practices, policies, conventions and theories. Throughout history, the process of exploring and expanding the frontiers of learning has necessarily challenged the established order, both internal and external to the academy. That is why tenure is so valuable: It is not merely protection for individual faculty members, but is also an assurance to society that the pursuit of truth and knowledge commands our first priority. Without freedom to question, there can be no freedom to learn.¹⁰

Tenure-Track and Non-Tenure-Track Positions - Tenure-track positions are ranks of assistant professor, associate professor, professor, distinguished professor, and University professor. Faculty appointed to clinical attending positions at the University of Arkansas for Medical Sciences, other faculty positions designated as clinical positions that exempt the faculty member from teaching and/or research responsibilities,¹¹ or other non-tenure-track positions approved by the President, may bear the designation of assistant professor, associate professor or professor¹² but in no event shall be considered in tenure-track positions and shall acquire no tenure rights by virtue of occupying such positions. Such non-tenure track positions shall be set forth in applicable promotion and tenure policies approved by the President; such policies may authorize term appointments beyond one year, but not to exceed five years, under merit-based campus procedures approved by the President.

Terminal Appointment - A terminal appointment is a final appointment, the expiration of which results in termination of an individual's employment.

Termination - Termination is the general term to describe severance of employment from the University. Termination may be by resignation, retirement, dismissal, non-reappointment, or expiration of appointment.

Year - Year will be either a fiscal year (July 1 through June 30 next) or an academic year (fall

¹⁰ **Comment:** This language is largely taken from The University of Texas Board of Regents' Rules and Regulations, Rule 31002, § 2, available [here](#).

¹¹ **Comment:** The term "clinical" varies in meaning across academic programs. For example, in legal education, clinical positions are often standard professor positions with the same teaching, research, and service responsibilities as classroom teachers. Those positions are entitled to—and are sometimes required to have under accreditation standards—all of the same rights, privileges, and obligations as classroom teachers. We presume that the reference here to "clinical" positions is meant to focus on employees at UAMS who are exempted from teaching and research and who instead focus exclusively on treating patients. We are of course open to making further changes here to make sure that different types of "clinical" positions are treated in the proper (and often mandatory) way.

¹² Solely at those institutions that do not offer tenure, the rank of distinguished or University professor may be awarded to non-tenured faculty who otherwise meet the qualifications for the rank as set out in Board Policy 470.1.

and spring semesters of the same fiscal year), unless otherwise designated.

II. Appointments

A. Faculty. The following principles shall apply to appointments to faculty positions:

1. General

Appointments shall not exceed one academic or fiscal year, except in the following circumstances: (1) term appointments beyond one year for non-tenure track faculty under procedures specifically established for that purpose as permitted in Section I (Tenure-Track and Non-Tenure Track Positions); or (2) appointments to faculty positions for summer school.

Recommendations for appointments to the faculty will be made by the departmental chairperson or equivalent after consultation with the faculty concerned, and subject to the approval of the dean, chief academic officer, and chief executive officer of the campus, who alone shall make the final recommendation for appointment. (See definition of appointment in Section I.)

Criteria and procedures for the initial appointment and successive appointment of all faculty members on a campus shall be adopted by each campus. The faculty of each campus, through its governance structure, shall initiate the process, on its own or at the request of the Chancellor or chief executive officer of the campus. The deans and chief academic officer of the campus shall then have an opportunity to give their advice regarding these criteria and procedures. These criteria and procedures must then be submitted to the Chancellor or chief executive officer of the campus and the President for approval. More detailed criteria and procedures may be adopted by the faculty and chairperson of each academic unit. These criteria and procedures must be submitted to the dean, the chief academic officer of the campus, the Chancellor of the campus, and the President for approval. Campus and unit criteria and procedures must be consistent with, and are subject to, this and other applicable University policies. If the President believe a policy adopted by a campus or unit is not consistent with University policy, the President shall have 60 days after the adoption by the campus or unit to indicate his or her objection. If the difference between the President and the campus or unit is not resolved within 60 days of the objection, the dispute shall be presented to the Board of Trustees for resolution.

An appropriate degree or professional experience is an essential qualification for appointment to positions at academic ranks.

Other important qualifications include experience in teaching, research, or other creative activity, and educational service at other colleges and universities or in non--academic settings.

2. Successive Appointments

Tenured faculty members have a right to a next successive appointment except for the reasons for termination of a tenured appointment given in Section I under the definition of tenure. Non-tenured faculty do not have a right to a next successive appointment, but may be offered an appointment after the expiration of a current appointment, provided that, in the case of tenure-track faculty, the appointment does

not extend the time in probationary status beyond the limits set in Sections IV.A.4 and IV.A.11. In the event that a non-tenured, tenure-track faculty member is not recommended for reappointment, the procedure described in Section IV.B. shall be followed. 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, unless the relevant accreditation standards governing the campus or academic unit mandate such a right.¹⁴

B. Administrative Appointments

Appointments to the position of dean are made by the chief executive officer or chief academic officer of the campus. Deans serve in that administrative position at the pleasure of the chief executive officer or chief academic officer. Appointments to the position of department head or chair, or as director of an academic program or center, are made by the Chancellor or chief executive officer (or his or her designee) following campus procedures developed through the campus governance process.¹⁵ Tenure may only be granted in faculty status and not in an administrative appointment.

