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## Faculty Senate Executive Committee Minutes, February 18, 2020

Utah State University

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## FACULTY SENATE EXECUTIVE COMMITTEE MINUTES

February 18, 2020

3:30 – 5:00 p.m.

Old Main-Champ Hall

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**Present:** Patrick Belmont (President), Becki Lawver (Past-President), Timothy Taylor (President-Elect), Noelle Cockett (Ex-officio), Frank Galey (Ex-officio), Cris Meier for Jessica Lucero, Christopher Monz, Erin Davis, Don Busenbark, Robert Wagner, Jan Thornton, Michele Hillard, Boyd Edwards for Thomas Lachmar, Yoon Lee, Paul Barr, Benjamin George, Zsolt Ugray, Nancy Hills, Richard Heflebower

**Absent:** N/A

**Guests:** David Farrelly, Allison Adams-Perlac,

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### **Call to Order** - Patrick Belmont

[Approval of Minutes](#) – January 21, 2020

*Minutes approved as distributed.*

### **University Business** - Noelle Cockett, President | Frank Galey, Provost

The long awaited Department of Justice (DOJ) report regarding sexual assault has come out. Last Wednesday the DOJ and USU signed a memorandum of understanding. It was a review of the way USU was handling sexual assault cases from 2013 to 2017. USU was prompted to do a deep dive in the spring of 2016 because of the Torrey Green rape case. USU has been ahead of the DOJ in making these changes. By the fall of 2020 USU has to have mandatory employee training. This training will be an annual requirement that all faculty, staff and students must attend. In years past, the recording of the training was archaic and some things fell through the cracks. This new program will collect information electronically. This training will be conducted in face-to-face sessions. IVC training will be provided for non-residential campuses. Currently adding additional trainers and peer trainers. Also doing a lot of face-to-face with students enrolled in Connections. Only about a quarter of freshman students do not register for nor attend connections. The DOJ has requested registration holds for students who do not complete this training. If the training is not completed during the fall semester the student's registration will be placed on hold. New units and modules will be developed and delivered each year. DOJ has put USU on a three-year watch list. The DOJ will request the lists of those who have gone through the training. If USU fails in the training, the DOJ will move the institution to non-compliance and USU could lose funding and grants. DOJ will be reviewing the Title IX office to see how the investigations are moving forward. At the end of three years the warning period is over and we will continue making improvements. Going to be bringing on additional resources into the equity office to help keep on track. There will be three additional trainers and working on upgrading investigation pool and hiring new investigators. Also plan on hiring an individual to track the data for the DOJ. Currently staffing up to meet those needs. This will allow the Office of Equity to get reports done in a timely manner. Two hours, once a year will be required for the training. It might be a good idea to do the training during faculty, department head and college retreats. Training will be focused on sexual misconduct because of the DOJ focus.

### **Information**

[EPC Monthly Report](#) – February 6, 2020 - Paul Barr

*Motion to move the EPC Monthly Report to the Faculty Senate Agenda made by Timothy Taylor.*

*Seconded by Joel Ellsworth. Moved to agenda.*

One General Education designation was approved.

63 semester course approval forms was approved.

One R401 approved.

The Registrar is looking at standardizing the deadlines for catalog and other curriculum events. Working with Michael Torrens and the Registrar's office to develop guidelines regarding substantive vs. non-substantive changes and how they are reviewed.

Honorary Degrees and Awards - Sydney Peterson

*Motion to move the Honorary Degrees and Awards to the Faculty Senate Agenda made by Christopher Monz. Seconded by Timothy Taylor. Moved to agenda.*

## **Reports**

Parking Committee Annual Report -James Nye

*Motion to table the Parking Committee Annual Report. Made by Benjamin George. Seconded by Christopher Monz. Motion passed; Report tabled.*

Discussion followed. The Faculty Senate Executive Committee expects the Parking Committee Annual Report to include the status of the requested Greenhouse Gas Steering Committee suggestions. Include Charles Darnell in getting this information.

## **Old Business**

[407.4.2](#) Procedures for Sanctions Other than Reprimands (second reading) - David Farrelly

Address concerns regarding violation of code 403. Some form of documentation needs to be recorded. The purpose is to memorialize the conversation rather than the facts and evidence. If there is info the facts and evidence can be memorialized. Retain per the USU retention schedule. Executive Committee did not have any problems or issues with this. This is specific to 403 violations.

*Motion to move to the Faculty Senate Agenda made by Timothy Taylor. Seconded by Christopher Monz. Moved to Faculty Senate Agenda.*

## **New Business**

[Board of Regents Faculty Representation Resolution](#) - Patrick Belmont

The Board of Regents is rethinking their processes since faculty is not being notified of any changes or happenings. A Council of Utah Faculty Senate leaders are currently meeting twice per year. They have gone through a number of iterations on Senate Bill 111 which provides for a faculty member on the Board of Regents. Spoke with Senator Hillyard and he stated that the hardest thing would be to have a faculty member as a voting member which could also cause a problem with conflict of interest. The University of Utah just recently passed a resolution like this. Resolution to support Bill 111 and request a voting member rather than just a representative.

*Motion to move to the Faculty Senate Agenda made by Joel Ellsworth. Seconded by Benjamin George. Moved to Faculty Senate Agenda.*

[403.3](#) Professional Responsibility; Standards of Conduct (first reading) - David Farrelly

A lot of these changes are because of the recent Department of Justice investigation (DOJ) and findings. Some of these updates could change if the DOJ does not agree with the proposed changes. PRPC has worked with the Office of Equity, legal counsel and the Provost on these changes.

*Motion to move to the Faculty Senate Agenda made by Becki Lawver. Seconded by Timothy Taylor. Moved to Faculty Senate Agenda.*

[407.1](#) Academic Due Process: Sanctions and Hearing Procedures (first reading) - David Farrelly

The changes/correction need to conform to the current laws. Current process is that equity investigates and then there is a gray area for grievances. Code 407 hasn't provided for the investigation but has provided for a hearing. Equity will be the fact finders and then go to a panel. The panel would consist of 2/3 faculty participation. This panel would review all evidence provided to them. The sanction process has not changed at all. Cases would still go to the Academic Freedom and Tenure Committee. It is extremely important that USU provide for due-process. Definition of sanction vs. administrative leave.

*Motion to amend to include term-faculty with tenure rank made by Benjamin George. Seconded by Joel Ellsworth. Amendment approved.*

*Motion to move to the Faculty Senate Agenda made by Timothy Taylor. Seconded by Benjamin George. Moved to Faculty Senate Agenda.*

[2020-2021 Faculty Senate Calendar](#) - Patrick Belmont

*Motion to move the 2020-2021 Faculty Senate Calendar to the Faculty Senate Agenda made by Benjamin George. Seconded by Joel Ellsworth. Moved to Faculty Senate Agenda.*

2020-2021 Faculty Senate President-Elect Nominations - Patrick Belmont

Looking at nominations for the 2020-2021 FS President-elect. Begin thinking about who is eligible and who can commit to this position.

*Motion to move to the Faculty Senate Agenda made by Timothy Taylor. Seconded by Joel Ellsworth. Moved to Faculty Senate Agenda.*

**Adjourn: 4:47 pm**



## FACULTY SENATE EXECUTIVE COMMITTEE MINUTES

January 21, 2020

3:30 – 5:00 p.m.

Old Main-Champ Hall

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**Present:** Patrick Belmont (President), Timothy Taylor (President-Elect), Frank Galey (Ex-officio), Jessica Lucero, Christopher Monz, Erin Davis, Don Busenbark, Robert Wagner, Jan Thornton, Michele Hillard, Thomas Lachmar, Yoon Lee, Paul Barr, Benjamin George, Zsolt Ugray for Daniel Holland, Noelle Cockett (Ex-officio), Nancy Hills, Richard Heflebower

**Absent:** Spencer Wendel, Becki Lawver (Past-President),

**Guests:** David Farrelly, Lisa Berreau, Richard Inouye, Mica McKinney

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**Call to Order** - Patrick Belmont

[Approval of Minutes](#) – December 16, 2019

*Minutes approved as distributed.*

**University Business** - Noelle Cockett, President | Frank Galey, Provost

Strategic Enrollment Management Plan – This endeavor is being done in two phases. Phase one was at the university level, phase two will be at the college and department level. On February 13, from 1:00 – 5:00 pm there will be an open house in the Eccles Conference Center to explain, to the campus community, what the Strategic Enrollment Management Plan (SEMP) is and how it is moving forward. Vice President Bill Plate presented strategic marketing initiatives. Currently reaching out to all colleges to gather upcoming events and event information. The four focal points that will be looked at will be quality, value, research and outcomes. This will be a good way to distinguish ourselves and highlight outcomes that promote excellence at USU. Looking at first round of applicants for the Vice Provost of the School of Graduate Studies. Will also be soliciting recommendations.

The university is working with the Department of Justice (DOJ) on the compliance review. Resolution agreements will be released in the next few weeks. No specifics yet but once the agreement is out all details will be released to the campus community. USU is required by law to have non-discrimination statements. Faculty, staff and administrators are asked to look at websites and other materials to make sure they include the statements. Training will take place for faculty, staff and students. This is going to require a lot of assistance in getting these objectives accomplished. If there are any questions or other information is needed please contact Provost Galey. The goal is to have open communication during this process. The DOJ information will be confidential and kept and handled that way. The president wanted to reiterate that since fall 2016 we have made incredible progress. The work is not yet done but USU is not the same university that the report will describe. It will be hard for USU to see what this report has to say. USU wants to encourage and gain support for this annual in-person training.

President Cockett has just returned from the legislature. Much more activity and conversation this year than the previous year. Bills and requests are popping up very quickly. It is looking like the salary compensation for this year will be a 2.5% increase. The president will meet with the Budget and Faculty Welfare Committee and the Staff Employee Association to discuss amounts and distribution. Discussions with the college deans has already taken place. USU's building request is for the construction of the Mehdi Haravi Global Learning Center. All language programs and the Intensive English Language Institute would be housed in this building.

## Information

[EPC Monthly Report](#) – January 9, 2020 - Paul Barr

General Education Subcommittee approved four General Education designations.

Academic Standards Subcommittee did not have a meeting so there is nothing to report.

Curriculum Subcommittee approved 154 semester course approval forms and also approved four R401 proposals. The registrar attended the meeting and stated that any R401s or R411s being proposed will require a curriculum complexity report. CIP codes were also discussed due to the fact that a number of departments across the university have been misclassified by using the wrong CIP codes. CIP code inconsistencies is causing problems with our students who have VISAs.

*Motion to move the EPC Monthly Report to the Faculty Senate agenda made by Ben George.*

*Seconded by Timothy Taylor. Moved to Faculty Senate agenda.*

Human Resources [Current](#) and [Proposed](#) Code 321 - Patrick Belmont

HR has gotten a lot of feedback on this code change. This policy includes definitions that will be linked to faculty code.

*Motion to move the Human Resource Code 321 to the Faculty Senate agenda made by Christopher Monz. Seconded by Ben George. Moved to Faculty Senate agenda.*

## Reports

[Professional Responsibilities and Procedures Committee \(PRPC\)](#) Annual Report - David Farrelly

Three code changes have been approved up through the Board of Trustees. Currently working with the Provost's office 407 code. This code is inconsistent with the Human Resource's code. It is time for the faculty to rethink what we do in the faculty code. Some of the sexual harassment/discriminations definitions are inconsistent and confusing. It is now necessary to rewrite and restructure 407. Another piece of code that is being worked on is how sanctions are proposed. It is felt that a paper trail should begin at the first conversation that takes place between the faculty member and his/her superior. This will align with the staff process in these matters. Discussions will be retained according to regulations and/or requirements.

*Motion to move the Professional Responsibilities and Procedures Committee (PRPC) Annual Report to the Faculty Senate agenda made by Thomas Lachmar. Seconded by Ben George. Moved to Faculty Senate agenda.*

[Office of Research](#) Annual Report - Lisa Berreau

Office of Research and School of Graduate Studies split during the year and the annual reports will now be split when being reported to the Faculty Senate. Highlights: 1) USU Receives Record Research Awards; 2) Research Landscapes Highlights Land, Water and Air; 3) Technology Transfer Generates Record Revenue; 4) Undergraduate Research Grows Impact with Peaks Fellows Program. The OSHA violation that USU received was due to a lack of personal protective equipment for the students. Research has met all the requirements and as an institution we need to get better and make sure that everyone is protected. The university will have annual conversations to discuss safety processes and procedures.

*Motion to move the Office of Research Annual Report to the Faculty Senate agenda made by Timothy Taylor. Seconded by Christopher Monz. Moved to Faculty Senate agenda.*

[School of Graduate Studies](#) Annual Report - Richard Inouye

The School of Graduate Studies is seeing a shift to the PhD programs. More students are pursuing their PhDs and fall enrollment is up by two percent. The number of degrees was down but that is due to programs like Social Work which is on a three-year cycle rather than a two-year cycle. Completed transition of moving documents to ServiceNow. Providing assistantships for diversity and inclusion within the graduate program.

*Motion to move the School of Graduate Studies Annual Report to the Faculty Senate agenda made by Ben George. Seconded by Yoon Lee. Moved to Faculty Senate agenda.*

## Old Business

[401.3.3](#) Tenured and Tenure-Eligible Faculty (second reading) - Britt Fagerheim

Do we need a different process for non-substantive changes? Do code changes always have to have a second reading? These are questions being asked and the Faculty Senate needs to decide what to do to help move these coded changes through quicker. The executive committee thought that when a code is brought forward the first time the decision can be whether to move it back for a second

update/reading or just move it forward after the first reading. These could be decided upon on a case-by-case basis.

*Motion to move code 401.3.3 to Faculty Senate agenda for 2<sup>nd</sup> Reading made by Timothy Taylor. Seconded by Christopher Monz. Moved to Faculty Senate agenda.*

[405.3.1](#) Tenure and Promotion: Criteria for Librarians (second reading) - Britt Fagerheim

Do we need a different process for non-substantive changes? Do code changes always have to have a second reading? These are questions being asked and the Faculty Senate needs to decide what to do to help move these coded changes through quicker. The executive committee thought that when a code is brought forward the first time the decision can be whether to move it back for a second update/reading or just move it forward after the first reading. These could be decided upon on a case-by-case basis.

*Motion to move code 401.3.3 to Faculty Senate agenda for 2<sup>nd</sup> Reading made by Timothy Taylor. Seconded by Christopher Monz. Moved to Faculty Senate agenda.*

Faculty Code Updates - Patrick Belmont

Using spreadsheet to track the process of the code changes. All information will be included there and it is extremely helpful for the PRPC to move code forward and see where it is in the process.

*Motion to move Faculty Code Updates to the Faculty Senate agenda made by Erin Davis. Seconded by David Farrelly. Moved to Faculty Senate agenda.*

**New Business**

N/A

**Adjourn: 4:30**

## **Report from the Educational Policies Committee February 6, 2020**

The Educational Policies Committee (EPC) met on February 6, 2020. The agenda and minutes of the meeting are posted on the Educational Policies Committee web page ([www.usu.edu/epc](http://www.usu.edu/epc)).

