

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 10, 2009**

TAB	DESCRIPTION	ACTION
1	PROPOSED AMENDMENTS TO BOARD POLICY Sections II.B.2; II.F.1-2; II.G.1; II.N. – 1st Reading	Motion to approve

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BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 10, 2009

SUBJECT

First Reading – Amendment to Board Policy Sections II.B.2; II.F.1-2; II.G.1; II.N.

BACKGROUND/DISCUSSION

The proposed changes to Board policy accomplish the following:

1. Clarify the broad authority of the institution chief executive officers for personnel matters affecting the institutions. Section II.B.2.b.
2. Clarify specific authority in the chief executive officers to make institutional or unit-wide personnel adjustments, including furloughs and reductions in force, to respond to financial challenges. Sections II.B.2.b
3. Incorporate notice and due process procedures for affected employees. Sections II.B.2.c.
4. Clarify that contract salary is subject to adjustment year to year based on budgets and subject to interim adjustments as part of institutional or unit-wide personnel adjustments made by the CEO's to respond to financial challenges. Sections II.F.1. & 2. (non-faculty exempt) & II.G.1. (Faculty)
5. Clean-up Financial Exigency Policy – remove references to actions that can be taken without a declaration of exigency. Sections II. N.1.; 2.d.; 2.e.; & 7.

The revisions to Section II.B.2. are intended first to add clarity to the scope of authority delegated by the Board to the chief executive officers of each institution. New subsection II.B.2.b further outlines the breadth of the Board's delegation to the chief executive officers. In recognition of the broad delegation of authority, new subsection II.B.2.c. specifically addresses the authority in the chief executive officers to take actions to reduce personnel costs across the entire institution or across budgetary units within the institution when necessary to respond to financial challenges (without a financial exigency declaration by the Board) and to maintain sound fiscal management at the institution. New subsection II.B.2.d. also adds limited due process procedures for affected employees to require at least 21 days opportunity for input by faculty and staff, 30 days notice to affected employees, and an appeal process to ensure that the exercise of the powers described in subsection II.B.2.c by the chief executive officer does not bring about a result that violates Board or institutional policy, or constitutional or statutory protections for the employees.

The revisions to Sections II.F. and II.G. clarify that the Board's policies on annual contracts and renewal of those contracts is not a guaranty of a particular salary from one contract period to the next. The institutions have the ability to offer a renewed contract at a different (including lower) annual salary and, in addition, the revisions reference to the institution's right to adjust salary during the contract term due to financial exigency or institution action to reduce budgetary expenditures pursuant to Section II.B.2.c. These provisions apply to exempt staff (Section II.F.2) as well as tenured and non-tenured faculty (Section II.G.2).

BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 10, 2009

Lastly, the revisions to Section II.N clean up the Board's policy on financial exigency to remove references to actions that the institutions can take without a declaration of exigency. The revisions to subsection II.N.1. recognize that the scope of Section II.N is financial exigency and that there are other budgetary actions that the institutions can take without the need for a declaration of exigency (although these actions can also be part of a response to financial exigency). The revisions also remove subsections II.N.2.d and II.N.7 which dealt with personnel actions other than layoff. These actions are now incorporated into the revised policies under Section II.B.2. and are not necessary in Section II.N.

IMPACT

There is no immediate financial impact on the institutions from these policy changes, rather the changes clarify the various tools available to the chief executive officers of the institutions to address budget challenges caused by such things as general fund gubernatorial hold-backs (pursuant to Idaho Code § 67-3512A) and legislative budget cuts (either current year or out-year). The ability of an institution to take quick initial action to balance its books is a key element in the ability to bridge to a new budget reality.

ATTACHMENTS

Attachment 1 – Proposed Revised Policy, Section II B	Page 3
Attachment 2 – Proposed Revised Policy, Section II F	Page 7
Attachment 3 – Proposed Revised Policy, Section II G	Page 13
Attachment 4 – Proposed Revised Policy, Section II N	Page 23
Attachment 5 – Summary of Comments	Page 35

STAFF COMMENTS AND RECOMMENDATIONS

These policy revisions clarify the authority and budgeting tools the institutional CEOs have to manage budget holdbacks and reductions. In addition, the revisions clean up Board policy so powers and procedures are more logically placed and easier to find.

Staff recommends approval.

BOARD ACTION

A motion to approve the first reading of the proposed amendments to Board Policies II.B.2; II.F.1 & 2., II.G.1; and II.N. as submitted.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: B. Appointment Authority and Procedures January 2005-February 2010**

B. Appointment Authority and Procedures

1. Nothing herein may be construed to be in limitation of the powers of the Board as defined by Sections 33-3006, 33-3104, 33-2806, and 33-4005, Idaho Code, or as otherwise defined in the Idaho Constitution or Code.
2. Delegation of Authority
 - a. The Board delegates all authority for personnel management not specifically retained to the executive director and the chief executive officers consistent with the personnel policies and procedures adopted by the Board. In fulfilling this responsibility, the executive director and chief executive officers, or their designees, may exercise their authority consistent with these policies and procedures. Provided, however, that the Board retains the authority for taking final action on any matters identified anywhere in these policies and procedures.
 - b. Within the general delegation of authority in the preceding paragraph a. above, the chief executive officers shall have the authority to manage, supervise and control the personnel and human resources of the institutions and agencies. Organizational structure, duty assignments, FTE count, place of work, shift placement, salaries, work hour adjustments, benefit determinations, reductions in force and all similar and related workplace decisions are the prerogative of the chief executive officers except or unless as limited by other applicable provisions of Board or institutional policy.
 - c. Without limiting the general description of b. above, the authority delegated to each chief executive officer includes the authority, in the chief executive officer's discretion, to reduce expenditures to respond to financial challenges (without a financial exigency declaration by the Board) and to maintain sound fiscal management. In such cases, the chief executive officer may take employment actions, as provided in applicable institutional policy, which are uniform across the entire institution, or uniform across institution budgetary units, but may not include actions requiring a financial exigency declaration by the Board. Such actions may include work hour adjustments such as furloughs or other unpaid leave as long as such are uniform across budgetary units or uniformly tiered as applied to certain salary levels or classifications. Work hour adjustments may be pro-rated based on annual salary levels to equitably reduce the financial hardship of the adjustments on lower level employees. Such actions may include reductions in force (not including tenured faculty members) when such reductions can be accomplished without shortening the term of an existing annual employment contract.

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: B. Appointment Authority and Procedures January 2005-February 2010**

- d. In implementing any such actions described in the preceding paragraph c. above, the institution shall seek the input from the faculty, non-classified staff and classified staff employee groups. Such groups will be given at least twenty-one (21) calendar days to provide their input on the proposed actions as provided for in the policies of the institution. The institution shall, once such input is taken and considered by the chief executive officer, establish procedures that provide for at least thirty (30) days written notice prior to the effective date of the action and an opportunity for an affected employee to be heard. The notice must include the effective date of the employment action, a statement of the basis for the employment action, and a description of the process to be heard. Such process must be prompt, expeditious, and fair. The employee may contest the action only based on whether the action, with respect to that employee, violates the procedural requirements of this policy, applicable institutional policy or constitutional or statutory protections for that employee. The employee may not challenge the chief executive officer's determination that a reduction in budgetary expenditures is necessary, nor contest the chief executive officer's chosen means of addressing the reduction need, unless such means violate constitutional or statutory protections for the employee.

