

1 **Policy: PAc-35**

2 **Subject: Termination of Faculty for Financial Exigency or for Program**
3 **Reduction or Discontinuance**

4 Approval Date:

5 Revision Date:

6

7 **PART 1: FINANCIAL EXIGENCY**

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9 **I. GENERAL CONSIDERATIONS**

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11 **A. Purposes**

12 At times, certain social and economic conditions affect colleges and universities
13 adversely. Falling enrollments, reduced funding, externally imposed curricular or
14 program restrictions, and other factors induce significant changes in an institution.

15 Any substantial decline in the state and national economies usually incurs reductions in
16 the financial support of colleges and universities as well as other social institutions and
17 their services. When the economic decline and accompanying reductions in support of
18 an institution reach critical proportions, a magnitude that drastically impairs the
19 operations and functioning of the University, serious measures are demanded to meet
20 the emergency intelligently and effectively.

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22 **B. Preparation and Purposes of the Policy**

23 Foresight and preparation before such measures are actually needed to address critical
24 financial conditions help to lessen harmful effects on people and the University and to
25 insure an orderly and fair process. The fundamental preparation for any emergency
26 measures consists of the formulation of policies and procedures through which a critical
27 cutback in funding can be met. In this formulation three purposes are to be served:

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- 29 (1) to maintain essential instructional and research services at a satisfactory level of
30 quality;
- 31 (2) to protect those faculty and staff who must deliver such services and the students
32 who receive them; and
- 33 (3) to preserve a capability of the University as a whole for continuance of services.

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35 **C. Academic Values and Tenure**

36 Beyond these three purposes are certain academic values that must guide both policy and
37 procedure development and their subsequent application when extraordinary financial
38 stringencies are imposed upon the University. Of these academic values, a fundamental
39 one undergirding several others is that of safeguarding tenure.

40 Tenure protects more than simply the right of individual faculty to a position or a
41 property right. It insures that ideas, concepts, and doctrines may be examined without
42 fear or favor; that fact and truth may be pursued in research without dictation; that
43 teaching may be done without reprisals. In short, tenure protects the exercise of the
44 basic functions of the University and the reasons for its being.

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48 D. Responsible University Means
49 Any respectable university will, in its policies and procedures, provide means for faculty
50 to express their personal and professional concerns and have due process. Moreover, any
51 responsible university will invoke a state of exigency only after other means have been
52 taken through the regular organizational and administrative structures to minimize a
53 financial urgency. If dire cutbacks are faced unexpectedly, other appropriate university
54 policies and procedures would be implemented simultaneously for all segments of the
55 university. In the case of Morehead State University, before the policy and process
56 outlined subsequently are activated, other policies and processes of the University
57 normally will have been exercised, including a review of non-academic programs and
58 termination of non-faculty positions in accordance with the MSU Personnel Policy and
59 Procedures Manual.

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61 E. Continual and Periodic Analyses
62 The University maintains continual analyses and periodic examinations of all fiscal
63 matters of the institution. These and other records will be immediately available to the
64 Financial Exigency Committee (as defined in Paragraph II. C, below) should the
65 activation of these policies and procedures become necessary.

66 67 **II. DEFINITIONS**

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69 A. "Termination for Financial Exigency" means the cessation of employment of a faculty
70 position before the end of the appointment period for reasons of financial exigency. The
71 non-reappointment of a faculty member on a specified term appointment is not a
72 termination for financial exigency, and no objection to a non-reappointment may be filed
73 under this procedure. The use of "termination" in this policy (PAc-35) means
74 termination for financial exigency unless otherwise stated.

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76 B. "Financial Exigency" means any imminent and extraordinary decline in the University's
77 financial resources that compels a reduction in the current operating budget to the extent
78 that the University would be unable to meet existing financial obligations that include,
79 but are not limited to, contractual obligations.

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81 C. "Financial Exigency Committee" is a special committee, the purpose of which is to
82 provide independent guidance and advice to the President and the Board of Regents on
83 a declaration of financial exigency and alternative approaches in alleviating said exigency,
84 to be formed in accordance with Section IV., Establishment and Operation of the
85 Financial Exigency Committee.

