

Faculty Response to the Revised PAC-26

In his August 18th meeting with Senator Adams, Chair Goodpaster outlined four areas that he was willing to revise/amend in the 6/16/16 draft of PAC-26. After noting that he was willing to formulate a reconciliation team comprised of three Board of Regent members and three Faculty representatives, he asked Senator Adams and/or Faculty Senate leadership to “provide [him], in writing, [their] comments/proposals for suggestions specific to the identified areas. . .no later than Thursday, September 1st” (“Paul Comments” 8/18/16). This document is that requested written response.

Concern #1

I have determined the necessity to maintain the section pertaining to Reorganization, Consolidation or Elimination of Academic Programs however, I am open to consideration of comment/input from Program Faculty regarding the plan once it has been developed by the Provost IF the plan involves elimination of Tenured/Tenured Track Faculty (“Paul Comments” 8/18/16)

Response to Concern #1

Faculty still maintain that program elimination, and program elimination alone, is the only academically viable justification for the termination of tenured faculty. Faculty, of course, may be terminated for cause or in the event of financial exigency, but, barring those instances, the only defensible reason is program elimination, an occasionally necessary “final step” that should only be undertaken when there is clear evidence that a program is not serving the academic needs of our students. Reorganization and consolidation are often little more than administrative shuffling in practice (for example, Government and History are back together again having been moved apart, for no clear reason, several years ago—this was change for the sake of change).

If the section pertaining to “Reorganization, Consolidation or Elimination of Academic Programs” must remain, those designations must be fully defined and differentiated. The current draft merely lists the different terms and cuts and pastes the same criteria for decision making under each designation, even when the criteria cannot logically apply. For example, there is no way that the “needs of a program” can be factored into a decision of which faculty to retain if the program the faculty are housed within is being eliminated.

Acceding to Chair Goodpaster’s request, we have added language to the 6/16/16 version of PAC-26 that could signal responsiveness to faculty comment/input, should a plan to eliminate faculty arise. (Please see the attached document, specifically pages 9, 10, 14, and 15.) That said, faculty preference is to maintain the clear and defensible criteria in the current PAC (program elimination and financial exigency) and work from there.

Concern #2

Assuming a Plan (pertaining to Reorg, Consol or Elim) is put forth suggesting elimination of Tenured Faculty, I am open to consideration of revised outline of “pecking order” for elimination of those identified Tenured Faculty – providing that there are objective criteria to separate as many faculty as possible (“Paul Comments” 8/18/16)

Response to Concern #2

The order of termination outlined in the version of PAC-26 Senate approved in 2015 offers clear and indisputably objective criteria for the “pecking order” of elimination. The virtue of this model is that it privileges seniority, and hence mitigates potential charges of discrimination based on other factors (such as age).

OPTION 1: ORDER OF TERMINATION SEQUENCE:

1. Tenured faculty members will have the preference of retention over nontenured faculty members.
2. A faculty member who has attained tenure prior to another faculty member has preference of retention.
3. If the time of tenured service is equal, then tenured faculty of superior academic rank will have preference of retention.
4. If service and rank considerations are the same for two faculty members, the faculty member with the longer period of employment at the University will have preference of retention.

If the Board wishes to retain a focus on rank, as is currently the case in the 6/16/16 PAC-26, time within rank needs to be privileged:

OPTION 2: ORDER OF TERMINATION SEQUENCE:

1. Tenured faculty members will have the preference of retention over nontenured faculty members.
2. Tenured faculty of superior academic rank will have preference of retention over tenured faculty of lesser rank;
3. A faculty member who has attained rank prior to another faculty member of the same rank would have preference of retention over the latter faculty member;
4. If time in rank is the same for two faculty members, i.e., both were promoted in their current rank on the same date, preference of retention shall be based on past performance and the potential for future contributions to the development of the University.

