



# Faculty Senate Town Hall

KBOR update, in consideration of  
Pandemic Policy implementation at ESU

September 19, 2022



# KBOR Policy Pandemic Amendment Feb 2021

further amended April 2022; deadline extended June 2022

## TEMPORARY PANDEMIC-RELATED AMENDMENT TO THE SUSPENSIONS, TERMINATIONS AND DISMISSALS POLICY

CHAPTER II: GOVERNANCE - STATE UNIVERSITIES . . . C. CHIEF EXECUTIVE OFFICER, FACULTY AND STAFF . . . 6. SUSPENSIONS, TERMINATIONS AND DISMISSALS . . . b Other . . .

**ii.** In light of the extreme financial pressures placed on the state universities due to the COVID-19 pandemic, decreased program and university enrollment, and state fiscal issues, effective immediately through December 31, 2022 and notwithstanding any other Board or institutional policy, any state university employee, including a tenured faculty member, may be suspended, dismissed, or terminated from employment by their respective university. Such terminations, suspensions, or dismissals shall follow the procedure set forth below. Declaration of financial exigency and the processes associated with declaration of financial exigency shall not be a prerequisite to any suspension, dismissal, or termination authorized by this provision, and no existing university policy hearing procedures shall apply to such decisions.

The chief executive officer of any state university, before making any suspensions, dismissals, or terminations under this provision, shall present to the Board for approval a framework for the university's decision-making under this provision. Elected representatives of the university's faculty, staff and student governance groups shall be given an opportunity to provide input, comments, and recommendations on the draft framework prior to the university provost's endorsement and chief executive officer's adoption and submission of the framework to the Board for approval. Once approved, that framework shall be used for any suspension, dismissal, or termination under this provision. Frameworks for decision-making may be based on factors such as, but not limited to, performance evaluations, teaching and research productivity, low service productivity, low enrollment, cost of operations, or reduction in revenues for specific departments or schools. Prior to the framework being implemented on any campus, the university CEO shall communicate to both the campus community and the Board a rationale for why the framework must be implemented instead of existing suspension, dismissal or termination policies.

# Emporia Rationale

As reported in Emporia Gazette

Pursuant to the Board of Regent’s policy set out at Chapter II, Section C., Paragraph 6.b., “In light of the extreme financial pressures placed on the state universities due to the COVID-19 pandemic, decreased program and university enrollment, and state fiscal issues, effective immediately through December 31, 2022 and notwithstanding any other Board or institutional policy, any state university employee, including a tenured faculty member, may be suspended, dismissed, or terminated from employment by their respective university. Such terminations, suspensions, or dismissals shall follow the procedure set forth below. Declaration of financial exigency and the processes associated with the declaration of financial exigency shall not be a prerequisite to any suspension, dismissal, or termination authorized by this provision, and no existing university policy hearing procedures shall apply to such decisions.” Emporia State University, which is committed to being forward focused and future ready, is placing the needs and expectations of its current and future students at the center of its strategic efforts. Ongoing changes in industry demands, locally and nationally, as well as changes in student demographics and commitments to higher education affect the historical mission of ESU. The University’s primary sources of revenue are student tuition and taxpayer dollars provided through the legislature. Increases in student tuition revenue are dependent on increased enrollment, which is very difficult to achieve for any university during these times. Because ESU has experienced extreme financial pressures accelerated by the COVID-19 pandemic, decreased program and university enrollment, and state fiscal issues, the University continues to face increases in the cost of operations across campus as well as substantive changes in the educational marketplace. These increased costs include higher costs being charged by providers and suppliers, as well as the necessity to properly maintain and support facilities, equipment, systems, security, and personnel. While the University is not facing financial exigency, the financial and market situations do require a prudent review and restructuring, which will require modification, reorganization, suspension, or elimination of certain operations, programs and curriculum, which may require immediate action notwithstanding any other Board or institutional policy. This framework allows for a more orderly transition to what is best for the University.

# Emporia Framework

A decision to suspend, dismiss, or terminate any university employee shall be based on factors such as, but not limited to:

- Low enrollment.
- Cost of operations.
- Reduction in revenues for specific departments or schools.
- Current or future market considerations as to the need for a program or department.
- Restructuring of a program, department, or school as determined to be necessary by the university.
- Realignment of resources.
- Performance evaluations.
- Teaching and research productivity.
- Low service productivity.

