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4 SUBJECT: Elimination of Tenured Faculty Appointments, and Tenure-
5 Track Faculty Appointments Within a Contract Period, Due to Low
6 Academic Program Productivity, Significant Financial Emergency, or
7 Financial Exigency.

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9 Approval Date:

10 Revision Date:

11
12 PURPOSE:

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15 To establish the procedures for the elimination of tenured faculty members,
16 or tenure-track faculty members if elimination is to occur during their
17 contract period, due to low academic program productivity, a significant
18 financial emergency, or financial exigency.

19
20 Henceforth, "TTTC faculty members" will refer to tenured faculty members
21 or to tenure-track faculty members who are to be eliminated during their
22 contract period.

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25 GENERAL POLICY:

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28 The Board of Regents has a statutory duty to the people of Kentucky to
29 maintain quality academic programs consistent with the University's
30 mission statement, strategic plan, oversight by the Council on
31 Postsecondary Education, and as governed by the General Assembly.
32 Accordingly, determination of the need to eliminate TTTC faculty members
33 due to low academic program productivity, a significant financial
34 emergency, or financial exigency is a prerogative reserved for the Board of
35 Regents and will not be delegated. The Board of Regents will make
36 elimination decisions upon the recommendation of the President that the
37 need exists to eliminate TTTC faculty members due to low academic
38 program productivity, a significant financial emergency, or financial
39 exigency. The Board of Regents is fully aware that the elimination of TTTC
40 faculty members is a matter of gravity and that such actions are to be taken

41 subject to thorough review and with the requisite safeguards of due
42 process in order to maintain quality academic programs consistent with the
43 University's mission statement, strategic plan, and financial resources.

44
45 As used in this policy, an "Academic Program" is (a) a program that offers a
46 distinct degree or (b) a track within a degree that is described as a distinct
47 option in the University catalog.

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50 REASON 1: LOW ACADEMIC PROGRAM PRODUCTIVITY

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52 Academic programs experiencing declining productivity are defined as
53 those with ongoing, sustained challenges related to achievement of key
54 performance metrics as defined by the state performance funding model.
55 Other data to be evaluated include a program's "student-credit-hour per
56 full-time-equivalent (SCH/FTE)" ratio, the general education classes and
57 other programs supported by the affected faculty, and the cost/benefit of
58 the program relative to other programs at the university. Using trend data in
59 these key metrics from annual academic program reviews, the Provost may
60 initiate a program evaluation process leading to a recommendation
61 regarding the future of the program. Through this process, the Dean, in
62 consultation with the faculty members in the affected program as well as
63 the Department Chair/Associate Dean, will be given the opportunity to write
64 an evaluation report with written justification for continued program support.
65 With agreement from the Provost, the faculty of the affected program will
66 develop a program productivity improvement plan as described in the
67 Continued Program Support section below. Otherwise, the process for
68 Reduced Scope of Program or Discontinuance of Program process will be
69 initiated.

70

71 Continued Program Support

72 Should the evaluation report result in a recommendation to continue
73 offering the program, the program faculty will develop a plan to improve its
74 productivity with respect to the key metrics. This plan must include specific
75 strategies and a timeline of at least two years showing progressive
76 improvements in the key metrics. The faculty may seek assistance from the
77 ORSP, Student Success, Institutional Research, and other personnel who
78 can contribute to the sustainability plan for the program. The Department
79 Chair/Associate Dean, Dean, and Provost must approve this plan or
80 recommend the program be reduced in scope or discontinued. The plan

81 should be implemented with fidelity by all parties.

82

83 After two years of the implementation phase, the program will be re-
84 evaluated. At this time, based on a determination by the Provost, in
85 consultation with the Dean, the implementation phase may be continued or
86 the program may be moved to the Reduced Scope of Program or
87 Discontinuance of Program process.

