



Eastern Kentucky University Policy and Regulation Library

4.6.16

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Chapter 6, Faculty Appointments and Evaluation
Section 16, Dismissal of Faculty

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Responsible Executive: Provost

Responsible Office(s): Provost, Colleges,
Departments

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Dismissal of Faculty

Policy Statement

Eastern Kentucky University complies with Kentucky Revised Statute 164.360 regarding the dismissal of tenured faculty. As a matter of principle, absent a conflict with State statute, the University complies with the American Association of University Professors and the Association of American Colleges and Universities "1958 Statement on Procedural Standards in Faculty Dismissal Proceedings." The Kentucky statute and the AAUP statement address statutory and procedural expectations for the dismissal of faculty. With this in mind, EKU has established a process by which tenured faculty may be dismissed. Faculty members without tenure are classified as employees at will to serve at the discretion of the University.

This policy does not apply when tenured faculty are recommended for dismissal for violating Policy 1.4.1, Non-Discrimination and Harassment and/or Regulation 1.4.2, Response to Non-Discrimination and Harassment.

Entities Affected

- Faculty
- Departments
- Colleges
- University-level administrators

Provisions for Dismissal

FACULTY WITHOUT TENURE

Faculty members without tenure are classified as employees at will to serve at the discretion of the University.

FACULTY WITH TENURE

Faculty members with tenure shall have a continuous appointment, except when that appointment is terminated

- by retirement;
- by resignation and acceptance thereof;
- by a dismissal for cause;
- by a decision of the University, with approval of the Board of Regents, that dismissal is necessary because of financial exigencies of the institution; or
- by a decision of the University, with approval of Board of Regents, that dismissal is necessary due to discontinuation of an academic program resulting in a situation so that there is no longer a teaching position available within the University for which the tenured faculty member is qualified.

Procedures

Establishing The Faculty Committee on Dismissal

1. The Faculty Committee on Dismissal (FCD) shall be comprised of an elected representative from each of the five academic colleges. When convened for the purpose of dismissal for financial exigency, the FCD shall also include an elected full-time faculty member from the Libraries. When convened for the purpose of dismissal for financial exigency or program discontinuance, the FCD shall also include the Chair of Faculty Senate and the Chair of the Chairs Association as non-voting ex officio members.
2. Non ex officio membership on the FCD shall be limited to full-time tenured faculty members and may not be a Department Chair, Associate Dean, or Dean.
3. Every three years, each College shall hold an election no later than September 15 and shall elect one (1) representative and two (2) alternates from among the eligible faculty.
4. The chair of the FCD shall be elected from within the non ex officio members.

DISMISSAL OF TENURED FACULTY FOR CAUSE

Pursuant to KRS 164.360, a tenured faculty member may be dismissed for cause. Statutory cause sufficient to support dismissal includes “incompetency, neglect of or refusal to perform duties, or immoral conduct.”

When there is an allegation of causes sufficient to warrant dismissal of a tenured faculty member, the following procedure shall apply.