III. Promotion

Promotion in academic rank shall be based primarily on the accomplishments of the individual while in the most recent rank. No minimum time in rank is required before a faculty member is eligible for promotion, nor is there a maximum time an individual may remain in a given rank except as limited by Sections IV.A.4. and IV.A.11. However, individual accomplishments and potential for continued value to the University are required for promotion. No faculty member in a tenure-track position shall be promoted to the rank of associate professor or higher without also being granted tenure.

Recommendations for promotion shall be initiated as provided for in departmental, unit, or campus rules.¹⁶ Faculty members who are being considered for promotion shall be given the

¹⁴ **Comment:** This is an example of where the Counsel's Office's failure to seek sufficient levels of feedback has led to a critical problem. In legal education, clinical and legal writing positions are often not tenure-track positions. However, the accreditation standards for law schools provide as follows: "A law school *shall* afford to full-time clinical faculty members a form of security of position *reasonably similar to tenure* . . ." American Bar Association Standards and rules of Procedure for Approval of Law Schools, Std. 405(c) (emphasis added), available [here](#). Likewise: "A law school *shall* afford legal writing teachers such security of position . . . as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction . . . and (2) safeguard academic freedom." *Id.* at 405(d) (emphasis added). Accordingly, to remain in compliance with standard 405, the law schools at UAF and UALR *must* grant non-tenure track clinical and legal writing faculty *some* right to continuous employment. We suspect that other university departments face comparable accreditation standards. That is why we added the language in blue.

¹⁵ **Comment:** As pointed out by the faculty senate at UALR, a majority of four-year institutions grant the faculty a much larger role in the selection of department heads than as proposed by the Counsel's Office. See Cipriano, R., & Riccardi, R., The department chair: A decade-long analysis. *Department Chair*, 28 (1), 10-13 (2017). And UALR follows such a practice. Accordingly, we adopted the language recommended by the UALR faculty senate to reflect this approach.

¹⁶ **Comment:** This change is necessary because, on some campuses and in some units, promotion is initiated by someone other than the chairperson. For example, at our law school, the process is initiated by the candidate for promotion submitting an application.

opportunity to submit relevant material documenting his or her performance¹⁷ which they believe will facilitate consideration of their competence and performance. Each campus shall provide for the inclusion of peer¹⁸ evaluation in the consideration of faculty nominated for promotion.

Criteria and procedures for promotion to each rank on a campus, including an appeals procedure for those desiring reconsideration of a negative recommendation, shall be adopted by each campus. The faculty of each campus, through its governance structure, shall initiate the process, on its own or at the request of the Chancellor or chief executive officer of the campus. The deans and chief academic officer of the campus shall then have an opportunity to give their advice regarding these criteria and procedures. These criteria and procedures must then be submitted to the Chancellor or chief executive officer of the campus and the President for approval. More detailed criteria and procedures may be adopted by the faculty and chairperson of each academic unit. These criteria and procedures must be submitted to the dean, the chief academic officer of the campus, the chief executive officer of the campus, and the President for approval. Campus and unit criteria and procedures must be consistent with and are subject to this and other applicable University policies. If the President believe a policy adopted by a campus or unit is not consistent with University policy, the President shall have 60 days after the adoption by the campus or unit to indicate his or her objection. If the difference between the President and the campus or unit is not resolved within 60 days of the objection, the dispute shall be presented to the Board of Trustees for resolution.

In addition to any criteria established by the campus concerning research, teaching, and service, all candidates for promotion and tenure are expected to be in substantial compliance with material applicable University policies and legal requirements that significantly relate to the applicant's ability to engage in teaching, research, and service.

IV. Tenure, Non-reappointment, and Dismissal

A. Tenure

1. The granting of tenure is a finding that the individual has completed successfully his or her probationary period and has become a permanent member of the University community. As such, he or she acquires additional procedural rights in the event that dismissal proceedings may be brought against him or her.
2. Only full-time faculty with ranks of assistant professor, associate professor, professor, distinguished professor, and University professor are eligible to be awarded tenure. An assistant professor is eligible to seek tenure accompanied by a concurrent promotion to associate professor. Faculty and other employees with the following titles are ineligible to be awarded tenure: clinical (where the professor is exempted from teaching and/or research responsibilities), research, teaching, adjunct, visiting, professor of practice or executive in residence faculty, research associates or research assistants, graduate associates or graduate assistants, instructors, advanced instructors, senior instructors, lecturers, and master lecturers. Faculty appointed to clinical attending positions at the University of Arkansas for Medical Sciences, other faculty positions designated as clinical positions where the professor is exempted from teaching and/or

¹⁷ **Comment:** Changes were made here to mirror the helpful changes suggested by the Counsel's Office below regarding tenure materials. See IV.A.6.

