MEMORANDUM

October 16, 2013

TO: Dr. Charles A. Roeckle

FROM: Patti Ohlendorf

RE: Faculty Council Legislation, D 9987 – 10000: Threatened Faculty Retrenchment

I write to help bring closure to the review and processing of the modifications to Section 2-2230, UT Austin Handbook of Operating Procedures, Threatened Faculty Retrenchment. As you know, the Faculty Council passed proposed modifications to this policy that were at least in part based upon new guidelines issued by UT System. Dan Sharporn in the UT System Office of General Counsel provided comments on the proposed changes. Some of the Faculty Council leadership, you, Steve Leslie, and I subsequently met with Dan to discuss his comments after which the Faculty Council leadership redrafted portions of the proposed changes that then were agreed to last fall by Dan and the campus.

Renee Wallace in the Office of the Provost recently proposed some additional edits to the proposed policy. The Faculty Council Executive Committee accepted the recommendations by the Office of the Provost. (See attached email and draft policy changes.) I also recommend that these edits be accepted.

Subject to approval by you and Bill Powers, this policy is ready for final approval by UT System and then can be incorporated into the UT Austin Handbook of Operating Procedures. Please let me know if you need additional information.

Thank you.

Attachment

cc: Dr. Hillary Hart
    Dr. Dean Neikirk
    Ms. Candice Fischbach
    Ms. Deborah Roberts
Dear Renee and Patti,

The Faculty Council Executive Committee accepted the recommended edits to D 9987-1000. The updated document is attached.

Best regards,

Debbie

Debbie Roberts
Executive Assistant

THE UNIVERSITY OF TEXAS AT AUSTIN • Office of the General Faculty & Faculty Council • West Mall Building, Room 2.102 • 306 Inner Campus Drive • Stop 9500 • Austin, TX 78712-1135 • Office: (512) 471-8506 • Fax: (512) 471-5984 • Proud member of j forty • NAMI educator & volunteer

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From: <Roberts>, Deborah L Roberts <debbie.roberts@austin.utexas.edu>
Date: Thursday, September 19, 2013 11:17 AM
To: D Fischbach <dfischbach@austin.utexas.edu>
Cc: Patricia A Ohlendorf <pohlendorf@austin.utexas.edu>, Cynthia M Sanchez <cynthia@po.utexas.edu>, Leekesha Williams <leekesha.williams@austin.utexas.edu>
Subject: Re: Policy Statement for Threatened Faculty Retrenchment (HOP 2-2230); D 9987-10000

Candice,

I am forwarding your message to the Faculty Council Executive Committee for their review and feedback. We will get a response back to you as soon as possible.

Debbie

Debbie Roberts
Executive Assistant

THE UNIVERSITY OF TEXAS AT AUSTIN • Office of the General Faculty & Faculty Council • West Mall Building, Room 2.102 • 306 Inner Campus Drive • Stop 9500 • Austin, TX 78712-1135 • Office: (512) 471-8506 • Fax: (512) 471-5984 • Proud member of j forty • NAMI educator & volunteer
On Sep 19, 2013, at 8:44 AM, "Fischbach, D Candice" <CFischbach@austin.utexas.edu> wrote:

Patti, Debbie,

Renee Wallace passed along the attached editing comments regarding faculty legislation involving HOP 2-2230/D9987-10000.

In order to bring closure to this HOP revision, Cynthia Sanchez asked me to seek your guidance on Renee’s suggested editing deletion on page 9989 for confirmation on whether this is okay to delete. The second item on page 9991 is easily remedied to reflect our current HOP policy number (HOP 2-2310).

Please provide me your feedback. Once this is finalized, the President’s Office can return it to Dan Sharporn for a final review to close out OGC Case #142147 and gain approval from the EVC-AA.

Thank you,
Candice

From: Sanchez, Cynthia M
Sent: Wednesday, September 18, 2013 5:38 PM
To: Fischbach, D Candice
Cc: Jaskolka, Lisa M
Subject: RE: Policy Statement for Threatened Faculty Retrenchment (HOP 2-2230); D 9987-10000

Candice,

I don’t know the answer to Renee’s question so I suggest that you please send Renee’s comments to Patti O and Debbie Roberts for their input. Does not seem like the language has been finalized.