A decision for action must be made in consideration of the following:

- Relevant accreditation requirements for the program, school, or college.
- Course availability to students in order to complete degree requirements. Course availability means students can take necessary courses either at ESU or through another university or community college in Kansas.

# Emporia Procedure

1. Notice. The President shall provide no less than 30 days' written notice of suspension, dismissal, or termination to the affected employee. This notice shall include a statement that this action is being taken pursuant to this policy, the reasons for the action being taken, the effective date of the action, and shall also include any considerations to be provided by the University to the affected employee (such as severance pay, payouts, retirement options, etc.).
2. Appeal. **The employee may appeal the action** taken pursuant to this policy through the Board of Regents office to the Office of Administrative Hearings. Any action taken that is not being taken pursuant to this policy shall have solely those appeal rights provided by existing university policy or other applicable procedures.
3. Appeal, Time and Content of. The employee must submit an appeal to the Board office within 30 days of receiving notice of the action. The appeal must include a copy of notice of the action received by the employee and a written statement with any relevant supporting evidence describing why the employee believes the decision for the action: **(a)** is substantially inconsistent with the university's decision-making framework approved by the Board; **(b)** was the result of unlawful bias or discrimination; or **(c)** was otherwise unreasonable, arbitrary or capricious. **These are the only grounds for reversing the President's decision.** The employee shall provide a copy of their appeal documents to the President at the same time they are submitted to the Board office.
4. Response to Appeal by President. The President shall have 30 days from receipt of the appeal to respond in writing to the appeal. This response shall include any supporting evidence or documentation. This response with supporting evidence or documentation shall be sent to the Board office with a copy sent to the employee at the same time. This 30 day period can be extended for good cause as determined by the Board President and CEO.
5. Submission of Appeal to Office of Administrative Hearings. Within 10 days of receiving the President's response to the appeal, the Board office shall refer the appeal to the Office of Administrative Hearings. The Office of Administrative Hearings shall provide a hearing and decide the appeal based on the standards stated in the Board's policy and in the University's framework approved by the Board. The University shall be responsible for fees charged by the Office of Administrative Hearings.
6. Hearing before the Office of Administrative Hearings. **The burden of proof is on the employee. No discovery will be permitted.** The review shall be based on the written materials submitted, along with any oral presentation to the administrative hearing officer by the employee and the University. The employee and the University may be represented by counsel.
7. Decision. **The decision of the administrative hearing officer is final** and not subject to further administrative review by any officer or committee of the university or by the Board of Regents.
8. Action Not Stayed during Appeal. An appeal under this policy will not stay the effective date of the suspension, dismissal, or termination. An employee who wins their appeal will be entitled to reinstatement, back pay and restoration of other lost benefits.



Sept. 7, 2022

# WSU Message from the president

Dear faculty and staff,

One of our fellow Regents institutions announced an organizational restructuring using, in part, a policy issued by the Kansas Board of Regents in response to the financial pressures created by the COVID-19 pandemic.

This announcement may cause you to wonder if Wichita State will also be availing itself of this temporary policy. That answer is simple: no.

The COVID-19 pandemic has forced institutions across the country to rethink how they do business: financially, programmatically and operationally. Wichita State is no exception.

We have had to make our own difficult, strategic decisions to navigate these uncharted waters (i.e., voluntary retirements, hiring freezes, restrictions on discretionary spending, etc.) and it is through *your* hard work, dedication and sacrifice that we have been successful in raising revenue while reducing costs to preserve the policies and past practices of our institution.

Thank you for your continued support of Wichita State University.

Have a great semester,

President Rick Muma



# ESU Faculty Response (slide 1/4)

September 9, 2022

## **FACULTY RESPONSE TO THE PROPOSED ESU FRAMEWORK FOR WORKFORCE MANAGEMENT**

**Presented to:** President Hush, the ESU Leadership Team, and the Kansas Board of Regents

**From:** Emporia State University Faculty Senate Executive Committee

**Summary:** Most faculty recognize the need for change with the challenges facing higher education. Up to this point, faculty, a smart and creative resource, have been shut out of the conversation. We are the ones charged with guiding students' development and learning to become educated citizens and skilled members of the Kansas workforce. Emporia State University faculty have concerns with the draft of the Framework for Workforce Management presented to them on September 7, 2022, after business hours.