¹⁸ "Peer" shall be defined by each campus as part of its policies governing promotion and tenure.

research responsibilities, or other non-tenure track positions approved by the President, although designated assistant professor, associate professor or professor, are ineligible to be awarded tenure. Academic administrators not appointed to a teaching or research unit may be awarded academic rank in addition to their administrative titles, with the concurrence of the faculty and administrative officer of the academic unit in which such rank could lead to tenure, in which case they may acquire tenure as faculty, but not as administrators. Other administrators and staff whose primary duties do not involve teaching regularly scheduled credit-hour courses, but who occasionally teach courses are not eligible for tenure and do not acquire credit for service toward tenure for such teaching activities.

3. Tenure rights apply to the area or areas of the faculty member's expertise and in the academic unit(s) in which his or her position is budgeted (examples: Department of English, (not College of Arts and Sciences), UAF; School of Law, UALR; Library, UAM; Departments of Music and Education, UAPB). Tenure rights are confined to a particular campus and are not applicable on another campus of the University of Arkansas. However, the reorganization of departments or units within a campus shall not in any way alter tenure rights, unless the reorganization is part of a financial exigency retrenchment or an academic planning retrenchment, initiated pursuant to, and complying in full with, Board Policy 405.5. Tenure and tenure rights are not awarded in a named or endowed chair or professorship or in any administrative appointment.
4. The probationary period may not extend beyond seven years, except as specifically provided herein, or as otherwise required by law. An initial appointment of one-half year (academic or fiscal) or less will not be included in the probationary period. If more than one-half of any year is spent in approved leave of absence without pay status, that year shall not apply toward the probationary period.

During the first six years of the probationary period, a tenure-track faculty member may request, for reasons set forth below, that the probationary period be suspended by one (1) year. The reasons for such a request will generally be the same as required under the Family and Medical Leave Act (FMLA) as amended, and are as follows: (a) the birth of a child to the faculty member or spouse and the child's care during the first year; (b) the adoption of a child by the faculty member or placement in the faculty member's home of a foster child within the first year of placement; (c) the care of the faculty member's spouse, child, or parent with a serious health condition; (d) the serious health condition of the faculty member that makes the faculty member unable to perform the functions of his or her job; (e) a qualifying exigency arising from the military deployment of an employee's spouse, son, daughter, or parent to a foreign country; or (f) to care for a covered service member with a serious illness or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

On the relatively rare occasion that an additional one-year extension is requested, such requests will be considered on a case-by-case basis. However, the faculty

member shall receive any leave to which he or she is entitled under the FMLA.¹⁹

A request to suspend the probationary period for these reasons must be made at the time of the qualifying event and shall first be directed in writing to the 405.1 department chair for approval and must also be approved by the dean (or approved through other established administrative channels), the vice chancellor for academic affairs, the chancellor or chief executive officer of the campus, and the president, under such procedures as the president shall approve. These procedures may include, but shall not be limited to, the manner in which the faculty member's duties and salary, if any, are determined during such year, the information which is required to substantiate a request and the extent to which a faculty member's performance during such year may be considered in awarding tenure. A faculty member who has been notified that he or she will not be reappointed may not subsequently request to suspend the probationary period under this policy.

5. Upon the recommendation of the department chair,²⁰ after consultation with the departmental faculty and with concurrence of the dean, the vice chancellor for academic affairs, and the chancellor, new appointees at the rank of associate professor, professor, distinguished professor, or university professor may be granted immediate tenure. Immediate faculty tenure may also be granted, under this same procedure, in connection with the hiring of senior leadership positions.
6. Recommendations for tenure shall be initiated as provided for in departmental, unit, or campus rules.²¹ Faculty members who are in tenure-track positions who are being considered for tenure shall be given the opportunity to submit relevant material documenting his or her professional performance which they believe will facilitate consideration of their accomplishments and potential.
7. Criteria and procedures concerning the awarding of tenure on a campus, including an appeals procedure for those desiring reconsideration of a negative recommendation, shall be adopted by each campus. The faculty of each campus, through its governance structure, shall initiate the process, on its own or at the request of the Chancellor or chief executive officer of the campus. The deans, and the chief academic officer of the campus shall then each have an opportunity to give their advice regarding these criteria and procedures. These criteria and procedures must be submitted to the Chancellor or the chief executive officer of the campus and the President for approval. More detailed criteria and procedures may be adopted by the faculty and chairperson of each academic unit. These criteria and procedures must be submitted to the dean, the chief academic officer of the campus, the Chancellor or chief executive officer of the campus, and the President for approval. Campus and unit criteria and procedures must be consistent with and are subject to this and other applicable university policies. If

¹⁹ **Comment:** Concerns were raised about this provision in the UAF Faculty Senate letter and elsewhere. The language in the Counsel's Office's second draft is somewhat better. And that is what we largely used here. But if faculty believe this language is still not sufficient, please let us know. We are more than willing to make changes to this language.