Thanks!

CYNTHIA SÁNCHEZ
OFFICE OF THE PRESIDENT | THE UNIVERSITY OF TEXAS AT AUSTIN | 512.471.2311

From: Fischbach, D Candice <CFischbach@austin.utexas.edu>
Sent: Friday, September 06, 2013 9:39 AM
To: Sanchez, Cynthia M
Cc: Williams, Leekeshia M
Subject: FW: Policy Statement for Threatened Faculty Retrenchment (HOP 2-2230)

Cynthia,

I received the following response back from Renee about the provost’s position with regard to revisions to the Threatened Faculty Retrenchment policy (2-2230).

What is next step given Renee’s feedback in the attachment?
Handbook of Operating Procedures
The University of Texas at Austin
(DRAFT HOP Revisions)

Policy Number: 2-2230
Previously HOP 3.16
Policy Title: Threatened Faculty Retrenchment
Effective Date: TBD

Responsible Executive Sponsor: Executive Vice President and Provost
Responsible Policy Owner: Executive Vice President and Provost
Policy Contact: Office of the General Faculty

Threatened Faculty Retrenchment

I. Policy Statement
The president of The University of Texas at Austin ("University"), in consultation with the faculty, has the responsibility for determining when to eliminate occupied academic positions, when to abandon an academic program, or occasions when both may occur. Regents Rule 31003, abandonment of academic positions or programs, will be interpreted in the light of Rule 40101, which gives faculty a "major role" in regard to "general academic policies and welfare" and related matters. This rule further assigns these faculty responsibilities to the faculty governance organization.

II. Reason for Policy
To outline the procedures to be followed in the event of financial exigency that may affect academic programs, tenured faculty members, and faculty with current academic appointments.

III. Scope & Audience
This policy applies to members of the general faculty and the president and his administration.

IV. Definitions
None.

V. Website (for policy)
http://policies.utexas.edu/policies/threatened-faculty-retrenchment

VI. Contacts

<table>
<thead>
<tr>
<th>Department</th>
<th>Phone Number</th>
<th>Website</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office of the General Faculty</td>
<td>512-471-5934</td>
<td><a href="http://www.utexas.edu/faculty/council/">http://www.utexas.edu/faculty/council/</a></td>
</tr>
<tr>
<td>Debbie Roberts</td>
<td>512-471-8506</td>
<td></td>
</tr>
<tr>
<td>Anita Ahmadi</td>
<td>512-471-5936</td>
<td></td>
</tr>
</tbody>
</table>
VII. Responsibilities & Procedures

A. GENERAL POLICY
Regents Rule 31003, Abandonment of Academic Positions or Programs, calls for development of institutional procedures for an in-depth review to inform and guide decisions on these matters. The following are procedures for The University of Texas at Austin beyond those indicated in Regents Rule 31003.

Regents Rule 31003, abandonment of academic positions or programs, will be interpreted in the light of Rule 40101 which gives faculty a "major role" in regard to "general academic policies and welfare" and related matters and in the light of the further provisions that assign these faculty responsibilities to the faculty governance organization and require that the organization and procedures of the governance organization be set out in the university Handbook of Operating Procedures and subject to governance review and approval.

B. ABANDONMENT OF ACADEMIC PROGRAMS OR POSITIONS FOR ACADEMIC OR BUDGET REASONS
An academic program under consideration for abandonment or an academic position held by a tenured faculty member or a tenure-track or non-tenure track faculty member before the end of a contract that is under consideration for elimination for bona fide academic or budget reasons should be reviewed in depth through a procedure determined by the President in consultation with the Faculty. The President shall consult with the Faculty Council and the affected budgetary units to determine the most appropriate of the possible courses of action to be taken and the means of safeguarding faculty rights and interests, including tenure rights.

