

Faculty Senate
Campus Affairs Committee
April, 2011 Year-End Report
Submitted by: Mary White Stewart
April 11, 2011

Committee Membership
Anne Medaille
Duncan Aldrich
David Fenimore
Nancy LaTourette
Shannon Taylor
Nancy Kohlenberger

Campus Affairs Committee (CAC)
Charges, 2010-11 Academic Year
Endorsed by the Senate April 21, 2011

Purpose: The Campus Affairs Committee monitors, conducts studies, and makes recommendations on a wide range of issues that affect the quality of campus life, such as work environment, campus safety, and food service.

Standing Charges:

1. Review CAC charges over the prior three years, and recommendations adopted by the Faculty Senate. Report on the implementation status of these recommendations.
2. Make recommendations on the future status, organization, structure, and charges of the CAC. Consider whether the committee is necessary and effective, and how could it be improved.
3. Upon request by the Executive Board:
 - a. Review any proposals affecting CAC objectives, and report recommendations to the Executive Board within six weeks after receipt of any request for review.
 - b. Serve as a sounding board for the Executive Board for issues related to CAC charges and objectives.
4. Appoint a liaison from the CAC to each of the following committees: the Committee on the Status of Women; the Work and Family Task Force; the Gay, Lesbian, Bisexual, and Transgender Advocacy Committee; the Multiethnic Coalition; the Intercultural Collaborative; and the University Disabilities Resource Coalition. Facilitate communication, as appropriate, between these committees and the Faculty Senate, and inform the Senate as to whether these committees are duplicating efforts.

Additional Charges:

5. Survey aspirant institutions to determine their protections, policies and practices regarding tenure.
6. Review system counsel's determination regarding tenure, including the protection that exists in The Code and bylaws and the conditions in which tenure can be revoked. Recommend ways to protect the rights of tenure and mechanisms to do so.

Recommendations:

Given the length of the CAC Affairs report and the complexity of interpreting the NSHE code and assessing its implications for faculty, we have placed the Recommendations at the beginning of the report for your consideration, followed by the supporting documentation and reasoning.

The Senate should consider the questions proposed above.

The Senate should also consider the following, particularly as they vote on the proposals put forward by the Code Review Committee:.

1. Tenure is not clearly established in the department or in the institution in the Code. A tenure location in the institution is justified in the Code and would provide greater protection to the faculty member.
2. Departments should be able to defend their departments and positions in person to the College Committees rather than only to the Senate Committee..
3. The justifications for termination of faculty requiring only a “reasonably adequate” statement of the basis for termination and the process and the data on which the decision was made provides the lowest legal level of protection of faculty. While “beyond a reasonable doubt” may not be possible here, we recommend a “more likely than not” standard, however that might be configured in this instance.
4. The relationship between financial necessity and curricular review needs clarification. Recommendations by the .Code Review Committee are addressing this and should be monitored carefully.
5. The University needs to truly make every effort to place faculty who are terminated in other positions in the University and to place them in positions that are as reflective as possible of their current status.
6. Faculty need to be provided a clear and forthright statement about the manner in which decisions to terminate or save particular positions or programs were made and these need to reflect some consistency or philosophy.
7. The Employment Review Process needs to be clarified to faculty so that their appearance and appeal is more than an empty exercise. Either the purview of the committee should be expanded, or the faculty member should be made aware that their appeal is extremely limited.
8. Last, curricular review is the wrong vehicle for making the draconian cuts that are a consequence of a financial emergency. Using it in this manner strains the credibility of the process, violates its underlying assumptions, and damages faculty by allowing for the unraveling of tenure rights. .

Charge #5: Survey aspirant institutions to determine their protections, policies and practices regarding tenure.

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Introduction

Committee Charge

Charge #5: Survey aspirant institutions to determine their protections, policies and practices regarding tenure.

Charge #5 Subcommittee Members

David Fenimore, English
Nancy LaTourrette, Computer Science & Engineering

Ann Medaille, Libraries

Universities Surveyed in This Report

The policies and procedures related to tenure and program elimination at the Six-Pac Universities and the University of Nevada, Las Vegas were consulted for this report. These universities are:

- Arizona State University
- Oregon State University
- University of Arizona
- University of Nevada, Las Vegas
- University of Oregon
- University of Washington
- Washington State University

Methods Used to Compile This Report

Documents related to tenure policies were identified for each of the seven institutions listed above. These documents include university policy documents, Boards of Regents policy documents, faculty manuals, university bylaws, and administrative codes.

The documents were read and analyzed, and seven categories were identified as being of particular interest: (1) definition of tenure, (2) where faculty members are tenured and who/what confers tenure, (3) removal when programs or departments are reduced or eliminated, (4) notice to be given and removal timelines, (5) appeal process, (6) placement in other units and other alternatives, and (7) reinstatement procedures. Although the issue of financial exigency was also addressed in these documents, this topic was not covered in this report.

Each of the seven categories is described in this report with references to procedures and policies from the seven universities. Included are quotes and citations from the appropriate documents for further reference.

Each category includes references to university policies only when appropriate, so the policies of every university are not necessarily described in each category. The University of Oregon and Oregon State University are usually described together because of the joint nature of their policies. In addition, only one document regarding the University of Nevada, Las Vegas (Bylaws) is referenced in this document, although other documents are appropriate as well, such as the NSHE Code. Those documents are considered elsewhere, so they have not been addressed here.

Summary of Findings

A comparison of tenure policies at these seven institutions reveals several findings of interest, which are summarized below.

(1) Tenure policies vary widely among institutions. Even the language in which tenure is initially described may vary radically.

(2) The policies surveyed here indicate that tenure exists within the institution and not within the system. However, an apparent disconnect exists between a common understanding that tenure is conferred by some extra-institutional entity (e.g., a Board of Regents) and the notion that a tenured faculty member's employment status is tied to the existence of her department, unit, program, project, or curriculum.

(3) While some policies list procedures to be followed when programs are eliminated or reduced, or when financial exigency is declared, none of the documents states reasons as to why some programs might be targeted for elimination.

(4) Some institutional policies specify steps in the processes that should be followed when programs or departments are being targeted for reduction or elimination. These processes may include the following: 1) the involvement of both students and faculty members, 2) the use of public forums as a way to involve the whole university community, 3) reviews that explore the possible impact of the proposed program reductions on the university, the community, and the state, and/or 4) affirmative action reviews that determine whether women and minorities may be unfairly impacted by the proposed program reductions.

(5) Each of the institutions contains policies that specify the appeal process that should be followed if tenured faculty members receive notice of termination, but none elaborate on the criteria that are used to evaluate faculty who appeal a decision due to program elimination.

(6) Although all of the institutions examined here express the intent that, if possible, a terminated faculty member should be relocated elsewhere in the institution, they do not specify a formal process. Most policies refer to making "best," "reasonable," or "good faith efforts" or to marshaling "available resources" to assist faculty in relocation.

(7) When a tenured faculty member's position has been terminated, the time within which that faculty member must be offered back a recreated position varies from between two and five years.

(8) The University of Washington has a policy that stipulates that only "program elimination within the University" can result in termination without cause of a tenured faculty member (16). Washington State, just below the University of Washington, adds "financial exigency" to this. The others include additional reasons, in addition to program elimination: "reduction in size or reorganization" (UNLV, 15); "budgetary or programmatic considerations requiring program discontinuance, curtailment, modification or redirection" (University of Arizona, 13); "program or department reductions" (Oregon State University and University of Oregon, 13); "program ... curtailment, modification or redirection" (Arizona State University, 12).

(9) Although tenure confers the expectation of continued employment, barring misconduct, it is possible to terminate a tenured faculty member without cause, given the ability of the administration in question to downsize, modify, or eliminate programs through some version of curricular review.

I. Definition of Tenure

Arizona State University

Arizona State University defines tenure as a property right with the expectation of continued employment that is given to faculty members who have demonstrated excellence in teaching, research, and service.

The employment status awarded by the president to a faculty member who has demonstrated excellence in teaching, research, and service in accordance with criteria established by ASU. The status of tenure creates an expectation of continued employment unless the faculty member is terminated or released in accordance with appropriate policies.

Arizona State University, Academic Affairs Manual, Definitions

<http://www.asu.edu/aad/manuals/acd/acd002.html>

Tenure is a property right authorized by the Board of Regents and, through board delegation of authority, granted by the president to individuals.

Arizona State University, Academic Affairs Manual, 506-04

<http://www.asu.edu/aad/manuals/acd/>

Oregon State University and the University of Oregon

The Oregon Administrative Rules define “indefinite tenure” as an appointment made by the institution’s president that forbids termination of an employee except for cause, financial exigency, or program or department reductions or eliminations.