88

89 Reduced Scope of Program

90 Should the evaluation report result in a recommendation to reduce the
91 program scope, the Department Chair/Associate Dean will develop a plan
92 to realign the program instructional resources with the reduced scope. This
93 plan must include input from the faculty in the affected program and must
94 be approved by the Dean and the Provost. If such a realignment leads to
95 the elimination of TTTC faculty members the plan will follow the process
96 identified in the Plan Development section.

97

98

99 Discontinuance of Program

100 Should the evaluation report result in a recommendation to discontinue the
101 program, decisions relative to the elimination of TTTC faculty members will
102 follow the process identified in the Plan Development section.

103

104

105 REASON 2: SIGNIFICANT FINANCIAL EMERGENCY

106

107 A significant financial emergency is defined as a documented substantial
108 decline in the financial resources of the institution that is brought about by
109 an unanticipated and significant reduction in state funding or institutional
110 enrollment, acts of terrorism or significant public crisis that compel a
111 sudden and imminent reduction in the available operating budget. In a
112 significant financial emergency, material reductions must be required
113 across divisions to balance the institution's operating budget while
114 sustaining quality or criteria for accreditation.

115

116 A significant financial emergency may also exist within a restricted program
117 upon notice of a reduction or elimination of program funds. In such a
118 situation, the administration shall determine what reductions could be made
119 within that program's budget to attempt to avoid layoffs.

120 In the event of a significant financial emergency, the President shall look at
121 all options within the University to redress the emergency, including the use
122 of furloughs, staff reductions in force and the elimination of faculty
123 appointments. In identifying faculty appointments the President may look
124 to any currently existing program review process in place to identify faculty
125 appointments that may be eliminated to help address the significant
126 financial emergency.

127
128 In evaluating options to respond to the imminent financial needs of the
129 institution resulting from a significant financial emergency, the President
130 shall consult with Academic Affairs and the CFO or his/her designee, as
131 well as representatives from constituencies from across the campus,
132 including specifically the Faculty Senate.

133
134 If the response to the significant financial emergency will involve elimination
135 of TTTC faculty, then the President will direct the Provost to engage in Plan
136 Development as detailed below. If the emergency is time-sensitive, the plan
137 deadlines below may be adjusted to shorten the overall process, as long as
138 all participants in the process are informed about the new timeline.

140 141 REASON 3: FINANCIAL EXIGENCY

142
143 The determination of the existence of financial exigency is a prerogative
144 reserved for the Board and will not be delegated. Determination that
145 financial exigency exists shall be made by the Board upon the presentation
146 by the President and Chief Financial Officer/Vice-President for
147 Administration and Fiscal Services (hereinafter "CFO") of an analysis of
148 institutional needs, requirements and available resources.

149 150 Financial Exigency

151
152 "Financial Exigency" is a severe financial crisis that fundamentally
153 compromises the integrity of the institution as a whole. This crisis may
154 occur due to reductions in state funding, loss of revenue from endowments
155 or investments, decline in institutional enrollment, acts of terrorism or
156 significant public crisis, other action, events or combinations thereof. The
157 crisis has caused the University to consider and, if appropriate, pursue the
158 elimination of non-tenured positions, staff positions, potential furloughs of
159 faculty and staff, pay cuts for faculty and staff, cuts to noneducational

160 programs and services, and a reduction in operating expenditures across
161 the institution, among other potential reductions to such a point that further
162 reductions in all of these categories would seriously jeopardize the quality
163 of the University's programs and the ability of the University to fulfill its
164 obligations to the public. Projections of enrollment, state funding and of
165 other sources of revenue must indicate that the shortage of funds will be
166 both severe and persistent.

