

Policy: PAc-26

Subject: Termination of Faculty for Financial Exigency and Discontinuance of Program

Approval Date: 05/22/87

Revision Date:

ACADEMIC VALUES AND TENURE:

A fundamental academic value, which must guide both policy and procedure, is that of safeguarding tenure. Morehead State University ("University") recognizes that tenure is a property right. Tenure protects more than simply the right of individual faculty; it also insures that ideas, concepts, and doctrines may be examined without fear or favor; that fact and truth may be pursued in research without dictation; and that teaching may be done without reprisals. In short, tenure protects the exercise of the basic functions of the University and the reasons for its being.

It is recognized that a tenured appointment of a faculty member is a commitment by the University to the continuous appointment of the faculty member; faculty are tenured to the University. 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 termination of faculty is necessary due to financial exigency or bona fide formal discontinuance of program.

GENERAL POLICY:

The Board of Regents has a paramount statutory duty to the people of Kentucky to maintain a quality educational program consistent with the mission statement and within available financial resources as determined by the Council on Postsecondary Education, the Governor, and the General Assembly. Accordingly, determination of the existence of financial exigency or discontinuance of program based essentially on educational considerations, that may involve the termination of tenured faculty members, is a prerogative reserved for the Board and will not be delegated.

The Board of Regents is fully aware of the fact that adjustments due to financial exigency or discontinuation of a program that include the termination of tenured faculty members are matters of gravity and require thoroughly considered balancing of the public and private interests. These actions are to be taken under exacting criteria and with assurance of requisite safeguards of academic due process to maintain a quality education program consistent with the mission statement and available financial resources.

Upon a documented report of the University needs and available fiscal resources and recommendation of the President that a case of financial exigency or need to discontinue a

program exists, faculty termination decisions will be made by the Board of Regents. The President's report to the Board of Regents shall result from and reflect the advice and written recommendations of the Faculty Senate and ad hoc committees which are listed in the specific procedures which follow.

In making specific recommendations for termination of individual tenured faculty appointments, the President shall take into account the following:

1. If funded vacancies exist, an offer will be made to the tenured faculty members concerned existing positions for which they are qualified by education and/or experience. If any faculty members are unqualified by education or experience, the University will grant the maximum of a one-year period of sabbatical leave during which the faculty member will retrain and prepare for the specific vacancy. Financial support will be granted in accordance with the sabbatical leave policy.
2. In the event of the termination of a tenured faculty member, that faculty member will not be replaced for a period of three years:
 - a. By another person of comparable qualifications at the same or higher salary without first offering reinstatement to the terminated tenured faculty member and allowing thirty calendar days for acceptance;
 - b. By another person at a reduced level of compensation without first offering reinstatement to the faculty member's most recent compensation and allowing thirty calendar days for acceptance.
3. In the event of the termination of all tenured faculty members in a particular area or discipline for discontinuance of program, that area or discipline will not be reinstated at the University for a period of five years.
4. Faculty members, who have been employed full-time at Morehead State University for seven or more consecutive years and are untenured, shall be afforded the same rights of Academic Freedom and Due Process as a tenured faculty member, upon recommendation of the President and approval of the Board of Regents.

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.

SECTION 1: PROCEDURE FOR FACULTY TERMINATION FOR FINANCIAL EXIGENCY:

This procedure will be used when it is proposed by the President that the University reduce the total number of faculty positions on a campuswide basis due to a case of financial exigency. It specifically outlines the rights and academic due process that are accorded a faculty member on a tenured or non-tenured contract and does not attempt to deal with other staff and University personnel procedures.

IDENTIFICATION OF A CASE OF FINANCIAL EXIGENCY:

The Vice President for Administration will identify that a case of financial exigency exists at Morehead State University and will inform the President of the situation with supporting documentation.

STEP ONE:

The President will submit a written report to the Faculty Senate which states that a case of financial exigency exists and give budgetary and financial information which would support that position. The President should also give preliminary recommendations regarding the number of faculty positions which are proposed to be eliminated and/or the dollar amount of savings in faculty salaries which are necessary to deal with the situation. The preliminary recommendations should also outline what other cuts are being proposed.