Indefinite tenure appointments are appointments given selected faculty members having an appointment of .50 FTE or more. Such appointments are made by the president in witness of the institution's formal decision that the faculty member has demonstrated such professional competence that the institution will not henceforth terminate employment except for cause, financial exigency, or program or department reductions or eliminations.

Oregon Administrative Rules, 580-021-0100

http://arcweb.sos.state.or.us/rules/OARS_500/OAR_580/580_021.html

The University of Oregon defines tenure in relation to academic freedom and states that those with tenure cannot be dismissed without academic due process.

The primary method by which academic freedom is guaranteed is through a conditional grant of tenure with indefinite term. This grant of tenure is offered only to those professors who make it through a rigorous, probationary period. During that period, they bear the burden of proving their potential for lifelong excellence in teaching, research, and service. Those who sustain this burden of proof are then offered, in return, a commitment that the University will not later dismiss them without itself bearing a burden of proof that they are not performing as expected. Tenured professors are not guaranteed their jobs. They are, however, guaranteed that they will not be dismissed without academic due process. This guarantee is central to academic freedom and the societal benefits that it generates.

University of Oregon, Post Tenure Review, Policy Number: 02.01.17

<http://policies.uoregon.edu/policy/by/1/03000-human-resources/post-tenure-review>

University of Arizona

The University of Arizona defines tenure as an employment status that creates a “legitimate claim of entitlement to continued employment.” That employment is assured “until retirement, resignation, dismissal for just cause, or termination for budgetary reasons or for educational policy change.” Tenure “neither constitutes nor implies a legal obligation which the President or ABOR is not empowered to undertake” and the status is dependent on fund allocation.

"Tenure" is the employment status awarded by a president to a faculty member who has demonstrated excellence in teaching, research, and service in accordance with criteria established by each university. The status of tenure creates a legitimate claim of entitlement to continued employment unless the tenured faculty member is dismissed or released in accordance with ABOR Policy 6-201H., J., or K., (Conditions of Faculty Service, Post-Tenure Review, Dismissal or Suspension, or Release of Faculty for Reorganization Caused by Budgetary Reasons or Programmatic Changes), of these conditions.

Arizona Board of Regents, Policy Manual, 6-201 C.19

[http://azregents.asu.edu/rrc/Policy Manual/6-201-Conditions of Faculty Service.pdf](http://azregents.asu.edu/rrc/Policy%20Manual/6-201-Conditions%20of%20Faculty%20Service.pdf)

An individual who holds a tenured appointment is assured that the President shall offer an appointment to that individual for each succeeding fiscal or academic year until retirement, resignation, dismissal for just cause, or termination for budgetary reasons or for educational policy change.

University of Arizona, University Handbook for Appointed Personnel, 3.11.04 Assurance of Appointment

<http://uhap.web.arizona.edu/>

It is within neither the President's nor the ABOR's power to commit the State of Arizona to an obligation for which an appropriation has not been made. The use of the term "with tenure" neither constitutes nor implies a legal obligation which the President or ABOR is not empowered to undertake. In practice, renewals of appointments of tenured faculty members have been approved and funds have been allocated annually for these appointments.

University of Arizona, *University Handbook for Appointed Personnel*, 3.11.05

Legal Effect of Tenure

<http://uhap.web.arizona.edu/>

University of Washington

The University of Washington defines tenure as the right of a faculty member to hold a position without termination or discriminatory reduction in salary.

Tenure is the right of a faculty member to hold his or her position without discriminatory reduction of salary, and not to suffer loss of such position, or discriminatory reduction of salary, except for the reasons and in the manner provided in the Faculty Code.

University of Washington, *Faculty Code and Governance*, Section 25-31

<http://www.washington.edu/admin/rules/policies/FCG/FCCH25.html>

Tenure should be granted to faculty members of such scholarly and professional character and qualifications that the University, so far as its resources permit, can justifiably undertake to employ them for the rest of their academic careers.

University of Washington, *Faculty Code and Governance*, Section 25-41

<http://www.washington.edu/admin/rules/policies/FCG/FCCH25.html>

The University of Washington Regents accept in principle the concept that tenure for members of the faculty is essential for effective teaching and sustained productivity in scholarship. They furthermore accept in principle the concept that the privilege of a faculty member to hold his or her position without discriminatory reduction in salary, and not to be removed therefrom, should not be abrogated except for cause and through orderly administrative processes, maintaining and retaining, however, the responsibilities and obligations of the Board of Regents as defined in the laws of the state of Washington.⁷

University of Washington, *Policy Directory*, Board of Regents Governance, Tenure of the Faculty Statement of Policy

<http://www.washington.edu/admin/rules/policies/FCG/FCCH25.html>

II. Where Faculty Members Are Tenured and Who/What Confers Tenure

Arizona State University

Tenure appointments are granted by the President who is authorized by the Board of Regents. Tenured faculty members are located at specific campuses, and tenure is not transferable among campuses.

Tenure is a property right authorized by the Board of Regents and, through board delegation of authority, granted by the president to individuals. An individual's tenure at Arizona State University is located at Tempe campus, West campus, or Polytechnic campus. Tenure is not transferable among the three campuses, except as provided through university policy and procedure.

Arizona State University, Academic Affairs Manual, 506-04

<http://www.asu.edu/aad/manuals/acd/>

A "tenured appointment" means that the president shall offer to a faculty member, having attained such status, an appointment for each succeeding fiscal or academic year until retirement, resignation, termination for budgetary reasons or educational policy change, or dismissal for just cause.

Arizona State University, Academic Affairs Manual, 505-02

<http://www.asu.edu/aad/manuals/acd/>

Oregon State University and the University of Oregon

Tenure appointments are made by the President, and faculty members are tenured within a department within an institution. Those with tenure in one department or institution cannot claim tenure in another department or institution.

Indefinite tenure appointments are appointments given selected faculty members having an appointment of .50 FTE or more. Such appointments are made by the president in witness of the institution's formal decision that the faculty member has demonstrated such professional competence that the institution will not henceforth terminate employment except for cause, financial exigency, or program or department reductions or eliminations.

Oregon Administrative Rules, 580-021-0100

http://arcweb.sos.state.or.us/rules/OARS_500/OAR_580/580_021.html

Tenure is reaffirmed as being institutional. Faculty having achieved tenure status in one Department institution cannot thereby claim tenure in other Department institutions.

Oregon Administrative Rules, 580-021-0105

http://arcweb.sos.state.or.us/rules/OARS_500/OAR_580/580_021.html

University of Arizona

Tenure is awarded by the President to a faculty member.

Attainment of tenure can only occur through specific notification by the President and may not result from inaction or inadvertence.

University of Arizona, *University Handbook for Appointed Personnel*, 3.11.03
<http://uhap.web.arizona.edu/>

"Tenure" is the employment status awarded by a president to a faculty member who has demonstrated excellence in teaching, research, and service in accordance with criteria established by each university.

Arizona Board of Regents, *Policy Manual*, 6-201 C.19

[http://azregents.asu.edu/rrc/Policy Manual/6-201-Conditions of Faculty Service.pdf](http://azregents.asu.edu/rrc/Policy%20Manual/6-201-Conditions%20of%20Faculty%20Service.pdf)

University of Nevada, Las Vegas

The award of tenure requires formal approval from the Board of Regents.

4.3.1 (A) Faculty members with well established careers may be tenured at the time of initial appointment provided they: (1) meet the basic UNLV standards for tenure; (2) are recommended by a vote of those eligible to vote on tenure decisions according to the bylaws of the appropriate department; (3) receive written recommendations from the department chair, the dean of the college, the Executive Vice President and Provost, and the president of the university. The award of tenure is contingent upon formal approval by the NSHE Board of Regents. (B/R 10/98)

University of Nevada, Las Vegas, *Bylaws*

[http://faculty senate.unlv.edu/common files/UNLV Bylaws.pdf](http://faculty senate.unlv.edu/common_files/UNLV_Bylaws.pdf)

University of Washington

Tenure is conferred by the President, who acts on behalf of the Board of Regents. Faculty members are employed by the Board.

The dean, advised as prescribed in Chapter 24, Section 24-54, Subsection C shall then make his or her recommendation to the President, and if tenure is to be granted it shall be conferred by the President acting for the Board of Regents.