Upon determining the existence of the need to reduce academic programs or faculty positions, or both, the President, in consultation with the Faculty Council Executive Committee, shall appoint a Review Committee composed of faculty and administrative personnel to make recommendations to the President as to which academic positions and/or academic programs should be eliminated. The Review Committee will be composed of at least half faculty members including, unless otherwise agreed to, the Chair of the Faculty Council. If for any reason the Chair cannot serve, the Faculty Council Executive Committee shall designate a replacement.

Faculty in a program that is under consideration for abandonment or in academic positions that are under consideration for elimination will be notified and afforded an opportunity to contribute to the review process.

Upon completion of the review process, a recommendation with supporting rationale shall be submitted by the Review Committee to the President for review and recommendation. If the President determines that an academic program shall be abandoned, the President will submit a request for approval with supporting documentation to the appropriate Executive Vice Chancellor.

A faculty member who wishes to appeal for reconsideration of a termination decision shall make this request within 30 days of notification of termination. The hearing process shall proceed as outlined in Section IV of this policy.

C. ABANDONMENT OF ACADEMIC POSITIONS OR PROGRAMS BECAUSE OF AN INSTITUTIONAL FINANCIAL EXIGENCY
Financial exigency is, as defined in the Regents' Rules, "a demonstrably bona fide financial crisis that adversely affects the institution as a whole and that, after considering other cost-reducing measures, including ways to cut faculty costs, requires consideration of terminating appointments held by tenured faculty" (RR 31003, 3). Whenever reason exists to anticipate the University is sufficiently threatened by financial exigency, declines in enrollment, or changes in educational needs to endanger the continuance of the University's obligations to faculty members with tenure or those on regular academic appointments, the President at the earliest
date possible shall inform the Faculty Council and all potentially affected budgetary units of the problem.

Procedure For Eliminating Programs Or Positions
"Upon determining the existence of a financial exigency and the need to reduce academic positions or academic programs or both, the president . . . shall appoint a committee composed of faculty and administrative personnel . . . At least one-half of the total committee membership shall be faculty members and at least one-half of the faculty members on the committee shall be appointed from recommendations submitted to the president from the [Faculty Council]" (RR 31003.3.1). The formation of the Exigency Committee shall include the general criteria the committee should apply in making its recommendations.

It is recommended that at least a majority of the faculty appointed will be tenured. Any appointed non-tenured or tenure-track faculty should be senior faculty with substantial experience in the university. The nominations should seek to represent the University as a whole, not just programs initially slated to be reduced or just those not so slated, and at least some of the faculty should have served on faculty governance review committees for recommendations on promotion and tenure for academic personnel. Unless otherwise specified, the committee shall complete its work in a period of time no longer than 60 days from the appointment of the Exigency Committee.

For Regents' Rule section 3.2, Assessment of Academic Programs, the Exigency Committee will provide a written report of its analysis of programs and recommendations. As stated in the Rule, "The committee will review and assess the academic programs of the institution and identify those academic positions that may be eliminated with minimum effect upon the degree programs that should be continued and upon other critical components of the institution's mission. The review will include, but not be limited to, as relevant: (a) an examination of the course offerings, degree programs, supporting degree programs, teaching specialties, and semester credit hour production; (b) an evaluation of the quality, centrality, and funding of research activities; and/or (c) an assessment of the productivity, community service, and quality of clinical services (in relation to teaching, healthcare delivery, and scholarly activity)."

For Regents' Rule sections 3.3, Review Consideration, and 3.4, Tenure Preference, the Exigency Committee should recommend specific positions to be eliminated in its written report. The recommendations should be related to the Exigency Committee's assessment of programs. If other officers of the university, such as deans or program chairs, are involved in identifying individuals whose appointments are to be terminated, the process for obtaining these recommendations should be described in the report. The Exigency Committee will then be available the personnel records of those being considered including current curriculum vitae, recent annual reports, promotion committee reports and recommendations, and results of periodic performance reviews. It will have access to full personnel files. Faculty whose positions would be jeopardized by the proposed actions will be provided the opportunity to contribute meaningfully to the Committee's review process, including the ability to respond in writing to the recommendations. A faculty member with tenure will be retained over a faculty member without tenure except in extraordinary circumstances in which such action would not be in the best interests of the academic, research, and clinical programs of the University.

