

Proposals to Amend the NSHE Code, Set 1:

1. *Academic freedom extends to anyone involved in direct instruction or research regardless of title.*

See Code, Section 1.1.p, in <http://system.nevada.edu/Board-of-R/Handbook/TITLE-2---/T2-CH01---Organization-and-Adminstr.pdf>.

Section 1.1 Definitions

- 1.1 (p) "Tenure" means ~~academic freedom and~~ continuing employment, which may be terminated only for the reasons specified in the Nevada System of Higher Education Code.

Recommendation #1.1: This section should be amended as above to eliminate its reference to academic freedom, which is much better described in Chapter 2. See <http://system.nevada.edu/Board-of-R/Handbook/TITLE-2---/T2-CH02---Academic-Freedom-and-Respo.pdf>.

2. *Hearing committees for any Chapter 6 hearing should, at the request of the person at risk, be composed of personnel from the same general personnel category.*

The faculty senate currently has a process in UNR Bylaws for grievances, which excludes, for example, faculty from the same department or those with less than five years at UNR. Its default is to have only academic faculty serve on an academic faculty member's grievance, and only administrative faculty serve on an administrative faculty member's grievance, unless all parties agree otherwise.

Code should be modified to allow institutions to put their own processes into their bylaws, so we can apply the grievance standards to Chapter 6 special hearing committees.

6.11.3 Appointment of the Special Hearing Committee.

- (a) ~~The faculty senate of each System institution shall select a faculty hearing pool. A faculty hearing panel, composed of at least fifteen faculty members, shall be selected by the faculty senate of each System institution. to serve on special hearing committees, and institutions shall establish selection procedures in their institutional bylaws.~~ Both academic and administrative faculty ~~and administrators~~ shall be eligible to serve. The members of the faculty hearing ~~panel~~pool shall serve one-year terms and upon agreeing to serve shall commit themselves in writing to serve on a special hearing committee when needed. ~~System institution administrators are obligated by the provisions of this subsection to grant special hearing committee members administrative leave or other assistance necessary to enable them to fulfill their responsibilities as members of special hearing committees. This might require providing teaching assistance from classes or other administrative relief from assigned duties.~~
- (b) Except as provided in subparagraph (c) below, within 5 college working days after receipt from the president of notice of the president's decision to hold a hearing under Section 6.12 of the Nevada System of Higher Education Code, the faculty senate chair shall select the names of nine persons from among the faculty hearing ~~panel~~pool to serve on a special hearing committee, the selection to be made by lot, ~~to serve on a special hearing committee and the faculty senate chair, within~~ subject to the established selection

procedures. Within the above-referenced time period, the faculty senate chair shall inform the person charged and the administrative officer of the names of the persons selected.

- (c) If a hearing is to be held on a charge or charges of sexual harassment under Subsection 6.2.2(p) of the Nevada System of Higher Education Code and if a student or graduate student is involved in the charge as an alleged victim, within 5 college working days after receipt of notice of the president's decision to hold a hearing under Section 6.8.3 of the Nevada System of Higher Education Code, the faculty senate chair shall select the names of eight persons from among the faculty hearing ~~panel~~pool, the selection to be made by lot subject to the established selection procedures, and the appropriate student government president shall nominate three students, to serve on a special hearing committee and the faculty senate chair and the appropriate student government president, within the above-referenced time period, shall inform the person charged and the administrative officer of the names of the persons selected or nominated.
- (d) System institution administrators are obligated by the provisions of this subsection to grant special hearing committee members administrative leave or other assistance necessary to enable them to fulfill their responsibilities as members of special hearing committees. This might require providing teaching assistance for classes or other administrative relief from assigned duties.

Recommendation #1.2: Section 6.11.3 should be amended as above to allow the faculty senate to follow established selection procedures in selecting a special hearing committee.

3. Code still refers to the University of Nevada, when it intends NSHE.

For example:

- 3.4.4 Notice of Tenure.** When a member of the academic faculty has been granted appointment with tenure, the academic faculty member shall be informed immediately by the president in writing. Any defect in the notice or any misstatement of the Board of Regents' actions shall not create any enforceable legal obligations against, or on the part of, the ~~University of~~ Nevada System of Higher Education.

