

## **Policy 6-313: Terminations and Program Discontinuance**

### **I. Termination of Appointments**

[Terminology. For the purpose of this section, the terms "faculty" and "faculty member" include academic librarians.]

Grounds for Dismissal. The following are the sole grounds for dismissal of faculty members with tenure:

- A. Cause. A faculty member may be dismissed for adequate cause only if he or she violates one or more of the rules set forth in Part IV of the Faculty Code of Rights and Responsibilities (the "Faculty Code"). Dismissal as a sanction may be imposed only if the violation demonstrates that the faculty member is incompetent in the performance of his or her duties as a teacher and faculty member or lacks the ability or willingness to meet his or her responsibilities to the University. Procedures governing dismissal for cause are set forth in Part VI of the Faculty Code.
- B. Medical Reasons. In the event of a tenured faculty member's inability to perform, even with reasonable accommodations, the essential functions of her/her duties and responsibilities as a faculty member, he/she may be terminated or given a renewal contract with substantially reduced status for medical reasons. Termination of employment for medical reasons is not to be considered dismissal as a sanction pursuant to the Faculty Code.
- C. Medical Reasons. In the event of a tenured faculty member's inability to perform, even with reasonable accommodations, the essential functions of her/her duties and responsibilities as a faculty member, he/she may be terminated or given a renewal contract with substantially reduced status for medical reasons. Termination of employment for medical reasons is not to be considered dismissal as a sanction pursuant to the Faculty Code.

- D. Medical Reasons. In the event of a tenured faculty member's inability to perform, even with reasonable accommodations, the essential functions of her/her duties and responsibilities as a faculty member, he/she may be terminated or given a renewal contract with substantially reduced status for medical reasons. Termination of employment for medical reasons is not to be considered dismissal as a sanction pursuant to the Faculty Code.

## **II. Procedures Governing Dismissal for Cause**

(See Parts IV-VI of the Faculty Code of Rights and Responsibilities, [Policy 6-316](#)).

## **III. Procedures Governing Termination for Medical Reasons**

- A. Medical Reasons. In the event of a tenured faculty member's inability to perform, even with reasonable accommodations, the essential functions of her/her duties and responsibilities as a faculty member, he/she may be terminated or given a renewal contract with substantially reduced status for medical reasons. Termination of employment for medical reasons is not to be considered dismissal as a sanction pursuant to the Faculty Code.
- B. In the event of failure to reach a mutually acceptable resolution, proceedings to terminate or to award a contract with substantially reduced status to a faculty member for medical reasons shall be initiated by a written statement alleging with reasonable particularity the faculty member's inability to perform the essential functions of the job, made by the cognizant vice president or his/her delegate. The issue shall proceed to a hearing before the Academic Freedom and Faculty Rights Committee pursuant to the procedures set forth in paragraph C below. In addition to those procedures, if the Academic Freedom and Faculty Rights Committee believes that the medical evidence from the two prior health examinations is inconclusive, the Academic Freedom and Faculty Rights Committee may order a third examination at the University's expense, to be conducted by a health care practitioner selected by the faculty member and the

University or, if they fail to agree, by the Academic Freedom and Faculty Rights Committee.

- C. In the event of failure to reach a mutually acceptable resolution, proceedings to terminate or to award a contract with substantially reduced status to a faculty member for medical reasons shall be initiated by a written statement alleging with reasonable particularity the faculty member's inability to perform the essential functions of the job, made by the cognizant vice president or his/her delegate. The issue shall proceed to a hearing before the Academic Freedom and Faculty Rights Committee pursuant to the procedures set forth in paragraph C below. In addition to those procedures, if the Academic Freedom and Faculty Rights Committee believes that the medical evidence from the two prior health examinations is inconclusive, the Academic Freedom and Faculty Rights Committee may order a third examination at the University's expense, to be conducted by a health care practitioner selected by the faculty member and the University or, if they fail to agree, by the Academic Freedom and Faculty Rights Committee.
1. Service of notice of hearing will be made at least 20 days prior to the hearing and will include a statement describing with reasonable particularity the faculty member's inability to perform the essential functions of his/her job. The faculty member may waive a hearing or may respond to the charges in writing at any time before the hearing. If the faculty member waives a hearing, but denies the charges against him/her or asserts that the charges do not support a finding of adequate cause, the Academic Freedom and Faculty Rights Committee will evaluate all available evidence and rest its recommendation upon the evidence in the record.
  2. The committee, in consultation with the vice president and the faculty member, will exercise its judgment as to whether the hearing should be public or private.