University of Washington, *Faculty Code and Governance*, Section 25-41

<http://www.washington.edu/admin/rules/policies/FCG/FCCH25.html>

General powers and duties of the board of regents are as follows:

(2) To employ the president of the university, his or her assistants, members of the faculty, and employees of the institution, who except as otherwise provided by law, shall hold their positions during the pleasure of said board of regents.

(8) Except as otherwise provided by law, to enter into such contracts as the regents deem essential to university purposes.

Washington State Legislature, RCW 28B.20.130, Powers and duties of regents — General

<http://apps.leg.wa.gov/RCW/default.aspx?cite=28B.20.130>

Washington State University

Tenure is granted within departments, programs, or units. The President, acting with authority from the Board of Regents, grants tenure.

Tenure is granted only for academic rank or professional status within programs, departments, or service units.

The acquisition of tenure requires affirmative action by the President of the University by delegation of authority from the Board of Regents. Tenure, once granted, is retained by the faculty member until he or she retires or ceases to be an employee of the University.

Washington State University, Faculty Senate, Faculty Manual, Section III
http://facsen.wsu.edu/faculty_manual/Section_III_310.pdf

Faculty members may be tenured in more than one unit simultaneously.

A faculty member whose appointment is budgeted on a continuing basis in more than one unit may be granted tenure, provided that the positions are permanent and provided that tenure is granted in all units simultaneously. Such tenure implies no obligation for one unit to increase the employment of the person beyond the budgeted portion in the event that duties should cease to exist in another unit.

This policy applies to a person holding a joint appointment in instructional units as well as to a person with duties divided between teaching and nonteaching responsibilities in a position having faculty status.

In special circumstances involving a joint appointee, one unit may request permission to assume an additional portion or all of the tenure responsibility for the faculty member, and in this case the other unit or units accept no responsibility for continuation of the position.

Washington State University, Faculty Senate, Faculty Manual, Section III
http://facsen.wsu.edu/faculty_manual/Section_III_310.pdf

III. Removal When Programs or Departments Are Reduced or Eliminated

Arizona State University

Tenured faculty members may be released from employment due to a reorganization that is “determined to be necessary due to budgetary or programmatic considerations requiring program discontinuance, curtailment, modification or redirection.” This determination can only be made after a review process conducted by the Faculty Senate and which includes both faculty members and students. The review process must include

a public forum to provide all members of the university community with an opportunity to express their views.

2. Release of tenured faculty members, or release of nontenured faculty members prior to the end of the appointment period, may occur upon reorganization when determined to be necessary due to budgetary or programmatic considerations requiring program discontinuance, curtailment, modification or redirection.

3. When the reorganization proposed by the administration calls for the release of any tenured faculty member or nontenured faculty member before the end of an appointment term, the following procedures shall be observed:

a. The president shall ask the faculty senate to designate a review committee composed of faculty and students to review and evaluate the proposed plan for reorganization. The committee's review shall include a public forum to provide an opportunity for all members of the university community to present their views on the impact of the proposed reorganization.

b. Each faculty member whose position may be affected by the proposed reorganization shall be notified promptly in writing of the proposed action and shall be given an early opportunity to present his or her views in person to the review committee and to the responsible administrator.

c. The review committee shall provide the president with a written evaluation of the proposed reorganization no later than ninety (90) days following the president's request, unless the president specifically requests that the evaluation be provided in a shorter period. This evaluation shall include an assessment of the impact of the proposed reorganization upon students, faculty and staff, the university as a whole, related activities outside the university, and the interest of higher education within the state.

d. The president shall decide whether or not to recommend the reorganization following receipt of the review committee's evaluation. If the president rejects the committee's evaluation, the president shall furnish the committee a written statement of the reasons for doing so.

e. The president shall present his or her recommendation relating to the proposed reorganization to the Board for approval.

f. If the Board approves the reorganization, each faculty member whose position is to be eliminated shall receive written notice when the decision to eliminate his or her position is final.

Arizona Board of Regents, Policy Manual, 601 K. 2.-5

<http://azregents.asu.edu/rrc/Policy%20Manual/6-201-Conditions%20of%20Faculty%20Service.pdf>

Oregon State University and the University of Oregon

For program or department reductions or eliminations to be made, the president must determine that these reductions or eliminations are consistent with institutional goals and needs, after allowing for appropriate input from others.

The appointment of an academic staff member with indefinite tenure will not be terminated for reasons other than for cause, except for financial exigency or program or department reductions or eliminations. Before the appointment of any academic staff member on indefinite tenure can be terminated for financial exigency, a bona fide determination will be made by the president that a financial exigency does exist, and that sufficient funds are not available for payment of compensation for the position concerned. Program or department reductions or eliminations may be made by the president, upon determination, pursuant to institutional procedures providing for faculty and other appropriate input, that such reductions or eliminations are consistent with institutional goals and needs;

Oregon Administrative Rules, 580-021-0315
http://arcweb.sos.state.or.us/rules/OARS_500/OAR_580/580_021.html

The University of Oregon dictates that an affirmative action review must be conducted prior to decisions being made in regard to program reductions or reorganizations to determine the reorganization's possible impact on women and minorities.

Under state law, the university must conduct an affirmative action review prior to any decision to make reductions in force or to reorganize activities. The impact on women and minority employees and students must be a consideration in the reorganization decision.

University of Oregon, Guide to Promotion and Tenure at the University of Oregon

<http://academicaffairs.uoregon.edu/content/chapter-iii#>

According to the University of Oregon, department/program reductions/eliminations must reflect a regard for the rights of affected faculty members and may not be used in place of taking action for cause.

University procedures relating to program or department reductions or eliminations reflect a regard for the rights of the affected academic staff members, and such procedures may not be used as a substitute for taking action against a faculty member for cause.

University of Oregon, Guide to Promotion and Tenure at the University of Oregon

<http://academicaffairs.uoregon.edu/content/chapter-iii#>

University of Arizona

Tenured faculty members may be released from employment because of reorganization due to "budgetary or programmatic considerations requiring program discontinuance, curtailment, modification or redirection." As with Arizona State University, the decision to reorganize can only be made after a review process conducted by the Faculty Senate and which includes both faculty members and students. The review process must also include a public forum to allow all members of the university community with an opportunity to express their views. In cases involving a financial emergency, a review

committee must review the reorganization plan and present an evaluation that describes the “impact of the proposed reorganization upon students, faculty and staff, the University as a whole, related activities outside the University, and the interest of higher education within the state.”

See quote from Arizona State University above.

Arizona Board of Regents, Policy Manual, 601 K. 2.-5

<http://azregents.asu.edu/rrc/Policy%20Manual/6-201-Conditions%20of%20Faculty%20Service.pdf>

In cases involving reorganization the review committee called for by ABOR-PM 6-201(K)(3)(a) shall consist of faculty members nominated by the Committee on Committees and selected by the Faculty Senate and students nominated by the Associated Students of the University of Arizona and selected by the President. The review committee shall present its findings to the Faculty Senate. The Senate's recommendations, together with the review committee's report, shall be forwarded to the President. Within 30 days of a decision to terminate a program element, an affected faculty member may appeal the decision to an appeal committee of faculty and administrators appointed by the President. The appeal committee will make a recommendation to the President within 30 days of the filing of the appeal. The President shall make the final decision.

University of Arizona, University Handbook for Appointed Personnel, 3.18.02 Reorganization

<http://uhap.web.arizona.edu/>

In cases involving financial emergency, the President shall ask the Faculty Senate to designate a review committee composed of faculty and students to review the proposed plan for reorganization, as called for by ABOR-PM 6-201(K)(3). The committee's review shall include a public forum to provide an opportunity for all members of the University community to present their views on the impact of the proposed reorganization.

Each faculty member whose position may be affected by the proposed reorganization shall be notified in writing of the proposed action and shall be given an early opportunity to present his or her views in person to the review committee and to the responsible administrator.

The review committee shall provide the President with a written evaluation of the proposed reorganization no later than 90 days following the President's request, unless the President specifically requests that the evaluation be provided in a shorter period. This evaluation shall include an assessment of the impact of the proposed reorganization upon students, faculty and staff, the University as a whole, related activities outside the University, and the interest of higher education within the state. The committee shall maintain a record of its proceedings, including all written documents and statements submitted to it. The President shall decide whether or not to recommend the reorganization following receipt of the review committee's evaluation. If the President rejects the

committee's evaluation, the President shall furnish the committee a written statement of the reasons for doing so.

The President shall present his or her recommendation relating to the proposed reorganization to ABOR for approval. If ABOR approves the reorganization, each faculty member whose position is to be eliminated shall receive written notice when the decision to eliminate his or her position is final.