"Upon completion of its review, the committee shall promptly recommend in writing to the president those persons who may be terminated, ranked in order of priority, with the reasons for their selection. The president shall, after consultation with institutional administrative officers as the president may deem appropriate, determine which academic positions are to be terminated because of the financial exigency and shall give the holders of these positions written notice of the decision" (RR 31003, 3.5, "Recommendation").

D. PROCEDURE FOR APPEAL
A faculty member whose position has been eliminated due to academic or budgetary reasons or institutional financial exigency is entitled to appeal that decision in accord with RR 31003, 2.4 or 3.7-3.8, as applicable.

Appeals must be made on the grounds that the decision to terminate the appellant as compared to another individual in the same discipline or teaching specialty was arbitrary and unreasonable based on the evidence presented (including claims such as, but not limited to, race or gender discrimination or violations of academic freedom). In the event of a financial exigency termination, the grounds for the appeal may also be that financial exigency was not in fact the reason for the initial decision to reduce academic positions.

The "Formal Hearing Procedures" of HOP 3.18, Part V, shall apply to the extent that they do not conflict with RR 31003.

E. ADDITIONAL NOTES
"If appointments are terminated, the University will not at the same time make new appointments in the same subject area or specialization except in extraordinary circumstances where a serious distortion in the academic or clinical program would otherwise result." (RR31003, IV).

A faculty member who is terminated shall be given a reasonable amount of time to close down his or her research and related facilities in a non-destructive way.

During this period of employment and for two additional years, the terminated faculty member shall have right to first consideration for any vacancies occurring in his or her field of teaching (RR 31003, 3.6).

VIII. Forms & Tools.
None.

IX. Frequently Asked Questions
None.

X. Related Information
UT System Board of Regents’ Rule 31003 and Regents Rule 40101

XI. History
Last review date: November 2012
Next scheduled review date: November 2014
Previous Policy – HOP 3.16
June 20, 2012

Dr. Sue Alexander Greninger
Secretary of General Faculty and Faculty Council
WMB 2.102 (F9500)

Dear Sue:

I write concerning the “Proposed Revisions to UT Austin’s HOP 3.16 Threatened Faculty Retrenchment,” Documents of the General Faculty 8936-8939 (enclosed). As you know, President Powers forwarded this proposal to The University of Texas System with his recommendation for approval (cf. his letter of February 22, 2012, to Dr. Pedro Reyes, Executive Vice Chancellor ad interim for Academic Affairs). Having reviewed the proposal on behalf of the System, the Office of General Counsel has returned the proposal with several concerns. These are summarized in the enclosed e-mail message from Mr. Dan Sharporn, Deputy General Counsel, to Ms. Candice Fischbach, Policy Manager of the University Policy Office. Also enclosed is a copy of the proposal with the passages of concern identified.

The Faculty Council will want to reconsider the proposal in light of Mr. Sharporn’s comments. If you have any questions, please do not hesitate to contact me.

Sincerely yours,

Charles A. Roeckle
Deputy to the President

CAR/am

Enclosures

cc: President William Powers, Jr.
Dr. Steven Leslie, Executive Vice President and Provost
Mrs. Patti Ohlendorf, Vice President for Legal Affairs
Dr. Gretchen Ritter, Vice Provost
Ms. Candice Fischbach, Policy Manager, University Policy Office
Ms. Debbie Roberts, Executive Assistant, Office of the General Faculty
Faculty Council Executive Committee
Hello Candice. Below are my comments on the proposed revisions:

Comments on the "Proposed Revisions to UT Austin's HOP 3.16 Threatened Faculty Retrenchment"

Part II, Abandonment of Academic Programs or Positions for Academic or Budget Reasons, second paragraph, last sentence:

"The Review Committee will be composed of at least half faculty members including, unless otherwise agreed to, the Chair of the Faculty Council."

It is unclear who would be required to agree to the exception. Recommend the Provost be able to decide.

