

# R481<sup>1</sup>, Academic Freedom, Professional Responsibility, Tenure, Termination, and Post-Tenure Review

**R481-1 Purpose:** To provide Utah Board of Higher Education (“Board”) guidelines for Utah System of Higher Education (“USHE”) degree-granting institutional policy in matters related to academic freedom, professional responsibility, faculty tenure, termination, and post-tenure review.

## R481-2 References

- 2.1 Utah Code § 53B-2-106, Duties and Responsibilities of the President
- 2.2 Utah Code § 53B-2-106.1, Tenure - Reporting
- 2.3 Board Policy R401, Approval of New Programs, Program Changes, Discontinued Programs, and Program Reports
- 2.4 Board Policy R411, Cyclical Institutional Program Reviews
- 2.5 Board Policy R482, Bona Fide Financial Exigency and Personnel Reduction

## R481-3 Academic Freedom, Professional Responsibility, and Tenure

**3.1 Institutional Policies:** The president of a degree-granting institution, in consultation with the institution’s board of trustees, shall develop policies that protect academic freedom in teaching, research, and an individual’s personal life; professional responsibility; tenure; and post-tenure review through a process which involves substantive participation of the faculty governance organization. The institution’s policy shall require that a final award of tenure be approved by the president of the degree-granting institution, in consultation with the institution’s board of trustees.

**3.2 Board Approval:** Each institutional policy shall be submitted to the Board for approval and shall be consistent with these guidelines. Substantive differences or exceptions must be reviewed and approved by the Board. Once approved, the institutional policy will apply, except when the institutional policy does not address an issue contained in this policy, in which case this policy will apply. Subsequent amendments to approved institutional policies, determined by the Commissioner of Higher Education (“Commissioner”) to be substantive, must be reviewed and approved by the Board.

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<sup>1</sup> *Approved December 20, 1973; amended May 15, 1985; April 28, 1989; January 24, 1997; April 15, 2009; November 18, 2011; ~~and~~ June 6, 2024; and November 21, 2024.*

**3.3 Academic Freedom:** The institutions are operated for the common good and not to further the interest of either the individual faculty member or the institution as a whole. The common good depends upon the free search for truth and its free exposition. Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights (*see* subsection 3.4). Institutional policies shall indicate how the concept of academic freedom applies to teaching, research, and an individual's personal life.

**3.3.1 Academic Freedom in Teaching:** Faculty members possess the right to full freedom in the classroom to discuss their subjects. They may present any controversial material relevant to their courses of instruction, but they shall be careful not to introduce into their teaching controversial matter which has no relation to the subject being taught.

**3.3.2 Academic Freedom in Research:** A faculty member is entitled to full freedom in research and in the publication of the results. Research for pecuniary return should be conditional upon disclosure to and the consent of the officials of the institution.

**3.3.3 Academic Freedom in Public Life:** A USHE institution faculty member is a citizen, a member of a learned profession, and an officer of an educational institution. When the faculty member speaks or writes as a citizen, they should be free from institutional censorship or discipline, but the faculty member's special position in the community imposes special obligations. As a person of learning and an education officer, the faculty member should remember that the public may judge their profession and institution by their utterances. Hence the faculty member should at all times strive to be accurate, should exercise appropriate restraint, should show respect for others, and should make every effort to indicate that they are not speaking for the institution.

**3.4 Professional Responsibility:** In addition to other matters covered, the institutional code of professional responsibility shall provide that persons having a formal association with the institution shall not be involved in acts which violate the academic freedom or constitutional rights of others, or the rules and regulations of the institution or the Board.

**3.5 Tenure:** Tenure is designed to protect the academic freedom of faculty. Upon the award of tenure by the institution, faculty members may be terminated<sup>2</sup> only for cause (*see* subsection

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<sup>2</sup> "Termination" and "dismissal," as defined by institutional standards and procedures under this policy, shall include "substantial reduction in status".

3.6.), bona fide program or unit discontinuance as defined in subsection 3.9.1, or bona fide financial exigency as defined in Board Policy R482, *Bona Fide Financial Exigency and Personnel Reduction*, and as specified in institutional policies and rules.