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87 D. Except as otherwise specifically provided herein, "day" means every day including
88 Saturdays and Sundays but shall not include official University holidays.

89 90 **III. PRELIMINARY STATEMENT AND DETERMINATION OF FINANCIAL** 91 **EXIGENCY**

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93 A. Board Authorization
94 If the President determines that circumstances indicate the University faces a financial
95 exigency, he/she shall take immediate action to apprise the Board of Regents of the
96 nature and extent of the financial crisis. He/she shall also present a general plan for how
97 the exigency can be alleviated. The statement to the Board shall outline in terms as

98 specific as the circumstances permit, the options readily apparent at the time. The
99 President's statement to the Board shall include a request for authorization to investigate
100 further the necessity for a declaration of financial exigency. The statement shall also
101 include the nature and extent of conditions and an outline of expenditure categories and
102 major department areas to be examined in projecting a course of action that would meet
103 such an emergency. Once Board authorization has been secured, the President shall
104 proceed in accordance with the procedures outlined in this policy.
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106 **IV. ESTABLISHMENT AND OPERATION OF THE FINANCIAL EXIGENCY** 107 **COMMITTEE**

108 109 A. Committee Composition

110 The President shall, within five (5) days after the Board has authorized such action,
111 establish a Financial Exigency Committee. The committee shall consist of ten (10)
112 members representing various segments of the University and selected in the following
113 manner and consistent with the University's Affirmative Action policies:
114

- 115 (1) Five (5) faculty members who are either tenured or tenure-track faculty to be
116 appointed by the President of the University from an existing pool of eight (8)
117 faculty, who shall serve two-year terms (1 July to 30 June), chosen from all
118 eligible faculty by an election conducted by the Governance Committee of the
119 Faculty Senate. The President shall in his/her selection ensure a broad
120 representation of programs and departments. [The Faculty Senate is authorized
121 to constitute the eight (8) elected faculty members as a continuing committee of
122 the Senate to study the University's financial condition when a funding crisis may
123 be imminent and to assess possible ways of meeting such a crisis.]
- 124 (2) Three (3) administrative employees, one of whom is an academic chair, shall be
125 appointed by the President.
- 126 (3) One (1) staff representative shall be appointed by the President after consultation
127 with Staff Congress.
- 128 (4) One (1) student representative shall be appointed by the President after
129 consultation with the Student Government Association.
- 130 (5) A chair of the committee shall be appointed by the President from the ten (10)
131 committee members.
132

133 B. Committee Charge

134 The Financial Exigency Committee shall make recommendations regarding:
135

- 136 (1) whether a declaration of exigency is warranted;
- 137 (2) a review of expenditure categories and the major department areas as outlined in
138 the President's statement to the Board of Regents; and
- 139 (3) alternative considerations in the area of academic affairs.
140

141 C. Committee Process

- 142 (1) Once the committee has been formed pursuant to subsection a., but no later than
143 five (5) days subsequent to the Board of Regents' action, the President shall
144 submit to the committee the statement that outlines the necessity for a
145 declaration of financial exigency, including establishment of a specific dollar
146 amount necessary to alleviate the emergency, and a general plan indicating means
147 by which the emergency can be alleviated. This statement shall include efforts

148 already undertaken by the University in response to the financial emergency.
149 Upon receipt, the committee shall evaluate the statement and plan, and prepare a
150 recommendation for the President's review.

151
152 (2) The committee shall review the information presented by the President and shall
153 recommend whether a declaration of financial exigency is necessary. The
154 committee shall also review the major departments, each department's
155 percentage of the budget, and any general reductions proposed by the President
156 in his/her statement. This review may include an examination of alternate
157 approaches to alleviating the emergency including, but not limited to, increases in
158 revenue, reallocation of current revenue, and use of University reserves to phase
159 out activities. The committee may review the various expenditures of the
160 University, including academic and non-academic departments and activities. The
161 committee may also review alternative considerations.