Part III, Abandonment of Academic Positions or Programs Because of an Institutional Financial Exigency, fifth paragraph, sixth sentence:

"The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result."

This impermissibly exceeds the standards established in Regents' Rule 31003, Sec. 3.4, i.e.:

"Tenure Preference. If, in the opinion of the committee, two or more faculty members are equally qualified and capable of performing the same teaching, research, and/or clinical role, the faculty member or members having tenure shall be given preference
over nontenured faculty. However, if such faculty members have the same tenure status and equal qualifications, consideration will be given to other documented needs of the institution.

Part IV, Procedures for Appeal:

The last sentence in the last paragraph of Part II and the first sentence in this part indicate that these procedures are to be used in the case of position elimination due either to financial exigency or for bona fide academic reasons, including those motivated by budget concerns:

"A faculty member whose position has been eliminated due to academic or budgetary reasons or institutional financial exigency is entitled to appeal that decision."

However, the grounds for appeals cited from Regents' Rule 31003, Sec. 3.8(d) in the next paragraph of Part IV are only applicable to elimination due to financial exigency:

"(1) Financial exigency was not in fact the reason for the initial decision to reduce academic positions; or (2) The decision to terminate the appellant as compared to another individual in the same discipline or teaching specialty was arbitrary and unreasonable based upon the evidence presented."

The applicable grounds for appeals due to bona fide academic reasons are specified in Regents' Rule 31003, Sec. 2.4(e):

"The burden shall be upon the appellant to show by a preponderance of the credible evidence that the decision to terminate the appellant as compared to another individual in the same discipline or teaching specialty was arbitrary and unreasonable based upon the evidence presented."

The third paragraph, first sentence, of Part IV states:

"For appeals on grounds other than the reasons listed in the paragraph immediately above, such as, but not limited to, race or gender discrimination or violation of academic freedom, the faculty member shall use the Faculty Grievance Procedure (HOP 3.18)."

Regents' Rule 31003 spells out the grounds available for appeals of decisions to eliminate certain faculty positions due to financial exigency (Sec. 3.8(d)) or for bona fide academic reasons (Sec. 2.4(e)). These are the grounds that must be applied and the grievance procedures cannot be substituted. The existing grounds would include claims of race or gender discrimination or violations of academic freedom as such actions, if proven, would be arbitrary and unreasonable.

Part V, Additional Notes, first paragraph, first sentence:

"If appointments are terminated, the University will not at the same time make new appointments except in extraordinary circumstances where a serious distortion in the academic or clinical program would otherwise result."

This should read:
"If appointments are terminated, the University will not at the same time make new appointments in the same subject area or specialization except in extraordinary circumstances where a serious distortion of the academic or clinical program would otherwise result."

First paragraph, second sentence:

"Similarly, the appointment or a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic or clinical program would otherwise result.

As noted above in comments on Part III, this impermissibly exceeds the standards established in Regents' Rule 31003, Sec. 3.4, i.e.:

"Tenure Preference. If, in the opinion of the committee, two or more faculty members are equally qualified and capable of performing the same teaching, research, and/or clinical role, the faculty member or members having tenure shall be given preference over nontenured faculty. However, if such faculty members have the same tenure status and equal qualifications, consideration will be given to other documented needs of the institution."

Dan Sharphorn
Associate Vice Chancellor and
Deputy General Counsel
The University of Texas System
201 West 7th Street
Austin, Texas 78701
512-499-4462
dsharphorn@utsystem.edu
10000

