

Proposed Resolution

(Sponsored by the ACF, and endorsed by the Faculty Senate Executive Committee)

We the members of the Fairmont State University Faculty Senate urge the State Legislature to continue its policy of no firearms, except those carried by law enforcement, being permitted on university Campuses.

Fairmont State University Board of Governors
POLICY NO. 63

TITLE: DESIGNATION/STATUS OF EMPLOYEES

EFFECTIVE DATE: On passage by the Board

GENERAL:

The purpose of this policy is to define the status of Fairmont State University employees as either Faculty or Staff.

Prior to legislation enacted by the Legislature in spring 2017 via HB2542, amendments to §18B, regular employees in public higher education institutions in West Virginia held one of three designations or statuses: Faculty, Classified Staff or Non-Classified Staff. While the recent legislation had no impact on faculty status, it did serve to broaden the definition of non-classified status, resulting in changes to both classified and non-classified status. In response to those changes, this policy establishes that henceforth all non-faculty positions will be in non-classified status and referred to as Staff.

AUTHORITY: WV Code 18B Section 9A-2; Title 133 WVHEPC, Series 9

DESIGNATIONS/STATUSES:

FACULTY POSITIONS (FACULTY STATUS)

This category includes all full-time and part-time positions with formal academic appointments and such other positions as may be determined by the President. In general, employees in this category are primarily engaged in teaching, research, professional activity and service work having a direct relationship to academic programs in the teaching or allied departments. (WV HEPC Title 133, Series 9.)

STAFF

“Non-classified employee” means a non-faculty regular employee of the University who meets one or more of the following criteria:

- Holds a direct policy-making position at the department or organization level including but not limited to executive, administrative, college, school and academic support departments;
- Reports directly to the president or designated/acting chief executive officer of the University;
- Is in an information technology-related position as outlined by title, working title or job description;

- Is hired after July 1, 2017, and meets the duties test for exempt status under the provisions of the Fair Labor Standards Act at the time of hire or anytime thereafter; or was in a non-classified position as of January 1, 2017;
- Is designated by the President or designee to be critical to the accomplishment of the mission of the university

Fairmont State University considers all positions critical to the accomplishment of the mission of the institution. Therefore, all staff positions are non-classified as critical and may fall under another non-classified criterion as well.

While critical to daily operations, a non-classified employee may or may not be deemed essential for operational or service purposes. An essential employee is required to report for duty in emergencies or other special situations as identified by the President or his/her designee. Supervisors are required to notify employees annually or as circumstances change if they or their positions are identified as essential.

AT-WILL EMPLOYEES

This status includes full-time and part-time administrative officers, deans (faculty members may serve in administrative roles, with the administrative portion of their duties being at-will), heads of major divisions or departments, information technology-related staff and non-academic staff officers and/or administrators.

The inclusion OR exclusion of a specific position or employee within this category is determined by the President or her/his designee, based on the level of duties and responsibilities assigned to the position and consistent with the provisions of applicable policies and WV Code §18-B-9A-2. Such appointments, so determined, are considered “at-will employment” and, as such, serve at the discretion of the President.

ALL OTHER EMPLOYEES (STAFF)

All regular full-time and part-time positions not covered in the definitions of “at-will” above shall be included in this category. Employees in this category are primarily engaged in non-teaching support and service activities of the University. Such employees are subject to progressive discipline as outlined in BOG policy 64.

Fairmont State University Board of Governors
POLICY NO. 64

TITLE: PROGRESSIVE DISCIPLINE AND SEPARATION FROM EMPLOYMENT

EFFECTIVE DATE: On passage by the Board

GENERAL:

The purpose of this policy is to establish and define the general disciplinary and employment-separation procedures for Fairmont State University employees, whether Faculty or Staff.

Staff:

Non-classified employees may be terminated for any reason; however, the University may choose (but is not required) to implement progressive discipline to remediate the conduct of a will and pleasure employee. The University does not waive the employee's will and pleasure status by doing so.

In general, the University believes that progressive discipline for most employees is a best-practice educational approach to correcting and improving employee behavior and will use progressive discipline in most cases. However, the President or her/his designee has the authority to determine if an employee's action or behavior is so egregious or damaging that it warrants disciplinary action outside the confines and parameters of the progressive discipline process.

At-Will Administrators:

Those administrators designated as will and pleasure/at-will appointees by the President (per Board of Governors Policy No. 63) may, at the President's discretion, be subject to either progressive discipline as defined in this Policy or immediate dismissal per at-will provisions.