STEP TWO:

Following notification by the President, the Faculty Senate will determine whether or not a case of financial exigency exists. If the Senate decides that the President's case for financial exigency has not been sufficiently documented, the President will be invited by the Chair of the Faculty Senate to make a presentation to the Senate at a regularly scheduled Faculty Senate meeting to present more supporting evidence for the position. If the Faculty Senate determines that a reasonable case for financial exigency exists, the matter will be referred to the three independent ad hoc committees listed in STEP THREE. The Senate may also choose at this time to prepare an independent and more comprehensive report for submission to the Faculty Regent and the President.

If the Senate decides that a case of financial exigency has not been adequately demonstrated, the Senate will submit a dissenting opinion to the President with a copy to the Faculty Regent.

If after receiving a Faculty Senate dissenting opinion, the President feels that a case of financial exigency does exist, the President may proceed to develop a full report to the Board of Regents

regarding the financial condition of the University. The report will include, but not be limited to, information and reports from the Faculty Senate and a recommended procedure to be followed regarding the termination and due process rights of tenured faculty affected by the financial exigency.

STEP THREE:

The Faculty Senate will elect the nine faculty members who are to serve on the three ad hoc committees listed below. Every effort will be made to have an equitable representation from nontenured as well as tenured faculty, since it is the former who are likely to bear the brunt of the reduction. There will also be a faculty representative from each of the three colleges on each ad hoc committee. The committees will work independently on the determination of financial exigency and will propose possible solutions and alternative courses of action. Faculty positions to be eliminated, but not specific faculty members, may be identified at this point in the process.

1. AD HOC COMMITTEE CHAIRED BY VICE PRESIDENT FOR ADMINISTRATION. The nine-member committee will consist of the Deans of the four academic colleges and one faculty member from each of the four colleges appointed by the Faculty Senate as outlined above, and will be chaired by the Vice President for Administration.
2. AD HOC COMMITTEE CHAIRED BY PROVOST/VICE PRESIDENT FOR ACADEMIC AFFAIRS. The eight-member committee will consist of the Faculty Regent, the Faculty Senate Chair, the Chair of the Faculty Senate Issues Committee and one faculty member from each of the four colleges appointed by the Faculty Senate as outlined above, and will be chaired by the Provost/Vice President for Academic Affairs.
3. AD HOC COMMITTEE CHAIRED BY FACULTY RIGHTS AND RESPONSIBILITIES CHAIR. The eight-member committee will consist of three Department Chairs/Associate Deans and one faculty member from each of the four colleges appointed by the Faculty Senate as outlined above, and will be chaired by the Chair of the Faculty Rights and Responsibilities Committee. The Department Chairs/Associate Deans will be appointed by the President, and every effort should be made to choose Chairs/Associate Deans that will be most adversely affected by the proposed eliminations of faculty positions.

STEP FOUR:

The three ad hoc committees will present written reports to the President within 120 calendar days from the time the committees are convened. Copies of the reports will be sent to the Faculty Senate, the Faculty Regent, and the chairs of the other ad hoc committees. Dissenting minority reports shall be included in the final reports.

STEP FIVE:

The President, after receiving the reports of the three ad hoc committee and the final recommendations of the Faculty Senate, will make recommendations regarding the specific faculty positions and faculty members who will be terminated for a case of financial

exigency. The President will follow the Order of Termination Sequence in determining the faculty members to be terminated.

These specific recommendations will be submitted to the Provost/Vice President for Academic Affairs who will notify in writing, within five business days, those faculty members whose positions are proposed to be eliminated. The Provost/Vice President for Academic Affairs will also convene the ad hoc Committee on Reconciliation listed in STEP SIX.

STEP SIX: AD HOC COMMITTEE ON RECONCILIATION.

