

ENHANCING POWER BY DENIGRATING THE CONTRACT:  
LCSC FACULTY'S POSITION OPPOSING THE SBOE AMENDMENTS

by  
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Executive Summary

The proposed revisions to SBOE Human Resource policies II.B, II.F, II.G, and II.N have generated considerable debate among faculty and administrations of higher education institutions across the state. The Board stated that the undertaking was in response to administrators' request for clarification of their authority in times of financial hardship. What has now been proposed is a blurring of the lines between routine personnel management actions, the force and relevance of employment contracts, and financial exigency.

The central theme of the board's proposed amendments is two-pronged:

- a. It seeks to expand the authority of CEOs under HR policy II.B to respond in times of financial hardship<sup>1</sup> by giving them more sweeping power to invoke employment actions<sup>2</sup> such as salary reductions (furloughs, as described in II.B.2.c), **and**
- b. In order to effectuate these powers, the Board seeks to alter the definition of the faculty's (and staff's) contracts of employment as provided in policy II.G (and II.F for non-classified staff) to provide for salary adjustments in subsequent years' contracts or "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."

The LCSC faculty oppose these changes in their entirety, as they believe that the "tools" that administrators need to make personnel managerial decisions already exist in the policies the board seeks to modify (but that the SBOE must make a declaration of financial exigency to invoke them). We also argue that by offering what amounts to adhesion contracts to effectuate salary reductions, the Board is engaging in unfair, unaccountable, and unconscionable practices that are contrary to public policy and sound employment principles and violate basic tenets of contract law: that the employee has a reasonable expectation that the contract will be honored to provide the contracted-for amount. Finally, we argue that the long-term effects of approving these proposed policies will create an at-will employment environment for its employees, and that they will have a deleterious effect on retention and recruitment of faculty and students to Idaho and to the advancement of Idaho's mission to produce a well-educated workforce.

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<sup>1</sup> A condition "not tantamount to financial exigency" (SBOE proposed policy II.B.2).

<sup>2</sup> These employment actions were originally included in the Board's financial exigency policy, II.N.2.d.

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"If you think education is expensive, consider the cost of ignorance."  
--Ann Landers (Rhodes, 2001).

Introduction

This white paper is provided (1) to urge the Idaho State Board of Education (SBOE) to withdraw the proposed amendments as they are deleterious to faculty, staff, students, and the populace of Idaho as well as its future workforce, (2) to explain the LCSC faculty's position by stating their arguments and the underlying reasons therefor, and (3) to provide recommendations for sound and rational alternatives to the proposed policies.

It is a given that Idaho's economic outlook is bad, and that further cuts are coming to higher education. The faculty of LCSC, despite their opposition to the proposed amendments, are well cognizant that Idaho's bleak outlook could bring devastating actions, such as furloughs and layoffs, to higher education's tenured and non-tenured faculty and non-classified staff. It is their fundamental belief, however, that Idaho's current economic woes should not serve as a basis to invoke practices that allow for employment contracts that alter faculty's bargained-for salaries or to provide administrators with a disproportionate amount of power to make budgetary cuts without demonstrated accountability or justification. The imposition of furloughs and suspension of contracts are possible under the state of financial exigency; implicit in this act is a threshold determination that provides the employees with accountability for these actions.

If approved by the SBOE, the policies will:

1. Create an at-will employment environment for its professional employees;
2. Undermine the foundations of shared governance by precluding faculty participation;
3. Have a deleterious effect on retention and recruitment of faculty and students to Idaho; and
4. Contravene Idaho's vision of producing a well-educated workforce.

It is for these reasons that the faculty of LCSC cannot, in good conscience, support the proposed amendments.

## Background of SBOE Policy Revisions

The following is a synopsis of the evolution of the SBOE policy amendment issue.