167

168

169 PLAN DEVELOPMENT

170

171 When there is a possibility that TTTC faculty members might be eliminated
172 for any of the three reasons detailed above, the Provost will convene a
173 Program Change Committee (PCC) comprised of the Provost (who will
174 Chair the PCC), the Dean of each college, and one tenured faculty member
175 from each college. Faculty members will be selected by the tenured and
176 tenure-track faculty members of the respective college. A faculty member
177 serving on the PCC will neither be a faculty senator nor the Faculty Regent.
178 The PCC will produce a written Proposal regarding low academic program
179 productivity, the significant financial emergency, or financial exigency.
180 However, the Provost will have ultimate authority over the content of the
181 Proposal.

182

183 If the Proposal recommends elimination of TTTC faculty members, the
184 Provost will submit the Proposal to the President, the Chair of the Faculty
185 Senate, and the Faculty Regent. The Proposal will include, but not be
186 limited to, the rationale for the elimination of TTTC faculty members, the
187 perceived effect that such an action and any resulting reorganization or
188 elimination of Academic Programs will have on the University as a whole,
189 and the number of TTTC faculty members that will be recommended for
190 elimination. The proposed timeline for closing or phasing out an Academic
191 Program and displacing of TTTC faculty members will be based on
192 consideration of the time required for anticipated completion by students
193 currently enrolled in the program or for facilitation of their placement in
194 acceptable alternative programs. At the conclusion of this process, the
195 faculty line for each eliminated appointment will terminate.

196

197 The Provost will also submit copies of the Proposal to the Dean of the
198 College and the Chair or Associate Dean of the department in which the
199 affected Academic Program(s) is located. The copy of the Proposal shall be

200 accompanied by a notice stating that a Response to the Proposal, if any,
201 from the Faculty Senate and from faculty in the affected Academic
202 Program(s) be made, in writing, to the Provost by a designated date not
203 less than sixty (60) calendar days from the date the Proposal is submitted
204 to the Faculty Senate Chair and the Chair or Associate Dean of the
205 department in which the affected Academic Program(s) is located. If,
206 however, the notice is given thirty (30) calendar days or less prior to the
207 close of the spring semester (graduation day), then the Faculty Senate and
208 the faculty in the affected Academic Program(s) shall have no less than
209 ninety (90) days calendar days to respond to the proposal.

210
211 The Faculty Senate as a body of the whole, or through its appointment of
212 an *ad hoc* committee or committees, may study and review the Proposal.
213 The Faculty Senate may provide a written Response to the Proposal no
214 later than the designated date to the Provost either (1) concurring with the
215 Proposal or, (2) setting forth arguments and statements of fact in opposition
216 to the Proposal and which may contain alternative proposals.

217
218
219 Within 30 calendar days of receipt of the Faculty Senate's Response and
220 the Responses from faculty in the affected Academic Program(s), the PCC
221 will review the Responses and will prepare a written Plan for the elimination
222 of TTTC faculty members due to low academic program productivity, a
223 significant financial emergency, or financial exigency ("Provost's Plan").
224 The Provost's Plan may modify the Proposal based upon consideration of
225 the Faculty Senate Response and the Response from faculty in the
226 affected Academic Program(s). The Provost will have ultimate authority
227 over the content of the Provost's Plan. The Provost's Plan will be forwarded
228 to the President accompanied by copies of the Proposal, the Faculty
229 Senate Response, and the Response from faculty in the affected Academic
230 Program(s). A copy of the Provost's Plan and all attachments will also be
231 forwarded to the Faculty Senate and the Faculty Regent.

232
233 The President shall review the Provost's Plan and accompanying
234 documentation, giving special attention to any proposal for termination of
235 tenured (and non-tenured) faculty. The President's decision shall take
236 careful account of the impact of the elimination of faculty appointments on
237 the University's ability to perform its educational role and mission. The
238 President may determine that no further action should be taken by the
239 University, thereby ending the process; or, the President may accept or

240 modify the Provost's Plan and forward to the Board of Regents a Plan for
241 Elimination of Tenured and Tenure-Track Faculty ("President's Plan").
242

