

Faculty Meet & Confer Draft Policy for Feedback

3.16. Retain and Retrain Policy

3.16.1. Purpose

The purpose of this policy is to provide a process by which Residential Faculty may be retained as district employees as an alternative to layoff in the event of a planned reduction in force at a college. This policy is not to be used to address faculty performance concerns. Faculty performance concerns shall be addressed informally or through the peer assistance and review process or the administrative evaluation process.

3.16.2. Faculty Service Areas

- 3.16.2.1.** Instructional councils are accountable for recommending Faculty Service Areas (FSA) (i.e. instructional disciplines and/or service areas). All areas of specialty overseen by an instructional council may be grouped into a single Faculty Service Area or into multiple Faculty Service Areas as determined by the instructional council.
- 3.16.2.2.** Instructional councils determine the minimum qualifications necessary for faculty to teach or work in each FSA.
- 3.16.2.3.** Instructional Councils assign all courses in the course bank to one or more FSAs
- 3.16.2.4.** The Executive Vice Chancellor of Academic Affairs and Provost is the approval authority for all FSA designations recommended by instructional councils. By March 15 of each academic year, each instructional council shall provide the Executive Vice Chancellor of Academic Affairs and Provost with written FSA recommendations. The Executive Vice Chancellor of Academic Affairs and Provost will review and approve final FSA designations for the following academic year by April 1.
- 3.16.2.5.** Residential Faculty are deemed qualified in any FSA in which they meet the minimum qualifications.

Commented [FW1]: The language in this policy was thumbed for loop out on 3/24/14. The faculty and administration members of the Meet and Confer Team will collect feedback from faculty at-large, FEC, CEC, and others beginning 3/25/14. In response to feedback, the Team may further refine the proposed policy language during its 4/21/14 Meet and Confer meeting. It is anticipated that the final version of this policy will be included in the 2014-2015 RFP.

- 3.16.2.6.** The primary FSA of instructional faculty is the FSA in which the majority of the faculty member's instructional load is taught over the most recently completed academic year. For service faculty, the primary FSA is the service area in which the faculty member has worked the majority of hours over the most recently completed academic year. The Human Resources Department at each college shall provide the appropriate Vice President (or designee) and all Residential Faculty at the college with a report of instructional load for each Residential Faculty by FSA by [redacted]. In the event that the workload of a faculty member is evenly split between two or more FSAs, the faculty member may designate which FSA is the faculty member's primary FSA.
- 3.16.2.7.** Secondary FSAs are all non-primary FSAs in which a faculty member meets the minimum qualifications.
- 3.16.2.8.** The appropriate Vice President (or designee) at each college shall review and approve final FSA assignments by April 15. Residential Faculty may appeal the determination to the Executive Vice Chancellor and Provost by May 1.
- 3.16.2.9.** Under-Ratio FSAs at a college are FSAs in which the addition of one Residential Faculty will not cause the percentage of instructional load in the FSA taught by Residential Faculty to exceed the applicable faculty ratios identified in Section 1.2.
- 3.16.2.10.** By October 1, the Vice Chancellor for Human Resources will provide the list of Under-Ratio FSAs at each college to all Residential Faculty.

Commented [a2]: What date is appropriate? Solicit input from Human Resource personnel who will be generating the report.

3.16.3. Reduction In Force Decision Making Process

- 3.16.3.1.** Before a decision is made to pursue a reduction in force within an FSA at a college, the College President will convene a meeting with the appropriate Vice President, Faculty Senate Leadership, Department/Division Chair with responsibility for the FSA, and all Residential Faculty within the FSA. The meeting will be facilitated by a neutral party trained in interest-based decision making and not employed at the college.

