

R482, Bona Fide Financial Exigency and Personnel Reduction¹

R482-1. Purpose: To provide Board policy, and guidelines for institutional policy, in matters related to bona fide financial exigency and resulting personnel reductions. The institutions of the System have a fundamental loyalty and concern for their faculty and staff employees, and financial exigency will be declared only under very unusual conditions after all other feasible alternatives have been carefully weighed.

R482-2. References

- 2.1. Utah Code §53B-2-106 (Duties and Responsibilities of the President)
- 2.2. Policy and Procedure R481, Academic Freedom, Professional Responsibility and Tenure
- 2.3. Policy and Procedure R841, Guidelines for Disciplinary Sanctions and Termination of Staff Personnel
- 2.4. Policy and Procedure R843, Guidelines for Reduction in Force Policy
- 2.5. Policy and Procedure R845, Guidelines for Payment in Lieu of Notice
- 2.6. American Association of University Professors, *Policy Documents and Reports*, 1984²

R482-3. Board Policy and Guidelines to Institutions

3.1. General: In order for an institution to carry out its responsibilities it may become necessary for the institution to curtail, modify, or eliminate units, sub units, departments, programs, courses or functions due to unfavorable economic conditions. Faculty and staff may be laid off³ as a result of financial exigency. Reference 3.8.2 and 3.15⁴ for clarification.

3.2. Institutional Policies: The president of each institution, with the approval of the board of trustees, shall develop policies related to financial exigency and personnel reduction through a process which involves substantive participation of any institutionally recognized faculty governance organizations. 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, then this policy will apply.

3.3. Alternative Actions in a Financial Situation Less than a Financial Exigency: In the event the institution is faced with a financial situation that is less severe than a financial exigency, institutional policy and procedures should facilitate the implementation of various alternative approaches available to the institution to deal with the situation. Such procedures shall include substantive consultations with

¹ Adopted April 28, 1989, amended October 26, 1990.

² This statement of guidelines and policies contains some provisions which are the same or similar to certain principles of bona fide financial exigency and personnel reduction adopted and promulgated by the American Association of University Professors (AAUP). However, adoption of these guidelines and policies is not intended to incorporate AAUP principles and interpretations, and any such incorporation by reference is expressly disclaimed.

³ Institutional policy may substitute dismissal for layoff. "Layoff," "termination" and "dismissal," as defined by institutional standards and procedures under these R482 guidelines, shall include "substantial reduction in status."

⁴ All funds included in State appropriation acts.

institutionally recognized faculty governance organizations and established staff policy advisory committees. In considering the alternatives and their application, first priority shall be given to the maintenance of the educational and academic programs central to the mission of the institution and necessary related support programs. These alternatives might include, but are not limited to:

- Restrictions on student enrollment.
- Voluntary action including retirement, partial retirement, early retirement, resignation, extended sabbatical leave, severance pay, or reduction in FTE.
- Not filling existing faculty and staff vacancies or vacancies resulting from resignation, retirement, or death.
- Reduction in nonacademic programs, units and support services to the extent necessary and feasible without significantly impairing the institution's ability to pursue its basic educational purposes.
- Elimination of instructional positions occupied by teaching assistants/fellows, associate instructors, and auxiliary faculty.
- Elimination of non-tenured faculty positions.
- Bona fide program or unit discontinuance pursuant to section 3.9 of Policy and Procedures R481, Academic Freedom, Professional Responsibility and Tenure.
- Salary reductions not tantamount to dismissals.

This list is not intended to be in any order of priority since it is recognized that institutions, when faced with a difficult financial situation, would be engaged in an iterative process to identify possible cost reduction measures, and that units and programs within each institution would also have particular needs and preferences which vary over time.

3.4. Declaration and Definition of Financial Exigency: The Board may declare a bona fide financial exigency at one or more institutions in the Utah System of Higher Education. A declaration of financial exigency for all of the System institutions would be in effect a declaration of financial exigency for the System as a whole. A bona fide financial exigency is an existing or imminent financial crisis which, if uncorrected, would threaten the survival of the institution as a whole and which could not be alleviated reasonably by less drastic means. "Survival of the institution as a whole" is expressly defined for purposes of this policy as the availability of adequate appropriated 3 funds to enable the institution substantially to fulfill its mission as approved by the Board. A declaration by the Board of financial exigency may authorize the president, with the approval of the board of trustees, to recommend and implement, subject to Board approvals as provided herein, reductions in force of faculty and staff personnel through layoffs.