Recommendation #1.3: Any references to the “University of Nevada” should be updated.

4. The faculty senate is supposed to be informed of hires with tenure at either Rank III or IV.

This practice is not followed, though the intent is met through the state's Open Meeting Law, which requires agenda to be posted for the public.

- 5.2.2 Final Approval.** The president must approve all recommendations concerning appointments to employment, nonreappointment to employment of nontenured faculty members, salary, promotion, or appointment with tenure within the president's System institution. However, an appointment with tenure shall also require, before becoming effective, the approval of the Board of Regents. ~~The president must provide 5 working days notice to the institutional faculty senate prior to approving a promotion to the position of Associate Professor (Rank III) or Professor (Rank IV). (B/R 4/99)~~ In accordance with the requirements of NRS 281.210, employees who are related to the

institution president within the third degree of consanguinity or affinity must be appointed by the Board of Regents.

Recommendation #1.4: Amend Section 5.2.2 as above.

5. *Many sections of the Code are redundant.*

Section 3.2.3(a) and (c) say the same thing.

3.2.3 Rank O.

- (a) Faculty placed in Rank O positions shall not be eligible for appointment with, nor shall have, tenure under any circumstances. A faculty member must agree to placement in a Rank O position.
- (b) Upon the request of the academic faculty member and the approval of the president, up to three years of uninterrupted full-time employment in a Rank O position may be counted towards completion of a probationary period for tenure in the event an academic faculty member employed in a Rank O position is subsequently appointed to a rank capable of conferring eligibility for appointment with tenure. Such decision must be made at the time of the subsequent appointment.
- (c) Academic faculty at the University of Nevada, Reno and the University of Nevada, Las Vegas who have been placed in Rank O positions may be given such academic titles as the member institution, at the president's discretion, may consider appropriate, ~~but such academic faculty shall not be eligible for appointment with, nor shall have, tenure under any circumstances by reason of the granting of such academic titles.~~

Recommendation #1.5(a): Amend Section 3.2.3 as above to eliminate redundant sentence.

In Section 3.3.2, approval by the President is implied before a faculty member can even be considered for early tenure. This is inappropriate, and was probably intended to refer to the fact that the President must approve the application before it goes to the Board of Regents, which is already stated in Section 5.2.2 (see #4 above).

3.3.2 Consideration for Tenure during Probation. Upon the request of the academic faculty member ~~and the approval of the president~~, academic faculty eligible for appointment with tenure may be considered for such appointment at the appropriate time during each year of employment during the probationary period. Member institutions shall make no provisions requiring members of the eligible academic faculty to be considered for appointment with tenure at any time prior to the next to the last year of the probationary period.

Recommendation #1.5(b): Amend Section 3.3.2 as above to eliminate redundant phrase.

Alternative suggestion: This could be rewritten to require the President to denote any faculty who he or she recommends for tenure prior to the 6th year of the probationary period.

6. *Code should be clarified to permit any process that can lead to a grievance being filed should always permit a reconsideration first.*

Reconsideration is explicitly an option in three sections, 5.2.4, which deals with the denial of tenure, promotion, or reappointment, 5.4.7(g), which deals with a layoff due to financial

exigency or curricular review, and 5.16, which deals with denial of merit increases. For example:

5.2.4 Reconsideration of Personnel Action Denying Appointment with Tenure, Promotion or Reappointment. Within 15 calendar days after receipt of the written reasons for denial of appointment with tenure, promotion or reappointment to employment, or for the issuance of a notice of termination, a faculty member may request reconsideration. The request shall be submitted in writing to the faculty member's department chair, supervisor, or dean who rendered the negative decision together with the reasons, arguments and documentation supporting the request for reconsideration. The request for reconsideration shall be promptly directed through regular administrative channels with recommendations for or against reconsideration of the decision. Final action shall be taken within a reasonable time by the president after receipt of the recommendations, except that if the president, after reconsideration, decides to recommend appointment with tenure should be granted, the final decision must be made by the Board of Regents.