During the February 6, 2020 meeting of the EPC, the following actions were taken:

1. **General Education Subcommittee**

- One General Education designation was approved:
  - ANTH 3240 (DSC)

2. **Academic Standards Subcommittee**

- No December meeting to report

3. **Curriculum Subcommittee**

- Approval of 63 course requests.

Request from the Department of Aviation, Career and Technical Education to **create a Cybersecurity emphasis in the Technology Systems Bachelor of Science degree.**

4. **Other Business**

Fran Hopkin brought a proposal for changes to the course and program approval timeline. Confusion of deadlines has brought about this item for discussion. A holistic approach that included all deadlines, not just certain requests was performed. The proposal aligns the deadlines based on the different requirements from federal, state and university policies.

Michael Torrens discussed issues regarding changing program requirements, R401 process and accreditation. Certain colleges/departments are making changes to their graduation requirements. These issues require oversight by the EPC committee. No definitions exist regarding changes and when an R401 is required versus simple catalog changes. Definitions will be developed to help clarify the process.



**FSR 2020-01**

**FSEC Reading: 2/18/2020**

**FS Reading: 3/2/2020**

**Faculty Senate Resolution to Request Faculty Representation in Utah System of Higher Education**

**WHEREAS** the Utah System of Higher Education (USHE) Board of Regents establishes policies that govern the priorities and activities of all public institutions of higher education in Utah.

**WHEREAS** the USHE Board of Regents is in a time of re-evaluation and transition with a mandate to “ensure that expert leadership is most effectively focused on aligning investments and institutional activities with the needs of the public foremost in mind.”

**WHEREAS** the faculty at USHE institutions have a vested interest in ensuring the relevance, vibrancy and feasibility of activities required of their institution, perform many of the essential day-to-day activities to fulfill the mission of their institution, and could provide useful insights regarding the on-the-ground implications of policies proposed by the Board of Regents.

**WHEREAS** all USHE institutions have an established body of faculty governance, the leaders of which from each institution have organized into the Utah Council of Faculty Senate Leaders (UCFSL).

**THEREFORE, BE IT RESOLVED THAT** the Utah State University Faculty Senate endorses creating a voting faculty member position on the Board of Regents or its equivalent depending on any revisions to Utah state law, consistent with the rationale provided below.

**Utah Council of Faculty Senate Leaders Representation in Utah System of Higher Education**

December 5, 2019

Dr. Anne Arendt, Utah Valley University Faculty Senate President

Prof. Robert Flores, University of Utah Academic Senate Policy Liaison

Dr. Rick McDonald, Utah Valley University Faculty Senate Special Assignments and Investigations

Dr. Pauli Alin, Utah Valley University prior Faculty Senate Special Assignments and Investigations

Dr. Jessica Hill, Utah Valley University Faculty Senate Vice President  
Dr. Doris Geide-Stevenson, Weber State University Faculty Senate Vice Chair  
Dr. Patrick Belmont, Utah State University Faculty Senate President  
Dr. Timothy Taylor, Utah State University Faculty Senate President-elect  
Dr. Larry Smith, Snow College Faculty Senate President  
Dr. Steve Barney, Southern Utah University Faculty Senate President  
Dr. Julio Cesar Facelli, University of Utah Academic Senate President  
Dr. Andrea Malouf, Salt Lake Community College Faculty Senate Vice President  
Dr. Timothy Herzog, Weber State University Faculty Senate Chair  
Dr. Justice Morath, Salt Lake Community College Faculty Association President  
Dr. Katerina Salini, Salt Lake Community College Faculty Senate President

## **Introduction**

By statute, the Utah System of Higher Education (USHE) is governed by the State Board of Regents (“The Board”) in accord with the Utah Constitution and Utah Code. “The Board’s major responsibilities include selecting and evaluating institutional presidents, setting policy, reviewing programs and degrees, approving institutional missions, and submitting a unified higher education budget request to the Governor and State Legislature” (USHE, n.d.). The purpose of this white paper is to request the addition of a member from the Utah Council of Faculty Senate Leaders (UCFSL) to the Board. The added member would speak for faculty bodies across Utah’s public institutions of higher learning. High-quality education provided by the public schools, colleges, and universities across Utah is one of the greatest long-term economic development tools our state possesses. Active collaboration across the statewide higher education system, along with K-12 and private business, is the best method to ensure a brighter future for Utah. By collaborating, we can best make a long-term commitment to excellence in our colleges and universities. Our request to add a UCFL member to the Board is intended to further enhance such collaboration.

## **Utah Situational Overview**

### **Utah System of Higher Education**

The Utah System of Higher Education (USHE) consists of the State Board of Regents and eight public institutions of higher education: the University of Utah, Utah State University, Weber State University, Southern Utah University, Snow College, Dixie State University, Utah Valley University; and Salt Lake Community College, (Utah Code 53-B-1-102, 2017). It is led by the Utah State Board of Regents, which is comprised of 17 members appointed by the Governor. The members include eight at-large, eight previous institutional trustees with representation from each USHE institution, and one student regent. The student regent serves a one-year term and all others serve six-year terms (Utah Code 53B-1-104, 2018).

USHE is in a time of re-evaluation and transition, based largely on the work of the Utah State Legislature Higher Education Strategic Planning Commission, which began in 2018 (Utah State Legislature Higher Education Strategic Planning Commission, 2019). The planning commission

was charged with developing a strategic plan to address postsecondary educational needs through the next 20 to 30 years. To this end, the National Center for Higher Education Management Systems (NCHEMS) was hired as a consultant to analyze system-wide challenges and opportunities, culminating in a comprehensive set of recommendations for action. One aspect of these recommendations is to reform statewide postsecondary governance in Utah (NCHEMS, 2019). The NCHEMS report recommends Utah “reform statewide postsecondary governance to ensure that expert leadership is most effectively focused on aligning investments and institutional activities with the needs of the public foremost in mind” (p. 6, 2019) because “Utah’s postsecondary structures operate without a tight connection to a clearly articulated and widely recognized set of state goals” (p. 12, 2019).

As the state re-evaluates USHE’s structure, purpose, and objectives in conjunction with implementing some NCHEMS recommendations, including the Utah Council of Faculty Senate Leaders into Regents discussions and deliberations would be beneficial to the reform process. In this way, faculty member investment into proposed changes could be increased and the process could benefit from faculty institutional experience and knowledge.

### **Utah Council of Faculty Senate Leaders**

The Utah Council of Faculty Senate Leaders (UCFSL) consists of approximately 35 members representing all USHE institutions. Members include current or past Faculty Senate (or Academic Senate) Presidents or Chairs, Presidents-elect, Vice Presidents or Vice Chairs, and Policy Liaisons and Parliamentarians. UCFSL bylaws describe its threefold purpose: To share ideas regarding the process of faculty governance in Utah; to consider and act on issues which have significance for faculty across the system of higher education; and to provide a representative voice of faculty to the Governor, the State Legislature, the Board of Regents, and the public (UCFSL, 2004). The current membership is notably active and involved as a team, as indicated through the collaborative writing of this paper.

### **Utah Faculty Representation on Institutional Board of Trustees**

Across USHE institutions, Boards of Trustees include student and alumni representation, yet there is limited inclusion of Faculty Senate (or Academic Senate) leadership. This is consistent with the empirical literature on shared governance that conveys considerable disagreement regarding faculty members service on university boards of trustees (Ehrenberg, Patterson, & Key, 2013). “Those opposed to the inclusion of faculty members on boards, such as the Association of Governing Boards of Universities and Colleges (AGB), emphasize the possible conflicts of interest. Those in favor emphasize the principle of shared governance” (Ehrenberg et al., 2013, p. 1). On the other hand, the Association of Governing Boards of Universities and Colleges encourages a respectful working relationship between boards and university faculty (Baldwin, 2018). In the Utah System, the relationship is presently governed at the statewide level by the Utah Code provisions which define the *voting* membership of the eight institutional boards of trustees (Utah Code 53B-2-104), and Board of Regents Policy which requires each institution to have a formal faculty body and to ensure that a representative of that faculty

body has the opportunity to attend and make reports at trustee meetings (Regents R223—Faculty and Staff Participation in Institutional Boards of Trustees Meetings). Each institution then implements the involvement of faculty representatives, through its institutional-level policies and practices. (See e.g., University of Utah Policy 2-002, President of Academic Senate participation in trustee meetings).

While the authors of this white paper view *voting* membership as desirable for faculty representation on all institutional boards, we also feel that greater faculty participation, even without voting privileges, would be universally beneficial to both the faculties of USHE institutions as well as to the institutions themselves in a more general sense.

Greater faculty participation in institutional Boards of Trustees would be in line with the American Association of University Professors' (AAUP) recommendation for greater communication between faculties and governing boards in colleges and universities. Currently, "communication between faculty and board members, when it occurs at all, tends to be ritualized, infrequent, and limited to specific agenda items" (p. 1, 2014). AAUP offers the following recommendation: "College and university governance works best when each constituency within the institution clearly understands its role and relationship to the other constituents and when communication among the governing board, the administration, and the faculty is regular, open, and unmediated. Too often the president serves as the sole conduit for faculty-board communication. While this practice may be efficient, it is not always effective in enhancing understanding between governing boards and faculties" (p. 3, 2014). Greater faculty participation in institutional Boards of Trustees would likely improve such understanding.

### **Mountain West Faculty Senate Leadership Involvement in Statewide Higher Education Systems**

Throughout the Mountain West region there are varied systems to administer higher education and varied levels of faculty senate leadership participation. In New Mexico, for example, there is a Higher Education Advisory Board which consists of 12 voting members. Faculty senate leadership representatives are also welcome in an ex officio nonvoting capacity. While in years past there have been requests for faculty appointee membership, with an eye toward leveraging faculty experience, changing representation on the committee would necessitate a constitutional amendment and so has not occurred to date (C. Brown, personal communication, November 26, 2019).

The Nevada State Board of Regents which governs the Nevada System of Higher Education consists of 13 voting members. In addition, there are Officers of the University which consists of a chancellor and eight institutional presidents. Their meetings are open and typically both institutional presidents and faculty senate leadership attend. The faculty senate participants are non-voting but are active in discussions (Nevada Board of Regents, 2018; Nevada System of Higher Education, n.d.).

The Montana Board of Regents which governs the Montana University System consists of seven voting members. One of these members is a student who is registered full time at a unit of higher education under jurisdiction of the board. These meetings are open and permit commentary as well as submission of materials from the public (Montana University System Board of Regents, 2019; Montana University System Board of Regents, 2019b).

Idaho operates under an Idaho State Board of Education and governs all levels from public kindergarten through college education. It is comprised of eight members, seven of whom are appointed by the governor and one of whom is voter-elected. The board meetings are not public, but the board may, from time to time, hold public hearings on matters it deems appropriate or as required by its governing policies and procedures (Idaho State Board of Education, n.d.; Idaho State Board of Education, 2008).

Colorado has both a Commission on Higher Education and a Department of Higher Education. The Colorado Department of Higher Education is the primary department within the state government that is responsible for implementing the policies of the Colorado Commission on Higher Education. The Commission on Higher Education has an advisory committee that consists of a minimum of 13 members. Six members are appointed from the general assembly; one member is selected and designated by the commission to represent the faculty in the state; one member is selected and designated to represent the students of the state; one member is a parent of a current student; and no more than four additional members representing educational or other groups may be selected (Colorado General Assembly, 2016). Their meetings are public.

### **Working Collaboratively Across Institutions**

To ensure student success and accomplish the Utah State Legislature goal of statewide educational attainment at 66 percent for its 25-64 year old population with a postsecondary degree or credential by 2025 (NCHEMS, 2019, p. 12), academic institutions are going to have to work together, as well as work with USHE decision makers. This is the only way initiatives like credit transfer, pathways, experiential credit, and articulations can be successfully accomplished.

### **Shared Governance Collaboration via Utah Council of Faculty Senate Leaders (UCFSL)**

By working together under the umbrella of UCFSL, faculty senate leadership teams across Utah can strive for quality improvement, strengthening of communication, and shared best practices. If UCFSL were to work more closely with USHE, the state could build a culture of shared governance and shared mission across Utah. Having a statewide and cross-institutional focus would help avoid any potential conflicts of interest by broadening the conversations to embrace public interests and avoid acting from purely personal, ideological, or institutional interests. Meetings and communications could be procedurally controlled to assure openness, competitive opportunity, and equal access to information. When a conflict is disclosed for any Regent, faculty representative or other party, the party in question would abstain from voting

or promoting the discussion between Board members. A responsibility of the Board of Regents is making decisions in the long-term best interests of students and the people of Utah, without favoring one particular university campus or geographic area. Each board member takes responsibility for holding a long-term and statewide view on their decision making, even at the expense of personal or narrow constituent interests.

### **Support for New Initiatives and Policy Strategies**

The NCHEMS report notes that policy is often driven by the legislature in Utah. This process often yields good ideas, but without “specification of sub-goals that can be acted upon and create the basis for accountability for the various components of the education system in the state,” they sometimes do not yield the collective benefits desired. NCHEMS has also noted that often the Utah plans are decidedly institutionally flavored (NCHEMS, 2019).

Faculty member representation at a state-wide non-institutionally-focused level could help. It is via the staff and faculty that most initiatives are put in to action. Consider, for example, as the Utah state legislature pursues new initiatives such as those found in House Bill 45 Higher Education Credit Amendments--transfer credits across institutions and prior learning assessments (Peterson & Millner, 2019). Both necessitate consideration of curriculum, changes in processes, and evaluation to ensure educational outcomes are met. These are roles that faculty members play, no matter what institution they are from. As faculty senate leadership from across institutions continue to work together, improvements can start to be made to overall policy strategies and practices across the state.

### **Education Leads to Economic Development**

Economic opportunity, in most cases, is defined by the opportunity to participate in the labor market. These labor market opportunities often depend in large part on that individual’s education and skills. An individual’s employment status, inclusive of the field and salary income, will largely drive their spending and consumption patterns. These labor market characteristics in turn significantly influence economic growth and the future directions of an economy. Increasingly, there is demand for highly educated workers (Reynis & Peach, 2015; National Center for Higher Education Management Systems, 2019).

### **Recommendations**

#### **Faculty Senate Leadership Representation in Utah System of Higher Education**

As the Nevada System of Higher Education notes, “It is incumbent on the State’s public colleges and universities, its primary economic engine, to examine carefully how they can perform within the limited resources available today, ensuring that the State is positioned as best as it can be to recruit, retain, and grow the industries and businesses needed for a brighter future” (2011, p. 3). Faculty senate leadership representation in USHE via the Utah State Board of Regents can help accomplish this goal for the people of Utah.

**Nomination and Appointment.** The faculty senate leadership representative to the Board of Regents will follow protocols similar to those for approval of the Utah student representative to the Board, as currently found in Utah Code 53B-1-04 (2018): One member, selected by the governor with the consent of the Senate, from three nominees presented to the governor by the then-current elected leaders of the faculty bodies at the eight USHE institutions OR Utah Council of Faculty Senate Leaders (UCFSL). Term length: One year.