²⁰ In Schools without departments and department chairs, refer to footnote 1.

²¹ **Comment:** As with promotion, this change is necessary because on some campuses and in some units, the tenure process is initiated in other ways, such as by application by the candidate.

the President believe a policy adopted by a campus or unit is not consistent with University policy, the President shall have 60 days after the adoption by the campus or unit to indicate his or her objection. If the difference between the President and the campus or unit is not resolved within 60 days of the objection, the dispute shall be presented to the Board of Trustees for resolution.

8. The President will not consider awarding tenure to a faculty member in a probationary status without the prior recommendation of the faculty member's departmental faculty, chairperson, dean, chief academic officer, and the chief executive officer of the campus concerned.
9. A faculty member, on attaining tenure, shall receive a notice from the chief executive officer of the campus affirming the acquisition of such rights. No person shall lose tenure rights by acceptance of leave-of-absence approved pursuant to University policy, or by appointment to a University of Arkansas administrative position.
10. Tenure becomes effective on July 1 of the next fiscal year.
11. Each year at the meeting at which promotions are considered by the Board of Trustees, the President shall inform the Board of the names of each person awarded tenure during the preceding twelve months, and shall indicate for each such individual the rank and date of appointment to the University faculty.
12. Subject to any extension of the probationary period under IV.A.4., an individual in a tenure-track position who was not awarded tenure with any of the first six academic year or fiscal year appointments must be evaluated as specified in Section IV.A.6. during the sixth appointment. If he or she is not approved for tenure, the seventh appointment shall be a terminal appointment and the individual may not be considered for tenure during the seventh appointment.
13. A faculty or staff member holding tenure rights may properly be dismissed for cause only if all substantive and procedural requirements set forth in this policy have been complied with. A tenured person notified of dismissal for reasons of unsatisfactory performance will be given notice of dismissal twelve months prior to termination of employment. Dismissal on other grounds may happen immediately after the conclusion of all procedures prescribed in Section IV.C. or in Section I under the definition of cause. This provision does not create an award of severance pay, but assumes the full performance of University responsibilities and duties assigned for the period between dismissal notice and final termination. Termination of a faculty member's employment because the faculty member has abandoned his or her job duties and accepted another position, shall not constitute dismissal under this policy.
14. No faculty member shall be dismissed, otherwise disciplined, or denied reappointment in violation of the following principles of academic freedom, but the observation of the limitations stated herein is the responsibility of each faculty or staff member. The University shall maintain, encourage, protect, and promote the faculty's full right to academic freedom in teaching, research and creative

activities, and professional, university, and employment-related service.²² Moreover, mere expressions of any opinion on any subject whatsoever (including, but not limited to, teaching, research, service, faculty governance, University operations, matters external to the University, and matters of public or private concern),²³ offered in any forum or medium (such as during faculty meetings, in the press, to government officials, to members of the public, or in social media), however vehemently expressed and however controversial such opinions may be, shall not constitute cause for dismissal or any other form of discipline. The threat of dismissal or of any other form of discipline shall not be used to restrain faculty members in their exercise of the right to academic freedom or of any legal rights, including, but not limited to constitutional rights.

- a. The faculty member is entitled to full freedom in research and in the publication of results, subject to the performance of his or her other academic duties, but personal research for pecuniary return requires prior approval by the appropriate University authorities and must be in accordance with Board Policy 450.1.
- b. The faculty member is entitled to freedom in the classroom in discussing the subject of the course and any matters or issues related in any way to the course, including, but not limited to, (1) matters of academic success and failure in general, (2) the current and future relevance of the course, course of study, or academic studies in general, and (3) the students' employment opportunities, future success, and life choices, but should not teach material wholly inappropriate or wholly unrelated to the course or course of study, and should maintain a reasonable academic learning environment. Given that this standard could be abused to violate academic freedom rights, all disputes as to whether material is wholly inappropriate or wholly unrelated to the course, and whether an academic learning environment is maintained, shall be resolved through a peer-review process determined by each campus, with the reviewing panel being constituted by full-time faculty not from the faculty member's own department.
- c. The University faculty member is a citizen, a member of a learned profession, and a member of an educational community. Speaking or writing as a citizen, a faculty member, or both, the faculty member is free from institutional censorship or discipline. However, as a person of learning and as a member of an educational community, the faculty member has a responsibility for awareness that the public may judge the profession and the institution by his or her utterances. Hence, it is recommended that faculty aspire to be accurate, exercise good judgment

²² **Comment:** Compare University of Florida Collective Bargaining Agreement, available [here](#), at § 10.1 (“The University and UFF shall maintain, encourage, protect, and promote the faculty’s full academic freedom in teaching, research/creative activities, *and professional, university, and employment-related public service.*”) (Emphasis added.)

²³ **Comment:** Compare University of Florida Collective Bargaining Agreement, available [here](#), at § 10.2 (“ . . . a faculty member shall be free to discuss all relevant matters in the classroom, to explore all avenues of scholarship . . . *to speak freely on all matters of university governance* . . .) (emphasis added).

and appropriate restraint, show respect for the opinions of others, and indicate that they are not spokespersons for the institution.