3.5. Procedures for Declaration of Financial Exigency: The Board will consult with the president prior to a declaration by the Board of a financial exigency at the institution. The president, with approval of the board of trustees and based on the substantive consultations with institutionally recognized faculty governance organizations and established staff policy advisory committees, shall provide the Board with an analysis of the circumstances that may support or oppose the declaration of financial exigency, including a review of reasonable alternatives to such a declaration by the Board. The president shall attach to the analysis available information and recommendations from faculty, staff, and other campus groups regarding the declaration of financial exigency. When declaring financial exigency the Board must take action by written resolution setting forth the basis for its decision, after notice and hearing, at a meeting of the Board.

3.6. Plan for Personnel Reductions: After a declaration of financial exigency, if the president, in the course of the continuing iterative process described in section 3.3, determines that personnel reductions are called for, he/she shall prepare and, with approval of the board of trustees, recommend to the Board a plan for personnel reductions. When developing this plan, the president shall consult with the Attorney General's Office and with institutionally recognized faculty governance organizations and established staff policy

advisory committees of the institution. The plan shall include discussion of the necessity and procedures for personnel reductions, the appropriate organizational units or sub units within the institution identified for personnel reductions, and the criteria for identifying the faculty and staff members who are to be laid off. Before any layoffs become effective, the Board must first consider and approve a plan for personnel reductions under its declaration of financial exigency.

3.7. Personnel Reductions: Personnel reductions shall be done equitably, in good faith, and in a systematic manner directly related to the financial exigency. Institutional policies shall provide appropriate due process procedures.

3.8. Personnel Reduction Criteria: In making any personnel reduction recommendation to the Board, the first priority of the president shall be the maintenance of the academic and educational programs central to the mission of the institution. Of high priority shall be the preservation of the quality and effectiveness of all essential non instructional, maintenance, administrative or support functions of the institution. Those faculty or staff members who are deemed to be of key importance to the specific program or function will be retained in preference to other faculty and staff members, whatever their status. A faculty or staff member is of "key importance" if his/her layoff would result in a "serious distortion" of the specific program or function, as determined by the institution under its policies developed pursuant to section 3.8.3. Criteria that should be considered include, but are not limited to, quality and essentiality of service and work, field of specialization, maintenance of necessary programs or services, tenure, rank, time in rank, length of service, and maintenance of affirmative action programs.

3.8.1. Retention of Non-Tenured Faculty when Tenured Faculty are Dismissed: It is not a requirement under conditions of a declaration by the Board of bona fide financial exigency that all non-tenured faculty members throughout the institution be first laid off before tenured faculty can be laid off. However, within a specific program, a tenured faculty member will not be laid off in favor of retaining a faculty member without tenure, except where a serious distortion of the specific academic program would otherwise result.

3.8.2. New Faculty Appointments when Tenured Faculty are Dismissed: The institution will not lay off tenured faculty members from a program and at the same time make new faculty appointments to other positions in that program except where a serious distortion in the academic program of the institution would otherwise result.

3.8.3. "Serious distortion": The finding of "serious distortion" is based on criteria established by the institution and approved by the Board. A finding of "serious distortion" in conjunction with the layoff of a tenured faculty member does not require a finding of any deficiency in his/her performance.

3.9. Notice of Layoff: Within the time frame provided in section 3.11, the President or a designee must give notice in writing to faculty and staff who are affected by a personnel reduction.

3.10. Form of Notice: The notice must include the following:

3.10.1. The effective date of layoff;

3.10.2. A statement of the reasons for the Board's action to declare a financial exigency;

3.10.3. The basis, the procedures, and the criteria used to lay off faculty and staff;

3.10.4. Any opportunity for reconsideration or appeal including access to appropriate documentation, and the issues that may or may not be considered; and

3.10.5. The reinstatement rights of the faculty and staff.

3.11. Time of Notice: The institution shall make every effort to give as much notice as practical in light of the financial exigency to each affected faculty and staff member in advance of the effective date of the layoff. The legislative appropriation process and the subsequent analysis needed before the Board declares a condition of financial exigency and receives, considers, and approves implementation of the program for personnel reduction may allow little time for official notice of layoff. The granting of adequate notice, and where possible, the full notice provided by institutional policy should be afforded high priority by the institution. For faculty, this would include notice provisions pursuant to sections 3.10 and 3.11 of Policy and Procedures R481, Academic Freedom, Professional Responsibility and Tenure. For staff, this would include notice provisions pursuant to Policy and Procedure R843, Guidelines for Reduction in Force, and Policy and procedure R845, Guidelines for Payment in Lieu of Notice. In any case, the Board requires the following minimum written notice of layoff:

3.11.1. To tenured faculty members a notice of layoff not less than six months before the effective date of the layoff.

3.11.2. To non-tenured faculty members not less than sixty (60) calendar days before the effective date of the layoff.

3.11.3. To all other salaried employees not less than the notification period required by R845-4.1.⁵

3.11.4. Institutional policy may provide for payments in lieu of notice.

3.12. Reassignment: At the time it is preparing and implementing a plan for personnel reduction, the institution shall, to the extent practicable, make a good faith effort to reassign any faculty member to be laid off to an existing vacant position within the institution for which that faculty member is qualified. The reassignment of faculty, including decisions regarding tenure, salary and other rights in the new assignment, shall be negotiated with the participation of the faculty of the program to which the proposed reassignment is to be made. The reassignment of staff members shall be carried out in accordance with institutional policy adopted pursuant to the Board's guidelines, R843-4.4. A faculty or staff member to be laid off has no right to displace another faculty or staff member from his or her position, except as may be provided staff members by institutional policy adopted pursuant to the Board's guidelines, R843-4.4. This good faith effort to reassign faculty and staff need not extend beyond the effective date of the layoff, but the faculty do enjoy the layoff rights provided herein and the staff have the rights contained in institutional policies adopted pursuant to R483, Guidelines for Reduction in Force Policy.

3.13. Appeal Rights: Unless otherwise required by law or regulation, the institution's grievance procedure shall not delay the effective date of the layoff. Institutional policy may provide for an internal appeals process, but the decision to lay off a faculty or staff member is not appealable to the Board.

3.14. Standard of Review: An affected faculty or staff member may contest a layoff only for (a) violation of his/her academic freedom or constitutional rights, or (b) failure to comply with this policy, with related institutional policy, or with the plan for personnel reduction approved by the Board. Because the procedures

⁵ Under certain conditions, federal guidelines, such as the Worker Adjustment and Retraining Notification Act (P.L.100-379), may require a different period of notice or impose other related requirements.

for the declaration of financial exigency contained herein require the demonstration of the need for such declaration after substantive consultations, notice, and hearing, the decision of the Board to declare financial exigency is not subject to contest by faculty or staff in any grievance or appeal procedure within the institution or before the Board.

3.15. Reinstatement Rights

3.15.1. For Tenured Faculty: In cases of layoff of tenured faculty members, the position concerned may not be filled by replacement within a period of three (3) years from the effective date of the layoff unless the tenured faculty member has been offered a return to employment in that position and has not accepted the offer within thirty (30) calendar days after the offer was extended.

3.15.2. For Non-tenured Faculty and Executive Personnel: In cases of layoff of non-tenured faculty members and executive personnel the position concerned may not be filled by replacement within a period of one (1) year from the effective date of the layoff unless the person laid off has been offered a return to employment in that position and the person laid off has not accepted the offer within thirty (30) calendar days after the offer was extended.

3.15.3. For Salaried Staff Members: In cases of layoff of all other salaried staff members reinstatement rights shall be determined in accordance with institutional policy adopted pursuant to the Board's guidelines, [R843-4.5](#).

3.15.4. Termination of Offer of Reinstatement: If an offer of reinstatement is not accepted within the timelines stated above the institution and the Board have no further obligation to the person laid off. After the expiration of the applicable reinstatement period as provided herein, the institution and Board have no further obligation to the affected faculty and staff.

3.15.5. Faculty Status and Benefits after reinstatement: A faculty member who has been laid off and who accepts reinstatement in the same position will resume the rank and tenure status held at the time of layoff, be credited with any sick leave accrued prior to the date of layoff, be paid a salary commensurate with the rank and length of previous service, and will be credited with any annual leave which the faculty member had accrued prior to the date of layoff and for which the faculty member has not received payment.

3.15.6. Non-faculty Status and Benefits after Reinstatement: A non-faculty employee who has been laid off and who accepts reinstatement in the same position within the period specified by institutional policy will be credited with such status and benefits after reinstatement as may be provided by institutional policy adopted pursuant to the Board's guidelines, [R843-4.6](#).

3.16. Periodic Reports to the Board During a Financial Exigency: After the Board has declared a condition of financial exigency at an institution, the president shall provide the Board with progress reports, as requested by the Board, to inform the Board, as appropriate, concerning the institution's procedures, decisions and recommendations relating to the financial exigency.

3.17. Termination of the Declaration of Financial Exigency: The Board will terminate a declaration of financial exigency when in its judgment the conditions described in section 3.4 no longer exist.