Because of its placement in these sections, the reconsideration process is considered to *only* apply in these situations. Reconsideration is also explicitly denied in Sections 5.4.8 and 5.5.2-4 (reassignment of administrators), and 5.5.7 (the new section on furloughs). The Executive Board, however, thinks reconsideration should be available as an option in any matter which is already grievable.

Recommendation #1.6: Create a new section on reconsideration in Chapter 5 which outlines the reconsideration process, using the language in 5.2.4. Revise sections 5.2.4, 5.4.7(g), and 5.16 to refer to this new section.

7. *Grievances should be correctly defined.*

Code defines a grievance as follows:

5.7.2 Scope of Grievance Procedures. A grievance is an act or omission to act by the respective administrations of the System institutions, allegedly resulting in an adverse impact on the employment conditions of a faculty member relating to promotion, appointment with tenure or other aspects of contractual status, or relating to alleged violations of the Nevada System of Higher Education Code or institutional bylaws.

This confuses a grievance with a grievable act, and should be changed as follows:

5.7.2 Scope of Grievance Procedures. A grievance is [an objection to](#) an act or omission to act by the respective administrations of the System institutions, allegedly resulting in an adverse impact...

Recommendation #1.7: Amend Section 5.7.2 to correctly define a grievance.

Proposals to Amend the NSHE Code, Set 2:

In response to the financial crisis, the advisory group recommended:

1. Remove curricular review from code as any kind of vehicle that might be used to meet short-term financial challenges. Curricular review is a careful, ongoing process that guides the evolution of the campus. While program creation and closures already require Board approval, the intermingling of curricular review and financial exigency should be corrected.
2. A new category of review should be created to address emerging financial crises. The request to initiate such a process should come from the president following consultation with the faculty senate. Board approval to invoke such a process should be required, institutional bylaws should govern the processes, and the process should be time -limited. Any actions resulting in the loss of tenured positions should require Board approval.

In addition to the disciplinary process described in Chapter 6, Code currently allows tenured faculty to be terminated for reasons of Curricular Review or Financial Exigency. Furloughs for tenured faculty also require a declaration of financial exigency. These conditions are described in Sections 5.4.5, 5.4.6, 5.4.7 of the Code. See <http://system.nevada.edu/Board-of-R/Handbook/TITLE-2---/T2-CH05---Personnel-Policy-for-Facul.pdf>. Section 5.9.2 applies these reasons to the termination of untenured faculty before the end of their contract and/or notice periods.

Section 5.4.5 describes the financial reasons for furlough or termination, and financial exigency requires a declaration by the Regents, with the chancellor, the presidents, and the senates playing a role. It can apply to the whole system, to the university, or even to an administrative unit. The Board can choose to have the institution(s) follow a process of creating an ad-hoc financial exigency committee to advise the president, or it may choose not to do so, and instead implement its own plan. Notice is reduced to 60 days, for both tenured and untenured, unless there aren't even enough funds for that, and there are few other limitations. For example, the Regents could hypothetically pick and choose who to lay off, or could choose to terminate all senior faculty above a certain rate of pay, though most people think this level of micromanagement unlikely. They could certainly choose which majors to close down. Finally, a financial exigency is not supposed to be a permanent state, and must be renewed every half year.

Section 5.4.6 describes the curricular reasons for termination, due to elimination of an administrative unit, project, program, major, or department. It is supposed to be for "bona fide reasons pertaining to the missions of the System institutions," and so prevents singling out individual faculty for termination. It is supposed to result from "an academic planning process as established in writing and approved by the presidents of the member institutions affected."

Because financial exigency is so extreme in its possible consequences, almost no universities in the country have resorted to it. Many fear that a declaration of financial exigency can do long-term damage to a university's ability to hire good faculty. Curricular review, however, does not explicitly allow consideration of costs. The university has chosen to implicitly include costs, since a limited budget means we must choose between which different programs can be funded.