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#### **Faculty Senate Leadership Representative as *Voting* Board Member**

Just as Utah has a student body representative to the Regents who is a *voting* board member as per Utah Code 53B-1-04, we recommend that there be an overall faculty body representative with voting rights.

If the faculty representative does not have voting privileges, they should at least be able to participate fully in discussions. At a minimum, the rights and responsibilities Regents Policy 223 currently provides for faculty representatives at the *institutional* trustee level should be applicable for the faculty representative to the Regents—to attend by right, to make reports and provide policy input.

How this representative is addressed and received will be relevant. As the AAUP notes, “As a first step, the position held by the faculty member should have a designation such as faculty representative, rather than faculty visitor or faculty observer, to indicate that his or her role is not passive. While perhaps mostly symbolic, the position’s title may help to shape the role that the faculty representative assumes when attending committee and board meetings” (p. 4, 2014).

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An alternative to the above, if there remain concerns relating to potential undue conflict of interest with a representative with active faculty status during the term of service, is to have an individual who is now retired from a USHE institution (or is on a phased retirement schedule) but has functioned as a Faculty Senate leadership member in the past, serve as a voting board member. If this were the path taken, it is recommended that individual not serve a one-year term but instead a longer term (e.g., a standard term length of six years). Again, the appointee should preferably not be from the same USHE institution as the current student appointee.

### **Conclusion**

Just as faculty senate leadership representatives from across Utah higher education institutions are currently collaborating via the UCFSL, so, too, can a faculty representative work with the Utah State Board of Regents with a broad and statewide lens. Faculty are allies, not adversaries in strategic planning and governance of higher education. A Faculty Senate Leadership Representative could help address the NCHEMS concern that “Utah’s success and prosperity in a knowledge-driven economic future will depend on having strong coordination of public postsecondary institutions, with expert leadership focused on aligning investments and institutional activities with the needs of the public (students, taxpayers, and employers), now and in the future. Effective state-level coordination is increasingly key to the effectiveness of postsecondary education as it has become as essential to individual success as to the healthy functioning of the macroeconomy in a globalized marketplace” (2019, p. 44). Most critically, “institutions are the means to the state’s goals, not the ends” (NCHEMS, p.5, 2019). The heart of each institution is the faculty.

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**FSR 2020-01**

**FSEC Reading: 2/18/2020**

**FS Reading: 3/2/2020**

**Faculty Senate Resolution to Request Faculty Representation in Utah System of Higher Education**

**WHEREAS** the Utah System of Higher Education (USHE) Board of Regents establishes policies that govern the priorities and activities of all public institutions of higher education in Utah.

**WHEREAS** the USHE Board of Regents is in a time of re-evaluation and transition with a mandate to “ensure that expert leadership is most effectively focused on aligning investments and institutional activities with the needs of the public foremost in mind.”

**WHEREAS** the faculty at USHE institutions have a vested interest in ensuring the relevance, vibrancy and feasibility of activities required of their institution, perform many of the essential day-to-day activities to fulfill the mission of their institution, and could provide useful insights regarding the on-the-ground implications of policies proposed by the Board of Regents.

**WHEREAS** all USHE institutions have an established body of faculty governance, the leaders of which from each institution have organized into the Utah Council of Faculty Senate Leaders (UCFSL).

**THEREFORE, BE IT RESOLVED THAT** the Utah State University Faculty Senate endorses creating a voting faculty member position on the Board of Regents or its equivalent depending on any revisions to Utah state law, consistent with the rationale provided below.

**Utah Council of Faculty Senate Leaders Representation in Utah System of Higher Education**

December 5, 2019

Dr. Anne Arendt, Utah Valley University Faculty Senate President

Prof. Robert Flores, University of Utah Academic Senate Policy Liaison

Dr. Rick McDonald, Utah Valley University Faculty Senate Special Assignments and Investigations

Dr. Pauli Alin, Utah Valley University prior Faculty Senate Special Assignments and Investigations

Dr. Jessica Hill, Utah Valley University Faculty Senate Vice President  
Dr. Doris Geide-Stevenson, Weber State University Faculty Senate Vice Chair  
Dr. Patrick Belmont, Utah State University Faculty Senate President  
Dr. Timothy Taylor, Utah State University Faculty Senate President-elect  
Dr. Larry Smith, Snow College Faculty Senate President  
Dr. Steve Barney, Southern Utah University Faculty Senate President  
Dr. Julio Cesar Facelli, University of Utah Academic Senate President  
Dr. Andrea Malouf, Salt Lake Community College Faculty Senate Vice President  
Dr. Timothy Herzog, Weber State University Faculty Senate Chair  
Dr. Justice Morath, Salt Lake Community College Faculty Association President  
Dr. Katerina Salini, Salt Lake Community College Faculty Senate President

## **Introduction**

By statute, the Utah System of Higher Education (USHE) is governed by the State Board of Regents (“The Board”) in accord with the Utah Constitution and Utah Code. “The Board’s major responsibilities include selecting and evaluating institutional presidents, setting policy, reviewing programs and degrees, approving institutional missions, and submitting a unified higher education budget request to the Governor and State Legislature” (USHE, n.d.). The purpose of this white paper is to request the addition of a member from the Utah Council of Faculty Senate Leaders (UCFSL) to the Board. The added member would speak for faculty bodies across Utah’s public institutions of higher learning. High-quality education provided by the public schools, colleges, and universities across Utah is one of the greatest long-term economic development tools our state possesses. Active collaboration across the statewide higher education system, along with K-12 and private business, is the best method to ensure a brighter future for Utah. By collaborating, we can best make a long-term commitment to excellence in our colleges and universities. Our request to add a UCFL member to the Board is intended to further enhance such collaboration.

## **Utah Situational Overview**

### **Utah System of Higher Education**

The Utah System of Higher Education (USHE) consists of the State Board of Regents and eight public institutions of higher education: the University of Utah, Utah State University, Weber State University, Southern Utah University, Snow College, Dixie State University, Utah Valley University; and Salt Lake Community College, (Utah Code 53-B-1-102, 2017). It is led by the Utah State Board of Regents, which is comprised of 17 members appointed by the Governor. The members include eight at-large, eight previous institutional trustees with representation from each USHE institution, and one student regent. The student regent serves a one-year term and all others serve six-year terms (Utah Code 53B-1-104, 2018).

USHE is in a time of re-evaluation and transition, based largely on the work of the Utah State Legislature Higher Education Strategic Planning Commission, which began in 2018 (Utah State Legislature Higher Education Strategic Planning Commission, 2019). The planning commission

was charged with developing a strategic plan to address postsecondary educational needs through the next 20 to 30 years. To this end, the National Center for Higher Education Management Systems (NCHEMS) was hired as a consultant to analyze system-wide challenges and opportunities, culminating in a comprehensive set of recommendations for action. One aspect of these recommendations is to reform statewide postsecondary governance in Utah (NCHEMS, 2019). The NCHEMS report recommends Utah “reform statewide postsecondary governance to ensure that expert leadership is most effectively focused on aligning investments and institutional activities with the needs of the public foremost in mind” (p. 6, 2019) because “Utah’s postsecondary structures operate without a tight connection to a clearly articulated and widely recognized set of state goals” (p. 12, 2019).

As the state re-evaluates USHE’s structure, purpose, and objectives in conjunction with implementing some NCHEMS recommendations, including the Utah Council of Faculty Senate Leaders into Regents discussions and deliberations would be beneficial to the reform process. In this way, faculty member investment into proposed changes could be increased and the process could benefit from faculty institutional experience and knowledge.

### **Utah Council of Faculty Senate Leaders**

The Utah Council of Faculty Senate Leaders (UCFSL) consists of approximately 35 members representing all USHE institutions. Members include current or past Faculty Senate (or Academic Senate) Presidents or Chairs, Presidents-elect, Vice Presidents or Vice Chairs, and Policy Liaisons and Parliamentarians. UCFSL bylaws describe its threefold purpose: To share ideas regarding the process of faculty governance in Utah; to consider and act on issues which have significance for faculty across the system of higher education; and to provide a representative voice of faculty to the Governor, the State Legislature, the Board of Regents, and the public (UCFSL, 2004). The current membership is notably active and involved as a team, as indicated through the collaborative writing of this paper.

### **Utah Faculty Representation on Institutional Board of Trustees**

Across USHE institutions, Boards of Trustees include student and alumni representation, yet there is limited inclusion of Faculty Senate (or Academic Senate) leadership. This is consistent with the empirical literature on shared governance that conveys considerable disagreement regarding faculty members service on university boards of trustees (Ehrenberg, Patterson, & Key, 2013). “Those opposed to the inclusion of faculty members on boards, such as the Association of Governing Boards of Universities and Colleges (AGB), emphasize the possible conflicts of interest. Those in favor emphasize the principle of shared governance” (Ehrenberg et al., 2013, p. 1). On the other hand, the Association of Governing Boards of Universities and Colleges encourages a respectful working relationship between boards and university faculty (Baldwin, 2018). In the Utah System, the relationship is presently governed at the statewide level by the Utah Code provisions which define the *voting* membership of the eight institutional boards of trustees (Utah Code 53B-2-104), and Board of Regents Policy which requires each institution to have a formal faculty body and to ensure that a representative of that faculty

body has the opportunity to attend and make reports at trustee meetings (Regents R223—Faculty and Staff Participation in Institutional Boards of Trustees Meetings). Each institution then implements the involvement of faculty representatives, through its institutional-level policies and practices. (See e.g., University of Utah Policy 2-002, President of Academic Senate participation in trustee meetings).

While the authors of this white paper view *voting* membership as desirable for faculty representation on all institutional boards, we also feel that greater faculty participation, even without voting privileges, would be universally beneficial to both the faculties of USHE institutions as well as to the institutions themselves in a more general sense.

Greater faculty participation in institutional Boards of Trustees would be in line with the American Association of University Professors' (AAUP) recommendation for greater communication between faculties and governing boards in colleges and universities. Currently, "communication between faculty and board members, when it occurs at all, tends to be ritualized, infrequent, and limited to specific agenda items" (p. 1, 2014). AAUP offers the following recommendation: "College and university governance works best when each constituency within the institution clearly understands its role and relationship to the other constituents and when communication among the governing board, the administration, and the faculty is regular, open, and unmediated. Too often the president serves as the sole conduit for faculty-board communication. While this practice may be efficient, it is not always effective in enhancing understanding between governing boards and faculties" (p. 3, 2014). Greater faculty participation in institutional Boards of Trustees would likely improve such understanding.

### **Mountain West Faculty Senate Leadership Involvement in Statewide Higher Education Systems**

Throughout the Mountain West region there are varied systems to administer higher education and varied levels of faculty senate leadership participation. In New Mexico, for example, there is a Higher Education Advisory Board which consists of 12 voting members. Faculty senate leadership representatives are also welcome in an ex officio nonvoting capacity. While in years past there have been requests for faculty appointee membership, with an eye toward leveraging faculty experience, changing representation on the committee would necessitate a constitutional amendment and so has not occurred to date (C. Brown, personal communication, November 26, 2019).

The Nevada State Board of Regents which governs the Nevada System of Higher Education consists of 13 voting members. In addition, there are Officers of the University which consists of a chancellor and eight institutional presidents. Their meetings are open and typically both institutional presidents and faculty senate leadership attend. The faculty senate participants are non-voting but are active in discussions (Nevada Board of Regents, 2018; Nevada System of Higher Education, n.d.).

The Montana Board of Regents which governs the Montana University System consists of seven voting members. One of these members is a student who is registered full time at a unit of higher education under jurisdiction of the board. These meetings are open and permit commentary as well as submission of materials from the public (Montana University System Board of Regents, 2019; Montana University System Board of Regents, 2019b).

Idaho operates under an Idaho State Board of Education and governs all levels from public kindergarten through college education. It is comprised of eight members, seven of whom are appointed by the governor and one of whom is voter-elected. The board meetings are not public, but the board may, from time to time, hold public hearings on matters it deems appropriate or as required by its governing policies and procedures (Idaho State Board of Education, n.d.; Idaho State Board of Education, 2008).

Colorado has both a Commission on Higher Education and a Department of Higher Education. The Colorado Department of Higher Education is the primary department within the state government that is responsible for implementing the policies of the Colorado Commission on Higher Education. The Commission on Higher Education has an advisory committee that consists of a minimum of 13 members. Six members are appointed from the general assembly; one member is selected and designated by the commission to represent the faculty in the state; one member is selected and designated to represent the students of the state; one member is a parent of a current student; and no more than four additional members representing educational or other groups may be selected (Colorado General Assembly, 2016). Their meetings are public.

### **Working Collaboratively Across Institutions**

To ensure student success and accomplish the Utah State Legislature goal of statewide educational attainment at 66 percent for its 25-64 year old population with a postsecondary degree or credential by 2025 (NCHEMS, 2019, p. 12), academic institutions are going to have to work together, as well as work with USHE decision makers. This is the only way initiatives like credit transfer, pathways, experiential credit, and articulations can be successfully accomplished.

### **Shared Governance Collaboration via Utah Council of Faculty Senate Leaders (UCFSL)**

By working together under the umbrella of UCFSL, faculty senate leadership teams across Utah can strive for quality improvement, strengthening of communication, and shared best practices. If UCFSL were to work more closely with USHE, the state could build a culture of shared governance and shared mission across Utah. Having a statewide and cross-institutional focus would help avoid any potential conflicts of interest by broadening the conversations to embrace public interests and avoid acting from purely personal, ideological, or institutional interests. Meetings and communications could be procedurally controlled to assure openness, competitive opportunity, and equal access to information. When a conflict is disclosed for any Regent, faculty representative or other party, the party in question would abstain from voting

or promoting the discussion between Board members. A responsibility of the Board of Regents is making decisions in the long-term best interests of students and the people of Utah, without favoring one particular university campus or geographic area. Each board member takes responsibility for holding a long-term and statewide view on their decision making, even at the expense of personal or narrow constituent interests.

### **Support for New Initiatives and Policy Strategies**

The NCHEMS report notes that policy is often driven by the legislature in Utah. This process often yields good ideas, but without “specification of sub-goals that can be acted upon and create the basis for accountability for the various components of the education system in the state,” they sometimes do not yield the collective benefits desired. NCHEMS has also noted that often the Utah plans are decidedly institutionally flavored (NCHEMS, 2019).

Faculty member representation at a state-wide non-institutionally-focused level could help. It is via the staff and faculty that most initiatives are put in to action. Consider, for example, as the Utah state legislature pursues new initiatives such as those found in House Bill 45 Higher Education Credit Amendments--transfer credits across institutions and prior learning assessments (Peterson & Millner, 2019). Both necessitate consideration of curriculum, changes in processes, and evaluation to ensure educational outcomes are met. These are roles that faculty members play, no matter what institution they are from. As faculty senate leadership from across institutions continue to work together, improvements can start to be made to overall policy strategies and practices across the state.

### **Education Leads to Economic Development**

Economic opportunity, in most cases, is defined by the opportunity to participate in the labor market. These labor market opportunities often depend in large part on that individual’s education and skills. An individual’s employment status, inclusive of the field and salary income, will largely drive their spending and consumption patterns. These labor market characteristics in turn significantly influence economic growth and the future directions of an economy. Increasingly, there is demand for highly educated workers (Reynis & Peach, 2015; National Center for Higher Education Management Systems, 2019).

