

aaup arkansas

Arkansas Conference of the American Association of University Professors

The Arkansas Conference of the American Association of University Professors has put together the following information so that faculty in the UA System are aware of the **substantive changes that affect faculty's tenure and termination, academic freedom, due process, and shared governance** that are now being considered by the UA System Board of Trustees. These changes are contained in [Board Policy 405.1, currently on the November 8th agenda \(see page 234\)](#).

With the authors' permission, we are providing analyses of the changes, links to letters of concern, and news articles related to the issue.

We can't say it strongly or loudly enough: **GET INVOLVED.**

Highlights of the Policy — [Analysis by Professor Joshua M. Silverstein, UA-Little Rock](#)

For the full analysis, [click here](#).

I. —Definition of Terms

For purposes of this policy, the following definitions shall apply:

Appointment —An appointment is employment by written ~~contract~~**notice** ("Notice of Appointment") by the Board of Trustees of an individual in a given capacity for a specified time period at a stated salary. An appointment is valid only when ~~the appointment form is~~ approved and signed by the President of the University ~~or, the Chancellor of the President's respective campus, the Vice President for Agriculture, the Chief Executive Officer of the respective unit, or their~~ designee, in accordance with authority delegated by the Board of Trustees, ~~and the Notice of Appointment is signed by the individual being appointed and returned. Such appointment is subject to the specified~~ all applicable policies of the Board of Trustees, the University ~~official of~~ Arkansas System, and the respective campus, division or unit.

Cause - Cause is defined as conduct that demonstrates the faculty member lacks the willingness or ability to perform duties or responsibilities to the University. A faculty member may be disciplined, or dismissed, for cause on grounds including but not limited to **unsatisfactory performance** or (1) professional dishonesty or plagiarism; (2) discrimination, including

¹ In most cases, academic units are organized into colleges with deans, chairpersons, and faculty. The normal order is for appointment, promotion and tenure processes to utilize this structure in making recommendations. Where colleges are not present, the normal order shall follow a pattern that closely mirrors the typical structure. For example, in Schools without departments, the decisions shall start with the faculty and move to the dean. For the purpose of this policy, and in reference to items involving professional librarians, extension specialists, instructional development specialists, or museum curators the terms "chairperson," "administrative officer," and "administrator" refer to the director or head librarian

Comment [j1]: The change from "contract" to "notice" could be construed to limit or eliminate contractual tenure protections under both contract law and constitutional law. Indeed, the word "contract" no longer appears anywhere in the rules. The only other use of this term was also removed. I've highlighted that change below.

Comment [j2]: This is a significant change. Under the current standard, termination for performance issues may result only from "incompetence," "neglect of duty," or the like. Under the new standard, a mere finding of unsatisfactory performance in an annual review is sufficient grounds to warrant termination. This interpretation is confirmed by language discussed in my final comment below.

harassment or retaliation, prohibited by law or university policy; (3) unethical conduct related to fitness to engage in teaching, research, service/outreach and/or administration, or otherwise related to the faculty member's employment or public employment; (4) misuse of appointment or authority to exploit others; (5) theft or intentional misuse of property; (6) incompetence or job abandonment, pattern of disruptive conduct or unwillingness to work productively with colleagues, or refusal to perform reasonable duties; (7) threats or acts of violence or retaliatory conduct; or (8) violation of University policy, or state or federal law, substantially related to performance of faculty responsibilities or fitness to serve the University.

Dismissal -Dismissal is severance from employment for cause after administrative due process as specified in Section IV C. ~~Non-provided in this policy. Termination by notice, expiration of appointment, or non-reappointment is not a dismissal (see further).~~

Comment [j3]: The language highlighted in yellow contains highly subjective standards that could easily be used to undercut academic freedom and tenure. "Disruptive conduct" and "unwillingness to work productively with colleagues" are vague concepts that are very much subject to abuse. They also violate AAUP standards as explained in my email.

c.- ____ The University faculty member is a citizen, a member of a learned profession, and a member of an educational community. Speaking or writing as a citizen, the faculty member is free from institutional censorship or discipline. However, as a person of learning and as a member of an educational community, the faculty member has a responsibility for awareness that the public may judge the profession and the institution by his or her utterances. Hence, faculty should at all times make an effort to be accurate, exercise good judgment and appropriate restraint, show respect for the opinions of others, and indicate that they are not spokespersons for the institution. Faculty are expected to work productively with colleagues in carrying out the mission of the University.

B. Non-Reappointment

Comment [j6]: As above, this is a subjective standard that could easily be abused, critically undercutting academic freedom and tenure protection.

9. In order to ensure a high quality and productive educational environment, annual review procedures adopted at the campus level must provide for prompt, meaningful and effective means of addressing unsatisfactory faculty performance. Any campus procedures regarding post-tenure review shall not allow greater than one academic year, with active cooperation from the faculty member, for an overall unsatisfactory performance rating to be substantially remedied prior to a recommendation of dismissal on the basis of unsatisfactory performance. In other words, if a faculty member's overall performance is evaluated as unsatisfactory for an academic year, any improvement plans or other remedial measures are expected to result in a satisfactory evaluation by the end of the following academic year; if not, the faculty member may be issued a notice of dismissal on twelve months' notice as provided for in this policy. Again, such period of time for remediation assumes the active cooperation and engagement of the faculty member; otherwise, a shortened timeframe may be utilized.

Comment [j8]: This is one of the most profound changes. It effectively allows for the termination of a faculty member after a single "unsatisfactory" rating. Let me explain. On the surface, the provision appears to provide that termination is only permissible after two unsatisfactory ratings. The provision states that "any improvement plans or other remedial measures are expected to result in a satisfactory evaluation by the end of the following academic year; if not, the faculty member may be issued a notice of dismissal . . ." That suggests that two unsatisfactory ratings are required. But now look at the last sentence: "Again, such period of time for remediation assumes the active cooperation and engagement of the faculty member; otherwise, a shortened timeframe may be utilized." This means that if the university, in its subjective judgment, determines that a person is not being sufficiently cooperative in the remediation plan, termination is possible well before the end of the first academic year after the unsatisfactory rating. In short, a single unsatisfactory rating, combined with a judgment of insufficient "cooperation and engagement" can result in termination. That is a dramatic change from the existing rule. The current standard requires "incompetence," "neglect of duty," or something comparable. Those words denote something considerably worse than a mere finding of unsatisfactory performance—or even multiple unsatisfactory ratings. As I explain in my email, this change is clear violation of AAUP standards.

[Link to article, "Vote on Faculty Measure Delayed," Arkansas Democrat-Gazette, Tues Oct 31 2017](#)

[Link to article "Tenure Debate Brewing at the University of Arkansas," Arkansas Times, Tues Oct 24 2017](#)

[Link to article "Tenure changes at UA draw more attention, opposition from UAMS faculty," Arkansas Times, Fri Oct 27 2017](#)

[Link to article "Changes to Ease Tenured Faculty Firings," The Chronicle of Higher Education, Thurs Oct 26, 2017](#)

[Link to letter sent by Arkansas AAUP to UA Systems Board President](#)

[Link to letter sent by UA-Little Rock Faculty Senate to President Bobbitt](#)

[Link to UAMS Academic Senate webpage of collected information, publications, and responses](#)