Concern #3

I am open to consideration of a new definition defining Financial Exigency (“Paul Comments” 8/18/16)

Response to Concern #3

The American Association of University Professors (the AAUP) provides a viable definition of financial exigency:

“A severe financial crisis that fundamentally compromises the academic integrity of the institution as a whole and that cannot be alleviated by less drastic means”

than the termination of faculty appointments. Financial exigency is declared after “all feasible alternatives to termination of appointments have been pursued, including expenditure of one-time money or reserves as bridge funding, furloughs, pay cuts, deferred-compensation plans, early-retirement packages, deferral of nonessential capital expenditures, and cuts to noneducational programs and services, including expenses for administration.” (“Recommended Institutional Regulations on Academic Freedom and Tenure” 4c)

This definition serves two functions: (1) it provides a clear definition of exigency and (2) it obviates the need for the articulation of “significant operating budget deficit.” The latter term (“significant operating budget deficit”) is unnecessarily nebulous and the outlined procedures for addressing it (in the 6/16/16 PAc-26) fail to prioritize the academic mission of the university (e.g., there are no steps where the various academic stakeholders are able to productively participate in the plan, unlike what occurs when financial exigency is declared). If we utilize the designation above, we recognize that there may be budgetary deficits that require immediate attention, but we do not allow permanent and irrevocable academic decisions to be determined by what may be a temporary, albeit painful, cashflow problem.

We understand that the Board is sensitive to the current state of higher education, and it is eager to offer the administration the tools it believes the administration needs to navigate through these difficult times. We would just like to note that the intended tool of “significant operating budget deficit” is a problematic double-edged sword. The President already has the flexibility to deal with issues on the non-academic side, and the recent UAR regarding furloughs grants the administration great flexibility in terms of all employee compensation. Allowing tenured faculty to be eliminated under constraints that are not academically based and are not even fully defined in terms of financial difficulty just leaves the university open to lawsuits, as fired employees can cite the vague definition to support their contention that the decision to terminate was capricious and arbitrary. There is a reason why no other regional institution includes such language in a policy on faculty termination. Kentucky universities are in consensus on this because that consensus makes sense for the institution as a whole.

Concern #4

Lastly, I am open to inclusion of an added Appeals Process (prior to BOR committee appeal) for eliminated faculty, i.e. Faculty Rights & Responsibilities Committee (“Paul Comments” 8/18/16)

Response to Concern #4

Because PAc-18 lays out all of the specifics of how the Faculty Rights and Responsibilities Committee operates and what it considers in its hearing, we don’t have to re-invent the wheel when we refer to this level of review in a revised PAc-26.

Suggested insertion:

(This should appear in all 3 of the sections of the proposed PAc that are entitled Appeal, namely on pp. 6, 10, and 14.)

Appeals Process

1. Any tenured member of the faculty, or tenure track faculty member, receiving notice of position elimination may appeal the determination to the Faculty Rights and Responsibilities Committee within fourteen (14) days of receiving such notice on the basis that the faculty member's position was not appropriately selected for elimination.
2. If an appeal is filed with it, the Faculty Rights and Responsibilities Committee shall have the right to convene a hearing board to consider whether the faculty member "has suffered a substantial injustice resulting from a violation of academic freedom, professional ethics, procedural fairness, or due process" (PAc-18). The committee's review can consider the range of course offerings of the institution, the importance of the program to the academic objectives of the unit, faculty status, and affirmative action in its deliberations, as well as the documentation provided by the university to support the elimination. The hearing board will operate as described in PAc-18, and will submit its conclusions to the President of the University and the Board of Regents.
3. Any tenured member of the faculty, or tenure track faculty member, receiving notice of position elimination may appeal the determination to the Board of Regents by providing notice to the Secretary of the Board of Regents within fourteen (14) days of receiving such notice, or within fourteen (14) days after a hearing before the Faculty Rights and Responsibilities Committee, on the basis that the faculty member's position was not appropriately selected for elimination. The Board Chair shall designate a panel of three (3) Board members to hear such appeal(s) and make a written recommendation to the full Board for final action.

Policy: PAc-26

Draft 5-3-16

Revised 5-4-16

Revised 5-18-16

Revised 6-16-16

Language added in response to PG Concern #1 on 9/1/16

Subject: Policy for Furlough of Faculty or Elimination of Standing Faculty Appointments Due to Reorganization, Consolidation, or Elimination of Academic Programs, Financial Exigency, or Significant Operating Budget Deficit

Approval Date:

Revision Date:

PURPOSE:

To establish the University's policy and related procedures for the furlough of faculty or the elimination of standing faculty appointments due to reorganization, consolidation, or elimination of academic programs, or as a result of financial exigency or a significant operating budget deficit.