A tenured faculty member who is released, or a nontenured faculty member who is released within an appointment period, shall be entitled to a review of this decision in accordance with the procedures provided in ABOR-PM 6-201(K)(6).

**University of Arizona, University Handbook for Appointed Personnel, 3.18.03
Financial Emergencies**

<http://uhap.web.arizona.edu/>

University of Nevada, Las Vegas

All employees are subject to termination for curricular reasons, which refers to “discontinuance, reduction in size or reorganization of an administrative unit, project, program or curriculum.”

19.1 Persons Subject to Layoffs or Furloughs. All persons holding authorized professional positions are subject to lay-off or furlough due to financial exigency or curricular reasons as outlined in the Nevada System of Higher Education Code, Sections 5.4.5, 5.4.6 and 5.4.7.

19.2 Curricular Reasons Defined. "Curricular reasons" refers to the bona fide discontinuance, reduction in size or reorganization of an administrative unit, project, program or curriculum for bona fide reasons pertaining to the missions of the University of Nevada, Las Vegas, resulting in the elimination of employment positions.

University of Nevada, Las Vegas, Bylaws

http://facultysenate.unlv.edu/common_files/UNLV_Bylaws.pdf

When curricular revisions are being considered that will result in the termination of positions, the process should proceed according to several steps which involve the academic units and affected faculty members.

19.8.3 Faculty Senate Priority and New Program Committee Recommendations. The recommendations of the Faculty Senate Priority and New Program Committee and the additional findings regarding displacement of faculty for curricular reasons shall be considered by the appropriate vice president or dean who shall either return the recommendations to the Faculty Senate Priority and New Program Committee for reconsideration or approve said recommendations and forward them to the president for final disposition. (B/R 3/03)

19.8.4 Procedures for Reviewing Curricular Revisions. Any curricular program proposal which has completed the procedures outlined herein, has been approved by the Executive Vice President and Provost (or appropriate administrator in the

case of faculty units), and which necessitates termination for curricular reasons shall be implemented according to the following steps: (B/R 10/98)

A. The academic department to be affected shall formally consider the proposed change and make its recommendation to the pertinent academic unit committee.

B. The pertinent academic unit committee shall formally consider the proposed change and make its recommendation to the academic unit faculty.

C. The academic unit faculty shall formally consider and act upon the recommendation of the pertinent academic unit committee.

D. The recommendation of the academic department and of the academic unit faculty shall be forwarded to the Faculty Senate and the Academic Council, each of which shall formally consider the matter and forward its recommendation to the president.

University of Nevada, Las Vegas, Bylaws

http://facultysenate.unlv.edu/common_files/UNLV_Bylaws.pdf

Tenured faculty members cannot be terminated in favor of retaining nontenured faculty members, except in extraordinary circumstances which would result in a distortion of the program.

19.8.6 Order of Layoffs for Tenured Faculty. Tenured faculty on regular, continuing contracts will not be terminated in favor of retaining nontenured faculty except in extraordinary circumstances where a serious distortion of the program would otherwise result.

University of Nevada, Las Vegas, Bylaws

http://facultysenate.unlv.edu/common_files/UNLV_Bylaws.pdf

University of Washington

Tenured faculty members may be removed from their positions due to program elimination.

The removal of tenured faculty, or the removal of non-tenured faculty prior to the end of a specified term of appointment, may be effected upon program elimination within the University. Such removals shall be termed "Removal for Reasons of Program Elimination."

University of Washington, Faculty Code and Governance, Section 25-52

<http://www.washington.edu/admin/rules/policies/FCG/FCCH25.html>

Washington State University

Tenured faculty members may be removed from their positions due to the discontinuation of a program or department of instruction, research, or service.

Termination of a tenured appointment or any other appointment before the end of the period of appointment may be based on financial exigency or the discontinuance of a program or department of instruction, research, or service.

Washington State University, Faculty Senate, Faculty Manual, Section III

[http://facsen.wsu.edu/faculty_manual/Section III 310.pdf](http://facsen.wsu.edu/faculty_manual/Section_III_310.pdf)

IV. Notice to Be Given and Removal Timelines

Arizona State University

Tenured faculty members who receive notice of termination shall be given a terminal year appointment, as long as budgetary considerations permit it.

A tenured faculty member who is released shall be given a terminal year appointment unless the Board's approval of the reorganization includes a specific determination that budgetary considerations do not permit such an appointment.

Arizona Board of Regents, Policy Manual, 6-201 K.7

<http://azregents.asu.edu/rrc/Policy%20Manual/6-201-Conditions%20of%20Faculty%20Service.pdf>

Oregon State University and the University of Oregon

Faculty members will receive twelve months' notice if they are terminated due to program or department reductions or eliminations that are unconnected to a state of financial exigency.

If the staff member cannot be retained either in the position in which presently employed or in some alternate position, maximum possible notice of termination shall be provided the academic staff member being terminated for financial exigency, and in the case of faculty terminated because of program or department reductions or eliminations not demonstrably related to a state of financial exigency, 12 months' notice shall be given.

Oregon Administrative Rules, 580-021-0315

http://arcweb.sos.state.or.us/rules/OARS_500/OAR_580/580_021.html

University of Arizona

Faculty members must be notified in writing when program reorganization decisions will affect their positions. Tenured faculty members who receive notice of termination shall be given a terminal year appointment, as long as budgetary considerations permit it.

Each faculty member whose position may be affected by the proposed reorganization shall be notified in writing of the proposed action and shall be given an early opportunity to present his or her views in person to the review committee and to the responsible administrator.

**University of Arizona, *University Handbook for Appointed Personnel*, 3.18.03
Financial Emergencies**

<http://uhap.web.arizona.edu/>

A tenured faculty member who is released shall be given a terminal year appointment unless the Board's approval of the reorganization includes a specific determination that budgetary considerations do not permit such an appointment.

Arizona Board of Regents, *Policy Manual*, 6-201 K.7

<http://azregents.asu.edu/rrc/Policy%20Manual/6-201-Conditions%20of%20Faculty%20Service.pdf>

The appointment of a tenured faculty member may not be terminated before the end of the academic year following the one in which the decision to eliminate that position becomes final.

University of Arizona, *University Handbook for Appointed Personnel*, 3.18.02

<http://uhap.web.arizona.edu/>

University of Nevada, Las Vegas

Faculty members whose positions will be terminated due to curricular reasons must be informed within three working days of the proposed change. Notices must be made in writing and must contain a “reasonably adequate” explanation of the reasons for the decision, as well as their rights to reconsideration. The document referenced below describes the reconsideration process. More information about the timeline for termination is included in the NSHE Code.

19.8.1 Notification of Proposed Layoffs. When the recommendations of the appropriate Faculty Senate Priority and New Program Committee, as outlined in Chapter II, Section 6.3.7 and 6.3.8 of these Bylaws, include the potential for displacement of faculty, prior to approval by the Executive Vice President and Provost (or other appropriate administrator in the case of nonacademic faculty), faculty potentially affected will be informed by their supervisor within three college working days of the proposed change, the proposed time schedule and the possible alternatives to termination for curricular reasons which may be available within the University or within other System institutions. (B/R 10/98)

19.11 Contents of Layoff Notices. Notice of the layoff of faculty members for financial exigency or curricular reasons shall be in writing and shall furnish the faculty member with a reasonably adequate statement of the basis for the decision to layoff the faculty member, a reasonably adequate description of the manner in which the decision was arrived at and a reasonably adequate disclosure of the information and data upon which the decision was based. The notice shall also inform the faculty member of the right to reconsideration, the procedures for reconsideration and the identity of the person or persons to whom a request for reconsideration should be directed.

University of Nevada, Las Vegas, *Bylaws*

http://faculty senate.unlv.edu/common_files/UNLV_Bylaws.pdf

University of Washington

If tenured faculty members are terminated due to program eliminations, they must be notified in writing by the dean, and they cannot be removed prior to the end of the academic year following the one in which the decision has been made.

Each faculty member proposed by the dean for removal for reasons of program elimination shall be so notified in writing by the dean pursuant to Chapter 26, Section 26-41, Subsection B.2.f.

When the President's decision to eliminate a program becomes final pursuant to Chapter 26, Section 26-41, Subsection B.6, and the subsequent decision is made as to which faculty members notified under this subsection are to be removed, each faculty member to be removed for reason of program elimination shall be notified in writing by the dean and the effective date of such removal shall be stated. The dean shall deliver a copy of this notification contemporaneously to the chair of the Adjudication Panel (Chapter 28.) No faculty member shall be removed for reason of program elimination prior to the end of the academic year following the one in which a final decision is transmitted to the faculty member.