1. In spring, 2009, administrators from the four-year institutions of higher education in Idaho sought clarification of the policies that define the authority (II.B) the CEOs of each institution could avail themselves of in hard financial times and to clarify the terms of financial exigency (II.N).
2. With the assistance of counsel from BSU and UI, SBOE proposed the following amendments to its Human Resource policies II.B, II.F, II.G, and II.N:
  - a. Policy II.B: The changes proposed fundamentally expanded the scope of administrators' powers to include actions to reduce salaries of all faculty and staff during non-exigency times. The change came in the form of removing language out of policy II.N, its financial exigency policy, and inserting the language into policy II.B which describes administrators' general authority.
  - b. Policies II.G and II.F: A change was also made to policy sections II.G and II.F (which define the contracts of employment that are issued to tenured/non-tenured faculty and non-classified staff, respectively).<sup>3</sup> These changes allowed institutions to (1) offer contracts of employment that change the amount of the contracted-for salary in subsequent years' contracts, (2) change the salary during the contract term when there was a declaration of financial exigency *or* (3) change the salary during the contract term when budgetary reductions were necessary (but where there was no declaration of financial exigency).
3. The rationale given by the SBOE for the amendments was that the institution CEOs sought clarification of the authority and "budgetary tools" they needed:
  - a. To make personnel adjustments to respond to budgetary challenges while incorporating limited due process for affected employees;
  - b. To subject the contract salary to "adjustment from year to year based on budgets and subject to interim adjustments as part of the institutional and unit-wide personnel adjustments" [sic] described in a. above; and
  - c. By removing references to actions in its financial exigency policy "that can be taken without a declaration of exigency."

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<sup>3</sup> Unless designated otherwise herein, references and arguments made with respect to section II.G (faculty) are intended to pertain to section II.F (non-classified staff) and references made to "professional employees" include tenured and non-tenured faculty and non-classified staff.

(SBOE rationale for amendments, 10/15/09 meeting agenda item BAHHR Section I, Tab 2).

4. The matter was originally scheduled for a first reading in August 2009; the president of LCSC argued for a continuance of it since faculty were not given the opportunity to review the changes or to comment upon it. The SBOE then rescheduled the proposed changes for a first reading at its October 15, 2009 meeting.<sup>4</sup>
5. Faculty groups from the four 4-year institutions opposed the proposed changes. LCSC's Faculty Senate unanimously passed resolution FSR-2009-01, expressing its opposition to the policy amendments (see Exhibit 1). ISU's Faculty Senate had proposed endorsing LCSC's resolution in addition to reiterating its concerns about any policies that the board would pass despite their opposition and UI's Faculty Senate proposed a similar resolution; it is believed the Board agenda item was withdrawn before any action was ratified by ISU or UI.
6. The SBOE withdrew the agenda item, citing it was "not prepared to go forward with the changes" on October 15 (telephone message from SBOE executive assistant).
7. In the time that has passed since the October 15 meeting, counsel for BSU and UI have continued to put forth variations of the revised policy. ISU has opposed the legislation but wanted to keep its options open by discussing its concerns about parameters of certain actions that are taken in non-exigency times. On learning that the matter was returning to the State Board's meeting in December, LCSC's Faculty Senate reaffirmed its opposition in a letter of November 4, 2009 to the SBOE (Exhibit 2).
8. The version of the proposed policies now scheduled for a first reading on December 10 has been provided to the faculty groups. It has not varied much from its original proposed form, although the method of salary reduction has now been refined to reflect furloughs. As in the earlier proposal, the current one continues to seek alteration of the employment contract to allow for salary adjustments whether for financial exigency or not.
9. The University of Idaho Faculty Senate passed a resolution for "compromise" language to the policies; we respectfully oppose their suggestions for the reasons stated herein.

