

## **Policy 5.19 Retrenchment**

These retrenchment guidelines and procedures (hereinafter “Guidelines” or “Guidelines and Procedures”) apply only to discontinuances of instructional staff personnel whose appointments are in effect, and they are intended to protect the rights of affected personnel. The Guidelines do not apply to the normal processes for the non-reappointment of instructional staff persons.

A financial exigency, for the purpose of these Guidelines, is an imminent fiscal crisis which will cause great and irreparable harm to the academic programs of The City University of New York or one of its constituent Colleges if it is not alleviated. The discontinuance of instructional staff personnel shall be implemented as a last resort only after the pursuit of other less drastic means to alleviate the impact of a financial exigency.

Discontinuance of personnel shall be undertaken only after other measures to avoid discontinuances have been explored and implemented to the extent practicable, consistent with the Board of Trustees’ and the Chancellor’s responsibilities to govern the University, to carry out the academic program of the University and to provide a safe and appropriate environment for the faculty, students and staff.

Discontinuances of personnel may be necessitated when the fiscal resources of the University or its constituent units are insufficient to meet the operating costs required to maintain the educational mission of the University or its constituent units (i.e., the condition of financial exigency). Discontinuances of personnel may also be necessitated for institutional reasons as described in Section 6212.8 of the Education Law of the State of New York. In the former situation, the discontinuances may occur within a relatively brief period of time. In the latter situation, the discontinuances would generally occur over a longer span of time. In either circumstance, affected persons will be notified as early as possible, but in no foreseeable event would the notification time be less than:

Twelve months (12) for tenured faculty members and other tenured instructional staff personnel and Lecturers with Certificates of Continuous Employment;

For tenured and certificated instructional staff personnel who hold appointment in departments which are being abolished, at the College’s option such notice can be provided through time on payroll after notice of retrenchment or, in lieu of all or part of such notice, the equivalent payment in salary of a non-pensionable lump sum adding up to twelve months’ salary. This obligation of twelve months’ notice (or the equivalent non-pensionable lump sum salary payment in lieu thereof) is inclusive of any retirement (Travia) leave to which the individual may be entitled. Therefore, if, prior to the effective date of discontinuance, such staff member is eligible for and announces his/her bonafide intention to retire and files the appropriate application to retire, he/she shall be granted a retirement leave consistent with Article 16.4 of the collective bargaining agreement and Section 3107 of the State Education Law. In no instance, however, shall such leave extend beyond the terminal date of the original notice period of twelve months or result in a greater obligation for the College, in terms of a combination of time on payroll after notice of retrenchment and lump sum payment, than the original notice period of twelve months.

Six (6) months for nontenured and noncertificated faculty members, persons in the College Laboratory Technician series, and Registrar series;

For nontenured and noncertificated faculty members, persons in the College Laboratory Technician series, and Registrar series who hold appointment in departments which are being abolished, at the College's option such notice can be provided through time on payroll after notice of retrenchment or, in lieu of all or part of such notice, the equivalent payment in salary of a non-pensionable lump sum adding up to six months' salary. This obligation of six months' notice (or the equivalent non-pensionable lump sum salary payment in lieu thereof) is inclusive of any retirement (Travia) leave to which the individual may be entitled. Therefore, if, prior to the effective date of discontinuance, such staff member is eligible for and announces his/her bonafide intention to retire and files the appropriate application to retire, he/she shall be granted a retirement leave consistent with Article 16.4 of the collective bargaining agreement and Section 3107 of the State Education Law. In no instance, however, shall such leave extend beyond the terminal date of the original notice period of six months or result in a greater obligation for the College, in terms of a combination of time on payroll after notice of retrenchment and lump sum payment, than the original notice period of six months.

Six (6) months for instructional staff members in the Higher Education Officer series who have received a Certificate of Continual Administrative Service pursuant to Section 13.3.b. of the PSC/CUNY collective bargaining agreement. All other instructional staff in the Higher Education Officer series will have a notice period of 60 days. Instructional staff members in the Higher Education Officer series may be required to use any accrued annual leave and any Travia Leave entitlement as all or part of the notice period.

For instructional staff members in the Higher Education Officer series who have received a Certificate of Continual Administrative Service pursuant to Section 13.3.b. of the PSC/CUNY collective bargaining agreement and who hold appointment in retrenchment units which are being abolished, at the College's option such notice can be provided through time on payroll after notice of retrenchment or, in lieu of all or part of such notice, the equivalent payment in salary of a non-pensionable lump sum adding up to six months' salary. This obligation of six months' notice (or the equivalent non-pensionable lump sum salary payment in lieu thereof) is inclusive of any retirement (Travia) leave to which the individual may be entitled. Therefore, if, prior to the effective date of discontinuance, such staff member is eligible for and announces his/her bonafide intention to retire and files the appropriate application to retire, he/she shall be granted a retirement leave consistent with Article 16.4 of the collective bargaining agreement and Section 3107 of the State Education Law. In no instance, however, shall such leave extend beyond the terminal date of the original notice period of six months or result in a greater obligation for the College, in terms of a combination of time on payroll after notice of retrenchment and lump sum payment, than the original notice period of six months.

Sixty (60) days for persons serving in all other full-time instructional staff titles, except titles in the Executive Compensation Plan;

Thirty (30) days for persons serving in adjunct instructional staff titles;

Fifteen (15) days prior to the effective date of appointment for persons who have received letters of appointment for full-time or annual salaried positions on the instructional staff but whose appointment date is in the future.