3. During the proceedings the faculty member will be permitted to have an academic advisor and counsel of his/her own choice.
4. At the request of either party or the committee, a representative of a responsible educational association shall be permitted to attend the proceedings as an observer.
5. A verbatim record of the hearing or hearings will be taken and a typewritten copy will be made available to the faculty member without cost at his/her request.
6. The burden of proof that adequate cause exists rests with the institution, and shall be satisfied only by clear and convincing evidence in the record considered as a whole.
7. The committee will grant adjournments to enable either party to investigate evidence to which a valid claim of surprise is made.
8. The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence, and the administration will, insofar as it is possible for it to do so, secure the cooperation of such witnesses and make available necessary documents and other evidence within its control.
9. The faculty member and the administration will have the right to confront and cross-examine all witnesses. Where the witness cannot or will not appear, but the committee determines that the interests of justice require admission of his/her statement, the committee will identify the witness, disclose his/her statement and if possible provide for interrogatories.
10. The committee will not be bound by strict rules of legal evidence, and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

11. The findings of fact and the decision will be based solely on the hearing record.
12. Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements and publicity about the case by either the faculty member or administrative officers will be avoided so far as possible until the proceedings have been completed, including consideration by the President. The president and the faculty member will be notified of the decision in writing and will be given a copy of the record of the hearing. A report of the decision will also be made by the committee to the Academic Senate for its information.
13. Committee deliberations and voting shall take place in closed session. The Committee shall decide whether by a preponderance of evidence, the faculty member is unable to perform the essential functions of his/her job with or without reasonable accommodations. The Committee shall report in writing its findings and recommendations within twenty (20) working days after the conclusion of the hearing to the President.
14. The President shall consider the record and the findings and conclusions of the Committee. Based upon such review and without conducting a further hearing, the President shall within ten (10) working days, accept the decision unless the President determines that the matter should be referred back to the Committee for further proceedings or that the Committee's findings are contrary to the evidence. If the President rejects the report, the President will state the reasons for doing so, in writing, to the Academic Freedom and Faculty Rights Committee and to the faculty member. The decision of the President is final.

Until the final decision upon termination of an appointment has been reached, the faculty member may be suspended temporarily, or assigned to other duties in lieu of suspension, only if immediate harm to the faculty member or others is threatened by his/her continuance. Before suspending a faculty

member, pending an ultimate determination of his/her status through the hearing machinery set forth above, the administration will consult with the Academic Freedom and Faculty Rights Committee. Salary will continue during the period prior to final decision by the Board of Trustees.

#### **IV. Procedures Governing Terminations Required by Financial Exigency**

A. Purpose. This section specifies the conditions under which the university would declare a state of financial exigency, the process by which such a condition would be declared and the process by which program reduction or discontinuance would proceed under a condition of financial exigency. It also specifies the process to be followed in termination or reduction in status of faculty members due to program reduction necessitated by financial exigency. Termination or reduction in status of faculty members due to program discontinuance is governed by the procedures of section 6 of this chapter.

#### **B. Definitions.**

1. Declaration and Definition of Financial Exigency. The State Board of Regents (Board) may declare a bona fide financial exigency at one or more institutions in the Utah System of Higher Education. A declaration of financial exigency for all of the System institutions would be in effect a declaration of financial exigency for the System as a whole. A bona fide financial exigency is an existing or imminent financial crisis which, if uncorrected, would threaten the survival of the institution as a whole and which could not be alleviated reasonably by less drastic means. 'Survival of the institution as a whole' is expressly defined for purposes of this policy as the availability of adequate appropriated funds to enable the institution substantially to fulfill its mission as approved by the Board. A declaration by the Board of financial exigency may authorize the president, with the approval of the Board of Trustees, to recommend and implement, subject to Board approvals as provided herein, reductions in force of faculty and staff personnel through layoffs.

2. Academic Program. A program is a unit within the university with an identifiable teaching, research, or other academic mission. For the purposes of these regulations "program" is to be determined by existing academic standards, and "programs" are never to be declared with the aim of singling out individual faculty members. For a unit to be designated as a "program," it shall fulfill one or more of these criteria:
  - a. whether the unit has "program" in its title or has otherwise been designated as a program by a specific faculty decision;
  - b. whether the unit offers or administers a degree, certificate, or some other credential;
  - c. whether the unit has an identifiable curriculum or is formally described in current university catalogs or other publications;
  - d. whether the unit has a separate budget;
  - e. whether the unit has an identified group of faculty.