#### LCSC Faculty's Position

The faculty of LCSC continue to oppose all amendments to the existing State Board of Education Human Resource policies because (a) they were made without faculty or staff

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<sup>4</sup> Despite the fact that faculty were not availed of the opportunity to review or comment upon the proposed amendments until September, 2009, at least two institutions' contracts of employment for 2009-10, signed in or about *May, 2009*, contained the language (or a variant thereof) that is now being proposed for approval by the Board.

participation or input as to the reasons for them or whether they are necessarily the best approach to preserve Idaho's educational mission, yet we are the primary targets of them; (b) they grant administrations unfettered power (under proposed II.B) to take widespread action to reduce employees' salaries with no accountability; and (c) they allow (under proposed II.G and II.F) for a contract of employment to be changed, during the course of its term, whether a financial exigency has been declared **or not**, in order to exercise the unfettered power it seeks under II.B. We discuss each of these reasons in more detail below.

### The Policy Revisions were Made without Faculty Input

1. The concept of faculty governance as part of the decision-making processes of its higher education institutions is one that has been endorsed by the SBOE in its policy III.C. As such, there is an expectation that the faculty, as the professional authority of the institution, have considerable input to the process of policy-making in higher education.
2. Shared governance in an institution of higher learning is not a new concept.

For over nine hundred years, the effectiveness of the university has been dependent on a social compact under which society supports the university financially and grants it a remarkable degree of autonomy, while the university uses its resources [the faculty] and its freedom to serve the larger public interest. The custodian of that social compact is the [governing board], which exercises both a fiduciary and an oversight role on behalf of the public. (Rhodes, 2001, p. 214).

3. In the 1960s, a joint statement on governance was formulated by the American Association of University Professors (AAUP), the American Council on Education (ACE), and the Association of Governing Boards (AGB) to define "that inescapable interdependence of the governing board, administration, faculty, students, and others in higher education" (AAUP, 2001). The joint statement recommends "sharing authority among the constituents of a college or university on the understanding that some areas of decision making require joint endeavor and that others are essentially separate jurisdictions in which one constituent has primary, but not exclusive responsibility" (Mortimer & Sathre, 2007, p. 23).
4. However, the shaky economic climate that has endured for the last few years, the resultant change in demographics, and other external forces, all have brought about a tendency to conduct the affairs of an institution of higher education along the lines of the corporate business model (Mortimer & Sathre, 2007, p. 23).

Still, faculty throughout the country have continued to assert that running colleges and universities as businesses effectively precludes their participation, bypassing their fundamental role in the education of their students in order to meet "standards of

institutional performance, educational effectiveness, and student learning" (Mortimer & Sathre, 2007, p. 15).

As state support has waned and institutions look for additional sources of revenue, too many major decisions about higher education have been taken over by market forces. The slow but steady acceptance of the market model of competition now being applied to American education is a colossal blunder that threatens its very identity. (Burgan, 2009, p. xxi)

5. In the case of the proposed SBOE policies, discourse did not occur with the faculty on the possibility or advisability of such changes or the effect they would have on the faculty or institutions. Legal counsel for two institutions' administrations rewrote the existing policies and faculty were thereafter invited to participate in suggesting changes. In the end, the proposal before the Board today is little different from the original proposed in October.
6. As professors, we have dedicated countless dollars and years toward our development as professionals. Our competence, expertise, commitment to the advancement of Idaho's students, selflessness, responsibility, and professional judgment legitimize our employment in Idaho's colleges and universities. As the professional authority in these institutions, then, we expect the same degree of dignity and fair treatment from our own employers. The SBOE's failure to include faculty in the process of revising policies that directly affect them undermines the trust and credibility that is so necessary to the culture of higher education and its governance.

#### The Policies Grant CEOs Unfettered Power with No Accountability

1. The authority granted under the existing policy II.B for personnel management calls upon the CEOs' requisite knowledge, expertise, and experience to run their institutions within well-established leadership, communication, personnel and fiscal management, political, and philosophical norms (Rhodes, 2001). The current policy II.B states:

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.

2. The proposed revisions give CEOs the power to operate their institutions as though they were in a state of financial exigency but without a declaration of one. The language of the proposed amendment, policy II.B.2.c, is as follows:

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. 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.