3. Specifically Reserved Board Authority

(Note: This is not an exclusive or exhaustive list and other reservations of Board authority may be found in other areas of these policies and procedures.) Board approval is required for the following:

a. Position Authorizations

- (1) Any permanent new position (including any reactivated position that requires a new "set-up" action); regardless of funding source, requires Board approval.

Agenda Item Format: Requests for new position authorizations must include the following information:

- (a) position title;
- (b) type of position;
- (c) FTE;
- (d) Term of appointment;
- (e) Effective date;
- (f) approximate salary range;
- (g) funding source;
- (h) area or department of assignment;
- (i) a description of the duties and responsibilities of the position; and
- (j) a complete justification for the position.

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: B. Appointment Authority and Procedures ~~January 2005-February 2010~~

(2) Any permanent position being deleted. The affected position should be identified by type, title, salary, area or department of assignment, and funding source.

- b. The initial appointment of all employees to any type of position at a salary that is equal to or higher than 75% of the chief executive officer's annual salary.
- c. The employment agreement of any head coach or athletic director (at the institutions only) longer than one year, and all amendments thereto.
- d. The criteria established by the institutions for initial appointment to faculty rank and for promotion in rank, as well as any additional faculty ranks and criteria as may be established by an institution other than those provided for in these policies (see subsection II. G.) Any exceptions to the approved criteria also require Board approval.

For the procedures established for periodic performance review of tenured faculty members see subsection II. G.

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: B. Appointment Authority and Procedures ~~January 2005-February 2010~~

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GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: F. Policies Regarding Non-classified Employees**August 2009 February 2010

F. Policies Regarding Non-classified Employees**1. Employment Terms**

- a. All non-classified employees, except those set forth in Section II.F.1.b. below, serve at the pleasure of the chief executive officer, and may be dismissed at any time, with or without cause, and without notice, at the discretion of the chief executive officer.

b. Employment Contracts

- (1) An institution may provide employment contracts to its non-classified employees. If an institution chooses to offer employment contracts to its non-classified employees, the employment contract must include the period of the appointment, salary, pay periods, position title, employment status and such other information as the institution may elect to include in order to define the contract of employment. Non-classified employees have no continued expectation of employment beyond their current contract of employment.

- (2) Non-classified employees, who serve pursuant to contracts of employment containing a stated salary are not guaranteed such salary in subsequent contracts or appointments, and such salary is subject to adjustment during the contract period due to financial exigency (as provided for in Section II.N of Board Policy) or as provided for in section II.B.2.c of Board Policy.

- ~~(2)~~(3) Each employee must acknowledge receipt and acceptance of the terms of the employment contract by signing and returning a copy to the institution initiating the offer of appointment. Failure or refusal of the employee to sign and return a copy of the employment contract within the time specified in the contract is deemed to be a rejection of the offer of employment unless the parties have mutually agreed in writing to extend the time. Nothing in this paragraph prohibits the institution from extending another offer to the employee in the event the initial offer was not signed and returned in a timely manner. Any alteration by the employee of the offer is deemed a counter-offer requiring an affirmative act of acceptance by an officer authorized to enter into contracts of employment binding the institution.

- ~~(3)~~(4) Each contract of employment shall include a statement to the following effect and intent: "The terms of employment set forth in this contract of employment are also subject to the Governing Policies and Procedures of the State Board of Education (or the Board of Regents of the University of Idaho, in the case of University of Idaho), and the policies and procedures of the institution." The contract shall also state that it may be terminated at any time

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: F. Policies Regarding Non-classified Employees****August 2009 February 2010**

for adequate cause, as defined in Section II.L. of Board Policy, or when the Board declares a state of financial exigency, as defined in Section II.N. of Board Policy. The contract shall also state that it may be non-renewed pursuant to Section II.F.5. of Board Policy.

- ~~(4)~~(5) No contract of employment with such an employee may exceed one (1) year without the prior express approval of the Board. Employment beyond the contract period may not be legally presumed. Renewal of an employment contract is subject solely to the discretion of the chief executive officer of the institution, and, where applicable, of the Board.

2. Compensation

- a. Salary – All non-classified employees shall receive a fixed salary. Payment in addition to the fixed salary may be authorized by the chief executive officer and reported to the Board. All initial salaries for non-classified employees are established by the chief executive officer, subject to approval by the Board where applicable. The Board may make subsequent changes for any non-classified employee salary or may set annual salary guidelines and delegates to its executive director authority to review compliance with its annual guidelines. Any annual salary increase outside Board guidelines requires specific and prior Board approval before such increase may be effective or paid to the non-classified employee. With the exception of the chief executive officers, and other positions whose appointment is a reserved Board authority, approval of salaries shall be effective concurrently with Board approval of annual operating budgets for that fiscal year.
- b. Salaries, Salary Increases and other Compensation related items
 - (1) Salaries for new appointments to dean, associate/assistant dean, vice president, and president/vice president direct-report positions may not exceed the median rate for such position established by the College and University Professional Association for Human Resources (CUPA), or its equivalent, without prior Board approval.
 - (2) Appointments to acting or interim positions shall be at base salary rates no greater than ten percent (10%) more than the appointees' salary rate immediately prior to accepting the interim appointment or ninety-five percent (95%) of the prior incumbent's rate, whichever is greater.
 - (3) Overtime Compensation – Non-classified employees earning annual leave at the equivalent rate of two (2) days for each month or major fraction thereof of credited state service are not eligible for either cash compensation or compensatory time off for overtime work. Non-classified employees in

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: F. Policies Regarding Non-classified Employees****August 2009 February 2010**

positions that are defined as "non-exempt" under the Fair Labor Standards Act earn overtime at a rate of one and one-half (1½) hours for each overtime hour worked. Other non-classified employees may earn compensatory time off at the discretion of the chief executive officer at a rate not to exceed one (1) hour of compensatory time for each hour of overtime worked.

- (4) Credited State Service - The basis for earning credited state service will be the actual hours paid not to exceed forty (40) per week.
- (5) Pay Periods - All non-classified employees are paid in accordance with a schedule established by the state controller.
- (6) Automobile Exclusion - Unless expressly authorized by the Board, no non-classified employee will receive an automobile or automobile allowance as part of his or her compensation.

3. Annual Leave

- a. Non-classified employees at the institutions, agencies earn annual leave at the equivalent rate of two (2) days per month or major fraction thereof of credited state service. Twelve-month employees employed at the entities named above may accrue leave up to a maximum of 240 hours. An employee who has accrued the maximum will not earn further leave until the employee's use of annual leave reduces the accrual below the maximum.

Non-classified employees in positions which are covered under the Fair Labor Standards Act earn annual leave according to § 67-5334 and are subject to the maximum leave accruals in § 67-5335(2).