Instructional staff serving in titles in the Executive Compensation Plan shall be discontinued in accordance with the Terms and Conditions of Employment for Staff in the Executive Compensation Plan.

Adjunct instructional staff with appointments who have not yet started to work may be notified on or before the effective date of the appointment.

Decisions regarding Graduate Assistants and adjuncts who are CUNY doctoral candidates shall take into consideration their status as students in a CUNY doctoral program, as well as instructional needs.

Discontinuance of personnel on grounds of financial exigency may be required at one or several units rather than at all of them. These Guidelines are intended to be followed in either case.

## **1 THE CHANCELLOR'S CONSULTATION, RECOMMENDATION, AND THE BOARD DETERMINATION TO DISCONTINUE INSTRUCTIONAL STAFF IN THE UNIVERSITY OR ANY CONSTITUENT UNIT**

### **1.1 CONSULTATION BY THE CHANCELLOR**

When the President of a College, in consultation with her or his appropriate faculty committee(s) foresees budgetary and/or financial difficulty the magnitude of which suggests the possibility that these Guidelines may need to be invoked, then she/he shall so inform the Chancellor. The Chancellor, having determined in consultation with College President(s) that financial exigency is likely to necessitate retrenchment of members of the instructional staff, shall consult with the Council of Presidents, officials of the University Faculty Senate, of the Professional Staff Congress, and of the University Student Senate.

### **1.2 THE CHANCELLOR'S REPORT AND RECOMMENDATION TO THE BOARD OF TRUSTEES**

Following this process of consultation, the Chancellor shall report to the Board of Trustees on his/her findings and on the process of consultation. The report shall also include the Chancellor's recommendation as to whether the discontinuance of instructional staff personnel whose appointments are in effect in the University or any of its constituent colleges<sup>1</sup> should be authorized by the Board of Trustees.

[Footnote:] <sup>1</sup> The term "constituent colleges" as used throughout these Guidelines is meant to include the eleven senior colleges, the seven community colleges (including the new community college), the William E. Macaulay Honors College, the Graduate School, the CUNY Graduate School of Journalism, the CUNY School of Law, the CUNY School of Professional Studies, the CUNY School of Public Health, and the Central Office.

### **1.3 THE CHANCELLOR INFORMS THE UNIVERSITY COMMUNITY**

Following the Board's authorization of the discontinuance of personnel, the Chancellor shall inform the University community through notice to the Presidents, the Professional Staff Congress, the University Faculty Senate, and the University Student Senate. The Chancellor shall also transmit to the President of each of the affected Colleges the determination that the University's Guidelines shall be invoked at that institution.

## **2 GUIDELINES AND PROCEDURES FOR THE DEVELOPMENT AND IMPLEMENTATION OF RETRENCHMENT PLANS AT THE CONSTITUENT COLLEGES OF THE UNIVERSITY**

### **2.1 THE PRESIDENT CONVENES AN AD HOC COLLEGE-WIDE COMMITTEE**

Following Chancellor and Board action as outlined in Section 1. above, the President of each affected College shall convene an ad hoc College-wide Committee, the members of which shall be designated by the President and shall include representatives of appropriate constituent groups including the College-wide Personnel and Budget Committee,<sup>2</sup> other teaching and non-teaching members of the instructional staff, including those currently serving as elected members of existing College bodies, members of the classified staff, students, the Affirmative Action Officer, and administrators of the College. It shall be the responsibility of this ad hoc Committee to make recommendations to the President for the development of a Retrenchment Plan (“Plan”) for the College. Each member of the Committee is expected to participate fully in its deliberations; the President shall chair the Committee.

[Footnote:] 2 The term College-wide Personnel and Budget Committee as used throughout these Guidelines is meant to include the College-wide Committee which recommends personnel actions, other than appeals, directly to the President.

Final decision-making with respect to the Plan rests with the President.

### **2.2 THE PRESIDENT AND MEMBERS OF THE COLLEGE-WIDE COMMITTEE CONSULT WITH THE COLLEGE COMMUNITY**

The President<sup>3</sup> each affected College, with the members of the College-wide Committee, separately or collectively, shall consult with representative groups on campus. The President is responsible for determining what programs or activities are to be curtailed or terminated. In making those determinations, she/he shall take into consideration the views expressed by appropriate faculty, staff, and student representatives.

[Footnote:] 3 References to the President and to the College shall be deemed references to the Executive Vice Chancellor and Chief Operating Officer and the University Staff, respectively, in the case of the Central Office.

### **2.3 THE PRESIDENT DEVELOPS THE RETRENCHMENT PLAN**

The President is then responsible for developing a written College Retrenchment Plan to be distributed to the College community through department chairpersons and other academic and non-academic officers of the College responsible for recommending personnel actions. The Plan may be amended from time to time as required.

The College Retrenchment Plan shall set forth the reasons why reduction or termination of academic or non-academic service is required. A timetable for the accomplishment of retrenchment shall be included in the Plan.

The Plan shall clearly identify the academic departments, administrative departments or offices or functional units, including centers, institutes, programs, and specially-funded units

("retrenchment units") within which discontinuances will be made, as well as the number of discontinuances in each retrenchment unit and the period(s) of notice to be given to affected individuals.

#### 2.4 APPROVAL AND DISTRIBUTION OF THE COLLEGE RETRENCHMENT PLAN

The President's completed Plan shall be circulated to members of the College-wide Committee, with opportunity for comment, and to the College Affirmative Action Officer (see Section 3 below) before being submitted to the Chancellor.