### **Recommendations**

#### **Faculty Senate Leadership Representation in Utah System of Higher Education**

As the Nevada System of Higher Education notes, “It is incumbent on the State’s public colleges and universities, its primary economic engine, to examine carefully how they can perform within the limited resources available today, ensuring that the State is positioned as best as it can be to recruit, retain, and grow the industries and businesses needed for a brighter future” (2011, p. 3). Faculty senate leadership representation in USHE via the Utah State Board of Regents can help accomplish this goal for the people of Utah.



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### **Conclusion**

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# Policy 403: Academic Freedom and Professional Responsibility

Section: Faculty Policies

Policy Number: 403

Subject: Academic Freedom and Professional Responsibility

Origin Date: July 1, 1997

Revision Date(s): October 20, 2006, March 6, 2009, July 8, 2011, January 6, 2012

Effective Date: January 6, 2012

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## 403.1 INTRODUCTION

The university is operated for the common good which depends upon the free search for truth and its free exposition. Academic freedom is essential to these purposes and applies to teaching, research, and service. (See policy 401.8.1 (1) regarding provisions which are the same or similar to certain statements of the American Association of University Professors).

The university is a community dedicated, through promulgation of thought, truth, and understanding, to teaching, research, and service. It must therefore, be a place where innovative ideas, original experiments, creative activities, and independence of thought are not merely tolerated but actively encouraged. Thought and understanding flourish only in a climate of academic freedom and integrity, expressed collectively by colleges and departments as well as individually through research and teaching and as they exist within the wider context of advanced study as commonly understood by all universities. The community also values diversity and respect, without which there can be no collegiality among faculty and students. In addition, the university community values individual rights and freedoms, including the right of each community member to adhere to individual systems of conscience, religion, and ethics. Finally, the university recognizes that with all rights come responsibilities.

Because the pursuit of truth is fundamentally a personal enterprise, a statement of faculty responsibility must be strongly anchored to principles of intellectual freedom and personal autonomy. While faculty must abide by standards of professional responsibility, the university must provide and safeguard a climate of intellectual freedom. Relationships within the university should consist of shared confidence, mutual loyalty, and trust. Dealings should be conducted with courtesy, civility, decency, and a concern for personal dignity. Such an atmosphere can be achieved only when all concerned behave responsibly. While the right of academic freedom is respected, the exercise of the right cannot be through disruptive actions or physical force. The university works to uphold its collective values by fostering free speech, broadening fields of inquiry, and encouraging the generation of new knowledge that challenges, shapes, and enriches our collective and individual understandings.

## 403.2 ACADEMIC FREEDOM

Academic freedom is the right to teach, study, discuss, investigate, discover, create, and publish freely. Academic freedom protects the rights of faculty members in teaching and of students in learning. Freedom

in research is fundamental to the advancement of truth. The faculty member is entitled to full freedom in teaching, research, and creative activities, subject to the limitations imposed by professional responsibility.

## 2.1 Freedom and Responsibilities of the University

Subject to the power and authority of the Board of Regents to control, manage, and supervise the Utah System of Higher Education, and Utah State University as a member institution, the university has the freedom to pursue its ends without interference from government. Included therein are the four essential freedoms of the university to determine for itself on academic grounds: (1) who may teach; (2) what may be taught; (3) how it shall be taught; and (4) who may be admitted to study. Consistent with principles of academic freedom, the faculty, individually and collectively, has the responsibility for determining the content of the curriculum.

The university consists of many components all of which support the interactive, collegial enterprise that exists in the quest for knowledge and its transmittal. The university has the general responsibility to protect the academic freedom of every faculty member and the freedom of every student to learn. The university itself shall not violate the academic freedom of any faculty member or the freedom of any student to learn and shall use its powers and resources to defend its faculty and students from unjustified attempts to compromise or restrict those freedoms, even should the exercise of those freedoms generate hostility.

## 2.2 Freedom and Course Requirements

Students are expected to take courses that will challenge them intellectually and personally. Students must understand and be able to articulate the ideas and theories that are important to the discourse within and among academic disciplines. Personal disagreement with these ideas and theories or their implications is not sufficient grounds for requesting an alternative course requirement. Alternative requirements requested on such grounds will not necessarily be granted. The university recognizes that students' sincerely held core beliefs may make it difficult for students to fulfill some requirements of some courses or majors (see policy 403.4). The university assumes no obligation to ensure that all students will be able to complete any course or major.

## 2.3 Violations of Academic Freedom or Standards and Regulations

Persons having a formal association with the university shall not be involved in acts which violate the academic freedom or constitutional rights of others, or the standards and regulations of the university or the State Board of Regents.

# 403.3 PROFESSIONAL RESPONSIBILITY; STANDARDS OF CONDUCT

The concept of academic freedom is accompanied by an equally demanding concept of professional responsibility. The standards for professional responsibility listed in the following subsections are standards to which faculty members are expected to adhere. University faculty members are citizens, members of learned professions, and officers of an educational institution. When speaking or writing as citizens, faculty members are free from institutional censorship or discipline, but their special position in the community imposes special obligations. As individuals of learning and as educational officers, they should understand that the public may judge their profession and their institution by their individual utterances. Hence, they should at all times strive to be accurate, exercise appropriate restraint, show respect for the opinions of others, and make every effort to indicate that they are not speaking for the institution.

### 3.1 Standards of Conduct - Faculty Responsibilities to Student

- (1) Faculty members engage in reasonable and substantial preparation for the teaching of their courses, appropriate to the educational objectives to be achieved and consistent with the standards of the discipline.
- (2) Faculty members meet scheduled classes. Schedules are altered or classes canceled only for valid reasons and only after adequate notice is given to students and the faculty member's direct academic supervisor. Failure to meet a class without prior notice to students is excusable only for reasons beyond the control of the faculty member.
- (3) Faculty members shall select course requirements based on the legitimate pedagogical goals of the course and discipline, and inform students of the general content and evaluation criteria in the syllabus or comparable documentation at the beginning of any course they teach. Faculty members evaluate student course work promptly, conscientiously, without prejudice or favoritism, and consistently with the criteria stated at the beginning of the course in the course documentation and related to the legitimate pedagogical goals of the course. The documentation for the course should identify, to the extent possible, the writings, lectures, films, presentations, performances, or other course requirements in sufficient detail to allow the student to identify requirements that may conflict with the student's sincerely held core beliefs. Faculty will not always be able to predict in advance requirements that may conflict with the sincerely held core beliefs of a given student or group of students. If conflicts arise, Procedures for Alternative Course Requirements due to Conflicts with Sincerely Held Core Beliefs (403.4) provides guidance to students and faculty for the resolution of conflicts.
- (4) Faculty members with teaching responsibilities maintain regular office hours for consultation with students, or they otherwise assure accessibility to students.
- (5) Faculty members do not plagiarize the work of students. When faculty members and students work together, appropriate credit is given to the students. Faculty members do not limit or curtail the right of any student to publish or otherwise communicate the result of the student's own independent scholarly activities.
- (6) Faculty members do not use their positions and authority to obtain uncompensated labor or to solicit gifts or favors from students. Faculty members do not ask students to perform services unrelated to legitimate requirements of a course unless the student is adequately compensated for such services.
- (7) Faculty members do not reveal matters told to them in confidence by students except as required by law, and then only to persons entitled to such information by law or institutional regulation. Faculty members may, however, report their assessment of a student's performance and ability to persons logically and legitimately entitled to receive such reports.
- (8) Faculty members create and maintain environments in which students are provided the opportunity to do original thinking, research, and writing.
- (9) Faculty members avoid the misuse of the classroom by preempting substantial portions of class time for the presentation of views on topics unrelated to the subject matter of the course. Faculty members do not reward agreement or penalize disagreement with his or her views on controversial topics.
- (10) Faculty members do not engage in the sexual harassment of students (policy 407.9): Faculty do not engage in sexual conduct—including without limitation sharing any sexually explicit or lewd communication, image, or photograph—with any subordinate student, as defined by Utah Code Ann. § 63G-7-301(4)(v).

## 3.2 Standards of Conduct - Professional Obligations

- (1) Faculty members do not plagiarize nor do they permit the appearance that they are the author of work done by others.
- (2) Faculty members do not falsify data either by deliberate fabrication or selective reporting with the intent to deceive.
- (3) Faculty members do not misappropriate other's ideas.
- (4) Faculty members do not misuse privileged or otherwise confidential information.
- (5) Faculty members exercise "reasonable care" (policy 403.3.5) in meeting their obligations to their associates when they are engaged in joint research or other professional effort.
- (6) Faculty members do not exploit their positions for personal or pecuniary gain when supervising the professional work of others. Research for pecuniary return should be conditional upon disclosure to and consent of the vice president for research and dean of the school of graduate studies.
- (7) Faculty members exercise "reasonable care" (policy 403.3.5) in meeting their commitments to the institution and to funding agencies where appropriate in research, publication, or other professional endeavors.
- (8) Faculty members keep informed and knowledgeable about developments in their fields.

~~(9) Faculty members do not engage in the sexual harassment of other faculty members or any employee of the university (policy 407-9).~~

## 3.3 Standards of Conduct - Responsibilities to the Institution

- (1) Faculty members conduct themselves in an open, fair, civil, and humane manner both in general and when making decisions or recommendations concerning admissions, employment, promotion, retention, tenure, and other professional matters.

~~(2) Faculty members do not engage in discrimination in violation of the policies of the university, including without limitation—(policies 303 (Affirmative Action/Equal Opportunity), 305 (Discrimination Complaints), and 339 (Sexual Harassment)). do not harass or discriminate against anyone on the basis of race, color, religion, sex, sexual orientation, gender identity, gender expression, national origin, age, veteran status, or marital or parental status, the presence of any sensory, physical or mental disability or handicap, or for any other reason impermissible under applicable constitutional or statutory provisions.~~

~~(3)~~ Faculty members may engage in outside professional activities that improve their academic skills and have a legitimate relationship to their academic service; however, faculty members must comply with policies 376 and 377, restricting the amount of time spent on noninstitutional commitments, including outside consulting and other non-institutional employment. They also must comply with state law and institutional regulations relating to conflicts of interest.

~~(4)~~ Faculty members do not exploit the institution's name or their relationship to the institution for personal reasons unrelated to their legitimate academic or professional activities. They avoid creating the impression that they are representing the institution in public appearances or statements, unless in fact they are.

~~(5)~~ Faculty members do not purposely destroy institutional property, purposely disrupt institutional programs, purposely inflict physical injury or threaten such injury to other persons on campus, or purposely interfere with the legitimate activities of other persons on the institution's campus, nor do they purposely



and unlawfully incite others to engage in such destruction, disruption, injury, or interference. Provided however:

(a) Non-violent reaction from members of an audience at a meeting or program open to the public shall not be considered disruption or interference of legitimate activities, unless such reaction occurs for the purpose of preventing the continuation of the program and has a reasonable likelihood of succeeding.

(b) Mere advocacy or expression shall not be considered incitement, unless the advocacy or expression poses a clear and present danger of the imminent occurrence of destruction, disruption, injury, or interference.

(56) Faculty members do not misappropriate institutional property or knowingly use it in violation of state or federal law.

(76) Faculty members do not knowingly mislead the institution by falsely asserting facts relevant to their qualifications as faculty members or their eligibility for institutional benefits.

(87) Faculty members adhere to the drug- and alcohol-free workplace policy (policy 313).

### 3.4 Standards of Conduct - Responsibilities of Citizenship

Faculty members share the general legal duties of citizenship. Faculty members who violate state or federal law may expect no immunity or special protection by reason of faculty status. As with other citizens, breaches of legal duty by faculty members are matters for disposition by the legal system. The university will not commence disciplinary proceedings for violations of law unless such violations directly relate to the university or adversely impact on the university's purposes and mission. The university reserves the right to bring disciplinary proceedings against faculty members who are charged with unlawful conduct which also constitutes a violation of a standard of conduct of this policy.

### 3.5 Definition of Reasonable Care

This term, which is familiar to the law, means that the level of performance required of a faculty member is that which is recognized in the profession as reasonable in the light of the obligations which he or she has assumed, competing demands upon his or her energy and time, nature and quality of his or her work, and all other circumstances which the academic community would properly take into account in determining whether he or she was discharging his or her responsibilities at an acceptable level.

## 403.4 PROCEDURES FOR ALTERNATIVE COURSE REQUIREMENTS DUE TO CONFLICTS WITH SINCERELY HELD CORE BELIEFS

It is the student's obligation to determine, before the last day to submit a petition for late course drop without penalty, when course requirements conflict with the student's sincerely held core beliefs. The class should be dropped if a conflict exists. A student who finds this solution impractical may request an alternative requirement from the instructor. Though the university provides, through this policy, a process by which a student may make such a request, the policy does not oblige the instructor to grant the request, except in those cases when a denial would be arbitrary and capricious or illegal. A request for an alternative requirement must be made to the instructor in writing or email, and the student must deliver a copy of the request to the office of the department head. The request must articulate the burden the requirement would place on the student's sincerely held core beliefs.

The instructor must respond to any request for an alternative requirement within two school days of receiving it. The response must be made in writing and a copy must be delivered to the office of the department head. In the event that the class does not meet on the day by which the instructor must respond, the student must make arrangements to receive the response in a timely manner. Instructors are not required to provide an alternative requirement, as long as the original course requirement has a reasonable relationship to a legitimate pedagogical goal. They may do so only if a reasonable alternative means of satisfying the course requirement is available and only if that alternative is fully appropriate for meeting the academic objectives of the course, after considering (1) the fundamental importance of the particular requirement to the legitimate pedagogical requirements of the course; (2) the burden on the student's sincerely held core beliefs; and (3) the difficulty of administering the alternative requirement.

In considering whether or not to provide an alternative requirement, the instructor may evaluate the sincerity but not the validity of the student's beliefs. If an instructor in a course provides an alternative requirement, the instructor must similarly consider all other requests made during the same semester for the same course for alternative requirements to address all students' sincerely held core beliefs. Requests will be individually evaluated in relation to the same considerations; however, the granting of one such request will not guarantee that all requests will be granted. Because the criteria and requirements for granting requests will apply differently to each instructor and to each section of each course, decisions made by an instructor in one course will not affect decisions by the same instructor in other courses or by other instructors in the same or other courses.

If an instructor does not grant a request for an alternative requirement, the student may appeal that denial in writing to the department head. If the department head is the instructor of the course, the student may appeal the denial to the academic dean of the college. The department head will, in consultation with the faculty member, act within two school days. The department head will uphold the denial unless she or he finds that the denial was arbitrary and capricious or illegal. The student may appeal the department head's decision to the academic dean of the college. The academic dean's determination shall be final as it pertains to the specific request for an alternative requirement. Faculty challenges to the appropriateness of this decision should follow established grievance procedures. The student may but is not required to participate in these further reviews.