University of Washington, Faculty Code and Governance, Section 25-52

<http://www.washington.edu/admin/rules/policies/FCG/FCCH25.html>

Washington State University

If tenured faculty members who hold twelve-month and nine-month appointments are terminated due to “elimination of function,” they must receive at least twelve months’ and nine months’ (not including the summer months) notice, respectively, in advance of their termination.

Termination may be effective for all faculty, including those on academic-year appointments, on any day of the calendar year. Tenured faculty members holding annual (twelve-month) appointments shall be entitled to receive at least twelve calendar months' notice in advance of termination for reasons of financial exigency or elimination of function. Tenured faculty members holding academic-year (nine-month) appointments shall be entitled to at least nine calendar months' notice in advance of termination for reasons of financial exigency or elimination of function, provided that the three summer months, not part of the usual academic year (May 16 to August 15 under the current academic calendar) shall not be included when computing notice requirements.

Washington State University, Faculty Senate, Faculty Manual, Section III

http://facsen.wsu.edu/faculty_manual/Section_III_310.pdf

If less than the required notice is given prior to termination, faculty members must receive appropriate financial compensation. If the affected faculty member acquires new

employment before the effective date of termination, that faculty member shall provide the University with appropriate notice.

Where less than the required notice is given prior to termination, the faculty member shall be entitled to receive at the time of termination one-twelfth of his or her current annual salary, on an annual appointment, or the faculty on an academic year appointment shall be entitled to one-ninth his or her current annual salary for each month less the required notice.

In the event that a faculty member who has received notice of termination for reasons of financial exigency or elimination of function secures new employment prior to the effective date of the termination, he or she shall provide the University with immediate notice, including the effective date of new employment. In these cases, the University shall waive the requirements for resignation notice that would otherwise apply.

Washington State University, Faculty Senate, Faculty Manual, Section III
http://facsen.wsu.edu/faculty_manual/Section_III_310.pdf

V. Appeal Process

Arizona State University

If a reorganization is proposed that would affect the employment of tenured faculty members, those faculty members must be notified in writing of the proposed action and given an opportunity to present their views to a review committee.

b. Each faculty member whose position may be affected by the proposed reorganization shall be notified promptly in writing of the proposed action and shall be given an early opportunity to present his or her views in person to the review committee and to the responsible administrator.

Arizona Board of Regents, Policy Manual, 601 K. 2.-5
<http://azregents.asu.edu/rrc/Policy%20Manual/6-201-Conditions%20of%20Faculty%20Service.pdf>

Tenured faculty members who receive notice of termination may file a written request for a review of the decision with the President within fifteen days. The review process is outlined in detail in the document cited below.

A tenured faculty member who is to be released, or a nontenured faculty member who is to be released during an appointment term, shall be entitled to a review of this decision by filing a written request with the president within fifteen days of receipt of notice of such release.

Arizona Board of Regents, Policy Manual, 6-201 K-6
<http://azregents.asu.edu/rrc/Policy%20Manual/6-201-Conditions%20of%20Faculty%20Service.pdf>

Oregon State University and the University of Oregon

Each institution sets up the formal and informal procedures through which faculty may initiate grievance proceedings.

'Grievance' means a complaint by an academic employee that the employee was wronged in connection with compensation, tenure, promotion or other conditions of employment or the employee's rights were denied as to reappointment;

Oregon Administrative Rules, 580-021-0050

http://arcweb.sos.state.or.us/rules/OARS_500/OAR_580/580_021.html

Grievance procedures for Oregon State University are described in the Oregon State University Faculty Handbook (<http://oregonstate.edu/admin/aa/handbook/grievance.html>) and in the Oregon Administrative Rules (beginning with 576-050-0010). Grievance procedures for Oregon University are described by the Office of Academic Affairs (<http://academicaffairs.uoregon.edu/content/chapter-iii#>) and in the Oregon Administrative Rules (beginning with 571-03-025).

University of Arizona

Tenured faculty members who receive notice of termination may file a written request for a review of the decision with the President within fifteen (or thirty when programs are to be eliminated) days. The review process is outlined in detail in the documents cited below.

A tenured faculty member who is to be released, or a nontenured faculty member who is to be released during an appointment term, shall be entitled to a review of this decision by filing a written request with the president within fifteen days of receipt of notice of such release.

Arizona Board of Regents, Policy Manual, 6-201 K-6

<http://azregents.asu.edu/rrc/Policy%20Manual/6-201-Conditions%20of%20Faculty%20Service.pdf>

A tenured faculty member who is to be released, or a nontenured faculty member who is to be released during an appointment term, shall be entitled to a review as provided in ABOR-PM 6-201(K)(6) upon written request filed with the President of the University within 15 days of receipt of notice of such release.

University of Arizona, University Handbook for Appointed Personnel, 3.18.02

<http://uhap.web.arizona.edu/>

Within 30 days of a decision to terminate a program element, an affected faculty member may appeal the decision to an appeal committee of faculty and administrators appointed by the President. The appeal committee will make a recommendation to the President within 30 days of the filing of the appeal. The President shall make the final decision.

**University of Arizona, *University Handbook for Appointed Personnel*, 3.18.02
Reorganization**
<http://uhap.web.arizona.edu/>

University of Nevada, Las Vegas

Faculty members may request a reconsideration after receiving notice of layoff due to curricular review. Requests for reconsideration must be received within 15 days of receipt of the layoff notice. The process is outlined below.

19.12 Reconsideration Process. Within 15 calendar days after receipt of the notice of layoff, the faculty member may request reconsideration of the decision to layoff, at which time the following provisions and procedures are applicable:

19.12.1 Order of Procedure. The reconsideration process may include:

A. RESERVED

B. The soundness of the educational/professional judgments and the criteria for identification for termination of the individual; but the recommendations of a faculty body on these matters will be considered presumptively sound.

C. Whether the criteria are being properly applied in the individual case.

19.12.2 Employment Review Committees. In the event decisions are made to layoff faculty members because of financial exigency or curricular reasons, the president shall establish one or more Employment Review Committees. The president shall determine the number of persons to serve on the committee(s), shall determine their terms of service and, in addition, shall choose one half of the membership of the committee(s) including one student. The Faculty Senate shall elect one half of the committee membership. The president and the Faculty Senate shall mutually agree on the appointment of a chair, who must be a tenured faculty member. If the president and the Faculty Senate cannot agree on the appointment of a chair, the president shall appoint the chair. The chair shall vote only in case of a tie vote. No one who took part in making the specific recommendation to the president to layoff the faculty member requesting the reconsideration may be a member of the Employment Review Committee.

19.12.3 Contents of Request for Reconsideration. The request for reconsideration shall be submitted in writing to the president, together with the reasons, arguments and documentation supporting the request for reconsideration. The president shall immediately send the request for reconsideration, together with a copy of the notice of layoff, to the Employment Review Committee.

19.12.4 Hearings. The Employment Review Committee shall hold a hearing on the request for reconsideration within 15 calendar days of its receipt or, given the number of requests that may be received, as soon after that time limit as is feasible. The hearing shall be informal and nonadversarial in nature. The committee shall have the discretion to consolidate hearings.

19.12.6 Administration's Response. The University administration shall have an opportunity to respond to the contentions of the faculty member requesting

reconsideration or to otherwise correct any erroneous or misleading information presented to the committee.

19.12.7 President's Decision. The Employment Review Committee shall forward its written recommendation to the president on the issue or issues presented by the request for reconsideration within 10 calendar days after the conclusion of the hearing. The president shall make a decision within 5 calendar days after receipt of the recommendation. The president's decision shall be final and shall be sent, in writing, to the faculty member requesting reconsideration.

19.12.8 Exclusive Means of Review. The review process involving financial exigency or curricular reasons shall be the exclusive means of review of such decisions.

University of Nevada, Las Vegas, Bylaws

http://facultysenate.unlv.edu/common_files/UNLV_Bylaws.pdf

University of Washington

In cases where tenured faculty members are terminated due to reasons of program elimination, those faculty members may deliver an appeal to the chair of an Adjudication Panel and to the Secretary of the Faculty Committee, who shall determine whether the decision to terminate the faculty member was reasonable and made without unlawful discrimination. All tenured faculty members who are terminated must be given the opportunity for a full review and hearing.

Each faculty member notified of removal for reason of program elimination may engage in the administrative and conciliatory proceedings of Chapter 27. He or she may deliver an appeal to the chair of the Adjudication Panel and to the Secretary of the Faculty as provided in Chapter 28, in which case a Hearing Committee shall determine whether the faculty member was properly identified as a member of the program eliminated; whether the procedures in this section were followed; whether the decision to remove the faculty member was reasonable; and, if the faculty member so alleges, whether he or she was unlawfully discriminated against because of race, religion, color, sex, national origin, age, handicap, sexual orientation, or status as a disabled or Vietnam era veteran.

