



SUBJECT: FINANCIAL CRISIS AND BONA FIDE FINANCIAL EXIGENCY

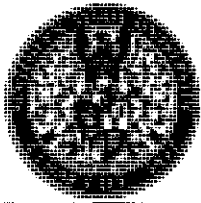
- I. **PURPOSE:** The purpose of this document is to provide institutional policy and procedures¹ in matters related to major financial crisis and bona fide financial exigency. Southern Utah University has a fundamental loyalty and concern for its faculty and staff employees, and financial exigency will be declared only under very unusual or severe conditions after all other feasible alternatives have been carefully considered.

This document specifies the process to be followed in a layoff or reduction in status necessitated by major financial crisis and financial exigency: (a) for faculty due to program reduction, and (b) for staff due to program reduction or discontinuance. Layoff or reduction in status of faculty members due to program discontinuances for any reason is governed by procedures of section 6.13 of the SUU Policy on Academic Freedom, Professional Responsibility, and Tenure which describes Bona Fide program discontinuance for academic reasons. Dismissal or reduction in status of staff members in all cases not governed by major financial crisis and financial exigency is governed by the SUU Personnel Policies and Procedures for Reduction in Force (II-14, part D, pages 3 to 5).

II. **REFERENCES**

- 2.1 53B-2-106, Utah Code Annotated 1953
- 2.2 State Board of Regents Policy and Procedures R481, Academic Freedom, Professional Responsibility and Tenure
- 2.3 State Board of Regents Policy and Procedures R482, Bona Fide Financial Exigency and Personnel Reduction¹

¹ The Southern Utah University Policy and Procedures for Major Financial Crisis and Bona Fide Financial Exigency shall be submitted to the State Board of Regents for approval and shall be consistent with the Bona Fide Financial Exigency and Personnel Reduction Guideline, R482, by the Board of Regents. Substantive differences or exceptions must be reviewed and approved by the Board of Regents. Once approved, the SUU policy will apply, except when the institutional policy does not address an issue contained in the Regents' policy, R482, then the Regents' policy will apply. Subsequent amendments to this policy, determined by the Commissioner to be substantive, must be reviewed and approved by the Board of Regents.



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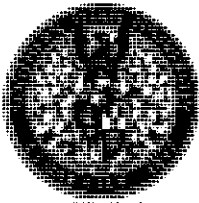
- 2.4 American Association of University Professors, Policy Documents and Reports, 1984²
- 2.5 Southern Utah University Policy and Procedures, Academic Freedom, Professional Responsibility and Tenure
- 2.6 Southern Utah University Personnel Policies and Procedures, Termination of Nonacademic Staff Employees and Disciplinary Sanctions, No. II-14, and Employment Grievances, No. II-18.

III. POLICY

- 3. Procedures for a Major Financial Crisis Which is Less Severe Than a Financial Exigency
 - 3.1. Purpose of Major Financial Crisis Section
 - 3.1.1. In the event Southern Utah University is faced with a major financial crisis that is less severe than a financial exigency, Section 3. enumerates various alternative approaches which are available to the University to deal with the situation. University action regarding these alternatives will involve substantive consultations with the Deans' Council, Faculty Senate, and Staff Association.
 - 3.1.2. This Policy does not preclude the discontinuance or reduction of programs for academic reasons at any time.
 - 3.2. Definition of Major Financial Crisis

To constitute a major financial crisis, a situation facing the University shall: (a) be significantly and demonstrably more than a minor, temporary, and/or cyclical fluctuation in operating funds; and (b) involve significant risk to the survival of programs, departments, colleges, or other major components of the University.

² This statement of policy and procedures contains some provisions which are the same as 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 policy and procedures does not incorporate AAUP principles and interpretations, and any such incorporation by reference is expressly disclaimed.



