

Background

When KCTCS was established by the *Kentucky Postsecondary Education Improvement Act of 1997*, former community college faculty transferred to KCTCS on tenure track or with tenure. Former technical college faculty transferred under 151B provisions with continuing status or the ability to earn this status under the rules in effect as of June 30, 1998. In the early years, new KCTCS full-time faculty were primarily appointed on tenure track (community colleges) or granted continued status after a six month introductory period (technical colleges). Among other matters, the KCTCS Board of Regents was busy dealing with part-time employment issues (1998), academic policies (including transfer of credit, faculty employment, definition of faculty/faculty rank/faculty titles, tenure policy and procedures, separation, and review of educational units) (1999), map over/promotion process for technical college faculty (2000), revision of *KCTCS Board of Regents Policy 2.0 KCTCS Employment* (2001) and *2.1 KCTCS Definition of Faculty, Faculty Rank, and Faculty Titles* (2002), and a compensation plan and classification program (2002).

Concerned with rapid shifts in the job market, emerging new job markets, and state budget cuts which underscored the need for flexibility, the KCTCS Board of Regents began to monitor the faculty appointment process, reviewing literature research, results of surveys of other states' employment practices, and KCTCS hiring trend data.

Previous KCTCS Board of Regents requests, reviews, discussions, and/or actions related to faculty appointments have included:

- ***Contract/Tenure Ad Hoc Committee Report, June 2002***
 - On June 28, 2001, the Board's Committee on Finance, Administration, and Technology requested an update on the System's tenure policy.
 - A Contract/Tenure Ad Hoc Committee, consisting of seven faculty, two college presidents, the KCTCS Chancellors, and the KCTCS General Counsel, was established to look at various options.
 - The ad hoc committee began meeting in February 2002.
 - The ad hoc committee charge was to research, review, and address the framework for the use of employment agreements (tenure and/or contracts) for new faculty hires.
 - The Contract/Tenure Ad Hoc Committee's findings were:
 - In employment agreements, KCTCS utilized both non-tenure term contracts and tenure track contracts. As a foundation for the framework for the use of employment agreements, *KCTCS Board of Regents Policy 3.1 Equal Employment Opportunity* states, "KCTCS is an equal employment opportunity employer. Employment decisions are based on merit and business needs ..."

- The literature search revealed that contracts and tenure both are used, and each has its advantages and disadvantages. There is no body of literature to support the superiority of one practice over another. The literature indicates that the use of non-tenure term contracts is increasing. However, tenure track contracts have a substantial presence in postsecondary institutions. There is a considerable body of literature and debate on this topic.
- The survey of benchmark states plus Kentucky revealed that only two of the systems currently report availability of tenure to all newly hired faculty members, one has both tenure and non-tenure contracts available (KY), and the remaining systems report no tenure contracts available to new hires.
- The Kentucky Revised Statutes (KRS) provided that the Board of Regents shall appoint a president, and the president will be charged with the appointment of all other employees (both faculty and staff). A faculty member may be removed only for incompetency, neglect of or refusal to perform his duty, or for immoral conduct.

Non-tenure term contracts may not exceed four years (KRS 164.360).

Current KCTCS policies address both tenure and non-tenure term contracts for newly hired faculty.

- The ad hoc team found no data to support a relationship between the use of tenure or non-tenure term contracts and longevity.
- The Contract/Tenure Ad Hoc Committee recommended:
 - KCTCS should consider the following framework for employment agreements for new faculty hires:
 1. Maximize KCTCS ability to attract and retain faculty.
 2. Affirm academic freedom, due process, and job security.
 3. Allow flexibility for colleges and faculty alike.
 - To allow flexibility, KCTCS should continue to offer both tenure track and a variety of non-tenure term contracts.
 - KCTCS should develop criteria and guidelines for determining the type of employment agreements to be offered to new hires.
 - KCTCS should track and report on the types of employment agreements issued to new hires each year.
- ***KCTCS Board of Regents Policy 2.0 KCTCS Employment Revision, May 2004***
 - On May, 14, 2004, the *KCTCS Board of Regents Policy 2.0 KCTCS Employment* was revised to include a section titled “Employment Status Categories”. Seven status categories were established, one of which was “Term Contract Employment Status”.
- ***Faculty Appointments Report, September 2007***
 - On June 14, 2007, the Board’s Finance, Technology, and Human Resources Committee requested additional information regarding faculty appointments.