- b. Non-classified employees appointed to less than full-time positions earn annual leave on a proportional basis dependent upon the terms and conditions of employment.
- c. Professional Leave - At the discretion of the chief executive officer, non-classified employees may be granted professional leave with or without compensation under conditions and terms as established by the chief executive officer.

4. Performance Evaluation

Each institution or agency must establish policies and procedures for the performance evaluation of non-classified employees, and are responsible for implementing those policies in evaluating the work performance of employees. The purposes of employee evaluations are to identify areas of strength and weakness, to improve employee work performance, and to provide a basis on which the chief

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: F. Policies Regarding Non-classified Employees**August 2009 February 2010

executive officers and the Board may make decisions concerning retention, promotion, and merit salary increases. All non-classified employees must be evaluated annually. Any written recommendations that result from a performance evaluation must be signed by the appropriate supervisor, a copy provided to the employee and a copy placed in the official personnel file of the employee. Evaluation ratings that result in findings of inadequate performance of duties or failure to perform duties constitute adequate cause as set forth in Section II.L. of Board Policy.

5. Non-Renewal of Non-classified Contract Employees

- a. Notice of the decision of the chief executive officer to not renew a contract of employment must be given in writing to the non-classified employee at least sixty (60) calendar days before the end of the existing period of appointment for annual appointments. For appointments of less than one year, the written notice must be at least thirty (30) days prior to the end of the existing period of appointment. Reasons for non-renewal need not be stated. Non-renewal without cause is the legal right of the Board. If any reasons for non-renewal are provided to the employee for information, it does not convert the non-renewal to dismissal for cause and does not establish or shift any burden of proof. Failure to give timely notice of non-renewal because of mechanical, clerical, mailing, or similar error is not deemed to renew the contract of employment for another full term, but the existing term of employment must be extended to the number of days necessary to allow sixty (60) (or thirty days where applicable) calendar days notice to the employee.
- b. Except as set forth in this paragraph, non-renewal is not grievable within the institution nor is it appealable to the Board. However, if an employee presents bona fide allegations and evidence to the chief executive officer of the institution that the non-renewal of the contract of employment was the result of discrimination prohibited by applicable law, the employee is entitled to use the internal discrimination grievance procedure to test the allegation. If the chief executive officer is the subject of the allegations, the employee may present the bona fide allegations and evidence to the Executive Director. The normal internal grievance procedure for discrimination must be used unless changed by mutual consent of the parties. The ultimate burden of proof rests with the employee. The institution is required to offer evidence of its reasons for non-renewal only if the employee has made a prima facie showing that the recommendation of non-renewal was made for reasons prohibited by applicable law. Unless mutually agreed to by the parties in writing, the use of the discrimination grievance procedure will not delay the effective date of non-renewal. Following the discrimination grievance procedures, if any, the decision of the institution, is final, subject to Section II.F.5.c., below.

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: F. Policies Regarding Non-classified Employees****August 2009 February 2010**

- c. The non-classified contract employee may petition the Board to review the final action of the institution. Any petition for review must be filed at the Office of the State Board of Education within fifteen (15) calendar days after the employee receives notice of final action. The Board may agree to review the final action, setting out whatever procedure and conditions for review it deems appropriate, or it may choose not to review the final action. The fact that a review petition has been filed will not stay the effectiveness of the final action, nor will the grant of a petition for review, unless specifically provided by the Board. Board review is not a matter of right. An employee need not petition for Board review in order to have exhausted administrative remedies for purposes of judicial review. Nothing in this section should be construed as any prohibition against filing a complaint with any appropriate state or federal entity, including but not limited to the Equal Employment Opportunity Commission (EEOC) or the Idaho Human Rights Commission (IHRC).

6. Tenure

Non-classified employees are generally not entitled to tenure. Certain, very limited, exceptions to this general rule are found in Subsection G.6 of these personnel policies and procedures.

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: F. Policies Regarding Non-classified Employees

August 2009 February 2010

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GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES**

Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~October 2009~~
February 2010

G. Policies Regarding Faculty (Institutional Faculty Only)**1. Letters of Employment**

- a. All faculty employees serve pursuant to employment contracts. The employment contract must include the period of the appointment, salary, pay periods, position title, employment status and such other information as the institution may elect to include in order to define the contract of employment. Non-tenured faculty employees have no continued expectation of employment beyond their current contract of employment. Each faculty employee must acknowledge receipt and acceptance of the terms of the employment contract by signing and returning a copy to the institution initiating the offer of appointment. Failure or refusal of the faculty employee to sign and return a copy of the employment contract within the time specified in the contract is deemed to be a rejection of the offer of employment unless the parties have mutually agreed in writing to extend the time. Nothing in this paragraph prohibits the institution from extending another offer to the employee in the event the initial offer was not signed and returned in a timely manner. Any alteration by the employee of the offer is deemed a counter-offer requiring an affirmative act of acceptance by an officer authorized to enter into contracts of employment binding the institution. Each contract of employment must include a statement to the following effect and intent: "The terms of employment set forth in this letter (contract) of employment are also subject to the Governing Policies and Procedures of the State Board of Education (or the Board of Regents of the University of Idaho, in the case of the University of Idaho), and the policies and procedures of (the institution)."
- b. Term of Appointment - All non-tenured faculty employees have fixed terms of employment. No contract of employment with such an employee may exceed one (1) year without the prior approval of the Board. Employment beyond the contract period may not be legally presumed. Reappointment of a faculty employment contract is subject solely to the discretion of the chief executive officer of the institution, and, where applicable, of the Board.
- c. Non-tenured faculty and tenured faculty, who serve pursuant to contracts of employment or notices (letters) of appointment containing a stated salary are not guaranteed such salary in subsequent contracts or appointments, and such salary is subject to adjustment during the contract period due to financial exigency (as provided for in Section II.N of Board Policy) or as provided for in section II.B.2.c of Board Policy.

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~October 2009~~
February 2010**

ed. Faculty Rank and Promotion

- (1) There are four (4) primary faculty ranks at each institution: (a) professor, (b) associate professor, (c) assistant professor, and (d) instructor. Each institution may establish additional faculty ranks, specify the title of each rank, and delineate the requirements for each faculty rank so established. Recommendations for additional faculty ranks must be submitted by the chief executive officer to the Board for approval.
- (2) Faculty rank, including initial appointment to faculty rank and any promotion to a higher rank at an institution, is located in a department or equivalent unit.
- (3) Each institution must establish criteria for initial appointment to faculty rank and for promotion in rank at the institution. Such criteria must be submitted to the Board for approval, and upon approval must be published and made available to the faculty.
- (4) Persons who have made substantial contributions to their fields of specialization or who have demonstrated exceptional scholarship and competence or appropriate creative accomplishment of recognized outstanding quality may be appointed to faculty rank without satisfying established institutional criteria for initial appointment or promotion, provided that the qualifications of such individuals have been reviewed in accordance with institutional procedures and the appointment is recommended by the chief executive officer and approved by the Board.
- (5) A non-classified employee may hold faculty rank in a department or equivalent unit in which rank has previously been established by the institution. A non-classified employee may be granted rank at the time of appointment or subsequent thereto, or may be promoted in rank, if such employee meets the criteria for rank as established by the institution and approved by the Board.