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3.3. Declaration of Major Financial Crisis

3.3.1. When the President identifies a possible major financial crisis, he or she shall inform the President's Council, Deans' Council, Faculty Senate, and the Staff Association concerning the causes and possible consequences of the crisis. The President shall also identify the measures considered by the University up to that point for dealing with the crisis, possible strategies which may be alternatives to program reduction or program discontinuance, and, as warranted, reasons why the University's financial circumstances may necessitate program reduction or discontinuance, and the time frame by which decisions on these matters must be made by all those entitled to participate in the consultative process. In that regard, the President shall use his/her best efforts to secure the fullest period of time possible for the consideration of these matters and to the response.

3.3.2. The Deans' Council, Faculty Senate, and Staff Association shall receive and consider the comments and advice from appropriate advisory committees, administrative officers, and individual faculty, and staff, on whether the President should declare the existence of a major financial crisis. After consulting with the President regarding whether a major financial crisis exists, the Deans' Council, Faculty Senate, and Staff Association shall express their views in writing to the President.

3.4. Implementation of a Major Financial Crisis

When the President, with the approval of the Board of Trustees, declares the existence of a major financial crisis, the University's actions in response to the crisis shall be governed by the provisions of Sections 3.5., 5.2.1. to 5.2.3., 6., 7., 8., 9., 10., 11., and 12. of this Policy. Sections 4., 5.1., and 5.2., however, refer specifically to only financial exigency. When declaring major financial crisis, the Board of Trustees must take action by written resolution setting forth the basis for its decision, after notice and hearing, as required by Trustees Bylaws, and Utah statute for open meetings of the Board of Trustees.

3.5. Consideration of Strategies



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When a major financial crisis has been declared, the President shall consult with the President's Council, Deans' Council, Faculty Senate, and the Staff Association concerning strategies for dealing with the crisis. In considering the alternatives and their application, first priority shall be given to the maintenance of the educational and academic programs central to the mission³ of the University. These alternatives might include, but are not limited to:

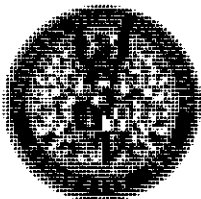
- 3.5.1. Restrictions on student enrollment.
- 3.5.2. Voluntary personnel action including reassignment, retirement, partial retirement, early retirement, resignation, extended sabbatical/leave, severance pay, or reduction in FTE.
- 3.5.3. Not filling existing faculty and staff vacancies or vacancies resulting from resignation, retirement, or death.

³ Mission Statement: Southern Utah University is a comprehensive, public university dedicated to promoting knowledge and skills through excellence in teaching, scholarship and public service. Fundamental to its role and central to its disciplines are superior teaching and scholarly research applications that complement teaching. The University is assigned to meet the baccalaureate, applied technology training, and professional graduate education requirements of southern Utah as determined by the Board of Regents. Such programs, particularly at the graduate level, are offered independently or in cooperation with other institutions. The University is also committed to promoting the economic, technological, and cultural development of its service area.

The University aspires to educate students for the future in a changing, global environment; hence, it engages in activities of instruction and public service, scholarship and regional development. Because of its role as a regional leader, the University addresses unique needs of rural students, communities, public education, and partnerships with business and industry.

Students qualify for admission to the University based on criteria that predict a reasonable expectation of success in university studies. Eligibility for admission and progress toward degree completion requires standards of academic performance and outcomes assessment.

University Center(s) administered by the University under the direction of the Board of Regents are committed to providing joint services with community colleges and upper division coursework as needed in neighboring counties of SUU's service area.



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- 3.5.4. Discontinuance or reduction in nonacademic programs, units and support services to the extent necessary and feasible without significantly impairing the University's ability to pursue its basic educational purposes and responsibilities.
 - 3.5.5. Discontinuance of instructional positions occupied by teaching assistants/fellows, lecturers, part-time faculty, term and auxiliary faculty, and other non-tenure-track faculty.
 - 3.5.6. Salary reductions not tantamount to dismissals.
 - 3.5.7. Dismissal of nontenured (tenure-track) faculty positions, unless an appointed committee determines in a specific program that, in their judgment, such a dismissal would create a "serious distortion" in that program (see Section 8. of this document).
 - 3.5.8. Academic program consolidation or reduction pursuant to alternatives in Sections 3.5.1. through 3.5.7. above which do not involve tenured faculty.
 - 3.5.9. Unless financial exigency has been declared, tenured faculty members may not be laid off for reasons of major financial crisis, except when bona fide program or unit discontinuance occurs via the procedure described in section 6.13. of the SUU Policy on Academic Freedom, Professional Responsibility, and Tenure.
 - 3.5.10 This list is not intended to be in any order of priority since it is recognized that the University, 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 Southern Utah University have particular needs and preferences which vary over time.
4. Definition of Bona Fide Financial Exigency