- 3.16.3.2.** In the meeting, the analysis that has led the College President to conclude that a reduction in force in the FSA at that college may be necessary will be shared. The analysis will include but is not limited to the following:
- Relationship of the FSA to the mission, vision, values, and strategic plan of the college and district
 - External requirement for the services provided by the FSA such as accreditation or intergovernmental agreements
 - Annual instructional load (as applicable)
 - Percentage of annual instructional load taught by Residential Faculty (as applicable)
 - Fall 45th-day FTSE inclusive of dual enrollment
 - Number of Residential Faculty teaching/working in the FSA
 - Number of Residential Faculty whose primary FSA is the FSA being analyzed
 - Revenue trends over five years for the FSA including but not limited to tuition and fees
 - Expenditure trends over five years for the FSA including but not limited to personnel and capital
 - Account balances for any fees accounts within the FSA
 - Cost/benefit analysis of reducing all non-Residential Faculty plus one Residential Faculty within the FSA
 - An explanation of the problem that reducing the number of faculty in the FSA would solve
 - The list of potential Residential Faculty that are at risk of layoff as determined by the Vice Chancellor of Human Resources
 - Other relevant information, as requested
- 3.16.3.3.** The facilitator will assist the group in the following:
- Understanding the history of the FSA
 - Identifying the problem that needs to be solved
 - Determining the parties' interests
 - Generating options for solutions
 - Applying agreed-upon criteria to evaluate possible solutions
 - Reaching consensus on a preferred solution

- 3.16.3.4.** If the preferred solution includes a recommendation that no non-Residential Faculty be hired and one or more Residential Faculty members within the FSA be reduced, the parties will jointly prepare and submit a written reduction in force plan to the Chancellor no later than October 1. If approved by the Chancellor and the Governing Board, the plan will go into effect on July 1 of the subsequent fiscal year.
- 3.16.3.5.** If the parties are unable to reach consensus on a preferred solution and the College President believes not hiring any non-Residential Faculty and a reduction of one or more Residential Faculty in the FSA is necessary, the College President will prepare and submit a written reduction in force plan to the Chancellor no later than October 1. At least seven (7) days in advance of the submission of the plan to the Chancellor, the written reduction in force plan will be shared with the Residential Faculty in the FSA. The faculty in the FSA may submit a written statement to the Chancellor related to the proposed reduction plan. If approved by the Chancellor and the Governing Board, the plan will go into effect on July 1 of the subsequent fiscal year.

3.16.4. Alternatives to a Reduction in Force

Upon receipt of a reduction in force plan recommending the layoff of one or more Residential Faculty members, the Chancellor may request that the Vice Chancellor for Human Resources consult with the college(s) to consider alternatives to layoff, including but not limited to:

- 3.16.4.1.** Formal solicitation of voluntary retirements of Residential Faculty members in the FSA, in inverse order of potential layoff
- 3.16.4.2.** Moving one or more Residential Faculty in the affected FSA to a secondary FSA at the college in which the faculty member is qualified. The secondary FSA would become the primary FSA for the affected faculty member in the subsequent year

- 3.16.4.3.** Voluntary transfers of one or more Residential Faculty members in the affected FSA to vacant faculty positions at other colleges pursuant to RFP Section 3.15.2
- 3.16.4.4.** Multiple college assignments to include day and evening assignments

3.16.5. Determining the Residential Faculty Affected by a Reduction in Force Plan

- 3.16.5.1.** If the alternatives to a reduction in force do not sufficiently address the problem to be solved, the Chancellor shall determine the number of occupied Residential Faculty positions within an FSA to be reduced and the Residential Faculty members to be laid off pursuant to the following four-step process:
 - 3.16.5.1.1.** The Chancellor will review the final recommendation and determine the FSA(s) and number of Residential Faculty positions in each FSA to be reduced.
 - 3.16.5.1.2.** The final reduction in force plan shall be submitted to the Governing Board for approval.
 - 3.16.5.1.3.** The Chancellor will provide the plan to the Vice Chancellor for Human Resources, who will review the plan and determine the specific Residential Faculty member(s) to be laid off based on the criteria provided herein.
 - 3.16.5.1.4.** Upon approval of the reduction in force plan by the Governing Board, layoffs of identified Residential Faculty members shall be implemented by District Human Resources.
- 3.16.5.2.** No non-Residential Faculty (e.g. Adjuncts, OSOs, OYOs) shall be employed by the college in the FSA(s) in which Residential Faculty are to be laid off. The layoff order for Residential Faculty will be in inverse order of seniority, where seniority is determined by the first date of Residential Faculty employment (i.e. tenure track date). In the event that two faculty in the FSA have the same tenure track date, the following criteria will be used in the numbered order below until a tie no longer exists to determine which faculty member is the most senior.

1. The Residential Faculty member with the greatest number of semesters teaching/working in the FSA at the college will be most senior.
2. The Residential Faculty member who is furthest to the right on the salary schedule will be the most senior.
3. If a tie in seniority still exists after applying the aforementioned criteria, the Vice Chancellor for Human Resources shall randomly select which faculty member will be said to have the greatest seniority.