GENERAL POLICY:

The Board of Regents has a paramount statutory duty to the people of Kentucky to maintain quality academic programs consistent with its mission statement, strategic plan and oversight by the Council on Postsecondary Education and as governed by the General Assembly. Accordingly, determination of the need to declare financial exigency, the existence of a significant operating budget deficit, or the need for reorganization, consolidation or elimination of an academic program that may involve the termination of tenured faculty members is a prerogative reserved for the Board and will not be delegated. As used in this policy an "Academic Program" may include a department, school, or other degree-granting unit or sub-unit within a department which offers a distinct degree, or a track within a degree that is described as a distinct option in the University catalog.

It is recognized that a tenured appointment of a faculty member results in a commitment to successive reappointment of the faculty member; however, the tenured status of a faculty member may be terminated due to retirement; resignation and acceptance thereof; removal for cause; or the decision of the Board of Regents that elimination of faculty appointments is necessary due to financial exigency, significant operating budget deficit, or due to reorganization, consolidation or elimination of an academic program.

Recognizing that the Board of Regents has authority over appointments and for the academic composition and administration of the University, the Board of Regents shall make faculty position elimination decisions upon the recommendation of the President that the need exists, as supported by documented University needs and/or available financial resources. The Board of Regents is fully aware of the fact that reorganization, consolidation or elimination of an academic program, unanticipated severe operating budget deficits, or the declaration of financial exigency that includes the elimination of faculty appointments which impacts both tenured and non-tenured faculty members are matters of gravity and require a thoroughly considered balancing of the public and private interests. These actions are to be taken subject to review and with assurance of requisite safeguards of due process to maintain quality academic programs consistent with the mission statement, strategic plan, and available financial resources of the University.

REORGANIZATION, CONSOLIDATION OR ELIMINATION OF ACADEMIC PROGRAMS

Reorganization, consolidation and/or elimination of an Academic Program(s) which shall result in the elimination of faculty shall be based upon the reasonable needs of the University and may include, but is not limited to, the following:

- An elimination of duplication of programs within the University and/or among state institutions of higher education;
- An ability to achieve effective and efficient program delivery through the creation of cooperative programs with other institutions of higher education through traditional or non-traditional means;

- A pattern or history of a decrease in, or consistently low, numbers of degrees awarded;
- A pattern or history of a decrease in, or consistently low, numbers of qualified applicants to the Academic Program;
- A pattern or history of low or declining enrollment in classes offered within an Academic Program;
- A pattern or history of low and/or declining scores on standardized/national examining instruments;
- An inability to meet standards for obtaining and/or maintaining credentials and/or accreditation;
- An apparent lack of marketplace demand for the Academic Program;
- A prioritization of the current academic objectives of the University,
- A reallocation of resources due to budget priorities, and/or a reduction of or elimination of restricted program funds.

A “restricted program” is one which is funded from an outside source that that requires the funds designated for that specific program may only be used for that purpose.

In the evaluation of the need to eliminate faculty appointments as a result of reorganization, consolidation or elimination of Academic Programs, the Provost/Vice President for Academic Affairs (“Provost/VPAA”) shall first consider the ability to eliminate instructor appointments and secondly tenure track faculty appointments within the subject academic program. In making specific recommendations for elimination of specific faculty appointments required by a proposed reorganization, consolidation and/or elimination of an Academic Program, the Provost shall take into account the following Criteria for Faculty Selection:

Tenured faculty members will have preference of retention over non-tenured faculty members, unless there is a compelling academic or accreditation reason to do otherwise. Absent a compelling academic or accreditation reason, the following sequence will be observed:

- Tenured faculty of superior academic rank will have preference of retention over tenured faculty of lesser rank;

- A faculty member who has attained tenure prior to another faculty member of the same rank would have preference of retention over the latter faculty member;
- If tenure in rank considerations are the same for two faculty members, i.e., both were tenured on the same date and were promoted in their current rank on the same date, preference of retention shall be based on unique or specialized credentials and/or area of instruction, the needs of the program, department/school and College, past performance and the potential for future contributions to the development of the University.
- If funded vacancies exist, reasonable effort will be made to offer the tenured faculty member concerned another existing position within the University for which the tenured faculty member is qualified by education and experience; and
- In the event of the termination of a tenured faculty member, that faculty member will not be replaced for a period of three (3) years by another person of comparable qualifications at the same or higher salary in a discipline in which the terminated, tenured faculty member is qualified to teach and/or perform the job duties without first offering reinstatement to the terminated tenured faculty member and allowing a reasonable time for acceptance;
- By another person at a reduced level of compensation in a discipline in which the terminated, tenured faculty member is qualified to teach and/or perform the job duties without first having offered the position at the reduced compensation to the tenured faculty member concerned and allowing a reasonable time for acceptance.