Faculty:

Termination proceedings and causes for dismissal for faculty members are set forth in West Virginia Higher Education Policy Commission Series 9, Section 12. However, faculty members are expected to adhere to the general provisions of this procedure, are expected to comply with the standards of conduct herein and are expected not to engage in acts of gross misconduct and/or any other conduct proscribed by Series 9. Unacceptable conduct set forth in this procedure may serve as grounds for dismissal of a faculty member for cause in accordance with Series 9. The University may, but is not required to, implement progressive discipline to remediate the conduct and/or unacceptable job performance of a faculty member. This procedure in no way supersedes Series 9 and does not impose upon the University an

obligation to use progressive discipline when addressing misconduct of a faculty member unless otherwise required to do so by law.

GENERAL DISCIPLINE POLICY STATEMENT:

The University has a progressive disciplinary system which allows opportunities for correction of unacceptable workplace conduct and/or job performance while maintaining fair and equitable treatment of all employees. Employees may be disciplined for unacceptable conduct and/or poor job performance and the discipline may include termination of employment. In order to maintain and operate the University in the best interests of both the employee and the University, it is necessary that all employees adhere to certain standards of conduct designed to create a friendly, cooperative, safe and effective work atmosphere. This requires each employee to respect the rights and feelings of others as well as to ensure that each employee's personal conduct is not harmful to others or to the University. Employees are expected to act professionally during working hours, (including but not limited to lunch hours), when conducting University business, when performing their job duties, and/or when representing the University in their official capacity as a University employee. Employees are expected to perform their job duties effectively and to maintain satisfactory levels of job performance. Employees may be disciplined for failure to perform the duties of their position and for unacceptable job performance. Off duty conduct may also be the source of disciplinary action if the conduct adversely affects the employee's ability to perform his/her job duties and/or bears a rational nexus to the employee's job and the reputation of the University. Employees found responsible for gross misconduct may be terminated immediately. Determining what constitutes gross misconduct is the purview of the President. All disciplinary actions will be determined on a case-by-case basis. The type of discipline imposed by the University may depend upon, but not be limited to, the seriousness of the performance/conduct issue(s) and the impact on the University's operations, credibility and reputation.

Misconduct

Misconduct is defined as any failure of an employee (faculty or staff) to comply with accepted standards of work or behavior. Breaches of discipline by an employee which are not of a similar nature may be added together and result in progression through the disciplinary procedure. Employees found responsible for gross misconduct may be terminated immediately without progressive discipline. Gross misconduct can be a single act or omission, or short course of conduct, or an accumulation of those things which, taken individually, would not amount to gross misconduct. Gross misconduct that could result in immediate employment termination includes, but is not limited to, the following (this list is not exhaustive):

- Stealing property of the University or of another person;
- Threat of violence or physical harm to any individual;
- Harassment or discrimination in any form;

- Damaging the property of the University or of another person;
- Reporting to work while under the influence of alcohol or drugs or consuming alcohol and/or drugs while at work in violation of University policy;
- Falsification of time records, including not reporting time off or using leave for purposes not covered under the leave definition used;
- Falsification of timecard and/or leave time, including not clocking out timely or reporting hours worked that were not;
- Lying in official matters;
- Failure to report to work for three (3) consecutive scheduled work days without notice;
- Gambling on University property or with University equipment or technology, either during or after work hours;
- Unauthorized possession or use of a firearm and/or deadly weapon and/or destructive device on University property;
- Falsification of employment application or official record;
- Insubordination in any form;
- Sexual harassment including but not limited to acts of sexual violence, discrimination or domestic violence, whether on or outside of work time;
- Unauthorized and excessive absence from work or tardiness;
- Engaging in sexual conduct or harassment in any form in University offices, classrooms, buildings, garages, grounds and/or property;
- Conviction of a crime (state of West Virginia, any other state and/or the federal government law);
- Loss of driver's license where driving on public roads is an essential part of the duties of the position;
- Failure to comply with the University's consensual relationship policy;
- Failure to comply with relevant law, established Board policy and institutional rules and guidelines;
- Substantial and manifest neglect of duty;
- Failure to maintain in good repair institutional real or tangible property;
- Failure to effectively secure hazardous, medical, drug or other materials/supplies;
- Requesting that a University authority provide false information or testimony on one's behalf;
- Failure to sign a Notice of Appointment, contract or any other required institutional document;

Other serious infractions that may involve immediate termination will be handled on a case-by-case basis at the discretion of the University.