243 If the situation is one of financial exigency, then the President will also
244 submit an overall Plan to Address Financial Exigency, ("President's
245 Exigency Plan") as (s)he deems appropriate, encompassing both academic
246 and non-academic programs and related elimination of faculty and staff
247 appointments to the Board of Regents for its official action.
248

249 The President shall forward to the Provost, Faculty Senate, and Staff
250 Congress a copy of the President's Plan (and, if necessary, the President's
251 Exigency Plan) submitted to the Board of Regents. Affected University
252 employees will be informed, in writing, of the action of the Board of
253 Regents.
254

255 ELIMINATION SEQUENCE 256

257
258 If a decision has been made to eliminate TTTC faculty members in an
259 academic program due to low academic program productivity, a significant
260 financial emergency, or financial exigency, then the following sequence will
261 apply:
262

263 1. Tenured faculty members will have preference of retention over tenure-
264 track faculty members.
265

266 2. Tenured faculty members of superior academic rank will have preference
267 of retention over tenured faculty members of lesser academic rank.
268

269 3. If two tenured faculty members have the same academic rank, then the
270 faculty member who attained rank earlier will have preference of retention
271 over the faculty member who attained rank later.
272

273 4. If two tenured faculty members have the same academic rank and
274 attained rank at the same time, then the faculty member who attained
275 tenure earlier will have preference of retention over the faculty member
276 who attained tenure later.
277

278 5. If two tenured faculty members have the same academic rank and
279 attained rank at the same time and attained tenure at the same time, then

280 preference of retention will be based on performance in teaching,
281 scholarship, and service over the past six years.

282

283 At any of the five stages in the sequence, the order of preference may be
284 modified if maintaining the order of preference would lead to a violation of
285 accreditation standards or to an inability to offer critical courses in the
286 program.

287

288 If funded vacancies exist, reasonable effort will be made to offer the
289 tenured faculty member concerned another existing position within the
290 University for which the tenured faculty member is qualified by education
291 and experience.

292

293 In the event of the termination of a tenured faculty member, that faculty
294 member will not be replaced for a period of three years by another person
295 in a discipline in which the terminated tenured faculty member is qualified
296 to teach or perform the job duties without first offering reinstatement to the
297 terminated tenured faculty member and allowing a reasonable time for
298 acceptance.

299

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

303

304

305 **APPEAL**

306

307 Any tenured faculty member or tenure track faculty member within a
308 contract period, receiving notice of position elimination may appeal the
309 determination to the Faculty Rights and Responsibilities Committee (FRR)
310 by delivery of notice to the FRR Chair through the Office of the President
311 within fourteen (14) days of receiving such notice. The appeal shall be
312 made on the basis that the faculty member's position was not appropriately
313 selected for elimination and/or that due process was denied. The following
314 procedure shall apply to the appeal hearing:

315

316 The hearing shall be before the full FRR except that no committee member
317 from the faculty member's department shall be allowed to serve, no
318 committee member related to the faculty member may serve, nor may a
319 committee member with any other conflict of interest serve. If the chair of

320 the FRR is disqualified, then a chair for the hearing shall be selected by the
321 FRR prior to the hearing.

322

323 The hearing shall be set by the FRR Chair not less than 15 calendar days
324 or more than 25 calendar days from the date of appeal unless agreed
325 otherwise by the Provost and the faculty member.

326

327 The faculty member will have the option of having a hearing that is open or
328 closed to the public, except as may be required by law.

329

330 The faculty member may consult with or retain legal counsel at his or her
331 own expense to provide representation during the hearing. The FRR shall
332 be advised by Morehead State University's Office of the General Counsel
333 or its designee. The Provost, or other administrator presenting the position
334 of the administration, may consult with or be represented by separate legal
335 counsel contracted by the University to provide representation during the
336 hearing.

337

338 The hearing proceedings will not be governed by formal, legal rules of
339 procedure and evidence. The FRR may consider any information that has a
340 probative value.