A terminated tenured faculty member who is recalled within the three (3) year period shall be reinstated with full tenure and time in rank as of the date of termination.

PLAN DEVELOPMENT:

The Provost will submit a written Proposal to the President, Chair of the Faculty Senate and Faculty Regent regarding the reorganization,

consolidation, and/or elimination of any Academic Program(s) that require the elimination of faculty lines. The Proposal will include, but not be limited to, the rationale for the reorganization, consolidation and/or elimination of the identified Academic Program(s), the perceived effect that the reorganization, consolidation and/or elimination of the Academic Program(s) will have on the University as a whole, and the number of faculty appointments which will be recommended for elimination. The proposed timeline for closing or phasing out an Academic Program and displacing of faculty members will be based on consideration of the time required for anticipated completion by students currently enrolled or for facilitation of their placement in acceptable alternative programs. At the conclusion of this process, the faculty line for each eliminated appointment shall terminate.

The Provost will also submit copies of the Proposal to the Dean of the College and the Chair of the department in which the affected Academic Program(s) is located. The copy of the Proposal shall be accompanied by a notice stating that a Response to the Proposal, if any, from the Faculty Senate and from faculty in the affected Academic Program(s) to the Proposal be made, in writing, to the Provost by a designated date not less than sixty (60) calendar days from the date the Proposal is submitted to the Faculty Senate Chair and the Chair of the department in which the affected Academic Program(s) is located. If, however, the notice is given thirty (30) days or less prior to the close of the spring semester (graduation day), then the Senate and the faculty in the affected Academic Program(s) shall have no less than ninety (90) days calendar days to respond to the proposal.

The Faculty Senate as a body of the whole, or through its appointment of an *ad hoc* committee or committees, may study and review the Proposal. The Faculty Senate may provide a written Response to the Proposal no later than the designated date to the Provost either (1) concurring with the Proposal or, (2) setting forth arguments and statements of fact in opposition to the Proposal and which may contain alternative proposals.

Within thirty (30) calendar days of receipt of the Faculty Senate's Response and the Response from faculty in the affected Academic

Program(s), the Provost shall review the Responses and shall prepare a written Plan for the elimination of faculty positions due to reorganization, consolidation and/or elimination of Academic Program(s) (“Provost’s Plan”). The Provost’s Plan may incorporate modification to the Proposal based upon consideration of the Faculty Senate Response and the Response from faculty in the affected Academic Program(s). The Provost’s Plan shall be forwarded to the President accompanied by copies of the Provost’s Proposal, and the Faculty Senate Response, and the Response from faculty in the affected Academic Program(s). A copy of the Provost’s Plan shall also be forwarded to the Faculty Senate and Faculty Regent.

The President shall review the Provost’s Plan and accompanying documentation, giving special attention to any proposal for termination of tenured (and non-tenured) faculty. The President’s decision shall take careful account of the impact of the elimination of faculty appointments on the University’s ability to perform its educational role and mission. The President may determine that no further action should be taken by the University, thereby ending the process; or, the President may accept or modify the Provost’s Plan and forward to the Board of Regents a Plan for Reorganization, Consolidation and/or Elimination of Academic Program(s) (“President’s Plan”).

The President shall forward to the Provost, Faculty Senate and Staff Congress a copy of the President’s Plan submitted to the Board of Regents. Affected University employees will be informed, in writing, of the action of the Board of Regents.

APPEAL

Any tenured member of the faculty, or tenure track faculty member, receiving notice of position elimination may appeal the determination to the Board of Regents by providing notice to the Secretary of the Board of Regents within fourteen (14) days of receiving such notice on the basis that the faculty member’s position was not appropriately selected for elimination. The Board Chair shall designate a panel of three (3) Board members to hear such appeal(s) and make a written recommendation to the full Board for final action.