C. Declaration of Financial Exigency.

1. A financial exigency exists after it has been formally declared by the State Board of Regents. The president of the university, with the advice of the Academic Senate, may recommend that the Board declare a state of financial exigency. The president and Academic Senate shall make recommendations to the Board concerning financial exigency in accordance with the procedures set forth herein.
2. As early as is feasible after the declaration of financial exigency appears to be a possibility, the president shall inform the Faculty Budget and Planning Advisory Committee and the Academic Senate concerning the causes and possible consequences of the crisis, reasons why the university's financial circumstances may require academic program discontinuance or reduction, and the options investigated by the university short of a declaration of financial exigency.
3. Within the time period established by the president, the Academic Senate shall receive and consider the comments and advice of the Faculty Budget and Planning Advisory Committee as well as timely presented views of any

- other faculty or administrative body, or individual faculty members, before making its recommendation to the president on whether financial exigency should be declared.
4. Within the time period established by the president and before making a recommendation to the State Board of Regents, the president shall receive and consider the comments and advice presented on the matter by the Faculty Budget and Planning Advisory Committee and by the Academic Senate.
  5. The president shall submit his/her final recommendation on the declaration of financial exigency in writing to the State Board of Regents and shall attach the written comments and advice of the Academic Senate.
- D. Time Considerations. Time considerations may be critical when the university must judge whether a financial exigency exists; whether or not programs must be eliminated or reduced; and whether faculty must be reduced in status or terminated. To the extent that such judgments must be made in a brief time frame for a given situation, the time periods for the consultative process provided for in these regulations shall be specified by written notice from the president, giving those for whom the consultative processes were provided in these regulations the fullest possible amount of time under the circumstances to use such processes. In that regard, the president shall use his best efforts to secure the fullest period of time possible for the consideration of these matters and the responses hereto. The failure of parties to fulfill the participation opportunity within the time frame provided shall not be deemed an absence of such opportunity.
- E. Program Elimination or Reduction because of Financial Exigency.
1. Iterative Process. After a declaration of financial exigency by the State Board of Regents, an iterative process of university program elimination or reduction may begin. The first step in this process shall be for each administrative and academic structural component of the university to assess its programs with regard to quality and essentiality to the mission of the university. All components of the university community make important contributions in

enabling the university to fulfill its mission. This process should be carried out in a manner that best ensures the continuing integrity of academic programs.

2. **Administrative and Support Services.** The president will ask the cognizant vice presidents to develop reduction plans in the areas of support services. Such plans will be reviewed by the Council of Academic Deans, the Budget and Planning Advisory Committee, and the Administrative Policy Advisory Committee, and will be integrated with academic discontinuance or reduction plans in light of the overall academic mission of the university.

As the iterative process continues, academic functions should take priority, and support services shall be reduced to the extent necessary and feasible without significantly impairing the university's ability to pursue its basic academic purposes.

3. **President's Direction.** The president, at his/her discretion, and after consultations with the Council of Academic Deans and the Budget and Planning Advisory Committee shall direct the cognizant vice president(s) to develop academic program discontinuance or reduction plans according to procedures set forth below in this section 5, part E, 4, 5 and 6.
4. **Academic Program Elimination or Reduction Plans.** The development of academic program elimination or reduction plans must involve consultation among departmental and college faculties to identify areas under consideration for academic program eliminations or reductions. The following criteria and information sources shall be considered by those making judgments about which programs should be eliminated or reduced because of financial exigency: (i) the general academic quality of the program with regard to scholarship, teaching and service (ii) the extent of importance the program has for the mission of the university; and, insofar as they relate to academic quality and the mission of the university, the following: (iii) Graduate Council Review; (iv) findings by national accreditation bodies; (v) reports by appropriate national ranking sources; (vi) such other systematically derived

- information, based on long-term considerations of program quality, as may be available; (vii) the capacity of the program to generate external funding; (viii) faculty/student ratios; (ix) cost/effectiveness analysis; and (x) relationship to the Board of Regents Master Plan for Higher Education in the State of Utah.
5. **Discontinuance of Administrative and Support Services.** If an academic program is discontinued or reduced, then administrative and support services associated with it shall be re-evaluated and reduced if appropriate. These reductions shall precede further reduction in or elimination of academic programs. This iterative process between reduction in administrative and support services and staff and elimination or reduction of academic programs shall proceed until the necessary level has been reached.
  6. **Review.** If a plan calls for the elimination or reduction of a specific program, department, school or college, that element of the plan shall be reviewed by the Faculty Budget and Planning Advisory Committee; the Graduate Council; the faculty members and/or the faculty committee most directly involved in the academic program proposed for elimination or reduction, the cognizant director, department chairperson, and/or dean; relevant college committees or councils; and relevant student advisory committees. The views of these bodies shall be forwarded to the Academic Senate for its consideration within the time periods prescribed by the president. The conclusions of the above bodies and the Academic Senate shall be forwarded to the president, who shall consider these views in his/her review of the proposed plan. When the president's recommendations are submitted to the State Board of Regents, they shall be accompanied by the Academic Senate's recommendations.
- F. **Faculty Termination or Reduction in Status Because of Financial Exigency.**
1. **Review.** If a plan calls for the elimination or reduction of a specific program, department, school or college, that element of the plan shall be reviewed by the Faculty Budget and Planning Advisory Committee; the Graduate Council; the faculty members and/or the faculty committee most directly involved in the