If the faculty instructor disagrees with the dean's decision that the instructor's denial of the student's request was arbitrary and capricious or illegal, the faculty instructor may not be compelled against his/her professional judgment to administer the requested alternative requirement for the student. If the faculty instructor declines to administer the alternative requirement, it will be the responsibility of the dean in consultation with the department head to design and administer the alternative requirement for the student in order to satisfy the student's request. The dean (or dean's appropriate designee) will determine the student's grade on that specific alternative requirement and will report that grade to the course instructor, who will incorporate that grade for the requirement into the total grade for the course. The final grade in the course will be determined by the faculty instructor and will be calculated in the same way as the final grade is determined for all other students in the course.

A student in good standing may determine, after the last day to submit a petition for late course drop without penalty, that a course requirement conflicts with the student's sincerely held core beliefs. If the instructor has denied the student's written request for an alternative requirement, the student may seek permission in writing from the dean to withdraw without receiving a W on his/her transcript and to receive a refund of tuition for that class. It is the student's responsibility to determine any effect withdrawing from the course may have on the student's financial aid. In making this request the student must demonstrate that he or she could not have made this determination prior to the last day to drop courses without penalty, or that the request was made prior to the last day to drop a course and a decision was made after the drop date. The dean's determination shall be final.

Decisions on requests for alternative requirements shall not be considered adversely to a faculty member in retention, promotion and tenure, or other proceedings as long as those decisions are made in good faith. Faculty shall not take adverse academic action against students requesting alternative requirements. The academic college dean, campus dean, vice chancellor for academic affairs or department head shall not take any adverse action against an instructor based on his/her decision to provide or not to provide an alternative requirement for a student.

# Policy 407: Academic Due Process: Sanctions and Hearing Procedures

Section: Faculty Policies

Policy Number: 407

Subject: Academic Due Process: Sanctions and Hearing Procedures

Origin Date: July 1, 1997

Revision Date(s): October 12, 2001; January 30, 2004; August 31, 2006; March 2, 2008; May 23, 2008; March 6, 2009; August 21, 2009; July 8, 2011; May 3, 2013, May 2, 2014, May 1, 2015

Effective Date: May 1, 2015

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## 407.1 INTRODUCTION

This section of the policy manual describes allowable sanctions that may be imposed on a faculty member and specifies procedures for the imposition of a sanction and for conducting a grievance hearing.

Where administrators have faculty assignments, they are subject to the provisions of this policy, such provisions to be carried out by their immediate supervisors.

In the absence of the president, or where a potential or actual conflict of interest exists, the president may designate a tenured faculty member to act on his/her behalf. If the provost is not a tenured faculty member or where a potential or actual conflict of interest exists, the provost may designate a tenured faculty member to act on his/her behalf.

In all proceedings in this policy, the rights of access to records are maintained (see Policy 405.6.4).

Notwithstanding any provisions of this policy or related policies, the University reserves the right to take any action as it may be required by law, including without limitation, actions necessary to discharge the University's federal, state, or local legal obligations as applied to the University through legislative action, regulation, or administrative rule and/or guidance.

### 1.1 Non-punitive Measures

Minor departures from professional behavior can often be corrected simply by calling the matter to the attention of the faculty member involved. Such minor lapses are handled within the faculty member's academic unit. However, any conversations between the faculty member and the department head, supervisor, academic dean, Vice President for Extension, regional campus dean, or other administrative officer about the grounds for believing that the faculty member has failed to comply with the standards of conduct defined in Policy 403 shall be memorialized in writing by

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~~the administrative officer or officers concerned within five business days of such conversations in the form of a letter. This letter shall be provided to the faculty member upon its completion. The faculty member may provide a response to this letter within three days of receipt.~~

Non-punitive measures such as guidance, leave of absence, voluntary resignation, or early retirement should be considered and taken in lieu of a sanction when: (1) it is available; (2) it will provide reasonable assurance that the faculty member will not repeat his/her violation of professional responsibility; (3) substantial institutional interests are not undermined; and (4) the faculty member consents thereto. The faculty member should consult with the Americans with Disabilities Act (ADA) Coordinator within the Office of Human Resources (HR) if performance issues are medically related.

## 1.2 Definitions of Days

In all proceedings under Policy 407, a day is defined as a calendar day (Sunday through Saturday, excluding official university holidays).

## 407.2 SANCTIONS

Misconduct contrary to the standards of conduct set forth in Policy 403 may lead to sanction. Minor departures from responsible professional behavior are likely to be minor lapses, which can be corrected simply by calling the matter to the attention of the faculty member involved. Such minor lapses are handled within the faculty member's academic unit.

Apparent failures to comply with the standards of conduct are approached by positive attempts to improve faculty performance such as sustained attempts to inform, persuade, and improve. If appropriate, positive efforts to improve faculty performance shall precede or accompany all sanctions.

## 2.1 Authorized Sanctions

### (1) Reprimand.

A reprimand is a written statement detailing a violation of the standards of conduct in Policy 403.

### (2) Probation.

Probation is a period of time, not to exceed one year, during which faculty members who have violated the standards of conduct in Policy 403 are afforded the opportunity to demonstrate their ability to comply with their professional responsibilities. Failure to fulfill the terms of probation may result in the imposition of another sanction.

### (3) Suspension.

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Suspension is the barring of a faculty member from the exercise of all or part of his/her duties for a period of time, not to exceed one year. Suspension may be imposed with full pay, partial pay, or without pay.

#### (4) Reduction in rank.

Reduction in rank is a one-step reduction in faculty rank as defined in Policies 401.4 and 401.5. Reduction in rank is different from reduction in status (see Policy 406.2.3 (2)).

#### (5) Dismissal.

Dismissal is the ending of employment.

Termination and non-renewal are defined here to differentiate them from dismissal. Termination and non-renewal are not sanctions. Termination means the ending of employment of a tenured faculty member or a faculty member with term appointment for program discontinuance, financial crisis, or bona fide financial exigency. Non-renewal means the ending of employment of a faculty member without tenure or a faculty member with term appointment by non-renewal of his/her contract (see Policy 405).

## 2.2 Purpose

The imposition of a sanction should serve one or more of the following purposes: (1) to induce self-improvement and reform by a faculty member whose conduct demonstrates the need for self-improvement and reform; (2) to indicate to the faculty member the seriousness of his/her violation and thereby deter him/her from future violations; (3) to reassure the institutional community that violations of the standards of conduct will not be tolerated, thereby helping to maintain respect for and commitment to the standards by other members of the institutional community; or (4) to remove from institutional employment faculty members whose violation of the standards of conduct makes them unsuitable to continue in beneficial service to the institution.

## 2.3 Imposing a Sanction

The decision to impose a sanction should be guided by fairness, professionalism, and should be designed to allow for an escalating set of consequences where appropriate.~~guided by mercy and restraint.~~ A sanction shall be imposed when: (1) the purpose set forth in Policy 407.2.2 cannot be adequately served by non-punitive measures; (2) the sanction is not disproportionately severe in relation to the violation of the standards of conduct for which it is imposed; and (3) the imposition of such sanction is fair and just to the faculty member involved, giving due consideration to the situation and to any relevant matters tending to mitigate the seriousness of the violation.

Sanctions are mutually exclusive and are imposed by the authority of the president. However, probation and another sanction consequent on the failure to fulfill the terms of probation cannot be imposed simultaneously. Sanctions are not cumulative; the sanctions are progressive in severity, but do not have to be imposed progressively.

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## 2.4 Restitution

When a sanction less than dismissal is imposed, the terms of imposition may include the requirement that the faculty member take reasonable action to make restitution or to remedy a situation created by a violation of the standards of conduct.

## 2.5 Double Jeopardy

No faculty member shall be twice subject to proceedings under this policy for the same instance of a violation of a standard of conduct.

Where a faculty member has been subject to proceedings in a court of law, a sanction shall not be imposed on the faculty member for the same acts unless the acts constitute violations of the standards of conduct in Policy 403.

# 407.3 PROCEDURES FOR REPRIMANDS

## 3.1 Notification of Intent to Issue a Reprimand

If a faculty member's department head or supervisor and academic dean or the vice president for extension, or, where appropriate, chancellor or regional campus dean believe that a faculty member has violated the standards of conduct in Policy 403 and such violation warrants a reprimand, they shall notify the faculty member of the basis of the proposed reprimand. The faculty member shall be afforded an opportunity to meet and persuade them that the proposed reprimand should not be imposed. If a reprimand is imposed, it must be issued within 5 days of the meeting.

## 3.2 Review of Reprimand

If a faculty member believes that the reprimand has been unjustly imposed, he or she may request a review of the reprimand by the Academic Freedom and Tenure Committee. Such request must be made in writing to the chair of the committee within 20 days after the faculty member receives the reprimand. Within 20 days of receipt of a written request for review, the chair of the Academic Freedom and Tenure Committee shall select by lot and convene a special panel of three members of the Academic Freedom and Tenure Committee (see Policy 402.12.3(2)). The panel shall provide the faculty member with the opportunity to submit a detailed written statement if he or she desires. The panel shall decide whether the facts merit a reprimand hearing. Submission of a request for review does not automatically result in a reprimand hearing.

The panel may seek to bring about a settlement of the matter with the consent of all parties involved. If settlement is not possible or appropriate within 20 days after the panel is convened, the panel will decide whether or not to hold a hearing on the matter.

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### 3.3 Reprimand Hearing

The reprimand hearing will occur within 10 days after the review of the reprimand by the panel. The hearing will be informal but will provide the faculty member and those imposing the reprimand with the rights to be present, to be heard, and to present evidence.

Within 10 days after the hearing, the panel will report its findings and recommendations in writing to the faculty member and to those imposing the reprimand. If the panel determines that the written reprimand is unjust or otherwise inappropriate, such sanction shall be rescinded by those who imposed it and removed from the faculty member's file.

## 407.4 PROCEDURES FOR SANCTIONS OTHER THAN REPRIMANDS

Probation, suspension with other than full pay, reduction in rank, and dismissal may be imposed on a faculty member ~~only~~ after it has been determined, by the proceedings in this policy or in Policy 305 (Discrimination Complaints), that he or she has violated the standards of conduct in Policy 403. The president may ~~suspend a place a~~ faculty member on administrative leave with full pay pending completion of the procedures described below or in Policy 305. Administrative leave is intended to be a non-punitive measure and is to be distinguished from suspension imposed as a sanction. In all proceedings to impose a sanction other than a reprimand, the following procedures shall govern, except for procedures which govern allegations of research fraud (see Policy 407.8) ~~and sexual harassment (Policy 407.9)~~. The sanction process will be transparent and expedient for the accused, the accuser(s), and all other cognizant parties. Faculty may choose to be accompanied by an advocate or observer during any sanction-related meeting with USU personnel or their representative(s), may request a reasonable delay of an ad hoc meeting to obtain such assistance, and must be informed of all relevant progress or decisions made in their absence.

### 4.1 Initiation

Whenever there are grounds to believe that a faculty member has failed to comply with the standards of conduct in Policy 403, the president, upon his/her own initiative, upon a recommendation from a department head, supervisor, academic dean, the vice president for extension, chancellor, regional campus dean, or other administrative office, upon request of the Board of Trustees, or upon the receipt of complaints from any person, may initiate proceedings for probation, suspension, reduction in rank, or dismissal of a faculty member.

### 4.2 Notice of Intent to Impose a Sanction

At the direction of the president, the provost shall cause written notice to be delivered personally or by certified mail, return receipt requested, to the faculty member under investigation. A copy of this notice shall be sent to the chair of the Academic Freedom and Tenure Committee, along with a statement confirming the date the faculty member received it. Copies will also be sent to the faculty member's department head or supervisor and academic dean, vice president for extension, or, where appropriate, chancellor or regional campus dean.

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Such notice shall contain the following:

(1) A concise and clear statement of the facts, conduct, or circumstances reported to constitute failure to comply with the standards of conduct in Policy 403, including a statement of the standard or standards the faculty member is alleged to have violated.

(2) A statement of the sanction proposed.

A statement that (a) the faculty member has the right to be heard in a conference with the provost (see Policy 407.4.5) either in person or by electronic conferencing; (b) the faculty member may have an advisor of his/her own choosing present at such conference; (c) this conference must be requested in writing within 5 days after receipt of the notice by the faculty member; and (d) this conference must be held within 10 days after receipt of notice by the faculty member.

(4) A statement of the schedule of events that lead to a formal hearing, and that a faculty member may be accompanied at such hearing by an advisor of his/her own choosing.

(5) A statement that within 20 days of the receipt of this notice, the faculty member, if he or she wishes to contest the alleged violation, must file in writing with the chair of the Academic Freedom and Tenure Committee a statement of intent to contest the alleged violation through formal hearing; and that failure to do so will result in the imposition of the proposed sanction.

(6) A statement that within 20 days of the filing of the written statement of intent to contest the alleged violation through formal hearing, the faculty member must file, with the chair of the hearing panel, a written response which answers the alleged violation contained in the original notice; and that failure to do so will result in the imposition of the proposed sanction.

### 4.3 Schedule of Events

The proceedings shall commence with the receipt by the faculty member of the written notice as described in Policy 407.4.2. A copy of the notice must be delivered by the provost to the chair of the Academic Freedom and Tenure Committee within 10 days of receipt of notice by the faculty member.

If the faculty member desires a conference with the provost, he or she must request it within 5 days of receipt of notice. The conference must be held within 10 days of receipt of notice.

The faculty member must present to the chair of the Academic Freedom and Tenure Committee a written statement of intent to contest the alleged violation through formal hearing within 20 days of receipt of notice. The chair of the Academic Freedom and Tenure Committee must notify the provost of the faculty member's intent to contest the alleged violation through formal hearing within 10 days of receiving such statement of intent.

The chair of the Academic Freedom and Tenure Committee must appoint four members of a hearing panel (Policy 402.12.3(7)), including a hearing panel chair, within 10 days of the filing of the written statement of intent to contest the alleged violation through formal hearing. The president must appoint an administrative member of the hearing panel within the same time.

The faculty member must file, with the chair of the hearing panel, a written response which answers the alleged violation contained in the original notice, within 20 days of the filing of the

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written statement of intent to contest the alleged violation through formal hearing. The chair of the hearing panel must provide the president with a copy of the faculty member's written response which answers the alleged violation contained in the original notice within 5 days of receiving such response.

A prehearing conference will be held within 10 days prior to the formal hearing. The formal hearing will be held within 40 days of receipt of the faculty member's statement of intent to contest the alleged violation through formal hearing. The chair of the hearing panel will schedule the hearing date. The hearing panel must provide a written report of its recommendation to the president, provost, and to the faculty member within 20 days of the hearing.

The schedule of events for sanctions may be suspended for a reasonable time if key participants are not available either in person, by teleconference, by letter, or other appropriate means. The hearing panel, appointed by the chair of the Academic Freedom and Tenure Committee, will determine by a majority vote whether a suspension of the schedule of events for sanctions is warranted.