FINANCIAL EXIGENCY

The determination of the existence of financial exigency or a significant operating budget deficit is a prerogative reserved for the Board and will not be delegated. Determination that a financial exigency or significant operating budget deficit exists shall be made by the Board upon the presentation by the President and Chief Financial Officer/Vice-President for Administration and Fiscal Services (hereinafter "CFO") of an analysis of institutional needs, requirements and available resources.

Financial Exigency

"Financial Exigency" is defined as a serious financial condition within the University due to reductions in state funding, loss of revenue from endowments or investments, decline in institutional enrollment, acts of terrorism or significant public crisis, other action, events or combinations thereof, which have required the elimination of non-tenured positions and operating expenditures to such a point that further reductions in these categories would seriously jeopardize the quality of the University's academic programs and the ability of the University to fulfill its obligations to the public. Projections of enrollment, state funding and of other sources of revenue must indicate that the shortage of funds will be both severe and persistent.

The making of specific recommendations for the elimination of Academic Programs and faculty appointments due to financial exigency shall be made similarly to that for reorganizations, consolidations and eliminations of programs as set forth above. In selecting academic reductions to be made, the President shall consider the following:

- An elimination of duplication of programs within the University and/or among state institutions of higher education;
- An elimination of duplication of programs within the University and/or among state institutions of higher education;

- An ability to achieve effective and efficient program delivery through the creation of cooperative programs with other institutions of higher education through traditional or non-traditional means;
- A pattern or history of a decrease in, or consistently low, numbers of degrees awarded;
- A pattern or history of a decrease in, or consistently low, numbers of qualified applicants to the Academic Program;
- A pattern or history of low or declining enrollment in classes offered within an Academic Program;
- A pattern or history of low and/or declining scores on standardized/national examining instruments;
- An inability to meet standards for obtaining and/or maintaining credentials and/or accreditation;
- An apparent lack of marketplace demand for the Academic Program;
- A prioritization of the current academic objectives of the University,
- A reallocation of resources due to budget priorities, and/or a reduction of or elimination of restricted program funds.

In the evaluation of the need to eliminate faculty appointments as a result of financial exigency, the Provost/Vice President for Academic Affairs (“Provost/VPAA”) shall first consider the ability to eliminate instructor appointments and secondly tenure track faculty appointments. In making specific recommendations for elimination of specific faculty appointments due to financial exigency, the Provost shall take into account the following Criteria for Faculty Selection:

Tenured faculty members will have preference of retention over non-tenured faculty members, unless there is a compelling academic or accreditation reason to do otherwise. Absent a compelling academic or accreditation reason, the following sequence will be observed:

- Tenured faculty of superior academic rank will have preference of retention over tenured faculty of lesser rank;
- A faculty member who has attained tenure prior to another faculty member of the same rank would have preference of retention over the latter faculty member;

- If tenure in rank considerations are the same for two faculty members, i.e., both were tenured on the same date and were promoted in their current rank on the same date, preference of retention shall be based on unique or specialized credentials and/or area of instruction, the needs of the program, department/school and College, past performance and the potential for future contributions to the development of the University.
- If funded vacancies exist, reasonable effort will be made to offer the tenured faculty member concerned another existing position within the University for which the tenured faculty member is qualified by education and experience; and
- In the event of the termination of a tenured faculty member, that faculty member will not be replaced for a period of three (3) years by another person of comparable qualifications at the same or higher salary in a discipline in which the terminated, tenured faculty member is qualified to teach and/or perform the job duties without first offering reinstatement to the terminated tenured faculty member and allowing a reasonable time for acceptance;
- By another person at a reduced level of compensation in a discipline in which the terminated, tenured faculty member is qualified to teach and/or perform the job duties without first having offered the position at the reduced compensation to the tenured faculty member concerned and allowing a reasonable time for acceptance.

A terminated tenured faculty member who is recalled within the three (3) year period shall be reinstated with full tenure and time in rank as of the date of termination.