162
163 (3) The committee shall present its report and recommendations to the President
164 within fifteen (15) days after receipt of the President's plan.

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166 **V. PRESIDENT'S ACTION**

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168 Upon receipt of the report and recommendations of the committee, the President shall
169 transmit the report and recommendations, any committee minority reports, and any
170 recommendations or comments he/she has to the Board of Regents for action. The
171 President shall, upon receipt, also make this report available to the University
172 community.

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174 **VI. BOARD ACTION**

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176 The Board of Regents shall consider such recommendations as it receives from the
177 committee, from any committee minority reports, and from the President. Faculty,
178 students, staff, and others may request in writing permission to address the Board
179 regarding any recommendations concerning financial exigency. The written request to
180 address the Board shall contain a statement of the purpose and reasons for the address.
181 Within fifteen (15) days after it receives the report and recommendations of the
182 committee, any committee minority reports, and the report and recommendations of the
183 President, the Board shall determine if a declaration of financial exigency is necessary.
184 Upon a declaration of financial exigency, the Board shall direct the President to act.

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186 **VII. UNIVERSITY ACTION UPON DECLARATION OF FINANCIAL**
187 **EXIGENCY**

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189 Upon receipt of the Board of Regents' declaration of financial exigency, the President
190 shall submit his decision and the reduction needed to alleviate the exigency to the
191 departments to be affected. The department chair shall in collaboration with the
192 department's tenured and tenure-track faculty shall recommend to the appropriate dean
193 ways in which the required savings shall be effected in that department; the dean shall
194 review this recommendation and submit his/her recommendation to the Provost.
195 Similarly, the Dean of Libraries, after consulting with his/her staff, shall submit a
196 recommendation to the Provost. The Provost shall review all recommendations and
197 shall submit his/her recommendation to the President. The President shall review and

198 consider all recommendations in making the final decision for termination of faculty
199 positions for submittal to the Board. The final decision for termination of faculty
200 positions for purpose of exigency shall be made by the Board of Regents.

201 202 **VIII. TERMINATION OF FACULTY POSITIONS**

203 204 A. Consideration/Obligation to Faculty

- 205
- 206 (1) If termination of faculty positions becomes necessary, due consideration shall be
207 given to:
- 208 (a) the missions of the University;
 - 209 (b) the criteria for faculty evaluation as established in PAc-27; PAc-30
 - 210 (c) normal attrition of faculty;
 - 211 (d) program review documents;
 - 212 (e) cost analyses; and
 - 213 (f) the Affirmative Action policies of the University.
- 214
- 215 (2) Morehead State University recognizes that tenure constitutes a property right.
216 Every effort shall be made to preserve the positions of tenured faculty.
- 217 (a) Tenured faculty members will have preference of retention over non-
218 tenured faculty members. If no tenured faculty are to be terminated, then
219 tenure track faculty shall be considered pursuant to the same criteria as
220 would be used for tenured faculty.
 - 221 (b) A faculty member who has attained tenure prior to another faculty
222 member will have preference of retention.
 - 223 (c) If the time of tenured service is equal, then tenured faculty of superior
224 academic rank will have preference of retention.
 - 225 (d) If service and rank considerations are the same for two faculty members,
226 the faculty member with the longer period of employment at the
227 University will have preference of retention.
- 228 (3) The full teaching load of a terminated faculty position shall not be assumed by
229 part-time faculty.
- 230 (4) The University shall make reasonable efforts to provide support for retraining, re-
231 education, and/or reassignment within the University of a faculty member
232 identified for termination.
- 233 (5) At the request of a terminated faculty member, the University shall provide
234 reasonable and timely re-employment assistance.
- 235 (6) The University may not fill a position in a discipline in which a tenured faculty
236 member who has been terminated is qualified to teach and/or perform the job
237 for a period of three (3) years from the date of the termination, unless the
238 position is first offered to that faculty member. The University may not fill a
239 position in a discipline in which a non-tenured faculty member who has been
240 terminated is qualified to teach and/or perform the job for a period of two (2)
241 years from the date of termination, unless the position is first offered to that
242 faculty member. The offer shall be made by certified mail, restricted delivery,
243 return-receipt requested, and the acceptance of such offer must be made in
244 writing. Each faculty member is responsible for providing the University with a
245 current address. The address on file in the office of the Provost shall be deemed
246 the current address for mailing notices required by this procedure. Failure to
247 accept the offer in writing with fifteen (15) calendar days of receipt of the offer