- Presented at the September 26-27, 2007, Board meeting, the Faculty Appointments Report consisted of the following sections:
 - **Literature Review 2002-07**
 - The literature (Finkelstein, 2006) reported a restructuring of faculty appointments in the past decade to include a parallel system of term contracts.
 - The change was attributed to “growing financial pressures, ... lower costs of hiring nontenure-track faculty members, and increased flexibility ... in the face of uncertain economic times and the end of mandatory retirement for tenure-track faculty members (that took place in 1994)” (Ehrenberg, 2005).
 - Pros and cons of both types of faculty appointments were addressed:
 - * Tenure is seen as the protection of academic freedom, due process, and dismissal for just cause (AAUP; NEA; Cloud, 2004).
 - * Tenure concerns spoke to gender and minority disparity (Lewin, 2004), use as a “rare perk” to attract researchers to universities (Burgan, 2003), public perception - a poll that found a majority of the public “doubts that tenure promotes quality” (*Inside Higher Education*, 2007), and post tenure review (NEA, 2002).
 - * The NEA (2002) reported, “New campuses have been created in Florida and California that do not have faculty tenure.”
 - * Term contracts are seen as affording flexibility and placing emphasis on the classroom, not on research or publishing (Patton, 2007).
 - * Term contracts concerns noted were lack of job security and obstacles to academic freedom (Holub, 2003; Kane, 2004); that it is not clear whether or not it is creating a “caste system” (Patton, 2007); and doubts that “contract employees can form as close of a relationship with their department or institution as tenured faculty seem to enjoy” (Patton, 2007).
 - **Survey of Benchmark and Surrounding States**
 - The survey showed a variety of faculty appointments now in use.
 - Several states and/or colleges reported having no tenure track, for example:
 - * Virginia (Community College System – 23 colleges) uses annual or multi-year contracts.
 - * Specific colleges in Indiana, Michigan, and Missouri.
 - **Compilation of Kentucky Revised Statutes and KCTCS Policies and Procedures**
 - **KCTCS Data: New Faculty Appointments by Employment Status Categories**
 - From 1999-2000 through 2006-07, 20+ to 40+ tenure track faculty were appointed annually; tenure track contracts began to decline in 2006-07 (from 44 in 2005-06 to 30 in 2006-07).
 - From 2004-05 through 2006-07, six to 90 term contract faculty were appointed annually; term contracts have increased each year (from six in 2004-05 to 90 in 2006-07).
- **Faculty Appointment Process Update, Fall 2008**
 - At its June 12, 2008, meeting, the Board’s Finance, Technology, and Human Resources Committee requested that additional information related to the faculty appointment process be provided at the September 2008 Board of Regents meeting.

- Presented at the September 25-26, 2008, meeting, the Faculty Appointment Process Update consisted of the following sections:
 - **Tenure**
 - Concepts in various sources reviewed focus on academic freedom, due process, and shared governance.
 - In determining tenure, universities generally focus on research/publishing and teaching/advising, while community colleges focus on teaching/advising and service to community.
 - **KCTCS Promotion and Tenure Process**
 - Both full-time term contract faculty and tenure track faculty participate in the promotion process, which includes peer review, administrative recommendation and/or action, and final action (ratification) by the KCTCS Board of Regents.
 - **Faculty Appointment Survey**
 - 2007 survey (see 2007 report above).
 - **Kentucky Higher Education Practices**
 - Five of the other Kentucky state postsecondary institutions reported using both tenure track and non-tenure track contracts – University of Kentucky, University of Louisville, Eastern Kentucky University, Western Kentucky University, and Northern Kentucky University.
 - **KCTCS Tenure Trend Data**
 - Tenure track contracts continue to show an overall decline from the high of 44 in 2005-06 to 32 in 2007-08.
 - Term contracts continue to show a steady annual increase from six in 2004-05 to 109 in 2007-08.
 - **Tenure Accountability**
 - Post Tenure Review - Suggested elimination of biennial ratings for faculty.
 - Criteria for Tenure Track Positions - Suggested establishing criteria based on funding, academic discipline, and program enrollment trends.
 - Appointment and Removal Process – Listed current practices (non-renewal/terminal appointments, reassignment, phased retirement, and voluntary reduced work schedule).
 - **Appendix**
 - Selected Kentucky Revised Statutes.
 - Selected KCTCS Board of Regents Policies.
- **Recommendation Requested**
 - At the September 2008 Board meeting, the Finance, Technology, and Human Resources Committee requested that a recommendation regarding the faculty appointment and tenure process be brought forward at a future Board meeting.

