

LOUISIANA COMMUNITY & TECHNICAL COLLEGE SYSTEM
Policy # 6.034

Title: LCTCS Force Majeure Exigency Policy for Modification and/or Discontinuation of Programs as a Result of Hurricanes Katrina and Rita

Authority: Board Action

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Last Revision: Initial

1. **Board Findings.** The Board of Supervisors of the Louisiana Community and Technical College System (“the Board”) hereby finds that:
 - A. The twin catastrophic disasters of Hurricanes Katrina and Rita have forced consideration of significant institutional changes at the directly affected Louisiana Community and Technical College (“LCTCS”) in New Orleans, Lake Charles, and other areas of South Louisiana. **This policy shall apply only to program modifications and/or discontinuances directly or indirectly arising as a result of those hurricanes, including the subsequent displacement of much of the populations of New Orleans Lake Charles, and other areas of South Louisiana;**
 - B. The Governor of Louisiana, in Proclamations 48 KBB 2005, 53 KBB 2005, 54 KBB 2005, and 60 KBB 2005, and the President of the United States of America have declared states of major disaster and emergency in the city of New Orleans and throughout affected parishes of Louisiana recognizing the severe and historical damage caused by the two hurricanes, which damages were completely beyond the cause and control of the Board, officers, and administration of the LCTCS and its institutions;
 - C. The effects of the two hurricanes have significantly altered the capabilities of the directly affected LCTCS institutions to provide the programs and services previously provided;
 - D. As a result of their diminished capabilities, the affected LCTCS institutions will have to consider modifying or discontinuing some programs and activities on various campuses;
 - E. Article VII, Section 14 of the Louisiana Constitution prohibits the donation of public funds and therefore prohibits payment of salary to employees for whom no work is available;
 - F. A substantial portion of the budgets for the affected LCTCS institutions relies on revenue streams that do not currently exist. Specifically, restoration of the revenue streams necessary to provide the traditional programs and services will take substantial time; the population bases in New Orleans, Lake Charles, and other directly affected localities and parishes have been substantially diminished; and campus facilities have been destroyed or are non-operational;
 - G. Emergency measures are necessary to enable the LCTCS to continue its fundamental missions on the various campuses within the areas directly affected by the hurricanes;

- H. The responsibility and authority to address such issues is placed upon the Board of Supervisors by Article 8, Section 7.1 of the Louisiana Constitution by mandating that the Board supervise and manage “all programs of public postsecondary vocational-technical training and, as provided by law, institutions of higher education which offer associate degrees, but not baccalaureate degrees” within the LCTCS;
- I. As part of that responsibility, the Board has previously recognized that “Tenure”, previously earned by its employees while under the supervision and management of other management boards, as a fundamental right of those protected academic employees; however, the Board declares that “Tenure” is not a guarantee of lifetime employment, particularly in the face of institutional change or financial exigency. “Tenure” does assure that the employee will not be dismissed without adequate justification and without due process;
- J. The Policies previously adopted by the Board and upon which all related employment contracts are predicated recognize the time periods for notice of termination or non-re-appointment that are predicated upon ordinary circumstances and are not controlling during a circumstance such as that in which the LCTCS finds itself as a result of the effects of Hurricanes Katrina and Rita;
- K. The circumstances described above have caused and will for the foreseeable future continue to cause significant institutional change and revenue shortfalls at LCTCS institutions;
- L. As a consequence of the destruction caused by those two hurricanes, LCTCS institutions and related components are expected to realize eventual lay-offs of classified and unclassified employees; and
- M. The following procedures to modify or discontinue programs and take Disaster-caused Employment Actions at LCTCS institutions are appropriate for the Board to respond to this crisis in an orderly and reasonable manner while respecting the needs and rights of the affected employees to the fullest extent possible under these extraordinary conditions.

2. **Procedures for Program Discontinuance**

- A. The procedures set forth below shall be followed by the LCTCS President and the Chancellors of LCTCS institutions to modify or discontinue programs and activities, including furlough, lay-off, or termination of tenured and non-tenured faculty members, unclassified staff, and other contract employees before the end of their contract term (“Disaster-caused Employment Actions”) when such modification or discontinuance is implemented as a result of hurricanes Katrina and Rita.
- B. In implementing these procedures, the President and the Chancellors shall give primary consideration to the maintenance of sound and balanced educational and other programs that are consistent with the functions and responsibilities of each affected institution.
- C. Prior to making a recommendation to discontinue a program or activity, the Chancellors shall take reasonable steps under the circumstances to consult with deans (or equivalents), department heads and faculty representatives.
- D. Upon a determination by the Chancellors that it is in the best interests of the institution to discontinue a program or activity, the Chancellors shall make such a recommendation to

the President. The President shall make a recommendation to the Board, which shall make the final decision.