The President shall transmit the Plan to the Chancellor along with a report on the process of participation and consultation with respect to the development of the Plan. The Plan shall become effective ten (10) working days after submission to the Chancellor, unless the effective date of the Plan is delayed by direction of the Chancellor.

### **3 AFFIRMATIVE ACTION**

The Board of Trustees has evidenced its commitment to the principles of non-discrimination and affirmative action in policy statements adopted beginning in December, 1970, and most recently reaffirmed in June, 2010. These statements reflect an awareness of and adherence to the federal laws and regulations which both govern and define affirmative action programs at the Colleges of the University.

Although cognizant of the need for reductions in personnel during a time of financial exigency, the Board of Trustees nevertheless reaffirms its commitment to these laws and regulations to ensure nondiscrimination in the treatment of University-designated protected groups. Accordingly, the Board stresses the importance of following affirmative action principles in the implementation of these Guidelines, and requires that:

Each President shall consult with his/her Affirmative Action Officer regarding the President's completed Plan before it is submitted to the Chancellor. The President shall provide to his/her Affirmative Action Officer a list of persons proposed to be discontinued. The Affirmative Action Officer shall immediately, in turn, submit to the President a comprehensive, statistical assessment of the College's work force which reflects the proposed retrenchment actions. The purpose of this consultation is to assure that the President is informed of the potential effect of these proposed actions upon the College's work force. The President shall consider the impact of the proposed retrenchment actions upon the College's work force.

Within three (3) weeks of implementing retrenchment decisions, each President shall submit to the Chancellor an impact statement analyzing the College's new work force profile. Specifically, this impact statement shall reflect the work force inventory of the College, the impact of discontinuances upon women and minorities, by number and percent, within that work force, and the rate at which each University-designated protected group has been retrenched. This statement shall have appended to it a revised utilization analysis including goals and timetables by appropriate affirmative action units.

Upon receipt of the College impact statements, the Chancellor shall report to the Board concerning the University's affirmative action work force profile by College in the light of retrenchment. This University statement shall be supported by the data presented in the College

impact statements. If the Chancellor determines that any retrenchment action is contrary to principles of law relating to affirmative action, he/she shall advise the President of his/her decision and the action the President must take to remedy the defect.

## **4 INSTRUCTIONAL STAFF PERSONNEL – GENERAL PRINCIPLES**

### **4.1 THE DEPARTMENT (OR OTHER UNIT) FOR RETRENCHMENT PURPOSES**

The basic unit for retrenchment purposes within the University is the academic department of the College. Where a College has a divisional or program organization, the divisional or program organization characterized by its own personnel and budget or other equivalent personnel committee, may be the appropriate unit. For other than academic departments, the appropriate unit may be an administrative department, office, or functional unit, such as a center, institute, program, or unit funded for the purpose of implementing a legislative initiative. Each College must identify its units of retrenchment for its instructional staff.

### **4.2 GENERAL PRINCIPLES FOR DISCONTINUANCE OF INDIVIDUAL PERSONNEL**

Once the unit or function to be retrenched has been identified, and it has been determined that personnel must be separated from service, then the following general principles for discontinuance of individuals obtain. In making decisions as to which member or members of a retrenchment unit should be separated from service, individual tenure status assumes primacy according to the State Education Law. Within a given retrenchment unit, any staff member with tenure, regardless of other academic considerations, must be retained over a person who does not have tenure. However, a tenured employee in one retrenchment unit may be discontinued while a non-tenured employee in a different retrenchment unit may be retained.

Non-tenured employees who may be affected by retrenchment may have received prior notices of appointment or reappointment. Appointments or reappointments rescinded or shortened as a result of retrenchment do not indicate or suggest that these specific discontinuances were the result of lack of competence or unprofessional conduct.

### **4.3 CRITERIA TO BE APPLIED FOR THE DISCONTINUANCE OF INDIVIDUALS WHO ARE MEMBERS OF THE INSTRUCTIONAL STAFF**

Retrenchment among instructional staff members holding the same or similar positions should take place in the following order within the retrenchment unit. Whenever the length of service of two or more persons is the same, the ordering among them rests with the judgment of the President.

#### ***4.3.1 ADJUNCT STAFF***

4.3.1.1 Persons with initial appointments who have not yet started work.

4.3.1.2 Persons scheduled to teach class sections which have been withdrawn, for which full-time employees have been rescheduled, for which there is insufficient registration, or for which the determination has been made that the course is not necessary for the fulfillment of any degree program.

4.3.1.3 Persons who have full-time employment outside the University in the inverse order of length of service.

4.3.1.4 Persons who have full-time employment with the University in the inverse order of length of service.

4.3.1.5 Persons who are not CUNY doctoral candidates and who have no additional employment in the inverse order of length of service.

4.3.1.6 Persons who are CUNY doctoral candidates in good standing and are receiving other financial support in inverse order of length of service.

4.3.1.7 Persons who are CUNY doctoral candidates in good standing and are receiving no other financial support in inverse order of length of service.

The foregoing notwithstanding, adjunct or hourly employees teaching courses deemed by the department to be educationally essential so as to merit continuance may be retained over non-tenured full-time personnel or other adjunct or hourly employees with greater length of service. However, the abolition of the position of a tenured or certificated employee and the retention of adjunct personnel should be undertaken for only the most compelling educational reasons.

#### 4.3.2 *RESIDENT SERIES*

Persons employed in titles in the Resident series shall be discontinued in inverse order of length of service in the Resident series, except for special educational reasons.<sup>4</sup>

[Footnote:] 4 The term “special educational reasons” as used throughout these Guidelines means a reason which is non-discriminatory against a person and is related to the educational, programmatic, functional, or administrative needs of the retrenchment unit or College.