341

342 Statements to the FRR, documentary evidence, and testimony by
343 witnesses will be subject to requirements of civility and relevance.

344

345 The Provost or his/her counsel will have the right to call and cross-examine
346 witnesses and to present documents and other evidence supporting the
347 decision to eliminate the faculty member's position.

348

349 The faculty member or his/her counsel will have the right to call and cross-
350 examine witnesses and to present documents and other evidence disputing
351 the decision.

352

353 The Provost, or his/her counsel, and the faculty member, or his/her
354 counsel, will have the right to confront and cross-examine each other's
355 witnesses.

356

357 The Chair of the FRR may restrict redundant testimony in the interest of
358 ensuring an efficient hearing process.

359

360 Any individual scheduled to appear as a witness, with the exception of the
361 faculty member and the Provost, will not be present in the hearing room
362 except when testifying-

363

364 A written record of appearances and sworn testimony of the concerned
365 parties and witnesses will be maintained.

366

367 A verbatim record of the hearing will be recorded by a court reporter and
368 may be transcribed as requested. The recording will be provided at no
369 cost to the faculty member upon request.

370

371 The burden of establishing a rational basis for the decision rests at all times
372 with the Provost.

373

374 The following hearing agenda will apply:

375

376 1. A reading, by the Chair of the FRR, of the notice to the faculty member
377 of the decision to eliminate his/her position.

378

379 2. Presentation of evidence by the Provost or his/her counsel supporting
380 the decision;

381

382 3. Presentation of evidence by the faculty member or his/her counsel
383 refuting the decision;

384

385 4. Presentation of rebuttal evidence as may be appropriate;

386

387 5. Summation or statement not to exceed 30 minutes by the faculty
388 member or his/her counsel; and

389

390 6. Summation or statement not to exceed 30 minutes by the Provost or
391 his/her counsel.

392

393 At the conclusion of the hearing, the FRR will go into closed session to
394 discuss the evidence presented at the hearing and to vote on whether there
395 exists a rational basis for the decision to eliminate Appellant's position
396 and/or whether the faculty member received due process. The FRR may
397 request the presence of the General Counsel at any time during the
398 deliberations.

399

400 The FRR will produce a written report of the committee's "findings of fact"
401 (evidence that the FRR believes to be true) and conclusions as to whether
402 a rational basis exists for the position elimination and/or due process was
403 denied based upon the record considered as a whole. The report will also
404 include the vote. Dissenting minority opinions may be included in the
405 report.

406
407 Copies of the FRR's report will be sent to the President, the Provost/VPAA,
408 and the faculty member.

409
410 The faculty member and the Provost may elect to respond in writing to the
411 FRR's decision and shall file such response with the President within 10
412 business days of the FRR's decision. Copies shall be sent to the other
413 party.

414
415 The President shall review the FRR's report and will determine whether to
416 allow the elimination of the position to stand, reverse the decision to
417 eliminate the position or craft such other relief as may be appropriate.
418 Within five business days of his decision, the President shall notify, in
419 writing, the faculty member, the Provost, the Chair of the FRR, the Faculty
420 Senate Chair, the Chair of the Board of Regents and the Faculty Regent.

421
422 If the faculty member is not in agreement with the decision of the President,
423 then he/she may further appeal to the Board of Regents by filing a letter of
424 appeal with the Chair of the Board through delivery to the Secretary of the
425 Board. The letter of appeal shall be filed within 10 business days of receipt
426 of the President's decision. Said appeal shall be heard on the written
427 record and may be assigned by the Chair, at his/her discretion, for a review
428 by a panel of three Board members or for review by the full Board. If the
429 appeal is assigned for review by the panel, it shall make a written
430 recommendation to the full Board for final action.

431
432 The Board Chair shall send written notice of the decision to the faculty
433 member, President, Provost, Chair of the FRR, and Chair of the Faculty
434 Senate.

435