#### 4.4 Emergencies

Emergencies may be grounds for a reasonable extension of the time limits for filing a notice of intent to contest the alleged violation, or for responding to the alleged violation, or for conducting the hearing. Such emergencies must be of a serious and compelling nature, and any such extension shall be by mutual agreement. Failing agreement, an extension for filing a notice of intent to contest the alleged violation is granted only by a majority vote of the Academic Freedom and Tenure Committee; an extension for filing a written response or for conducting the formal hearing is granted only by a majority vote of the hearing panel.

#### 4.5 Conference with Provost

A faculty member notified of an intent to impose a sanction has the right to be heard in conference with the provost either in person or by electronic conferencing. The schedule for requesting and holding a conference is specified in 4.3 above. Both the faculty member and the provost may each have an advisor of their own choosing present at the conference. The purpose of the conference is to attempt to reach an agreement or settlement. In the event that the alleged violations are disposed of by mutual agreement or negotiation at the conference, no hearing need be held. A copy of such settlement shall be sent to the chair of the Academic Freedom and Tenure Committee.

The right to a conference with the provost is discretionary with the faculty member; requesting or rejecting such a conference does not abrogate the faculty member's right to a formal hearing.

#### 4.6 Notice of Intent to Contest the Alleged Violation

A faculty member notified of action leading to sanction must file a notice of intent to contest the alleged violation if the faculty member desires a formal hearing. The notice of intent to contest the alleged violation must be filed with the chair of the Academic Freedom and Tenure Committee

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within 20 days of receipt of notice. Failure to do so will result in entry of the faculty member's default in the premises, and the imposition of the proposed sanction.

## 4.7 Response to the Alleged Violation

The faculty member must file a written response which answers the alleged violation contained in the original notice with the chair of the hearing panel within 20 days of the filing of the written statement of intent to contest the alleged violation. Appropriate, substantiating documentation shall be submitted with the response. Failure to do so will result in entry of the faculty member's default in the premises, and the imposition of the proposed sanction.

## 4.8 Pre-hearing Conference

Within 10 days prior to the date set for the hearing, a pre-hearing conference will be held before the chair of the Academic Freedom and Tenure Committee, who shall preside, and the chair of the hearing panel. At this pre-hearing conference the provost or administrative representative and the faculty member shall make available to each other lists of their proposed witnesses and the documentary evidence to be introduced at the hearing. The prehearing conference shall delineate the issues to be examined at the hearing, stipulate the facts to be agreed upon, and achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious.

Before the formal hearing begins, upon request, either party shall allow the other to examine all documentary evidence and any written or recorded statements that were made by witnesses listed by either party.

## 4.9 Hearing to Consider Imposition of a Sanction

### (1) Date.

The formal hearing will be held within 40 days of receipt of the faculty member's statement of intent to contest the alleged violation through formal hearing. The chair of the hearing panel will schedule the hearing date. The formal hearing may be continued upon good cause shown by either party. The panel will grant adjournment to enable either party to investigate evidence to which a valid claim of surprise is made.

### (2) Records; witnesses; counsel.

Upon request by either the provost or administrative representative, the faculty member, or any member of the hearing panel, the chair of the hearing panel shall request the production of university records and the presence of witnesses to appear and testify. Compliance with such requests is an obligation of employment of any university official or employee except that the privilege against self-incrimination and access to university records as provided in Policy 405.6.4 shall be honored by the panel.

The faculty member and the provost or administrative representative each have the right to have present any one person as an advisor of their choice at all stages of the hearing. The faculty

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member and the provost or administrative representative shall also each have the right to confront and cross-examine witnesses, to present evidence and call witnesses in their own behalf, to testify, and to be present with their advisor and/or counsel at all meetings and proceedings of the panel except sessions which are closed for deliberation and vote. The faculty member's advisor and the provost or administrative representative's advisor are permitted to advise and counsel their respective parties but are not permitted to argue the case or interrogate witnesses. Members of the hearing panel may question witnesses and parties to the hearing.

### **(3) Opening the hearing to the public.**

Hearings shall be closed to the public unless the faculty member requests that they be open and the panel determines, following such request, that an open hearing will not prejudice the interests of the university, the faculty member, or the witnesses. When an open hearing is requested by the faculty member but such request is denied, the specific reasons for denial shall be stated in the record. In any closed hearing the faculty member and the provost or administrative representative shall each have the right to the presence of not more than three persons each designated by them as observers.

### **(4) Hearing record.**

A verbatim record of the hearing or hearings shall be made by the president's office and, upon request, a written copy shall be made available to the faculty member without cost.

### **(5) Burden of proof.**

The burden of proof that adequate cause exists to impose a sanction rests with the provost or administrative representative and shall be satisfied only by a preponderance of the evidence in the record considered as a whole.

The panel will not be bound by rules of evidence, and will admit any evidence that is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

The findings of fact and the recommendation will be based solely on the hearing record.

### **(6) Publicity.**

Except for such simple announcements as may be required covering the time of the hearing and similar matters, public statements and publicity about the case by all parties and persons involved or present will be avoided as far as possible until the proceedings have been completed.

### **(7) Deliberations; standards for review.**

Hearing panel deliberations and voting shall be conducted in closed sessions from which all other persons are excluded. Upon request of any member of the panel, votes shall be taken by secret written ballot. A simple majority of members shall be required for recommendations by the

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hearing panel. The panel chair shall be entitled to vote on all questions. The hearing panel may recommend the sanction proposed by the provost or a less severe sanction, including no sanction.

The standard of review by the hearing panel shall be whether the imposition of the proposed sanction (a) is an arbitrary or capricious action, (b) fails to accord the faculty member the academic due process statutory, or constitutional, established by these policies, (c) violates the academic freedom of the faculty member, or (d) violates the legal, statutory, or constitutional rights of the faculty member. If the faculty member asserts a violation of statutory or constitutional civil rights in any of the protected categories of race, color, religion, sex, national origin, age, disability, marital or parental status, or veteran's status, in the faculty member's written response to the alleged violation or at any time during the course of the proceeding, such claims shall be immediately referred in writing to the Affirmative Action/Equal Opportunity (AA/EO) Office by the chair of the hearing panel. All such statutory and constitutional civil rights claims shall be handled as outlined in Policy 305.

The hearing panel must report its recommendation to the president, the provost, and to the faculty member within 20 days of the hearing.

#### 4.10 Decision by the President

The president shall review the report and recommendation of the hearing panel and notify the faculty member, the provost, and the chair of the Academic and Freedom Committee of his/her decision within 10 days.

Prior to making his/her decision, the president may remand the matter to the hearing panel for review and further hearing, if necessary. The president shall state in writing to the chair of the hearing panel the specific purposes or reasons for the remand. The further review and hearing shall be limited to those purposes or reasons. The hearing panel shall complete its review and report its conclusions to the president within 20 days after receipt of the remand by the chair of the hearing panel. The president shall review the report and notify the faculty member, the provost, and the chair of the Academic Freedom and Tenure Committee within 10 days of his/her decision.

The decision of the president is final.

#### 4.11 ~~Temporary Suspension~~ Administrative Leave with Full Pay Pending Legal Action

In the event that a faculty member is charged with a felony or other serious crime that affects an institutional interest, or in the event of an investigation of the faculty member pursuant to University Policy Number 305, the ~~president provost~~ may ~~temporarily suspend~~ place the the faculty member on administrative leave with full pay without following the procedures above upon written notice to the faculty member. This ~~suspension leave~~ shall remain in effect until such time as the faculty member has resigned, been acquitted of the ~~felony criminal~~ charges, or been sanctioned according to procedures above.

### 407.5 GRIEVANCES

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Faculty members may grieve actions taken against them, including actions initiated by the university against the faculty member. Grievances are allegations of arbitrary or capricious conduct; violations of legal, constitutional, or statutory rights; or violations of this code or other adopted policies and procedures. A faculty member may not grieve a decision reached under Policies 407.3, and .4.

## 5.1 Initiation

A faculty member who has grounds to file a grievance may file written notice of intent to grieve with the chair of the Academic Freedom and Tenure Committee in a timely fashion, but in no instance later than 120 days after the grievant knew or should have known the facts and circumstances giving rise to the grievance.

However, if the subject of the grievance is termination, non-renewal (including the denial of tenure), or reduction in status a faculty member must file written notice of intent to grieve with the chair of the Academic Freedom and Tenure Committee within 20 days of receipt of notice of termination, non-renewal, or reduction in status.

Once notice of intent to grieve has been filed with the chair of the Academic Freedom and Tenure Committee, the actual grievance statement must be filed in writing with the chair of the Academic Freedom and Tenure Committee within 20 days. Failure to file the grievance statement during this time dismisses the intent to grieve with prejudice against the faculty member refiling.

Proceedings for grievances may be suspended for a reasonable time if key participants are not available either in person, by teleconference, by letter, or other appropriate means. The hearing panel, appointed by the chair of the Academic Freedom and Tenure Committee, will determine by a majority vote whether a suspension of grievance proceedings is warranted.

## 5.2 Grievance Statement

The grievance statement must include a specific identification of the grievance, a concise summary of the evidence with supporting documentation, and a list of individuals (i.e., respondents) who are asked to respond to the grievance statement. Five copies plus an additional copy for each respondent must be filed with the chair of the Academic Freedom and Tenure Committee.

If a faculty member asserts a violation of statutory or constitutional civil rights in any of the protected categories of race, color, religion, sex, national origin, age, disability, marital or parental status, or veteran's status in his/her grievance statement (or at any time during the course of the proceeding), such claims shall be immediately referred in writing to the AA/EO Office by the chair of the Academic Freedom and Tenure Committee. All such statutory and constitutional civil rights claims shall be handled as outlined in Policy 407.8. The chair of the Academic Freedom and Tenure Committee shall inform the faculty member in writing.

## 5.3 Grievance Hearing Panel

Once the grievance statement has been filed, the chair of the Academic Freedom and Tenure Committee must, within 15 days, appoint a grievance hearing panel in accord with Policy 402.12.3.

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The president will appoint the fifth member of the grievance hearing panel within 15 days of the filing of the grievance statement.

## 5.4 Distribution of Grievance Statement and Responses

Within 5 days after the filing of the grievance statement, the chair of the Academic Freedom and Tenure Committee must distribute copies of the grievance statement to each of the respondents named in the grievance.

Within 20 days after the filing of the grievance statement, these respondents must file six copies of their written responses with the chair of the grievance hearing panel. Within 25 days after the filing of the grievance statement, the chair of the grievance hearing panel must distribute the respondents' responses to the grievant.

Within 25 days after the filing of the grievance statement, the chair of the grievance hearing panel must distribute copies of the grievance statement and the respondents' responses to the remaining members of the grievance hearing panel.

## 5.5 Pre-hearing Conference

Within 40 days after the filing of the grievance statement, a pre-hearing conference shall be held before the chair of the Academic Freedom and Tenure Committee, who shall preside, and the chair of the grievance hearing panel. At this pre-hearing conference the parties shall make available to each other lists of their witnesses and the documentary evidence to be introduced at the hearing. The pre-hearing conference shall delineate the issues to be examined at the hearing, stipulate the facts to be agreed upon, and achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious. Before the formal hearing begins, upon request, either party shall allow the other to examine all documentary evidence and any written or recorded statements that were made by witnesses listed by either party.

## 5.6 Grievance Hearing

### (1) Date.

The grievance hearing will be held within 20 days of the pre-hearing conference. The grievance hearing panel will schedule the hearing. The grievance hearing may be continued upon good cause shown by any of the parties and mutual agreement thereto. The grievance hearing panel will grant adjournment to enable either party to investigate evidence to which a valid claim of surprise is made.

### (2) Records; witnesses; counsel.

Upon request by either of the parties to the grievance, the hearing panel shall request the production of university records and the presence of witnesses to appear and to testify. Compliance with such requests is an obligation of employment of any university official or

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employee except that the privilege against self-incrimination and access to university records as provided in Policy 405.6.4 shall be honored by the hearing panel.

Each party to the grievance has the right to have present any one person as an advisor of his/her choice at all stages of the hearing. Each party shall also have the right to confront and cross-examine witnesses, to present evidence and call witnesses in his/her own behalf, to testify, and to be present with his/her advisor at all meetings and proceedings of the hearing panel except sessions which are closed for deliberation and vote. The advisors and counsels are permitted to advise and counsel their respective parties but are not permitted to argue the case or interrogate witnesses. Members of the hearing panel may question witnesses and parties to the hearing.

### **(3) Opening the hearing to the public.**

Grievance hearings shall be closed to the public unless a party requests that they be open, the other party agrees, and the hearing panel determines that an open hearing will not prejudice the interests of any of the parties to the grievance. Where an open hearing is requested on the mutual consent of the parties but such request is denied, the specific reasons for denial shall be stated in the record. In any closed grievance hearing the parties shall have the right to choose and to have present not more than three persons each designated by them as observers.

### **(4) Record.**

The chair of the hearing panel will be responsible for seeing that a taped record of the hearing is taken. If a written record is desired by either party to the grievance, the parties will share equally in the cost of the transcription.

### **(5) Burden of proof.**

The burden of proof that adequate cause for grievance exists rests with the faculty member and shall be satisfied only by a preponderance of the evidence in the record considered as a whole.

The grievance hearing panel will not be bound by strict rules of evidence, and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

The findings of fact and the recommendation will be based solely on the hearing record.

### **(6) Publicity.**

Except for such simple pronouncements as may be required covering the time of the hearing and similar matters, public statements and publicity about the grievance by either party will be avoided as far as possible until the proceedings have been completed.

### **(7) Deliberations.**

Hearing panel deliberations and voting shall be conducted in closed sessions from which all other persons are excluded. Upon request of any member of the hearing panel, votes shall be taken by

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secret ballot. A simple majority of members shall be required for recommendations. The chair shall be entitled to vote on all questions.

**(8) Recommendation of the hearing panel.**

In its finding, the hearing panel will determine only whether the grievance is valid or not valid; that is, whether or not there has been arbitrary or capricious conduct, violations of legal, constitutional, or statutory rights, or violations of these policies or other adopted policies and procedures. The determination of the hearing panel shall be binding on the Academic Freedom and Tenure Committee as a whole. A hearing panel shall submit a written report and recommendation to the president within 20 days of the hearing. A copy of the hearing panel’s report shall be forwarded to both parties to the grievance.

**(9) Presidential review and recommendation.**

The president shall review the report and recommendation of the hearing panel and notify the parties to the grievance of his/her decision within 10 days. The decision of the president is final.

**407.6 NON-RENEWAL**

**6.1 Definition of Non-Renewal**

Non-renewal is the ending of employment of tenure-eligible or term appointment faculty, other than by dismissal (Policy 407.2.1(5)) or by termination (Policy 406.2.3(2)). When non-renewal occurs at the end of the pre-tenure probationary period for tenure-eligible faculty (Policy 405.1.4), it is a denial of tenure.