Finally, Section 5.4.7 lays out the procedures for both reasons, but it is clear after several readings that some procedures are appropriate for curricular review, and some are not. For example, the university can try to move faculty to another position, but this is clearly inappropriate under

financial exigency. Under curricular review, tenured faculty may be terminated with 7 months notice, i.e. a Dec. 1 notice for a July 1 termination, which is inadequate time for most academic faculty to go through the job search process (as academic job markets usually start in September and most openings close by November, with hiring decisions for July 1 often completed by February). It then requires that “reasonably adequate” explanations be given, and describes the reconsideration process, in which the university has to create one or more employment review committees.

It is the opinion of the advisory group that curricular review should be a routine process, not an emergency process, which is used to eliminate or reduce majors, programs, departments, and administrative units. If at all possible, it should not involve the abrogation of tenure, but in cases where no alternative employment is possible, then notice should be at least one year, since that is how the academic job market works.

It is unlikely that adding more conditions and safeguards to financial exigency would be agreed upon by the Regents. Had the Governor been successful last May in his proposal to cut state funding for the university by half, then financial exigency would have been a virtual certainty.

Which leaves the middle ground. If curricular review is not to be used for emergency financial purposes, and financial exigency is to be avoided but cannot be eliminated, then what means do we have to respond to budget crises such as we now face?

The advisory group recommended something in-between, which they suggested calling “financial review” but could be thought of what curricular review is currently, or as financial exigency, by some other name, with many more protections. By making suggestions of what the process might be, but not being specific enough, we unintentionally created an imaginary monster under the bed. Not realizing that curricular review already allows termination of tenured faculty, some faculty argued that we would be handing Regents, or an unpopular president, a powerful weapon that could be used against us in the future. Should we enable that? On the other side, however, is the fear that Regents have shown they are willing to create something ad-hoc, as they did in June, and that something could be even worse. Should we try to exert control over what that might be?

Here are some possible recommendations:

Recommendation #2.1: Divide Section 5.4.7 into two parts, one dealing only with curricular review, the other dealing only with financial exigency.

Recommendation #2.2: Amend Section 5.4.7 to require a full year notice for tenured faculty who are terminated for reasons of curricular review.

Recommendation #2.3: Amend Section 5.4.6 to clarify that cost versus value may be explicitly considered under curricular review, and that this process may be used to respond to financial difficulties.

Recommendation #2.4: Modify these sections to remove references to furloughs, so that they would not require a financial exigency. A new section should then be created to describe the process of implementing furloughs, with appropriate safeguards.

Recommendation #2.5: In conjunction with 2.1, 2.2, and 2.4 above, create a new process, tentatively called financial review, which would combine aspects of both curricular review and financial exigency. Like financial exigency, it would require a declaration by the

Regents, input from the senate and the president, and regular review. Like the current process of curricular review, it would allow for termination of tenured faculty for curricular reasons, with at least seven months notice (and preferably a year), and would not allow individual faculty to be singled out. As in 2.3 above, it would explicitly consider cost as part of the decision, and it would specify a process consistent with curricular review in Section 3.5.4(b) of the UNR Bylaws for consultation of the department, college, and senate. As in 2.4 above, it would also lay out conditions for furloughs for tenured faculty. It may also be appropriate to allow a reduced notice for untenured faculty, from one year to six months instead of to the current 60 days.

Each of these recommendations would require careful drafting of specific language, to ensure that there were no unintended consequences.

Proposals to Amend the NSHE Code, Set 3:

In response to the financial crisis, the advisory group recommended:

The three-category personnel classification system as described in code is no longer adequate or flexible enough to meet the needs of the different NSHE institutions. Campuses should be allowed to evolve an employment taxonomy consistent with the mission needs.

This recommendation has several bases. On one hand, there was some discussion in the so-called “Swat Team” report of June 2009 regarding this matter, particularly with regard to the current definitions of administrators and faculty, and the notice requirements of each. Also, the faculty senate chairs of several other institutions asked for this; UNLV, in particular, does not use the same terminology as UNR, but refers to their administrative faculty in bylaws as “professional staff” and would like the Code to not conflict with their bylaws.

