



Eastern Kentucky University

Policy and Regulation Library

University Policy: 4.6.16POL

Responsible Office(s): Office of the Provost

Effective: XXX

Next Review Date: Fall 2031

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Dismissal of Faculty

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.

Entities Affected

- Faculty
- Departments
- Colleges
- University-level administrators

Procedures

I. Non-tenured Faculty

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

II. Tenured Faculty

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; or
- by removal by the Board of Regents for Bona Fide Financial Reasons, including but not limited to financial exigency, low enrollment in a particular program or major, or misalignment of revenue and costs in a particular college, department, program, or major.

Tenured faculty terminated under this policy do not qualify for a terminal appointment or extended notice, except as otherwise provided herein or as required by law.

III. Establishing the Faculty Committee on Dismissal

1. The Faculty Evaluation Appeals Committee (FEAC), as established in Policy 4.6.4, Promotion and Tenure, will serve as the Faculty Committee on Dismissal (FCD).
2. The chair of the FCD shall be elected from within the non-ex officio members.

IV. 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, immoral conduct, or failure to meet college or university performance and productivity requirements, as established by the Board of Regents.”

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

1. Human Resources, with the inclusion of other academic or administrative officers as appropriate, will investigate the facts of the allegation. The investigation shall include a meeting with the tenured faculty member. The tenured faculty member may choose to bring one (1) silent advisor of their choice to the meeting. The silent advisor shall not be a participant in any aspect of the process and shall not be implicated in any of the facts under review. The tenured faculty member shall provide the name of the silent advisor to Human Resources at least three (3) Days in advance of the meeting.
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 the faculty member's continuance. Any such suspension shall be with pay.
4. Within seven (7) Days of notification from the Provost of intent to dismiss, the tenured faculty member may request to the Provost in writing via the faculty member's official ECU employee email address—with a copy to the Department Chair, the College Dean, the President, and the Human Resources Director—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 a timely inquiry by the FCD, steps 5 and 6 of these procedures shall be skipped. The burden is on the faculty member to ensure the request was received.
5. The FCD shall begin the inquiry into the matter to determine if, in the FCD's opinion, the allegations, if true, meet the standard of "cause." The FCD does not reinvestigate the allegations and does not determine the truth of the allegations. The FCD does not elicit oral or written statements or testimony beyond the submission. The inquiry shall be based on the written record only. 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 fifteen (15) Days, unless otherwise agreed by the Provost and the tenured faculty member, to complete the inquiry and present its recommendation(s).
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 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 thirty (30) Days' notice of dismissal, including written notification of charges.
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 seven (7) Days after receiving a notice of dismissal from the President, the tenured faculty member shall send a written request via the faculty member's official ECU employee email address for a hearing to the Secretary of the Board of Regents. The Board of Regents shall set the time of the hearing as soon as practicable. The Board shall adopt hearing procedures to govern the hearing.
9. If a hearing before the Board of Regents is requested, the Board of Regents shall render a final decision. The President or President's designee shall provide written notification to the tenured faculty member of the Board of Regents' decision via the faculty member's official ECU employee email address.

V. Dismissal of Tenured Faculty Due to Bona Fide Financial Reasons or Program Closure

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 KRS 164.360 and Policy 4.6.4, Tenure and Promotion, a tenured faculty member may be removed by the Board of Regents for Bona Fide Financial Reasons, including but not limited to financial exigency, low enrollment in a particular program or major, or misalignment of revenue and costs in a particular college, department, program, or major for a Program Closure. This Section establishes the process by which such removal shall be proposed, evaluated, and decided, and shall be provided to faculty members. With regard to notification of dismissal of faculty, including tenured and non-tenured faculty, for Bona Fide Financial Reasons, Policy 4.6.16 supersedes other University policies.

For purposes of dismissal of faculty under this Policy, the Board of Regents shall make the final determination on whether Bona Fide Financial Reasons exist based on the record presented to the Board. When the asserted Bona Fide Financial Reason is financial exigency, the determination of financial exigency shall be made in accordance with University Policy 1.5.1POL, Financial Exigency. For other Bona Fide Financial Reasons, the record may include information and recommendations from the President, Provost, or appropriate University leadership. The record shall identify the relevant financial, enrollment, programmatic, operational, or institutional evidence supporting the recommendation.

In order for the Board to consider a proposed removal for Bona Fide Financial Reasons, the President must submit a recommendation report to the Board that includes (i) the President's determination regarding the existence of Bona Fide Financial Reasons that require removal of tenured faculty from employment; and (ii) the President's proposed implementation plan identifying the tenured faculty appointments recommended for elimination. In preparing the recommendation report to the Board, the President shall request a report and recommendation from the Provost regarding any proposed elimination of tenured faculty appointments due to Bona Fide Financial Reasons or Program Closure. The report shall include the justifications and supporting data for the recommendation and the relevant Bona Fide Financial Reason(s). Program Closure may be initiated through Academic Program Review or other applicable University processes, in accordance with University Policy 1.5.4POL, Academic Curriculum.