- E. Upon a determination by the Board that a program or activity should be discontinued, the President of the LCTC System shall have final authority to implement the plan, including related Disaster-caused Employment Actions.
- F. The authority of the Chancellors to transfer any employee from one program or activity to another (or participate in multiple programs) within the institution is recognized and affirmed.
- G. After a determination by the Board to discontinue a program or activity, each employee remaining within the program shall be furloughed, laid off, or terminated and provided notice and opportunity to be heard pursuant to the provisions of Section 4 of this plan.

3. **Procedures for Program Modification**

- A. The Chancellors shall determine how many and what type of positions are currently needed, can be funded, and have work to be done in the various programs or activities: (i) that are not recommended for discontinuance and (ii) for which modification is feasible and appropriate.
- B. The Chancellors shall consult with the deans (or equivalents), department heads and, as reasonable under the circumstances in his determination, faculty members. For purposes of these procedures, the following words shall have the given meaning: (1) "Furlough" means the employee is placed on temporary leave without pay status before the end of the employee's contract term; (2) "Lay-off" means the employee is temporarily dismissed before the end of the employee's contract term; (3) "Terminate" means the employee is permanently separated from the institution. Both furloughs and lay-offs may lead to eventual termination.
- C. Whenever practicable and reasonable, employees should be furloughed rather than laid-off or terminated, until more information is available to determine the institution's future needs and capabilities.
- D. The initial decision to take Disaster-caused Employment Action as to a particular employee shall be made by the Deans (or equivalents) after consultation with the department heads (or equivalents). The Deans shall recommend any such action to the Chancellors based on the following criteria:
 - i. The needs and requirements of the institution and the program or activity, with the primary focus on the maintenance of sound and balanced programs and activities that are consistent with the functions and responsibilities of the institution; and
 - ii. The value an individual employee provides toward meeting the needs and requirements of the institution, which may be based upon:
 - a. The existence of a revenue stream dedicated to or based on the work of the employee (e.g., grants, contracts, etc.);
 - b. The employee's specific teaching skill set, particularly when that skill set would be difficult to replace;
 - c. The employee's recent performance and productivity, including academic (teaching and other scholarship), clinical service, and administrative accomplishments;

- d. The employee's history of productivity, including academic (teaching and other scholarship), clinical service, and administrative accomplishments;
- e. Evidence of the employee's long-standing commitment and contributions to the institution;
- f. Evidence of the employee's outstanding service to the institution in the immediate aftermath of Hurricanes Katrina and Rita; and
- g. Other relevant and compelling institutional considerations.

4. **Procedures for Notification and Review**

- A. Once a program or activity has been discontinued or the Deans (or equivalents) have made a recommendation for, The affected LCTCS institution shall notify each affected employee of the proposed Disaster-caused Employment Action in writing (including e-mail when available and reliable). The notice shall include a summary of the proposed action, the reasons therefore, and the available review procedures.
- B. An employee notified of a proposed Disaster-caused Employment Action may respond in writing to the proposed action within five (5) days, exclusive of Saturday, Sunday, and legal holidays, from their receipt of the notice and request an opportunity to be heard. The request shall be sent to the institution's Vice-Chancellor for Academic Affairs who, with the affected Dean (or designee), shall meet with the employee within five (5) days of the request. The Vice-Chancellors and the Deans (or designee) shall listen to and consider any facts and contentions presented by the employee and review the initial recommendation as to that employee, in light of the information provided by the employee. Unless the recommendation is modified, the Vice-Chancellor shall submit the recommendation, along with any written materials submitted by the employee, for the Chancellors' review and decision.
- C. After reviewing the Deans' recommendation, any submittal by the Vice-Chancellors, and any written materials submitted by the affected employee, the Chancellors shall notify affected employees, in writing, of the final decision. Affected employees may apply to the office of the LCTCS System President for review of the decision by submitting a written request to that office within three (3) days, exclusive of Saturday, Sunday, and legal holidays, from the receipt of the notice of the final action of the Chancellor. Such review shall be at the President's sole discretion and in his sole discretion may be on the record only.
- D. The Human Resources Departments of the LCTCS shall work with affected employees, even after a Disaster-caused Employment Action is final to assist them with:
 - i. Retirement system issues;
 - ii. Insurance and other benefit issues;
 - iii. Alternative employment availability;
 - iv. Immigration issues; and
 - v. Other appropriate matters which reasonably will assist the employee during this difficult time.

- 5. **Limited Policy.** This Force Majeure Exigency Plan shall be limited to responding to the circumstances arising out of the catastrophic destruction caused by Hurricanes Katrina and Rita, and for that purpose this Plan shall supplement the provisions of LCTCS Board of Supervisors Policy #6.026 (Financial Exigency/Reduction in Force Policy).