3. We argue that the giving of powers as expansive as these within the confines of a CEO's "general authority" without accountability provides a potential for unrestrained, arbitrary and capricious actions. The kinds of actions that potentially affect the salaries and other terms of employment as specified in employees' contracts are more appropriately and ethically addressed when there is a declaration of financial exigency. The existing policy II.N provides for such actions.
4. Idaho's definition of financial exigency (II.N) is:

A demonstrably bona fide financial crisis that adversely affects an institution or agency as a whole, or one (1) or more programs, or other distinct units.

In the existing II.N, references with respect to layoffs in financial exigency have not been changed. The change comes in other employment actions that are authorized responses to a declared financial exigency (II.N.2.d):

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 employment action need not be uniformly applied, it need only meet the requirements of 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.

5. Under the proposed amendment, the actions described in II.N.2.d were moved into policy II.B as part of the expanded authority to institutions' CEOs for personnel management outside of financial exigency. Ironically, the sentence in bold above: "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 . . ." was omitted. Clearly, the intent here was to provide CEOs *carte blanche* to invoke furloughs or other salary-reducing actions (except layoffs) without any justification or accountability. This sets the stage for arbitrary and capricious decision-making, a concept that has not been lost upon the AAUP:

Proposed policy revisions that allow arbitrary actions absent a financial exigency are an excuse for administrators to make unnecessary or unwarranted cuts (Bunsis, 2009).

6. It is not enough to say "a crisis exists." Very specific procedures accompany the SBOE's declaration of financial exigency, procedures that ensure an orderly, strategic, and principled approach to administering actions that suspend the contracts of tenured and non-tenured faculty and non-classified staff. The courts across the country have identified very specific criteria that must be examined and presented to justify the imposition of financial exigency. The Idaho Supreme Court in *Pace v. Hymas*, 111 Idaho 581, 588-90 (1986) noted that the hurdles of "substantial and competent evidence" must be passed before a declaration of financial exigency is made. Some of the kinds of evidence to be considered are (Dixon, Lynch & Swem, 1987):

- An accounting of surplus monies (reserves).
- Consideration of alternatives such as freezing or reducing increases in salaries, travel, capital outlay, and supplies or equipment.
- Examination of the institution's budget to look at increases in spending, including those for salaries, in all areas.
- Incidence of operating deficits carried from year to year and severe budget cuts.
- Decline in enrollment or non-materializing of a projected increase in enrollment.
- Cost-saving arrangements for consolidation of non-instructional resources, including reductions in administrative and service areas.<sup>5</sup>

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<sup>5</sup> While it may appear to be cost-effective to target faculty and staff salaries because of our large numbers, it is also difficult to ignore data that tell us otherwise (Rhoades, 2009):

- a. Between 1976 and 2005, the number of faculty has increased by 17% , compared to a 101% increase in administrators.
- b. Between 1995 and 2006, spending in instruction was decreased by 3% while spending in student services (3%) and administration (2%) increased.

The AAUP also calls for a "comprehensive analysis of the financial condition of the organization" beyond simple cash flow projections in making a determination of financial exigency. (AAUP, 2009.)

7. A corollary, then, is that in times of financial hardship (where there is no declaration of financial exigency), employees expect the institutions to account for their reserves and their efforts to exhaust alternatives before engaging in actions that compromise faculty and staff employment. Passage of the proposed policy II.B.2.c precludes that expectation; nowhere is there found any language that provides the rigorous measures of accountability described in paragraph 9 above. Such accountability assures that the stakeholders--faculty, staff, students, and the public--participate in and are informed of the institution's financial and strategic decision-making.
8. We assert that the proposed changes effectively create a state of exigency within the scope of administrators' routine authority, but without the need for a declaration of financial exigency. However, in order to accomplish these salary-reduction measures, the SBOE proposes that contracts of employment be changeable in amount from year to year, changeable in the event of a financial exigency declaration **or** to accommodate actions such as cutting work hours or furloughs when no financial exigency has been declared.