On the other hand, a similar charge was given to the senate’s Administrative Faculty Personnel Policies & Procedures Committee. The primary reason for this charge was the complaint by some administrative offices that neither administrative faculty nor classified staff accurately fit their needs, and they suggested the creation of a technical staff category that would not have the degree requirements of faculty. This grew into a debate about whether non-instructional administrative professionals should be considered “faculty” or not, a debate which caused many administrative faculty much insecurity in the context of the current budget crisis, and led some to also feel disrespected by academic faculty. While the committee recommended against this, their report was not accepted by the Senate, and the matter has not been voted on, up or down, by the senate.

There have also been some discussions of whether UNR could adopt a different model for its classified staff, like DRI’s category of research technologists. In the past, classified staff have preferred being part of the state classified system, though recent legislative policy on furloughs may have led some to reconsider.

The three-category system divides its employees into academic faculty, administrators (or, alternatively, administrative faculty), and classified staff. Of course, this excludes those on letters of appointment. Section 1.1 of the Code (see <http://system.nevada.edu/Board-of-R/Handbook/TITLE-2---/T2-CH01---Organization-and-Administr.pdf>) defines academic faculty as those in instruction, research and libraries, and then defines “administrators” as those administrative faculty in executive, supervisory, and support positions.

These are further defined in the Regents’ Handbook, Title 4, Chapter 3, Section 2 (see <http://system.nevada.edu/Board-of-R/Handbook/TITLE-4---/T4-CH03---Professional-Staff.pdf>), which deals with professional staff, defined by state law as unclassified, salaried employees who are exempt from the Fair Labor Standards Act. The Handbook specifically says that resident physicians, postdoctoral fellows, and DRI’s research technologists are not faculty.

As defined by the Handbook, administrative faculty includes (1) executive faculty, including vice-presidents and above, (2) supervisory faculty, such as deans and directors of centers, and (3) support faculty, which includes the rest of administrative faculty. Specifically, support faculty are defined who perform non-manual work, of either a confidential nature performed under the direct supervision of a member of the executive faculty, or of a predominately intellectual, specialized or technical nature requiring training, experience or knowledge, and the consistent exercise of

discretion and judgment. Oddly enough, the Handbook specifically says this includes teaching assistants, laboratory assistants, athletic coaches and assistant athletic coaches.

The Code thus clearly defines administrators as identical to administrative faculty. However, the Code also refers to administration and the faculty as if they were different groups, such as in Section 5.7.3. In another example, it is clear that administrators do not have notice rights:

5.4.8 **Reassignment of Administrators.** An administrator who is not otherwise employed with tenure serves in an administrative capacity at the pleasure of the appointing authority. Such an administrator may be removed from the administrative position without cause, reasons or right of reconsideration...

This is clearly inconsistent with current practice, as well as with other sections of the Code, and the section then goes on to contradict even itself.

Here are some possible recommendations:

Recommendation #3.1: In Section 1.1 of the Code, revise subsection (b) to define administrative faculty (not administrators) as “those professional staff in executive, supervisory or support positions, as defined by the Board of Regents.” Then add a statement that institutions may define these professional staff categories further in their bylaws.

Recommendation #3.2: In Section 1.1 of the Code, add a new section after (b) to define “administrators” as only that subset of administrative faculty in executive and supervisory roles, not support roles. Correct every reference to administrators elsewhere in the Code to ensure that it means only these administrators, and not others. Where necessary, correct references to “faculty,” which might be better defined as “faculty and other professional staff exclusive of those in administrative positions.”

This latter definition, then, leaves it to the university to define whether or not all professional staff are faculty, but treats them the same regardless – unless, of course, they fall into the new definition of administrator, who serve “at the pleasure” of the president. If either of these recommendations are adopted by the Regents, there should also be a corresponding change in Title 4, Chapter 3, Section 2 of the Regents’ Handbook, along with an elimination of the inclusion of “teaching assistants.”