University of Washington, Faculty Code and Governance, Section 25-52

<http://www.washington.edu/admin/rules/policies/FCG/FCCH25.html>

No faculty member having tenure as defined in this chapter shall be removed from his or her position or subjected to discriminatory reduction of salary until she or he has been given opportunity for a full review and hearing as provided in Sections 25-62, 25-71, or Chapter 26, Section 26-31 as applicable to the case, and in Chapter 28.

University of Washington, Faculty Code and Governance, Section 25-53

<http://www.washington.edu/admin/rules/policies/FCG/FCCH25.html>

VI. Placement in Other Units and Other Alternatives

Arizona State University

The institution will devote its “best efforts” to securing alternative appointments for faculty members whose positions are to be terminated due to reorganization. It will also devote its “best efforts and available resources” to making those faculty members aware of other professional opportunities.

Each university shall devote its best efforts to securing alternative appointments within the university for any faculty member who is released as a result of reorganization. Each university shall devote its best efforts and available resources to ensure that such faculty members are made aware of openings at other Arizona universities and opportunities for retraining or further professional growth.

Arizona Board of Regents, Policy Manual, 6-201 K.4

<http://azregents.asu.edu/rrc/Policy%20Manual/6-201-Conditions%20of%20Faculty%20Service.pdf>

Oregon State University and the University of Oregon

Faculty members who cannot be retained may be moved to an alternate position, although this obligation of the institution is not elaborated upon.

If the staff member cannot be retained either in the position in which presently employed or in some alternate position, maximum possible notice of termination shall be provided . . .

Oregon Administrative Rules, 580-021-0315

http://arcweb.sos.state.or.us/rules/OARS_500/OAR_580/580_021.html

University of Arizona

The institution will devote its “best efforts” to securing alternative appointments for faculty members whose positions are to be terminated due to reorganization. It will also devote its “best efforts and available resources” to making those faculty members aware of other professional opportunities.

Each university shall devote its best efforts to securing alternative appointments within the university for any faculty member who is released as a result of reorganization. Each university shall devote its best efforts and available resources to ensure that such faculty members are made aware of openings at other Arizona universities and opportunities for retraining or further professional growth.

Arizona Board of Regents, Policy Manual, 6-201 K.4

<http://azregents.asu.edu/rrc/Policy%20Manual/6-201-Conditions%20of%20Faculty%20Service.pdf>

The University shall devote its best efforts to securing alternative appointments within the University in positions for which the affected faculty member is qualified under existing criteria. The University shall devote its best efforts to insure that such faculty members are made aware of openings at other Arizona universities and opportunities for retraining for further professional growth.

University of Arizona, *University Handbook for Appointed Personnel*, 3.18.2
<http://uhap.web.arizona.edu/>

University of Nevada, Las Vegas

For faculty members who are to be terminated for curricular reasons, the University will take “all reasonable steps” to identify suitable alternative appointments and place faculty members accordingly, provided that the designated receiving department does not demonstrate that this arrangement would be unsuitable. Other options will also be investigated, such as placement within other system institutions, early retirement options, and retraining programs.

19.8.2 Alternatives to Layoffs. Among the alternatives to termination for curricular reasons to be investigated jointly by each potentially affected faculty member's supervisor and dean and the appropriate vice president are:

A. All reasonable steps will be taken to identify a suitable, alternative appointment within the University for each faculty member who may be displaced. In consultation with the Faculty Senate Priority and New Program Committee, the president and the appropriate vice president shall designate appropriate receiving departments throughout the University for each potentially affected faculty member. A displaced faculty member may be appointed to a vacancy in such a designated receiving department unless the department demonstrates that the displaced faculty member is not suitable for such vacancy or unless the threat of layoffs for curricular reasons is removed. (B/R 10/98)

B. All reasonable steps should be taken to investigate suitable, alternative appointments within other System institutions and to facilitate communication between each affected faculty member and other System institutions, when requested to by said faculty member.

C. A careful review and evaluation of administrative appointment, early retirement options, retraining programs, non-University employment opportunities, or other alternatives shall be conducted and discussed with the affected faculty member.

University of Nevada, Las Vegas, *Bylaws*

http://faculty senate.unlv.edu/common_files/UNLV_Bylaws.pdf

University of Washington

When tenured faculty members have been terminated due to program elimination, the University will make “every reasonable effort” to place faculty members in other positions for which they are qualified.

The University shall make every reasonable effort to place faculty members notified of removal for reason of program elimination in other University employment for which they are qualified with comparable terms of employment. Priority in such employment shall be given to the faculty member in accordance with University and state employment procedures. In addition to the required notification period, special assignments with pay may be provided to enable the faculty member to prepare for changed employment responsibilities.

University of Washington, Faculty Code and Governance, Section 25-52
<http://www.washington.edu/admin/rules/policies/FCG/FCCH25.html>

Washington State University

If programs are discontinued, the institution will make “reasonable and good faith efforts” to transfer affected faculty members to other positions.

Before an appointment is terminated because of discontinuance of a program of instruction, research, or service, the institution will make reasonable and good faith efforts to transfer the affected faculty member to a suitable position for which he or she is qualified.

Washington State University, Faculty Senate, Faculty Manual, Section III
[http://facsen.wsu.edu/faculty_manual/Section III 310.pdf](http://facsen.wsu.edu/faculty_manual/Section_III_310.pdf)

VII. Reinstatement Procedures

Arizona State University

If a tenured faculty member is terminated due to program elimination and that program element is reinstated within three years, that faculty member must first be offered reappointment and given thirty days in which to accept it.

In the event that the program element which has been terminated should be reinstated within a period of three years, new positions requiring qualifications and duties reasonably comparable to those of the released tenured faculty member shall not be filled without first offering the appointment to the released tenured faculty member. The released tenured faculty member must be given a reasonable time, not to exceed thirty days, to accept or decline reappointment.

Arizona Board of Regents, Policy Manual, 6-201 K.5
<http://azregents.asu.edu/rrc/Policy%20Manual/6-201-Conditions%20of%20Faculty%20Service.pdf>

Oregon State University and the University of Oregon

If a faculty member is terminated for reasons of program or department reductions or eliminations, that faculty member's place cannot be filled or replaced within two years, unless that same faculty member is offered reappointment and given a reasonable amount of time in which to accept the position.

If a tenured faculty member's appointment is terminated or if the appointment of a nontenured faculty member is terminated before the end of the period of appointment because of financial exigency, or because of program or department reductions or eliminations, the released faculty member's place will not be filled by a replacement within a period of two years, unless the released faculty member has been offered reappointment and a reasonable time within which to accept or decline it;

Oregon Administrative Rules, 580-021-0318

http://arcweb.sos.state.or.us/rules/OARS_500/OAR_580/580_021.html

University of Arizona

If a tenured faculty member is terminated due to program elimination and that program element is reinstated within three years, that faculty member must first be offered reappointment and given thirty days in which to accept it.

In the event that the program element which has been terminated should be reinstated within a period of three years, new positions consisting of duties reasonably comparable to those of the released tenured faculty member shall not be filled without first offering reappointment to the released tenured faculty member. The released tenured faculty member must be given a reasonable time not to exceed 30 days within which to accept or decline reappointment.

University of Arizona, University Handbook for Appointed Personnel, 3.18.2

<http://uhap.web.arizona.edu/>

See quote from Arizona State University above.

Arizona Board of Regents, Policy Manual, 6-201 K.5

<http://azregents.asu.edu/rrc/Policy%20Manual/6-201->

[Conditions%20of%20Faculty%20Service.pdf](http://azregents.asu.edu/rrc/Policy%20Manual/6-201-Conditions%20of%20Faculty%20Service.pdf)

University of Nevada, Las Vegas

If a faculty member's position is terminated for curricular reasons and that position is reinstated within two years, the removed faculty member must be offered reappointment at his or her previous rank, with twenty days to accept the offer.

19.9 Restriction on Replacements. If a faculty member is laid off for the above stated reasons, the faculty member's position will not be filled within a period of two years, unless a reasonable attempt to offer reappointment has been unsuccessful or reappointment has been offered in writing and the faculty member

has not accepted the same in writing within 20 calendar days of receipt of the offer. The reappointment referred to herein shall be at the faculty member's previous rank or range, inclusive of all cost-of-living increases given during the layoff. All sick leave and other accrued benefits shall be restored at the level present at the time of the layoff.

