

Memorandum

TO: UA System Chancellors, Chief Academic Officers, and Faculty/Staff
Representatives

FROM: UA System Administration

RE: Summary of Revisions to Board Policy 405.5

DATE: March 7, 2024

The following is a commentary on proposed amendments to Board Policy 405.5 - *Retrenchment*. As part of the ongoing process to revise Board of Trustees and UA System policies to align them with current law and practice, the Office of General Counsel, in consultation with the Office of Academic Affairs, has reviewed and recommended certain revisions to policy with the goal of providing clarity surrounding the retrenchment process and ensuring compatibility with other Board Policies regarding employment. **This is a follow-up draft of the policy that was produced after meetings with UA System faculty and staff representatives in early February. A red-lined version of the revised draft is enclosed.**

Purpose: Footnote No. 1 has been added in the purpose statement to indicate retrenchment does not apply to the Arkansas Archeological Survey, the Arkansas School for Mathematics, Sciences, and the Arts, and the Criminal Justice Institute. This allows removal of language elsewhere in the policy addressing units without governance structures. This clarifies that any campus undergoing retrenchment will include the campus governance structure in the process.

Applicability: The current policy provides that it does not limit the President, Chancellor, and the Vice President for Agriculture’s ability to terminate staff and faculty under Board Policy 405.4. The OGC recommends adding that the policy does not limit the authority of the campus to terminate employees pursuant to not only Board Policy 405.4 but also Board Policy 405.1 and “other applicable policies.” This revision ensures consistency with other policies on termination.

Financial Exigency Retrenchment:

Section IV.A.1: The new draft requires the Chancellor or Chief Executive Officer to propose a financial exigency retrenchment supported with “budget summaries and projections and other appropriate documentation.” The reference to budget summaries and projections was added back into the policy based on feedback from faculty/staff representatives. Additionally, in this section and others throughout the policy, governance “body” is replaced with “structure” to align with the proposed amendments to Board Policy 100.4 regarding campus governance.

Section IV.A.2: The current policy provides that “academic administrative personnel” and a

committee appointed by the governance body shall review the financial exigency proposal. The revised draft replaces “academic administrative personnel” with “appropriate administrators.” The revision adds symmetry with the language on academic planning retrenchment and provides for input from individuals with financial expertise. **The sentence indicated committee evaluation does not apply to a campus with no governance body was removed considering footnote No. 1.**

Section IV.A.4: Based on feedback from faculty/staff “shall” was reinserted rather than “may”. “The Board of Trustees *shall* certify a bona fide financial exigency...”

Section IV.B.2: Language was added to make clear that the committee referenced in this section is the same as the committee in IV.A.2. Also, the last sentence was modified to make clear that both the administrators and the campus committee should examine nonacademic areas and programs for possible budget reductions or retrenchment.

Section IV.B.3: The current policy provides that “each affected academic dean or administrative officer of nonacademic areas shall be responsible for recommending programs to be retrenched and the number of personnel affected in accordance with the criteria and procedures established by the appropriate campus governance body.” The revised draft changes this language to: “in accordance with criteria and procedures established by this policy and the applicable campus policy (if any) previously adopted by the campus governance structure and approved by the President.” The revision is consistent with other board policies requiring President approval of certain campus policies and provides a process for campuses that may not have established criteria and procedures.

Section IV.B.5: The current policy provides a minimum 30-day termination notice to a nonexempt employee and a 60-day termination notice to an exempt employee. The revised version provides a 60-day notice of termination to tenured, tenured-track, and clinical or other non-tenured track faculty with a multi-year appointment. For all other employees, the campus notification period should be in accordance with Board Policy 405.4. This revision ensures consistency with other board policies on termination.