The seven-member committee will consist of the Provost/Vice President for Academic Affairs, the Vice President for Administration, the Chair of the Faculty Senate, one faculty member elected by the Faculty Senate from each of the three committees listed in STEP THREE, and the Faculty Regent who will serve as Chair. There should be a faculty member from each College represented on the committee. The committee will meet individually with each affected faculty member and will make every effort to reach some accommodation with the individual regarding his/her rights and possible courses of alternative action. Such advice may include, but not be limited to, proposing such alternatives as a reassignment of work duties, sabbatical leave for the purpose of retraining or re-adapting teaching skills towards a new position, and informed of any early retirement incentive programs available. The faculty member affected will be afforded the opportunity to present documentation or other evidence in support of his/her objection to the proposed elimination of position due to financial exigency and the resulting intention to terminate the faculty member's contract. If the faculty member and the ad hoc Committee on Reconciliation can reach a mutually agreeable solution, the faculty member and the Committee will submit a written proposal of settlement to the President outlining the conditions of acceptance.

If the matter cannot be resolved successfully with the faculty member, the ad hoc Committee on Reconciliation will issue a written report to the President within five business days from the time of the final meeting with the affected faculty member. The report will outline the areas of disagreements. A copy of the report will be sent to the Chair of the Faculty Senate and the Faculty Regent. Dissenting minority reports shall be included in the final report.

If the faculty member feels that he/she has not received due process, he/she has the right to file an appropriate grievance with the Faculty Rights and Responsibilities Committee which will investigate the matter within four weeks and submit a recommendation to the President. A copy of the report will be sent to the Provost/Vice President for Academic Affairs, the Chair of the Faculty Senate, and the Faculty Regent. Dissenting minority reports shall be included in the final report.

STEP SEVEN:

The President will meet personally with the faculty member and will attempt to reconcile the areas of disagreement regarding the termination of the faculty member. The President, after consultation with the Vice President for Administration, the Provost/Vice President for Academic Affairs, the Faculty Regent, the Chair of the Faculty Rights and Responsibilities Committee, and

a person of the faculty member's choosing, will then make a final recommendation regarding the position of the faculty member which will be submitted to the Board of Regents for consideration and action. A written copy of the formal recommendation will be given to the faculty member within five business days of the final meeting. This ends the formal process of academic appeal but does not preclude the possibility of seeking redress through the legal system for perceived injury and harm.

SECTION 2: PROCEDURES FOR FACULTY TERMINATION FOR DISCONTINUANCE OF PROGRAM:

This procedure will be used when the President proposes that the University eliminate all faculty positions in a particular department, discipline, or program area (hereafter referred to only as Program) for a case of discontinuance of program which is based essentially on educational considerations. It specifically outlines the rights and academic due process that are accorded a faculty member on a continuing contract and does not attempt to deal with other staff and University personnel procedures. It is recommended that, in the general interest of Morehead State University, a procedure be developed for these employees and that a process be set up to reconcile the interests of the University as a whole.

NOTE. "Educational considerations" do not include cyclical or temporary variations in enrollment. They must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance.

INITIAL DETERMINATION OF THE NEED TO TERMINATE TENURED FACULTY POSITIONS FOR DISCONTINUANCE OF PROGRAM:

Recognizing that the President has authority for program discontinuance, the University will generally rely upon the Provost/Vice President of Academic Affairs to determine whether it would be desirable and in the best interests of the University as a whole, based essentially on educational considerations, to discontinue a Program and to eliminate all of the tenured faculty positions in that Program. After consultation with the appropriate Dean(s) and Department Chair(s)/Associate Dean(s), the Provost/Vice President of Academic Affairs will inform the President in writing of the situation with supporting documentation.

STEP ONE.

The President will submit a written recommendation to the Faculty Senate which states that the President intends to propose to the Board of Regents that a particular Program be discontinued and that all faculty positions in that Program be terminated due to the changing program needs of the University. The recommendation will include, but not be limited to, the rationale for discontinuing the Program, the perceived effect that the elimination of the Program will have on the University as a whole, and the number of faculty positions that will be terminated. The President will also submit copies of the recommendation to the Dean of the College in which the Program is located, the specific Program Chair/Associate Dean, and the Chair of the

appropriate University curriculum committee. Graduate and undergraduate programs in the same Program will be handled as separate recommendations.