248 or rejection of the position eliminates the re-employment rights of the faculty
249 member to the position. Such acceptance or rejection must be made in writing.
250 (7) A faculty member who is recalled within the specified three- (3) year period for
251 tenured faculty or two- (2) year period for tenure-track faculty shall have restored
252 all sick leave accrued on the effective date of layoff. Tenured faculty shall be
253 recalled with full tenure, and non-tenured faculty shall be recalled with the
254 number of years of prior service at the University counting as part of the
255 probationary period. Further, the salary for such positions filled through recall of
256 terminated faculty shall be negotiable but in no case shall the faculty member
257 receive less than he/she was paid at the time of termination.
258

259 B. Notice to Individual Faculty

260 If the Board of Regents' final action includes the termination of faculty, the President or
261 his/her designee shall give written notice of that fact by certified mail, restricted delivery,
262 return-receipt requested, to the faculty to be terminated. The notices shall include a
263 statement of the conditions requiring termination of employment, a general description
264 of the procedures followed in making the decision, and a disclosure of pertinent financial
265 or other data upon which the decision was based. A faculty member receiving such
266 notice may request clarification. The President and the Board shall make every
267 reasonable effort to ensure that notice to tenured or tenure-track faculty be given not
268 less than seventy-five (75) calendar days before the effective date of termination. In
269 addition, reasonable effort shall be made to ensure that no faculty appointment is
270 terminated before the end of the academic year in which the financial exigency occurs.
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272 C. Unemployment Compensation

273 Any faculty terminated shall be eligible for unemployment compensation if he/she meets
274 the conditions of qualification for benefits defined in Chapter 341 of the Kentucky
275 Revised Statutes. (See especially KRS 341.350.) Benefits are calculated in accordance
276 with KRS 341.380 et seq.
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278 IX. REVIEW OF INDIVIDUAL TERMINATIONS

279 A. Request for a Hearing

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282 (1) Within ten (10) days after receiving a notice of termination, a tenured or tenure-
283 track faculty member may request a review of the action by the Board of
284 Regents. Review may be had solely to determine whether the decision to
285 terminate was made in accordance with established procedures with respect to
286 that individual. The request for review must be in writing and addressed to the
287 chair of the Board with a copy to the President. It must specify the grounds on
288 which it is contended that the established procedures were abridged, and must
289 include a short, plain statement of facts that the faculty member believes
290 supports the contention.

291 (2) Submission of such a request constitutes on the part of the faculty member, first,
292 a representation that he/she can support this contention by factual proof, and,
293 second, an agreement on the part of the faculty member that the University may
294 offer in rebuttal any relevant data in its possession. The Board shall consider the
295 request upon the transmission of the request by the President and shall grant a
296 hearing if it determines that a prima facie case is presented by the statement. A
297 denial of the request finally confirms the decision to terminate, and the Board

298 shall so notify the faculty member. If the request is granted, a hearing shall be
299 held within ten (10) days after the request is received; the faculty member shall be
300 given at least (5) days notice of the hearing.