3.16.5.3. The Residential Faculty members in the FSA at the college to be laid off shall be notified by the Vice Chancellor for Human Resources no later than December 1.

3.16.6. Retaining and Retraining Faculty Identified for Layoff

3.16.6.1. Plan to Retain

No later than the last day of Fall Semester, a committee composed of the Residential Faculty member who has been identified for layoff, the appropriate Department/Division Chair, the Faculty Senate President, and the appropriate Vice President (or designee) shall meet with the purpose of developing a plan to retain the faculty member scheduled for layoff as an employee in the District. Options for the plan may include but are not limited to transferring to another college as Residential Faculty in any Under-Ratio FSA in which the Residential Faculty member is qualified or retraining to become qualified in an Under-Ratio FSA before transferring to another faculty position.

3.16.6.2. Transfer to Another College without Retraining

Probationary faculty whose most recent Peer Assistance and Review recommendation was Renew and all appointive faculty may

- 3.16.6.2.1.** Request a voluntary transfer to faculty positions at any other MCCCDC college in which the faculty member is qualified in inverse order of proposed layoff pursuant RFP Section 3.15.2.

- 3.16.6.2.2.** Request a transfer into any Under-Ratio FSA at any other MCCCDC college in which the faculty member is qualified. Within 15 accountability days of such request, the faculty member will be interviewed by the college. If the faculty member meets the minimum qualifications of a Residential Faculty position in the FSA, they will be hired into the position, assuming funding as described in Section 3.16.6.3. is available, unless the President of the receiving college can demonstrate that the Residential Faculty is not willing or able to perform the essential functions of the position as constituted in the FSA at that college.
- 3.16.6.2.3.** If the faculty member is transferred, the gaining college shall contribute the equivalent of 30 load hours at the adjunct rate to the cost of the new faculty line. The balance of the transferred Residential Faculty member's salary shall be transferred from the District to the gaining college as a part of the budgeted residential/adjunct 60:40 ratio implementation plan.
- 3.16.6.2.4.** The ability to transfer under this process is contingent upon budgeted funds for the residential/adjunct 60:40 ratio implementation plan.

3.16.7. Retraining

- 3.16.7.1.** Appointive faculty identified for layoff, who are not transferred per Section 3.16.6.2. above are eligible to be retrained as described hereafter,
- 3.16.7.2.** The committee identified in 3.16.6.1. will seek to determine what additional coursework or other training will be required for the faculty member to become qualified in an Under-Ratio FSA selected by the Residential Faculty member.

- 3.16.7.3.** If the committee determines that it is feasible for the Residential Faculty Member to become qualified in the selected Under-Ratio FSA within 12 months of the scheduled date of the layoff and the Residential Faculty member is willing to pursue retraining, the committee will submit a training plan to the Executive Vice Chancellor of Human Resources for review. The Vice Chancellor, upon verifying the plan will result in the Residential Faculty member becoming qualified in an Under-Ratio FSA, will approve the plan and notify the committee, the Vice Chancellor of Academic Affairs and Provost, and the College President of the college where the Residential Faculty member will transfer upon becoming qualified in the Under-Ratio FSA.
- 3.16.7.4.** If the Residential Faculty member has not become qualified in the selected Under-Ratio FSA by the scheduled layoff date at the college, the Residential Faculty member will be placed on a retraining sabbatical for up to 12 months, after the Residential Faculty member expresses intent to complete the retraining plan.
- 3.16.7.4.1.** A Residential Faculty member's salary and benefits during any retraining sabbatical shall be funded entirely by Faculty Professional Growth funding.
- 3.16.7.4.2.** The benefits and obligations for retraining sabbaticals shall be the same as those described in A.1.1., A.4.6., A.4.7.5., A.4.7.9., A.4.7.10, A.4.8., and A.4.9.
- 3.16.7.4.3.** Upon becoming qualified in the selected Under-Ratio FSA, the Residential Faculty member will transfer into the selected Under-Ratio FSA at the previously identified college pursuant 3.16.6.2.2.

3.16.7.4.4. If the retrained Residential Faculty member fails to become qualified in the Under-Ratio FSA, the member shall then be subject to layoff and will be required to repay the salary paid to the member during the retraining sabbatical. If the retrained member obtains retraining and is placed in the Under-Ratio FSA but works less than two (2) academic years in the Under-Ratio FSA after retraining, the member will be required to repay the salary paid during the retraining sabbatical.