2. Compensation**a. Salary**

All initial salaries for faculty employees are established by the chief executive officer, subject to approval by the Board where applicable. Payment in addition to regular salaries must be authorized by the chief executive officer and reported to the Board. The Board may make subsequent changes for faculty employee positions or may set annual salary guidelines and delegate to its executive director authority to review compliance with its annual guidelines. Any annual salary increase outside Board guidelines requires specific and prior Board

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~October 2009~~
February 2010**

approval before such increase may be effective and paid to the employee. With the exception of the chief executive officers, and other positions whose appointment is a reserved Board Authority, approval of salaries shall be effective concurrently with Board approval of annual operating budgets for that fiscal year.

b. Salaries, Increases and other Compensation related items

(1) For purposes of categorizing faculty employees for salary and reporting purposes, the following definition applies: Faculty includes all persons whose specific assignments customarily are made for the purpose of conducting instruction, research, or public service as a principal activity (or activities), and who hold the following academic rank or titles of professor, associate professor, assistant professor, instructor, lecturer, or the equivalent of any of these academic ranks. Report in this category deans, directors, or the equivalents, as well as associate deans, assistant deans, and executive officers of academic departments (chairpersons, heads, or the equivalent) if their principal activity is instructional. Do not include student teaching or research assistants or medical interns or residents. (For reporting purposes, deans, associate deans, and assistant deans are included in the executive/administrative category.)

(2) Credited State Service/Full Time Status - A faculty member employed for an academic year and paid over a twelve-month period will be credited with twelve (12) months of state service. For all benefit status determinations and calculations, faculty members shall be considered full time, year round employees of the employing institution as long as the employee's teaching, research and service duties are commensurate with the full time faculty work load assignment as defined by the employing institution.

(3) Pay Periods - All faculty employees, including those on academic-year appointments, are paid in accordance with a schedule established by the state controller.

(4) Automobile Exclusion - Unless expressly authorized by Board policy, no faculty employee will receive an automobile or automobile allowance as part of his/her compensation.

3. Annual Leave

- a. Only faculty members serving twelve (12) month appointments earn annual leave. Such annual leave shall be earned in the same manner as for non-classified employees.

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~October 2009~~
February 2010**

b. Sabbatical Leave

(1) Eligibility

A sabbatical leave may be granted at the discretion of the chief executive officer to a tenured faculty member (or a professional-technical faculty member) who has completed at least six (6) years of full-time service at an institution. A sabbatical leave may not be awarded to the same faculty member more than once in any six (6) academic years and sabbatical leave time is not cumulative. Sabbatical leave proposals must be submitted, reviewed, and processed according to policies and procedures established at each institution. A sabbatical leave may be used for the purpose of acquiring new professional skills and updating professional skills or conducting research. Sabbatical leave awards are fully dependent on the availability of appropriate funding.

(2) Term

The term of a sabbatical leave is either one (1) academic semester at full pay or two (2) semesters at half pay.

(3) Condition

Each faculty member who is granted a sabbatical leave must serve at the institution for at least one (1) academic year after completion of the sabbatical unless the chief executive officer approves a waiver of the requirement.

(4) Report on Sabbatical Leave

By the end of the first semester following return to the institution from a sabbatical leave, the faculty member must submit a written account of sabbatical activities and accomplishments to the academic vice president.

(5) Report to the Board

The chief executive officer must report the names of faculty members awarded sabbatical leaves and a brief statement of the purposes of each sabbatical in their semi-annual report to the Board

4. Performance Evaluation

- a. Annual Evaluation - Each year the chair of a department must submit to the dean of the chair's college an evaluation of each faculty member in the department. This evaluation, together with the input of higher administrators, will be used as (1) basis for the final recommendation relative to reappointment, non-

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~October 2009~~
February 2010**

reappointment, acquisition of tenure, or other personnel action, whichever is appropriate. The chairman must communicate an assessment of strengths and weaknesses to each faculty member evaluated.

- b. Evaluation Criteria - Evaluation of faculty should be made in terms of the individual's effectiveness. Each institution shall publish its criteria for annual evaluation and ensure that all members of the faculty have access to the criteria.
- c. Any written recommendations that result from evaluation of a faculty employee will be given to the employee and a copy will be placed in the employee's file.
- d. Each institution must develop policies, procedures, and measurement instruments to be used in the evaluation by students of faculty teaching effectiveness.

5. Non-renewal of Non-tenured Faculty Members

- a. Notice of non-renewal must be given in writing and in accordance with the following standards:
 - (1) First Year Of Service - Not later than March 1 of the first full academic year of service if the appointment is not to be renewed at the end of the academic year; or if a one-year appointment terminates during an academic year and is not to be renewed, at least three (3) months in advance of its termination.
 - (2) Second Year of Service - Not later than December 15 of the second full academic year of service if the appointment is not to be renewed at the end of the academic year; or, if the appointment terminates during an academic year and is not to be renewed, at least six (6) months in advance of its termination.
 - (3) Three (3) Or More Years Of Service – Not later than July 15 preceding the academic year at the end of which the appointment is to be terminated; or, if the appointment terminates during an academic year and is not to be renewed, at least twelve (12) months in advance of its termination.
 - (4) Failure to provide timely notice of non-renewal because of mechanical, clerical, or mailing error does not extend or renew the letter or contract of employment for another term, but the existing term of employment will be extended to provide the employee with a timely notice of non-renewal.
 - (5) Financial Exigency - Notice of non-renewal is not required when the Board has authorized a reduction in force resulting from a declaration of financial exigency and a non-tenured faculty member is to be laid off. In that event, notice of layoff must be given as provided under the policies for reduction in force.

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~October 2009~~
February 2010**

b. Request For Review

- (1) Non-renewal is not subject to investigation or review except that the employee may request an investigation or review to establish that written notice was or was not received in accordance with the time requirements set forth in this section. In such cases, the investigation or review will be concerned only with manner and date of notification of non-renewal. The employee must request such investigation or review in writing of the chief executive officer within fifteen (15) days of receipt of the written notice of non-renewal.
- (2) Provided, however, that if the non-tenured faculty member presents bona fide allegations and evidence in writing to the chief executive officer of the institution that the non-reappointment was the result of discrimination prohibited by applicable law, the non-tenured faculty member is entitled to use the internal discrimination grievance procedure to test the allegation. In such cases, the same procedures, burden of proof, time limits etc. as set forth for the grievance of non-renewal by non-classified employees shall be used (see subsection F).

- c. Non-tenured faculty members who are notified that they will not be reappointed or that the succeeding academic year will be the terminal year of appointment are not entitled to a statement of reasons upon which the decision for such action is based. No hearing to review such a decision will be held.