#### 4.3.3 *NON-TENURED AND NON-CERTIFICATED INSTRUCTIONAL STAFF – ALL TITLES*

4.3.3.1 Persons who have received letters of appointment for full-time annual salaried positions for initial hire but who have not started their period of employment shall have their appointments revoked prior to the discontinuance of full-time non-tenured or non-certificated instructional staff who have commenced their employment, except for special educational reasons.

4.3.3.2 Persons employed in titles on the instructional staff not holding tenure or Certificates of Continuous Employment shall be discontinued in inverse order of length of full-time continuous service<sup>5</sup> on the instructional staff, except for special educational reasons.

[Footnote:] 5 Continuous service shall be deemed to include periods of continuous service prior to and following approved leaves of absence without pay, but the period of leaves of absence without pay shall not be counted.

#### 4.3.4 *LECTURERS WITH CERTIFICATES OF CONTINUOUS EMPLOYMENT*

4.3.4.1 Full-time instructional staff members holding Certificates of Continuous Employment shall be discontinued before any employee holding statutory tenure in the retrenchment unit.

4.3.4.2 Members of the instructional staff who have received Certificates of Continuous Employment shall be discontinued after all other non-tenured persons in the retrenchment unit.

4.3.4.3 A position held by a person who has received a Certificate of Continuous Employment may be abolished or discontinued by the Board for reasons which are not discriminatory against a particular person or persons. In the event that a certificated position in a retrenchment unit is to be abolished or discontinued, the person who last received his/her Certificate of Continuous Employment shall be the person whose position is first to be abolished, except that for special educational reasons which are not discriminatory against a particular person or persons, the position of a person next most junior may be abolished or discontinued.

#### 4.3.5 *TENURED INSTRUCTIONAL STAFF*

4.3.5.1 Tenured members of the instructional staff shall be discontinued after the discontinuance of all non-tenured persons, including persons holding Certificates of Continuous Employment, in the retrenchment unit. The provisions of subdivision 8 of Section 6212 of the Education Law are applicable to these titles.

4.3.5.2 Where a position in a department is to be abolished or discontinued, a person in any title on the permanent instructional staff who does not have tenure in that department shall be dismissed before a person in a title on the permanent instructional staff who does have tenure in that department.

4.3.5.3 A position held by a person upon the permanent instructional staff may be abolished or discontinued by the Board for reasons which are not discriminatory against a particular person or persons. In the event that a position in a department is to be abolished or discontinued, such position shall be that of the person last appointed to such department, save that, for special educational reasons which are not discriminatory against a particular person or persons, the Board may continue the services of a tenured person or persons whose position or positions would otherwise be abolished or discontinued, and abolish or discontinue the position or positions of the person or persons next most recently appointed to such department.

#### 4.4 *PERSONS IN EXCLUDED TITLES AND FUNCTIONS*

The discontinuance of persons in excluded titles or functions shall be made on the basis of managerial or functional needs without regard to date of initial appointment or length of service. A person discontinued from an excluded title or function who holds tenure or who prior thereto held a position in a tenure-bearing title shall return to the department in which tenure was held, or service toward tenure earned. A tenured person appointed to an excluded title or function in a retrenchment unit other than the department in which he or she holds tenure shall retain his/her tenure rights during the period in which he or she is serving in such

excluded title or function. A non-tenured person appointed to an excluded title or function in a department or unit other than the department in which his/her service toward tenure was earned shall retain such service credit during the period in which he or she is serving in such excluded title or function.

#### 4.5 PERSONS IN EXECUTIVE COMPENSATION PLAN TITLES

Persons serving in titles in the Executive Compensation Plan shall be discontinued in accordance with the Terms and Conditions of Employment for Staff in the Executive Compensation Plan.

#### 4.6 CONTINUING EDUCATION TEACHERS

Persons in the title Continuing Education Teacher shall be discontinued as and when the specific courses which they are teaching are abolished. In the event that there are simultaneous sections or classes in the particular subject, employees shall be discontinued in inverse order of seniority within the Continuing Education Program at the affected College in the title Continuing Education Teacher.

#### 4.7 DISTINGUISHED AND UNIVERSITY PROFESSORS

Persons in titles with the designation Distinguished Professor or University Professor, or other named or specially-funded “chairs” shall be discontinued in the order in which their names appear on the tenured or non-tenured seniority list in accordance with their base titles without the Distinguished Professor or University Professor or named chair designations and shall receive notice of discontinuance in accordance with the provisions applicable to the base titles.

#### 4.8 GRADUATE ASSISTANTS

Decisions regarding Graduate Assistants shall take into consideration their status as students in a CUNY doctoral program, as well as instructional needs.

#### 4.9 INSTRUCTIONAL STAFF IN THE HUNTER COLLEGE CAMPUS SCHOOLS

Instructional staff employed in the Hunter College Campus Schools shall be discontinued in accordance with these Guidelines. The President of Hunter College shall identify the units of retrenchment within the High School and the Elementary School in accordance with Section 4.1 above.

### **5 IMPLEMENTATION OF THE COLLEGE RETRENCHMENT PLAN – NOTIFICATION OF INDIVIDUALS TO BE DISCONTINUED**

1.1 The President, in accordance with the College Retrenchment Plan and the criteria for discontinuance of appointments set forth above, having determined the number of positions to be abolished in each retrenchment unit, shall notify the persons whose appointments are to be discontinued.

