

DRAFT UT DALLAS POLICY ON FINANCIAL EXIGENCY (Rev 3 MR 2010)

Preamble

The enunciation of a policy in Rule 31003, Section 1, of the Regents' *Rules and Regulations* (<http://www.utsystem.edu/bor/rules.htm#A4>) concerning the Abandonment of Academic Positions or Programs calls for the President of the University to determine institutional procedures for an in-depth review to inform and guide decisions on these matters. Section 2 concerns elimination for "Academic Reasons." Section 3 concerns elimination due to financial exigency. In accord with Rule 31003, U. T. Dallas policy and procedures relating to Section 3 are as follow.

GENERAL POLICY ON INTERPRETATION OF REGENT'S RULES

Regents Rule 31003, abandonment of academic positions or programs must be interpreted in the light of Rule 40101 which gives faculty the "major role" in regard to "general academic policies and welfare" and related matters and in the light of the further provisions that assign these faculty responsibilities to the faculty governance organization and require that the organization and procedures of the governance organization be set out in the university Handbook of Operating Procedures and subject to governance review and approval. In addition, the University accepts the recommendations regarding declarations of exigency in the American Association of University Professors "Recommended Institutional Regulations on Academic Freedom and Tenure."

The term "faculty committee" as used in Regents Rules section 31003 shall be understood here as meaning the Academic Senate of the University of Texas at Dallas, the regular committees of the Senate, or any ad hoc committee that the Senate may assign responsibilities to in order to respond to the exigency. It does not include committees that the Senate does not constitute or approve.

INITIAL DECLARATION OF FINANCIAL EXIGENCY

Financial exigency is an imminent financial crisis that threatens the survival of the institution as a whole and that cannot be alleviated by less drastic means. Whenever there is reason to anticipate that the University is sufficiently threatened by financial exigency, declines in enrollment, or changes in educational needs to endanger the continuance of the University's obligations to faculty members with tenure or those on regular academic appointments, the President at the earliest date possible shall inform the Faculty Senate and all potentially affected budgetary units of the problem.

The President shall consult with the Senate and the concerned budgetary units to determine the nature and seriousness of the problem, the most appropriate of the possible courses of action to be taken, and the means of safeguarding faculty rights and interests, including tenure rights. In solving such a problem, The University shall make every reasonable effort to reassign affected faculty members to other suitable work and to aid them in finding other employment.

On the basis of these deliberations, the President shall write an Initial Declaration of

Financial Exigency giving the extent and scope of the emergency and the general approach to be taken to respond to it.

CONCURRENCE OF THE SENATE

The President shall submit the Initial Declaration of Exigency to the Senate for advice and concurrence. Concurrence requires a majority vote of the Senate. This process may involve amendments, mutually agreed upon. Concurrence will result in a joint Senate-presidential Exigency Plan. The joint Plan shall include a formula for the membership of the committee “composed of faculty and administrative personnel to make recommendations to the president as to which academic positions and/or academic programs should be eliminated as a result of the financial exigency” in accordance with rule 3.1, as well as the general criteria the committee should apply in making its recommendations.

PROCEDURE FOR ELIMINATING POSITIONS

Upon concurrence, the Senate shall nominate faculty to serve on the committee to review the President’s declaration, assure that there is no alternative to the proposed actions, and develop a process to make the needed decisions as outlined in Regents Rules 31003, Section 2, 3.2 to 3.5, provided that:

For section 3.1, the “committee composed of faculty and administrative personnel” the general size and composition of the committee shall be agreed upon by the Senate and the President, provided that it has at least seven members, three of whom will be faculty. Once this is done, the Senate will nominate the faculty members. At least a majority of the faculty nominated will be tenured. The nominations should seek to represent the university as a whole, not just programs initially slated to be reduced or just those not so slated, and at least some of them will have served on the Committee for Qualifications of Academic Personnel. The President shall not appoint faculty to the committee who are not nominated by the Senate. This committee shall be called hereafter the Exigency Committee.

For section 3.2, assessment of academic programs. The Exigency Committee will provide a written report of its analysis of programs, which shall be submitted to the Senate for review and response before recommendations are made for specific positions to be eliminated. As stated in the Rule, “The committee will review and assess the academic programs of the institution and identify those academic positions that may be eliminated with minimum effect upon the degree programs that should be continued. The review will include, but not be limited to, an examination of the course offerings, degree programs, supporting degree programs, teaching specialties, and semester credit hour production.” The Committee shall consider and may offer advice on all avenues by which terminations of faculty members can be avoided or minimized, and, as well, by which the negative effects of any necessary terminations can be mitigated. Unless an extension is approved by the President, the Committee shall complete its work in a period of time no longer than 60 days.