**3.5.1 Written Terms and Conditions of Employment:** The terms and conditions of every appointment and any revisions, including tenured employment, shall be stated in writing and be provided to the affected faculty member.

**3.5.2 Length of the Tenure-track Period:** Beginning with appointment to a tenure-track position (usually full-time instructor or assistant professor, or as determined by institution policy) the tenure-track period should not exceed seven years at the institution unless the faculty member is granted an extension based on institutional policy. The institution shall provide policy relative to credit towards the tenure-track period for service at other institutions.

**3.5.3 Academic Freedom of Non-tenured Faculty:** Non-tenured faculty members have the same academic freedom that tenured faculty members enjoy.

**3.5.4 Non-reappointment During the Tenure-track Period:** Tenure-track faculty members shall have appropriate evaluation by their colleagues and such others as institutional policy shall provide during the tenure-track period. The institution is permitted, within the limits of academic freedom, statutory law, and constitutional law, the utmost discretion in determining who will be retained for tenure appointments. Tenure-track faculty members may not be terminated for reasons which violate their academic freedom or legal rights. Institutional policies shall provide procedures for the non-reappointment of tenure-track faculty members.

**3.6 Reasons for Dismissing Faculty for Cause:** A faculty member may be recommended for dismissal for cause as determined by this policy and institutional policies or guidelines for:

**3.6.1** Professional incompetence;

**3.6.2** Serious misconduct or unethical behavior;

**3.6.3** Serious violation of Board or institutional rules;

**3.6.4** Legal misconduct substantially related to the performance of duties;

**3.6.5** The conviction of a crime affecting the fitness of the faculty member to engage in teaching, research, service, outreach, administration, or other assigned duties;

**3.6.6** Falsified credentials, revoked credentials, or plagiarism;

**3.6.7** Substantially impaired performance ~~for medical reasons for which accommodations have not been successful~~; or

**3.6.8** Inability or unwillingness to meet institutional expectations, including failure to address deficiencies outlined in a remediation plan following post-tenure review.

**3.7 Sanction of Faculty:** Sanctions may be imposed on a faculty member when it has been determined by institutional review that they have violated institutional policies and will serve one or more of the following purposes:

**3.7.1** To induce self-improvement and reform by a faculty member;

**3.7.2** To indicate to the faculty member the seriousness of their violation and thereby deter them from future violation;

**3.7.3** To reassure the institution's community that violations of policy which the faculty member has committed will not be tolerated, thereby serving to maintain respect for and commitment to the policies of other members of the institutional community; or

**3.7.4** To dismiss from institutional employment a faculty member who has demonstrated by their conduct an inability or an unwillingness to meet their responsibilities to the institution.

**3.8 Procedures for Dismissal for Cause:** The procedures for dismissal for cause of a tenured or tenure-track faculty member shall comply with minimal due process requirements in subsections 3.8.1-3.8.1.7. Institutional policies shall provide procedures for dismissal for cause which may be more, but not less, protective of due process rights than those set forth herein. In addition, officials involved in faculty discipline hearings should consult the institution's legal counsel regarding procedural issues. The procedures and due process requirements for dismissal for cause of a tenured or tenure-track faculty member do not apply to non-reappointments of pre-tenure-track faculty.

**3.8.1** Minimum Due Process Requirements:

**3.8.1.1** Notice of the cause or causes of the proposed dismissal in sufficient detail to enable the affected faculty member to understand and rebut them;

**3.8.1.2** Notice of the names of those persons making the charges, the nature of the factual evidence, and any evidence supporting the allegation(s);

**3.8.1.3** Reasonable time and an opportunity for the affected faculty member to respond;

**3.8.1.4** Reasonable time and opportunity for the affected faculty member to present evidence in their defense;

**3.8.1.5** A hearing before an independent board of tenured faculty peers;

**3.8.1.6** A written determination on the issue, including a determination of termination or continued employment; and

**3.8.1.7** An appeals process ending with the final decision of the president of the degree-granting institution in consultation with the institution's board of trustees.