University of Nevada, Las Vegas, Bylaws

http://faculty senate.unlv.edu/common_files/UNLV_Bylaws.pdf

University of Washington

If a tenured faculty member is terminated for reasons of program elimination and that program is reinstated within five years, the removed faculty member must be offered reappointment, with thirty days to accept the offer.

In the event that the academic program which has been eliminated is reinstated within a period of five years, new positions shall not be filled through normal appointment search procedures until removed faculty members qualified for the position have been offered reappointment on terms at least comparable to terms which applied to the position previously held. Such removed faculty members shall be given 30 calendar days to accept or decline an offer of reinstatement.

University of Washington, Faculty Code and Governance, Section 25-52

<http://www.washington.edu/admin/rules/policies/FCG/FCCH25.html>

Washington State University

If a tenured faculty member's position is terminated for reasons of program discontinuation and that position is reinstated within three years, the faculty member must be offered reappointment, with a reasonable period of time in which to accept the offer.

If an appointment is terminated before the end of the period of appointment because of financial exigency or because of discontinuance of a program of instruction, the released faculty member's appointed position will not be filled by a replacement within a period of three years, unless the released faculty member is offered suitable reappointment and a reasonable time within which to accept or decline the reappointment.

Washington State University, Faculty Senate, Faculty Manual, Section III

[http://facsen.wsu.edu/faculty_manual/Section III 310.pdf](http://facsen.wsu.edu/faculty_manual/Section_III_310.pdf)

Tenured faculty members who are reinstated within two years of termination may be reinstated with tenure. That faculty member may be reinstated within a new department or unit, which will assume the tenure obligations for that faculty member.

When a former faculty member who had tenure is reemployed in a comparable position within two years, tenure may be given immediately, though the usual procedures must be followed.

If a tenured person takes a different faculty position within the institution on a permanent basis, the receiving department must assume the tenure obligations accompanying the transfer. In the special case of the formation of a new unit, the prior tenure of each faculty member will be transferred to the new unit.

Washington State University, Faculty Senate, *Faculty Manual*, Section III
http://facsen.wsu.edu/faculty_manual/Section_III_310.pdf

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Charge 6: Review system counsel’s determination regarding tenure, including the protection that exists in the Code and bylaws and the conditions in which tenure can be revoked. Recommend ways to protect the rights of tenure and the mechanisms to do so.

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In the body of the response to Charge #6 I have included our analysis of the tenure protections in the NSHE system and at UNR and have expanded that discussion to compare UNR with peer institutions

The Meaning of Tenure

In the Code, the actual definition of tenure is vague, indicating only that its purpose is to provide a faculty committed to excellence, to promote academic freedom, and to provide a substantial degree of job security. (3.1.2) none of these objectives, as laid out in the Code, indicates that tenure assures ongoing employment to the faculty member.

The review of peer institutions reveals that the definition of tenure is fairly consistent across institutions, with tenure defined as “a property right with the expectation of continued employment (Arizona State University) and the “right...to hold a position without termination or discriminatory reduction in salary (University of Washington), but every institution allows for the termination of tenured faculty under specified conditions.

Tenure Home

The question of whether tenure is in a department or the institution is one of considerable interest to faculty, particularly because of the financial crisis spearheading curricular review. This concern was voiced by several faculty during the Employment Review hearings this past year. It may well be that some of these questions about tenure location have not been of great concern previously a) because there was no threat of job loss other than “for cause,” or

b) because tenure was seen as protected by the institution, so departmental splits, reorganizations and eliminations were not viewed as reducing one’s security...but now, under curricular review, these questions become very important.

There is not a clear answer – the Code does not specify where tenure resides. There is no mention in the Code or the Bylaws of “tenure home.” Bart Patterson, NSHE Vice Chancellor Administrative and Legal Affairs, has issued the opinion that the Code ‘contemplates’ that tenure is granted in the unit/department (memo 2/28/2011) He bases this on provisions in the Code that are completely open to interpretation. For example, he sites Title 2, Chapter 3 3.3.1 (b1 and 2) which indicate that the president must seek a recommendation from the “appropriate faculty” before exempting a faculty member from the probationary period or conferring tenure upon hire, but this does not determine that tenure is in the department or unit. Likewise, language about reassignment, transfer between institutions and evaluation (do not place the faculty member’s tenure clearly within an unit (Title 2, 3.4.2 (b, and c) and 3.4.6). The only argument supporting the department as the location of tenure is 3.3.1(b2) which uses the language “the department within which the individual was hired...” It can be argued that several sections of the Code instead suggest that tenure is granted at the institutional level, not at the department

level. For example, the Code indicates that while departments recommend tenure to the President, the President, not the department chair, the college personnel committee, or the dean, is responsible for offering tenure to the faculty member. Faculty are hired within particular departments, and departments can recommend tenure on hire, but tenure is not granted *by* the department. A department may recommend a faculty member for tenure and the College may support that recommendation, but the University Personnel Committee can recommend differently, and the President can turn that person down. While the tenure process is initiated at the department level, there is both a College level review and a University level review of the application, which indicates that the institution at large, not just the department, has a stake in tenure.

Additionally, the Code (3.4.7c1) suggests that in the event of hiring a faculty person ‘with tenure’ the president of the institution is to seek a recommendation from the unit but is not obligated to adhere to the unit recommendation in making a recommendation to the regents. This implies that the department is not required to approve tenure in order for it to be granted. It is also of note that tenure is clearly not within the NSHE system, but it is within the institution (Code. Sec. 3.4.7 a and b).

Peer institutions vary in their clarity about where tenure is located. Arizona State University states that tenure is granted by the President and tenured faculty members are located and tenured at specific campuses. Oregon State on the other hand specifically indicates that faculty are tenured within a department and tenure is not transferrable to another department or institution. At Washington State tenure is specifically granted within a department or program. There is no such clarity in the NSHE Code.

Faculty should make their understandings and interpretations of tenure location clear and, before too many changes are made in the code, should forward these.

Organizational Changes and Curricular Review

Section 2.1.3 of the UNR Bylaws refers to the process through which changes in the organization are made. This section is consistent with section 5.4.6 of the NSHE Code which addresses curricular reasons for termination of faculty members and the process for such terminations. Much of the NSHE Code’s consideration of relinquishment of tenure or termination of tenure is not relevant to our current situation in which we are considering the meaning of tenure under conditions of curricular review or financial exigency. We are therefore not considering those situations in which faculty are terminated “for cause” or any other reason.

The NSHE Code and UNR Bylaws outline a fairly extensive procedure for the restructuring or elimination of a program or department. It seems quite clear that if a program is eliminated, reduced in size or reorganized, the tenured faculty positions in that program can be eliminated through this process. (Code, 5.4.6). If the program or department is being eliminated due to financial exigency or curricular review, the faculty member’s position is eliminated and with that, their tenure.

The 2011 Curricular Review document issued by the Office of the Provost (March 7, 2011) specifies the application of 5.4.6 in the Code. This document lays out the way the department formally considers the Provost's decision to eliminate a department or unit (the show cause stage) and proceeds to discuss the process including review by a college committee, a vote by the college, an appeals process to a senate committee and then to the whole Senate and then finally to the Employment Review Committee. Departments are clearly provided the opportunity to challenge the decision to reorganize, eliminate or reduce their unit in written documents of defense.

Transparency and the perception of fairness would be enhanced if the affected departments were able to defend their positions in person to the College committees considering their defense. Further, tenured faculty are not included in the discussion about the elimination or reorganization of their department or unit until after they have been targeted, a top-down process that seems to violate the spirit of shared governance

Justification for Termination of Faculty

The administration is required to provide only a "reasonably adequate" statement of the basis for the decision to lay off the faculty member and a "reasonably adequate" description of the manner in which the decision was arrived at and a "reasonably adequate" disclosure of the information and data upon which the decision-makers relied (Code, 5.4.7 (f)). Last year this "reasonably adequate" basis was usually the closure of the faculty member's program as a result of curricular review and with that the elimination of their position. In a few instances - for example when the entire program was not being eliminated - the "reasonably adequate" basis was something else related to the faculty member's value to the university in another capacity.

All of our peer institutions provide for removal of tenured faculty as a result of curricular review. Arizona State stipulates that this can only occur after a "lengthy review process," including both faculty and students and allowing all members of the university community an opportunity to express their views. Further the University of Oregon requires an affirmative action review prior to any decision being made in regard to reductions or reorganizations, something UNR should carefully consider. In all of these institutions, there is very little specific detail about the process that occurs when department are reorganized.