Types of Discipline

The following steps are typical of the procedure followed to counsel an employee; however, each situation is unique and the University reserves the right to choose the level of disciplinary action it deems appropriate at any time and given the infraction or event.

Verbal Counseling: If an employee's work performance or conduct is unsatisfactory, the supervisor or anyone in the employee's chain of command should communicate this information to the employee through counseling.

Written Warning: The supervisor or anyone in the employee's chain of command should consult with the Chief Human Resources Officer for approval to issue a written warning. Once the written warning has been approved, the supervisor may but is not required to meet with the employee regarding the deficiencies in performance and/or conduct. The written warning is a written summary of the unsatisfactory performance or conduct as well as any violations of University policy if applicable. The written warning and any attachments should be forwarded to the Chief Human Resources Officer for retention in the employee's official University personnel file.

Suspension without Pay: If, after a reasonable time, performance or conduct deficiencies persist, the employee may be given a disciplinary suspension without pay. The supervisor or anyone in the employee's chain of command is required to consult with the Chief Human Resources Officer for approval prior to suspending an employee without pay.

Nonexempt employees may be suspended without pay for a period varying from 1 to 15 working days, depending on the gravity of the offense and the employee's previous record. Exempt employees may be suspended without pay for a period of 1 to 15 working days and must be in week long increments to a maximum of three weeks.

Employment Termination: Employment termination may result after receipt of two (2) written warnings in one twelve (12) month period. The written warnings do not have to be for the same offense. A suspension without pay is not required prior to employment termination. Prior to terminating an employee, the University will issue the employee an intent to terminate employment letter and will provide the employee with an opportunity (within five [5] working days) to rebut the charges set forth in the intent to terminate employment letter to the University's satisfaction. The supervisor or anyone in the employee's chain of command is required to consult with Human Resources prior to issuing an intent to terminate employment letter. The President makes the final decision on all employment terminations.

Immediate Termination: Immediate termination of an employee without progressive discipline may result, without prior counseling or warning, where/when there are serious violations and/or gross misconduct. The University will issue the employee an intent to terminate employment letter and will provide the employee with an opportunity (within five [5] working days) to rebut the charges set forth in the intent to terminate employment letter, to the University's satisfaction. The supervisor or anyone in the employee's chain of command is required to consult with Human Resources prior to issuing an intent to terminate employment letter. The President makes the final decision on all employment terminations.

Grievance Procedure

Any eligible employee may seek resolution of an employment related dispute through the Public Employees Grievance Procedure, established by the legislature in W. Va. Code § 6C-2-1, *et seq.* Information about the Grievance Procedure and grievance forms are available in the Human Resources Office and online at: <http://www.pegb.wv.gov/Pages/default.aspx>

Resignation

In accordance with the notification requirements of this section, an employee shall submit a signed and dated resignation letter or statement to his/her immediate supervisor, indicating the date when the resignation is to be effective. A written notice is required; an email from the employee's official assigned University email account is acceptable as written notice. Immediately following receipt of written notice, the employee's supervisor shall confirm acceptance of the resignation in writing to the employee (email is an acceptable format.) The supervisor or departmental business office shall immediately forward a copy of the signed written resignation letter or confirmation to the Human Resources Office for placement in the employee's personnel file so that the termination can be processed.

Notification Requirements/Restrictions on Leave Usage during Notice Period

Staff: A staff employee shall provide at least two (2) weeks' written notice of his/her resignation, whenever possible. A staff employee at the manager or administrator level is expected to give at least a four (4) week notice. A shorter period of notice may be accepted if authorized by the immediate supervisor and his/her VP or Dean. A staff employee is expected to be present and functioning at his/her position, as scheduled, throughout the two week notice period, unless this requirement is waived by the immediate supervisor. Benefits-eligible employees are not to use sick leave during the notice period unless the need to use the leave is documented by the employee's medical provider and provided to the HR Benefits unit.

Faculty: A faculty member shall give notice of resignation in writing at the earliest opportunity, giving due consideration of the institution's need to have a full complement of faculty throughout the academic year. Notice of resignation shall be forwarded by the Dean or business office to the Provost's Office immediately.

Part-time and Temporary Employees: Part-time and temporary employees are also required to submit resignations in writing to their immediate supervisors. Supervisors should consult with Human Resources immediately in the case of the resignation of a part-time or temporary employee so that the termination can be processed timely.