6. Tenure

- a. **Tenure Defined** - Tenure is a condition of presumed continuous employment following the expiration of a probationary period and after meeting the appropriate criteria. After tenure has been awarded, the faculty member's service may be terminated only for adequate cause; except in the case of retirement or financial exigency as declared by the Board; in situations where extreme shifts of enrollment have eliminated the justification for a position; or where the Board has authorized elimination or substantial reduction in a program. Tenure status is available only to eligible, full-time institutional faculty members, as defined by the institution. All faculty appointments are subject to the approvals as required in Board policy. Nontenured members of the faculty are appointed to term appointments pursuant to subsection G1. Any commitment to employ a nontenured member of the faculty beyond the period of his or her current term of appointment is wholly ineffective.

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~October 2009~~
February 2010**

b. Acquisition of Tenure

(1) Professional-Technical Faculty hired under the division of professional-technical education prior to July 1, 1993 who were granted tenure may retain tenure in accordance with these policies. Individuals hired under the Division of Professional-Technical education subsequent to July 1, 1993 are hired and employed as nontenure track faculty and will:

- (a) be afforded the right to pursue promotion; and
- (b) be considered and granted an employment contract in accordance with these policies and be subject to continued acceptable performance and/or the needs of the institution; and
- (c) be afforded an opportunity to serve on institutional committees.

(2) Academic faculty members, after meeting certain requirements, established by the employing institution, may acquire tenure. Each institution shall develop policies for the acquisition of tenure that are consistent with this general philosophy and policy statement of the Board. Acquisition of tenure is not automatic, by default or defacto, but requires an explicit judgment, decision, and approval. A faculty member is eligible to be evaluated for the acquisition of tenure after having completed four (4) full years of academic employment at the institution, although tenure may be awarded prior to completion of this initial eligibility period in certain exceptional cases as provided in Board Policy II.G.6.d.4.a). In addition, an academic faculty member must be evaluated for the acquisition of tenure not later than the faculty member's sixth (6th) full academic year of employment at the institution. In certain exceptional cases a faculty member may petition for extension of the timeline for tenure due to extenuating circumstances as provided in Board Policy II.g.6.d.4.b).

c. Notification - An individual eligible for tenure must be informed, by proffered written contract, of appointment or nonappointment to tenure not later than June 30 after the academic year during which the decision is made. In case of denial of tenure, the faculty member must be given a written notice that tenure was denied.

d. Standards of Eligibility for Tenure

(1) Annual Appointments - Until the acquisition of tenure, all appointments are made for a period not to exceed one (1) year. Prior to the award of tenure, employment beyond the annual term of appointment may not be legally presumed.

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~October 2009~~
February 2010**

- (2) Service in Professional Rank - All satisfactory service in any professorial rank may be used to fulfill the time requirement for acquiring tenure. Each institution must develop criteria and rules by which prior service may be evaluated for inclusion in experience necessary for acquiring tenure.
- (3) Service in Instructor Rank - A maximum of two (2) years satisfactory service in the rank of instructor at the institution will be allowed in partial fulfillment of the time requirement in the professorial ranks. Faculty members who hold the rank of instructor may be eligible for tenure status if provided for by the institution even though they teach in fields that have established professorial ranks.
- (4) Exceptional Cases
 - (a) Tenure may be awarded prior to completion of the usual eligibility period in certain exceptional cases. In such cases, the burden of proof rests with the individual.
 - (b) Extension of the tenure review period may be granted in certain exceptional cases. In such cases the faculty member must formally request such an extension and indicate the reason for the request. An institution that permits an extension of the tenure review period must include in its policies the procedure a faculty member must follow to request such an extension, and the basis for determining the modified timeline for review.
- e. Evaluation For Tenure - It is expected that the chief executive officer, in granting tenure, will have sought and considered evaluations of each candidate by a committee appointed for the purpose of annual evaluations or tenure status. Such committee must consist of tenured and non-tenured faculty; student representation; and one (1) or more representatives from outside the department. Each member of the committee has an equal vote on all matters. The committee must give proper credence and weight to collective student evaluations of faculty members, as evidenced by an auditing procedure approved by the chief executive officer. The recommendation of the committee will be forwarded in writing through appropriate channels, along with written recommendations of the department chairperson or unit head, dean, and appropriate vice president, to the chief executive officer, who is responsible for making the final decision.
- f. Award of Tenure - The awarding of tenure to an eligible faculty member is made only by a positive action of the chief executive officer of the institution. The president must give notice in writing to the faculty member of the approval or denial of tenure. Notwithstanding any provisions in these policies to the contrary, no person will be deemed to have been awarded tenure because notice is not given

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~October 2009~~
February 2010**

g. Periodic Performance Review of Tenured Faculty Members - It is the policy of the Board that at intervals not to exceed five (5) years following the award of tenure to faculty members, the performance of tenured faculty must be reviewed by members of the department or unit and the department chairperson or unit head. The review must be conducted in terms of the tenured faculty member's continuing performance in the following general categories: teaching effectiveness, research or creative activities, professional related services, other assigned responsibilities, and overall contributions to the department.

(1) Procedures for periodic review - Each institution must establish procedures for the performance review of tenured faculty members at the institution. Such procedures are subject to the review and approval of the Board. Each year the academic vice president or designee is responsible for designating in writing those tenured faculty members whose performance is subject to review during the year.

(2) Review standards - Each institution may establish its own internal review standards subject to approval by the Board. Absent such institutional standards, the institution must use the following standards.

If during the periodic review, the performance of a tenured faculty member is questioned in writing by a majority of members of the department or unit, the department chairperson or unit head, the appropriate dean, the appropriate vice president, or the chief executive officer, then the appropriate vice president or equivalent administrator must decide whether a full and complete review must be conducted in accordance with the procedures established for the initial evaluation for tenure at the institution. If during the periodic review, the performance of a tenured faculty member is not questioned in writing, members of the department or unit and the department chairperson or unit head must prepare a written review statement that the performance review has been conducted and that a full and complete review is not required.

(3) Exception for Associate Professors in the Promotion Process - Generally, the promotion from the rank of associate professor to full professor is considered no earlier than the fifth full year after attaining the rank of associate professor, which is generally contemporaneous with the granting of tenure. In such cases, if review for promotion to full professor is scheduled during the fifth, sixth or seventh full year after the award of tenure then the promotion review may, if it meets substantially similar criteria and goals of the post tenure review, take the place of the periodic performance review described here.

(4) Termination of employment - If, following a full and complete review, a tenured faculty member's performance is judged to have been

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~October 2009~~
February 2010**

unsatisfactory or less than adequate during the period under review, the chief executive officer may initiate termination of employment procedures for the faculty member. In other words, an unsatisfactory or less than adequate performance rating shall constitute adequate cause for dismissal.

- h. Dismissal for Adequate Cause - Tenured faculty members may be dismissed for adequate cause as provided for in Subsection L of this Section.

- i. Tenure for Academic Administrators

(1) "Academic administrators," for purposes of this topic, means the chief academic officers of the Office of the State Board of Education and the institutions and the deans and department chairs and their associates/assistants of the academic units of the institutions, and shall not include persons occupying other administrative positions.

(2) An employee with tenure in an academic department or equivalent unit who is appointed to an academic administrator position retains tenure in that department or equivalent unit

(3) An individual hired for or promoted to an academic administrator may be considered for a tenured faculty rank in the appropriate department or equivalent unit. Such consideration is contingent upon approval by the institution's president.