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 appropriated⁴ funds to enable Southern Utah



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University substantially to fulfill its mission (see footnote³) as approved by the Board of Regents.

5. Declaration of Bona Fide Financial Exigency

5.1. Under such circumstances, in order for Southern Utah University to carry out the purposes and responsibilities central to its mission, it may become necessary for the University to discontinue or reduce nonacademic or academic "programs" and their attendant units, subunits, departments, or courses. A declaration of financial exigency supposes that efforts to reach the needed level of reduction shall be consistent with the goal of preserving the institution's ability to substantially fulfill its academic mission. Nevertheless, this policy also covers circumstances wherein modification of the mission statement may be required.

5.2. The Board of Regents 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 in effect be a declaration of financial exigency for the system as a whole. Hence, a declaration by the Board of Regents 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; the following personnel reductions.

5.2.1. Reductions in force through layoffs⁵ of faculty, by program discontinuances shall follow the procedure outline in section 6.13. of the SUU Policy on Academic Freedom, Professional Responsibility, and Tenure.

5.2.2. Reductions in force through layoffs⁵ of faculty by program reductions shall follow the procedures as outlined herein.

⁴All funds included in State appropriation acts.



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- 5.2.3. Reductions in force through layoffs⁵ of staff by program reductions or discontinuances shall follow the procedures as outlined herein. For all staff reductions not originating from major financial crisis and financial exigency considerations, the process outlined in SUU Personnel Policies and Procedures, II-14, for Reduction in Force will be followed.
6. Procedures for Declaration of Major Financial Crisis or Financial Exigency
- 6.1 Major financial crisis or financial exigency, respectively, exists only after the Board of Trustees or the Board of Regents declares it. The Board of Trustees will consult with the President prior to a declaration by the Board of Trustees of a major financial crisis at the institution. Likewise, the Board of Regents will consult with the President prior to a declaration by the Board of Regents of a financial exigency at the institution. In turn, as early as is feasible when a condition of major financial crisis or financial exigency appears to be a possibility, the President shall inform the Deans' Council, Faculty Senate, and Staff Association concerning: (a) the causes and possible consequences of the crisis; (b) the measures investigated by the University short of the declaration of a major financial crisis or financial exigency; and (c) the reasons why circumstances may require a declaration of a major financial crisis or financial exigency. The Deans' Council, Faculty Senate, and Staff Association shall receive/seek and consider comments, information, and advice from appropriate advisory committees, administrative officers, and individual faculty and staff. Each body shall then forward to the President a memorandum of advice and recommendation as to whether a condition of a major financial crisis or financial exigency should be declared, or whether other reasonable alternatives exist.
- 6.2. The President, with approval of the Board of Trustees and based on the substantive consultations with the Deans' Council, Faculty Senate, and Staff Association, shall provide the Board of Regents with an analysis of the circumstances that may support or oppose the declaration of a major financial crisis or financial exigency, respectively, including a

⁵ "Layoff" as defined under the Regents' R482 guidelines and SUU Policy, shall include "substantial reduction in status," and refers to personnel action taken relative to program discontinuance or reduction.



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review of reasonable alternatives to such a declaration by the Board of Trustees or the Board of Regents. The President shall attach to the analysis available information and recommendations from the Deans' Council, Faculty Senate, and Staff Association regarding the declaration of a major financial crisis or financial exigency. When declaring a major financial crisis or financial exigency, respectively, the Board of Trustees or the Board of Regents must take action by written resolution setting forth the basis for its decision, after notice and hearing as required by Trustees or Board Bylaws, and Utah statute for open meetings of the Trustees or the Board.

