

## **Recommended Policies and Procedures for Use in Termination of Tenured Faculty Appointments for Reasons Other Than Cause**

Submitted by: Ad hoc Committee on Unit Closures

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Termination of Tenured Faculty Appointments for Reasons Other Than Cause

### **I. Introduction**

*The ad hoc Committee on Unit Closures was charged with recommending policies and procedures for use in circumstances where tenured faculty appointments may be involuntarily terminated for reasons other than for cause.*

*In developing the recommendations set forth below, the Committee used the Faculty Handbook as its primary source. In addition, the Committee reviewed other materials, including A.A.U.P. Guidelines (1984 ed.), the faculty handbooks of other universities, law review articles and literature on faculty retrenchment in higher education.*

*The Faculty Handbook sets forth the limited circumstances in which a tenured appointment may be involuntarily terminated for reasons other than cause, and further commits the University to certain procedures in connection with any such decision. The Handbook does not, however, define terms such as "financial or other serious exigencies," nor does it detail the procedures to be used at various stages in the termination decision-making process. The Committee's report is an effort to develop more extensive guidelines for use in those situations where termination of a tenured appointment may occur.*

*The Committee's recommendations are grounded in several principles that, in the Committee's judgment, are embodied in the language of the Faculty Handbook. These principles include the following:*

1. *termination of a faculty appointment "is expected to be of extremely rare occurrence...." Faculty Handbook, p. 27;*
2. *although the granting of tenure ordinarily represents a commitment to permanent employment, there are limited circumstances which may justify elimination of a tenured faculty appointment for reasons other than cause;*
3. *the University has an obligation to consider and exercise all reasonable alternatives before involuntary termination of tenured faculty becomes available as an option;*
4. *all those who may be affected by a decision to terminate a faculty appointment should have an opportunity for meaningful participation in the various decision-making processes associated with elimination of a tenured faculty position;*
5. *a faculty member whose appointment is to be terminated is entitled to procedural fairness in connection with the termination decision;*
6. *the University is obligated to ensure that a tenured faculty member whose appointment has been terminated is treated fairly and reasonably in connection with the terms of his or her separation from the University;*
7. *all retrenchment decisions should be consistent with Loyola's policy of nondiscrimination and should take into account the University's commitment to a diverse faculty;*
8. *principles of academic freedom as defined in the Faculty Handbook must be respected in all phases of the retrenchment process.*

### **II. Policies and Procedures for Use in Cases of Termination of a Tenured Appointment for Reasons Other Than Cause**

*The Faculty Handbook informs faculty that "financial or other serious exigencies might require the University to reevaluate the continuing of tenured faculty in their positions." For purposes of this policy, the terms "financial or other serious exigencies" are defined as follows:*

*Financial exigency refers to an imminent financial crisis which threatens the survival of the University as a whole and which cannot be alleviated by less drastic means.*

*Other serious exigencies include discontinuance, reduction or substantial restructuring of a program or*

department of instruction for sound educational reasons. A sound educational reason is one where the educational mission of the University as a whole will be enhanced by the discontinuance, reduction or restructuring. A serious exigency is characterized by a substantial and chronic problem within a school, department or program, such as a serious and noncyclical decline in student enrollments or the ongoing unavailability of external financial support. Cyclical or temporary variations in student enrollments, a current operating deficit or temporary financial pressures do not constitute a serious exigency for purposes of this policy.

### III. Requirement of Wide and Timely Consultation

In cases of unit discontinuance, reduction or substantial restructuring that potentially include the termination of tenured faculty, the Faculty Handbook contains a pledge of "wide consultation" and "timely notice." The Handbook, however, does not define these terms, identify who is obligated to consult or specify who is entitled to be consulted. While the scope of consultation will vary with every situation, in general any administrator, administrative body or committee that is charged with making a recommendation or decision that may result in termination of tenured faculty should engage in appropriate wide and timely consultation prior to making such a recommendation or decision. For purposes of implementing this policy, the following definitions apply:

**Consultation:** Consultation includes making a full presentation of the relevant facts and insuring that the expressed opinion(s) of the body(s) being consulted is obtained within a reasonable and agreed upon timeframe. Expressions of opinion(s) can involve suggestions and alternative proposals, including requests for the decision-makers to solicit information or reaction from specifically-named external organizations. Inherent in the concept of consultation is the expectation that the expressed opinions of the bodies being consulted are taken into account prior to any final decision.