**3.9 Dismissing Faculty for Reasons Other Than Cause:** A faculty member may be dismissed for reasons other than cause as a result of:

**3.9.1** Bona fide program or unit discontinuance as provided in subsection 3.10; or

**3.9.2** Bona fide financial exigency as provided in Board Policy R482, *Bona Fide Financial Exigency and Personnel Reduction*.

### **3.10 Bona Fide Program or Unit Discontinuance**

**3.10.1 Program Defined:** A "program" is a unit within the institution with an identifiable teaching, research, or other academic mission. For the purpose of this policy, program is to be determined by existing academic standards, and programs are never to be defined with the aim to single out individual faculty members for adverse treatment. For a unit to be designated as a program, it shall have an identified group of faculty and shall fulfill one or more of these criteria:

**3.10.1.1** Whether the unit has program, center, institute, laboratory, department, school, or college in its title or has otherwise been designated as a program;

**3.10.1.2** Whether the unit offers or administers a degree, certificate, or some other credential;

**3.10.1.3** Whether the unit has an identifiable curriculum or is formally described in current institutional catalogs or other publications; or

**3.10.1.4** Whether the unit has a separate budget as listed in official institutional documents.

**3.10.2 Bona Fide Program Discontinuance Defined:** Bona fide program discontinuance means the termination of a program as defined in subsection 3.10 or modification of a program to such a degree that the faculty member's position is no longer needed for reasons based upon educational and academic considerations.<sup>3</sup> For the purpose of this section, educational and academic considerations do not include cyclical or temporary variations in enrollment, but must be based on evidence and reflect judgments that in the long term the basic educational mission of the institution will be strengthened by the discontinuance or modification of the program. This does not preclude the reallocation of resources to other academic programs with higher priority based on academic and educational considerations.

**3.10.3 Institutional Procedures:** Institutional procedures for the discontinuance of programs shall include substantive consultations with institutionally recognized faculty governance organizations, an analysis of the circumstances that may support or oppose the discontinuance of the program, and a review of reasonable alternatives to the discontinuance.

**3.10.4 Notification of Program or Unit Discontinuance:** Notification of program or unit discontinuance shall be given to the Board according to Board Policy R401, *Approval of New Programs, Program Changes, Discontinued Programs, and Program Reports*. This allows the Board to review such proposals, to disapprove the discontinuance of a program if it concludes the program should be retained at the

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<sup>3</sup> Educational and academic considerations include, but are not limited to, the program analysis considerations in Board Policy R401, *Approval of New Programs, Program Changes, Discontinued Programs, and Program Reports*; and Board Policy R411, *Cyclical Institutional Program Reviews*.

institution, or to approve the discontinuance with institutional assurances that students in the program will be able to complete the program.

**3.10.5 Placement in Another Suitable Position:** Before dismissing a tenured faculty member because of bona fide discontinuance of a program or unit, the institution, with faculty participation, will make a reasonable effort to place the faculty member concerned in another suitable, vacant, existing position within the institution for which the faculty member is qualified. A tenured faculty member to be dismissed has no right to displace another faculty or staff member from a position to maintain employment.

**3.11 Notice of Non-reappointment of Faculty:** During the tenure-track period, or as a result of a bona fide program discontinuance, notice of non-reappointment of non-tenured faculty, or of intention not to recommend reappointment to the institution's board of trustees, should be provided in writing as early as possible to the employee, but no later than in accordance with the following standards:

**3.11.1 During First Academic Year of a One-year Appointment:** Notice of non-reappointment shall be given no later than March 1 of the first academic year of service, if the appointment expires at the end of the academic year; or, if a one-year appointment terminates during an academic year, notice should be given at least three months in advance of termination.

**3.11.2 During the Second Academic Year of a Two-year Appointment:** Notice of non-reappointment shall be given no later than December 15 of the second academic year of service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, notice should be given at least six months in advance of termination.

**3.11.3 After Two or More Years:** Institutional policy may set the minimum period for notice of non-reappointment at not fewer than six months before the expiration of an appointment after two or more years in the institution.

**3.12 Notice of Dismissal of Tenured Faculty:** Institutional policy may set the minimum period for notice of dismissal of a tenured faculty member as a result of a bona fide program discontinuance at not fewer than six months before the dismissal of the faculty member.