7. Plan for Personnel Reductions

- 7.1. After a declaration of (a) major financial crisis, or (b) financial exigency, the President, in the course of the continuing iterative process described in section 3., shall prepare and recommend to, respectively, (a) the Board of Trustees, or (b) the Board of Regents a plan for personnel reductions.
- 7.2. The plan shall include: (a) discussion of the necessity and procedures for personnel reductions; (b) the appropriate nonacademic and academic programs within the University identified for personnel reductions, and (c) the criteria for identifying the staff and faculty members who are to be laid off because of program discontinuance and/or because of program reduction.
- 7.3. In the development of the plan, there shall be consultation with the Attorney General's Office, and substantive involvement of the Deans' Council, Faculty Senate, and Staff Association of the University.
 - 7.3.1. As a first step, the President will instruct each nonacademic and academic structural component of the University to assess its programmatic operation with regard to its quality and importance to the mission of the University as a basis upon which to determine the plan for personnel reduction.
 - 7.3.2. Acting on the information gathered in the process, the President's and Deans' Councils will prepare criteria and determine their recommended plan for personnel reduction. These recommendations, along with supporting information, will then be submitted to the Faculty Senate and Staff Association.



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- 7.3.3. 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 University.
- 7.3.4. As part of their deliberation process, the Faculty Senate and Staff Association shall provide opportunity for departments and/or faculty and staff affected to defend their program operations and personnel.⁶
- 7.3.5. Personnel reductions resulting from program discontinuances and/or program reductions, upon which the Deans' Council, Faculty Senate, and Staff Association agree, shall be forwarded to the President's Council and then the President for his/her final decision.⁶ Letters communicating the action of the Faculty Senate, Deans' Council, and Staff Association shall be prepared by the appropriate Vice Presidents and Provost, including their personal recommendations.
- 7.3.6. Should there be disagreement among the Deans' Council, Faculty Senate, Staff Association and/or other administrative entities on certain proposed program discontinuances or reductions, such as a deadlock on nonacademic versus academic programs, a negotiation process shall be established by the President's Council that facilitates the required level of personnel reduction.⁶
- 7.3.6.1 Any such process shall require the subsequent participation of the Deans' Council, Faculty Senate, and Staff Association.

⁶ For faculty layoffs resulting from (a) program reduction or (b) program discontinuance, respectively, the procedures (a) outlined herein and (b) in section 6.13. of the SUU Policy on Academic Freedom, Professional Responsibility, and Tenure shall be followed. For staff layoffs resulting from program reduction or discontinuance, the procedures outlined herein shall be followed. For all staff reductions not originating from major financial crisis and financial exigency considerations, the procedures outlined in the SUU Personnel Policies and Procedures, II-14, for Reduction in Force (pages 3 to 5 of 9, part D), shall be followed.



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7.3.6.2 Under such divisive circumstances, final authority for approval of the plan for personnel reduction, with attendant program discontinuance and/or program reduction, rests with the President, Board of Trustees, and the Regents. A letter detailing dissenting views regarding the plan for personnel reduction shall be prepared by the Provost or the appropriate Vice President. In addition to communicating the action of the Faculty Senate, Deans' Council, and Staff Association, the appropriate Vice President or Provost will also provide his/her personal recommendations. This letter should be reviewed by the Deans' Council, Faculty Senate Executive Committee, or Staff Association, and will accompany the President's plan for (a) the Board of Trustees' response for major financial crisis, or (b) Regent's consideration for financial exigency.

7.4. Before any layoffs become effective, (a) the Board of Trustees, or (b) the Board of Regents must first consider and approve a plan for personnel reductions under its declaration of, respectively, (a) major financial crisis, or (b) financial exigency.

8. Personnel Reductions

Personnel Reductions will be done equitably, in good faith, and in a systematic manner directly related to the major financial crisis or financial exigency. Due process procedures are described in Sections 11. and 12. of this document relating, respectively, to staff and faculty layoffs arising from program discontinuances or reductions attendant to major financial crisis or financial exigency.