- The first and most egregious affront is that faculty were only provided two business days to respond to the draft.
- The second issue with the framework is termination criteria are so general that they could be used to release **any** employee at ESU.

At the faculty level, the suspension of tenure is a very serious action that violates the trust faculty have in the university. If the termination of employees, especially tenured faculty, is indeed strategic, that strategy should be transparent. This includes how programs and curriculum will be evaluated (cost, enrollment, etc.).

These comments are the collective input from an emergency Faculty Senate meeting on Friday, September 9, 2022, at 3 pm. If it is not possible to use existing policy, we recommend that President Hush and the Leadership Team make the changes identified in this evaluation of the Framework for Workforce Management and submit the revised version to all shared governance entities for feedback before presentation to KBOR. We respectfully request a minimum of 8 business days to review any changes.

# ESU Response (slide 2/4)

## The Framework Termination Factor Concerns

1. The factors for dismissal are vague, and all terminology needs to be clearly defined. For example, what constitutes “low service productivity” or “conduct of the employee”? What is the difference between dismissal and termination?
2. There is no ranking of factors for termination. Which are primary factors for termination? Are cost of operations and conduct of the employee used equally to make decisions?
3. If workforce reduction is necessary to meet restructuring needs, then the framework should provide justification for termination. Any other criteria should be eliminated from the framework. The text “but not limited to” should be removed from the second line following the “The Framework” heading.
4. There is no indication of the timeframe over which an employee’s performance is evaluated.
5. If employees with similar positions are potential candidates for workforce reduction, how are performance records ranked since every department has different evaluation metrics and inconsistency of use?
6. If restructuring is criteria for dismissal, executive committees of shared governance or those assigned or elected by those committees should be involved in decision making.



# ESU Response (slide 3/4)

## Issues if the Framework is Utilized

1. Appeal – The lack of appeal at the institutional level is inconsistent with the practice of dismissing/terminating tenured faculty. Faculty should be allowed to present evidence and appeal against the decision locally before moving the appeal to the Board level. Any ruling on an appeal at the university level should be reviewed by an appeals committee that includes faculty, students, and staff. The composition of the committee should not include more than 50% of its members from the administrative level.
2. Hearing before the Office of Administrative Hearings – The inability to provide discovery should be removed. If new evidence has been discovered, it should be allowed to be introduced. In addition, requiring the burden of proof to be on the employee exacerbates the balance of power in the appeals process.

The lack of details in the proposal leads to instability and insecurity. ESU faculty strive to create an environment that best serves the needs of the students and prepares them for their futures. The proposed process will cause good faculty to leave, especially at a time when faculty morale is so low. Students will consider other, more stable colleges. Students want to attend a college that is inviting, secure, and with potential, not an institution that may eliminate their program of choice. Lack of detailed rationale and clearly defined factors for program and faculty termination will negatively impact recruiting and retention.

# ESU Response (slide 4/4)

## Faculty Grievances about the Process

1. President Hush and his team have spent eight months on the proposal. Faculty were given two business days to respond to the proposed Framework. This timeframe is unreasonable to assemble faculty and provide well thought-out responses. It is difficult to imagine there is any intent to sincerely consider faculty input.
2. The proposed framework is not a framework for strategic realignment of resources. In its current form, it allows for carte blanche dismissal of faculty. The factors for termination are so broad, vague, and ill-defined that it could be used to terminate any employee at ESU. This process for dismissal is unprecedented in higher education and creates a dangerous precedent. We cannot imagine that the Kansas Board of Regents intended to give such broad and sweeping power to remove tenured faculty. We expected a proposal with substantial detail. The draft ESU Framework for Workforce Management provided to the university community on September 7, 2022, should be rejected.
3. The ESU leadership team has not disclosed any supporting data for reorganization. The curriculum at institutions of higher learning is driven by the faculty. Faculty are very open to modifying existing programs, creating new programs, and eliminating existing programs to meet student and workforce needs. There are countless instances of this across campus. The leadership team should involve a diverse group of faculty in identification of need areas and how we can help meet those needs.
4. The complete lack of transparency, clear and constant communication, and involvement of shared governance is unprecedented in the collective memory of the faculty. None of the shared governance bodies was made aware of any restructuring needs, or the scope of financial difficulties. Best practice in both higher education and the business world involves bringing stakeholders together to solve problems.