B. Non-Reappointment

These procedures apply to non-tenured faculty members who are in tenure-track positions who are not offered a next successive appointment for the period following the expiration of a current appointment. These procedures do not apply to faculty in clinical attending positions at the University of Arkansas for Medical Sciences bearing the designation of assistant professor, associate professor or professor.

The appointment of a non-tenured faculty member may be terminated effective at the end of the appointment period, at the option of either the individual or the University.

A chairperson, dean, or chief academic officer who decides not to recommend a non-tenured faculty member for reappointment shall notify him or her in writing in accordance with the following schedule and shall enclose a copy of this section with the letter of non-reappointment:

For the first year of service, not later than March 1, if the appointment expires at the end of that academic year; or at least three months in advance of its termination if the appointment expires at some other time during the year.

For the second year of service, not later than December 15, if the appointment expires at the end of that academic year; or at least six months in advance of its termination if an appointment expires at some other time during the year.

After the second year of service, at least twelve months before the expiration of the terminal appointment. The terminal appointment will be for the academic or fiscal year, according to the appointment last held by the individual.

The individual, upon being notified that he or she will not be reappointed, may request, within ten working days after receipt of the notice, a meeting with the dean of the school or college, or other appropriate administrators. The meeting shall be held within five working days, or as soon as practical thereafter. Following the meeting with the dean, if the dean reaffirms the recommendation of nonreappointment, within ten working days the employee may request a meeting with the chief academic officer of the campus.²⁴ Within ten working days following the meeting with the chief academic officer, or as soon as possible thereafter, the chief academic officer will make the final decision on any request that the decision be reconsidered.

Department chairpersons and other employees of that campus may be requested to participate in their individual capacities in the interviews by the individual concerned, by the chief academic officer, or by the dean or other appropriate administrator.

In considering the matter, the dean and chief academic officer shall consult with other University employees with relevant knowledge regarding the individual's performance. If the individual does not request these interviews within the time limits stated above after receipt of notification of non-reappointment, the matter shall be considered closed.

²⁴ For purposes of the Clinton School of Public Service, the employee may request a meeting with the Vice President of Academic Affairs.

C. Dismissal

This section applies to all tenure-track or tenured faculty members. Dismissal of non-tenure track faculty and other personnel is addressed in Board of Trustees Policy 405.4.

1. Preliminary Proceedings

- a. Except in circumstances where there are significant and documented personal safety concerns,²⁵ when a chairperson or dean has reason to consider a decision to dismiss a tenured or tenure-track faculty member prior to the expiration of an appointment, the chairperson or Dean shall first discuss the matter with the faculty member privately. After the discussion, if the decision of the chairperson or dean is to recommend dismissal, he or she shall prepare a statement of the grounds constituting the cause for dismissal and forward it through the chief academic officer to the chief executive officer on the campus, with a copy to the faculty member. If there are significant and documented personal safety concerns, the private meeting can be bypassed and the chairperson or dean can proceed with providing the statement of grounds for dismissal through the chief academic officer to the chief executive officer of the campus, with a copy to the faculty member. If the chief executive officer of the campus, after considering the recommendation of the chairperson or dean, decides that a proceeding should be undertaken, action shall be commenced according to the procedures which follow.
- b. If requested by either party, or if directed by the chief executive officer, the parties shall engage in informal discussions to determine whether an acceptable resolution of the matter is possible, with such discussions to take place prior to the chief executive officer deciding that a proceeding should be undertaken per section IV.C.1.a. The discussions shall include the assistance of one or more faculty selected for this purpose and/or counsel if requested by the faculty member, the chairperson or Dean, the chief academic officer, or the chief executive officer.

2. Hearing Procedures

The formal proceedings shall be initiated by a communication addressed to the individual by the chief executive officer of the campus informing him or her of the dismissal and the grounds for it, and that, if he or she so requests, a hearing to recommend whether his or her employment by the University shall be terminated on the grounds stated, will be conducted at a specified time and place by a faculty committee constituted as described in Section 4 below. Sufficient time shall be allowed to permit the individual to prepare a defense and to permit the University to prepare the prosecution. The individual shall be informed in detail, or by reference to published regulations, of the procedural rights to which he or she is entitled, including the right to advice of counsel.

²⁵ Whether the faculty member has a license to carry a firearm on campus shall not be considered in this evaluation.

The individual shall indicate whether he or she wishes a hearing and, if so, shall file with the chief executive officer of the campus, within two weeks of the date of the mailing of the communication by the chief executive officer of the campus, an answer to the statement of grounds for the proposed dismissal.

If the individual does not request a hearing, no further action shall be taken. Further, at the request of the individual, the proceedings provided for herein may be terminated at any time after the request for a hearing on written notice to the chief executive officer of the employee's acquiescence in the dismissal. Similarly, the administration may drop dismissal proceedings at any stage.