#### The Policies Allow for Adhesion Contracts that Bind Employees to Changing Salary Amounts

1. Existing policy II.G provides as follows:

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. . . .

(A similar provision appears in II.F with respect to non-classified employees as well.)

It is clearly understood in this language that an employment contract as written is intended to be honored and not changed.

2. However, by granting administrators the authority to invoke salary-reducing measures within their general authority under II.B, the Board runs afoul of the foregoing language of II.G as well as the "Contract Clause" of the U.S. Constitution (U.S. Const., art. I, §10).

The "Contract Clause" of the United States Constitution says that no state shall pass a law "impairing the obligation of contracts." U.S. Const., art. I, § 10. The Contract Clause is violated "when one alleges that he or she has a contract with the state, which the state, through its legislative authority, has attempted to

impair.” *University of Hawaii Professional Assembly v. Cayetano*, 183 F.3d 1096, 1101 (9th Cir. 1999) (citations omitted).

(AAUP Financial Crisis FAQs website, 2009).

3. Fundamental to a faculty member's employment is reliance upon the employment contract that reflects the bargained-for salary. An employee should have a reasonable expectation that the institution will honor it. A court decision from Michigan underscores the importance of so honoring contracts, even in financial hard times:

Where an employee enters into a contract with an employer whereby the employer agrees to pay the employee a fixed amount for his services, the employer is required to pay such amount or he may be held liable in an action for breach of contract. *Karr v. Board of Trustees of Michigan State University*, 119 Mich. App. 1, 5 (1981).

A contractual agreement which remains binding on the university during times of economic difficulty insures that . . . the university will be able to obtain qualified instructors whose decision whether to accept employment with the university will not be adversely affected by concern that the agreement they enter into in good faith at the time that they accept employment will be subject to unilateral change any time thereafter that the Legislature decides to cut appropriations. *Id.* at 8.

4. To circumvent this issue, then, the SBOE proposes to offer tenured and non-tenured faculty and non-classified staff a contract that allows the employing institution to break it to avoid the specter of impairing the contract with the imposition of a furlough or other salary cuts. The proposed policy reads as follows:

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.

5. The LCSC Faculty oppose the proposed revisions to II.G and II.F, as the contracts proposed amount to adhesion ("take it or leave it") contracts that afford employees no ability to negotiate or no choice but to accept the terms (Garner, 1996, p. 139). These contracts are, in effect, non-contracts; they allow the institution to disavow a salary that was agreed upon for a contract term in order to impose furloughs.

6. It is the consequence of this proposed policy revision that has been most disturbing: the SBOE, in order to allow institutions to impose furloughs, will offer its employees the choice (a) to have contracts that need not be honored or (b) to be unemployed.
7. While well cognizant that institutions have freedom of contract (the ability to offer terms it wants and leaving the decision to employees to bargain for a bad situation), we find it unacceptable, demoralizing, and against public policy that a state agency would find it necessary to subject its professional employees to such an unconscionable practice.

The consequences of this action alone can be devastating to higher education in Idaho.

- AAUP censure--The effect of the revised policies upon faculty, especially where tenure is concerned, will resound beyond the institutions. AAUP censure of administrations and governance boards is one effect where unsatisfactory conditions of academic freedom and tenure have been found to prevail. (AAUP website).
- Retention of current faculty--If these policies are passed, institutions will be hard-pressed to retain the faculty to whom they grant tenure. Fundamental to the faculty's efforts in seeking tenure is the assurance of continuity of employment and the protection academic freedom. Giving unfettered power to furlough employees and offering contracts that allow for salary reduction will no doubt encourage faculty to seek more secure employment in another state. Morale within the institutions will suffer.
- Recruitment of future faculty--Idaho's institutions of higher learning will suffer from their inability to hire faculty who want greater assurance than an at-will employment environment.
- Program integrity--The programs in colleges and universities will be undermined by the "brain-drain" that will no doubt follow when the faculty begin pulling up stakes. Educational programs are only as good as the faculty in them.
- Students will suffer--the greatest detriment will fall upon the students in this state. It would be difficult to choose an institution of higher education in Idaho with a faculty in flux. The SBOE's vision of a well-educated workforce will be undermined by its own policies.