We recommend that President Hush and the Leadership Team make the changes identified in this evaluation of the Framework for Workforce Reduction and submit the revised version to all shared governance entities for feedback before presentation to KBOR. We respectfully request a minimum of 8 business days to review any changes.

# WSU Faculty Senate Resolution

September 12, 2022

As the Wichita State University Faculty Senate, we express support for our colleagues at Emporia State University in their opposition to the “Framework for Workforce Management” proposal as they face the possibility of elimination of tenured faculty positions. We urge the leadership of Emporia State to work with faculty to find alternative responses to ongoing financial challenges that predate the Covid 19 pandemic and instead utilize established financial exigency policies. Faculty who earn tenure commit to the long-term education and research missions of the universities and can be partners in a transparent process of faculty governance.

We thank our President and Executive Team at WSU for their fiscal management of our university and choice to refrain from invoking this emergency policy.

<https://www.wichita.edu/academics/facultysenate/documents/ay2223/WichitaStateUniversityFacultySenateResolution.pdf>

# CoFSP Statement to the Regents

September 14, 2022

We, the Kansas Council of Faculty Senate Presidents (CoFSP), express support for our colleagues at Emporia State University and their opposition to the “Framework for Workforce Management” proposal.

We urge the Kansas Board of Regents to work with the students, staff, and faculty at Emporia State to address the difficult situation on campus.

To that end, we request the following:

1. We request a timeline that allows for feedback and the involvement of all governance bodies.
2. We request that the decision-making process be as open and transparent as possible regarding any structural changes so that all impacted parties understand and may take part in the process.

Hopefully by working together, all members of the Emporia State University community will have the opportunity to minimize the long-term impacts of the current financial situation.





WICHITA STATE UNIVERSITY

# AAUP Response



12 September 2022

Jon Rolph, Chair - Kansas Board of Regents  
1000 SW Jackson Street  
Suite 520  
Topeka, Kansas 66612-1368

Re: Mitigating damage of KBOR/ESU policy to Emporia State University, its students, and alumni

Dear Regent Rolph:

We are extremely concerned to learn that ESU may soon submit to the Board an application commonly known as *Workforce Management*, a policy if implemented would damage KBOR institutions by allowing administrations to indiscriminately terminate employees without cause. All of the Regents' institutions, save ESU, have opted not to implement the policy, and we suspect for the reasons highlighted below. Although we are sure that you and the Board have the best of intentions, the students and alumni of ESU will be particularly harmed if this policy is implemented.

We understand that the Board believes the financial difficulties experienced at ESU are due to COVID-19 and declining enrollments, and only cutting faculty slots can fix the problem. Please be aware of the misinformation that might have been presented (See below). Existing policies are already in place to deal with financial issues like these. ESU has a history of discontinuing programs, a process that is relatively quick. Moreover, the university has both Chronic Low Performance and Corrective Faculty Development processes, along with Post Tenure Review, to deal with unproductive tenured faculty members.

In addition, please carefully read the attached an Advisory Letter from the AAUP National Office; although it was issued when KU was considering applying to KBOR for a similar *Workforce Management* policy, the salient points have not changed (Letter from AAUP National dated January 29, 2021). It is critically important to be aware that implementing a *Workforce Management* policy could very well lead to the ESU Administration being placed on the AAUP Censured Administrations list. In higher education, the stain of AAUP censure is highly embarrassing and has widespread adverse ramifications.

Accreditation efforts will likely face challenges, including the Higher Learning Commission (HLC). The final page highlights some concerns with respect to HLC accreditation; it is not an exhaustive list. Should ESU's administration be censured by AAUP the damage to the students, alumni, and people of the state of Kansas would far eclipse any short-term savings of this policy. The ESU faculty really are eager to work together to reimagine universities; just give the ESU faculty a chance. Accordingly, we respectfully ask you to immediately reject applications to implement the *Workforce Management* policy and encourage you to consider the guiding principles of the AAUP. More time is needed to fully evaluate the impact of this policy on all constituents, as well as give concerned bodies time to respond to the policy.