STEP TWO.

The President will convene a seven-member ad hoc Committee on Program Elimination to report on the effects that the elimination of the Program will have on University curricula. The ad hoc Committee on Program Elimination 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 Issues Committee of the Faculty Senate elected by the Faculty Senate; two faculty members 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)/Associate Deans may serve as nonvoting, ex officio member(s) of the committee. The ad hoc Committee on Program Elimination will have at least 120 calendar days in which to prepare and submit its finished report to the President with a copy to the Faculty Senate Chair and Faculty Regent. The appropriate graduate or undergraduate University curriculum committee and the Faculty Senate shall also prepare separate reports and recommendations for the President.

STEP THREE.

If the ad hoc Committee on Program Elimination recommends that elimination of the Program and its faculty positions is in the best interest of the University based essentially upon educational considerations, and if the appropriate University curriculum committee and the Faculty Senate concur in this recommendation, the President will ask the Provost/Vice President for Academic Affairs to convene an ad hoc Committee on Reconciliation as constituted in STEP FOUR.

If the Faculty Senate and the appropriate University curriculum committee concur with an opinion from the ad hoc Committee on Program Elimination that the discontinuance of the Program(s) and its faculty positions is not in the best interest of the University, and if the President feels that the need for a program(s) discontinuance exists, the President may proceed to develop a full report to the Board of Regents regarding Program discontinuance. The report will include, but not be limited to, information and reports from the Faculty Senate, the appropriate University curriculum committee, and the ad hoc Committee on Program Elimination; and a recommended procedure to be followed regarding the termination and due process rights of tenured faculty affected by the Program discontinuance.

STEP FOUR.

AD HOC COMMITTEE ON RECONCILIATION. If the President decides to convene the seven-member ad hoc Committee on Reconciliation, the seven-member committee will consist of the Provost/Vice President for Academic Affairs, the Vice President for Administration, the Chair of the Faculty Senate, and three members elected by the Faculty Senate, and will be chaired by the Faculty Regent. There shall be a faculty member from each College represented on the committee.

The committee will meet individually with each affected faculty member and will make every effort to reach some accommodation with the individual regarding their rights and their possible courses of alternative action. Such advice would include, but not be limited to, proposing such alternatives as a reassignment of work duties, sabbatical leave for the purpose of retraining or re-adapting teaching skills towards a new position, and informed of any early retirement incentive programs available. The faculty member affected will be afforded the opportunity to present documentation or other evidence in support of his/her objection to the proposed elimination of position due to financial exigency and the resulting intention to terminate the faculty member's contract. If the faculty member and the committee can reach a mutually agreeable solution, the faculty member and the committee will submit a written proposal of settlement to the President outlining the conditions of acceptance.

STEP FIVE.

If the matter cannot be resolved successfully with the faculty member, the ad hoc Committee on Reconciliation will issue a written report to the President within five business days from the time of the final meeting with the affected faculty member. The report will outline the areas of disagreements. Dissenting minority reports shall be included in the final report.

If the faculty member feels that he/she has not received due process, he/she has the right to file an appropriate grievance with the Faculty Rights and Responsibilities Committee which will investigate the matter within four weeks and submit a recommendation to the President. A copy of the report will be sent to the Provost/Vice President for Academic Affairs, the Chair of the Faculty Senate, and the Faculty Regent. Dissenting minority reports shall be included in the final report.

STEP SIX.

The President will meet personally with the faculty member and will attempt to reconcile the areas of disagreement regarding the termination of the faculty member. The President, after consultation with the Vice President for Administration, the Provost/Vice President for Academic Affairs, the Faculty Regent, the Chair of the Faculty Rights and Responsibilities Committee, and a person of the faculty member's choosing will then make a final recommendation regarding the position of the faculty member which will be submitted to the Board of Regents for consideration and action. A written copy of the formal recommendation will be given to the faculty member within five business days of the final meeting. This ends the formal process of academic appeal but does not preclude the possibility of seeking redress through the legal system for perceived injury and harm.