PLAN DEVELOPMENT:

The Provost will submit a written Proposal to the President, Chair of the Faculty Senate and Faculty Regent regarding financial exigency that requires the elimination of faculty lines. The Proposal will include, but not be limited to, the rationale for the reorganization,

consolidation and/or elimination of the identified Academic Program(s) as well as the reduction in faculty positions within ongoing programs; the perceived effect that the reductions will have on the University as a whole, and the number of faculty appointments which will be recommended for elimination. The proposed timeline for closing or phasing out an Academic Program and displacing of faculty members as a result of financial exigency will be based on consideration of the time required for anticipated completion by students currently enrolled or for facilitation of their placement in acceptable alternative programs and the availability of funding. At the conclusion of this process, the faculty line for each eliminated appointment shall terminate.

The Provost will also submit copies of the Proposal to the Dean of the College and the Chair of the department in which the affected programs and/or positions are located. The copy of the Proposal shall be accompanied by a notice stating that a Response to the Proposal, if any, from the Faculty Senate and from faculty in the affected programs to the Proposal be made, in writing, to the Provost by a designated date not less than sixty (60) calendar days from the date the Proposal is submitted to the Faculty Senate Chair and the Chair of the department in which the affected programs and/or positions are located. If, however, the notice is given thirty (30) days or less prior to the close of the spring semester (graduation day), then the Senate and the faculty in the affected programs shall have no less than ninety (90) days calendar days to respond to the proposal.

The Faculty Senate as a body of the whole, or through its appointment of an *ad hoc* committee or committees, may study and review the Proposal. The Faculty Senate may provide a written Response to the Proposal no later than the designated date to the Provost either (1) concurring with the Proposal or, (2) setting forth arguments and statements of fact in opposition to the Proposal and which may contain alternative proposals.

Within thirty (30) calendar days of receipt of the Faculty Senate's Response and the Response from faculty in the affected programs, the Provost shall review the Responses and shall prepare a written Plan for the elimination of faculty positions due to financial exigency ("Provost's Plan"). The Provost's Plan may incorporate modification to

the Proposal based upon consideration of the Faculty Senate Response and the Response from faculty in the affected programs. The Provost's Plan shall be forwarded to the President accompanied by copies of the Provost's Proposal, ~~and~~ the Faculty Senate Response, and the Response from faculty in the affected programs. A copy of the Provost's Plan shall also be forwarded to the Faculty Senate and Faculty Regent.

The President shall review the Provost's Plan and accompanying documentation, giving special attention to any proposal for termination of tenured (and non-tenured) faculty. The President shall further consult with the CFO or his/her designee as well as representatives from constituencies from across the campus in evaluating administrative options to respond to the financial exigency.

The President's decision shall take careful account of the impact of the elimination of faculty appointments on the University's ability to perform its educational role and mission. The President may accept or modify the Provost's Plan.

The President will submit a Plan to Address Financial Exigency, ("President's Plan") as (s)he deems appropriate, encompassing both academic and non-academic programs and related elimination of faculty and staff appointments to the Board of Regents for its official action. The President shall forward to the Provost, Faculty Senate and Staff Congress a copy of the President's Plan submitted to the Board of Regents. Affected University employees will be informed, in writing, of the action of the Board of Regents.

APPEAL

Any tenured member of the faculty, or tenure track faculty member, receiving notice of position elimination may appeal the determination to the Board of Regents by providing notice to the Secretary of the Board of Regents within fourteen (14) days of receiving such notice on the basis that the faculty member's position was not appropriately selected for elimination. The Board Chair shall designate a panel of three (3) Board members to hear such appeal(s) and make a written recommendation to the full Board for final action.

Significant Operating Budget Deficit

A “significant operating budget deficit” is defined as a documented substantial decline in the financial resources of the institution that is brought about by an unanticipated and significant reduction in state funding or institutional enrollment, acts of terrorism or significant public crisis, or by other action, events or combinations thereof, that compel a sudden and imminent reduction in the available operating budget. A “significant operating budget deficit” may also exist within a restricted program upon notice of a reduction or elimination of program funds.

In the event of a significant operating budget deficit the President shall look at all options within the University to redress the deficit, including the use of furloughs, staff reductions in force and the elimination of faculty appointments. In identifying faculty appointments the President may look to any currently existing program review process in place and/or any Proposal or Plan currently existing with respect to the Reorganization, Consolidation or Elimination of Academic Programs under this Policy to identify faculty appointments that may be eliminated to help address the significant operating budget deficit.