**Timely:** Consultation is timely when it occurs immediately after the decision-making body(s) has embarked upon serious discussion of conditions that might lead to changes in a department, unit and/or school that may result in the termination of tenured faculty. The obligation to consult is ongoing and should occur well in advance of all critical stages in the decision-making process.

**Wide:** Wide consultation will depend upon the kind of discontinuance, reduction or substantial restructuring that is being considered:

- If issues being discussed include the discontinuance, reduction or substantial restructuring of an entire school, wide consultation will minimally include the Dean(s) and Chairpersons, the Committee on Faculty Appointments, the Faculty Council, the faculty of the affected school or the elected body representing that faculty, and the appropriate organization which serves as the elected representative of the affected student body;
- If issues being discussed include the discontinuance, reduction or substantial restructuring of a department within a school, wide consultation will minimally include the Dean(s), Chairperson(s), Committee on Faculty Appointment, the Faculty Council, the faculty of the affected school within which the department is housed or the elected body representing that faculty, and the appropriate organization which serves as the elected representative of the affected student body;
- If issues being discussed include the discontinuance, reduction or substantial restructuring of a program or component within a department, wide consultation minimally will include the Dean(s) and Chairperson(s), the Committee on Faculty Appointments, Faculty Council, the faculty of the school within which the affected department is housed or the elected body representing the faculty of that school, and the appropriate organization which serves as the elected representative of the affected student body.

### IV. Prerequisites to Termination of Tenured Faculty

After it is determined that a financial or other serious exigency may result in involuntary termination of one or more tenured faculty appointments, and prior to elimination of any such appointment, the following actions must be seriously considered, with due regard given to programmatic needs:

- Elimination of part-time faculty positions, subject to programmatic concerns, especially where part-time faculty possess special expertise not represented among tenured faculty;
- Nonrenewal of visiting appointments;
- Nonreappointment of nontenure-track faculty;
- Early transition incentives and normal attrition.

### V. Procedures for Terminating Tenured Faculty

**A. Appointment of Program Review Committee**

*At such point that it is determined that one or more tenured faculty appointments may be involuntarily terminated as a result of financial or other serious exigency, the Senior Academic Officer, after consultation with the appropriate Dean(s) and in cooperation with the Faculty Council, shall appoint a Program Review Committee (PRC). Members of the PRC normally should be persons with full faculty status as defined in the Faculty Handbook, and may include Departmental Chairpersons, but may not include Vice-Presidents or Deans. The charge of the Program Review Committee shall include:*

- *To determine whether program downsizing, elimination or restructuring is necessary;*
- *To conduct wide and timely consultation in making such a determination, including consultation with appropriate administrators, Deans and Chairpersons, administrative bodies and committees;*
- *To propose a plan, or alternative plans, to accomplish the needed reductions if restructuring or downsizing is justified;*
- *To suggest criteria or policies, consistent with these guidelines, by which tenured faculty members are to be terminated, if a reduction in tenured faculty members is part of any proposed plan;*

*The Committee's final report is to be submitted to the Senior Academic Officer in a timely and previously agreed upon fashion.*

**B. Appointment of Committee on Faculty Retrenchment**

*If, after review of the report of the Program Review Committee, it is determined that a program curtailment or restructuring will necessitate the involuntary termination of one or more members of the tenured faculty, after consultation with the Dean(s) and Chairperson(s) the Senior Academic Officer will appoint a committee of tenured faculty, the Committee on Faculty Retrenchment (CFR), to make recommendations as to which faculty appointments to terminate.*

*Any such Committee on Faculty Retrenchment shall be constituted by use of the following process:*

