

CONCORD UNIVERSITY BOARD OF GOVERNORS

FACULTY REDUCTIONS IN FORCE

Policy Number: CU-HR-67

GENERAL

Financial, legal, or other operational conditions may arise that require a reduction in the institution's faculty personnel cost and / or personnel complement.

The University may, at its sole discretion, opt to utilize a Full Time Equivalent (FTE) or salary reduction in lieu of, or in addition to, a reduction in force (RIF) that leads to a layoff. For the purposes of this policy an FTE calculation is based upon a full time teaching load of 24 credit hours in an Academic Year. An FTE reduction with a commensurate salary reduction or a salary reduction do not constitute a reduction in force (RIF) or a layoff.

PURPOSE

This policy has been enacted to establish and define the process for determining when / whether a RIF is warranted and for faculty separation due to a reduction in force. Such actions may be taken in response to 1) a loss of funding due to the end of a program, grant, or other funding; 2) when the University has determined a position, program, or function is no longer needed, or viable; 3) when a financial or other operational condition or exigency exists (as determined by the Board on recommendation of the President) necessitating a reduction in faculty.

SCOPE

This policy is applicable to: All full-time (.53 FTE and above) faculty, including tenured and non-tenured faculty, regardless of rank.

POLICY

It is the policy of Concord University to undertake reductions in the faculty personnel complement in a thoughtful, consistent, and equitable manner to preserve the rights of tenured faculty.

Process for Implementation

When financial, legal, or operational conditions exist, as determined by the President or Board, that may necessitate a reduction in force for faculty, the President will undertake measures to make an informed decision concerning where such reductions should be made in the best interest of the university and the students it serves.

The President shall delineate the rationale used for the determination of the need for the

reduction in force, whether operational or financial, and provide it to the Board.

In exercising its fiduciary responsibilities, the Board may declare that operational conditions, including but not limited to lack of funding, lack of work, reduction in enrollment, or material changes in operations, exist requiring a reduction in the institution's personnel costs or complement, such as but not limited to lack of funds or decline in enrollment. The conditions may or may not rise to the level of declaration of exigency but nevertheless be deemed, at the sole discretion of the Board, serious enough to require a reduction in force.

Reduction or Discontinuance of an Existing Program

A tenured or tenure-track faculty member's appointment may be terminated because of the reduction or discontinuance of an existing program as a result of a review of the program.

The President or Board may call for a focused program review to help inform this decision. The focused program review will consider available information regarding program viability, adequacy, necessity, and consistency with the mission. The President will consult with the academic administrators and program faculty to supplement information from the program review and other sources.

Following review and consultation as noted above, the President will make a recommendation to the Board regarding any reductions or discontinuance of an existing program or curricula determined by the President to be in the best interest of the University.

A reduction in force leading to a layoff and termination of faculty may be triggered by program reductions or eliminations. The President will present the Board an overview of the anticipated impact on faculty staffing of any recommended reduction or discontinuance of a program.

Notice of Intent to Terminate

The university will use its best efforts to provide a tenured or tenure-track faculty member with notice of non-retention for program reduction or elimination by March 1 for the August – December (Fall Term) and by September 1 for January – May (Spring) Term. Failure to provide notice by the established date will result in the faculty member being appointed for the next and final term.

Exigent Circumstances

A faculty member's appointment may be terminated because of serious or exigent circumstances, as defined by and determined by the Board. Such circumstances may include financial and other operational conditions that affect the University's ability to efficiently and effectively carry out its mission. The determination of whether serious exigent circumstances or an exigency exist(s) resides solely with the Board.

The Board shall delineate the rationale for its declaration of exigent circumstances or, as appropriate, exigency.

Termination of Exigent Circumstances

The conclusion of the condition necessitating a layoff and termination of faculty does not alter or affect employment terminations that were made during the period.

Order for Elimination of Faculty Positions

The process for selecting which faculty members will be retained or subject to layoff will be based upon the academic needs of the university as defined and determined by the President and Provost.

When the needs of the university can be met otherwise, non-tenured faculty members within the discipline will be terminated prior to the termination of the employment of tenured faculty members.

The University may layoff the incumbent in the position being eliminated. The university may offer a laid-off employee another vacant position but is under no obligation to do so.