- academic program proposed for elimination or reduction, the cognizant director, department chairperson, and/or dean; relevant college committees or councils; and relevant student advisory committees. The views of these bodies shall be forwarded to the Academic Senate for its consideration within the time periods prescribed by the president. The conclusions of the above bodies and the Academic Senate shall be forwarded to the president, who shall consider these views in his/her review of the proposed plan. When the president's recommendations are submitted to the State Board of Regents, they shall be accompanied by the Academic Senate's recommendations.
2. Voluntary Incentives. Insofar as feasible, The plan will emphasize the creation of various incentives such as voluntary retirement, early retirement, partial retirement, partial resignation, resignation, extended leaves, salary reductions, severance pay, or similar actions that will result in immediate or eventual cost savings for the university, and that are voluntarily entered into by individual faculty members rather than imposed by university authority.
  3. Priorities. When non-voluntary faculty reductions are necessary, unless explicitly stated and compelling academic reasons exist to the contrary, consideration will be given to not filling existing faculty vacancies and not filling vacancies from resignations, retirement or death. Consideration should next be given to the elimination of instructional positions occupied by teaching assistants/fellows, associate instructors and auxiliary faculty. Next, consideration should be given to the termination of tenure-track or tenured faculty members.
  4. Tenure System. The integrity of the tenure system will be respected and tenured faculty members will not be terminated unless there are explicitly stated, compelling academic reasons. The appointment of a faculty member with tenure will not be terminated in favor of retaining the faculty member without tenure except in extraordinary circumstances where a serious distortion of the academic program would otherwise result. A serious

- distortion will be determined in accordance with sections E. 4. and F. 1. above.
5. Procedures for Faculty Termination or Reduction in Status due to Program Discontinuance. Termination or reduction in status of tenured or tenure-track faculty members due to program reduction short of program discontinuance shall follow the procedures set forth below in this section F, 6 through 14. Termination or reduction in status of tenured or tenure-track faculty members due to program discontinuance necessitated by financial exigency is not governed by these procedures but shall follow the procedures set forth in University Regulations, Chapter VII, section 6 paragraph 3.
  6. Departmental and College Review. Proposed faculty reduction plans shall be reviewed by affected department and college faculties in light of the future strength, balance, quality of teaching, research, service and mission of the department and college tempered by concern for individual circumstances. Faculty response to such reduction plans shall be forwarded to the appropriate department chairperson and dean in a timely manner.
  7. Notice. The dean shall give timely written notice to any faculty member who is the subject of a recommendation for reduction. A faculty member so identified may respond in writing at any point in the process with his/her comments becoming part of the record to be forwarded to the next level of review. The dean, after considering any such response, shall add his/her separate recommendation(s) and forward the complete file to the cognizant vice president.
  8. Intent to Appeal. If a faculty member chooses to respond to his/her proposed dismissal or reduction in status, the faculty member must submit, within thirty days of his/her receipt of a recommendation for termination or reduction in status from the dean, a written notice of intent to appeal to the vice president.

9. Appeal. A faculty member who intends to appeal, and who has submitted notice of such intent, must file a formal written appeal to the vice president within ninety days of receipt of proposed termination notice. The faculty member's written appeal to the vice president should state, as precisely as possible, the grounds for the appeal.
10. Review by the Vice President. The file, including any appeal submitted by the faculty member, will be reviewed by the cognizant vice president who will add his/her separate recommendation(s) and forward the complete file to the President.
11. Hearing. If the cognizant vice president recommends termination or reduction in status, the faculty member, within fifteen (15) days after receiving a copy of the cognizant vice president's final recommendation to the president, may submit a written request to the cognizant vice president for a hearing on the pending action. A hearing will then be conducted in a timely manner by the Academic Freedom and Faculty Rights Committee.
12. Standard of Review. An affected faculty or staff member may contest a layoff only for (a) violation of his/her academic freedom or constitutional rights, or (b) failure to comply with this policy, with related institutional policy, or with the plan for personnel reduction approved by the Board. Because the procedures for the declaration of financial exigency contained herein require the demonstration of the need for such declaration after substantive consultations, notice, and hearing, the decision of the Board to declare financial exigency is not subject to contest by faculty or staff in any grievance or appeal procedure within the institution or before the Board.