**3.13 Notice in Addition to the Required Minimum:** The institution shall make a reasonable effort to give each affected faculty member as much notice of non-reappointment or

dismissal, in addition to the minimum required by institutional policy, as is practical under the circumstances.

### **3.14 Annual Review as Part of Assessing Faculty Competence and, if Funding**

**Permits, Merit Pay Award:** Each tenure-track and tenured faculty member, along with all other faculty members, shall be reviewed each year in conjunction with institutional policies on the faculty member's performance. Each institution shall develop a rigorous annual review procedure for all faculty members. When funding permits, a faculty member may be awarded merit pay consistent with institutional policies and process.

### **3.15 In-Depth Post-Tenure Review**

**3.15.1 Intent of Post-tenure Review:** The review shall assess the tenured faculty member's performance with the intent of:

**3.15.1.1** Recognizing performance in the discipline's endeavors which demonstrates growth and development;

**3.15.1.2** Communicating to the faculty member specific areas in need of improvement related to performance in scholarship, teaching, and service; and

**3.15.1.3** Enhancing each individual's future productivity.

**3.15.2 Procedures:** The president shall ensure that each program or department at the institution has established policies describing the minimum performance of a tenured faculty member for use in a post-tenure review. The post-tenure review shall be conducted by a committee of tenured faculty member peers, appointed by the appropriate vice president at the institution in consultation with the faculty member's department chair. The committee shall include at least two individuals appointed from either a different department than the tenured faculty member going through post-tenure review, a different degree-granting institution than the faculty member, or both and the provost or the provost's designee. The post-tenure review shall be a comprehensive review of the tenured faculty member's performance over the previous five years. The criteria for such review shall include multiple indices, and be discipline- and role-specific, as appropriate, to evaluate:

**3.15.2.1** Teaching assessments, including student evaluations for all courses taught and collegial and administrative assessments;



**3.15.2.2** The quality of scholarly and creative performance and/or research productivity;

**3.15.2.3** Service to the institution, profession, or community;

**3.15.2.4** Annual performance reviews;

**3.15.2.5** Intellectual property owned wholly or partly by, or commercialization efforts attributed to, the faculty member;

**3.15.2.6** Compliance with the institution's policies regarding the responsibilities and ethical obligations of faculty members; and

**3.15.2.7** Any improvement plans for underperformance, if applicable.

**3.15.3** For faculty seeking rank advancement after receiving tenure, the institution's rank advancement reviews may constitute the post-tenure review, so long as the reviews include the requirements and timeline outlined in subsection 3.15.2.

**3.16 Remedial Actions Based on Post-tenure Review:** If, as a result of the post-tenure review process, the faculty member is found to not be meeting the minimum standards required by the institution and the faculty members academic unit, the institution shall create a remediation plan to address deficiencies and a timeline by which the tenured faculty member is expected to address the deficiencies. A faculty member's failure to successfully address deficiencies may be subject to disciplinary action, including dismissal for cause, under institutional policies adopted pursuant to this policy.

**3.16.1** In consultation with the institution's board of trustees, a president who does not dismiss a tenured faculty member who fails to address deficiencies as described in subsection 3.16 shall justify in writing to the board why the tenured faculty member is not being dismissed.

**3.17 Presidential Report to Board:** A president shall provide an annual report to the Board, no later than October 1 of each year, with the following information:

**3.17.1** Presidents shall submit to their institution's board of trustees and provide a copy to the Utah Board of Higher Education, an annual report detailing the number of faculty

members: eligible for tenure, who left the institution prior to receiving tenure, denied tenure, and awarded tenure;

**3.17.2** The number of post-tenure reviews that took place at the degree-granting institution in the previous year;

**3.17.3** An analysis of scores from post-tenure reviews that took place in the previous year with personal information redacted;

**3.17.4** The number of post-tenure reviews from the previous year that resulted in a remediation plan;

**3.17.5** A qualitative summary of the types of remediation plans created in the previous year, including an average timeline by which tenured faculty members are expected to address deficiencies; and

**3.17.6** A summary of written justifications described in subsection 3.16.1, if any, with personal information redacted.