(4) Upon termination of employment as an academic administrator, an employee with tenure may, at his or her option, return to employment in the department or equivalent unit in which he or she holds tenure unless such employee resigns, retires, or is terminated for adequate cause.

(5) An individual hired for a non-academic administrator position from outside the institution will not be considered for tenured faculty rank in conjunction with such appointment. However, he or she may be granted an adjunct faculty appointment, upon the recommendation of the appropriate department and dean and with the approval of the provost or chief academic officer and president, if the individual will teach and otherwise contribute to that department.

(6) Notwithstanding the above, each administrative employee who is granted tenure shall be reviewed in the same manner as tenured faculty

- j. Terminal Contract of Employment - If a faculty member is not awarded tenure, the chief executive officer must notify the faculty member of the decision not to recommend tenure and may, at his or her discretion, either issue to the

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~October 2009~~
February 2010**

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- faculty member a contract for a terminal year of employment, or, at the sole discretion of the chief executive officer, issue to the faculty member contracts of employment for successive periods of one (1) year each. Such appointment for faculty members not awarded tenure must be on an annual basis, and such temporary appointments do not vest in the faculty member any of the rights inherent in tenure and there shall be no continued expectation of employment beyond the annual appointment.
- k. When authorized by the chief executive officer, or his or her designee, the year in which the tenure decision is made may be the terminal year of employment.
 - l. Effect of lapse in service, transfer, reassignment, reorganization, and administrative responsibilities.
 - (1) A non-tenured faculty member who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years may have his or her prior service counted toward eligibility for the award of tenure. Eligibility for the award of tenure must be clarified in writing before reappointment. A tenured faculty member who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years must have tenure status clarified in writing by the president or his designee before appointment. The faculty member may be reappointed with tenure, or may be required to serve additional years before being reviewed for tenure status.
 - (2) Before a non-tenured faculty member holding academic rank is moved from one position in the institution to another, the member must be informed in writing by the academic vice president, after consultation with the receiving department, as to the extent to which prior service may count toward eligibility for tenure status.
 - (3) No faculty member's tenure in a discipline may be adversely affected by the reorganization of the administrative structure. A faculty member's tenure is not affected by reassignment of administrative responsibilities.
 - (4) When a tenured faculty member is serving as department chairman, college dean, or in some other administrative or service capacity, retention of membership, academic rank, and tenure in the subject-matter department or similar unit is maintained. Should the administrative or service responsibilities terminate, the member takes up regular duties in the discipline within which membership, academic rank, and tenure was retained.

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~October 2009~~
February 2010

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GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: N. Staff Reduction Procedures – All Employees August 2009-February 2010**N. Financial Exigency Procedures – All Employees****1. Financial Exigency**

The Board recognizes that in order to discharge its responsibilities for the agencies or institutions under its governance, it may become necessary to curtail, modify, or eliminate some of the programs of the agencies or institutions due to unfavorable economic conditions. The Board further recognizes that it must dedicate its resources to the achievement of the purposes and goals of its agencies or institutions. As used here, “financial exigency” means a demonstrably bona fide financial crisis that adversely affects an agency or institution as a whole, or one (1) or more programs, or other distinct units. A financial exigency exists only upon Board declaration, and the responsibility and authority to make such a declaration rests solely with the Board. The realities of the legislative appropriation process, the state revenue collection process, the possibility of budget hold-backs via executive order and the subsequent analysis needed before the Board declares a financial exigency may allow little time for official notice of a declaration of a financial exigency and may require that the decision to declare a financial exigency be based on estimated revenues, rather than on actual revenues. The Board must take action by written resolution setting forth the basis for its decision to declare a financial exigency, after notice and hearing, at a regular or special meeting of the Board.

This subsection N ~~is designed to authorize~~ addresses potential responses to a declared financial exigency including: (1) the lay off of non-classified contract employees, tenured faculty, and non-tenured faculty, and classified employees during the term of their contract of employment; (2) ~~employment actions other than layoffs that are designed to reduce budgetary expenditures;~~ (3) the closure, relocation, or discontinuance of any programs, units, or activities; or (4) ~~any combination thereof.~~ –3

This subsection N does not apply to the organization or reorganization of the institutions or agencies under the governance of the Board, nor does it limit the authority delegated by the Board to the chief executive officers to organize and reorganize the institutions or agencies, including the authority to take certain employment actions, as provided in section II.B.2.b. of the Board’s Governing Policies and Procedures, either independently or, in response to, a declared financial exigency. ~~Organizational structure, duty assignments, FTE count, place of work, shift placement, salaries, work hours, benefit determination and reductions in force and all similar and related work place decisions are the prerogative of the chief executive officers, subject to the reserved authority of the Board where applicable. In addition, this subsection N is not applicable to the following situations:~~

- a. When a reduction in force occurs pursuant to, and for those employees subject to, the State Board for Professional-Technical Education’s administrative rules

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: N. Staff Reduction Procedures – All Employees August 2009-February 2010**

governing post-secondary reduction or termination (I DAPA 55.01.02), which excludes community colleges.

- b. When a reduction in force occurs where the reductions are made via the non-renewal process for non-classified contract staff and non-tenured faculty.
- c. When a reduction in force occurs pursuant to Board policies (Section III. G.) for program consolidation, relocation or discontinuance not resulting from financial exigency. Program closure, relocation, reduction, or discontinuance pursuant to Section III.G shall not be implemented utilizing any policy or procedure in this Section II. N.
- d. When a reduction in force affects State of Idaho classified employees using the procedures of the State Division of Human Resources or classified employees of the University of Idaho using the policies of the University of Idaho.
- e. When a reduction in force affects non-classified at-will employees.

2. Response by an Institution or Agency to a Declared Financial Exigency

- a. After active consultation with employees, including faculty, professional staffs, and classified personnel, the Chief Executive Officer of each agency or institution must prepare a plan (the "Plan") in response to the declaration of financial exigency. When developing this Plan, consideration must be given to the necessity and manner of reducing the employment force, the appropriate units or subunits to be affected, and the criteria for identifying the employees who are affected by the Plan. Once completed, the Plan must be approved by the Board. Provided, however, that implementation of the Plan and notices required to be given in the Plan may begin prior to Board approval, which approval shall then also include ratification of such actions.
- b. Each of the institutions shall seek advice from a committee, which may include representatives of the administration, faculty, staff or students, on the state of the financial exigency and possible responses thereto.
- c. Notwithstanding any other Board policy, order or rule, or the policies of any institution or agency, all categories of employees may be laid off as a result of a Board declared financial exigency. The process used to layoff employees must be done equitably (but not necessarily uniformly), in good faith, and in a systematic manner directly related to the financial exigency.
- ~~d. Employment Actions Other than Layoffs. In any situation where a layoff may be made under this subsection N, an employment action other than a layoff (including but not limited to a salary reduction, a work hour reduction, a demotion, and/or administrative leave without pay) may also be instituted. Such~~

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: N. Staff Reduction Procedures – All Employees August 2009-February 2010**

~~employment action need not be uniformly applied, it need only meet the requirements of this topic 2 and topic 7 below. In determining how to implement employment actions other than a layoff, the institution shall use the same policies that apply to a financial exigency layoff. However, employees who are affected by employment actions other than layoff do not have layoff reinstatement rights.~~

e.d. _____ Program Closure, Relocation and Discontinuance. When the Plan for responding to a declared financial exigency includes the closure, relocation or discontinuance of a program, such program closure, relocation or discontinuance shall be subject only to the requirements of this subsection N and not to any other Board policy, including specifically, but not limited to, section III.G, and its related guidelines. However, arrangements should be made for enrolled students to complete affected programs in a timely manner and with minimum interruptions.