If the faculty member requesting the hearing believes that the recommendation is associated with prejudicial treatment, harassment, or illegal discrimination, based upon race, color, ethnic or national origin, sex, religion, age, lack of American citizenship, sexual preference, handicapped status, or status as a veteran of the military service, he/she may also consult

- with the Director of the Office of Equal Opportunity and an additional, separate hearing may be conducted by a Discrimination Hearing Panel (see Policy and Procedures No. 2-32). The decisions and conclusions of such hearing committees and panels will be communicated in writing to the faculty member.
13. Hearing Procedure. In conducting a hearing on a faculty member's appeal of dismissal or reduction in status due to financial exigency, the hearing committee will follow the guidelines set forth in University Regulations, Chapter VII, Section 3A, and the president shall respond to the committee's recommendation according to these guidelines.
  14. Notice of Termination or Reduction in Status. Notice from the president will be given to a faculty member who is terminated due to program reduction because of financial exigency as follows: Should either (1) the faculty member fail to request a hearing on the pending action as provided in paragraph (11) and the president decide in favor of termination or reduction status or (2) the faculty member request a hearing as provided in paragraph (11) and such hearing be timely initiated, then the president shall give written notice of termination or reduction in status to the affected faculty member.
  15. Form of Notice. The notice must include the following:
    - a. The effective date of layoff;
    - b. A statement of the reasons for the Board's action to declare a financial exigency;
    - c. The basis, the procedures, and the criteria used to lay off faculty and staff;
    - d. Any opportunity for reconsideration or appeal including access to appropriate documentation, and the issues that may or may not be considered; and
    - e. The reinstatement rights of the faculty and staff.

If the appointee is untenured and in the first year of service, notice shall be given at least three months prior to the termination or reduction in status of the existing appointment. If the appointee is tenured or is in the second or subsequent year of service, the intended termination or reduction in status shall not become effective sooner than twelve months after the date upon which notice is served.

16. Relocation. With the assistance of cognizant academic administrators (e.g., department chairs, deans, vice presidents) and the consent of the receiving department or college, every reasonable effort will be made to enable faculty members affected, who wish to do so, to obtain suitable positions elsewhere in the university.

## **V. Procedures Governing Terminations Because of Bona Fide Program Discontinuous for Academic Reasons**

- A. Purpose. This section specifies the procedures to be followed in discontinuing a program for academic reasons. It also specifies the procedures for termination, should that be necessary, of the faculty and staff of a program when the program is discontinued for any reason.

- B. Definitions.

1. Program discontinuance means the termination of a program, center, institute, department, school, or college for reasons based upon educational and academic considerations. For the purpose of this section, educational and academic considerations do not include cyclical or temporary variations in enrollment, but must reflect long-range judgments that the basic educational mission of the university will be strengthened by the discontinuance of the program, center, institute, department, school or college. This does not preclude the reallocation of resources to other academic programs with higher priority based on academic and educational considerations.

2. A program is a unit within the university with an identifiable teaching, research, or other academic mission. For the purpose of these regulations, "program" is to be determined by existing academic standards, and "programs" are never to be declared with the aim of singling out individual faculty members. For a unit to be designated as a "program," it shall fulfill one or more of these criteria:
  - a. whether the unit has "program" in its title or has otherwise been designated as a program by a specific faculty decision;
  - b. whether the unit offers or administers a degree, certificate, or some other credential;
  - c. whether the unit has an identifiable curriculum or is formally described in current university catalogs or other publications;
  - d. whether the unit has a separate budget;
  - e. whether the unit has an identified group of faculty.

C. Process of Program Discontinuance for Academic Reasons.

1. Timing. Program discontinuance may occur at any time.
2. Initiation. Formal consideration of possible discontinuance of an academic program may be initiated by the faculty of that program; the faculty or an appropriate committee of the faculty of the center, institute, department, school or college of which the program in question is a part; the Graduate Council; or the cognizant director, department chairperson, dean, or vice president, or president of the university.
3. Memorandum. In the event that a program discontinuance may result in the termination of faculty, the faculty group or committee or the administrative officer initiating the formal consideration of discontinuance of an academic program shall prepare, and submit to the vice president for academic affairs