1. The appropriate administrative officers will investigate the facts of the allegation. The investigation shall include discussions with the tenured faculty member. The tenured faculty member may choose to bring one representative to such discussions. During the discussions, if information is sufficient to support the allegations, the tenured faculty member and the University may mutually agree on the separation of the tenured faculty member from the University.
2. The findings of the investigation shall be provided to the Provost, who shall provide a written notice of the charge(s) and the intent to dismiss to the tenured faculty member, with a copy to the Department Chair, the College Dean, and the President.
3. Suspension of the tenured faculty member during these procedures is justified if, in the opinion of the Provost, harm to the tenured faculty member or to others is threatened by his/her continuance. Any such suspension shall be with pay.
4. Within fourteen (14) calendar days of notification from the Provost of intent to dismiss, the tenured faculty member may request to the Provost in writing—with a copy to the Department Chair, the College Dean, and the President—an inquiry by the Faculty Committee on Dismissal (FCD). The written request may include a statement from the tenured faculty member regarding the allegations. If the tenured faculty member does not request an inquiry by the FCD, steps 5 and 6 of these procedures shall be skipped.
5. The FCD shall begin the inquiry into the matter within five (5) calendar days of receiving the request. The inquiry shall be based on the written record. To the extent practical, the principle of confidentiality shall be observed. The FCD may make recommendations to the Provost and the tenured faculty member to resolve the matter through sanctions or other means; such recommendations are not binding. The FCD shall have thirty (30) calendar days to complete the inquiry and present their findings and recommendation, but if requested the Provost and the tenured faculty member may agree to an extension of not more than fifteen (15) days.
6. Any recommendation made by the FCD shall be communicated in writing to the Provost, the Department Chair, the College Dean, the President, and the tenured faculty member. The report shall contain a statement of the FCD's specific reasons in support of its advice and recommendation.
7. The Provost shall make a final recommendation and shall notify the President. If the President concurs with the Provost's recommendation of action other than dismissal, the President shall notify the tenured faculty member. If the Provost's recommendation is dismissal, the President shall provide the tenured faculty member with written notification of charges and of dismissal.
8. Tenured faculty receiving such a notice from the President have the right to be heard in person or by counsel before the Board of Regents. Within fifteen (15) calendar days after receiving a notice of dismissal from the President, the tenured faculty member shall send a written request for a hearing to the Secretary of the Board of Regents. The Board of Regents shall set the time of the hearing no sooner than fifteen (15) calendar days nor later than forty-five (45) calendar days after the request.

9. If a hearing before the Board of Regents is requested, the Board of Regents shall render a final decision. The President shall notify the tenured faculty member of the Board of Regents' decision.

DISMISSAL OF FACULTY DUE TO FINANCIAL EXIGENCY

The Board of Regents has a statutory duty to the people of Kentucky to maintain a quality educational program within available or projected financial resources. Pursuant to Policy 4.6.4, Tenure and Promotion, a tenured faculty member may be dismissed when a financial exigency exists. Because of the significance of dismissal decisions regarding tenured faculty, the Board shall ensure that such dismissal decisions occur only after a careful review of alternative measures determine that dismissals of tenured faculty are unavoidable. With regard to notification of dismissal of faculty, including tenured and non-tenured faculty, for financial exigency, Policy 4.6.16 supersedes other University policies.

If the Board determines that a financial exigency exists that will likely result in the dismissal of tenured faculty, the following procedures shall be followed. The Provost shall ensure that steps 1-8 do not exceed 90 days. An extension of the timeline may be granted with the consent of the President and Faculty Senate and the Board.

1. The Provost, the FCD, and the Deans shall meet to evaluate the necessity of eliminating faculty positions. If they conclude, based on available data, that faculty lines will need to be eliminated, they will prepare a report recommending the number of faculty lines to be eliminated, with justifications and supporting data for the recommendation.
2. The Chair of Faculty Senate shall disseminate the report to the Senate at least two weeks prior to a regularly scheduled or special session. It is the responsibility of Faculty Senate to solicit input from faculty at large prior to the meeting.
3. The Faculty Senate shall consider the report and any feedback or additional data and shall prepare a response. The response shall be due to the Provost within fourteen (14) calendar days after the Senate's meeting.
4. The Provost, the FCD, and the Deans shall meet to review the Faculty Senate response and shall prepare a final recommendation to the President that shall include the number of faculty lines to be eliminated.
5. Upon approval by the President, the Provost and the Deans, in consultation with the Department Chairs, shall determine where faculty lines should be eliminated.
6. In making specific recommendations for elimination of individual tenured faculty appointments, the Dean, in consultation with the Department Chair, shall take into account the following equitable considerations.
 - a. If funded vacancies exist, reasonable effort will be made to offer the affected tenured faculty member another existing position within the institution for which the tenured faculty member is qualified by education and experience, per Policy 4.6.1, Determining Qualifications for Faculty Teaching Credit-Bearing Courses.

Transfer of tenure to another department must be in compliance with Policy 4.6.4, Tenure and Promotion.