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302 B. Conduct of the Hearing

- 303
304 (1) The hearing shall be conducted informally and in private, with only the members
305 of the Board, the faculty member, the President, and such witnesses as may be
306 called, in attendance. During the hearing, the faculty member and/or the
307 President will be permitted to have an adviser who may give advice to that party
308 but may not otherwise represent the party. A quorum for purposes of the
309 hearing is a simple majority of the Board's total membership. If the faculty
310 member asks for a transcript of the proceeding, the transcript shall be made and
311 one copy provided to the faculty member free of charge. The Board may
312 consider only such evidence as is presented at the hearing, and it need consider
313 only the evidence that it considers fair and reliable. All witnesses may be
314 questioned by the Board members, the faculty member, and the President.
- 315 (2) Except as herein provided, the conduct of the hearing shall be under control of
316 the chair of the Board of Regents. The hearing shall begin with the faculty
317 member's presentation of contentions, limited to those grounds specified in the
318 request for a hearing and supported by such proof as he/she desires to offer.
319 The burden is on the faculty member to satisfy the Board by a preponderance of
320 evidence that the procedures used to reach the decision to terminate were
321 abridged. When this presentation is concluded, the Board shall recess to consider
322 whether the proof offered in support of the contention establishes the
323 contention, unless it is not rebutted. If it determines that the contention has not
324 been so established, it shall notify the parties and conclude the proceedings. If it
325 determines that rebuttal is desirable, it shall so notify the parties and the hearing
326 shall proceed. The President may then present, in rebuttal of the faculty
327 member's contention or in general support of the decision to terminate, such
328 testimonial or documentary proofs as he/she desires to offer, including his/her
329 own testimony. After the President completes his/her presentation, the Board
330 shall consider the matter in executive session.

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332 C. Procedure After Hearing

333 If the Board determines that the faculty member's contention has not been established, it
334 shall issue a simple statement to notify the faculty member and the President. If the
335 Board determines that the faculty member's contention has been established, it shall so
336 notify him/her and the President by a written notice that states what corrective action
337 must be taken.

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340 **X. TERMINATION OF FINANCIAL EXIGENCY**

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342 The financial exigency terminates when the University has, under the directions of the
343 Board of Regents given to the President, reformulated the University budget to meet the
344 specified financial constraints that imposed the emergency.

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347 **PART 2: PROGRAM REDUCTION AND DISCONTINUANCE**

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A. PURPOSE:

Given the complex and interlocking nature of University academic programs, it is possible at times that a program will need to be reduced or discontinued and provisions made for reassignment, or other arrangements, of the program faculty. This policy deals with the initiation of the process and the mechanisms for accomplishing it. For purposes of this section, a program will be defined as any group of courses taught by University faculty. The program can be within an existing department or stand as an independent unit.

B. DETERMINING WHETHER TO REDUCE OR DISCONTINUE A PROGRAM:

The basis for recommending program reduction or discontinuance can arise from several possible sources of information including, but not limited to:

- (a) relevant trends or priorities for program graduates;
- (b) lack of course offerings by the program on a timely basis;
- (c) a history of courses being dropped from the schedule of classes because of low enrollment.

The initial request to reduce or discontinue a program may come from any of several sources, including the program faculty, the program chair, the Faculty Senate, the appropriate dean of the program, the Provost, the President, or the Board of Regents. Regardless of the initial source of the request to reduce or discontinue a program, it will be the dean, the Provost, or the President who formulates the request in writing. The originator of the written request will formulate the request after consultation with the program faculty and the program chair. The request will not constitute a decision to reduce or discontinue but will be a compilation of the various sources of information used as the basis for the request. The sources of information must include at least the following:

- (a) reasons for the request, including any data used to support these reasons;
- (b) the procedures for terminating or reassigning faculty;
- (c) the timetable for completing the reduction or discontinuance, taking into account the time necessary to retrain or otherwise adjust the program faculty and to allow any current majors in this program to complete their studies in a reasonable time;
- (d) projections as to whether program reduction or discontinuance may be achieved through the normal attrition process of retirement, resignation, or early retirement.