Trust that has been earned by following established policies and procedures can evaporate very quickly. The damage to ESU students, alumni, and faculty is likely to be quite large. Moreover, KBOR and all of its institutions suffer with a loss of trust. Our views, and these documents, may be shared.

Best Regards,

Professor Janett Naylor-Tincknell  
President, Kansas Conference of the American Association of University Professors

cc: KBOR, K. Hush, S. Keough, K. Simons, M. Morales, B. Price, M. Criley L. Kelly, lawmakers, et al.

## 1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments

In 1915 the American Association of University Professors adopted the *Principles on Academic Freedom and Tenure*. In 1925 the Association adopted the *Interpretive Comments* to the *Principles*. In 1940 the Association adopted the *Statement of Principles on Academic Freedom and Tenure*, which replaced the *Principles* and the *Interpretive Comments*. In 1970 the Association adopted the *Interpretive Comments* to the *Statement of Principles*, which replaced the original *Interpretive Comments*. The *Statement of Principles* and the *Interpretive Comments* are the guiding principles of the Association.

1. The Introduction to the *Principles* states that the *Principles* are the guiding principles of the Association and that the *Interpretive Comments* are the guiding principles of the Association's policies.

## The Use and Abuse of Faculty Suspensions

The report that follows is excerpted from a longer report of the same title, which was prepared by a subcommittee of Committee A on Academic Freedom and Tenure and approved for publication by Committee A in August 2008.

### I. Background

This subcommittee was charged with reviewing and analyzing the large number of AAUP cases and complaints involving suspension from teaching or research as a sanction imposed on faculty members, and the additional sanction of expulsion or banishment from the entire campus or from certain areas and activities. Although the suspension of a faculty member from some or all duties is not a new phenomenon, it has been increasingly common in recent years; and although Association policy severely limits its use, it appears to have become almost a routine recourse for administrations seeking to discipline faculty members regardless of the seriousness of the alleged cause. The subcommittee has reviewed the development of Association policy since the issuance of the 1940 *Statement of Principles on Academic Freedom and Tenure*, some forty published Committee A reports, a limited number of university task-force reports that examined the use of suspension, and other available material.<sup>1</sup>

Suspension has been defined in different ways both in institutional regulations and by administrations at the time the penalty is imposed on the faculty member. Sometimes, as we will show, administrators decline to use the term and claim that in fact what they are imposing is not a suspension at all. An examination of some of these claims will be useful in restating the central tenets of Association policy. In addition, suspension has sometimes been employed as a sanction independent of dismissal, here termed "freestanding" suspension (see Section IV).

Historically, suspension has been regarded in Association policy as a severe sanction second only to dismissal, because it has been seen primarily in terms of removal of a faculty member from teaching. As one case report put it,

finding of the investigating committee in the 1966 case of St. John's University:

The professor's entire case for academic freedom and tenure was destroyed by the finding of the investigating committee in the 1966 case of St. John's University:

## Recommended Institutional Regulations on Academic Freedom and Tenure

(2018 REVISION)

*The Recommended Institutional Regulations on Academic Freedom and Tenure sets forth, in language suitable for use by an institution of higher education, rules that derive from the chief provisions and interpretations of the 1940 Statement of Principles on Academic Freedom and Tenure and of the Statement on Procedural Standards in Faculty Dismissal Proceedings. The Recommended Institutional Regulations was first formulated by Committee A on Academic Freedom and Tenure in 1957. A revised and expanded text, approved by Committee A in 1968, reflected the development of Association standards and procedures. Texts with further revisions were approved by Committee A in 1972, 1976, 1982, 1990, 1999, 2005, 2006, 2009, 2013, and 2018. When such revisions have constituted a change in the Association's policies, they have been adopted by the Council.*

*The current text is based upon the Association's continuing experience in evaluating regulations actually in force at particular institutions. It is also based upon further definition of the standards and procedures of the*