General Termination Procedures

Resignations shall be regarded as permanent and irrevocable and the employee shall forfeit all eligibility for continued services and benefits, in accordance with the currently existing policies of the Higher Education Policy Commission, the Fairmont State University Board of Governors or University, employment contracts, notices of appointment and/or federal and state laws.

- The employee shall contact Human Resources regarding health insurance benefits, COBRA, annual leave accruals, retirement accounts or other benefits in place for the employee at the time.
- The employee shall settle any outstanding bills or monetary commitments to the University, such as parking tickets, fines, tuition, etc., prior to the termination date.
- The employee shall surrender to his/her supervisor or the appropriate authority all University property, including but not limited to ID card, keys or key cards, computers or tablets, parking permits, other equipment, thumb drives, documents, e.g., on or before the employee's last day physically at work.
- A terminating employee may not "wipe" or erase any files from equipment provided to him/her by the University and must provide any passwords used to lock equipment or files to his/her supervisor and/or IT.
- Benefits-eligible employees will stop earning leave accruals once they have submitted their resignations.
- Employees are not permitted to remain on payroll to exhaust any annual or sick leave balances. Terminating employees will be paid out their accumulated annual leave balances as of the termination date, which will typically be paid in the employee's last pay check, paid under the timelines and rules of the payroll system in place at the time of resignation.

Failure to Follow Resignation Procedures

Failure by an employee to meet the above responsibilities and/or the resignation-notice requirements may result in the employee's leaving the University in poor standing, the consequences of which may include ineligibility for re-hire at the University, or a negative reference.

Fairmont State University Board of Governors
POLICY NO. 65

TITLE: Layoffs and Reductions in Force

EFFECTIVE DATE: Upon passage by the Board

GENERAL

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

Purpose

The purpose of this policy is to establish and define the layoff and reduction in force (RIF) procedures for regular (.53FTE and above) Fairmont State University employees, whether Faculty or Staff. Such actions may be taken in response to 1) loss of funding due to the end of a program or 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 condition or exigency (as determined by the Board of Governors upon the President's recommendation) necessitates a reduction in the labor budget.

Scope and Applicability

This policy shall apply to all regular full-time (.53 FTE and above) employees and positions, to include faculty, Faculty Equivalent/Academic Professional (FEAP) and staff employees.

For the purposes and intent of this policy, a mandated and equitably applied FTE and commensurate salary reduction for an employee and/or a position is not considered a reduction in force. The University may, at its sole discretion, opt to utilize an FTE/salary reduction in lieu of or in addition to a layoff or reduction in force.

This policy is intended to apply only to full-time regular employees, i.e., those at .53 FTE and above. Employees at less than .53 FTE, i.e., part-time regular ("1039") or temporary, casual or project employees are not included in this policy, as they are considered "at-will" employees whose positions may be abolished at any time if deemed necessary by the appropriate institutional authority.

Layoffs

Layoffs may occur in either faculty or staff positions/units. For layoffs due to lack of funds or work, abolishment of a position, material changes in duties or organization or the termination/abolishment of a program:

1. The University may lay off the incumbent in the position being eliminated.
2. The University may offer a laid-off employee another, vacant position but is legally under no obligation to do so. If another position is offered, it will be compensated at the classification and pay range appropriate to the duties of the offered position, taking into account the experience and skill set of the employee. Appropriate compensation will be determined by Human Resources. If the employee declines the offer, the layoff will continue; no further obligation to the employee accrues to the University in regard to layoff.
3. In the case of abolishment of some but not all of the positions of the same job title or in the same job unit, consideration shall be given to the following factors to determine whom to lay off: (a) an employee's documented quality of work performance as demonstrated in performance evaluations or records (including, but not limited to, disciplinary records, attendance, and behavior), (b) seniority at FSU, (c) years of service in the current position, and (d) job suitability and the employee's skill set.
4. If after considering these factors the University elects to lay off an employee, the University may offer the employee, at the University's discretion, a monetary severance package of not less than two pay periods and not more than the employee's current base salary for one fiscal year. In no case is the University obligated to offer such a severance package, especially in cases where the employee does not have requisite knowledge, skills, abilities or experience to perform the duties of the position being eliminated or of another position.
5. An employee's acceptance of a severance package in any amount ends his/her employment; however, those employees so terminated may be considered for future employment with Fairmont State University if they have had good performance evaluations while employed with FSU and if they have the requisite skill sets, experience and competencies to do the job. Employees wishing to be reemployed must apply and participate in the standard competitive selection process, as there are no automatic recall rights following layoff.
6. For the purposes of this policy, seniority is the length of continuous service at Fairmont State University only and represents only one factor in decision-making regarding layoff. A more senior employee is one with longer service at the University than another employee in the same job title who is also subject to layoff.