8.1. Personnel Reduction Criteria

In making any personnel reduction recommendation to the Board of Trustees or the Board of Regents, the first priority of the President shall be the maintenance of the academic and educational programs central to the mission of Southern Utah University. High priority shall also be given to the preservation of the quality and effectiveness of all essential noninstructional, maintenance, administrative or support (nonacademic) programs of the University.

8.1.1. Criteria for faculty or staff reduction might include, but are not limited to, quality, and essentiality of service and work, field of specialization,



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maintenance of necessary programs or services, tenure of tenured faculty, rank, time in rank, length of service, and maintenance of affirmative action programs. Those faculty and staff who are deemed to be of key importance to the specific program or function will be retained in preference to other faculty and staff, 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 which is being reduced or discontinued, as determined by the institution under its policies developed pursuant to section 8.4.

8.2. Retention of Nontenured Faculty When Tenured Faculty Are Laid Off

It is not a requirement under conditions of a declaration by (a) the Board of Trustees of a major financial crisis, or (b) the Board of Regents of bona fide financial exigency that all nontenured, tenure-track faculty members throughout the University be first laid off before tenured faculty can be laid off when faculty reductions occur. However, under a major financial crisis, tenured faculty may be laid off only under bona fide program discontinuances for academic reasons. In either case (a) or (b) above, a tenured faculty member within a specific program 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. The determination of "serious distortion" shall be made by the Faculty Senate, or an appropriate committee selected by the Senate, by a simple majority vote. If affirmatively determined by the appropriate body, a recommendation of "serious distortion" will be made to the President and the Board of Trustees for their approval.

8.3. New Faculty Appointments When Tenured Faculty Are Dismissed

When faculty reductions occur at SUU due to a major financial crisis or a financial exigency, the University will not layoff 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. The determination of "serious distortion" shall be made by the Faculty Senate, or an appropriate committee selected by the Senate, as per the procedure outline in section 8.2.

8.4. "Serious Distortion" Defined When Faculty Reductions Occur



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The finding of "serious distortion" when faculty reductions occur is based on criteria established by the Faculty Senate at Southern Utah University and approved by the Deans' Council, President, Board of Trustees, and the Board of Regents in conjunction with a plan for personnel reduction. These criteria should include, but not be limited to, essentiality of service and work, field of specialization, and maintenance of necessary programs or service. 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.

8.5. Notice of Layoff

Within the time frame provided in section 8.5.2. below, the President must give notice in writing to faculty and staff who are affected by a personnel reduction resulting from a program discontinuance or reduction.

8.5.1. Form of Notice for Personnel Reductions

The notice must include the following:

- 8.5.1.1** The effective date of layoff;
- 8.5.1.2** A statement of the reasons for the Board of Trustees, or Board of Regents' action to declare, respectively, a major financial crisis, or a financial exigency;
- 8.5.1.3** The basis, the procedures, and the criteria used to layoff faculty and staff;
- 8.5.1.4** Any opportunity for reconsideration or appeal including access to appropriate documentation, and the issues that may or may not be considered; and
- 8.5.1.5** The reinstatement rights of the faculty and staff.

8.5.2. Time of Notice

The University shall make every effort to give as much notice as practical in light of the major financial crisis or financial exigency to each affected faculty and staff member in advance of the effective



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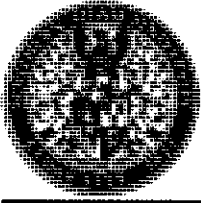
date of the layoff. The legislative appropriation process and the subsequent analysis needed before the Board of Trustees or Board of Regents declares a condition of, respectively, major financial crisis, or financial exigency and receives, considers, and approves implementation of the process for personnel 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 pursuant to faculty as provided in section 6.13. of the SUU Policy on Academic Freedom, Professional Responsibility and Tenure, on program discontinuance, should be afforded high priority by the University. In any case, the Board of Regents requires the following minimum written notice of layoff:

- 8.5.2.1 To tenured faculty members a notice of layoff not less than six months before the effective date of the layoff.
- 8.5.2.2 To nontenured faculty members (tenure-track) not less than sixty (60) calendar days before the effective date of the layoff.
- 8.5.2.3 To all non-tenure-track faculty and staff who have been employed at SUU for five or more years, not less than sixty (60) calendar days⁷ before the effective date of the layoff.
- 8.5.2.4 To all other non-tenure-track faculty and staff not less than thirty (30) calendar days⁷ before the effective date of the layoff.
- 8.5.2.5 If adequate notice is not provided, severance pay must be provided in lieu of these minimum notice requirements in sections 8.5.2.1. through 8.5.2.4.

8.6. Reassignment

At the time it is preparing and implementing a plan for personnel reduction, the University shall, to the extent practicable, make a good faith effort to reassign any staff or faculty member to be laid off to another known existing, vacant, and suitable position within Southern Utah University for which he/she is qualified. This good faith effort to

⁷ Under certain conditions, federal guidelines, such as Worker Adjustment and Retaining Notification Act (P.L. 100-379), may require a different period of notice or impose other relating requirements.



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reassign staff and faculty need not extend beyond the effective date of the layoff, but the staff and faculty do enjoy the rights provided herein.

- 8.6.1. The reassignment of faculty, including decisions regarding tenure, salary and other rights in the new assignment, shall be negotiated with the decision authority resting with the faculty of the department to which the proposed reassignment is to be made. The department tenure and tenure-track faculty shall decide by simple majority vote whether the faculty member in question is qualified for any given position. If, as affirmatively determined by the department faculty, placement in another position would be facilitated by a reasonable period of training, financial support not to exceed a one academic-year (nine months) sabbatical leave may be recommended to the President and the Board of Trustees, if financially possible.
- 8.6.2. A faculty or staff member to be laid off has no right to displace another staff or faculty member from their position nor to expect that a new position will be created in order to maintain employment.
- 8.6.3. The tenure and tenure-track faculty of a receiving department, however, shall maintain the right to displace a nontenured faculty member in order to retain a tenured faculty member in a position for which he/she is qualified, if this does not compromise the integrity of the program and if such a decision is deemed to be in the best interest of the University. While the administration facilitates such action, the decision to displace nontenured faculty rests with the tenure and tenure-track faculty in the department which would be receiving such a tenured faculty member, and shall be decided by simple majority vote.

8.7. Appeal Rights

Unless otherwise required by law or regulation, the appeal procedure at Southern Utah University shall not delay the effective date of the layoff. The University's policy provides for an internal appeals process described in sections 11. and 12., respectively, for staff and faculty layoffs resulting from program discontinuances or reductions. On the other hand, the decision to layoff a staff or faculty member is not appealable to the Board of Trustees or the Board of Regents.

8.8. Standard of Review

- 8.8.1. An affected faculty or staff member may contest a layoff only for:



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- 8.8.1.1 Violation of his/her academic freedom, or constitutional or statutory rights, or
- 8.8.1.2 Failure to comply with University policy, or with the plan for personnel reduction approved by the Board of Trustees or Board of Regents. Because the procedures for the declaration of, respectively, major financial crisis or financial exigency contained herein (Section 3. or 6.) require the demonstration of the need for such declaration after substantive consultation, notice, and hearing, the decision of the Board of Trustees or Board of Regents to declare, respectively, a major financial crisis, or financial exigency is not subject to contest in any grievance or appeal procedure within Southern Utah University or before the Board of Regents.
- 8.9. Reinstatement Rights for Layoff
- 8.9.1. 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.
- 8.9.2. For nontenured faculty or staff - In cases of layoff of nontenured faculty or staff members, 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.
- 8.9.3. If an offer of reinstatement is not accepted, the University and the Board of Regents have no further obligation to the person laid off. After the expiration of the applicable reinstatement period as provided herein, Southern Utah University and the Board of Regents have no further obligation to the affected staff and faculty.
- 8.9.4. 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



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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.