1.2 If an entire function, office, or department is to be abolished, or if the number of positions to be abolished is exactly equal to the number of non-tenured or non-certificated

personnel in the unit, the President shall notify the affected persons of the discontinuance of their appointments in accordance with the provisions of the College Retrenchment Plan. The President shall also notify the affected persons of the effective date of discontinuance and indicate that the action resulting from the need for retrenchment was not the result of lack of competence or unprofessional conduct. Discontinuances within the circumstances described in this section require no further justification.

1.3 If Section 5.2 is not applicable, the President shall notify each person whose appointment is to be discontinued of such discontinuance and the justification therefor, which shall be either length of service or a special educational reason. If discontinuance is based on a special educational reason, the special educational reason shall be stated in the letter of notification.

1.4 Notification of discontinuance of appointment shall be by certified mail and simultaneously by regular first class mail.

1.5 Discontinued individuals shall have notice mailed not later than fifteen (15) working days after the approval of the College's Plan by the Chancellor unless the effective date is delayed by the Chancellor. In the latter case, notice shall be mailed not later than fifteen (15) days after the effective date of the Plan established by the Chancellor.

1.6 For tenured and certificated members of the instructional staff, discontinuance of appointment shall be effective not less than twelve (12) months including annual leave after the date of mailing of notification or such date as specified in the letter, whichever is later; or if the departments in which they hold appointment are being abolished, on the date specified in the letter of notification in accordance with the provisions set forth above.

1.7 For non-tenured and non-certificated faculty members, persons in the College Laboratory Technician series and the Registrar series serving in full-time titles, discontinuance of appointment shall be effective not less than six (6) months including annual leave after the date of mailing of notification or such date as specified in the letter, whichever is later; or if the departments in which they hold appointment are being abolished, on the date specified in the letter of notification in accordance with the provisions specified above.

1.8 For persons serving in the Higher Education Officer series, who have received a Certificate of Continual Administrative Service pursuant to Section 13.3.b. of the PSC/CUNY collective bargaining agreement, discontinuance of appointment shall be effective not less than six (6) months including annual leave after the date of mailing of notification or such date as specified in the letter, whichever is later; or if the retrenchment units in which they hold appointment are being abolished, on the date specified in the letter of notification in accordance with the provisions set forth above.

1.9 For all other persons serving in the Higher Education Officer series and persons serving in the Research Assistant, Research Associate, and Substitute (full-time) titles, discontinuance of appointment shall be effective not less than sixty (60) days including annual leave after the date of mailing of notification or such date as specified in the letter, whichever is later.

1.10 For members of the instructional staff serving in adjunct titles whose employment has commenced, discontinuance of appointment shall be effective not less than thirty (30) days after the date of mailing of notification or such date as specified in the letter, whichever is later.

1.11 For persons who have received letters of appointment for full-time or annual salaried positions on the instructional staff but whose appointment date is in the future, revocations of the offer of appointment shall be effective not less than fifteen (15) days after the date of mailing of notification.

1.12 In the event a person has received or is scheduled to receive a notice of reappointment or non-reappointment, the earlier of the dates of either non-reappointment or discontinuance pursuant to these Guidelines shall prevail.

## **6 REVIEW AND APPEALS PROCEDURE**

6.1 A person who has been discontinued pursuant to these Guidelines may request a review of the decision within twenty (20) calendar days of the date of the letter of notification. Such request shall be filed with the Office of the President of the College.

6.2 After consultation with the ad hoc College-wide Committee, a special retrenchment review committee or committees shall be established by the President to consider appeals timely submitted. Each such committee shall be composed of no fewer than three tenured members of the instructional staff of the College.

No member of a department P & B Committee, the ad hoc Committee, or other person who has formally participated in the recommendation of the discontinuance of an individual to the President shall participate in the consideration of, or decision on, the appeal of such person.

In the Central Office, the Vice Chancellor for Human Resources Management shall designate a special retrenchment review committee. No Vice Chancellor shall participate in the consideration of or decision on appeal of a person within the area of his or her jurisdiction.

6.3 The affected individual may appeal to the retrenchment review committee and has the burden of establishing through the presentation of evidence that:

Where the determination was made on the basis of length of service, that the P & B Committee or party making the decision did not correctly compute the length of service in accordance with these Guidelines.

Where the determination was made on the basis of special educational reasons, that the reason given was unsupported by the stated educational, programmatic, functional, or administrative needs of the retrenchment unit.

That the applicable retrenchment unit was arbitrarily and capriciously identified.

6.4 An appellant may request to meet with the Committee, present relevant evidence and be represented by counsel or a representative of the certified collective bargaining agent if the appellant is covered by a collective bargaining agreement.

6.5 At the request, and at the expense, of the appellant, a stenographic record of the appeal hearing shall be made.

6.6 The Committee shall make a report and recommendation to the President for transmission to the Chancellor or his or her designee who shall make the final decision and notify the

appellant by certified and regular mail, and shall also notify the President. The Chancellor's designee shall not be chosen from the College from which the appellant was discontinued.

## **7 TRANSFER EFFORTS AND PREFERRED ELIGIBLE LISTS**

### **7.1 TRANSFER EFFORTS (TENURE)**

7.1.1 When the position of a tenured member of the instructional staff is abolished or discontinued, the College shall attempt to find a vacant position in the College which can be efficiently and capably filled by such person. No priority shall obtain among persons whose positions have been abolished or discontinued for purposes of transfer efforts. A vacant position is a full-time position which the College has the financial ability to fill and intends to fill, and with respect to which there is no applicable preferred eligible list, or from which no person is on a leave of absence with or without pay.

