II.E.17. Removal of Faculty by Reason of Financial Exigency
(Source: Standing Resolution of the Trustees, October 16, 1959; revised, September 9, 1983; revised, 1991)

A. If the administration of the University proposes to curtail an activity of the University that might involve the removal of faculty members, it shall initiate consultation with the Executive Committee of the Senate on the issues of the existence of a financial exigency, the appropriateness of the selection of the particular segment of the faculty for removal, possible alternative actions and the like, at least thirty days before it proposes to send to the affected faculty members the notice described in paragraph b. below.

B. If after such consultation the administration determines to take action to curtail an activity of the University with or without the concurrence of the Senate, the administration shall make an attempt to continue those faculty members who will be affected by such action, by transfer to other faculty positions so far as feasible. If such transfer is not deemed feasible by the administration, the President shall send the following written notice to (1) each faculty member whose employment the University proposes to terminate and who either has tenure at the time such notice is given or, by the operation of the University’s tenure principles, will have tenure at the time of the proposed termination and (2) each faculty member on term appointment whose employment the University proposes to terminate prior to the expiration of such term. The President’s notice shall state that the University is engaged in proceedings that may result in termination of the faculty member’s employment; that, if it is finally decided that his or her employment will be terminated, such termination will become effective not less than one year from the date of receipt of such notice; and that he or she may request a hearing before the Committee on Academic Freedom and Responsibility of his or her faculty (unless the administration proposes to terminate the employment of an entire faculty, in which case the notice shall state that the faculty member may request a hearing before the Senate’s Committee on Academic Freedom and Responsibility).

C. Each faculty member so notified may request a hearing by sending a written request therefore to the chair of the appropriate committee within thirty days of his or her receipt of the President’s notice. The faculty member’s failure to request a hearing before the committee shall be a waiver of his/her right to request the hearing before the committee. The faculty member shall accompany his/her request with a statement in which he/she may make one or more of the following charges:

- that the administration is not acting in good faith to remove him or her on the grounds of financial exigency;

- that it is possible for him or her to be assigned to other duties, the nature of which shall be described in his or her statement.

In his/her statement, the faculty member shall specify in as much detail as is practicable the reasons for his/her charge or charges. The faculty member shall send a copy of his/her
statement to the President. The President shall furnish the faculty member and the committee with a written answer to the faculty member’s charges.

D. If the faculty member charges that the administration is not acting in good faith, the President shall send a written notice to each faculty member affected by the proposed curtailment, stating that the recipient may join in the hearing. The President shall also furnish each such faculty member with a copy of the charges made by the faculty member initially requesting the hearing and a copy of the answer thereto.

A faculty member who receives such notice and who does not, within ten days following receipt of such notice, deliver to the chair of the committee a written statement of his/her intention to join in the hearing and of his/her reasons therefore, shall thereby waive his/her right thereafter to request a hearing on the charge that the administration is not acting in good faith. A faculty member’s failure to join in such a hearing shall not be a waiver of his/her right to request a hearing on the possibility of his or her own reassignment.

Promptly after the expiration of the period within which faculty members may state their intention to join in the hearing, the chair of the committee shall notify the parties in writing of the date and place of the hearing, which shall be held not less than three weeks from the date the chair shall send to the parties notice of such date and place.

E. Any faculty member requesting or joining in the hearing, and the administration, shall be entitled to move to disqualify, for prejudice, any member of the committee. Such motion shall be made in writing, which shall set forth the reasons therefore, and shall be delivered to the chair of the committee no later than ten days prior to the date set for the hearing. Such motion shall be decided by the remaining members of the committee. If the remaining members decide that disqualification is proper, an alternate member, if any, shall serve as a substitute for the disqualified member. If an alternate member is not available, the parties may agree that the hearing shall be held by the remaining members or that the remaining members shall select a substitute. In the event of failure to agree, a substitute shall be elected by the faculty (if the committee is a faculty committee), or shall be selected by the Executive Committee of the Senate (if the committee is a Senate committee).

F. If a hearing is held at the request of a faculty member on a charge that the administration is not acting in good faith, the administration shall have the burden of proving by a preponderance of the evidence that it is acting in good faith in seeking to remove the faculty member on the grounds of financial exigency. If a hearing is held at the request of a faculty member on a charge that it is possible for him or her to be assigned to other duties, the faculty member shall have the burden of proving by a preponderance of the evidence that such assignment is possible, and shall not be deemed to have met such burden unless he or she shall introduce testimony, supporting such assignment, by faculty members from the department or school to which such assignment is proposed to be made. A transcript of the hearing shall be kept by a stenographer furnished by the University. Both the faculty member and the representatives of the administration may appear throughout the hearing; both may have the assistance of counsel. Both shall have the right to be confronted by the witnesses against them and to question the witnesses personally or through counsel. Each party may call witnesses on his/her own
behalf; the faculty member shall receive the assistance of the administration in securing the attendance of witnesses on his/her behalf. The committee shall afford the faculty member and the administration opportunity to present oral and written argument.

G. After the hearing, the committee shall deliberate privately. It shall determine solely on the basis of the information presented at the hearing whether or not the administration has proved by a preponderance of the evidence that it is acting in good faith in seeking to remove the faculty member on the grounds of financial exigency, or whether or not the faculty member has proved by a preponderance of the evidence that it is possible for him/her to be assigned to other duties. The committee shall send to the faculty member and (through administrative channels) the President a transcript of the proceedings and a copy of its report, in which it shall set forth its findings, recommendations and reasons therefore.

H. If the committee concludes that the administration is not acting in good faith, or that it is possible for the faculty member to be assigned to other duties, the administration shall not proceed with action to terminate the faculty member’s employment. If the committee concludes otherwise, the faculty member may appeal to the board by sending to the Secretary of the University within thirty days following receipt of the committee’s report, a written request that he or she be accorded the hearing before the board. The board shall then afford the faculty member, the administration and the committee an opportunity to appear before it. The faculty member and the administration may have the assistance of counsel.

I. The board may direct that action to terminate the faculty member’s employment be discontinued, may take action based on the committee’s conclusions, or, if it decides that additional evidence should be received or that further proceedings are otherwise required, shall remand the matter to the committee. In the event of such remand, the committee may receive additional evidence, shall send the parties written notice of hearings at least one week before they are to be held and shall accord the parties the procedural rights provided in paragraph C. above. The faculty member may again appeal to the board as provided in paragraph H. above. The board shall furnish all parties with copies of a report of its decision, in which it shall set forth its reasons therefore.

J. If the employment of a faculty member is terminated by reason of financial exigency, his or her salary shall be continued for one year from the date of his or her receipt of the President’s notice described in paragraph B. above. Until such termination date the faculty member shall continue to work in his/her own field or on some other activity mutually agreed upon. If the employment of a faculty member who has tenure is terminated by reason of financial exigency, the released faculty member’s place shall not be filled by a replacement within a period of two years from the date of termination, unless the released faculty member has been offered reappointment with tenure and has declined.

K. A decision by the board made pursuant to these procedures shall be final within the University.

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