- 8.9.5. A nonfaculty employee who has been laid off and who accepts reinstatement in the same position will be credited with any sick leave the employee had accrued prior to the date of layoff, be paid a salary commensurate with the length of previous service, and be credited with any annual leave which the employee had accrued prior to the date of layoff and for which the employee has not received payment.

9. **Periodic Reports to the Board of Regents During a Major Financial Crisis or Financial Exigency**

After the Board of Trustees or Board of Regents, respectively, has declared a condition of major financial crisis or financial exigency at Southern Utah University, the President shall provide the Board of Trustees and the Regents with progress reports, as requested by the Board of Regents, to inform the Board of Regents, as appropriate, concerning the University's procedures, decisions and recommendations relating to the major financial crisis or financial exigency.

10. **Termination of the Declaration of Major Financial Crisis or Financial Exigency**

The Board of Trustees or the Board of Regents, respectively, will terminate a declaration of major financial crisis or financial exigency when in its judgment the conditions described in Sections 3., or 4. and 5. no longer exist.

11. **Staff Due Process in Case of Appeal Resulting From a Major Financial Crisis or Bona Fide Financial Exigency**

If, as a result of a major financial crisis or financial exigency, a staff member is laid off by the decision to discontinue or reduce a nonacademic or academic program, the staff member may appeal the decision under conditions in the SUU Personnel Policies and Procedures, Employment Grievances (II-18).



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12. Faculty Due Process in Case of Appeal For Faculty Layoffs Resulting From a Major Financial Crisis or Bona Fide Financial Exigency

Major financial crisis or bona fide financial exigency as defined herein (sections 3., 4., 5., and 6.) requires that such action be based on demonstrable evidence of the need for such a declaration after substantive consultation, notice and hearing by the Board of Trustees or the Regents that in their collective judgment, (of the Regents), the University's programs and/or mission may not be preserved unless such reductions occur. Since such review requires recommendations from departmental and college curricular committees, the Deans' Council, Faculty Senate, and other administrative officers, the grievance or appeal procedure of an individual faculty member shall not permit the faculty member to contest the decision of the Board of Trustees or the Regents to declare, respectively, a major financial crisis or financial exigency in any grievance or appeal procedure within SUU or before the Board of Regents unless it can be demonstrated that such declaration procedures were not substantively followed.

12.1. If declaration procedures for a major financial crisis or financial exigency were followed, any faculty member who is laid off by a decision to discontinue or reduce an academic program may appeal the decision to the Faculty Board of Review only on the grounds listed below.

12.1.1 The decision for program discontinuance or reduction was not made in accordance with established policy and procedures contained herein relative to the faculty member impacted.

12.1.2 The decision was arbitrary or capricious relative to the faculty member impacted and did not follow the plan for personnel reduction.

12.1.3 The decision was pretextual, in that it was based upon something other than the criteria established for program discontinuance or reduction, or the plan for personnel reduction.

12.1.4 The decision resulted from discriminatory or prejudicial treatment during the review process in violation of specific constitutional or statutory rights, including academic freedom.



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- 12.2. The faculty member takes on the role of petitioner and must file a formal charge with the chair of the Faculty Board of Review. Within ten working days following receipt of a formal charge, the Faculty Board of Review may in its discretion decide not to hold a formal hearing on the charge if it is determined to be beyond the scope of the issues set forth above or if it is determined to be an abuse of the intent of academic due process. The decision to dismiss the charge, together with reasons therefore, shall be submitted in writing to both the petitioner and the respondent. If a decision is made to dismiss the formal charge, any appeal must be submitted by the petitioner to the President within ten working days of receipt of the decision.
- 12.3. If the formal charge is deemed to warrant the convening of a formal hearing, the Faculty Board of Review will conduct a hearing to determine whether academic due process has been afforded the petitioner. The hearing shall be strictly limited to resolving the following issues.
- 12.3.1 Whether the decision was arbitrary, capricious, or pretextual, and did not follow the plan for personnel reduction. In this regard, it shall not be necessary that the recommendations of the various departmental or college curricular committees, the Faculty Senate, and Deans' Council or other administrators all be unanimous. The standard of review is whether the evidence preponderates in favor of a finding that the ultimate decision was or was not based upon legitimate, reasonable grounds related to the criteria for program discontinuance or reduction, or the plan for personnel reduction.
- 12.3.2 Whether the decision was free from discriminatory or prejudice in violation of specific constitutional or statutory rights, including academic freedom.
- 12.3.3 Whether the policy and procedural guidelines and criteria for program discontinuance or reduction, or the plan of personnel reduction were followed. If reasonable care is evidenced, then failure to follow the guidelines or criteria exactly shall not be construed to be sufficient grounds for a charge of procedural error.
- 12.4. The Faculty Board of Review shall not attempt to determine the merit of decisions and recommendations made by departmental or college curricular committees, the Faculty Senate, the Deans' Council or other



