

III. I. Termination of an Appointment for Financial Exigency or Discontinuance of a Program or Department of Instruction.¹

Comment: Formerly III.B.10

Termination of a tenured or tenure eligible appointment, or of a probationary or specified-term appointment before the end of the term specified in the contract, may occur (a) under extraordinary circumstances because of financial exigency that threatens the College as a whole, or (b) because of the discontinuance of a specific program or department of instruction within the College.

1. Financial Exigency: Financial exigency is an imminent financial crisis that threatens the College as a whole and that cannot be alleviated by less drastic means than termination of academic appointments. The responsibility for determining financial exigency and for identifying the criteria for selecting the appointment(s) to be terminated shall lie with the Faculty University Priorities Committee (or subsequent budget and planning committee with elected faculty membership²), following the procedures enumerated in III.I.2 below. Ultimate authority over these decisions rests with the President and the Board of Visitors.

Comment: Financial exigency and discontinuance of a program were treated together in the present Handbook; we've separated them out in order to clarify slight differences in the procedures between the two

Comment: PRC wonders how to measure the drastic-ness of a means—we've decided to leave it alone, since that's part of what the FUPC will have to decide.

Comment: The following proviso is deleted because it is not policy and because such a committee (FUPC) now exists and has been built into the procedures

Comment: SUBSTANTIVE: This next deletion takes out the participation of "non-tenured" faculty, at least at the level of FUPC—AAUP does not include non-tenured as far as I can tell, and there are not non-tenured faculty members on FUPC

Comment: Possibly substantive—the proviso that the decision should not be made primarily by faculty who would be affected seems covered by the make-up of FUPC.

Comment: The sentence about determining criteria has been moved to "Procedures" below

Comment: PRC suggests deleting, given that III.J. says the BOV isn't bound by the handbook--we think it's important to leave it in

Comment: Delete "and that all feasible alternatives to such termination have been considered," per PRC, first because the definition of exigency includes less drastic alternatives, and second because this formulation is softer than "less drastic"

Comment: New language, specifying what might happen following the Assembly's deliberations

Comment: Possibly substantive—the proviso that the decision should not be made primarily by faculty who would be affected seems covered by the make-up of FUPC.

Once the President and the Faculty University Priorities Committee have determined that the substantive standards for financial exigency (as defined above) have been met, but before any faculty appointment is terminated, the Provost will meet with the Faculty Assembly and ask the Faculty Assembly to affirm that a condition of financial exigency exists. Although the Faculty Assembly's response is not binding on the President, should the Faculty Assembly determine that the substantive standards have not been met, that opinion will be entered into the record and forwarded to the Faculty Hearing Committee and, if necessary, to the Board of Visitors should the faculty member(s) whose positions have been reassigned or terminated appeal the decision.

The Faculty University Priorities Committee shall determine the criteria for identifying the individuals whose appointments are to be terminated. The criteria may include consideration of length of service. The committee should consult all concerned programs or departments as part of its deliberations, and follow to the extent possible the AAUP Guidelines "On Institutional Problems Resulting from Financial Exigency."³ Before terminating an appointment, the committee shall make every effort to find another suitable position at the College for the affected faculty member(s).

¹ These standards and procedures follow the "Recommended Institutional Regulations of Academic Freedom and Tenure," sections 4.c.&d., American Association of University Professors *Policy Documents and Reports*, 10th ed. (2006), pp. 24-5.

² Consistent with AAUP's recommendation that such judgments should be the "primary responsibility . . . of an appropriate faculty body" (p. 24).

³ American Association of University Professors *Policy Documents and Reports*, 10th ed. (2006), p. 147.

If the College terminates appointments because of financial exigency, it will not at the same time make new appointments, or retain nontenured faculty while terminating tenured faculty, except in extraordinary circumstances where a serious distortion of the College's academic program would otherwise result.

If the administration issues written notice to a particular faculty member of the intention to terminate his or her appointment because of financial exigency; the faculty member may appeal the decision to the Faculty Hearing Committee within thirty calendar days of receipt of notice of intent to terminate.

The hearing will be governed by the hearing procedures set forth in Section III.F.4.c. The Committee shall make findings of fact, conclusions, and recommendations in a timely manner and issue a written report to the Provost and the faculty member(s). The findings of the Faculty Assembly shall be introduced. The Faculty Hearing Committee shall consider:

- a. Whether the administration followed the procedures set forth above (the Faculty Hearing Committee may consult with the Procedural Review Committee as needed); if the Faculty Hearing Committee discovers a procedural irregularity, it shall indicate to the Provost in writing the nature of the irregularity and the point at which the process at which should resume.
- b. The existence and extent of the condition of financial exigency, *if* the Faculty Assembly has not affirmed the decision of the administration and the Faculty University Priorities Committee. In that case, the burden shall rest with the administration to demonstrate its case. If the Faculty Assembly *has* affirmed the decision, the Faculty Hearing Committee shall not reevaluate the decision.
- c. The validity of the educational judgments and criteria used to determine which appointments are to be terminated
- d. Whether the criteria are being properly applied in the individual case.

Comment: New language, in an attempt to resolve the apparent contradiction between old a and b

Within thirty calendar days of receipt of the report, the Provost shall (1) provide an opportunity for written response by the faculty member, (2) accept or reject the recommendation of the Faculty Hearing Committee report, and (3) state the reasons for acceptance or rejection in writing to the Faculty Hearing Committee and the faculty member. If the Provost's report recommends termination, the faculty member will then have thirty calendar days after receipt of notice from the Provost to appeal the decision to the President and the Board of Visitors per the procedures outlined in III.F.5.