Retention decisions regarding faculty members in the same department and/or discipline will be guided by the University's operational need to support the mission.

Layoff and termination of faculty members will generally follow the order specified below unless there is an identified need to retain other faculty members who are deemed to be of key importance to a particular program:

Non-Tenured:

1. Adjunct Faculty
2. Lecturer and Temporary Faculty
3. Instructor
4. Assistant Professor
5. Associate Professor
6. Professor
7. Distinguished Professor

Tenured:

1. Assistant Professor
2. Associate Professor
3. Professor
4. Distinguished Professor

Retention consideration will include but not be limited to the following factors:

- Teaching effectiveness
- Qualifications (education, knowledge, skills, abilities, and attitudes) and job fit;
- Professional development and scholarship
- Positive vis-a-vis student impact, such as retention, effective advising, and percentage of students receiving grades of D or F or Withdrawing from the class (DFW rates)
- Evidence of quality of academic performance, including but not limited to:
 - Supervisory and student evaluations
 - Disciplinary actions
 - Attendance
 - Student outcomes
 - Behavioral outcomes, such as facilitating student success, compliance with organizational values, etc.
- Organizational citizenship, including professional behavior and civility
- Years of service in current position at Concord University

If, after consideration of the criteria for retention, two or more faculty members in the same discipline are found to be equally qualified and suitable for the job, then the Provost will make a recommendation to the President concerning which of the positions better serves the vital interests of the University.

There shall be no bumping of positions permitted.

In the event a tenured faculty member is selected for layoff and a non-tenured faculty member is to be retained, the university may offer the individual to be laid off a severance package.

Reassignment

Every effort will be made to reassign an individual to instructional or non-instructional duties commensurate with the faculty member's training and experience, and offers of release time or leaves of absence should be made to enable such persons to acquire capabilities in areas in which their services would be required by the institution. Faculty development programs and funds should be used to facilitate such reassignments.

Transfers/Refusals to Transfer

In some cases, the President may decide (as a result of the above-described review process), to abolish or combine certain programs or curricula, or to close certain physical campuses or locations, whether for purposes of a financial condition necessitating a reduction in the institution's personnel budget, reorganization, or reallocation of resources. In such a case, faculty may be reassigned to another program, college, physical location, or position for which

the individual is qualified.

If a faculty member is offered and refuses such reassignment to a program, college or physical location, or position for which the individual is qualified, then the President may terminate that faculty member's employment and recall rights.

Layoff Notice

The President shall provide written notice to a faculty member of the intent to layoff and separate the individual from employment based upon a reduction in force. The notice shall contain a description of the reasons for the intended layoff, the effective date of the layoff, and separation from employment process.

The President will make every effort to give as much notice as is practical in light of the condition necessitating the reduction in force to each faculty member affected in advance of the date of the effective date of the layoff. However, the legislative appropriation process or the recognition of the reduction of revenues and the subsequent analysis needed before a decision that a financial or operational condition necessitating a reduction in the faculty exists, may allow little time for formal notice.

DUE PROCESS

The Board will provide a mechanism for a due process hearing and appeal of layoff as noted herein and acknowledges the right of the faculty to pursue a grievance if not satisfied with the University's response to the appeal.

Tenured and Tenure-Track Faculty

Upon receipt of such notice, the affected faculty member may request a hearing to be conducted by the President, or designee. A written request for a hearing must be made within five (5) working days (excluding holidays) of notice of intended layoff.

The hearing process includes:

1. Ensuring that reductions-in-force do not arbitrarily violate the principles of academic freedom or established law on the basis of individual qualifications such as race, color, gender, sex, sexual orientation, gender identity, gender expression/association, national origin, age, height, weight, religion, creed, genetic information, disability, or veteran's status, as identified and defined by relevant and appropriate employment law.
2. The burden of proof in layoff proceedings rests with the faculty member.
3. The decision that a financial condition necessitating a reduction in the institution's faculty compliment rests within the President's authority and discretion, with the approval of the Board.
4. The hearing shall be recorded by mechanical means with a digital copy provided to all appropriate parties to be included with the final response as described below.
5. The strict rules of evidence shall not, however, be applied during the hearing.
6. Following the hearing, the President or designee shall prepare a written decision upon any matters raised by the faculty member who requested the hearing. The decision shall contain a general description of the concerns raised by the faculty member and a

response to each thereto.