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administrators. The procedures outlined in Sections 3., 7., and 8. contained herein and in section 6.13. of the SUU Policy on Academic Freedom, Professional Responsibility, and Tenure permit maximum review potential by faculty and administrators of the review process, as well as appeal of the plan for personnel reduction.

- 12.5. The faculty member shall have the burden of introducing sufficient evidence to support a decision that one or more of the rights set forth above were violated during the review process for the plan for personnel reduction. The standard of proof in these cases shall be preponderance of the evidence. The burden of proof rests upon the faculty member in his/her role of petitioner.
- 12.6. The Provost, or an appointee, shall be considered the respondent and therefore shall respond to the formal charge.
- 12.7. The hearing shall be conducted according to the provisions for formal hearings contained in section 6.11.3., Formal Hearing of the SUU Policy for Academic Freedom, Professional Responsibility and Tenure. The Faculty Board of Review, however, shall consider only the issues set forth above.
- 12.8. The findings and report of the formal hearing shall be guided by the provisions in the SUU Policy on Academic Freedom, Professional Responsibility and Tenure, section 6.11.3., Formal Hearing, subsections 6.11.3.3.(1), 6.11.3.3.(2), 6.11.3.3.(4), and 6.11.3.3.(6). Subsections 6.11.3.3.(3) and 6.11.3.3.(5) do not apply to these cases. In the cases of faculty discussed in this section, the Faculty Board of Review shall recommend to the President that:
- 12.8.1 The case be dismissed on the grounds that the procedures followed by departmental or college curricular review committee(s), the Faculty Senate, Deans' Council, or other administrator(s) were fair, reasonable and afforded academic due process to the petitioner; or
- 12.8.2 That the faculty member's case be reevaluated by the appropriate departmental or college curricular review committee(s), the Faculty Senate, Deans' Council, or other administrator(s) because academic due process appears to have not been afforded the petitioner with respect to one or more of the issues 12.3.1. through 12.3.3. In the event that the recommendation is for reevaluation, the Board will also recommend to the President any concerns regarding the program



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discontinuance or reduction process or the plan for personnel reduction (including specifying the addition or deletion of specific individuals in the review process) and the precise point in the discontinuance/reduction process or the plan for personnel reduction where the reevaluation must start. The reevaluation process shall be guided by the policies set forth herein, but shall be completed in a timely manner, no later than June 30 of the calendar year in which the recommendation for dismissal or reduction in status was made.

- 12.9. If the recommendation of the Faculty Board of Review is to not reevaluate the faculty member's layoff, the President shall consider, but not be bound by, this recommendation. Under this condition, the President shall make a decision no less than ten nor more than twenty working days following the date of the recommendation of the Board. If the recommendation of the Faculty Board of Review is to reevaluate the faculty member's layoff, the President will refer the specifics of this recommendation to appropriate personnel to reevaluate the discontinuance/reduction process and/or the plan for personnel reduction as outlined by the Faculty Review Board. The recommendation resulting from this reevaluation shall be forwarded from appropriate reevaluation personnel to the President within ten working days following the date of recommendation of the Board. The President shall make a decision under this circumstance no less than twenty nor more than thirty working days following the date of the recommendation of the Board. There shall be no appeal or review of the Board's recommendation beyond the President, except as provided in the statutes or the civil courts.

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