Benefits

Employees laid off under this policy will be treated as terminated for purposes not involving misconduct on the part of the employee and will be treated as such under all applicable state and federal rules, laws and regulations.

Notice

A notice of intent to reduce the workforce will be sent to affected employees as soon as practical after a determination has been made that a reduction is necessary. The employee(s) so identified will be provided a written notice of layoff, which will include the effective date of the layoff and separation paperwork to be completed.

The University will use its best efforts to provide at least a four-week notice of any layoff. The University may, at its sole discretion, choose to provide pay of up to four weeks in lieu of notice, but is under no obligation to do so.

REDUCTION IN FORCE—FACULTY

It shall be the policy of the Board of Governors to undertake reductions in the faculty workforce or personnel complement in a consistent and equitable manner. Following the decision that a financial or other condition necessitating a reduction exists, the President shall undertake program/curriculum reviews to consider pertinent program/curriculum or administrative information. The President may recommend to the Board of Governors the elimination or reduction of programs/curricula deemed appropriate, given financial and enrollment considerations, and in the best interest of the University in general. The primary consideration in any resulting decision to eliminate positions and to reassign or reduce the number of affected faculty positions and personnel will be the preservation of the quality and effectiveness of the University's programs and overall mission. A reasonable reduction in the number of hours an employee works (FTE) is NOT considered a reduction in force and may be utilized by the University as a cost-saving measure in lieu of layoffs or reduction in force.

Basis for Elimination of Faculty Positions: Recommendations by the President to the Board of Governors concerning the elimination of any faculty position will be made on the basis of need within each discipline, as defined by the President after consultation with the Chief Academic Officer/Provost, the Deans and department chairs. For purposes of a reduction in force, FEAPs (Faculty-Equivalent Academic Professionals) will be considered faculty.

Elimination of Positions with Equal Rank in Same Discipline/Department: In the event all other factors are considered to be equal and a choice must be made concerning the elimination of the position of one of two or more faculty members holding the same rank and teaching the same discipline, the faculty member with the greater seniority will be retained. Also, in the event of a conflict between rank and seniority, such as when an assistant professor has substantially more seniority than his or her equally qualified counterpart who is an associate professor, the department chair, dean and the chief academic officer will jointly review the annual evaluations of both faculty members for the previous three years, as well as any other relevant data, and make a recommendation to the President concerning which of the positions better serves the vital interests of the University.

Order for Elimination of Faculty Positions: Non-tenured faculty members within the discipline to be reduced will be terminated prior to the termination of the employment of tenured faculty members. Employment terminations of faculty members will generally follow the

order specified below unless there is an identified need to retain 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. Associate Professor/Senior
7. Professor
8. Professor/Senior

Tenured:

9. Assistant Professor
10. Associate Professor
11. Associate Professor/Senior
12. Professor
13. Professor/Senior

President's Recommendation: In addition to recommendations made in response to a financial condition necessitating a reduction in force, the President may recommend the termination of the employment of faculty members to the Board of Governors at any time for reason of lack of funds, lack of work, reduction in enrollment or abolition of position. Recommendations of the President to the Board of Governors relative to the termination of the employment of faculty members shall not be made until affected faculty members have been afforded a hearing as provided herein.

Notice and Hearing for Tenured Faculty Members: The President shall provide written notice to any full-time tenured faculty member of the intent to recommend termination of employment based upon a reduction in force. The notice shall contain a description of the reasons for the intended recommendation. The President must make every effort to give as much notice as is practical in light of a financial condition necessitating the reduction in force to each affected faculty member in advance of the effective date of the layoff. However, the legislative appropriation process or the recognition of a reduction in revenues and the subsequent analysis needed before a decision that a financial condition necessitating a reduction in the institution's labor budget exists may allow little time for formal notice to the employees who are to be laid off. Upon receipt of such notice, the affected faculty member may request a hearing to be conducted by the President or his/her designee. A request for a hearing must be made within five (5) working days (excluding holidays) of a notice of recommended termination. Among the issues to be considered by the President or designee are:

- a. 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.
- b. The burden of proof in position or employee termination proceedings rests with the faculty member. The decision that a financial condition necessitating a reduction in the institution's labor budget rests solely within the President's authority and discretion, with the approval of the Board, and is not subject to contest by any faculty member.
- c. The hearing shall be recorded by mechanical means and a written transcript provided to all participating and appropriate parties to be included with the final response as described in (e) below. The strict rules of evidence shall not, however, be applied during the hearing.
- d. 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 description of the concerns raised by the faculty member and a response to each thereto. A copy of the decision and transcript shall accompany any subsequent recommendation made by the President to the Board of Governors. These actions will all be completed within ten (10) working days (excluding observed holidays) of the appeal meeting, unless an extension is mutually agreed upon by the faculty member and an approved designee of the University.
- e. Use of the appeal procedure does not commensurately delay the effective date of employment termination of the faculty member.

Non-Tenured Faculty Members: 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 notice and hearing under the terms of this policy. In the event a faculty member serving under a fixed-term appointment is recommended for employment termination during the term of employment because of a reduction in force resulting from a decision that a financial condition necessitating a reduction in the institution's labor budget, that faculty member shall be entitled to use the appeal procedure described following.

Action by the Board of Governors: Upon receipt of a recommendation by the President, the Board of Governors may approve the termination of employment of a faculty member. No separate hearing shall be afforded to affected faculty members by the Board of Governors. The affected faculty member shall be provided with written notice of the action taken by the Board of Governors and shall also be provided with a copy

of the instructions and form for filing an appeal with the West Virginia Public Employees Grievance Board.

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 labor budget or for reorganization or reallocation of resources. In such a case, an employee may be reassigned to a new program, school or physical location. If a faculty member refuses the reassignment to a program, school or physical location, the President may then terminate that faculty member's employment because an equitable offer has been made and refused. The University is then under no further obligation to maintain the employee's job or employment.

New Faculty Positions: New positions will not be created while a financial condition necessitating a reduction in the institution's labor budget is in effect unless a serious disruption in the functioning of the University or a loss of grant funds would otherwise result, as determined within the sole discretion of the President. New academic programs or faculty positions may be created only when it can be demonstrated that these programs or positions will help the University extricate itself from the financial conditions necessitating the reduction in force. Priority for filling these positions will be given to existing, qualified faculty whose positions are slated for abolishment.

Re-employment Following Financially Based or Other Termination: Notwithstanding any other recall rights contained in the policy, in the case of the termination of the employment of a tenured faculty member occupying a permanent faculty position, the position concerned may not be filled by replacement within a period of two (2) years from the effective date of the termination of employment, unless the faculty member has been offered a return to employment in that position and has not accepted the offer within 30 calendar days after the offer is extended.

Termination of Exigency: The conclusion of a financial condition necessitating a reduction in the institution's labor budget will not imply that employment terminations that were made during that period are automatically withdrawn, revoked or otherwise invalid.

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 termination during a financial condition necessitating a reduction in the institution's labor budget: When filling academic positions, the highest ranking qualified tenured faculty member whose employment has been terminated as part of a financial condition necessitating a reduction in force (and who has not been employed in an academic position elsewhere) shall be offered the position. If the position is refused, it

shall be offered to other similarly affected faculty members in rank order. Any refusal of employment by a faculty member shall terminate any further rights to recall. However, a refusal to accept a position shall not preclude a faculty member from making application for other posted position openings. The Office of Human Resources shall notify faculty members whose employment has been terminated of position openings in accordance with the terms of this policy. The notice 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.

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 re-employment with the University under the terms of this policy will resume tenure and the rank held at the time of employment termination, be paid a salary commensurate with the rank and length of previous service and, if applicable, be credited with any sick leave accrued as of the date of employment termination and be credited with any annual leave accrued as of the date of employment termination for which payment has not been made. 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 reduction in force.

REDUCTION IN FORCE—STAFF

It shall be the policy of the Board of Governors to undertake reductions in the staff workforce or personnel complement in a consistent and equitable manner and in compliance with applicable law in force at the time of the reduction in force. Following the decision that a financial or other condition necessitating a reduction exists, the President shall undertake program/curriculum reviews to consider pertinent program/curriculum or administrative information. The President may recommend to the Board of Governors the elimination or reduction of programs/curricula deemed appropriate, given financial and enrollment considerations, and in the best interest of the University in general. The primary consideration in any resulting decision to eliminate positions and to reassign or reduce the number of affected staff positions and personnel will be the preservation of the quality and effectiveness of the University's programs, operational needs and overall mission.