7. These actions will typically all be completed within ten (10) working days (excluding observed holidays and any other days the University is closed) of the appeal meeting.
8. Use of the appeal procedure does not commensurately delay the effective date of layoff and employment termination of the faculty member.

Term and Non-Tenure-Track Faculty

In most instances, a reduction in force of faculty members under fixed-term appointments will be accomplished by non-reappointment rather than by layoff during the term of employment. Non-renewal under these circumstances does not entitle a faculty member to a conference under the terms of this policy.

If a faculty member serving under a fixed-term appointment is recommended for layoff to be effective during the term of employment, that faculty member shall be entitled to use the appeal procedure described above.

New Faculty Positions

New academic programs or faculty positions may be created to help the University improve the financial or other conditions necessitating the reduction in force. Priority for filling these positions will be given to existing, qualified faculty whose positions are slated for elimination.

Benefits

Faculty laid off under this policy will be treated as having been terminated for purposes not involving misconduct on the part of the employee and thus the individual will not be disqualified from unemployment compensation benefits.

Process for Re-employment of Affected Personnel

The following process shall be observed for determination of recall and reassignment of affected faculty members following their separation for reduction in force and for two years thereafter.

When filling academic positions, a former faculty member whose employment has been terminated by layoff will be recalled subject to the following conditions:

- The former faculty member must be fully qualified for the position.
- The former faculty member must be the best qualified individual to meet the needs of the university.
- The former faculty member notifies the university within ten (10) calendar days of recall as to whether the offer of re-employment and reappointment is accepted.

If the position is refused or not accepted within (10) calendar days from the date of the offer, it shall then be offered to other similarly affected faculty members in rank order.

The notice of recall shall be sent by certified mail to the last known address of the employee. It is the responsibility of the employee on the recall list to notify the Office of Human Resources of any change in address in order to retain recall status.

Refusal of offered employment, retirement, or acceptance of a full-time appointment at another institution shall terminate any further right of recall.

Refusal to accept a position shall not preclude a former faculty member from making application for future posted position openings.

First Right of Refusal of Position

In the case of layoff of a tenured faculty member occupying a permanent faculty position, the position concerned may not be filled by replacement within two (2) years from the effective date of the termination of employment, unless:

- The former faculty member has been offered a return to employment in that position; and,
- Has not accepted the offer within ten (10) calendar days after the offer is extended.

Termination of Conditions

The conclusion of operational, financial, or other conditions, including exigency, necessitating a reduction in the institution's personnel budget does not alter or affect reductions in force, including layoffs executed.

Assumption of Responsibilities: The duties of a faculty member terminated under the provisions of this policy will be assumed by his/her remaining colleagues in so far as is feasible.

Rights of Returning Tenured Faculty Members

A tenured faculty member who has been terminated and who accepts reemployment with the University under the terms of this policy will receive tenure, rank, salary, and benefits held at the time of separation.

Annual increment service time earned to the date of termination will be restored and new service time will begin accruing again upon reinstatement; no annual increment or other service time accrues during the period of layoff.

RESPONSIBILITY FOR IMPLEMENTATION

The President and Provost shall have primary responsibility for making recommendations to the Board regarding layoff or elimination of faculty positions.

It is the responsibility of the Chief Human Resources Officer to oversee implementation of a reduction in force consistent with this policy relevant policy and corresponding State code.

AUTHORITY FOR INTERPRETATION

The final authority for interpretation of this policy rests with the President.

REFERENCE / AUTHORITY

WV Code 18B-7-3

- ★ Preempts HEPC Series 9, Section 13 (Termination Because of Reduction or Discontinuance of an Existing Program) and Section 14 (Termination Due to Financial Exigency), and Section N. (Termination Due to Reduction or Discontinuance of an Existing Program) of the Faculty Handbook, and, repeals and replaces CU Board Policy No. 30 (Termination Due to Reduction or Discontinuance of an Existing Program), and preempts any other conflicting Concord University policy and/or Concord University Faculty Handbook sections.

APPROVAL

Effective: May 04, 2018