3. Suspension

Suspension of the individual from normal duties or reassignment to other duties during the proceedings will occur only if an emergency exists which threatens physical harm to individuals other than the faculty member who is the subject of the dismissal or to the University. Determination of an emergency shall be made by the chief executive officer, in consultation with the President, and shall be reviewed by the Board of Trustees. Such suspension shall be with pay. This pay provision does not preclude disciplinary suspension without pay, if otherwise explicitly authorized by University policy.

4. Hearing Committee

The faculty of each campus shall establish a systematically rotated panel of faculty from which hearing committees can be drawn. To hear a particular case, a committee, selected from the panel in accordance with campus policies, shall be composed of faculty members of departments not involved in the dismissal.

Upon receipt from the chief executive officer of the campus of a copy of the statement of grounds for dismissal, accompanied by the individual's answer thereto, the chairperson of the hearing committee shall conduct hearings and recommend a course of action as provided in Section IV.C.5.

5. Committee Proceedings

The committee shall proceed by considering, before the time of the hearing, the statement of grounds for dismissal already formulated and the individual's written response.

In addition to the members of the committee, only the person requesting the hearing and his or her representative, the chief executive officer of the campus or his or her designee, and a representative, and witnesses called by the committee are permitted to attend the hearing.

Charges contained in the initially formulated statement of grounds for dismissal may be supplemented at the hearing by evidence of new events occurring after the initial communication to the individual which constitute new or additional cause for dismissal. If such supplementary charges are adduced, the committee shall provide the individual with sufficient time to prepare his or her defense.

The chief executive officer of the campus shall have the option to attend or not to attend the hearing, and he or she may select a designee to assist in developing and

presenting the case. The chief executive officer or designee may be assisted by a representative in developing and presenting the case and in other matters related to the hearing.

The committee shall determine the order of proof and shall supervise the questioning of witnesses. The committee may decline to accept unnecessarily duplicative material or unduly repetitive testimony.

The individual shall have the aid of the committee when needed in securing the attendance of witnesses. The individual or his or her representative and the chief executive officer of the campus (or designee) or his or her representative shall have the right within reasonable limits to question all witnesses who testify orally.

The committee will use its best efforts to provide an opportunity for those involved to confront all witnesses. But where this cannot be achieved despite the efforts of the hearing committee and the University, the identity of such non-appearing witnesses, and any written evidence they may have furnished, shall be disclosed to all interested parties during the hearing. However, written testimony or statements shall be considered by the committee only if the witness has been fully deposed by both sides and the hearing committee deems the written testimony sufficiently reliable to warrant denying the faculty member his or her right to confrontation at the hearing. The University's desire not to burden a potential witness shall not be a sufficient reason to refuse to produce a witness, and a witness's unwillingness to appear before the hearing committee shall not be sufficient grounds to justify a non-appearance before the committee. If the witness does not appear in person before the committee for either of those two reasons, then written testimony from the witness shall not be permitted.

. All evidence presented to the committee shall be duly recorded. These are not legal proceedings and formal rules of court procedure generally need not be followed. But the committee shall exercise reasonable efforts to protect the rights of the parties in the reception of evidence. And no written or oral testimony shall be presented other than through witnesses who observed first-hand the events about which they are testifying. Likewise, third-party written or oral testimony repeating statements made by others who observed events first-hand shall not be presented.

The proceedings shall be recorded digitally or via court reporter, and witnesses shall be sworn.²⁶ The ultimate objective of the hearing is consideration of the matter via a fair and just process that results in a fair and just outcome.

6. Consideration by Hearing Committee

The committee shall formulate its recommendation in private, on the basis of the hearing. Before doing so, it shall give opportunity to the individual and the chief

²⁶ **Comment:** Virtually all of the redlining in this document reflects changes that either the Counsel's Office or we recommend be made to existing 405.1. However, here, and in a few places noted below, the redline reflects both new language proposed by the Counsel's Office *and* changes we recommend be made to the Counsel's Office's *new language*. We have done this in order to not misrepresent the differences between our position and the position of the Counsel's Office. By the way, we can think of no legitimate reason why witnesses would *not* be sworn.

executive officer of the campus or his or her designated representative to make oral statements before it. If written arguments are desired, the committee may request them. The committee shall issue its conclusions promptly and shall include explicit findings with respect to each of the grounds for removal presented.

The chief executive officer of the campus and the individual shall be notified of the conclusions in writing and a copy of the record of the hearing shall be available to both parties.

A copy of the record of the hearing and the conclusions of the hearing committee shall be furnished to the faculty member, his or her representatives, and the President of the University. If the committee votes in favor of the faculty member and against dismissal, then the committee's decision shall be binding as to the campus, all officials of the campus, and the President. The President may then appeal that decision to the Board of Trustees, which shall only overturn the committee if the Board finds the decision to be clearly erroneous. If the committee votes in favor of dismissal, the President may affirm or reverse that decision if the President's decision is clearly supported by the evidence. Any decision of the President or the Board of Trustees shall be transmitted to the chief executive officer of the campus and to the individual involved.