~~f.e.~~ A financial exigency layoff, ~~employment actions other than a layoff, and~~ or program closure, relocation or discontinuance resulting from financial exigency may occur in the following manner and may be the same or may differ from one (1) agency or institution to another:

- (1) By entire entity or across an entire agency or institution; or
- (2) By subunit within an agency or institution, such as, but not limited to, a college, school, academic department, administrative department, division, office, bureau, discipline, or specialty within a discipline, and such actions may also differ between subunits of the same agency or institution; or
- (3) by any combination of the aforementioned.

3. Classified Employees

When a financial exigency results in a layoff that affects classified employees, the following shall apply:

a. State of Idaho Classified Employees

A layoff affecting employees subject to the Idaho classified personnel system will be made pursuant to the Rules of the Division of Human Resources.

b. University of Idaho Classified Employees

A layoff affecting University of Idaho classified employees will be made pursuant to the policies of the University of Idaho. Provided, however, that University of

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: N. Staff Reduction Procedures – All Employees August 2009-February 2010**

Idaho classified employees do not have a right of appeal to the Idaho Personnel Commission nor to the Board.

4. At-Will Employees.

This section II.N does not apply to the termination of at-will employees at the institutions or agencies. Such employees have no layoff rights and no right to notice, a hearing or reinstatement following termination of employment.

5. Layoff Criteria – All non-classified contract employees, non-tenured faculty and tenured faculty.

a. In developing the Plan, the chief executive officer must utilize as the first criterion the preservation of the overall quality and effectiveness of the programs of the agency or institution. Consequently, those employees who are deemed to be of key importance will be retained in preference to other employees, whatever their status, at the discretion of the Chief Executive Officer. Programs, for purposes of a financial exigency layoff, include, but are not limited to, academic, non-instructional, maintenance, administrative, and other support areas. Other criteria that must be considered include, but are not limited to, tenure, rank, time in rank, length of service, field of specialization, maintenance of necessary programs or services, maintenance of affirmative action programs, and quality of service and work.

b. Notice of Financial Exigency Layoffs

(1) Form of Notice. The Board recognizes that any layoff may be a severe economic and personal loss to an employee. Therefore, and within the time frame provided in this policy, the Chief Executive Officer must give notice in writing to employees who are affected by a financial exigency layoff, which notice must include the effective date of the layoff; a statement of the basis for the Board's declaration of a financial exigency; a statement of the basis, the procedures, and the criteria used to lay off an employee; any opportunity for reconsideration or appeal, including access to appropriate documentation, and the issues that may and may not be considered; and the reinstatement rights of the employee.

(2) Time. Each agency or institution should make every reasonable effort to give as much notice as is practical, in light of the financial exigency, to each employee in advance of the effective date of the layoff. The Board requires each agency or institution under its governance to take the following minimum time for written notice of layoff:

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: N. Staff Reduction Procedures – All Employees ~~August 2009~~ February 2010**

- (a) Non-classified Contract Employees And Non-tenured Faculty - Not less than sixty (60) calendar days before the effective date of the layoff. Provided, however, that if under the express terms of the employee's contract the employment may be terminated on less notice, then the shorter notice provided in the contract shall apply.
 - (b) Tenured Faculty - To tenured faculty members occupying faculty positions, a notice of layoff with the effective date of layoff being at the end of the first full semester (Fall or Spring) after the financial exigency is declared.
- c. Hearing Procedures
- (1) All employees of the institutions or agencies who receive a notice of a financial exigency layoff have the right to appear before the Board at the meeting of the Board where the Board will take action on the Plan. Such appearance shall be governed by the Board's policies, procedures and guidelines regarding testimony before the Board. In addition, categories of employees shall have hearing rights as set forth below in this subtopic c.
 - (2) Non Tenured Faculty and Non-classified Contract Employees' Hearing Rights
 - (a) In most instances, a layoff of non-tenured faculty and non-classified employees serving under a contract of employment for a fixed term may be accomplished by non-renewal of the contract of employment rather than by lay off during the term of employment. Non-renewal after a Board declared financial exigency does not require a hearing nor is the non-renewal appealable at the agency or institution, nor is it appealable to the Board.
 - (b) If a non-tenured faculty member occupying a permanent faculty position or a non-classified employee serving under a contract of employment for a fixed term is laid off during the term of employment due to a financial exigency, the faculty member or employee is entitled to the pre-layoff hearing procedures set forth in paragraph (4) below.
 - (3) Tenured Faculty Hearing Rights. All Tenured faculty members occupying permanent faculty positions who are laid off due to a financial exigency are entitled to the pre-layoff hearing procedures set forth in paragraph (4) below.
 - (4) Financial Exigency Layoff Hearing Procedures
 - (a) The financial exigency layoff hearing procedures at the institutions or agencies must ensure a prompt and expeditious hearing that is fair and

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: N. Staff Reduction Procedures – All Employees August 2009-February 2010**

unbiased, but the hearing shall be informal. The application of evidentiary rules, questioning of witnesses (including cross-examination), rules concerning burden of proof, the participation of legal counsel, and similar and related attributes of more formal adjudication shall not be required. The final written recommendation of the hearing body or officer must be conveyed to the Chief Executive Officer of the institution or agency who shall make a final decision. An employee may ask the Chief Executive Officer to reconsider the decision. Such a request must be filed in writing with the Chief Executive Officer within fifteen (15) days of the notice of the final decision of the institution or agency. The decision of the Chief Executive Officer in response to the reconsideration request is final except as modified by the Board pursuant to an appeal under Section II.M. Use of these hearing procedures does not delay the effective date of the layoff.

(b) Grounds to Contest. The employee may contest the layoff on the following grounds:

- (i) Whether the agency or institution followed the appropriate policies and procedures and the terms of the Plan;
- (ii) Whether the layoff was made for constitutionally impermissible reasons; or
- (iii) Whether any other improper criteria were applied.

(c) Limitations Upon Review. The hearing body or officer will not review the Board's decision to declare a financial exigency or the funding distribution among and within the institutions or agencies. The decision of the Board to declare a financial exigency is at the Board's sole discretion and may not be contested by any employee in any type of hearing or appeal procedure.

(d) Employees may request that the Board hear an appeal of the final decision of the chief executive officer as provided in Board policy section II.M.2.b. Such a request does not delay the effective date of the layoff.