**6.2 Reasons for Non-Renewal**

There are only three reasons for non-renewal: unsatisfactory performance of the faculty member’s assigned role (Policies 405.6.1 and 11.1); failure to satisfy the criteria for the award of tenure; or cessation of extramural funding that is required for a substantial portion of the salary support of the faculty member. Non-renewal prior to the end of the pre-tenure probationary period for tenure-eligible faculty is an administrative decision of the department head or supervisor, academic dean or vice president for extension, and, where appropriate, the chancellor or regional campus dean, and must be approved by the provost and president. In making a decision regarding non-renewal, the department head or supervisor, academic dean or vice president for extension, and, where appropriate, the chancellor or regional campus dean is to take into consideration the most current and all previous reports from the Tenure Advisory Committee when making a decision regarding non-renewal (Policy 405.6.2(1)). Tenure-eligible and term appointment faculty members may not have their appointments nonrenewed for reasons that violate their academic freedom or legal rights.

**6.3 Notice of Non-Renewal**

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### (1) Delivery of notice.

The president or the president's designee shall prepare written notice of non-renewal and shall deliver the notice personally to the faculty member, or shall have the notice delivered by certified mail, return receipt requested. If the notice is thus mailed, it is deemed effective for all purposes.

### (2) Notification schedule.

For tenure-eligible faculty appointments, non-renewal must first be preceded by the following minimum notice (a) not later than March 1 for first-year and second-year appointees; (b) not later than December 10 for third-year appointees; (c) no later than January 29 prior to the issuance of a terminal year appointment for fourth-year and fifth-year appointees, except in the case of denial of tenure (see Policy 407.6.1), where minimum notice shall be not later than April 15.

For term appointments commencing at times other than the beginning of the academic year, notice of non-renewal must be no later than: (a) 60 days prior to the end of the first year of service; (b) 130 days prior to the end of the second year of service; or (c) 30 days prior to the issuance of a terminal year appointment after two or more years of service.

## 6.4 Procedures

### (1) Statement of reasons for non-renewal.

Reasons for non-renewal may be stated in the notice of non-renewal, at the president's discretion.

### (2) Conference.

Within 5 days of the receipt of the notice of non-renewal, at the faculty member's request, a conference to discuss the non-renewal shall occur between the department head and the faculty member who received notice of nonrenewal.

### (3) Review by higher administrative level.

Within 15 days of the notice of non-renewal, at the faculty member's request, the non-renewal and relevant documentation shall be reviewed in a conference including the faculty member and the academic dean or vice president for extension, and, where appropriate, the chancellor or regional campus dean. Unless specifically requested by the faculty member, this conference shall not include the department head or supervisor.

## 407.7 INQUIRY INTO ALLEGATIONS OF SCIENTIFIC MISCONDUCT IN RESEARCH AND IMPOSING SANCTIONS FOR RESEARCH FRAUD

In order to distinguish misconduct from honest error and ambiguities of interpretation that are inherent in scientific research, and to provide an environment that promotes integrity, the

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university has adopted procedures for assessing allegations and conducting inquiries and investigations related to possible scientific misconduct in research. These procedures are contained in the most recent version of "UTAH STATE UNIVERSITY Scientific Misconduct Procedures" (USU-SMP). The USU-SMP procedures were recommended by the Office of Research Integrity of the U. S. Department of Health and Human Services and modified by USU. The USU-SMP are maintained and made available by the vice president for research and dean of the school of graduate studies. They shall also be included in the Faculty Handbook.

## 7.1 Applicability

The Scientific Misconduct Procedures apply to all faculty, professional employees, graduate and undergraduate researchers, trainees, technicians, staff members, fellows, guest researchers or collaborators conducting funded research at USU.

If the imposition of a sanction is recommended for a member of the faculty as a result of such inquiry and investigation, these sanctions shall apply for research fraud as defined in Policy 407.7.2(2) and shall be governed by the procedures in described in Policy 407.4.

## 7.2 Definitions

### (1) Definitions of Scientific Misconduct in Research

Scientific misconduct or misconduct in science means fabrication, falsification, plagiarism, using data generated by someone else without permission, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

### (2) Definition of Research Fraud for the Imposition of a Sanction

Research fraud is an act of deception which that is different from unintentional error. For the purposes of imposing a sanction under Policy 407.4, research fraud is considered to be a violation of the standards of conduct set forth in Policy 403 which occurs within a research setting and involves one or more of the following deceptive practices: plagiarism (Policy 403.3.2(1)); falsification of data (Policy 403.3.2(2)); misappropriation of other's ideas (Policy 403.3.2(3)); failure to exercise "reasonable care" where appropriate in research (Policy 403.3.2(7) and 403.5)); and misuse of confidential or privileged information (Policy 403.3.2(4)).

### (3) Definition of the Accuser in Scientific Misconduct

The accuser is a person who makes an allegation of scientific misconduct.

### (4) Definition of the Respondent in Scientific Misconduct

The respondent is the person against whom an allegation of scientific misconduct is directed or the person who is subject of the inquiry or investigation.

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### 7.3 Research Integrity Officer

The Research Integrity Officer is responsible for assessing allegations of scientific misconduct and determining when such allegations warrant inquiries and for overseeing any inquiries and investigations. This officer will be the vice president for research and dean of the school of graduate studies.

### 7.4 Inquiry into Allegations of Scientific Misconduct

The procedures detailed in the USU-SMP will be followed when an allegation of possible misconduct in science is received by an academic or administrative officer. Special circumstances in an individual case may dictate a variation from the normal procedure when doing so is deemed to be in the best interest of the university. Any change from the normal procedure must ensure fair treatment to the subject of the inquiry or investigation. Any significant variation must be approved in advance by the vice president for research and dean of the school of graduate studies.

### 7.5 Protection of the Good Faith Accuser and the Respondent

University employees who receive or learn of an allegation of scientific misconduct will treat the accuser with fairness and respect and, when the allegation has been made in good faith, will take reasonable steps to protect the position, confidentiality, and reputation of the accuser and other individuals who cooperate with the university against retaliation. Likewise, university employees who receive or learn of an allegation of scientific misconduct will treat the respondent with fairness and respect. In both instances, university employees will protect, to the maximum extent possible, the confidentiality of information regarding the accuser, the respondent, and other affected individuals.

## **407.8 DISCRIMINATION, SEXUAL HARASSMENT, AND DISALLOWED CONSENSUAL RELATIONSHIPS**

### 8.1 Grievance and Sanction Protocols

#### **(1) Initiation.**

Pursuant to University Policy 305, any Utah State University employee, job applicant, or student who feels he or she may have been the victim of discrimination in employment and/or academic-related practices and decisions, unfair employment practice, or sexual harassment may file a Complaint with the Office of Equity.

#### **(2) Procedures.**

All such Complaints, including Complaints alleging that a faculty member violated any relevant provision(s) of Policy 403 or Policy 339 under the purview of the Office of Equity shall be processed

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and investigated pursuant to the protocols set forth in University Policy 305 and/or pursuant to the applicable Office of Equity processes and procedures. Any sanction sought following such an investigation must follow the procedures set forth in section 407.3. and/or 407.4 of this policy, as applicable. Faculty may appeal the final decision of the Equity Office investigation to a panel composed of members of the Equity Office Advisory Council as described in Policy 305. A faculty member will serve as the Chair and at least two-thirds of the membership of the appeal hearing panel will be faculty members having tenure, consisting of at least two faculty members, one of whom will serve as the chair. This panel will be composed of members of the Equity Office Advisory Council.

### **(3) Temporary suspension Administrative leave with full pay pending final disposition.**

In extraordinary circumstances, where the provost concludes that serious and immediate harm will ensue if the faculty member continues to work, and after consulting the chair of the Academic Freedom and Tenure Committee, the provost may at any time during or after an inquiry or investigation into a sexual harassment complaint recommend to the president the suspension with pay of that any faculty member accused of sexual harassment may be placed on administrative leave with full pay.

### **(4) Report to the Academic Freedom and Tenure Committee.**

Whenever a referral has been made by an Academic Freedom and Tenure grievance committee to the Office of Equity, the Director of the Office of Equity shall meet periodically with the Academic Freedom and Tenure grievance committee and the chair of the Academic Freedom and Tenure Committee to discuss any inquiry or investigation.

### **(5) Exclusive action.**

A faculty member may not file a grievance under Policy 407.6 to challenge the proceedings under this policy or Policy 305. that

### **(6-5) Protection of the Parties.**

The Office of Equity Policy 305 generally describes a grievance process that is extended to the members of the University community listed in Policy 305. This process is designed to faithfully balance the rights of individuals to make Complaints and the rights of individuals to respond to Complaints. To help ensure the integrity of this process, a party found to have been intentionally dishonest in making allegations or responding to allegations may be subject to sanction or other university discipline.

## **8.2 Other Investigatory Methods**

Neither the terms of this section 407.8 nor the terms of Policy 305 preclude other investigatory methods, such as an official internal investigation approved by the Office of the Provost so long as

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the procedures set forth in section 407.3 and/or 407.4, as applicable, govern the implementation of any sanction(s) stemming from such an investigation.

## 8.3 Disallowed Consensual Relationships

A disallowed consensual relationship (see Policy 403.1) may be grieved pursuant to section 407.8 of this policy and Policy 305. However, neither the terms of this section 407.8 nor the terms of Policy 305 preclude other investigatory methods relating to disallowed consensual relationships, such as internal investigation, so long as the procedures set forth in section 407.3 and/or 407.4, as applicable, govern the implementation of any sanction(s).

## 407.8 SEXUAL HARASSMENT

### 8.1 Definition of Sexual Harassment

~~Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:~~

- ~~(1) Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment or status in a course, program, or activity, including a student's academic success;~~
- ~~(2) Submission to or rejection of such conduct is used as a basis for an employment decision affecting an individual; or~~
- ~~(3) Such conduct unreasonably interferes with an individual's work or academic performance or creates an intimidating, hostile, or offensive working or learning environment.~~

### 8.2 Policy Statement

~~No faculty member shall engage in sexual harassment. Sexual harassment will not be tolerated by the faculty or administration of the university. Any statement in Policies 407.8 and 407.9 that refers to faculty also applies to students with teaching or research responsibilities and other instructional personnel of the university.~~

~~Sexual harassment may involve a misuse of power and threaten relationships between teacher and student or supervisor and subordinate and may exist among peers.~~

### 8.3 Examples of Sexual Harassment

~~Sexual harassment encompasses the verbal or physical conduct prohibited by Policy 407.8.1 above and also includes, but is not limited to:~~

- ~~(1) Sexual assault and physical molestation;~~
- ~~(2) Direct or implied threats that submission to sexual advances will be a condition of employment, work status, promotion, grades, or letters of recommendation;~~

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(3) Subtle pressure for sexual activity, an element of which may be conduct such as repeated and unwanted staring or touching of a sexual nature or unwelcome "sexual talk;"

(4) Sexual conduct (not legitimately related to the subject matter of a course in which one is involved) that produces discomfort or humiliation, or both, and that includes one or more of the following: (a) comments of a sexual nature; or (b) sexually explicit statements, questions, jokes, pictorials, or anecdotes;

(5) Sexual conduct that would discomfort or humiliate, or both, a reasonable person at whom the conduct was directed that includes one or more of the following: (a) unnecessary touching, patting, hugging, or brushing against a person's body; (b) remarks of a sexual nature about a person's clothing or body; or (c) remarks about sexual activity or speculations about previous sexual experience.

## 8.4 Isolated Acts

For sexual harassment to be committed in some instances, a pattern of prohibitive conduct is required. Members of the university community who, without establishing a pattern of doing so, engage in isolated conduct of the kind described in Policy 407-8.3 demonstrate insensitivity that necessitates remedial measures. When university administrators become aware that such activities are occurring in their areas, they should direct that those engaged in such conduct undertake an educational program designed to help them understand the harm they are doing and must advise the AA/EO Office of such activities.

## 8.5 Procedures for Inquiry into Allegations of Sexual Harassment and Other Violations of Statutory and Constitutional Civil Rights

### (1) Initiation.

A complaint that the provisions of this policy have been violated may be brought by any member of the university community to any academic or administrative office. The complaint shall be filed with the AA/EO Office. The complaint must be filed within 120 calendar days of the last alleged occurrence. Alleged incidences outside the timeline should nonetheless be brought to the attention of the AA/EO Office for review.

### (2) Procedures.

An inquiry or investigation shall be conducted in accordance with the policies and practices of the AA/EO Office. Since damage could result to the career and reputation of any person accused of a violation of this policy, or other constitutional or statutory civil rights laws, all information regarding such matters should be held as confidential, to the maximum extent possible.

In the event the allegations in the complaint are not substantiated, all reasonable steps will be taken to restore the reputation of the accused faculty member.

A complainant found to have been intentionally dishonest in making the allegations or to have made them maliciously is subject to sanction or other university discipline. Any appeal of the

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findings and recommendation of the inquiry or investigation shall also be conducted in accordance with the policies and practices of the AA/EO Office.

### **(3) Temporary suspension with full pay pending final disposition.**

In extraordinary circumstances, where the provost finds that it is reasonably certain that the alleged sexual harassment has occurred and serious and immediate harm will ensue if the faculty member continues to work, and after consulting the chair of the Academic Freedom and Tenure Committee, the provost may at any time during or after an inquiry or investigation into a sexual harassment complaint recommend to the president the suspension with pay of any faculty member or teaching assistant accused of sexual harassment.

### **(4) Report to the Academic Freedom and Tenure Committee.**

Whenever a referral has been made by an Academic Freedom and Tenure grievance committee to the AA/EO, the Director of the AA/EO shall meet periodically with the Academic Freedom and Tenure grievance committee and the chair of the Academic Freedom and Tenure Committee to discuss any inquiry or investigation.

### **(5) Exclusive action.**

A faculty member may not file a grievance under Policy 407.6 to challenge the proceedings under this policy.

## **407.9 CONSENSUAL RELATIONSHIPS**

### **9.1 Rationale**

The university's educational mission is promoted by professionalism in faculty-student relationships. Professionalism is fostered by an atmosphere of mutual trust and respect. Actions that harm this atmosphere undermine professionalism and hinder fulfillment of the university's educational mission. Trust and respect are diminished when those in positions of authority abuse or appear to abuse their power. Those who abuse or appear to abuse their power in such a context violate their duty to the university community.

Faculty members exercise power over students, whether in giving them praise or criticism, evaluating them, making recommendations for their further studies or their future employment, or conferring any other benefits on them. Amorous relationships between faculty members and students are not acceptable to the university when the faculty member has professional responsibility for the student. Such situations greatly increase the chances that the faculty member will abuse his/her power and sexually exploit the student. Voluntary consent by the student in such a relationship is suspect, given the fundamentally asymmetric nature of the relationship. Moreover, other students and faculty may be affected by such unprofessional behavior because it places the faculty member in a position to favor or advance one student's interest at the expense of others and implicitly makes obtaining benefits contingent on amorous or sexual favors. Therefore, the university will view it as unprofessional conduct if faculty members engage in amorous

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relations with students in certain situations, even when both parties appear to have consented to the relationship.

## 9.2 Consensual Relationships in the Instructional Context

No faculty member shall have an amorous relationship (consensual or otherwise) with a student who is enrolled in a course being taught by the faculty member, whose academic work (including work as a teaching assistant) is being supervised by the faculty member, or whose present or future academic or professional success is controlled or influenced by the faculty member. A violation of this policy is considered to be violation of the standards of conduct set forth in Policy 403.