Page not used.
NON-SUBSTANTIVE REVISIONS TO THE THREATENED FACULTY RETRENCHMENT
LEGISLATION D 8936-8939

On May 10, 2010, the Faculty Council approved legislation (D 8009-8012) proposing changes to the
Threatened Faculty Retrenchment policy in the Handbook of Operating Procedures (then HOP 3.16). However,
the legislation was disapproved by the president and returned to the Faculty Council. The Faculty Council
approved a second proposal (D 8624-8628) on April 11, 2011, which was also returned by the president. Further
discussion with President Powers and Provost Leslie regarding the procedures for appeal produced further
revisions resulting in D 8936-8939, which was approved by the Faculty Council on September 19, 2011, and
later by the General Faculty on October 5, 2011. On February 24, 2012, President Powers transmitted the
legislation to UT System recommending approval. On June 20, 2012, the legislation was returned by UT
System’s Vice Chancellor and Deputy General Counsel Dan Sharpnorn citing several concerns, which are
summarized in appendix A. The FCEC, current and past chairs of the Faculty Rules and Governance
Committee, the provost, and the vice president for legal affairs have worked closely with Mr. Sharpnorn to
address his concerns. On October 1, 2012, the FCEC, Provost Steve Leslie, and Vice President Patti Ohlendorf
determined that the following revisions to the Threatened Faculty Retrenchment policy in the Handbook of
Operating Procedures 2-2230 do not need approval of the Faculty Council since the changes are non-
substantive and are in keeping with the spirit of D 8936-8939. The Office of the President will transmit the
proposed changes to UT System for final approval.

Sue Alexander Greninger, Secretary
The Faculty Council and General Faculty

Posted on the Faculty Council website (http://www.utexas.edu/faculty/council/) on October 10, 2012.
POLICY IMPACT STATEMENT

Please submit one Policy Impact Statement for each policy under consideration.

Submission Date: October 10, 2012

Responsible Policy Owner/ Sponsor: Office of the General Faculty
Phone: 471-5934
Executive Level Sponsor: Executive Vice President and Provost

Proposed Policy Title: Threatened Faculty Retrenchment
Existing Policy Title & HOP # (if revision): 2-2230
Future Policies Planned in this Subject Area (list titles if available): N/A

I. Background and Policy Rationale

A. Is this policy new, a substantial revision, or a minor revision?

☐ New ☐ Substantial Revision ☒ Minor Revision

B. Why is this policy or revision necessary?

☐ Legal ☐ Regulatory ☐ UT System driven
☐ Financial ☐ Social Requirement ☒ Operational/Operational Efficiency
☐ Current University policy is outdated ☐ Technological
☐ Other:

C. For new policies: Provide a preliminary draft using the policy template that can be found at http://www.utexas.edu/compliance/policy/ . Fill in as much of the policy template sections as feasible at this point knowing the policy draft can be refined further in the process.

Handbook of Operating Procedures 2-2230
Threatened Faculty Retrenchment
[Previously CHAPTER 3 – FACULTY AND ACADEMICS
Sec. 3.16 Abandonment of Academic Positions or Programs]

A. GENERAL POLICY

Regents Rule 31003, Abandonment of Academic Positions or Programs, calls for development of institutional procedures for an in-depth review to inform and guide decisions on these matters. The following are procedures for The University of Texas at Austin beyond those indicated in Regents Rule 31003.

Regents Rule 31003, abandonment of academic positions or programs, will be interpreted in the light of Rule 40101 which gives faculty a “major role” in regard to “general academic policies and welfare” and related matters and in the light of the further provisions that assign these faculty responsibilities to the faculty governance organization and require that the organization and procedures of the governance organization be set out in the university Handbook of Operating Procedures and subject to governance review and approval.

B. ABANDONMENT OF ACADEMIC PROGRAMS OR POSITIONS FOR ACADEMIC OR BUDGET REASONS

An academic program under consideration for abandonment or an academic position held by a tenured faculty member or a tenure-track or non-tenure track faculty member before the end of a contract that is under consideration for elimination for bona fide academic or budget reasons should be reviewed in depth through a procedure determined by the President in consultation with the Faculty. The President shall consult with the Faculty Council and the affected budgetary units to determine the most appropriate of the possible courses of action to be taken and the means of safeguarding faculty rights and interests, including tenure rights.

Upon determining the existence of the need to reduce academic programs or faculty positions, or both, the President, in consultation with the Faculty Council Executive Committee, shall appoint a Review Committee composed of faculty and administrative personnel to make recommendations to the President as to which academic positions and/or academic programs
should be eliminated. The Review Committee will be composed of at least half faculty members including the Chair of the Faculty Council. If for any reason the Chair cannot serve, the Faculty Council Executive Committee shall designate a replacement.