Still, higher education is the one beacon of hope for society that the public--high school graduates, transfers, displaced homemakers, laid-off loggers--continues to seek out to redirect their lives toward greater success and fulfillment. It has withstood the test of time--of wars, of national economic decline, of major political change.

During times of financial hardship, then, faculty, administration, and SBOE alike must continue to hold strong to the values of higher education and what it means for Idaho's future.

### Recommendation

While passionate in our opposition to the proposed policies, the Faculty of LCSC are deeply committed to preserving the dignity and credibility of higher education in our state. In the spirit of cooperation and collaboration, we offer the following recommendations for alternative approaches to the proposed policies.

1. Preserve the Core Academic Mission: The SBOE's vision is for "a well-educated Idaho." Idaho has one of the lowest rates in the nation of high school graduates continuing their education. Higher education is the one state agency that has direct ability to change that trend. More students are returning to college as the economy gets worse; only higher education is equipped to handle that influx and turn it around to infuse the workplace with more educated and skilled workers.

Faculty, with the support of the staff, comprise the engines that drive higher education. Rather than undermine their efforts, we encourage the SBOE to place greater emphasis on preserving those very people who daily commit their efforts to realizing the state's vision. It is only through the collective efforts of all stakeholders--board, administrations, faculty, and staff--that institutions will have greater capacity to produce the workforce that can turn around the state's economic problems.

We recommend the SBOE appoint a faculty advisory committee to brief it on current issues that concern the core academic mission. The chair of ICHEF presently serves as the faculty representative on the Instruction, Research and Student Affairs (IRSA) committee of the SBOE, but it might be well to expand faculty representation on the other committees that engage in policy-making for the board.

2. Demand Accountability: Instead of imposing policies that will no doubt drive the faculty from Idaho's institutions of higher education, we recommend the SBOE seek a commitment from administrations for more effective application of the policies that exist now. In policy II.B, rather than adding to a CEO's power, we urge the SBOE to hold that administration accountable for the effective management of the institution's personnel and fiscal matters.

It is only through transparent and accountable processes that employees and the public know that personnel and fiscal matters are being capably managed. We urge the SBOE to implement accountability measures in all personnel and fiscal matters, especially in times of financial hardship (where no financial exigency is declared). As publicly funded institutions, it is not unreasonable to expect the kind of accountability required to justify financial exigency in the case of financial hardship.

3. Preserve Existing Policies to Guide Strategic and Principled Problem-Solving: The issue before us arose because the administrations sought clarification of the authority they could exercise in times of financial hardship. The response of the expansion of current policy to encompass salary cuts at the expense of offering unconscionable contracts is a regressive, oppressive step that will have far-reaching, deleterious implications not just for faculty and staff but for the future of Idaho's higher education institutions.

Rather than dismantling the well-founded protections afforded to institutions and faculty in financial exigency, we believe it is an imperative that the SBOE involve the stakeholders in the higher education institutions to collaborate toward accountability and policy-making. A starting point will be discourse with all stakeholders about what can or should be done ***within the confines of financial exigency***. While some would equate financial exigency with bankruptcy, we cannot ignore the fact that the state is in bad fiscal shape. If furloughs and/or layoffs must be instituted, we recommend the SBOE do them within the confines of financial exigency. Why? Accountability. With accountability, the employees of this state will be less reluctant to distrust decisions with respect to drastic cuts. The SBOE will foster credibility and trust in the faculty and staff of their colleges and universities through accountable policy-making.