## 9.3 Consensual Relationships Outside the Instructional Context

Amorous relationships between faculty members and students occurring outside the instructional context may lead to difficulties. Particularly when the faculty member and student are in the same academic unit or in units that are academically allied, relationships that the parties view as consensual may appear to others to be exploitive. Further, in such situations (and others that cannot be anticipated), the faculty member may face serious conflicts of interest and should be careful to distance himself/herself from any decisions that may reward or penalize the student involved. A faculty member who fails to withdraw from participation in activities or decisions that may reward or penalize a student with whom the faculty member has or had an amorous relationship is considered to be in violation of the standards of conduct set forth in Policy 403.

# 407.10 COMPLAINTS

A complaint alleging violations of Policies 407.8 or 407.9 may be informally or formally registered by any person, or the formal process (Policy 407.11) may be initiated by the provost.

## 10.1 Informal Complaint

At the complainant's option, a complaint that one or more provisions in Policies 407.8 or 407.9 have been violated may be brought to any appropriate member of the university community, including any academic or administrative officer of the university such as the provost, the AA/EQ Director, the vice president for student services, any academic dean, vice president of extension, chancellor, regional campus dean, supervisor, department head, ombudsperson, or advisor.

The person to whom the complaint is brought will counsel the complainant about the options available under this policy and, at the complainant's request, may help the complainant resolve the complaint informally and/or help the complainant draft a formal complaint if the complainant decides to follow that route.

The person to whom the informal complaint is brought will not inform the accused of the complainant's action without the consent of the complainant.

## 10.2 Formal Complaint

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A complainant who wishes to make a formal complaint should file it with the AA/EO Office.

## **407.11 PROCEDURES FOR INQUIRY INTO ALLEGATIONS OF VIOLATIONS OF POLICY ON SEXUAL HARASSMENT AND CONSENSUAL RELATIONSHIPS (Policy 407.8 and 407.9)**

In all proceedings to impose a sanction for violations of Policies 407.8 and/or 407.9, the following rules and procedures shall govern.

### **11.1 Initiation of a Preliminary Inquiry into Alleged Violations of Policies 407.8 and/or 407.9**

Whenever there are grounds to believe that a faculty member has violated Policies 407.8 and/or 407.9, the Director of the AA/EO, upon the filing of a complaint, will initiate a preliminary inquiry. In conducting the preliminary inquiry, the Director of the AA/EO may interview the complainant, the accused, and other persons believed to have pertinent factual knowledge. At all times, the Director of the AA/EO will conduct the preliminary inquiry in a manner to ensure confidentiality.

The Director of the AA/EO must decide whether or not an inquiry is appropriate, and must inform those filing the complaint of this decision within 10 days of receiving the complaint of alleged violation of Policies 407.8 and/or 407.9. If an inquiry is warranted, the Director of the AA/EO will inform the provost who shall cause an inquiry panel to be established.

### **11.2 Inquiry into Allegations of Violation of Policies 407.8 and/or 407.9**

#### **(1) Purpose.**

An inquiry into allegations of violation of Policies 407.8 and/or 407.9 shall determine from review of factual evidence whether the initiation of actions described in Policies 407.1 through 407.4 is warranted. The purpose of the inquiry is to establish whether there is a reasonable basis for believing that the alleged violation of this policy has occurred.

#### **(2) Notification of faculty member.**

Within 10 days of the decision to hold an inquiry, the provost shall notify the faculty member in writing, return receipt requested, of the specific allegations filed against him/her and the procedures described in this policy regarding the inquiry.

#### **(3) Membership of the inquiry panel.**

The inquiry will be conducted by a panel of three faculty members, including two chosen by the chair of the Academic Freedom and Tenure Committee from the membership of that committee or from the Faculty Senate at large, and one to be chosen by the provost. Each member of the inquiry

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panel shall be impartial and shall be removed and replaced if there are any real or apparent conflicts of interest. Not all members of the inquiry panel shall be of the same sex.

#### **(4) Inquiry panel deliberations.**

In conducting the inquiry, the inquiry panel may interview the complainant, the accused, and other persons believed to have pertinent factual knowledge. At all times, the inquiry panel will take steps to ensure confidentiality. The inquiry will afford the accused a full opportunity to respond to the allegations.

The inquiry panel must review the allegations and provide a written report of its findings within 20 days after the provost's notification to the accused. The inquiry panel will review the evidence relating to the allegations and determine whether or not actions as described in Policies 407.1 through 407.4 are warranted.

#### **(5) Inquiry panel report.**

The written report of the inquiry panel shall be submitted to the provost. If the report recommends proceedings to take actions described in Policies 407.1 through 407.4, the provost shall forward a recommendation to the president to initiate such proceedings, and will so notify the complainant and the accused. If the inquiry panel report indicates that the allegations are unsupported, the provost shall so notify the complainant and the accused. The outcomes of the inquiry are either a judgment that the allegations are not warranted or the recommendation of actions described in Policies 407.1 through 407.4.

### **11.3 Protection of Complainant and Others**

#### **(1) Consent of complainant.**

Inquiries will be initiated only with the complainant's consent. The complainant will be informed fully of steps taken during the inquiry.

#### **(2) Protection of witnesses.**

All reasonable measures will be taken to assure that the complainant and all others testifying before the hearing panel will suffer no retaliation as the result of their activities in regard to the process. Steps to avoid retaliation might include: (a) lateral transfers of one or more of the parties in an employment setting and a comparable move if a classroom setting is involved, and (b) arrangements that academic and/or employment evaluations concerning the complainant or others be made by an appropriate individual other than the accused, and/or (c) temporary suspension with full pay pending final disposition.

In extraordinary circumstances, after consulting the chair of the Academic Freedom and Tenure Committee, the provost may, at any time during or after an inquiry into a sexual harassment complaint, recommend to the president the suspension with pay of any faculty member or teaching assistant accused of sexual harassment if, after reviewing the allegations and interviewing the accused, the complainant, and, if it seems appropriate, others, the provost finds that it is

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~~reasonably certain that the alleged sexual harassment has occurred and serious and immediate harm will ensue if the person continues to work.~~

### ~~11.4 Protection of the Accused~~

~~At the time the inquiry commences, the accused will be informed of the allegations, the identity of the complainant, and the findings of the preliminary inquiry. In the event the allegations are not substantiated, all reasonable steps will be taken to restore the reputation of the accused.~~

~~A complainant found to have been intentionally dishonest in making the allegations or to have made them maliciously is subject to sanction or other university discipline.~~

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## **Current 407.2 and 407.4 Code**

### **407.2 Sanctions**

Misconduct contrary to the standards of conduct set forth in Policy 403 may lead to sanction. Minor departures from responsible professional behavior are likely to be minor lapses, which can be corrected simply by calling the matter to the attention of the faculty member involved. Such minor lapses are handled within the faculty member's academic unit.

Apparent failures to comply with the standards of conduct are approached by positive attempts to improve faculty performance such as sustained attempts to inform, persuade, and improve. If appropriate, positive efforts to improve faculty performance shall precede or accompany all sanctions.

### **407.4 PROCEDURES FOR SANCTIONS OTHER THAN REPRIMANDS**

Probation, suspension with other than full pay, reduction in rank, and dismissal may be imposed on a faculty member only after it has been determined, by the proceedings in this policy, that he or she has violated the standards of conduct in Policy 403. The president may suspend a faculty member with full pay pending completion of the procedures described below. In all proceedings to impose a sanction other than a reprimand, the following procedures shall govern, except for procedures which govern allegations of research fraud (see Policy 407.8) and sexual harassment (Policy 407.9).

#### **4.1 Initiation**

Whenever there are grounds to believe that a faculty member has failed to comply with the standards of conduct in Policy 403, the president, upon his/her own initiative, upon a recommendation from a department head, supervisor, academic dean, the vice president for extension, chancellor, regional campus dean, or other administrative office, upon request of the Board of Trustees, or upon the receipt of complaints from any person, may initiate proceedings for probation, suspension, reduction in rank, or dismissal of a faculty member.

#### **4.2 Notice of Intent to Impose a Sanction**

At the direction of the president, the provost shall cause written notice to be delivered personally or by certified mail, return receipt requested, to the faculty member under investigation. A copy of this notice shall be sent to the chair of the Academic Freedom and Tenure Committee, along with a statement confirming the date the faculty member received it. Copies will also be sent to the faculty member's department head or supervisor and academic dean, vice president for extension, or, where appropriate, chancellor or regional campus dean.

Such notice shall contain the following:

- (1) A concise and clear statement of the facts, conduct, or circumstances reported to constitute failure to comply with the standards of conduct in Policy 403, including a statement of the standard or standards the faculty member is alleged to have violated.

- (2) A statement of the sanction proposed.
- (3) A statement that (a) the faculty member has the right to be heard in a conference with the provost (see Policy 407.4.5) either in person or by electronic conferencing; (b) the faculty member may have an advisor of his/her own choosing present at such conference; (c) this conference must be requested in writing within 5 days after receipt of the notice by the faculty member; and (d) this conference must be held within 10 days after receipt of notice by the faculty member.
- (4) A statement of the schedule of events that lead to a formal hearing, and that a faculty member may be accompanied at such hearing by an advisor of his/her own choosing.
- (5) A statement that within 20 days of the receipt of this notice, the faculty member, if he or she wishes to contest the alleged violation, must file in writing with the chair of the Academic Freedom and Tenure Committee a statement of intent to contest the alleged violation through formal hearing; and that failure to do so will result in the imposition of the proposed sanction.
- (6) A statement that within 20 days of the filing of the written statement of intent to contest the alleged violation through formal hearing, the faculty member must file, with the chair of the hearing panel, a written response which answers the alleged violation contained in the original notice; and that failure to do so will result in the imposition of the proposed sanction.

## Proposed Changes

### 407.4.1 Initiation

Whenever there are grounds to believe that a faculty member has failed to comply with the standards of conduct in Policy 403, the president, upon ~~his/her~~ **their** own initiative, upon a recommendation from a department head, supervisor, academic dean, the vice president for extension, chancellor, regional campus dean, or other administrative office, upon request of the Board of Trustees, or upon the receipt of complaints from any person, may initiate proceedings for probation, suspension, reduction in rank, or dismissal of a faculty member.

### 407.2 Sanctions

Misconduct contrary to the standards of conduct set forth in Policy 403 may lead to sanction. Minor departures from responsible professional behavior **can often be corrected simply by calling the matter to the attention of the faculty member involved.** Such minor lapses are handled within the faculty member's academic unit. ~~However, any all conversations between the faculty member and the department head, supervisor, academic dean, vice president for extension, regional campus dean, or other~~ **any administrative officer with oversight of the faculty member's academic unit (Department Head, Dean, etc.)** ~~about the grounds for believing that the faculty member has failed to comply with the required standards of conduct~~ **pertaining related-s to potential violations of Policy 403, Standards of Conduct specifically contained in Policy 403** shall be memorialized in writing by the administrative officer(s) involved ~~and shall also include a statement of the nature of the potential violation.~~ At the conclusion of such a meeting the accused faculty member ~~will~~ **shall** be afforded the opportunity to sign the memorandum as being a faithful reflection of the conversation. A dated ~~stamped~~ copy of ~~that letter(s)~~ each memorandum ~~will~~ **shall** be supplied-provided to the faculty member within 24 hours of the

conversation(s). The faculty member may also provide a dated ~~stamped~~ response to such a memorandum/a in writing within three (3) days (see 407.1.2) that memorializes their own understanding of the conversation(s) involved. ~~Failure to respond is tacit acknowledgment by the faculty member that the memorandum(a) supplied by the administrator(s) is/are a faithful account of the conversation(s) being described.~~ A copy of all of ~~these~~ memoranda and any related documents shall be retained by the academic unit ~~with copies also being placed in the faculty member's file.~~ Electronic communications employing official USU channels are acceptable for transmittal. ~~If all parties agree that the matter is too minor to be documented then no memoranda need be exchanged. Agreement to this will be evidenced by a lack of memoranda from all of the parties involved. However, any party is free to create a memorandum describing their recollections of the conversation(s), and this memorandum shall be (a) circulated to all other involved parties and (b) retained by the academic unit with a copy/copies being placed in the faculty member's file.~~

The ~~intent purpose~~ of these memoranda is to memorialize the content of the conversations rather than to establish facts or supply evidence of guilt or innocence. If further relevant facts or evidence ~~come to light later any~~ require subsequent conversations, they should also be memorialized as described above.

~~Letters-Memoranda will shall~~ be kept for as long as is the period required by the applicable State of Utah retention schedule.

~~Complaints related to issues that must be handled by the Equity Office will follow the protocols described in the appropriate parts of Sec. 300 of the university code.~~

Apparent failures to comply with the standards of conduct are approached by positive attempts to improve faculty performance such as sustained attempts to inform, persuade, and improve. If appropriate, positive efforts to improve faculty performance shall precede or accompany all sanctions. Complaints related to issues that must be handled by the Equity Office will follow the protocols described in the appropriate parts of Sec. 300 of the ~~University Policy Library~~ university code.

# FACULTY SENATE

2020-2021 Session

**UtahState**  
UNIVERSITY

## Calendar of Meetings and Committee Reports

<b>Executive Committee Meeting</b> Champ Hall - Main 136 3:30 – 5:00 pm	<b>Senate Meeting</b> Merrill-Cazier Library Room 154 3:00 – 4:30 pm	<b>Senate Committee Annual Reports</b>	<b>University Council and Committee Reports</b>
August 24, 2020	September 8, 2020 (Tuesday)		Empowering Teaching Excellence – Neal Legler & Travis Thurston
September 21, 2020	October 5, 2020	Educational Policies Committee (EPC) – Paul Barr	Honors Program – Kristine Miller
October 19, 2020 Immediately following FSEC Mtg. - Faculty Forum Planning	November 2, 2020	Academic Freedom and Tenure Committee (AFT) – Michael Lyons	Athletic Council – Ed Heath Libraries Advisory Council – Nick Roberts
<b>November 9, 2020 - FACULTY FORUM</b> <b>Merrill-Cazier Library - 154</b> <b>3:00 – 4:30 p.m.</b>			
November 16, 2020	November 30, 2020	Faculty Evaluation Committee (FEC) – Josi Russell	USUSA – Sami Ahmed
December 14, 2020	January 4, 2021	Faculty Diversity, Development, & Equity Committee (FDDE) –	Council on Teacher Education – Sylvia Read Scholarship Advisory Board – Craig Whyte
January 18, 2021 (Tuesday)	February 1, 2021	Professional Responsibilities and Procedures Committee (PRPC) – David Farrelly	Office of Research - Lisa Berreau School of Graduate Studies – Richard Inouye
February 16, 2021 (Tuesday)	March 1, 2021		Parking Committee – James Nye Sustainability Council – Alexi Lamm
March 15, 2021	March 29, 2021	Budget and Faculty Welfare Committee (BFW) – Jennifer Duncan	Honorary Degrees and Awards – Sydney Peterson
April 12, 2021	April 26, 2021	Committee on Committees – Jan Thornton	Calendar Committee – Renee Galliher Recruitment & Retention– Heidi Kesler & Katie Jo North