Faculty in a program that is under consideration for abandonment or in academic positions that are under consideration for elimination will be notified and afforded an opportunity to contribute to the review process.

Upon completion of the review process, a recommendation with supporting rationale shall be submitted by the Review Committee to the President for review and recommendation. If the President determines that an academic program shall be abandoned, the President will submit a request for approval with supporting documentation to the appropriate Executive Vice Chancellor.

A faculty member who wishes to appeal for reconsideration of a termination decision shall make this request within 30 days of notification of termination. The hearing process shall proceed as outlined in Section IV of this policy.

C. ABANDONMENT OF ACADEMIC POSITIONS OR PROGRAMS BECAUSE OF AN INSTITUTIONAL FINANCIAL EXIGENCY

Financial exigency is, as defined in the Regents’ Rules, “a demonstrably bona fide financial crisis that adversely affects the institution as a whole and that, after considering other cost-reducing measures, including ways to cut faculty costs, requires consideration of terminating appointments held by tenured faculty” (RR31003.3). Whenever reason exists to anticipate the University is sufficiently threatened by financial exigency, declines in enrollment, or changes in educational needs to endanger the continuance of the University’s obligations to faculty members with tenure or those on regular academic appointments, the President at the earliest date possible shall inform the Faculty Council and all potentially affected budgetary units of the problem.

Procedure For Eliminating Programs Or Positions

"Upon determining the existence of a financial exigency and the need to reduce academic positions or academic programs or both, the president . . . shall appoint a committee composed of faculty and administrative personnel . . . At least one-half of the total committee membership shall be faculty members and at least one-half of the faculty members on the committee shall be appointed from recommendations submitted to the president from the [Faculty Council]" (RR 31003.3.1). The formation of the Exigency Committee shall include the general criteria the committee should apply in making its recommendations.

It is recommended that at least a majority of the faculty appointed will be tenured. Any appointed non-tenured or tenure-track faculty should be senior faculty with substantial experience in the university. The nominations should seek to represent the University as a whole, not just programs initially slated to be reduced or just those not so slated, and at least some of the faculty should have served on faculty governance review committees for recommendations on promotion and tenure for academic personnel. Unless otherwise specified, the committee shall complete its work in a period of time no longer than 60 days from the appointment of the Exigency Committee.

For Regents’ Rule section 3.2, Assessment of Academic Programs, the Exigency Committee will provide a written report of its analysis of programs and recommendations. As stated in the Rule, “The committee will review and assess the academic programs of the institution and identify those academic positions that may be eliminated with minimum effect upon the degree programs that should be continued and upon other critical components of the institution’s mission. The review will include, but not be limited to, as relevant: (a) an

1 Upon the recommendation of Associate Vice President Renee Wallace, the phrase “unless otherwise agreed to” was deleted by the Faculty Council Executive Committee on September 26, 2013.
examination of the course offerings, degree programs, supporting degree programs, teaching specialties, and semester credit hour production; (b) an evaluation of the quality, centrality, and funding of research activities; and/or (c) an assessment of the productivity, community service, and quality of clinical services (in relation to teaching, healthcare delivery, and scholarly activity)."

For Regents’ Rule sections 3.3, Review Consideration, and 3.4, Tenure Preference, the Exigency Committee should recommend specific positions to be eliminated in its written report. The recommendations should be related to the Exigency Committee’s assessment of programs. If other officers of the university, such as deans or program chairs, are involved in identifying individuals whose appointments are to be terminated, the process for obtaining these recommendations should be described in the report. The Exigency Committee will have available the personnel records of those being considered including current curriculum vitae, recent annual reports, promotion committee reports and recommendations, and results of periodic performance reviews. It will have access to full personnel files. [The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.] Faculty whose positions would be jeopardized by the proposed actions will be provided the opportunity to contribute meaningfully to the Committee’s review process, including the ability to respond in writing to the recommendations. A faculty member with tenure will be retained over a faculty member without tenure except in extraordinary circumstances in which such action would not be in the best interests of the academic, research, and clinical programs of the University.