6. Reinstatement Rights

a. Tenured Faculty

In cases of a financial exigency layoff of tenured faculty members occupying permanent faculty positions, the position concerned may not be filled by replacement within a period of three (3) years from the effective date of the layoff unless the tenured faculty member has been offered a return to employment in

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: N. Staff Reduction Procedures – All Employees August 2009-February 2010**

that position and has not accepted the offer within thirty (30) calendar days after the offer is extended.

- (1) Refusal Of Reinstatement Offer . If an offer of reinstatement is not accepted, the tenured faculty member's name may be deleted from the reinstatement list, and, if so deleted, the Board has no further obligation to the faculty member.
- (2) Benefits During Layoff. A tenured faculty member who is laid off may continue to contribute toward and receive the benefits of any applicable state or University of Idaho insurance program if the laws, rules, regulations, policies, and procedures governing the administration of such insurance program so permit.
- (3) Leave Credit. A tenured member of the faculty who has been laid off and who accepts reemployment at the institution will resume tenure and the rank held at the time of layoff, be credited with any sick leave accrued as of the date of layoff, be paid a salary commensurate with the rank and length of previous service, and be credited with any annual leave (if applicable) which the employee has accrued as of the date of layoff and for which the employee has not received payment.

b. Non Tenured Faculty and Non-classified Contract Employees

In cases of a financial exigency layoff of non-tenured faculty members occupying permanent faculty positions, and non-classified contract employees occupying permanent positions, the position concerned may not be filled by replacement within a period of one (1) year from the effective date of the lay off unless the employee has been offered a return to employment in that position and the employee has not accepted the offer within thirty (30) calendar days after the offer is extended.

- (1) If an offer of reinstatement is not accepted, the employee's name may be deleted from the reinstatement list, and if so deleted, the Board has no further obligation to the employee.
- (2) A non-tenured faculty member or a non-classified contract employee who is laid off may continue to contribute toward and receive the benefits of any applicable state or University of Idaho insurance program if the laws, rules, regulations, policies, and procedures governing the administration of such insurance program so permit.
- (3) A non-tenured member of the faculty who has been laid off and who accepts reemployment at the institution will resume the rank held at the time of layoff,

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: N. Staff Reduction Procedures – All Employees August 2009-February 2010**

be credited with any sick leave accrued as of the date of layoff, be paid a salary commensurate with the rank and length of previous service, and will be credited with any annual leave (if applicable) which the employee had accrued as of the date of layoff and for which the employee has not received payment.

- (4) A non-classified contract employee who has been laid off and who accepts reemployment at the institution will be credited with any sick leave the employee had accrued as of the date of layoff, paid a salary commensurate with the length of previous service, and credited with any annual leave which the employee had accrued as of the date of layoff and for which the employee has not received payment.

~~7. Employment Actions Other than a Layoff. The implementation of personnel actions other than a layoff shall follow the requirements of this topic 7.~~

- ~~a. If the Plan for addressing the financial exigency includes employment actions other than, or in addition to, a layoff, the employees affected by such actions shall be entitled solely to such procedures as are set forth in this topic and those that may be set forth in the Plan, if any. Such procedures must include at least thirty (30) days written notice prior to the effective date of the action and an informal opportunity for the employee to be heard. The notice must include the effective date of the employment action; a statement of the basis for the Board's action to declare a financial exigency; a statement of the basis for the employment action and a description of the process for the opportunity to be heard. Such process must be prompt, expeditious and fair, but shall be informal. The application of evidentiary rules, questioning of witnesses (including cross-examination), rules concerning burden of proof, the participation of legal counsel, and similar and related attributes of more formal adjudication shall not be required. The employee may contest the action based on whether the agency, institution or school followed the appropriate policies and procedures and the terms of the Plan; whether the action was made for constitutionally impermissible reasons; or whether any other improper criteria were applied. The hearing will not review the Board's decision to declare a financial exigency or the funding distribution among and within the institutions, agencies, or school. The decision of the Board to declare a financial exigency is at the Board's sole discretion, and may not be contested by any employee in any type of hearing or appeal procedure. The written recommendation of the hearing officer or body must be conveyed to the chief executive officer who shall make a final decision. There is no right of appeal to the Board.~~
- ~~b. There are no reinstatement rights with respect to employment actions other than a layoff. Remedies, if any, to which employees are entitled, shall be set forth in the Plan.~~

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: N. Staff Reduction Procedures – All Employees ~~August 2009~~ February 2010**

87. Financial Exigency Program Closure, Relocation or Discontinuance.

- a. Faculty or staff being laid off as a result of a program closure, relocation or discontinuance pursuant to a financial exigency Plan shall be entitled to the same procedural rights as any other layoff pursuant to a financial exigency. Provided, however, the reinstatement rights only exist if the program is reinstated by the institution, not merely if the position is filled.
- b. Students enrolled in a program that is closed, relocated or discontinued pursuant to a financial exigency Plan should be given notice of the closure as soon as is practical. Notwithstanding any other provision of Board policy, institutional policy, or institutional catalog statements to the contrary, arrangements should be made for enrolled students to complete affected programs in a timely manner and with minimum interruptions. When there is a similar program within the institutions governed by the Board, an affected student will be provided with information on transferring to that program, although admission to any such program is contingent upon the availability of a position and the student's meeting any applicable admission requirements. If there is no similar program available within the institutions governed by the Board or the student is not able to gain admission to a similar program, the institution will make reasonable efforts to place the student in a related or comparable program within the institution. If none is available, the institution will make reasonable efforts to assist the student in locating to another program at the institution or elsewhere for which he or she is qualified.

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: N. Staff Reduction Procedures – All Employees ~~August 2009~~ February 2010

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SUMMARY OF COMMENTS

ATTACHMENT 5

1. The following summarizes changes suggested by the University of Idaho Faculty Senate:

Under II.B.2, all references to salary reductions were removed. Language was added which provides that institutions shall establish internal procedures for implementation of work hour adjustments (with the advice and consent of faculty and staff).

The proposed language under II.F. and II.G. was removed in its entirety.

The Senate requested that the Board provide additional time before the first reading of this policy change to allow university faculties to find consensus.

2. The following summarizes comments made by the Lewis-Clark State College Faculty Senate:

The changes give the administrations the power to operate their institutions as though they were in a state of financial exigency without a declaration of one. The processes afforded higher education employees under the existing policy (II.N) suffice.

The authority granted to administrations under the existing policy II.B for personnel management is a general statement that invokes the requisite knowledge and training of administrators to run their institutions within well-established leadership norms. The proposed revisions give administrations carte blanche to administer without accountability to the employees or the people of the state.

Policy II.G, which currently defines the contracts of employment for institutional faculty, provides sufficient protections for the faculty and the state board to ensure that faculty carries out their work as educators. The language as proposed essentially allows the state to dishonor its contracts with the faculty, relegating them to at-will status. The same argument can be made with respect to Policy II.F, which pertains to non-classified staff.

3. Rep. Tom Trail (R-Moscow) submitted the following comments:
 - There has been limited involvement by faculty and staff in the crafting of these proposed policies.
 - The proposed policies could have a chilling effect on retention and recruitment.
 - Current policies are adequate to address the current fiscal crisis.

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