The process does allow flexibility but may also provide a potential source of arbitrariness and unfairness.

Some faculty members are concerned that "curricular review" resulting in elimination or reorganization of their program has been presented as the reason for termination of employees, but that curricular review actually camouflaged the underlying reason of "financial necessity." The Provost's position on this is that while the process of curricular review may have been necessitated by financial considerations, these financial considerations were the impetus for the curricular review and not the reason for the elimination of the program. This position would seem to be the only one he could take given the financial stressors operating on the institution.

Using the process in this fashion does lead to the perception of unfairness and it seems that clarification in the Code and Bylaws of the relationship between financial necessity and curricular review would be useful.

The process of curricular review is designed to downsize, eliminate or reorganize programs or units or departments for *bona fide* reasons related to planning and the long term health of the University. The driver in the current process of curricular review is financial crisis and this appears to our committee to violate the underlying justification for curricular review. At the same time, we recognize that UNR has in place a process through which organizational change occurs, and it may be that relying on this process is reasonable if the only alternative is financial exigency. Yet, curricular review should be a long-considered, open, process in which voices of faculty and other interested parties can be heard, debate and faculty engagement in the spirit of shared governance can occur.

Given the severe time constraints within which this curricular review was conducted, while this review process as conducted at UNR may adhere to the “letter of the law” we do not see it as reflecting the “spirit of the law.”

Placement of Terminated Faculty in Other Positions

NSHE Code 5.4.7 b. indicates that faculty laid off for curricular or financial reasons shall be continued if professional positions are available. UNR Bylaws 3.5.5 say that the university will first *make every effort* to place the faculty member concerned in another appropriate qualified professional position within the university. Other peer institutions use a similar language, such as “devote its best efforts to securing alternative appointments” (Arizona State), “take all reasonable steps to identify and place them in suitable alternative appointments” (UNLV, and “make every reasonable effort to place faculty members in other positions” (University of Washington). While some faculty members who were laid off at UNR during the last round of cuts were offered RCUFs, I think we can agree that the University did not make every effort to place faculty who were laid off in other professional positions. The administration seemed reluctant to place laid off faculty in other departments or units in which they may have fit. While it may be difficult for the faculty member as well as the department to have a laid off faculty member “forced on them,” extreme situations might justify extreme measures.

The University needs to take this section of the Code and Bylaws seriously and to demonstrate that they have made “every effort.”

Reinstatement

UNR Bylaws (3.5.5) indicate that if a tenured faculty member is terminated, the position will not be filled within a period of two years unless the affected faculty member has been offered reinstatement at the same salary, rank, and tenure status. All of the institutions our committee reviewed have a policy of reinstatement if a program is reinstated or the position is reinstated. At UNLV, if a position is terminated for curricular reasons and the position is reinstated within two years, the faculty member who was removed must be offered reappointment, and at Arizona State, the time is three

years. At the University of Washington the tenured faculty member who was terminated must be offered reappointment if the program is reinstated within five years.

Faculty Rights

Several members of our Senate committee members reported that faculty in their programs were not aware that if a department was reduced or reorganized that they would not be protected by tenure. Clearly, tenure rights are being weakened, not only here at UNR, but in other institutions. For example, at the eight-campus University of Louisiana System, the Board of Regents approved changes that destroyed key elements of tenure protection because of budget cuts to the system, similarly to what has occurred here at UNR, including eliminating tenure protection for faculty in layoffs if the professor's programs have been discontinued and reducing notice requirements from two semesters to one if a particular level of budget cuts is anticipated. Faculty requests for greater involvement in the process were rejected by the Board. Faculty had requested, for example, that if their program were eliminated but if courses were still offered in that program, their jobs should be protected (A parallel with the layoff of German faculty at UNR). On the other hand, the University of Missouri system provides more faculty rights, for example, giving consideration to "seniority in terms of academic rank and length of service in the event that certain continuous appointments must be terminated because of financial exigencies."

Our committee suggests that faculty be informed of their rights or lack thereof under conditions of curricular review, including the process for deciding who is terminated and whether tenure or seniority is considered.

Employment Review Committee

The next issue is the final appeal the terminated faculty member can make to the Employment Review Committee. The purpose of this appeal process has been misunderstood and is unclear. The actual scope of the review as defined in the Code is very narrow. The appeal is limited to whether there is "sufficient evidence" to support the "specific decision" to lay off the particular faculty member or whether there has been "material deviation" from the procedures. There can be no reconsideration of the policy decision to discontinue or reorganize the program of which the faculty member is a part (NSHE Code 5.4.7 (g)). However, faculty using the process have tended to perceive it as an opportunity to show why they in particular should not be let go, while the administration's position has been that the only reason they are being let go is that their program is being eliminated or otherwise reorganized. So there is really nothing for them to argue. The only exception is when not all members of the department that is being reorganized are being let go, leading perhaps to a faculty member challenging the reasons that some faculty have been retained and others laid off. Yet, it is extremely difficult to argue that the administration should have made a choice different than the one they made since they are able to offer a justification for the decision and their justification need only be "reasonably adequate." Further, the burden of proof is on the faculty to show that another choice should have been made.

Although the NSHE Code 5.4.7 (Procedures for Furlough, Pay Reduction or Termination of Employment Due to Financial Exigency or Curricular Reasons) refers to faculty being terminated as a result of financial exigency or curricular review, in fact the actual process leaves almost no room for review of those faculty. The review process wrongly communicates to faculty that they can appeal their particular case based on their merit. The only real basis for the appeal seems to be when a faculty member can show that they are actually not a member of the program being eliminated, or they can show malfeasance.

This final appeal process and purpose needs to be carefully rewritten so that either it is allowing the department one final chance to save itself, or it is saying to the faculty members, basically, if you feel that you are the victim of discrimination or wrongdoing, this is your chance to appeal, but do not present us with your publication record, grant record or anything else that would be relevant to evaluating you as a member of the academic community.

Another related question is the degree to which the Employment Review Committee can evaluate or assess the processes and procedures that occurred at the *departmental level*. The 2010 ERC interpreted 5.4.7.(g) 1 to mean that they could not consider the policy decisions at the departmental or program level, even though there may have been some irregularities or some questionable processes that led to the decision to downsize or eliminate certain programs.

Questions Regarding Process and Protection

While tenure does not protect a faculty member if the program with which they are affiliated is eliminated, there remain a number of questions related to tenure which deserve careful consideration by the Senate and the faculty:

In the case of reorganization or reduction of a unit, what role does tenure play? It is clear that if an entire unit is eliminated, the faculty position is eliminated, hence tenure offers no protection, whether it is situated in the institution *or* the unit. But when only some faculty are to be let go, what role does tenure play? If a department loses four of their seven faculty, who decides which faculty go? What if all are tenured? Will all lose their jobs with three being hired back through a competitive process? Who will establish the definition of the position and the criteria for rehiring? We did not find any information in the code or bylaws that addressed these important questions of faculty rights.

If a program is reorganized, for example if two units are merged, and decreased in size, how will lay-offs be determined and by whom? Who will determine the criteria? Will the department chairs recommend to the Dean and the Provost? Will the Provost decide to fire everyone and then re-establish positions?

If a faculty member was tenured in a department that no longer exists as a result of previous reorganizations in the University (such as is the case in Education, where does that faculty member's tenure lie? If a department is renamed or moved, should all faculty have their tenure documents redrawn?

If a faculty member is tenured in one department, but most of their funding comes from other sources (as is the case for many faculty in Extension), and Extension is dramatically downsized, does their tenure in the department protect them or are they laid off because Extension is downsized?

How does one decide where a faculty member is tenured if that person has a joint appointment? If the tenure comes from one department but the other program in which the person is joint is eliminated, does the person automatically return to the department in which they have tenure? (Do MOUs always cover these contingencies?)

I would like to thank the members of the Committee, particularly Duncan Aldrich and Ann Medaille, and the members of the subcommittees for their hard work gathering and reviewing material and providing information and interpretations for this report.

Respectfully Submitted,

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Mary White Stewart, Chair
Campus Affairs Committee

Subcommittee: Peer Institution Review
Ann Medaille, Chair, Libraries
Members:
David Fenimore, English
Nancy LaTourette, Computer Science and Engineering

Subcommittee: UNR Bylaws and Code Tenure Review
Mary White Stewart, Chair, Sociology
Members:
Duncan Aldrich, Libraries
Shannon Taylor, College of Education
Barbara Kohlenberger, Medical School

Senate Liaison: Steven Lafer, College of Education