7.1.2 If such position is found, the person who is offered and accepts such position shall have tenure therein, provided such position is on the permanent instructional staff. Tenure or seniority in the new department shall date from the effective date of appointment to the new position. Such person shall be advised of the title and salary of the new position.

7.1.3 The acceptance of a position pursuant to this Section shall not preclude the placement of such person's name on the preferred eligible list for his/her original retrenchment unit as provided in Section 7.3.

### **7.2 TRANSFER EFFORTS (CERTIFICATE OF CONTINUOUS EMPLOYMENT)**

7.2.1 When the position of a Lecturer holding a Certificate of Continuous Employment is abolished or discontinued, the College shall attempt to find a vacant position in the College which can be efficiently and capably filled by such person, provided that transfer efforts shall be made for such Lecturers only after such efforts are made pursuant to Section 7.1 herein for any tenured member of the instructional staff whose position has been abolished or discontinued. A vacant position is a full-time position which the College has the financial ability to fill and intends to fill, and with respect to which there is no applicable preferred eligible list, or from which no one is on a leave of absence with or without pay.

7.2.2 If such position is found, the Certificate of Continuous Employment shall not be applicable thereto unless the position is that of Lecturer. Seniority in the new department shall date from the effective date of appointment to the new department. Such person shall be advised of the title and salary of the new position.

7.2.3 The acceptance of a position pursuant to this Section shall not preclude the placement of such person's name on the preferred eligible Lecturer list for his/her original retrenchment unit as provided in Section 7.4 hereof.

### **7.3 PREFERRED ELIGIBLE LISTS (TENURE)**

#### ***7.3.1 Establishment of Preferred Eligible Lists***

7.3.1.1 There shall be a separate preferred eligible list of discontinued tenured persons for each retrenchment unit, with the exception of the following:

A person who has filed for retirement with the retirement system of which he/she is a member.

A person who is collecting a retirement benefit from the retirement system of which he/she is a member.

A person who is collecting a retirement benefit from the optional retirement program based in whole or in part on CUNY service.

A person who is collecting a retirement benefit from any retirement system or program of New York State or any political subdivision thereof.

7.3.1.2 Each list shall be applicable to the retrenchment unit for which it was created. The retrenchment unit is the academic department of the College, or the division or program where the College is so organized, or, for other than academic departments, the administrative department, office, or functional unit from which such person was discontinued.

7.3.1.3 When the position of a tenured member of the instructional staff is abolished or discontinued, the name of such person shall be placed forthwith on the preferred eligible list for the retrenchment unit in which he/she last served. The names on each such list shall be ranked in order of the effective date of appointment to the department or other retrenchment unit. If two or more persons were appointed effective the same date, the person with the longest full-time continuous service on the instructional staff shall be listed first, then the person with the longest combination of full- and part-time continuous service on the instructional staff, and finally, in random order. For purposes of this paragraph, continuous service shall include continuous service prior to an approved leave of absence without pay.

7.3.1.4 The head of each retrenchment unit shall forward to the President the names of all persons to be placed on the preferred eligible list(s). The President shall designate a person to be responsible for, coordinate, and update all preferred eligible lists.

7.3.1.5 A person who elects not to have his or her name placed on a preferred eligible list shall so indicate in writing to the President's designee in charge of lists. Such election shall constitute a permanent waiver of all preferred eligible rights.

### 7.3.2 *Use of Preferred Eligible Lists*

7.3.2.1 When a position on the instructional staff other than a Lecturer position becomes vacant in the retrenchment unit or there is a newly-created position on the instructional staff other than a Lecturer position in the retrenchment unit, appointment shall be offered to the person whose name is listed first on the preferred eligible list for that retrenchment unit, except that for special educational reasons, which are not discriminatory against a particular person or persons, the person or persons next on the list may be offered appointment in lieu thereof. For the purposes of use of preferred eligible lists, a vacant position is a full-time position which the College has the financial ability to fill, intends to fill, and from which no person is on a leave of absence with or without pay.

7.3.2.2 If the position offered is in the same title as that held at the time of discontinuance, the person shall be deemed restored to his/her original position, and shall be appointed at a salary not less than that which he or she was receiving at the time of discontinuance.

7.3.2.3 If the position offered is not in the same title as held at the time of discontinuance, such person shall have tenure in the new position, provided it is on the permanent instructional staff, and the original date of tenure in the department shall be the tenure date. Such person shall be advised of the title and salary of the new position. Such person shall retain his/her place on the preferred eligible list.

7.3.2.4 If there is a vacant or newly-created position in the Lecturer title, and no person is on a preferred eligible Lecturer list for such title in the retrenchment unit, such position shall be offered to persons on the preferred eligible list of tenured persons in accordance with Section 7.3.2.3 hereof.

7.3.2.5 Offers shall be made by certified mail to the address on file with the President's designee for lists. Acceptances shall be by certified mail to the President within four weeks of the mailing of the offer. The four-week period may be reduced by the President if circumstances mandate.

7.3.2.6 Failure to accept an offer of appointment from a preferred eligible list to the title held when discontinued in the retrenchment unit from which discontinued, within the period specified herein, shall cause the name of such person to be removed therefrom forthwith, subject to Section 7.3.2.7 hereof.

7.3.2.7 If a person to whom an offer of an appointment from a preferred eligible list is made notifies the President within the time provided in Section 7.2.3.5 hereof that he or she cannot accept such offer for reasons which in the judgment of the President would otherwise justify a leave of absence with or without pay, or if such person demonstrates to the satisfaction of the President a present commitment to another employer, such appointment may be made effective for the term or semester commencing after the term or semester for which the offer is initially made, but in no event shall a person's name remain on the list for a period longer than three years. A substitute may be employed as interim appointee for the position.