Academic Planning Retrenchment:

Section V.A.2: In the new draft, governance “body” is changed to “entity” to reflect that this process generally will involve the governance entity representing faculty. This “entity” language is consistent with proposed revisions to Board Policy 100.4 on governance. The process here is different from Section IV. where the committee “is representative of all campus constituencies” because the focus of Academic Planning Retrenchment is academics (institutional mission, substantial program changes, and major reallocations of resources for academic, research, or support services). The deletion or suspension of a program, typically, is an academic decision,

which is why Board Policy 620.1 requires “[a] recommendation for the deletion, suspension, or significant expansion or modification of any program . . . shall be reviewed by the faculty of the program involved, the administrative head of the college, school, or other unit of the program involved, the campus governing body, the chief academic officer, and the Chancellor.” This process ensures alignment among Board Policies.

Section V.A.4. “may” has been changed to “shall” based on faculty/staff feedback.

Section V.B.2: The current policy provides that all (a) all faculty terminated under academic planning retrenchment shall be given notice pursuant to Board Policy 405.1, Section IV.B. and (b) all staff receive notice in accordance with Board Policy 405.4. The revised version provides that (a) only tenure-track and tenured faculty receive notice pursuant to Board Policy 405.1 and (b) all other employees receive notice in accordance with Board Policy 405.4. This revision ensures consistency with other board policies on terminations.

Processes Applicable to all Retrenchments:

Section IV.A: The current policy states that “within a given department, a faculty member with tenure must be retained over one who does not have tenure,” but otherwise, the policy does not provide an order of retrenchment for each type of retrenchment. The revised policy provides an order of retrenchment for a campus to follow “unless the campus specifies otherwise in a policy adopted by the campus governance structure and approved by the President prior to the commencement of the retrenchment process.” The proposed order begins with the retrenchment of non-tenured faculty over tenured faculty within a given department or program (including a clinical program). The next step, which is subject to the remaining faculty members in the department having the necessary qualifications and credentialing to teach the remaining courses, is based on the following criteria in order of priority: (1) relevance and expertise **in consultation with relevant faculty**; (b) rank; (c) the last into the rank will be the first out; and (d) seniority **at the institution. The additions in red were made based on feedback from faculty/staff.** The revisions to this section are consistent with other board policies requiring President approval of certain campus policies and provides for a more defined order of retrenchment.

Section IV.B.: The current policy provides for both types of retrenchment that “serious efforts shall be made to relocate affected faculty and staff in other parts of the program area or in a different program area of the same campus or division.” The existing policy does not address whether tenure transfers if a campus relocates a tenured faculty member. The revised version suggests (a) limiting the relocation requirement to faculty for more consistency with Board Policy 405.1 and (b) echoing a portion of the language from Board Policy 405.1 stating: “Faculty members holding positions eliminated by reduction or elimination of programs will be relocated in other academic areas of the campus for which they are qualified whenever possible.” With

respect to tenured faculty, the revised policy also states: “based on the qualifications of a relocated tenured faculty member, the campus may recommend the faculty member to the President for tenure in the new academic program or unit.” This revision is consistent with Board Policy 405.1 requiring that the President approve recommendations for tenure. A sentence was added in Section IV.B.2. to clarify that an appeal of termination through Academic Planning Retrenchment by a tenure-track or tenured faculty member shall be conducted in accordance with Section V.C. of the retrenchment policy.

Section IV.C.: The current policy provides that (a) for academic planning, any appeal shall be “in accordance with the existing appellate structure” and (b) for financial exigency, any person who has been terminated may appeal the decision within ten (10) calendar days and that the appeal “shall be based on whether there was material deviation from the established campus guidelines for termination because of retrenchment.” First, the revised version provides a consistent appeal process for both types of retrenchment. Second, the revised policy limits appeals to “tenure-track, tenured, or clinical or other non-tenure track faculty with merit-based multi-year appointments under Board Policy 405.4” versus all employees. This revision is consistent with Board Policy 405.4, which limits all other employees to appeals from “for cause terminations.” Retrenchment is not for cause termination. Third, the revised version modifies the basis of an appeal to “a material deviation from this policy or the previously established campus retrenchment policy approved by the President prior to the commencement of the retrenchment process.” This revision is consistent with other board policies requiring President approval of certain campus policies.

The new draft removes the reference to the committee being appointed by the chancellor or CEO considering footnote No. 1 discussed above.