Basis for Elimination of Staff Positions: It shall be the policy of the Board of Governors to undertake reductions in the workforce of staff personnel in a consistent and fair manner, and in accordance with applicable law at the time of the reduction, insofar as the needs of the institution, its mission and its students are met first. Following a reduction in workforce in the

ranks of staff personnel, the continuation of services and programs with appropriately trained and qualified personnel shall be afforded primary consideration in all decisions related to elimination of positions and any reassignment of affected staff personnel.

- 1.) Part-time regular (“1039’s”), casual, project and/or temporary staff positions/employees are not covered under the provisions of this policy, and such positions may be abolished at any time deemed necessary.
- 2.) A reasonable reduction in the number of hours an employee works (FTE) is NOT considered a reduction in force and may be utilized by the University as a cost-saving measure in lieu of layoffs or reduction in force.
- 3.) In the case of abolishment of some but not all of the positions of the same job title or in the same job unit, consideration shall be given to the following factors to determine whom to lay off: (a) an employee’s documented quality of work performance as demonstrated in performance evaluations of records (including, but not limited to, disciplinary records, attendance, and behavior), (b) seniority at FSU, (c) years of service in the current position, and (d) job suitability and the employee’s skill set.
- 4.) Seniority is only one of many factors the University may employ to determine reductions in force; in no case will it be the determining or primary factor in reduction in force decisions.
- 5.) An employee who is subject to a reduction in force shall, if re-employed by the University, receive credit for previously accumulated service for increment purposes, but shall not accumulate seniority during the period of absence prior to re-employment. The University may but is not required to re-employ an employee terminated under a reduction in force, once circumstances or finances change.

President’s Authority and/or Recommendation: The President may eliminate staff positions without prior recommendation to the Board of Governors for reasons other than financial conditions necessitating a reduction in the institution’s labor budget. These reasons may include, but are not limited to, lack of funds, expirations of special grants or revenue streams, lack of work, material changes in duties, the employee’s own work patterns and leave history that have affected the viability or need for the position, or changes in organization. In the event of a decision that a financial condition necessitating a reduction in the institution’s labor budget exists, the President shall, where possible, eliminate filled or vacant part-time (“1039”), casual, project or temporary and non-critical vacant positions prior to recommending the elimination of positions held by regular full-time staff personnel.

Affected Personnel: Staff personnel who are serving in positions that have been designated for elimination shall be considered for reassignment based upon their classification and any relevant specific qualifications, skills, competencies or training they may possess. Seniority may be considered in such decisions, but the University is under no obligation to make reassignments based on seniority, either in whole or in part. Once positions have been designated for elimination, the affected employees must update their record of credentials and specific qualifications and training within a reasonable timeframe as determined by the Office of Human Resources, if they wish to be considered for

reassignment.

Consideration of FTE Status: – FTE status shall be considered in evaluating the suitability of positions for reassignment. Notwithstanding the fact that employees with FTE's between .53 and 1.0 are considered full-time, vacancies and other potential positions for an employee's reassignment must not vary more than .20 of the affected employees' FTE status to be considered suitable. However, if there are no suitable vacancies or other available suitable positions held by employees with less seniority, an employee may be reassigned to a position that would otherwise be considered non-suitable for reason of FTE disparity. If the employee refuses such a reassignment, the termination per reduction in force will proceed.

Process for Reassignment of Affected Personnel: The process for determining eligibility for reassignment will be the responsibility of Human Resources.

RESPONSIBILITIES AND PROCEDURES

Faculty: The President and Chief Academic Officer/Provost shall have primary responsibility for making recommendations to the Board of Governors regarding elimination of faculty positions. Human Resources will be guided in process and implementation by the decisions provided by the President and Chief Academic Officer.

Staff Employees: The Office of Human Resources shall have primary responsibility for the implementation of the provisions of this policy.

It is the responsibility of the Chief Human Resources Officer to oversee implementation of a workforce reduction consistent with this policy statement and corresponding State code. The final authority for interpretation of this policy rests with the Chief Human Resources Officer.

REFERENCE / AUTHORITY

HEPC Title 133, Series 9 (Sections 13 and 14) and WV Code 18B-7-3