"Upon completion of its review, the committee shall promptly recommend in writing to the president those persons who may be terminated, ranked in order of priority, with the reasons for their selection. The president shall, after consultation with institutional administrative officers as the president may deem appropriate, determine which academic positions are to be terminated because of the financial exigency and shall give the holders of these positions written notice of the decision” (RR 31003, 3.5, “Recommendation”).

D. PROCEDURE FOR APPEAL
A faculty member whose position has been eliminated due to academic or budgetary reasons or institutional financial exigency is entitled to appeal that decision in accord with RR 31003, 2.4 or 3.7-3.8, as applicable.

[For appeals on the grounds that "(1) Financial exigency was not in fact the reason for the initial decision to reduce academic positions; or (2) The decision to terminate the appellant as compared to another individual in the same discipline or teaching specialty was arbitrary and unreasonable based upon the evidence presented." (RR 31003, 3.8, (d), (1) and (2)), the faculty member must use the Hearing process described in Regents’ Rules 31003. The hearing committee will not consider any other issues.

[For appeals on grounds other than the reasons listed in the paragraph immediately above, such as, but not limited to, race or gender discrimination or violations of academic freedom, the faculty member shall use the Faculty Grievance Procedure (HOP 3.18). The faculty appellant will follow the standard grievance process as outlined in HOP 3.18 and flowchart 3, beginning at Step 5 with a request for a hearing.]

Appeals must be made on the grounds that the decision to terminate the appellant as compared to another individual in the same discipline or teaching specialty was arbitrary and unreasonable based on the evidence presented (including claims such as, but not limited to, race or gender discrimination or violations of academic freedom). In the event of a financial exigency termination, the grounds for the appeal may also be that financial exigency was not in fact the reason for the initial decision to reduce academic positions.
The "Formal Hearing Procedures" of HOP 2-2310. 2 Part V, shall apply to the extent that they do not conflict with RR 31003.

E. ADDITIONAL NOTES

"If appointments are terminated, the University will not at the same time make new appointments in the same subject area or specialization except in extraordinary circumstances where a serious distortion in the academic or clinical program would otherwise result." (RR31003, IV). [Similarly, the appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic or clinical program would otherwise result—(RR-31003, IV).]

A faculty member who is terminated shall be given a reasonable amount of time to close down his or her research and related facilities in a non-destructive way.

During this period of employment and for two additional years, the terminated faculty member shall have right to first consideration for any vacancies occurring in his or her field of teaching (RR 31003, 3.6).

D. What foreseeable advantages will this policy bring to the University?

The enunciation of a policy in Rule 31003, Section 1, of the Regents' Rules and Regulations (http://www.utsystem.edu/bor/rules.htm#A4) concerning the Abandonment of Academic Positions or Programs calls for the President of the University to determine institutional procedures for an in-depth review to inform and guide decisions on these matters.

II. Policy Impact

List entities, offices, and other University community members affected by this policy: Members of the General Faculty, Office of the President, and the Office of the Executive Vice President.

III. Proposed Policy Development

Identify key stakeholders, affected parties and/or governance groups who have been consulted, or will be consulted in developing policy.

Faculty Council Executive Committee, Office of the President, Office of Legal Affairs, Office of the Executive Vice President and Provost, and UT System’s Office of the Vice Chancellor and Deputy General Counsel.

IV. Communications and Training

A. What types of communication and training activities will your office provide to build awareness and enable implementation of the policy? Upon final approval from UT System, the Secretary of the General Faculty will report to the Faculty Council; The updated status is also posted on the Office of the General Faculty and Faculty Council’s website.

B. Will initial or periodic training be required by law? None. If so, please explain how you will accomplish.

Submitted by:

[Signature]

Authorized Signature- Responsible Policy Owner

October 10, 2012
Date

Authorized Signature – Executive Level Sponsor (VP/Provost level)

[Signature]

[Date]

2 On September 26, 2013, the document was corrected to reflect the new Handbook of Operating Procedures numbering system—previously HOP 3.19.