## On Institutional Problems Resulting from Financial Exigency: Some Operating Guidelines

The guidelines that follow reflect Association policy as set forth in the *Recommended Institutional Regulations on Academic Freedom and Tenure*,<sup>1</sup> *The Role of the Faculty in Budgetary and Salary Matters*,<sup>2</sup> and other policy documents. They were formulated by the Association's staff, in consultation with the Joint Committee on Financial Exigency, Committee A on Academic Freedom and Tenure, and the Committee on College and University Governance. They were first issued in 1972 and reissued in slightly revised form in 1972. The current text approved by Committee A in 1978.

and meaningful decisions relating to institutional resources that bear the burden of the cost of research and research for the overall

*Recommended Institutional Regulations on Academic Freedom and Tenure*,<sup>3</sup> to be readapted within a department or elsewhere within the institution; institutional resources should be made available for assistance in readaptation. 5. In some cases, an arrangement for the early retirement of a tenured faculty member, by investing appropriate additional institutional funds into the individual's retire-





WICHITA STATE  
UNIVERSITY

September 14-15, 2022

Discussion Agenda | Wednesday

## DISCUSSION AGENDA

### A. Other Matters

#### 1. Act on Framework for Workforce Management – President Hush ESU

#### Summary and Recommendation

*Emporia State University is in the process of implementing the Board policy on Workforce Management as part of its effort to prepare and equip the University to meet current and future needs of the institution, its students and the surrounding community. A related part of this effort includes consideration of program discontinuance and curriculum change. ESU requests the Board's approval of the framework.*

#### Background

ESU's Framework for Workforce Management has been prepared pursuant to the Board's policy set out in Chapter II, Section C., Paragraph 6.b, as modified and approved by the Board in June 2022. The rationale for why ESU desires to implement its framework is set out within the language of the framework and is in alignment with the Board's policy requirements. The balance of the framework describes factors on which decisions will be made and the procedure to be followed for taking action. Again, these factors and procedures are in compliance with the Board's policy.

#### Recommendation

ESU is requesting that the Board approve its Framework for Workforce Management, which includes program discontinuance and curriculum change.

The Regents voted unanimously in favor of accepting the proposed framework.

# A few facts

- This year at ESU: 209 faculty are tenure/tenure track; of those 125 are tenured. – KBOR
- Preliminary IPEDS HR survey ESU submitted to KBOR last year. As of November 1, 2021,
  - Total full-time instructional staff (Professors, Associate Professors, Assistant Professors, & Instructors) = 227
  - Total part-time instructional staff = 27
  - Full-Time Equivalent (FTE) = 236
- 26% 5-year decrease in first-time entering students 2016-2021 at ESU. - KBOR
- Implementing now: 7% workforce reduction - ESU President Hush
- “Late Friday evening, Media Relations director Gwen Larson confirmed 33 terminations across the campus, the bulk coming out of the College of Liberal Arts and Sciences.” - [Emporia Gazette](#) Sept 16
- [ESU bulletin](#) and Emporia Gazette have further details.

# Moving Forward

- Barring unforeseen events, current Regents have no intention to extend this policy or reactivate it at a later date.
- Again, President Muma has stated that WSU will not avail itself of this temporary policy.
- The consulting firm [rpk Group](#) will present recommendations regarding program review to KBOR at their December meeting.
- Regent Lane said the rpk Group report will be “one data point”.
- The Board has invited faculty participation and is open to potential changes to current practices. The Council of Faculty Senate Presidents (CoFSP) will be working to make effective use of this opportunity.
- The program review process may be our best means of maintaining quality and opportunity for our students.

- Chronicle of Higher Education
- Kansas Reflector
- Emporia Gazette
- ESU Bulletin
- KVOE

# Dr. Castro's position (not representative of all faculty or WSU) Academic Freedom is the Original Estate

What is tenure for?

- Tenure protects academic freedom. Not well, but it's what we've got.
- Academic freedom is not a special privilege or an individual license to do whatever we like in the classroom. It's an essential component of a functional democracy.

How so?

- We all learn in K-12 that we have three branches of government to provide checks and balances.
- A free press is sometimes referred to as "the fourth estate", a fourth institution that serves to balance power in a healthy democracy.
- Academic freedom is analogous to a free press, but it's even more fundamental: Education is the origin of functional citizens, including professional journalists.

We are on a slippery slope, but the Regents intended to provide a guard rail. Now we have work to do. That will take many forms.