3.16.8. Appeal Process.

3.16.8.1. Verification of Policy Application

A Residential Faculty member who has been notified that the member is scheduled to be laid off may appeal, if the employee believes this retain and retain policy was violated. The affected employee must submit a written request specifying the improper application of the policy to the District HR Solutions Center within five (5) working days of the receipt of notice of layoff. Upon receipt of the request, the District HR Solutions Center shall convene an Appeal Committee made up of the Faculty Association President the Director of the HR Solutions Center and MCCC General Counsel (or designees). The Appeal Committee shall meet within ten (10) working days of the request to verify that the reduction in force decision making process was followed (3.16.3.), that alternatives to a reduction in force were considered (3.16.4.), that the least senior faculty member was selected for layoff (3.16.5), and that the Residential Faculty member was provided the option of transfer or retrain and transfer (3.16.6). The Appeal Committee shall determine if the policy was followed. If the Appeal Committee determines the policy was followed, the layoff decision will stand. If the Appeal Committee determines the policy was not followed, the committee will report any variances to the Vice Chancellor of Human Resources.

3.16.8.2. If the Vice Chancellor of Human Resources concurs that the policy was not followed, appropriate remedial action will be taken.

3.16.9. Illegal Discrimination.

In situations involving allegations of discrimination based on race, color, religion, sex, sexual orientation, gender identity, national origin, citizenship status, age, disability, veteran status, or genetic information, the review of the layoff shall be conducted by the MCCCCD EEO/AA Manager, who shall submit a recommendation to the Vice Chancellor of Human Resources, who shall make a final decision.

3.16.10. Notification of the Outcome of an Appeal.

The Vice Chancellor for Human Resources (or designee) shall issue a written decision regarding the appeal to the affected employee, Faculty Association President, and College President within five days of receiving either the recommendation of the Appeal Committee or the EEO/AA Manager. The decision is final and cannot be grieved under the grievance procedure in this manual.

3.16.11. Effect of Layoff.

3.16.11.1. Employment.

Residential Faculty scheduled for layoff who do not transfer to another college or accept a retraining sabbatical will be laid off pursuant to this policy and are deemed separated from service with MCCCCD effective June 30 of the current fiscal year. Eligible employees shall be paid for accrued but unused sick leave pursuant to RFP Appendix B (4).

3.16.11.2. Insurance Benefits.

Laid-off employees may continue group health insurance under COBRA beginning July 1 of the subsequent fiscal year, if they are not reemployed by MCCCCD.

3.16.11.3. Tuition Waiver.

Residential Faculty and their spouses and dependents may continue to receive tuition waivers for any MCCCCD course that begins before July 1 of the subsequent fiscal year.

3.16.11.4. Retirement Status/Withdrawal of Employee Contributions.

Laid-off Residential Faculty stop earning retirement service credits effective July 1 of the subsequent fiscal year. They may elect to withdraw the employee portion of retirement contributions, which may include the employee portion and employer portion based on credited service, as of July 1 of the subsequent fiscal year without affecting reemployment rights. Should the employee withdraw employee contributions and resume employment with MCCCDC within 24 months of the layoff effective date, the previously forfeited credited service may be repurchased by paying an amount equal to the amount of withdrawn contributions plus interest to ASRS within 60 days of rehire date. Affected employees are urged to consult with District HR staff and ASRS about the consequences of withdrawing employee contributions.

3.16.12. Rights During Layoff Notice Period.

Between the December 1 layoff notification date and the June 30 layoff implementation date, the Residential Faculty member shall retain all rights of a Residential Faculty member including but not limited to salary and benefits.

3.16.13. Recall Rights.

Laid-off Residential Faculty members shall be placed on a recall list for three (3) years following the June 30 effective date of layoff. If the FSA at the college becomes an Under-Ratio FSA and if the college decides to hire any other Residential Faculty or OYO/OSO faculty in the FSA, the laid-off Residential Faculty member will be recalled in inverse order of layoff (last person laid off will be the first person recalled). If a laid-off Residential Faculty member accepts any other full-time permanent position within MCCCDC, the member will be removed from the recall list. While on a recall list, a laid-off Residential Faculty member shall be considered an internal candidate when applying for all vacant MCCCDC employment positions.