7.3.2.8 All appointments of persons on preferred eligible lists shall be subject to the approval of the Board of Trustees and continued financial ability.

7.3.2.9 The restoration of a person from a preferred eligible list to the title held when discontinued, in the retrenchment unit from which discontinued, shall automatically remove his/her name from such list.

### *7.3.3 Terms and Conditions of Lists*

7.3.3.1 Unless earlier removed as provided herein, a person's name shall remain on an eligible list for a period of three years and shall be removed at the end of such period.

7.3.3.2 Upon application to the pension system to which he/she belongs by a discontinued employee that he/she wishes to retire or he/she is collecting a retirement benefit from any

retirement program, based in whole or in part on CUNY service, or, he/she is collecting a retirement benefit from any New York State retirement system or its political subdivisions, the name of such discontinued employee shall be removed from the eligible list, effective the date of approval of the application by his/her retirement system, but in no event later than the date of issuance of the first benefit payment.

7.3.3.4 The placement of a person's name on a preferred eligible list shall not preclude such person from accepting an appointment, if offered pursuant to the normal appointment procedures, to a vacant position within the University. Such person shall have tenure in the new position provided it is on the permanent instructional staff. Tenure in the new department shall date from the effective date of appointment to the new position. Such person shall be advised of the title and salary of the new position. Such person shall retain his/her place on the preferred eligible list for the original retrenchment unit.

7.3.3.5 A person who is employed by the Board while his/her name is on a preferred eligible list, and who accepts an appointment from such eligible list to his/her original department shall retain no rights in or to the interim position.

7.3.3.6 A person whose name is placed on a preferred eligible list shall be deemed to be on leave without pay for the purpose of maintaining his/her status in any retirement system of which he/she is a member for the period his/her name is on the list, but service credit for retirement purposes shall not be accorded for such period. This paragraph shall not apply to persons who are employed by the Board and are receiving credit for retirement purposes as such employees while their names are on such lists.

7.3.3.7 Except for the purposes of Section 7.3.3.6 hereof a person whose name is on a preferred eligible list shall not be deemed thereby to be an employee of the Board of Trustees, and shall not be entitled to increment credit during the time he/she is on such list.

7.3.3.8 Any knowing misstatement or omission of material fact supplied by a candidate for or person listed on a preferred eligible list shall cause the immediate removal of a person's name from the preferred eligible list.

7.3.3.9 A person shall be notified of the removal of his/her name from a preferred eligible list, but failure of notification shall not cause retention of such person's name thereon.

7.3.3.10 A person whose name is to be placed on a preferred eligible list shall complete and deliver such forms as shall be issued by the Office of Human Resources Management. It is the responsibility of the person listed to keep the College informed of his/her current address and to update other required information as necessary, and failure to do so shall be the sole responsibility of the person involved. The University reserves the right to rely upon the latest information supplied by persons on preferred eligible lists.

## 7.4            PREFERRED ELIGIBLE LISTS (CERTIFICATE OF CONTINUOUS EMPLOYMENT)

### *7.4.1            Establishment of Preferred Eligible Lists.*

7.4.1.1 There shall be a separate preferred eligible list of discontinued certificated Lecturers in each retrenchment unit, with the exception of the following:

- A person who has filed for retirement with the retirement system of which he/she is a member.
- A person who is collecting a retirement benefit from the retirement system of which he/she is a member.
- A person who is collecting a retirement benefit from the optional retirement program based on whole or in part on CUNY service.
- A person who is collecting a retirement benefit from any retirement system or program of New York State or any political subdivision thereof.

7.4.1.2 Each list shall be applicable only to the retrenchment unit for which it was created. Such list shall be called the preferred eligible Lecturer list. The retrenchment unit is the academic department of the College, or the division or program, where the College is so organized, or, for other than academic departments, the administrative department office, or functional unit, from which such person was discontinued.

7.4.1.3 When the position of a member of the instructional staff with a Certificate of Continuous Employment is abolished or discontinued, the name of such person shall be placed forthwith on the preferred eligible Lecturer list for the retrenchment unit in which he or she last served. The names on each such list shall be ranked in order of effective date of appointment to the department or other retrenchment unit. If two or more persons have been discontinued on the same date, the person with the longest full-time continuous service on the instructional staff shall be listed first, the person with the longest combination of full-time and part-time continuous service on the instructional staff, and finally, in random order. For the purposes of this paragraph, continuous service shall include continuous service prior to an approved leave of absence without pay.

7.4.1.4 The head of each retrenchment unit shall forward to the President the names of all persons to be placed on preferred eligible Lecturer list(s). The President shall designate a person to be responsible for, coordinate, and update all preferred eligible lists.

7.4.1.5 A person who elects not to have his or her name placed on the preferred eligible lecturer list shall so indicate in writing to the President's designee for lists. Such election shall constitute a permanent waiver of all preferred eligible rights.

### *7.4.2            Use of Preferred Eligible Lecturer Lists*

7.4.2.1 When a Lecturer position becomes vacant, or a new Lecturer position is created in the department or other retrenchment unit, appointment shall be offered to the person whose name is listed first on the preferred eligible Lecturer list for that department or

other retrenchment unit except that for special educational reasons, which are not discriminatory against a particular person or persons, the person or persons next on the list may be offered appointment in lieu thereof. A person restored from a preferred eligible Lecturer list shall be appointed at a salary not less than that which he/she was receiving when his/her position was abolished or discontinued. For the purposes of use of preferred eligible Lecturer lists, a vacant position is a full-time Lecturer position which the College has the financial ability to fill, intends to fill, and from which no person is on a leave of absence with or without pay.

7.4.2.2 Offers shall be made by certified mail. Acceptances shall be by certified mail to the President within four weeks of the mailing of the offer. The four week period may be reduced by the President if circumstances mandate.

7.4.2.3 Failure to accept an offer of appointment from a preferred eligible Lecturer list within the period specified herein shall cause the name of such person to be removed therefrom forthwith subject to Section 7.4.2.4 hereof.

7.4.2.4 If a person to whom an offer of an appointment from a preferred eligible Lecturer list is made notifies the President within the time provided in Section 7.4.2.2 hereof that he or she cannot accept such offer for reasons which in the judgment of the President would otherwise justify a leave of absence with or without pay, or if such person demonstrates to the satisfaction of the President a present commitment to another employer, such appointment may be made effective for the term or semester commencing after the term or semester for which the offer is initially made, but in no event shall a person's name remain on the list for a period longer than three years. A substitute may be employed as interim appointee for the position.

7.4.2.5 All appointments from preferred eligible Lecturer lists shall be subject to approval of the Board of Trustees and continued financial ability.

7.4.2.6 The restoration of a person from a preferred eligible Lecturer list to the retrenchment unit from which discontinued shall automatically remove his or her name from such list.

### 7.4.3 *Term and Conditions of Lists*

7.4.3.1 Unless earlier removed as provided herein, a person's name shall remain on an eligible list for a period of three years and shall be removed at the end of such period.

7.4.3.2 Upon application to the pension system to which he/she belongs by a discontinued employee that he/she wishes to retire or he/she is collecting a retirement benefit from any retirement program, based in whole or in part on CUNY service, or, he/she is collecting a retirement benefit from any New York State retirement system or its political subdivisions, the name of such discontinued employee shall be removed from the preferred eligible list, effective the date of approval of the application by the appropriate retirement system.

7.4.3.3 The placement of a person's name on a preferred eligible Lecturer list shall not preclude such person from accepting an appointment, if offered pursuant to the normal appointment procedures, to a vacant position within the University. Such person shall be

advised of the title and salary of the new position. Such person shall retain his/her place on the preferred eligible Lecturer list for the original retrenchment unit.

7.4.3.4 A person who is employed by the Board while his/her name is on a preferred eligible lecturer list, and who accepts an appointment from such eligible list to his/her original department shall retain no rights in or to the interim position.

7.4.3.5 Insofar as permitted by law a person whose name is placed on a preferred eligible Lecturer list shall be deemed to be on leave without pay for the purpose of maintaining his/her status in any retirement system of which he/she is a member for the period his/her name is on the list, but service credit for retirement purposes shall not be accorded for such period. This paragraph shall not apply to persons who are employed by the Board while their names are on such lists.

7.4.3.6 Except for the purposes of Section 7.4.3.5 hereof, a person whose name is on a preferred eligible Lecturer list shall not be deemed thereby to be an employee of the Board of Trustees, and shall not be entitled to increment credit during the time he/she is on such list.

7.4.3.7 Any knowing misstatement or omission of material fact supplied by a candidate for or a person listed on a preferred eligible Lecturer list shall cause the immediate removal of a person's name from such list.

7.4.3.8 A person shall be notified of the removal of his/her name from a preferred eligible Lecturer list, but failure of notification shall not cause retention of such person's name thereon.

7.4.3.9 A person whose name is to be placed on a preferred eligible Lecturer list shall complete and deliver such forms as shall be issued by the Office of Human Resources Management. It is the responsibility of the person listed to keep the College informed of his/her current address and to update other required information as necessary, and failure to do so shall be the sole responsibility of the person involved. The University reserves the right to rely upon the latest information supplied by persons on preferred eligible Lecturer lists.

## **8 COLLECTIVE BARGAINING GRIEVANCE AND ARBITRATION PROVISIONS**

Nothing in these Guidelines shall impair any rights which may exist concerning grievance and arbitration provisions of collective bargaining agreements.

## **9 GENERAL NOTES AND COMMENTS**

9.1 A person whose position is discontinued shall receive the value of his/her remaining accumulated annual leave in a lump sum after the effective date of discontinuance. Between the date of notice and the effective date of discontinuance, the employee may be required to use accumulated annual leave.

If a person whose position is discontinued meets the requirements for retirement leave as set forth in Article 13 of the Bylaws and notice of intent to retire is provided to the College not less

than thirty (30) days prior to the effective date of discontinuance, such leave shall be provided, except as limited herein.

9.2 Persons being discontinued may be entitled to a range of benefits. The Colleges and the Central Office will provide such information and be prepared to assist discontinued personnel in understanding their rights.

9.4 Persons whose services are discontinued pursuant to these Guidelines and Procedures cease to be employees of the University as of the date of discontinuance, unless such employees have rights to revert to other Instructional Staff or Classified Service positions. Notice of non-reappointment in the discontinued position for future periods should not be sent to such persons. Notwithstanding the foregoing, a person discontinued pursuant to these Guidelines and Procedures may be appointed for a future period pursuant to the normal appointment procedures or pursuant to the Rules and Procedures for Preferred Eligible Lists.

(BTM,1992,04-27,005,\_B). Amended: (BTM,1998,09-28,006,\_I); (BTM,2011,11-28,005,\_B)