

**Manhattan Area Technical College
Institutional Policy and Procedure Manual**

Policy No. 6.5.6

Title: Financial Exigency Policy	
Originated By: Carmela Jacobs, Vice President of Operations/Chief Financial Officer	
Signature 	Date: July 7, 2018
Reviewed:	
Signature	Date
Approved:	Revised:

Purpose: To provide guidelines and procedures in the determination and declaration of a financial exigency and to define circumstances where adverse employment action may be necessary for curriculum reasons.

Definition. Financial exigency: the financial position of Manhattan Area Technical College (“the College”) as a whole is such that the financial resources of the College are insufficient to support existing academic programs, or the College is unable to finance the full compensation of staff for the current or succeeding fiscal year. This includes an enrollment decline, cuts in funding, an unforeseen natural disaster requiring significant expenditures for repair or remediation, and an unanticipated major expense, including significant repair costs and litigation expenses.

Policy Statement: The President of the College, acting on behalf of the Board of Directors (“the Board”), recognizes that if it may become necessary to restrict, modify, or eliminate some of the programs under its governance due to unfavorable economic conditions. The President further recognizes that under such circumstances the College may be compelled to take certain adverse employment actions to ensure that it can fulfill its purposes and goals. Such action may be necessary in the event of a financial exigency, or for curricular reasons.

Procedure: In the event program restriction, modification, or elimination becomes necessary, the President may declare a financial exigency. A financial exigency shall exist only upon the President’s declaration, and responsibility and authority to make such a declaration rests solely with the President.

Financial Exigency Plan and Implications

- After consultation with the Board, Faculty Senate, and other appropriate personnel, the President of the College shall prepare a plan (“Plan”) in response to the declaration of financial exigency. In developing this Plan, consideration shall be given to the necessity and manner of reducing the employment force, the appropriate departments or programs to be affected, and the criteria for identifying employees who will be affected by the Plan. Once completed, the Plan must be approved by the Board.
- Notwithstanding any other Policy or procedure of the College, all categories of employees may be subject to reductions in force as a result of a Board approved declaration of financial exigency. The process used to identify employees to be terminated must be equitable, in good faith, and directly related to the financial exigency.
- In developing the Plan, the President of the College must utilize as the first criterion, the preservation of the overall quality and effectiveness of the programs of the College. Consequently, employees deemed to be of key importance will be retained, at the discretion of the President, in preference to other employees, regardless of status. Programs, for purposes of financial exigency, include, but are not limited to, academic, non-instructional, maintenance, administrative, and other support areas. Other criteria that may be considered include, but are not limited to, renewable contract status, rank, time in rank, length of service, field of specialization, maintenance of necessary programs or services, and quality of service.

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- Additional actions including, but not limited to: The termination of the employment of faculty during the term of their contract of employment; the non-renewal of employment contracts for faculty members on renewable contract status; employment actions other than terminations that are designed to reduce budgetary expenditure; the closure, relocation, or discontinuance of any program or activities.
- It is not a requirement of financial exigency that all or most nontenured positions through the College be first eliminated. All reasonable steps to honor the commitment to tenured persons will be taken. However, departments which are tenured-in will not be invulnerable to personnel reductions until all non-tenured personnel have been released. Such a policy would be destructive of College programs and unjust to faculty in departments where the tenure rate is low. The Plan must be sensitive to the magnitude of teaching demands made on each department, as well as the basic need to have significant representation from the various fields of scholarship.
- Should it be necessary to terminate a tenured person, this policy will ensure that such individuals will have priority for re-hiring as appropriate opportunities arise.
- The College will maintain its commitment and legal obligation to affirmative action and will safeguard, to the extent possible, the gains made under these policies.

Curricular Revisions

The President also recognizes that it may become necessary to take adverse action related to employment and/or programs for curricular reasons. Curricular reasons include, but are not limited to:

- An enrollment decline (an “enrollment decline” means a pattern of declining enrollment across the College or within a program; i.e. a significant and sustained downward trend over time.) The President is responsible for determining when an enrollment decline exists that is sufficient to invoke this policy.
- A reorganization or consolidation compelling the elimination of the need for particular faculty expertise or a reduction in the overall need for faculty in a department or division.
- The termination of a program from the curriculum where such termination eliminates or reduces the need for faculty qualified in that discipline or area of specialization
- Compliance with objectives of the college to provide technical education to meet community needs, whereas the industry needs within the community have abruptly developed restructuring financial allocation of programs

Employment Actions Related to Financial Exigency/Curricular Revisions

- In any situation where a termination may be made under this policy, an employment action other than a termination (including but not limited to a salary reduction, a teach-out reduction, a demotion and/or administrative leave without pay) may also be considered and instituted. In determining whether to implement actions other than a termination, the College shall use the same policies that apply to a termination because of a financial exigency or for curricular reasons. However, employees who are affected by employment actions other than a termination may not have reinstatement rights.
- If the College intends to take employment action pursuant to this policy other than, or in addition to, a termination, the employees affected by such action shall be entitled to such procedures as are set forth in this paragraph, and those that may be set forth in the Plan, if any, and the College’s Separation from Employment Policy. Notice requirements, and the description of the process for the opportunity to be heard for faculty members, are set forth in the College’s Separation from Employment Policy. Employees who are at-will are not entitled to any specific notice, or an opportunity to be heard. However, at-will employees may utilize 3.7.4, General Complaint and Grievance Policy. At-will employees may not contest the President’s decision to declare a financial exigency, or the funding and distribution amongst the various departments and/or programs of the College. The decision of the President to declare financial exigency is at the President’s discretion, following

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the consultation of the Board, and may not be contested by any employee in any type of hearing or appeal procedure.

- If employing this policy reveals that it fails to specify the procedures for carrying out some aspects of the faculty reduction in force that it envisions, the necessary additional procedures shall be devised by the President in such a way, which conforms, as much as possible, to the general plan and procedures already specified by the policy.

Students Affected by Declared Financial Exigencies/Curricular Revisions

Student(s) enrolled in a program that is closed, relocated, or discontinued pursuant to a financial exigency plan, or because of curricular reasons, should be given notice thereof as soon as is practical. Arrangements should be made available to enrolled students to complete affected programs in a timely manner, and with minimal interruptions.

TERMINATION OF EXIGENCY

The President, following consultation with the Board, will declare the end of financial exigency when the financial status of the College warrants. However, if financial exigency is to continue more than a year, the President, following consultation the Board, will annually present a financial status report to the Faculty Senate, and indicate that financial exigency will continue.

Restoration of Unclassified Positions Following the Period of Financial Exigency

When the President, in the annual review of financial exigency at Faculty Senate, indicates that no faculty member shall be dismissed, except for cause, during the coming academic year, the period of financial exigency shall be considered terminated.

A faculty member released according to the procedures applicable to, and in consequence of, financial exigency at the time of termination shall be placed on lay-off status, a condition that will assure the person continuance of all permissible rights available to faculty members. Such a person shall remain on lay-off status for two years after the termination of exigency or until the person:

- accepts or rejects an offer of appointment to the position from which the person was released;
- accepts or rejects an offer of appointment to a position within the College comparable in status and compensation to that from which the person was released;
- fails to notify the College in writing of their interest and availability every six (6) months after the termination date of their contract;
- resigns.

During and upon emergence from financial exigency, the College must honor the reinstatement rights of faculty members released under financial exigency. The President shall notify (by certified mail, return receipt requested, to the latest address supplied by the individual) all released faculty members on termination/lay-off status whenever a position becomes available for which a review has indicated them to be qualified for candidacy. If a vacancy occurs or a position is restored in a department from which said individuals were released due to financial exigency, those persons shall be offered reinstatement in reverse order. If in another department a vacancy occurs for which a released faculty member on lay-off status is qualified for candidacy, that person shall be so notified and shall be considered for the position through the department's normal selection process.

Any faculty member reduced from staff is accorded reinstatement rights unless he/she:

- waives reinstatement rights in writing;
- fails to accept recall to a position for which he/she is qualified;

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- fails to respond with the ten (10) days to a recall notice sent to the latest address which he/she has furnished to the College;
- or fails to report for duty in the accepted position.

The name of such person is then removed from the list, and said faculty member has no further reinstatement rights.

This policy does not apply to the following:

- Where reductions in force are made via the non-renewal process for faculty members who are not on renewable contract status.
- When a reduction in force affects at-will employees.

Due Process

Persons released under financial exigency who claim that their reinstatement rights have been infringed upon shall have access to the current due process and grievance procedures to the extent that such procedures are consistent with the terms of this policy.