- or health sciences, a memorandum which (1) clearly identifies the program; (2) states explicit criteria by which faculty are identified with the program under consideration for reduction or elimination; (3) states the reasons for recommending discontinuance in light of the university's academic mission; (4) assesses the probable consequences for faculty, related programs and the university in general resulting from discontinuance; and (5) suggests a time-table for accomplishing the discontinuance.
4. Procedure for Considering Program Discontinuance. In the event that a program discontinuance may result in the dismissal of faculty, the following process shall apply:
- a. Solicitation of Comments. Copies of the memorandum embodying an initial or amended proposal for program discontinuance shall be distributed for comment and recommendation to (i) the faculty members and/or faculty committee most directly involved in the academic program proposed for discontinuance; (ii) relevant departments or colleges; (iii) the cognizant director, department chairperson, and/or dean; (iv) relevant college committees or councils; (v) the Faculty Budget and Planning Advisory Committee; and (vi) relevant student advisory committees.
  - b. Dean's Recommendation. After receiving and considering any comments, the dean shall forward his/her recommendation to the Graduate Council for its review and recommendation.
  - c. Graduate Council Recommendation. The Graduate Council's recommendation shall be submitted to the cognizant vice president for review and recommendation.
  - d. Vice President's Recommendation. After receiving and considering the comments, the cognizant vice president shall submit the proposal and comments, together with his/her recommendation regarding the continuation or discontinuance of the program, to the Academic Senate.

The vice president's recommendations shall be subject to review and debate by the Academic Senate according to Faculty Regulations, Chapter III.

- e. Academic Senate's Recommendation. The Academic Senate's recommendation shall be forwarded with the vice president's recommendations to the president for his/her consideration and determination of the recommendation to be made to the State Board of Regents. The Board of Trustees shall review the president's recommendation before it is submitted to the State Board of Regents. The recommendations of the Academic Senate shall accompany the recommendations of the president to the Board of Trustees and the State Board of Regents.

D. Termination of Faculty and Staff Due to Discontinuance of a Program, Center, Institute, Department, School or College.

1. Notice of Program Discontinuance. After the State Board of Regents has approved a proposal by the university to discontinue a program, center, institute, department, school or college, the cognizant administrative officer (dean or vice president) shall give written notice of that discontinuance to all persons in the program, center, institute, department, school or college.
2. Notice of Reduction in Status. In addition to the general notice from the cognizant administrator (see previous paragraph), the president shall give tenured and untenured faculty members in the program, center, institute, department, school or college scheduled for discontinuance formal notice of termination or reduction in status as follows: If the appointee is untenured and in the first year of service, notice shall be given at least three months prior to the termination or reduction in status of the existing appointment. If the appointee is tenured or is in the second or subsequent year of service, the intended termination or reduction in status shall not become effective sooner than twelve months after the date upon which notice is served.

3. Relocation. With the assistance of cognizant academic administrators (e.g. department chairs, deans, vice presidents) and the consent of the receiving department or college, every reasonable effort will be made to enable faculty members affected, who wish to do so, to obtain suitable positions elsewhere in the university.
4. Effect Upon Faculty and Staff. A minimum of one full calendar year, beginning July 1, shall pass from the time when a final decision is made to close an academic program until program discontinuance. During that interval good faith efforts must be made to relocate affected faculty and staff in other suitable positions in the university.
5. Rights of Appeal. In any instance where it is not possible to continue the appointments of regular faculty members, the established procedures for ending faculty appointments, including rights of appeal, will be observed. (See University Regulations, Chapter VI, Section 3, and Chapter VII, Section 3.)

## **VI. Effect Upon Students**

Although opportunity for completion of a degree or transfer to another program cannot be guaranteed when an academic program is discontinued because of financial exigency or program discontinuance, every effort will be made to accommodate the needs of students already enrolled in the program. After the vice president submits a recommendation to the Academic Senate for discontinuance of an academic program, no new admissions to that program will be permitted, unless and until a final decision to retain the program is made.

## **VII. Academic Freedom**

If a faculty member, facing termination because of financial exigency or program discontinuance, believes that such termination involves a violation of his/her academic freedom, the faculty member may file a complaint with the Academic Freedom and Faculty Rights Committee, which shall deal with the complaint according to its established rules of procedure. The complaint should specify as

precisely as possible the conditions and/or circumstances which are believed to limit the faculty member's academic freedom.

## **VIII. Employment after Terminations**

Tenured faculty members terminated because of financial exigency or discontinuance of a program, department, school or college, for a period of three years following the date on which they received their final salary payment, shall receive special consideration among candidates with comparable qualifications for any vacant and funded university positions for which they apply and are qualified.