In section 3.3, Review Consideration. The Exigency Committee next recommends specific positions to be eliminated. These recommendations should also be contained in a written

report. The recommendations should be related to the Exigency Committee's assessment of programs. If other officers of the university, such as deans or program chairs, are involved in identifying individuals whose appointments are to be terminated, the process for obtaining these recommendations should be described in the report. The Exigency Committee will have available the personnel records of those being considered including current curriculum vitas, annual reports, promotion committee reports and recommendations, and results of periodic performance reviews. It will have access to full personnel files. Faculty whose positions would be jeopardized by the proposed actions will be provided the opportunity to contribute meaningfully to the Committee's review process.

For section 3.4, Tenure Preference. The Exigency Committee should not apply an unduly narrow interpretation of the idea that two candidates should be "equally qualified" before preference is given to one with tenure over one without. Preference should be given to tenured faculty over non-tenured if they have approximately the same qualifications and prospects, and to more senior faculty over less senior provided that their accomplishments are roughly proportional to their relative academic lifetimes. The decisions should be consistent with the general principle that greater contributions will gain greater recognition.

In section 3.5, Recommendation. According to the Rule, "upon completion of its review, the Exigency Committee shall promptly recommend to the president those persons who may be terminated, ranked in order of priority, with the reasons for their selection. The president shall, with such consultation with institutional administrative officers as they may deem appropriate, determine which academic positions are to be terminated because of the financial exigency and shall give the holders of these positions written notice of the decision." The Exigency Committee recommendations to the President shall be made in writing. Unless an extension is approved by the President, the Committee shall complete its work in a period of time no longer than 60 days from the submission of the initial recommendations identifying the programs or positions to reduce or eliminate.

PROCEDURE FOR NOTICE AND APPEAL

A faculty member whose position has been eliminated is entitled to appeal the decision, subject to the requirements of Regents' Rules 31003 section 3.8.

The issues in this hearing may include:

- (a) The existence and extent of the exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of other hearing involving the same issue may be introduced.
- (b) The validity of the educational judgments and the criteria for identification for termination, although the panel should give presumptive weight to the previous judgments of the Senate and the exigency committee.
- (c) Whether the criteria developed by the exigency committee are being properly applied in the individual case.

The hearing shall be held before a panel consisting of full-time faculty drawn from the list of faculty in the pool approved for service on hearing tribunals in accordance with the UTD Policy on Hearing Tribunal Selection Procedures, provided that such faculty are not in the academic programs affected by the decision. At least half of the membership of such panels shall be from faculty recommended by the Senate. The size of such appeals panels shall be determined as part of the guidelines for the declaration of exigency. The Hearing Panel shall elect its own Chair. The hearing must be held no later than 30 days after a written request is submitted to the President's office.

The employment of a tenured faculty member who is to be terminated under this policy shall extend only to the termination of his/her academic program. During this period of employment and for 3 additional years, the terminated faculty member shall have the right to first consideration among equally qualified candidates for any faculty position at U. T. Dallas for which a recruitment and hiring process is conducted and for which the faculty member in question formally applies. In addition, the considerations noted in Rule 31003, Section 2, Subsections 2.6 - 2.11 of the Regents' *Rules and Regulations* will be extended to the faculty member to be terminated.

NO CONCURRENT REPLACEMENTS

If appointments are terminated, the University will not at the same time make new appointments except in extraordinary circumstances where a serious distortion in the academic program would otherwise result. Similarly, the appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.

FINANCIAL EXIGENCY ADVISORY COMMITTEE RECOMMENDATIONS

1. Title

Abandonment of Academic Positions or Programs

2. Rule and Regulation

Sec. 1 President's Responsibility. The president of an institution of The University of Texas System ~~has the responsibility~~ is responsible for determining when to eliminate occupied academic positions, the titles of which are given in the Regents' *Rules and Regulations*, Rule 31001, or abandon academic programs or both, subject to approval by the appropriate Executive Vice Chancellor. The decision of the president shall include full and meaningful faculty input as specified below and in the institution's Handbook of Operating Procedures, and the implementation of that decision shall be subject to the following minimum procedural requirements.

Sec. 2 Elimination for Academic Reasons. An academic program under consideration for abandonment or an academic position that is under consideration for elimination for bona fide academic reasons should be reviewed in depth through a procedure determined by the president that includes the elements specified below and in the Institution's Handbook of Operating Procedures. Neither the procedures specified in Rule 31008 of the Regents' Rules and Regulations concerning termination of a faculty member, the notice requirements of Rule 31007, Section 5 concerning tenure, nor Rule 31002, Sections 1 and 2, concerning notice of nonrenewal to nontenured faculty members, shall be applicable.^[d1]

2.1 Notification. Tenured faculty in a program that is under consideration for abandonment or in an academic position that is under consideration for elimination will be notified and afforded an opportunity to contribute to the review process through a duly constituted committee consisting of faculty members and administrators and have those contributions fairly considered.