If terminated, the faculty member shall receive compensation and notice in accordance with the following schedule: at least three months, if the final decision is reached by March 1 (or three months prior to the expiration) of the first year of service; at least six months, if the decision is reached by December 15

of the second year (or after nine months but prior to eighteen months) of service; at least one year, if the decision is reached after eighteen months of service or if the faculty member has tenure.

The released faculty member's position will not be filled by a replacement for at least three years, unless the released faculty member has been offered reinstatement at the same rank and under comparable terms of employment, and a reasonable time within which to accept or decline it.

Comment: PRC—clarifying how one is reinstated

2. Discontinuance of a Program or Department of Instruction: A decision to terminate academic appointments resulting from the discontinuance of a program or department of instruction not compelled by financial exigency (as defined in III.I.1 above), must reflect long-range institutional judgments that the educational mission of the College as a whole will be enhanced by the discontinuance. The responsibility for determining that it is in the best interest of the College's educational mission to discontinue the program or department, and for identifying the criteria for selecting the appointment(s) to be terminated or reassigned, shall lie with the Faculty University Priorities Committee (or subsequent budget and planning committee with elected faculty membership²). Ultimate authority over these decisions rests with the President and the Board of Visitors.

[Once the President and the Faculty University Priorities Committee have determined that the substantive standards for discontinuance of a program have been met (as defined above), but before any faculty appointment is terminated, the Provost will meet with the Faculty Assembly and ask the Faculty Assembly to affirm that the discontinuance of a program or department of instruction reflects long-range institutional judgments that the educational mission of the College as a whole will be enhanced. Although the Faculty Assembly's response is not binding on the President, should the Faculty Assembly determine that the substantive standards have not been met, that opinion will be entered into the record and forwarded to the Faculty Hearing Committee and, if necessary, to the Board of Visitors should the faculty member(s) whose positions have been reassigned or terminated appeal the decision

Comment: Is "the administration" necessary here? Aren't they included in FUPC? PRC—replace with "President"?

Comment: PRC suggests deleting

Comment: PRC—the statement becomes part of the record in the case of an appeal to the Faculty Hearing Committee and/or the President and the Board of Visitors

The Faculty University Priorities Committee shall determine the criteria for identifying the individuals whose appointments are to be terminated or reassigned. The criteria may include consideration of length of service. The committee should consult all concerned programs or departments as part of its deliberations. Before terminating an appointment, the committee shall make every effort to find another suitable position at the College for the faculty member, even if such an appointment requires retraining. Per AAUP guidelines,

Comment: SUBSTANTIVE: This is new language—the current Handbook doesn't say what happens if the Assembly does NOT affirm the decision

Comment: Possibly substantive—the proviso that the decision should not be made primarily by faculty who would be affected seems covered by the make-up of FUPC.

if the College plans to discontinue a program or department of instruction for reasons other than financial exigency, it should likewise plan to bear the costs of relocating or retraining affected faculty members placed in another position within the College.⁴

Comment: Per PRC

If the administration issues notice to a particular faculty member of an intention to terminate or reassign his or her appointment because a program or department of instruction is to be discontinued, the faculty member may appeal the decision to the Faculty Hearing Committee within thirty calendar days of receipt of notice of intent to terminate.

The hearing will be governed by the hearing procedures set forth in Section III.F.4 The Committee shall make findings of fact, conclusions, and recommendations in a timely manner and issue a written report to the Provost and the faculty member(s). The findings of the Faculty Assembly shall be introduced. The Faculty Hearing Committee shall consider:

a. Whether the administration followed the procedures set forth above (the Faculty Hearing Committee may consult with the Procedural Review Committee as needed); if the Faculty Hearing Committee discovers a procedural irregularity, it shall indicate to the Provost in writing the nature of the irregularity and the point at which the process should resume.

b. The conclusion that the educational mission of the College as a whole will be enhanced by the discontinuance of a program or department of instruction, if the Faculty Assembly has not affirmed the decision of the administration and the Faculty University Priorities Committee. In that case, the burden shall rest with the administration to demonstrate its case. If the Faculty Assembly *has* affirmed the decision, the Faculty Hearing Committee shall not reevaluate the decision.

Comment: New language, in an attempt to resolve the apparent contradiction between old a and b

c. The validity of the educational judgments and the criteria used for determining which appointments are to be terminated or reassigned;

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

Comment: I've deleted what followed in the old version because in AAUP, those stipulations don't apply to discontinuation of a program

⁴ "Recommended Institutional Regulations of Academic Freedom and Tenure," section 4.d., American Association of University Professors *Policy Documents and Reports*, 10th ed. (2006), pp. 25.

Within thirty calendar days of receipt of the report, the Provost shall (1) provide an opportunity for written response by the faculty member, (2) accept or reject the recommendation of the Faculty Hearing Committee's report, and (3) state the reasons for acceptance or rejection in writing to the Faculty Hearing Committee and the faculty member. If the Provost's report recommends termination, the faculty member will then have thirty calendar days after receipt of notice from the Provost to appeal the decision to the President and Board of Visitors per the procedures outlined in III.F.5.

If terminated, the faculty member shall receive compensation and notice in accordance with the following schedule: at least three months, if the final decision is reached by March 1 (or three months prior to the expiration) of the first year of service; at least six months, if the decision is reached by December 15 of the second year (or after nine months but prior to eighteen months) of service; at least one year, if the decision is reached after eighteen months of service or if the faculty member has tenure.

If the released faculty member is tenured, or if he or she is released before the end of the term specified in the contract, his or her position will not be filled by a replacement for at least three years, unless the released faculty member has been offered reinstatement at the same rank and under comparable terms of employment, and a reasonable time within which to accept or decline it.

Comment: Deleted because in AAUP, what followed doesn't apply to discontinuance of programs