In evaluating options to respond to the imminent financial needs of the institution resulting from a significant operating budget deficit, the President shall consult with Academic Affairs and the CFO or his/her designee, as well as representatives from constituencies from across the campus, including specifically the Faculty Senate.

The President will submit a Plan to Address Significant Operating Budget Deficit, as (s)he deems appropriate, encompassing both academic and non-academic programs and related elimination of faculty and staff appointments to the Board of Regents for its official action. In making recommendations for elimination of specific faculty appointments required by a significant operating budget deficit the President shall take into account the following:

- Elimination of duplication of programs within the University and/or among state institutions of higher education;

- An ability to achieve effective and efficient program delivery through the creation of cooperative programs with other institutions of higher education through traditional or non-traditional means;
- A pattern or history of a decrease in, or consistently low, numbers of degrees awarded;
- A pattern or history of a decrease in, or consistently low, numbers of qualified applicants to the Academic Program;
- A pattern or history of low or declining enrollment in classes offered within an Academic Program;
- A pattern or history of low and/or declining scores on standardized/national examining instruments;
- An inability to meet standards for obtaining and/or maintaining credentials and/or accreditation;
- An apparent lack of marketplace demand for the Academic Program;
- A prioritization of the current academic objectives of the University,
- A reallocation of resources due to budget priorities, and/or a reduction of or elimination of restricted program funds.

In the evaluation of the need to eliminate faculty appointments as a result of a significant budget deficit, the President in conjunction with the Provost/Vice President for Academic Affairs (“Provost/VPAA”) shall first consider the ability to eliminate instructor appointments and secondly tenure track faculty appointments. In making specific recommendations for elimination of specific faculty appointments due to significant budget deficit, the President and Provost shall take into account the following Criteria for Faculty Selection:

- Tenured faculty members will have preference of retention over non-tenured faculty members, unless there is a compelling academic or accreditation reason to do otherwise. Absent a compelling academic or accreditation reason, the following sequence will be observed:
- Tenured faculty of superior academic rank will have preference of retention over tenured faculty of lesser rank;
- A faculty member who has attained tenure prior to another faculty member of the same rank would have preference of retention over the latter faculty member;

- If tenure in rank considerations are the same for two faculty members, i.e., both were tenured on the same date and were promoted in their current rank on the same date, preference of retention shall be based on unique or specialized credentials and/or area of instruction, the needs of the program, department/school and College, past performance and the potential for future contributions to the development of the University.
- If funded vacancies exist, reasonable effort will be made to offer the tenured faculty member concerned another existing position within the University for which the tenured faculty member is qualified by education and experience; and
- In the event of the termination of a tenured faculty member, that faculty member will not be replaced for a period of three (3) years by another person of comparable qualifications at the same or higher salary in a discipline in which the terminated, tenured faculty member is qualified to teach and/or perform the job duties without first offering reinstatement to the terminated tenured faculty member and allowing a reasonable time for acceptance;
- By another person at a reduced level of compensation in a discipline in which the terminated, tenured faculty member is qualified to teach and/or perform the job duties without first having offered the position at the reduced compensation to the tenured faculty member concerned and allowing a reasonable time for acceptance.

A terminated tenured faculty member who is recalled within the three (3) year period shall be reinstated with full tenure and time in rank as of the date of termination.

Criteria for Faculty Selection set forth in this Policy, except in the instance of a significant operating budget deficit within in a restricted program, in that event any reduction in faculty appointments shall be made from the subject program. The President shall forward to the Provost, Faculty Senate and Staff Congress a copy of the Plan to Address Significant Operating Budget Deficit submitted to the Board of Regents. Affected University employees will be informed, in writing, of the action of the Board of Regents.

APPEAL

Any tenured member of the faculty, or tenure track faculty member, receiving notice of position elimination may appeal the determination to the Board of Regents by providing notice to the Secretary of the Board of Regents within fourteen (14) days of receiving such notice on the basis that the faculty member's position was not appropriately selected for elimination. The Board Chair shall designate a panel of three (3) Board members to hear such appeal(s) and make a written recommendation to the full Board for final action.

Any elimination of staff positions necessitated by a plan approved by the Board of Regents under this policy shall be administered pursuant to PG-58.