- 2.2 Supporting Rationale. Upon completion of the review process, a recommendation with supporting rationale should be submitted to the chief academic officer for review and recommendation to the president.
- 2.3 Review by Executive Vice Chancellor. If the president determines that an academic program should be abandoned, a request for approval with supporting documentation should be forwarded to the appropriate Executive Vice Chancellor.
- 2.4 Appeal Procedures. The president of an institution shall appoint a hearing committee [comprised of faculty members](#) to consider any appeals for reconsideration of termination decisions. Within 30 days from the date of notice of termination, a ~~person~~ [faculty member](#) shall have the right to appeal to the hearing committee for reconsideration of the termination decision. The appeal for reconsideration shall be in writing and addressed to the president of the institution. A ~~person to be terminated~~ [faculty member](#) [\(the appellant\)](#) shall be given a reasonably adequate written statement of the basis for the initial decision to reduce academic positions and, upon request of the person, shall be given any written data or information relied upon in arriving at such decision. The hearing committee shall conduct the hearing in accordance with the following conditions and procedures:
- (a) The hearing committee shall set the date, time, and place for hearing the appeal for reconsideration. Such hearing shall be held within 30 days of the date of the written request unless the ~~person to be terminated~~ [appellant](#) waives such time requirement; however, such hearing shall be held within 90 days from the date of the request.
- (b) The hearing will be closed to the public unless requested to be open by the ~~appealing~~ [person](#) [appellant](#).
- (c) The ~~appealing person~~ [appellant](#) may be represented by legal counsel at ~~their~~ [his/her](#) expense.

- (d) The ~~appealing person~~appellant and the institution may offer any written evidence or oral testimony that is material to the issues.
 - (e) The burden shall be upon the ~~appealing person~~appellant to show by a preponderance of the credible evidence that the decision to terminate the ~~appealing person~~appellant as compared to another individual in the same discipline or teaching specialty was arbitrary and unreasonable.
 - (f) No other issues shall be heard or considered by the hearing committee.
- 2.5 Establishment of Date. The date for abandoning or phasing out an academic program should take into consideration the time required for anticipated completion by students currently enrolled or ~~to facilitate~~ for facilitation of their placement in acceptable alternative programs.
- 2.6 Requests for Reassignment. The administration will notify tenured faculty in the program to be abandoned and ask each faculty member to inform the president or designee, in writing, of the faculty member's request for reassignment to other academic program(s) and to provide details of their qualifications ~~to teach in~~ for appointment to such academic program(s).
- 2.7 Employment Alternatives. The president or designee will meet individually with tenured faculty who respond to discuss possible employment alternatives to termination.
- 2.8 Non-retention. If the decision is not to retain, the president or designee will send a written response stating reasons for non-retention.
- 2.9 Displacement. If retention of a tenured faculty member results in displacement of a tenured faculty member in another ~~area~~ program, the displaced faculty member is entitled to the above procedures.

- 2.10 Benefit Information. Any faculty member whose employment is terminated pursuant to this Subsection shall be informed of applicable benefits available upon termination, such as retirement, accrued leave, and opportunity to continue insurance coverage.
- 2.11 Employment Assistance. U. T. System institutions shall provide appropriate assistance to affected faculty members concerning available alternative employment opportunities.

Sec. 3 Elimination Due to [an Institutional](#) Financial Exigency. When such reductions are necessary as a result of financial exigency, the procedure for the selection and notification of those academic positions that are to be terminated shall be governed by this Section, and [the institution's Handbook of Operating Procedures](#). Neither the procedures specified in [Rule 31008](#) of the Regents' *Rules and Regulations* concerning termination of a faculty member, the notice requirements of [Rule 31007](#), Section 5 concerning tenure, nor [Rule 31002](#), Sections 1 and 2, concerning notice of nonrenewal to nontenured faculty members, shall be applicable.

- 3.1 Committee Recommendations. Upon determining the existence of a financial exigency and the need to reduce academic positions or academic programs, or both, the president of an institution shall appoint a committee composed of faculty and administrative personnel to make recommendations to the president as to which academic positions and/or academic programs should be eliminated as a result of the financial exigency. [At least one-half of the total committee membership shall be faculty members and at least one-half of the faculty members on the committee shall be appointed from recommendations submitted to the president from the institution's faculty governance body.](#)
- 3.2 Assessment of Academic Program. The committee will review and assess the academic programs of the institution and identify those academic positions that may be eliminated with minimum effect upon the degree programs that should be continued [and upon other critical components of the institution's mission](#). The

review will include, but not be limited to, as relevant: (a) an examination of the course offerings, degree programs, supporting degree programs, teaching specialties, and semester credit hour production; (b) an evaluation of the quality, centrality, and funding of research activities; and/or (c) an assessment of the productivity, community service, and quality of clinical services (in relation to teaching, healthcare delivery, and scholarly activity).

- 3.3 Review Consideration. Upon determining that one or more academic positions in a degree program or teaching specialty should be eliminated, the committee will recommend to the president, in writing the particular position or positions to be terminated by after reviewing the academic, research, and clinical qualifications and talents of holders of all academic positions in those degree programs or clinical or academic teaching specialties, the needs of the program they serve, past academic performance, and the potential for future contributions to the development of the institution. Tenure status of a faculty member shall not be a consideration in the determination of whether a particular position should be eliminated except as permitted in Section 3.4 below.
- 3.4 Tenure Preference. If, in the opinion of the committee, two or more faculty members are equally qualified and capable of performing a particular the same teaching, research, and/or clinical role, the faculty member or members having tenure shall be given preference over non-tenured faculty. However, if such faculty members has have the same tenure status and equal qualifications, consideration will be given to other documented needs of the institution.
- 3.5 Recommendation. Upon completion of its review, the financial exigency review committee shall promptly recommend in writing to the president those persons who may be terminated, ranked in order of priority, with the reasons for their selection. The president shall, with such consultation with institutional administrative officers as they the president may deem appropriate, determine which academic positions are to be terminated because

of the financial exigency and shall give the holders of these positions written notice of the decision.

- 3.6 Notification of Vacancies. Any person terminated due to financial exigency will be notified when a vacancy occurs in the same institution in their field of teaching within the next two academic years following the termination. If such person makes timely application and is qualified for the position to be filled, they shall be offered employment in that position. If the vacancy is in a field of teaching in which two or more persons have been terminated because of financial exigency, all will be notified of the vacancy and of those so notified and making timely application, employment will be offered to the person who is the better qualified for the position to be filled.
- 3.7 Hearing Committee. The president shall appoint a hearing committee comprised of faculty members to hear any appeals for reconsideration of termination decisions based upon financial exigency. Within 30 days from the date of the notice of termination, a person faculty member shall have the right to appeal to the hearing committee for reconsideration of the termination decision. The appeal for reconsideration shall be in writing and addressed to the president. A person to be terminated faculty member (the appellant) shall be given a reasonably adequate written statement of the basis for the initial decision to reduce academic positions and, upon request of the person, shall be given any all written data or information relied upon in arriving at such decision.
- 3.8 Appeal Procedures. The hearing committee shall set the date, time, and place for hearing the appeal for reconsideration. Such hearing shall be held within 30 days of the date of the written request unless the person to be terminated- appellant waives such time requirement; however, such hearing shall be held within 90 days from the date of the request. The hearing committee shall conduct the hearing in accordance with the following conditions and procedures.

- (a) The hearing will be closed to the public unless requested to be open by the ~~appealing person~~appellant.
- (b) The ~~appealing person~~appellant may be represented by legal counsel at ~~their~~ his/her own expense.
- (c) The ~~appealing person~~appellant and the institution may offer any written evidence or oral testimony that is material to the issues.
- (d) The burden shall be upon the ~~appealing person~~appellant to show by a preponderance of the credible evidence that:
 - (1) Financial exigency was not in fact the reason for the initial decision to reduce academic positions; or
 - (2) The decision to terminate the ~~appealing person~~appellant as compared to another individual in the same discipline or teaching specialty was arbitrary and unreasonable based upon the evidence presented.
- (e) No other issues shall be heard or considered by the hearing committee.
- (f) The hearing committee shall make written findings of fact and recommendations to the president of ~~an~~ the institution as soon as practical following the hearing. The president shall have the final decision to either accept or reject the recommendation of the hearing committee.

Sec. 4 Institutional policies and procedures implementing this Rule shall be approved in accordance with applicable Regents Rules (including Rule 20201, Sec. 4.9) and placed in the institution's Handbook of Operating Procedures.

3. Definitions

None

Financial Exigency: a demonstrably bona fide financial crisis that adversely affects an institution as a whole and that, after considering other cost-reducing measures, including ways to cut faculty costs, requires consideration of terminating appointments held by tenured faculty.¹

Governance body: the elected body representative of the faculty and charged with developing academic policy in the areas designated in Regent's Rule 40101.

4. Relevant Federal and State Statutes

None

5. Relevant System Policies, Procedures, and Forms

None

6. Who Should Know

Administrators
Faculty

7. System Administration Office(s) Responsible for Rule

Office of Academic Affairs
Office of Health Affairs

8. Dates Approved or Amended

December 10, 2004

9. Contact Information

Questions or comments regarding this rule should be directed to:

- bor@utsystem.edu

¹ Includes faculty holding seven-year term appointments, approved by the Board of Regents (Regents Rule 31007, Sec. 2), during the term of their appointments.