To that end, we recommend the creation of a policy task force comprising faculty, staff, administration, and board members to contribute to the policy concepts before they are rewritten (with lawyers for the board and administration serving in an advisory capacity only.)

### Conclusion

The faculty of LCSC seek only the assurance that the policies that govern the institutions of higher education in this state are fair and involve the stakeholders' input in their determination and execution. This is not the case with the present proposals. The policies in place right now strike sufficient balance in governance: administrators have their "tools" (and the likely skills to administer them), faculty engineer knowledge in our students (and their productive contributions to Idaho's economy), and the board has its policies to guide the work of the institutions.

We look to the SBOE to adopt the "principled use of power and influence to achieve the mission of the institution." (Mortimer & Sathre, 2007, p. 114.) Just as we, the faculty, abide by rules governing our ethical conduct in the workplace and in the teaching that we do, we look to your sense of justice, fairness, and ethical conduct to model that same behavior for the stakeholders in governance.

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EXHIBIT 1

RESOLUTION NO. FSR-2009-01

A RESOLUTION EXPRESSING OPPOSITION BY THE FACULTY OF LEWIS-CLARK STATE COLLEGE  
TO THE IDAHO STATE BOARD OF EDUCATION'S REVISIONS OF  
HUMAN RESOURCE POLICIES II.B, II.G, AND II.N,  
CURRENTLY SCHEDULED FOR A FIRST READING ON OCTOBER 15, 2009

WHEREAS, the Idaho State Board of Education has proposed changes to the following  
Human Resource Policies:

1. Section II.B: Human Resources Policies & Procedures-Appointment Authority & Procedures
2. Section II.G: Human Resources Policies and Procedures-Policies Regarding Faculty;
3. Section II.N. Human Resources Policies and Procedures-Financial Exigency Procedures, and

Policy Section II.B

WHEREAS, under the proposed change to **Section II.B**, administrations will have the ability to invoke furloughs or salary reductions even where no financial exigency exists; as such, the action effectively enhances the powers of the administrations without a corresponding accountability that is required in times of financial exigency, an accountability dictated by public policy; and

Policy Section II.G

WHEREAS, the proposed policy on faculty contracts, **Section II.G**, eliminates the protection of employment afforded by contract, or the right to a thorough appeal before a panel of peers based on institutional reduction procedure; and

WHEREAS, by these changes, the Idaho State Board of Education effectively strips a faculty person's ability to rely upon a contract by modifying the contract, without clear guidelines at any time, at the will of the institutions. As such, institutions will have the ability to engage in unethical acts that undermine the trust and respect of their own faculty. We believe a policy like this will provide the perfect "loophole" that could be used against faculty--in times of financial exigency or not. Any salary reduction procedures must be approved by all parties involved, and contract law and ethics must be followed; and

WHEREAS, the institutions of higher education in Idaho state that they follow and support the AAUP statement on academic freedom and tenure. This is stated many times throughout polices, procedures, and accreditation self-studies. The policy proposals are in direct violation of this and this puts all Idaho educational institutions at risk of being sanctioned in the form of

censure by the AAUP if the new policies go into effect. The negative publicity that sanctioned institutions of higher education receive has a perilous effect on the institution and state. Historically, it is very difficult to retain and recruit faculty at sanctioned institutions and school enrollments are at risk due to the negativity and publicity sanctioned schools receive; and

*WHEREAS*, recruitment, retention, scholarship, creativity, morale, legal issues, and institutional efficiency are at risk if the policies go into force. The policy change disregards over 30 years of progress with higher education and shared governance in the great state of Idaho; and

*WHEREAS*, if Idaho is looking to boost its economy, we believe it is the institutions of higher education that will produce the work force that will contribute to any such recovery and/or growth. Fundamental to these institutions are the many men and women of the faculty who have committed their daily lives and efforts to the advancement of their students (at salaries already compressed at 20-40% below the median salary with their peers). That the State Board can disregard these efforts by essentially creating an at-will relationship after drawing in a faculty member with a contract of employment is simply unconscionable and unethical. Additionally, tenure in itself is an achievement that is rewarded with longevity, including sustainable contracts. This is a direct violation of contract ethics and potentially the federal rules and regulations that pertain to them; and