- b. In instances when the sustainability of an academic program—that is, the ability to adequately provide its approved curriculum or meet its accreditation requirements--would be jeopardized by the elimination of a position, faculty members with an expertise needed by the University would have retention preference.
 - c. After instances described in (b) above are considered, the following conditions shall be applied in the following order when considering retention preferences:
 - 1) Tenured faculty members will have preference of retention over non-tenured faculty members in the same department.
 - 2) Tenured faculty of superior academic rank will have preference of retention over tenured faculty of lesser rank (see Policy 4.6.4, Tenure and Promotion).
 - 3) A faculty member who had attained tenure prior to another faculty member of the same rank would have preference of retention over the latter faculty member.
 - 4) If tenure and rank considerations are the same for two faculty members, i.e., they both were tenured on the same date and were promoted to their current rank on the same date, the faculty member with the longer period of employment with ECU would have retention preference.
 - d. Faculty members already on a terminal appointment are not eligible to be retained by the University even if they meet any of the above conditions.
7. The Dean shall submit recommendations for dismissal of specific faculty to the Provost, who shall make recommendations to the President.
 8. The President shall send written notice to each faculty member recommended for dismissal, with copies to the faculty member's Chair, Dean, and the Provost. The notice shall include:
 - a. A statement of the intent to dismiss; and
 - b. A statement of the basis for the decision.
 9. Tenured faculty receiving such a notice have the right to be heard in person or by counsel before the Board of Regents. Within fifteen (15) days after receiving a notice of dismissal, the individual concerned shall send a written request for a hearing to the Secretary of the Board of Regents. The Board of Regents shall set the time of the hearing no sooner than fifteen (15) days nor later than forty-five (45) days after receiving the request.
 10. The Board of Regents shall render a final decision. The President shall notify the tenured faculty member of the Board of Regents' decision.

Replacing Dismissed Tenured Faculty

In the event of dismissal due to financial exigency, the position or similar position of a tenured faculty member will not be filled by a full- or part-time faculty within three years of dismissal, unless the released faculty member has been offered reinstatement in a full-time position in at

the same tenure status, rank, and at least the same salary as at the time of dismissal and has been provided at least thirty (30) calendar days to consider whether to accept or decline the offer.

DISMISSAL OF FACULTY DUE TO ACADEMIC PROGRAM DISCONTINUANCE

As in the case of the determination of the existence of financial exigency, the Board of Regents is also aware that discontinuance of an academic program requires deliberate and thoughtful planning and discussion. In the case of academic program discontinuance, the dismissal of tenured faculty members may take place only after sustained deliberations and discussions of the academic program discontinuation. Such deliberation and discussions must include the involved tenured faculty members, as well as the approval of the deliberative bodies of the University. In the event the discontinuance of an academic program is proposed, the Council on Academic Affairs and the Faculty Senate shall review the proposal and make recommendations to the President. Decisions should be based upon the full educational mission and goals of the University and not upon cyclical or temporary variations in enrollment.

In making specific recommendations for elimination of individual tenured faculty positions required by the discontinuance of an academic program, the following process shall be used. The Provost shall ensure that steps 1-9 do not exceed 90 days. An extension of the timeline may be granted with the consent of the President and Faculty Senate.

1. The Provost, the FCD, and the Deans shall meet to evaluate the necessity of eliminating tenured faculty positions. If they conclude, based on available data, that faculty lines will need to be eliminated, they will prepare a report recommending the number of faculty lines to be eliminated, with justifications and supporting data for the recommendation.
2. The Chair of Faculty Senate shall disseminate the report to the Senate at least two weeks prior to a regularly scheduled or special session. It is the responsibility of Faculty Senate to solicit input from faculty at large prior to the meeting.
3. The Faculty Senate shall consider the report and any feedback or additional data and shall prepare a response. The response shall be due to the Provost within two weeks after the Senate's meeting.
4. The Provost, the FCD, and the Deans shall meet to review the Faculty Senate response and shall prepare a final recommendation to the President that shall include the number of faculty lines to be eliminated.
5. Upon approval by the President, the Provost and the Deans, in consultation with the Department Chairs, shall determine where faculty lines should be eliminated.
6. The Dean, in consultation with the Department Chair, shall take into account the following equitable considerations.
 - a. If funded vacancies exist, reasonable effort will be made to offer the affected tenured faculty member another existing position within the institution for which the tenured faculty member is qualified by education and experience, per Policy 4.6.1, Determining Qualifications for Faculty Teaching Credit-Bearing Courses.