In preparing the recommendation report, the Provost may elect to seek consultation regarding the proposed elimination of faculty appointments or other matters addressed in the report. Such consultation may be obtained individually or through an advisory panel composed of individuals designated by the Provost, which may include academic administration, chairs, deans, and a representative(s) from faculty. The Provost may establish procedures for how the Provost's recommendation will be formed. Any

input provided is advisory and non-binding and does not limit the Provost's authority to prepare, revise, or submit the recommendation report. The recommendation report shall proceed according to the following process:

1. In making specific recommendations for the elimination of individual tenured faculty appointments, the Provost and the President 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.
 - 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 the faculty member's 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.
2. Upon review and approval of the Provost's report by the President, the President may revise the report and shall present the final recommendation report to the Board of Regents.
3. The President shall send written notice to each faculty member recommended for dismissal, with copies to the Provost and the faculty member's Chair and Dean, no fewer than thirty (30) Days before the Board of Regents considers final action on the proposed removal. The notice shall include:
 - a. A statement of the intent to dismiss, including the reason or reasons for the proposed removal;
 - b. the supporting evidence or a summary of the data relied upon in support of the reason or reasons for the proposed removal;

- c. a statement that the faculty member has an opportunity to respond before the Board of Regents, by counsel or otherwise, and to introduce testimony, which shall be heard and determined by the Board; and
 - d. a statement that dismissal for Bona Fide Financial Reasons under this Section does not entitle the faculty member to a terminal appointment, except as otherwise required by law.
4. Tenured faculty receiving such a notice shall be given an opportunity to respond before the Board of Regents, by counsel or otherwise, and to introduce testimony. Within seven (7) Days after receiving a notice of dismissal, the faculty member shall send a written request via the faculty member's official ECU employee email address for a hearing to the Secretary of the Board of Regents. The Board of Regents meeting shall serve as the hearing, unless the Board sets another time for the hearing, which shall be scheduled as soon as practicable. The Board shall adopt hearing procedures to govern the hearing. Failure to submit a timely request for a hearing shall constitute a waiver of the opportunity to respond before the Board.
5. The Board of Regents shall render a final decision. If the Board of Regents determines that removal is warranted for Bona Fide Financial Reasons, the faculty member's appointment shall terminate on the effective date stated in the Board's final decision, provided that such date shall not be sooner than the expiration of the thirty (30) Day written notice period required by this Section. Dismissal for Bona Fide Financial Reasons under this Section does not entitle the faculty member to a terminal appointment, except as otherwise required by law. The President or the President's designee shall notify the tenured faculty member in writing of the Board of Regents' decision.

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.
- **Bona Fide Financial Reasons:** Bona Fide Financial Reasons shall include, but are not limited to, financial exigency, low enrollment in a particular program or major, or misalignment of revenue and costs in a particular college, department, program, or major, as provided by applicable law.
- **Day:** Day shall have the same meaning it has under Kentucky law, specifically KRS 446.030, where in computing any period of time, the day of the act or notification which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, a legal holiday, or a day on which the University is closed, in which event the period runs until the end of the next day which is not one (1) of the days just mentioned. This applies even if the period of time prescribed or allowed is less than seven (7) days.

- **Financial Exigency:** Financial exigency is as determined by the Board pursuant to KRS Chapter 164 and all applicable law.
- **Retention Preferences:** Retention preferences provide the determination of which faculty will be retained by the University.
- **Terminal Appointment:** A terminal appointment of a faculty member is a limited term that will end in termination of employment.

Responsibilities

- **Board of Regents**
The Board of Regents is responsible for:
 - providing tenured faculty members an opportunity to be heard, by counsel or otherwise, when required under this Policy.
 - rendering the final decision regarding dismissal for cause, for Bona Fide Financial Reasons, or for Program Closure.
 - determining whether Bona Fide Financial Reasons exist and whether dismissal of tenured faculty may be necessary before the procedures for dismissal due to Bona Fide Financial Reasons or Program Closure proceed.
 - ensuring that dismissal decisions for Bona Fide Financial Reasons or Program Closure occur only after a careful review of alternative measures determines that dismissals of tenured faculty are unavoidable.
- **College Deans**
The College Deans are responsible for:
 - providing information, data, and recommendations to the Provost, as requested and appropriate.
 - consulting with the Provost regarding academic program needs, accreditation requirements, faculty qualifications, retention preferences, and the potential impact of proposed reductions.
 - Assisting the Provost in determining, with consultation with Department Chairs, if appropriate, which faculty lines should be eliminated due to Bona Fide Financial Reasons or Program Closure.
 - assisting in identifying funded vacancies or other existing positions for which an affected tenured faculty member may be qualified, where applicable.
- **Department Chair**
The Department Chair is responsible for:
 - Providing information and recommendations, in consultation with the College Dean, on the specific faculty to be dismissed due to Bona Fide Financial Reasons or Program Closure to the Provost, as requested and appropriate.
- **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.

- Human Resources

Human Resources is responsible for:

- Investigating allegations that may support dismissal of a tenured faculty member for cause, with the inclusion of other academic or administrative officers as appropriate.
- Meeting with the tenured faculty member as part of the investigation.
- Providing the findings of the investigation to the Provost.

- President

The President is responsible for:

- reviewing the Provost's recommendation report regarding proposed dismissal due to Bona Fide Financial Reasons or Program Closure, and presenting a final recommendation report to the Board of Regents
- notifying, in writing, a charged tenured faculty member of the decision regarding action, including dismissal.
- sending 30-Day written notice to each faculty member recommended for dismissal because of Bona Fide Financial Reasons or Program Closure, with copies to the Provost and the faculty member's Chair and Dean.
- notifying the tenured faculty member of the Board of Regents' final decision on matters of dismissal.

- 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.
- preparing a written recommendation report for the President of specific faculty lines to be dismissed due to Bona Fide Financial Reasons or Program Closure.
- including justifications, supporting data, and the relevant Bona Fide Financial Reason in the recommendation report.

Policy Adoption Review and Approval

Policy Revised

DATE

X
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ENTITY

X
Provost
University Counsel

ACTION

X
Reviewed & Readopted
Editorial Revision

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March 4, 2015
February 3, 2015

ENTITY

Board of Regents
Board of Regents
President
Provost Council
Faculty Senate

ACTION

Adopted
Adopted
Approved
Approved
Approved