- *The Senior Academic Officer shall create a list of names containing at least one-third more names than the total number to be appointed to the Committee.*
- *An election among those whose names are included on the list shall than be held under the auspices of the Election Committee of Faculty Council. All tenured faculty in the school or department from which reductions are to be made shall be entitled to vote in such an election. Each eligible tenured faculty member may cast as many votes as the total number of persons necessary to establish the committee. Thus, if a committee of five is desired, each eligible faculty member may vote for five persons from among at least seven nominees. \* Those nominees who obtain the highest total number of votes shall be named members of the Committee on Faculty Retrenchment. Any tie among votegetters may be broken by a coin toss.*
- *It shall be the function of the Committee on Faculty Retrenchment to recommend which tenured faculty appointments to terminate. In making its recommendations, the Committee shall seek the input of the Dean and, where applicable, Chair of the affected unit, and shall employ the following criteria together with any additional standards or procedures suggested by the Program Review Committee or established by the Senior Academic Officer:*
- *The Committee on Faculty Retrenchment shall recommend termination of tenured faculty based on an assessment of which members of the tenured faculty will best contribute to the mission of the affected unit, with appropriate but not exclusive consideration given to faculty members' length of service within the affected unit.*

*The recommendations of the Committee on Faculty Retrenchment shall be made to the Senior Academic Officer. He or she shall decide whether to accept the Committee's recommendations(s) or whether to remand the recommendation(s), in whole or in part, to the Committee for further consideration.*

**V. Rights of Terminated Tenured Faculty**

**A. Right of Consultation**

*Each tenured faculty member whose position is identified for termination shall have the right to be so informed in a timely fashion and shall have the right to be consulted in relation to the termination procedures and conditions.*

**B. Right of Reconsideration**

*Any tenured faculty member who receives timely notice that his or her appointment will be terminated as a result of financial or other serious exigency may request reconsideration by the Committee on Faculty Appointments. Requests for reconsideration are to be made in writing within 30 days after a faculty member receives official notice of the decision from the Senior Academic Officer. Upon reconsideration, the Committee on Faculty Appointments may recommend to the Senior Academic Officer that the decision to terminate be upheld, reversed or further reviewed.*

**C. Minimum Separation Rights and Benefits**

*In the case of any tenured member of the faculty whose appointment is terminated for reasons other than cause, the University will, at a minimum, follow these procedures and provide these benefits:*

- a. *Prior to issuance of a final termination notice, a tenured faculty member should be given notice of and preference in hiring for any position within the University for which the faculty member is qualified, including in a teaching, administrative or other appropriate position.*
- b. *If the position previously held by a terminated faculty member is reinstated within two years after the date of termination, the faculty member shall have a right of first refusal to be notified of and to accept the position. In all other cases, for two years after termination a terminated tenured faculty member shall have a right to be notified of and apply for any faculty position that becomes available in the University which is in the faculty member's area of competence.*
- c. *To minimize the substantial hardship created by termination, a tenured faculty member should minimally be provided with the following:*
  1. *Existing benefits should continue for a defined period of time based upon reasonable expectations of the faculty member;*
  2. *Tuition benefits should continue for any dependent.*
  3. *Health benefits should continue for a reasonably defined time. Further, the University should make all reasonable efforts to ensure that access to health insurance is available after any mandatory period, such as through COBRA.*
  4. *Continued access to other university resources such as library, computers, and travel shall be made available to ensure that existing contract rights and commitments such as book contracts (with book subventions) can be honored by the terminated faculty member. Such matters will, in all probability, require a case by case review.*
  5. *A standard compensation package should be made available to tenured faculty who are terminated. The salary component of the package should contain no less than one year of salary plus a month of salary for each year of service at the University after receiving tenure. In no case should the compensation package be less than the most recent early transition package offered by the University to tenured faculty.*

*revised January 2001 by Rebecca Graff (rgraff@luc.edu), University Libraries  
<http://www.luc.edu/resources/faccouncil/reports/termination.htm>*