The President will convene a seven-member ad hoc Committee on Program Review to report on the effects that the reduction or discontinuance of the program will have on University curricula. The ad hoc Committee on Program Review will consist of the two college representatives on the appropriate graduate or undergraduate University curriculum committee from the College in which the program is located; two members from the Academic Policies Committee of the Faculty Senate elected by the Faculty Senate; two faculty members (tenured, if possible) from the affected program elected by faculty within the program; and the Dean of the College in which the program is located who will serve as Chair. The program Chair(s) may serve as nonvoting, ex officio member(s) of the committee. The ad hoc Committee on Program Review will prepare and submit its finished report within 30 days to the President with a copy to the Faculty Senate Chair and

398 Faculty Regent. The appropriate graduate or undergraduate University curriculum
399 committee and the Faculty Senate shall also prepare separate reports and
400 recommendations for the President.

401
402 If the Committee on Program Review recommends that reduction or discontinuance
403 of the program and its faculty positions is in the best interest of the University based
404 essentially upon educational considerations, and if the appropriate University
405 curriculum committee, the Faculty Senate, and the President concur in this
406 recommendation, the President will ask the Provost to implement the reduction or
407 discontinuance plan recommended by the Committee on Program Review.

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409 If either the Committee on Program Review, the appropriate University curriculum
410 committee, or the Faculty Senate do not agree that the reduction or discontinuance
411 of the program is in the best interest of the University, and if the President feels that
412 the need for a program reduction or discontinuance exists, the President may
413 proceed to develop a full report to the Board of Regents regarding program
414 reduction or discontinuance. The report will include, but not be limited to,
415 information and reports from the Faculty Senate, the appropriate University
416 curriculum committee, and the ad hoc Committee on Program Review; and a
417 recommended procedure to be followed regarding the termination and due process
418 rights of tenured faculty affected by the program reduction or discontinuance. If the
419 Board of Regents approves, then the President will ask the Provost to implement the
420 plan as approved by the Board of Regents.

421
422 C. FACULTY REDUCTION FOR PROGRAM REDUCTION OR
423 DISCONTINUANCE:

424 If normal attrition will fail to bring about a sufficient reduction, then the University
425 shall offer economic incentives (e.g. contract buy-outs or paid leave for retraining).
426 The University shall offer reassignment or paid leave for retraining to tenured faculty
427 affected by the program reduction or discontinuance, and shall make every
428 reasonable effort in the case of untenured faculty. In both reassignment and
429 retraining, every effort should be made to utilize the past training and expertise of
430 the faculty in question. The duration and term of a paid leave for retraining shall be
431 negotiated with the Provost, taking into account such factors as:

- 432 (a) credentials (education and experience);
- 433 (b) faculty rank; and
- 434 (c) consistency in the application of this policy.

435 In all reassignment decisions, tenure shall be heavily weighed. To maintain the
436 proper balance in curriculum offerings, however, it may be necessary to reassign
437 faculty without regard to tenure.

438
439 If the desired reduction in the number of faculty is still not achieved, then the dean,
440 based on recommendation from the program faculty and chair, shall consider the
441 following factors in preparing a list of professors to be terminated:

- 442 (a) tenure, rank, and seniority in that order of importance;
- 443 (b) faculty performance over the last three years;
- 444 (c) affirmative-action guidelines;
- 445 (d) particular specialties of faculty and the continued needs of the program.

446 Every reasonable effort shall be made to preserve the positions of tenured faculty
447 through reassignment or paid leave for retraining as outlined elsewhere in this policy.

448 Given the University's commitment to tenure, tenured faculty will not be terminated
449 for program reduction or discontinuance except as provided below.

450
451 The University shall offer reassignment to other academic programs, or offer a paid
452 retraining leave to tenured faculty. If such reassignment or retraining leave is refused,
453 then the faculty so refusing may be terminated. Tenured faculty would be terminated
454 in accordance with the requirements of the Kentucky Revised Statutes.

455
456 The President and the Board shall ensure that notice to tenured or tenure-track
457 faculty be given prior to December 1 in the academic year prior to the effective date
458 of termination. In addition, reasonable effort shall be made to ensure that no faculty
459 appointment is terminated before the end of the academic year in which the program
460 reduction or discontinuance decision occurs. Terminated faculty shall be notified in
461 writing and have the right to appeal the decisions to the Faculty Rights and
462 Responsibilities Committee as provided in PAC-18.