Policy Section II.N

*WHEREAS*, the financial exigency policy, **Section II.N**, which creates a possibility of curtailing, modifying or eliminating some of its programs in agencies or institutions (including layoffs of non-classified contract employees, tenured and nontenured faculty and classified employees during the term of their contract of employment), is now being expanded to include invoking furloughs and salary reductions *without* a declaration of financial exigency. In essence, this provision gives unilateral power to the administration to declare reductions in force by fiat. Again, this is contrary to the public trust given to the State Board and it ignores the accountability required by public policy.

NOW, THEREFORE, BE IT RESOLVED by the Faculty of Lewis-Clark State College that it expresses opposition to all proposed changes to Idaho State Board of Education Human Resource Policies II.B, II.G, and II.N.

ADOPTED UNANIMOUSLY by the Faculty Senate of Lewis-Clark State College at a regular meeting held on the 8<sup>th</sup> day of October, 2009.

EXHIBIT 2



2009-10 Officers:

Joni Dickinson Mina, Ph.D., Chair  
[jmina@lcsc.edu](mailto:jmina@lcsc.edu)  
Harold Crook, Ph.D., Chair-Elect  
[hcrook@lcsc.edu](mailto:hcrook@lcsc.edu)  
Nan Miguel, Secy/Treasurer  
[nmiguel@lcsc.edu](mailto:nmiguel@lcsc.edu)

November 4, 2009

VIA EMAIL TO TRACIE BENT,  
[tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov)

Idaho State Board of Education  
650 W. State Street  
P.O. Box 83720  
Boise, ID 83720-0027

RE: SBOE MEETING ON DECEMBER 9-10, 2009

Dear Members of the State Board of Idaho:

The faculty of Lewis-Clark State College hereby submit the enclosed resolution, FSR-2009-01, passed unanimously by our Faculty Senate on October 8, 2009, which states our opposition to the proposed revisions to SBOE Human Resource policies II.B, II.F, II.G, and II.N. The resolution was passed in response to the proposed October 15 agenda item. If the matter is on the agenda for its December 9-10, 2009 meeting, we ask that you consider it as well. Furthermore, we understand that Idaho State University has filed a notice of its opposition to the revised policies with a recommendation for further discussion; we would appreciate it if you would include this letter and the enclosed resolution in support of that notice as well.

Our faculty continue to voice opposition to revisions of the policies; in a straw poll taken by our Administrative Procedures Committee last week, 158 of our 173 faculty opposed the changes.

Faculty are opposed to the changes for the following reasons (we will shortly submit a white paper which our Faculty Senate is crafting to further detail our stand on this matter):

1. 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. We believe that the processes afforded higher education employees under the existing policy, II.N, suffice.
2. 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.
3. 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 carry 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. We make the same argument with respect to Policy II.F, which pertains to non-classified staff.

4. The revisions were made without faculty (or staff) input, yet we are the primary targets of them.

We invite the Board to engage the representative faculty and staff groups of our four-year institutions in a discussion to resolve this issue, with the starting point of the *existing* policies.

While well cognizant of the economic woes that Idaho faces, our faculty continue to believe that the state must continue emphasis on higher education to generate a workforce that can give back to the state's businesses and other revenue-generating sources. It is therefore incumbent upon the board to maintain a balance within the institutions to keep world-class faculty employed to accomplish that mission. The policy revisions as proposed will certainly not accomplish that end.

Thank you for your consideration.

Sincerely,

*/s/ Joni Mina*

Joni Mina, Ph.D.  
Chair, LCSC Faculty Association

Enclosure:  
FSR-2009-01

cc: Faculty Senate/Association  
ISU Faculty Senate  
UI Faculty Senate  
BSU Faculty Senate

j