Transfer of tenure to another department must be in compliance with Policy 4.6.4, Tenure and Promotion.

- b. Effort will be made to provide financial and other support for a reasonable period of training/education to assist the affected tenured faculty member in qualifying for other positions in the University.
 - c. The following conditions shall be applied in the following order when considering retention preferences:
 - 1) Tenured faculty members with an expertise needed by the University would have retention preference.
 - 2) Tenured faculty members will have preference of retention over non-tenured faculty members in the same department.
 - 3) Tenured faculty of superior academic rank will have preference of retention over tenured faculty of lesser rank (see Policy 4.6.4, Tenure and Promotion).
 - 4) A faculty member who had attained tenure prior to another faculty member of the same rank would have preference of retention over the latter faculty member.
 - 5) If tenure and rank considerations are the same for two faculty members, i.e., they both were tenured on the same date and were promoted to their current rank on the same date, the faculty member with the longer period of employment with ECU would have retention preference.
 - d. Faculty members already on a terminal appointment are not eligible to be retained by the University even if they meet any of the above conditions.
7. To accommodate the necessity to teach out discontinued academic programs, tenured faculty will be given notice of dismissal at least twelve (12) months prior to the end of the approved teach-out plan.
 8. The Dean shall submit recommendations for dismissal of specific faculty to the Provost, who shall make recommendations to the President.
 9. The President shall send written notice to each faculty member recommended for dismissal, with copies to the faculty member's Chair, Dean, and the Provost. The notice shall include:
 - A statement of the intent to dismiss; and
 - A statement of the basis for the decision.
 10. Tenured faculty receiving such a notice have the right to be heard in person or by counsel before the Board of Regents. Within fifteen (15) calendar days after receiving a notice of dismissal, the individual concerned shall send a written request for a hearing to the Secretary of the Board of Regents. The Board of Regents shall set the time of the hearing no sooner than fifteen (15) calendar days nor later than forty-five (45) calendar days after receiving the request.
 11. The Board of Regents shall render a final decision. The President shall notify the tenured faculty member of the Board of Regents' decision.

Replacing Dismissed Tenured Faculty

In the event of dismissal due to discontinuance of an academic program, the position or similar position of a tenured faculty member will not be filled by a full- or part-time faculty within three years of dismissal, unless the released faculty member has been offered reinstatement in a full-time position at the same tenure status, rank, and at least the same salary as at the time of dismissal and has been provided at least thirty (30) calendar days to consider whether to accept or decline the offer.

Definitions

- **Academic Program:** Academic Program is a related cluster of credit-bearing courses that constitute a coherent body of study within a discipline or set of related disciplines.
- **Calendar Day:** Throughout this document calendar day shall be interpreted to mean no later than the specified number of calendar days following the day of notification. If the final calendar day occurs on a weekend or holiday, the due date shall be on the first day on which University administrative offices are open. The time for response may be extended upon agreement by both parties.
- **Financial Exigency:** Financial Exigency is as determined by the Board pursuant to KRS Chapter 164 and all applicable law.
- **Retention Preferences:** The determination of which faculty will be retained by the University.
- **Terminal Appointment:** Appointment of a faculty member to a limited term that will end in termination of employment.

Responsibilities

- Board of Regents
The Board of Regents is responsible for:
 - hearing appeals of dismissal decisions of tenured faculty for cause, for financial exigency, or for discontinuance of an academic program
 - rendering a final decision on appeal for tenured faculty members dismissed for cause, for financial exigency, or for discontinuance of an academic program
 - ensuring that dismissal decisions for financial exigency or discontinuance of an academic program occur only after a careful review of alternative measures determine that dismissals of tenured faculty are unavoidable
- College Deans
The College Deans are responsible for:

- meeting with the FCD and the Provost to evaluate the necessity of eliminating faculty positions due to financial exigency or academic program discontinuance
- preparing a report, with the FCD and the Provost, if faculty lines will need to be eliminated based on financial exigency or discontinuance of an academic program,
 - recommending the number of faculty lines to be eliminated, with justifications and supporting data for the recommendation
 - disseminating the report to Chair of Faculty Senate
 - reviewing, with the FCD and the Provost, the Faculty Senate response to the report and preparing a final recommendation to the President
- determining, with the Provost and in consultation with Department Chairs, which faculty lines should be eliminated due to financial exigency and discontinuance of an academic program
- making recommendations, in consultation with Department Chairs, the specific faculty to be eliminated in financial exigency or academic program discontinuance
- submitting recommendations to the Provost for dismissal of specific faculty due to financial exigency or academic program discontinuance
- Department Chair
 - The Department Chair is responsible for:
 - making recommendations, in consultation with the College Dean, the specific faculty to be dismissed due to financial exigency or academic program discontinuance
- Faculty Committee on Dismissal
 - The Faculty Committee on Dismissal is responsible for:
 - conducting inquiries at the request of the charged tenured faculty member of charges leading to an intent to dismiss for cause
 - making non-binding recommendations to the Provost and the charged tenured faculty member to potentially resolve dismissal for cause matters through sanctions or other means
 - communicating such recommendations in writing to the Provost, the Department Chair, the College Dean, the President, and the charged faculty member
 - meeting with the Provost and the Deans to evaluate the necessity of eliminating faculty appointments due to financial exigency or program discontinuance
 - preparing a report, with the Deans and the Provost, if faculty lines will need to be eliminated based on financial exigency or discontinuance of an academic program,
 - recommending the number of faculty lines to be eliminated, with justifications and supporting data for the recommendation
 - disseminating the report to Chair of Faculty Senate

- reviewing, with the Deans and the Provost, the Faculty Senate response to the report and assisting with preparing a final recommendation to the President
- Faculty Senate
 - The Faculty Senate is responsible for:
 - soliciting input from faculty at large concerning the report on faculty dismissals due to financial exigency or program discontinuance
 - preparing a response to the report and submitting the response to the Provost no later than two weeks after the Senate's meeting on this issue
- Faculty Senate Chair
 - The Faculty Senate Chair is responsible for:
 - disseminating the report on faculty dismissals due to financial exigency or program discontinuance to the Senate at least two weeks prior to a regularly scheduled or special session
- President
 - The President is responsible for:
 - notifying, in writing, a charged tenured faculty member of decision regarding action, including dismissal
 - sending written notice to each faculty member recommended for dismissal because of financial exigency or program discontinuance, with copies to the faculty member's Chair, Dean, and the Provost
 - notifying the tenured faculty member of the Board of Regents' decisions on appeal of a dismissal decision
 - scheduling a hearing, at the request of a tenured faculty member dismissed for cause, with the Board of Regents
- Provost
 - The Provost is responsible for:
 - providing a written notice of charge(s) (for cause) and the intent to dismiss to the tenured faculty member, with a copy to the Department Chair, the College Dean, and the President.
 - making a final recommendation on dismissal for cause and notifying the President of such recommendation
 - meeting with the FCD and the Deans to evaluate the necessity of eliminating faculty appointments due to financial exigency or program discontinuance
 - preparing a report, with the FCD and the Provost, if faculty lines will need to be eliminated based on financial exigency or discontinuance of an academic program,
 - recommending the number of faculty lines to be eliminated, with justifications and supporting data for the recommendation
 - disseminating the report to Chair of Faculty Senate
 - reviewing, with the FCD and the Provost, the Faculty Senate response to the report and preparing a final recommendation to the President

- determining, with the Deans and in consultation with Department Chairs, which faculty lines should be eliminated due to financial exigency or program discontinuance
- making final recommendations to the President of specific faculty to be dismissed due to financial exigency or program discontinuance

Interpreting Authority

Executive Vice President for Academic Affairs and Provost

Policy Adoption Review and Approval

Policy Issued

<u>DATE</u>	<u>ENTITY</u>	<u>ACTION</u>
October 19, 2015	Board of Regents	Adopted
April 9, 2015	President	Approved
March 4, 2015	Provost Council	Approved
February 3, 2015	Faculty Senate	Approved