### **A. Reinstatement Rights.**

1. For Tenured Faculty. In cases of layoff of tenured faculty members, a relevantly similar position may not be filled by replacement within a period of three (3) years from the effective date of the layoff unless the tenured faculty member has been offered a return to employment in that position and has not accepted the offer within thirty (30) calendar days after the offer was extended. Tenured faculty will be offered reinstatement to such positions before offers are made to untenured faculty.
2. For Nontenured Faculty and Nonfaculty Employees. In cases of layoff of nontenured faculty members and all other salaried employees a relevantly similar position may not be filled by replacement within a period of one (1) year from the effective date of the layoff unless the person laid off has been offered a return to employment in that position and the person laid off has not accepted the offer within thirty (30) calendar days after the offer was extended.
3. Offers of Reinstatement Not Accepted. If an offer of reinstatement is not accepted the institution and the Board have no further obligation to the person laid off. After the expiration of the applicable reinstatement period as provided herein, the institution and Board have no further obligation to the affected faculty and staff.

4. Status Following Reinstatement. A faculty member who has been laid off and who accepts reinstatement in the same position will resume the rank and tenure status held at the time of layoff, be credited with any sick leave accrued prior to the date of layoff, be paid a salary commensurate with the rank and length of previous service, and will be credited with any annual leave which the faculty member had accrued prior to the date of layoff and for which the faculty member has not received payment.

#### **IX. Decision-Making with Regard to a Major Financial Crisis Which is Short of a Financial Exigency**

- A. Purpose. This section applies to the process of determining whether at a particular time the university faces a major financial crisis, which is not definable as a situation of financial exigency, and to the process of making decisions in response to such a crisis.

This section does not preclude the discontinuance or reduction of programs for academic reasons at any time.

- B. Identifying a Major Financial Crisis.

1. Definition. To constitute a major financial crisis, a situation facing the university shall:

- a. be significantly and demonstrably more than a minor, temporary, and/or cyclical fluctuation in operating funds; and
- b. involve substantial risk to the survival of departments, colleges, schools, or other major academic components of the university.

2. Decision-making about the Existence of such a Crisis.

- a. When the president of the university identifies a major financial crisis, the president shall inform the Faculty Budget and Planning Advisory Committee and the Academic Senate concerning the causes and possible

consequences of the crisis. The president shall also identify the measures considered by the university up to that point for dealing with the crisis, possible strategies which may be alternatives to program reduction (short of termination) or program termination, and, as warranted, reasons why the university's financial circumstances may necessitate academic program reduction or termination, and the time frame by which decisions on these matters must be made by all those entitled to participate in the consultative process. In that regard, the president shall use his/her best efforts to secure the fullest period of time possible for the consideration of these matters and the response thereto.

- b. The Academic Senate shall receive and consider the comments and advice of the Faculty Budget and Planning Advisory Committee, as well as timely presented views of any other faculty or administrative body, on whether the president should declare the existence of a major financial crisis. After consulting with the president regarding whether a major financial crisis exists, the Senate shall express its view in writing to the president.
- C. Implementation. When the president declares the existence of a major financial crisis, the university's actions in response to the crisis shall be governed by the provisions of Sections D,E,F, and G of this section.
- D. Consideration of Strategies. When the president has declared the existence of a major financial crisis, the central administration shall consult with the Council of Academic Deans, the Graduate Council, and Administrative Directors, the Faculty Budget and Planning Advisory Committee concerning strategies for dealing with the crisis. Consideration of strategies shall include examination of the feasibility of restrictions on enrollment, reductions in non-academic staff, budget reductions which are across-the-board, using phased reductions, using attrition, reductions in supplies, and program reduction or termination. The administration will then submit a plan to the Academic Senate describing

strategies it proposes to follow in developing a specific plan for coping with the crisis. The Senate will make whatever recommendations it deems appropriate to the president regarding such strategies.

- E. Program Reduction or Termination because of a Major Financial Crisis. This section applies when the president after receipt of the recommendation of the Academic Senate has concluded that a declared major financial crisis entails program reduction or termination.
1. Academic Program. An academic program is a unit within the university with an identifiable teaching, research, or other academic mission. For the purposes of these regulations "program" is to be determined by existing academic standards, and "programs" are never to be declared with the aim of singling out individual faculty members. For a unit to be designated as a "program," it shall fulfill one or more of these criteria:
  2. Criteria for Academic Program Cutbacks. The following criteria and information sources shall be the bases for decision-making about which programs should be reduced or eliminated because of a major financial crisis: (i) the general academic quality of the program with regard to scholarship, teaching and service; (ii) the importance the program has for the mission of the university; and, insofar as they relate to academic quality and the mission of the university, the following: (a) Graduate Council Reviews; (b) findings by national accreditation bodies; (c) reports by appropriate national ranking sources; (d) such other systematically derived information, based on long-term considerations of program quality, as may be available; (e) the capacity of the program to generate external funding; (f) faculty/student ratios; (g) cost/effectiveness analysis; and (h) relationship to the Board of Regents master plan for higher education in the State of Utah.
  3. Iterative Process. The process of University program reduction or termination should be an iterative one between academic programs and their support services.