7. Consideration by Board of Trustees

If, the matter is subject to review by the Board as described above, the President shall transmit to the Board of Trustees the full report of the hearing committee, stating its conclusions and his or her own decision or opinion. The review shall be based on the record of the previous hearing, accompanied by opportunity for argument, oral or written or both, by the principals at the hearing and/or by their representatives. To overrule a committee decision in favor of the faculty member or a decision by the President in favor of the faculty member, the Board of Trustees must vote to overrule the decision by two-thirds of all Board members present at the Board meeting where the matter is considered. The decision of the Board of Trustees on review shall be the final administrative, University review. It shall be communicated to the President and through him or her to the person involved.

If the decision of the Board is that the faculty member is to be terminated, and the termination is based on unsatisfactory performance, the termination becomes effective at the conclusion of the twelve-month period from the date of the initial notice of termination. If that period has elapsed, or if the termination is based on other grounds of cause, the termination becomes effective immediately following the Board's decision.

V. Annual Review

An annual review of the work and status of each faculty member shall be made on the basis of assigned duties and according to criteria and procedures required herein. Each year, the chief academic officer of each campus shall (a) require of each chairperson, Dean, or other unit head, an assessment of the performance of all faculty members in the academic unit, including an identification of all faculty development needs and of all problems in performance of

faculty, and (b) in consultation with the Chancellor or chief executive officer, take steps designated to insure compliance on that campus with all criteria and procedures for annual reviews.

A. Tenured and Tenure-Track Faculty

The annual review of each faculty member shall provide the primary basis for the chairperson's, Dean's, or other unit head's recommendations relating to salary, ²⁷ successive appointment, non-reappointment, and dismissal. Furthermore, this review is to provide guidance and assistance to all faculty in their professional development and academic responsibilities in the areas of teaching, scholarly and creative activity, and service.

Criteria and procedures for an annual review of all tenured and tenure-track faculty shall be adopted by each campus. The faculty, through its governance structure, shall initiate the process, on its own or at the request of the Chancellor or chief executive officer of the campus. The deans and chief academic officer of the campus shall then have an opportunity to give their advice regarding these criteria and procedures. These criteria and procedures must then be submitted to the Chancellor or chief executive officer of the campus and the President for approval. More detailed criteria and procedures may be recommended by the faculty and chairperson of each academic unit. These criteria and procedures must be submitted to the dean, the chief academic officer of the campus, the Chancellor of the campus, and the President for approval. Campus and unit criteria and procedures must be consistent with and are subject to this and other applicable university policies. If the President believe a policy adopted by a campus or unit is not consistent with University policy, the President shall have 60 days after the adoption by the campus or unit to indicate his or her objection. If the difference between the President and the campus or unit is not resolved within 60 days of the objection, the dispute shall be presented to the Board of Trustees for resolution. All procedures for annual reviews adopted by a campus shall include provision for and details for implementation of the following:

1. Within a reasonable time after the beginning of the first appointment of each faculty member: written notification to the faculty member of the criteria, procedures, and instruments currently in use in assessing performance;
2. Within a reasonable time after the beginning of each academic year: written notification to each faculty member of that year's assignments, review schedule, and the criteria, procedures, and instruments to be used that year;
3. Reasonable opportunity for each faculty member to submit any relevant material documenting his or her professional performance to be considered in the annual

²⁷ **Comment:** Annual reviews are only one piece of promotion and tenure considerations. The materials submitted by the faculty member seeking promotion or tenure and various reviews and other materials gathered by the college or unit, including materials gathered by any promotion and tenure committee, also play major roles. In addition, the procedures governing promotion and tenure decisions are set forth in earlier sections. This section is primarily concerned with annual reviews and determinations that relate directly to annual reviews. Thus, rather than following the Counsel's Office's recommendation that the word "generally" be inserted before the phrase "provide the primary basis," it is best to simply delete promotion and tenure from the list of items for which annual reviews provide the primary basis for recommendations.

review;

4. Peer evaluation, which shall be made fully available to the faculty member and those conducting the review;²⁸
5. Student evaluation of teaching, which shall be made fully available to the faculty member and those conducting the review;
6. Prior to the chairperson's making a recommendation in any year: (a) a meeting between the chairperson and faculty member to discuss all issues relating to the review, (b) the providing to that faculty member a copy of the chairperson's tentative recommendation(s), and (c) reasonable opportunity for the faculty member to submit a written response to be forwarded to each subsequent level of review;
7. As long as a faculty member is employed by the University and for at least three years thereafter: maintenance of annual review forms, recommendations, associated narratives, and all other relevant material used in or resulting from the annual reviews of that faculty member;
8. Availability to each faculty member of all writings used in or resulting from the annual reviews of that faculty member.
9. In order to maintain 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 performance. Effective July 1, 2019, campus procedures shall require that any tenured faculty member who receives (a) two overall unsatisfactory reviews in sequence, or (b) three overall unsatisfactory reviews in five years, shall be placed on a professional development plan. The professional development plan shall be developed by the faculty member's academic unit, the faculty member, and three faculty members outside the faculty member's academic unit, and shall include remedial measures designed to address the overall performance deficiencies, with the expectation that substantially carrying out the plan will lead to a satisfactory performance rating or significant improvement in performance. The plan shall cover up to three years with the possibility of a one year extension. During the period of the professional development plan, if the faculty member receives two additional overall unsatisfactory reviews, 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.²⁹ However, an unsatisfactory review may not be awarded during the professional development plan unless a committee jointly agreed to by the academic unit and the faculty

²⁸ **Comment:** The changes in items 4 & 5 are excellent and we commend the Counsel's Office for those changes in particular. Our additional suggestions for language here are only stylistic.

²⁹ **Comment:** What we have done here is take the standards as they currently exist at UAF, see [here](#) (setting out UAF Academic Policy 1405.11), and UALR, see [here](#) (setting out UALR Policy 403.3), and combined them with some of the language proposed by the Counsel's Office. The Counsel's Office has not presented a *single piece of evidence*, systematic or anecdotal, suggesting that the standards currently in effect at UAF and UALR are insufficient. Accordingly, there should be no change in the standard by which unsatisfactory performance leads to a dismissal.

member under review, made up of two tenured faculty from the faculty member's unit and three faculty members from other units, decides by a two-thirds vote that the faculty member's overall performance is unsatisfactory. The faculty member and the unit shall have the opportunity to present relevant materials to the committee for the making of its decision.³⁰

a. "Unsatisfactory" performance is performance that demonstrates a lack of professional competence by the faculty member.³¹ Each campus shall develop substantive criteria that implement this standard and shall include those criteria in the campus policies governing faculty annual reviews. However, campuses may allow individual units or departments to develop their own substantive criteria for determining unsatisfactory performance because academic disciplines frequently vary in their basic professional standards. Each campus (or unit or department) shall also develop rules that govern the procedures for conducting annual reviews, including procedures that provide the faculty member with a right to appeal a determination that the faculty member's performance was unsatisfactory.³²

B. Non-Tenure Track Faculty. Faculty who are not in tenure-track positions shall be evaluated by procedures adopted by each campus. Such procedures shall provide guidance and assistance to faculty in their professional development and academic responsibilities.

VII. Non-Retroactivity.

A. Tenured Faculty. Faculty members granted tenure prior to the adoption of this version of Board Policy 405.1 are entitled, under constitutional and contract law (among other reasons), to be governed in full by the version of 405.1 in effect they were awarded tenure. Accordingly, this policy expressly recognizes and further provides that all faculty granted tenure prior to the adoption of this version of 405.1 shall be governed in full by the version of 405.1 in effect when they were awarded tenure. Each faculty member tenured prior to the effective date of this version of 405.1 is hereby also granted the right to choose whether to be governed by this version of 405.1 or the version in effect when they were tenured at the point in time that the University seeks to apply a provision of 405.1 to the faculty member.

B. Untenured, Tenure-Track Faculty. Each untenured, tenure-track faculty member who

³⁰ **Comment:** In some units or colleges, annual reviews are conducted by a single supervisory individual. This may be appropriate for purposes of salary raises, but it is not appropriate for purposes of revoking tenure. Accordingly, once the faculty member is put on a professional development plan, a committee of faculty, comparable to the promotion and tenure committee of a unit or college, should be involved in the annual review of the faculty member. Only if that committee determines that the faculty member's performance is unsatisfactory may the annual review officially designate the faculty member as unsatisfactory for the year. Note that this is consistent with best practices as recommended by the AAUP. *See* Post-tenure Review: An AAUP Response (1999), available [here](#) (providing that "faculty should also conduct the actual [post-tenure] review process.").

³¹ **Comment:** The AAUP recommends that this be the standard for abrogation of tenure for inadequate performance. *See* Post-tenure Review: An AAUP Response (1999), available [here](#).

³² **Comment:** We have borrowed from the helpful language suggested by the Counsel's Office in crafting this provision. But we felt that our alterations were too significant to put them in redline form. Instead, we are treating this as an original recommendation by us.

received his or her notice of appointment prior to the effective date of this version of Board Policy 405.1 shall be governed in full by the version of 405.1 in effect when they received their notice of appointment. Each faculty member who received their notice of appointment prior to the effective date of this version of 405.1 is hereby also granted the right to choose whether to be governed by this version of 405.1 or the version in effect when they received their notice of appointment at the point in time that the University seeks to apply a provision of 405.1 to the faculty member.

_____, 2018 (Revised)
October 2, 2001 (Revised)
September 18, 1998 (Revised)
August 11, 1998 (Corrected)
June 6, 1997 (Revised)
April 25, 1997 (Revised)
September 16, 1994 (Revised)
June 16, 1989 (Revised)
January 23, 1987 (Revised)
September 17, 1982 (Revised)
June 18, 1982 (Revised)
February 8, 1980 (Revised)
April 20, 1962, and Revisions