Proposed Policy Revision

The proposed revision of *KCTCS Board of Regents Policy 2.0 KCTCS Employment* shows employment status categories separated into two distinct sections – one section for employees appointed prior to July 1, 2009, and one section for employees appointed effective on or after July 1, 2009. The new section for employees appointed effective on or after July 1, 2009, has two employment status categories – term contract and “at will”. New KCTCS regular full-time faculty and staff will be appointed as term contract status employees.

Term contracts are issued for one to four year periods in accordance with Kentucky Revised Statutes 164.360. Years of service for determining contract length have been added to both sections of the policy. Technical edits have been made as needed.

Under this proposed revision, the KCTCS Board of Regents would no longer grant tenure to faculty after the current 168 eligible tenure track faculty have completed the promotion and tenure process or received terminal contracts. The current tenure track pipeline will be processed through 2014.

Considerations/Rationale

Based on a thorough discussion, research, and analysis, the proposed revision in policy is made with consideration of the following:

- Current trends in higher education related to the granting of tenure.
- Academic freedom for faculty.
- Impact on recruitment and retention of quality faculty.
- Impact of changing student and industry needs on academic programs.
- Consistent use of employment status categories for faculty and staff.
- The need for flexibility and accountability in both academic programs and faculty.
- Faculty hiring trends for KCTCS for 2000-2008 (see Attachment A).

Rationale relative to this proposed revision includes:

- Literature reviews conducted in 2002 and 2007 show the restructuring of faculty appointments to include term contracts.
 - The change is attributed to “growing financial pressures, ... lower costs of hiring nontenure-track faculty members, and increased flexibility ... in the face of uncertain economic times and the end of mandatory retirement for tenure-track faculty members (that took place in 1994)” (Ehrenberg, 2005).
 - Term contracts are seen as affording flexibility and placing emphasis on the classroom, not on research or publishing (Patton, 2007).
- State surveys conducted in 2002 and 2007 show states and/or colleges which have no tenure track, such as Virginia, Indiana, Michigan, and Missouri.
 - Contract/Tenure Ad Hoc Committee Report, June 2002
 - Faculty Appointments Report, September 2007
 - Faculty Appointment Process Update, Fall 2008
- Programs needs are changing rapidly.
 - From 1998-2008, KCTCS colleges have developed 2,934 programs (2,328 certificates/option, 156 diplomas, and 450 associate degree/options).
 - During the same time period, KCTCS colleges have deactivated 238 programs (143 certificates, 57 diplomas, and 38 associate degrees).
- The use of term contract faculty allows KCTCS to be more responsive to academic program needs and demands.
- KCTCS colleges have increased the use of term contract; there has been no impact on recruiting quality faculty.
 - 281 term contract faculty were appointed from 2004-05 to 2007-08.
 - Of those 281 term contract faculty, 109 were appointed in 2007-08.
- KCTCS colleges have decreased the use of tenure track contracts.
 - 147 tenure-track faculty were appointed 2004-05 to 2007-08.
 - Of those 147 tenure track faculty, 32 were appointed in 2007-08.
- Shared governance is assured to faculty through the faculty senate process, as stated in the *Kentucky Postsecondary Education Improvement Act of 1997* and *KCTCS Board of Regents Policy 1.4 Internal Governance Structure: KCTCS Senate*.
- KCTCS policies and procedures apply to both term contract faculty and tenure track faculty, for example:
 - Faculty performance review process.
 - Promotion process and promotion criteria.

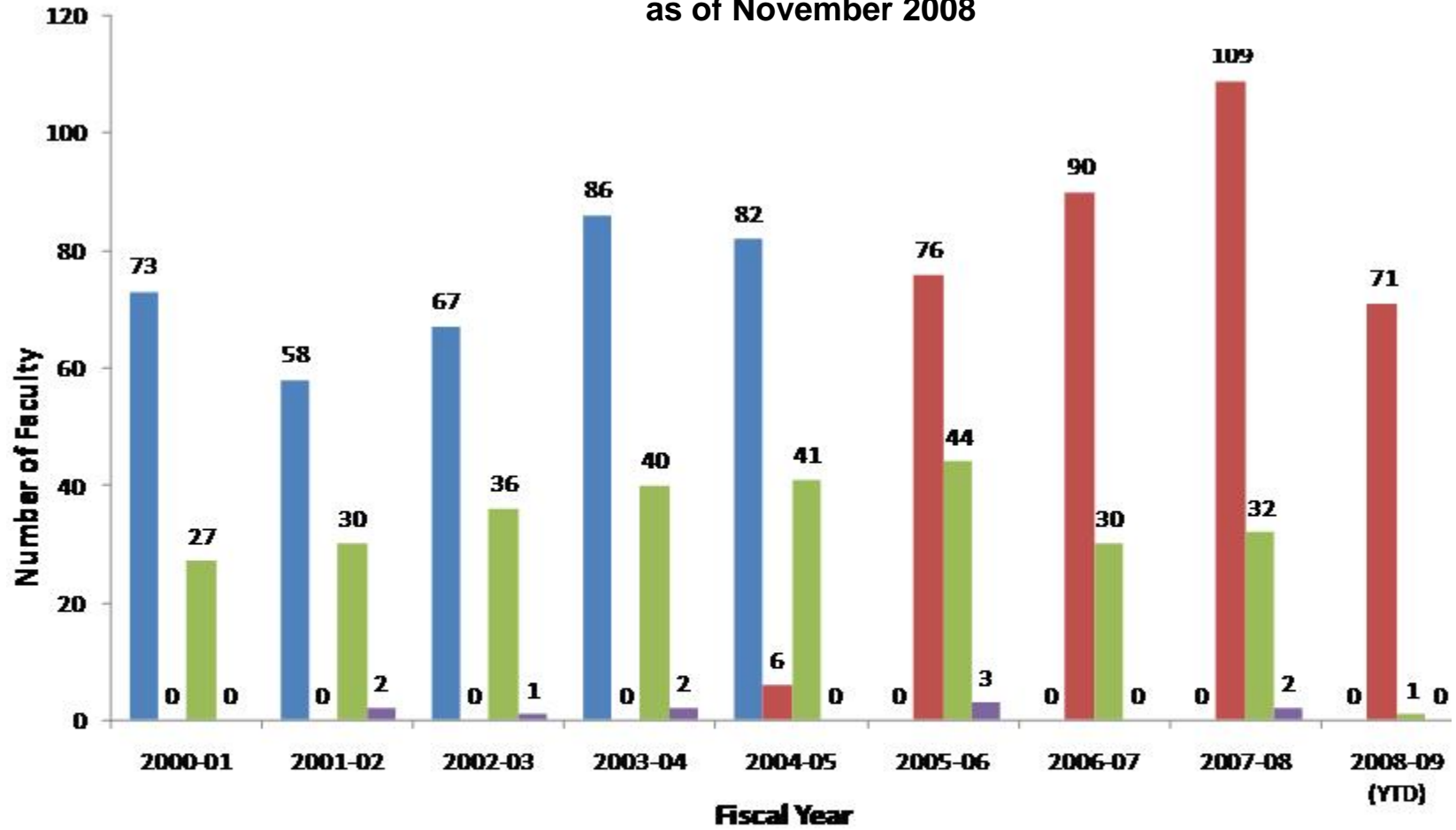
- KCTCS culture provides for and embraces academic freedom, with policies/processes in place for faculty appeals if needed in this regard.
 - Academic freedom is assured to faculty and students through the *KCTCS Board of Regents Policy 2.9.1.2 KCTCS Academic Freedom Policy*, which includes appeal processes for faculty and for students.
- Due process rights for faculty are assured through Kentucky Revised Statute 164.360, which states that “... no ... faculty member shall be removed except for incompetency, neglect of or refusal to perform his duty, or for immoral conduct.”
- Likewise, KCTCS policies assure faculty and staff due process rights during the contract period – for example:
 - *KCTCS Board of Regents Policy 2.16 KCTCS Personnel Dispute.*
 - *KCTCS Administrative Policies and Procedures 2.16.2.1 Faculty Appeals through the KCTCS Senate Advisory Committee on Appeals (KCTCS Senate ACA).*
 - *KCTCS Administrative Policies and Procedures 2.16.2.2 Complaint Resolution Procedure.*
- Adoption of one employment status (term contract) for faculty and staff provides greater consistency in hiring practices and application of human resources policies.
- While the expectation for postsecondary education has increased in Kentucky, the state’s relative commitment to postsecondary education has decreased.
 - In fiscal years 1998-00, the first biennium for KCTCS, postsecondary education received 15.5 percent of the state general fund appropriation.
 - In the 2008-10 biennium, the appropriation for postsecondary education has been reduced to 13.7 percent of the general fund appropriation.
- To date, KCTCS has experienced significant budget reductions from fiscal year 2001-02 through fiscal year 2008-09, amounting to \$ 31.5 million. The amount and nature of the reductions are noted below, with the recurring funds (\$25.6 million) impacting the base for future years.

<u>Fiscal Year</u>	<u>Budget Reduction</u>
2001-02	\$ 3.3 million (recurring)
2002-03	\$ 4.4 million (recurring)
2003-04	\$ 5.9 million (non-recurring)
2003-04	\$ 4.4 million (recurring)
2007-08	\$ 6.9 million (recurring)
2008-09	\$ 6.6 million (recurring)

With the volatility of the global economy as well as the state and national economy, rapid shifts in the job market, and emerging new job markets, flexibility in the employment of faculty and staff is essential in continuing to build a comprehensive community and technical college system for the 21st century.

New KCTCS Faculty Appointments by Employment Status Category as of November 2008

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- Continued Employment Status: Faculty who have satisfactorily completed the KCTCS Introductory Period.
- Term Contract Employment Status: Beginning March 2005, regular faculty who have specified term contracts.
- Tenure-Track Employment Status: Tenure review process until they earn tenured employment status.
- Tenured Employment Status: Faculty who have completed the tenure review period and are awarded tenure.

Note: Faculty Employment Status Definitions were refined in March 2005.

STRIKETHROUGH VERSION

2.0 Kentucky Community and Technical College System Employment

With the establishment of the Kentucky Community and Technical College System through the *Kentucky Postsecondary Education Improvement Act of 1997* (in sections of KRS Chapter 164), KCTCS is authorized to employ individuals in furtherance of its mission. The KCTCS President is authorized to promulgate administrative procedures to implement this policy.

2.0.1 Employment Status Categories

2.0.1.1 Employment Status Categories For Employees Appointed Prior to July 1, 2009

Employment status determines an employee’s right to continued employment with KCTCS. Based on the process by which the faculty or staff member is employed, the employee has a designated employment status, and/or the right to earn a designated employment status.

KCTCS recognizes seven (7) employment status categories:

A. Faculty Tenured Employment Status

The Board of Regents may grant tenure to faculty upon recommendation by the President of KCTCS and the Chancellor. Tenure for faculty when granted by the Board of Regents in accordance with the Kentucky Community and Technical College System procedures shall be in KCTCS and not at the individual educational unit of the KCTCS colleges. Faculty members who have earned tenure under UKCCS or KCTCS have tenured employment status at KCTCS. The terms of employment are specified in the faculty member’s contract.

B. Faculty Tenure-Track Employment Status

Faculty members working to earn tenured employment status while in a tenure-track (tenure-eligible) position are issued a tenure-track contract and have tenure-track employment status at KCTCS. The terms of employment are specified in the faculty member’s contract.

A. Term Contract Employment Status

Faculty who are employed in a non-tenure-track position are issued a term contract. Regular full-time faculty ~~and~~ have term contract employment status.

Regular full-time faculty may be offered a series of employment contracts with varying lengths over a long term association with KCTCS. Employment terms are as follows:

<u>Years of Service</u>	<u>Contract Length</u>
0-3	<u>1 year or less</u>
4-6	<u>1 or 2 years</u>
7+	<u>1, 2, 3, or 4 years</u>

Exceptions to these specified faculty employment terms must be approved in advance by the KCTCS President or designee.

Regular full-time staff may be issued a term contract and have term contract employment status.

Faculty and staff who are employed through a term contract are not eligible to earn KCTCS continued employment status and are subject to the employment terms specified in their contract.

B. Continued Employment Status

Prior to July 1, 2003, newly hired regular status non-contract faculty earned “continued employment status” under the KCTCS personnel system after the Introductory Period was satisfactorily completed. Regular status non-contract staff earn “continued employment status” under the KCTCS personnel system after the Introductory Period is satisfactorily completed. Former UKCCS non-contract staff who exercise the one-time option into the KCTCS personnel system are granted continued employment status.

C. Continuing Employment Status

Former 151B faculty and staff who earned “continuing employment status” under KRS Chapter 151B retain continuing employment status following their transfer to KCTCS under KRS 164.5805, including those who exercise the one-time option into the KCTCS personnel system.

D. “Status” Employment Status

Former 18A staff who earned “status” employment status under KRS Chapter 18A retain “status” employment status following their transfer to KCTCS under KRS 164.5805, including those who exercise the one-time option into the KCTCS personnel system.

E. “At Will” Employment Status

Temporary status contract and non-contract employees shall have “at will” employment status. Regular status less than full-time contract and non-contract employees who are hired on or after July 1, 2004, shall have “at will” employment status. Former UKCCS contract and non-contract staff retain their employment “at will” status following their transfer to KCTCS under KRS 164.5807. For employees under the KCTCS personnel system who are subject to the Introductory Period, they have “at will” employment status during the course of the Introductory Period.

2.0.1.2 Employment Status Categories For Employees Appointed Effective On Or After July 1, 2009

Employment status determines an employee’s right to continued employment with KCTCS. Based on the process by which the faculty or staff member is employed, the employee has a designated employment status.

KCTCS recognizes two (2) employment status categories:

A. Term Contract Employment Status

Regular full-time faculty and staff shall be issued a term contract and have term contract employment status.

Regular full-time faculty and staff may be offered a series of employment contracts with varying lengths over a long term association with KCTCS. Employment terms are as follows:

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Exceptions to these specified employment terms must be approved in advance by the KCTCS President or designee.

Faculty and staff who are employed through a term contract are subject to the employment terms specified in their contract.

B. “At Will” Employment Status

Temporary faculty and staff (contract and non-contract) shall have “at will” employment status. Regular less than full-time faculty and staff shall have “at will” employment status.

2.0.2 Employee Rights

Employees hired after the establishment of KCTCS are governed by the KCTCS personnel system rules. Employees who were transferred to KCTCS pursuant to KRS Chapter 164 are referred to in KCTCS policies and procedures as “former UKCCS employees” and “former KRS 151B/18A employees,” respectively. Former UKCCS employees transferred to KCTCS pursuant to KRS 164.5807 retain coverage under the personnel rules in the University of Kentucky administrative regulations. Former UKCCS employees with tenure shall retain their tenure. Former 151B/18A employees retain coverage under the applicable personnel rules in Titles 101 and 780 of the Kentucky Administrative Regulations that were in effect on June 30, 1998, and adopted by the KCTCS Board of Regents pursuant to KRS 164.5805(1)(e). Former 151B employees with “continuing employment status” shall retain their “continuing employment status.” Former 18A employees with “status” as their employment status shall retain their “status.” These transferred employees have the right to exercise a one-time option into the KCTCS personnel system. All employee grievances and appeals shall be under the rules provided by the KCTCS policies and procedures.

KCTCS employees under the University of Kentucky administrative regulations who accept other positions in any KCTCS college after June 29, 2001, retain coverage under University of Kentucky administrative regulations until they elect to be covered by the KCTCS personnel system. Former Cabinet for Workforce Development employees who accept other positions in any KCTCS college after June 29, 2001, retain coverage under applicable provisions of Titles 101 and 780 of the Kentucky Administrative Regulations that were in effect on June 30, 1998, until they elect to be covered by the KCTCS personnel system. The employee’s option into the KCTCS personnel system shall be in writing and may be exercised at any time to be made effective on the first day of the applicable pay period. Positions in the KCTCS System Office shall be positions under the KCTCS personnel system; therefore, employees who choose to accept KCTCS System Office positions shall be governed by KCTCS personnel system policies.

No one other than the KCTCS Board of Regents may alter or modify Board policies. No one other than the KCTCS President may alter or modify administrative policies and procedures. Any alteration or modification of policies must be in writing.

<u>4-30-99</u>	<u>5-14-04</u>	<u>4-30-99; 6-29-01; 5-14-04</u>
Date Approved by KCTCS Board of Regents	Date of Last Review	Date of Last Revision <i>(Include all dates in chronological order)</i>
 	<u>5-14-04</u>	<u>(SIGNED) 5-14-04</u>
Chair, Board of Regents	Date	President, KCTCS Date

AS IT WILL APPEAR VERSION

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B. Faculty Tenure-Track Employment Status

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Regular full-time staff may be issued a term contract and have term contract employment status.

Faculty and staff who are employed through a term contract are not eligible to earn KCTCS continued employment status and are subject to the employment terms specified in their contract.

D. Continued Employment Status

Prior to July 1, 2003, newly hired regular status non-contract faculty earned “continued employment status” under the KCTCS personnel system after the Introductory Period was satisfactorily completed. Regular status non-contract staff earn “continued employment status” under the KCTCS personnel system after the Introductory Period is satisfactorily completed. Former UKCCS non-contract staff who exercise the one-time option into the KCTCS personnel system are granted continued employment status.

E. Continuing Employment Status

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Chair, Board of Regents	Date	President, KCTCS	Date