4. Program Reduction or Termination Plans. The president shall direct the cognizant vice presidents to assist the academic departments in developing plans regarding academic program reduction or termination. The individual academic departments of the university shall be asked to reevaluate their programs, consider alternatives to program reduction or termination, and examine possible time frames (including multi-year) for accomplishing potential budget reductions. The dean of each college or school involved shall review the departmental reports resulting therefrom, and comment on them. The departmental reports and dean's comments shall be forwarded to the university administration, the Council of Academic Deans, and the Graduate Council for their review and statement of reactions. The president shall direct the cognizant vice presidents to assist the administrative units of the university in developing plans regarding program reduction or termination in the area of support services. In reassessing programs, the individual academic and administrative departments of the university shall endeavor to identify those which might most appropriately be considered for reduction or termination, given the financial crisis faced by the university.
5. Review. If plans call for the reduction or termination of specific programs, departments, schools, or colleges, those elements of the plans shall be reviewed by the faculty members and/or faculty committees most directly involved in the academic programs proposed for termination or reduction; the cognizant directors, department chairpersons, and/or deans; relevant college committees or councils; relevant student advisory committees; the Council of Academic Deans; and the Graduate Council. Within the time frame specified by the president, the plans, and the views of the review bodies regarding them, shall be forwarded to the Faculty Budget and Planning Advisory Committee for its consideration. The views of the Faculty Budget and Planning Advisory Committee shall be reported to the Senate and to the university administration for consideration. The views of the Senate on the plans shall be forwarded to the president and to the Board of Trustees, and/or to such other body as may be required by state law or university policy.

F. Making Adjustments in Academic Staffing Levels in Response to a Declared Major Financial Crisis.

Among the methods available to the organizational units of the university of adjusting academic staffing levels, for financially driven (short of financial exigency) program reduction short of program elimination, are:

1. Voluntary retirement
2. Voluntary partial retirement
3. Voluntary early retirement
4. Voluntary resignation
5. Voluntary reductions in FTE
6. Severance pay
7. Extended leaves
8. Salary reductions not tantamount to dismissals
9. Not filling existing faculty vacancies
10. Not filling vacancies resulting from resignation, retirement or death
11. Elimination of instructional positions occupied by teaching assistants/fellows, associate instructors, and auxiliary faculty

This list is not intended to be in any order of priority, since it is recognized that particular needs and preferences vary among organizational units of the university and overtime.

Unless financial exigency has been declared, tenured and tenure-track(4) faculty members may not be terminated because of program reduction except when program discontinuance occurs.

In the event that a program or academic unit of the university is discontinued, then adjustments to academic staffing levels may be made according to the methods listed above, as well as those in Chapter VII, Section 6. Moreover, that Section, "Procedures Governing Terminations because of Bona Fide Program Discontinuance for Academic Reasons," will govern in the event of the termination of a tenured or tenure track faculty member.

#### G. Time Considerations.

Time considerations may be critical when the university must judge whether a major financial crisis exists, what its effects may be, and what the responses to it should be. When the president declares that a major financial crisis exists, he/she shall also determine the maximum amount of time available to the university for preparing a response or recommendation to the Board of Regents for such crisis and shall establish time periods for each step in the consultative process which afford the fullest time possible for each step. In that regard, the president shall use his best efforts to secure the fullest period of time possible for the consideration of these matters and the response thereto.

#### X. Contacts

Policy Owners:

Questions about this Policy and any related Rules, Procedures and Guidelines should be directed to the Associate Vice President for Faculty and the Associate Vice President for Health Sciences.

Policy Officers:

Only the Sr. Vice President for Academic Affairs and the Sr. Vice President for Health Sciences or their designees have the authority to grant exceptions to this policy.

#### XI. History

- A. Elimination of instructional positions occupied by teaching assistants/fellows, associate instructors, and auxiliary faculty

Revised: 6/18/08

- B. Previous Versions

Revision 9:

Approved by: Academic Senate 5/01/06

Approved by: Board of Trustees 5/08/06

Legislative History

Revision 8:

Revision 7:

Revision 6:

Revision 5: