

Procedure 4-23: Termination or Demotion of Contractual Employees

1. INTRODUCTION

This procedure specifies the procedures for termination or demotion of a contractual employee during the term of an existing contract in accordance with Policy IV-G-1 Policy on Termination or Demotion for Contractual Employees.

2. PROCEDURE

A. Just and/or good cause includes but is not limited to the following:

1. Physical or mental incapacity that prohibits the employee from performing his or her contracted job function.
2. Conviction or commission of a felony, a crime involving moral turpitude, a misdemeanor that is related to the employee's job, or that adversely impacts the interests of the College. Moral turpitude offenses include both felony and misdemeanor crimes, including, but not limited to:
 - Crimes related to fraud, theft, and burglary
 - Homicide
 - Kidnapping
 - Aggravated assault
 - Robbery
 - Sexual assault
 - Prostitution
 - Indecency with a minor
 - Public lewdness
 - Possession of obscenity or child pornography
3. Unlawful use, possession, or distribution of controlled substances or dangerous drugs.
4. Being under the influence of alcohol, controlled substances, or dangerous drugs during work hours or while engaged in business on behalf of the College.
5. Assault on an employee, officer or student as described in the Texas Penal Code.
6. Unsatisfactory job performance or the repeated failure to support or demonstrate College values. Unsatisfactory performance or behaviors may be communicated through a written evaluation, written notice, performance improvement plan or behavioral improvement plan.

7. Falsification of pertinent information regarding the employee's credentials, transcript or application for employment, regardless of when the falsification is discovered.
8. Falsification and/or unauthorized alteration or destruction of government records.
9. Breach of trust, including but not limited to:
 - Making false statements or failing to disclose information to a leader that a reasonable employee would have disclosed under similar circumstances;
 - Failure to participate in good faith regarding an on-going investigation;
 - Fraud, theft, embezzlement; or
 - Falsification of state or federal documents.
10. Failure to comply with directives and requirements of the employee's leader, failure to follow established policies and procedures of the College district, repeated and continued neglect of duties and responsibilities, or insubordination.
11. Violating the policies and procedures defining acceptable use of College e-mail, telephones, cell phones, smart phones, computer tablets, fax machines, laptops, computers, internet, social media, or any other on-line or electronic technology.
12. Failure to maintain any license, registry, or certificate required by one's position.
13. Excessive absences (excluding absences protected by law), failure to follow any procedures pertaining to absences, unacceptable patterns of repeated absences, or failure to provide required documentation to substantiate an absence(s).
14. Cumulative events where numerous instances of misconduct or violations have occurred which indicate an unacceptable pattern of on-going behaviors.
15. For other good cause.
16. No termination or demotion decision shall be based on an employee's race, creed, color, national origin, citizenship status, age, disability, pregnancy, religion, gender, sexual orientation, gender identity, genetic information, marital status, or veteran status. Additionally, the College shall not discriminate or retaliate against employees who exercise rights guaranteed by the Constitution or rights conferred by statute, including, but not limited to, the Family Medical Leave Act, Uniformed Services Employment and Reemployment Rights Act, and the Texas Whistleblower Act.

B. Evaluation of Termination Proposal:

1. The relevant leaders in conjunction with Human Resources shall review the evidence and documentation pertaining to the employee's work history and any allegations of misconduct and

evaluate whether good cause exists to terminate the contract. If the proposal is based on an allegation of wrongdoing, the relevant leaders also shall consider the nature and severity of the misconduct and the outcome of any investigation pertaining to the allegation. Human Resources shall review the proposed recommendation and documentation to ensure compliance with College's policies and guidelines.

2. Written notice of intent to terminate shall be provided to the employee.
3. When it is in the College's or College Community's best interest, the Chancellor, or his/her designee, may place contractual employees on paid administrative leave or reassign the employee during an internal/external investigation due to allegations of wrongdoing, or when a proposal to terminate or demote is pending before the Board of Trustees.
4. This guideline does not apply to non-renewal of contractual employees. Non-renewal will be subject to Policy IV-G-4: Policy on Non-Renewal of Contractual Personnel.
5. This guideline does not apply to Reduction in Force (RIF) decisions. RIF decisions are subject to Policy IV-G-5.

3. HEARING PROCEDURE

If it is proposed that a contractual employee be terminated or demoted during the term of a contract, certain procedural steps are to be followed. These procedural steps are not applicable to the non-renewal of a term contract or the decision of the administration or Board not to offer the professional employee further employment with the college.

A. Discussions with the Employee

The respective SLT member or his or her designee shall discuss any possible termination or demotion with the employee prior to the Chancellor's giving the contractual employee formal written notice of any proposed action to terminate or demote. If the employee is unavailable to meet or refuses to participate, the Administration may proceed with the preparation of the formal written notice.

B. Approval by the Chancellor

1. Any proposed termination or demotion must be approved by the Chancellor. If the Chancellor approves the proposed action, the Chancellor or his/her designee shall notify the contractual employee of the proposed action, the grounds for the action and of the right to a hearing before the Hearing Committee.
2. The notice of a proposed termination or demotion may be hand delivered, sent via e-mail or other postal service provider.
3. An employee's failure to update his or her postal address, refusal to accept delivery of a letter, or refusal or failure to open e-mail will not constitute good cause for failure to comply with the deadlines stated in the notice of the proposed termination or demotion.

C. Appeal Rights

An employee whose employment contract is proposed for termination or demotion during the term of the contract shall be afforded due process.

D. Request for a Hearing

If the contractual employee wishes to contest the proposed action, he or she may request a hearing before the Hearing Committee. Requests for a hearing must be made in writing to the Chancellor within five (5) working days of receipt of the notice of proposed termination or demotion. If no request for a hearing is made within five (5) working days of receipt of the notice, the Chancellor may recommend to the Board of Trustees that the contractual employee be terminated or demoted, and the Board of Trustees shall take the action it deems proper.

E. Appointment of the Hearing Committee

1. The purpose of the Hearing Committee is to afford a fair hearing on the merits of each proposal for termination or demotion and to make a recommendation for disposition to the Chancellor.
2. The Hearing Committee shall be comprised of three (3) impartial contractual employees. One member is to be designated by the respective Strategic Leadership Team (SLT) member, one member by the contractual employee, and one member by the Chancellor.
3. The Chancellor in consultation with the SLT shall designate one of the contractual employees of the Hearing Committee members (one faculty member, one administrator or one contractual professional employee) to serve as the chair of the hearing committee.

F. Impartiality of Hearing Committee Members

1. If any contractual employee appointed to serve on the hearing committee believes that he or she cannot hear the evidence and make a fair and impartial recommendation, the member shall so advise the committee.
2. If the committee member or the remaining members of the committee determine that any prior contact with the employee would prevent the member from impartially considering the evidence and making a recommendation, the member shall be disqualified from serving on the committee.
3. Upon such disqualifications, the Chancellor shall appoint a member of the same classification to serve.

G. Conduct of Hearing

The hearing committee shall conduct a hearing to afford a fair and impartial hearing on the merits of the administrative recommendation and make a written recommendation to the Chancellor. The burden of proof is on the administration to establish that good cause is the basis of the proposed termination or demotion.

1. Rights of Parties

- a. All parties, at any level of the hearing procedure, may be represented or accompanied by a representative including legal counsel. If either party is to be represented by legal counsel at the hearing, that party shall notify the other party at least seven (7) working

days prior to the hearing so that the other party may arrange to be represented by counsel at the hearing if desired.

- b. The administration, having the burden of proof, will have the opportunity and duty to open and close the presentation, argument or discussion, if any, to be made to the hearing committee.
- c. Each party shall have the right to testify.
- d. The hearing shall be closed to the public.

2. Expenses of the hearing shall be borne by the College District; however, the employee is responsible for his or her own attorneys' fees and for incidental costs, such as photocopy costs.
3. The hearing shall be held at a place and time named by the Chairperson of the Committee, in consultation with the Provost / Vice Chancellor and Human Resources.
4. Documents submitted as evidence shall be noted and identified by the chairperson of the hearing committee and included in the final report to the Chancellor.
5. The strict rules of evidence are not in force at the hearing; however, general concepts of relevancy and materiality shall prevail at the hearing. The chairperson may limit cumulative or repetitious testimony or evidence.
6. At least three (3) working days before the hearing, each party shall notify the other and the panel of the identity of witnesses, other than impeaching or rebuttal witnesses whose identity cannot reasonably be determined beforehand, to be called and of documents to be submitted in evidence. The parties shall have the right to cross-examine all witnesses who testify at the hearing. The hearing committee reserves the right to call other witnesses if the committee, in its discretion, deems such action to be advisable.
7. The chairperson of the hearing committee shall rule on any objections made during the hearing. The chairperson is free to consult with other committee members as needed.
8. The hearing committee shall ensure that all parties are afforded a fair procedure and substantial justice.
9. The hearing committee may allow breaks or recesses at its discretion.
10. Hearing committee members may question the witnesses or counsel; however, witnesses and counsel may not question committee members.
11. The hearing committee may place a reasonable time limit on opening and closing arguments, taking into consideration the complexity of the case. The committee may, in its sole discretion, direct the parties to provide their closing argument in a written format.

12. The hearing committee may impose other reasonable rules or restrictions on the presentation of evidence or witnesses to facilitate the hearing process. For example, the committee in its discretion may allow a witness to appear out of turn if that witness will be unavailable at a future time.
13. Except for routine announcements, such as those relating to the time of the hearing and similar matters, public statements about the case by the parties or committee members shall be avoided, as much as possible. Public statements, if any, concerning the decision or recommendation of the hearing committee shall be withheld until final disposition.
14. In cases pertaining to a recommendation for termination or demotion, the proceedings shall be recorded and transcribed by a court reporter, and a copy of the verbatim transcript will be supplied to the employee who is the subject of the hearing.

H. Recommendation of the Hearing Committee

1. The panel by a majority of its total membership shall:
 - a. Make findings of fact.
 - b. Determine whether the facts constitute good cause for demotion or termination.
 - c. Such findings and conclusions shall be based solely on the evidence presented at the hearing.
2. Transcripts of the proceeding will be sent to the committee within fifteen (15) working days.
3. Within ten (10) working days after receipt of the written transcript of the proceedings, the committee shall submit a written recommendation for disposition to the Chancellor. The recommendation shall be based on the policies and applicable rules, regulations and administrative directives of the college. The transcript of the hearing together with all documents received into evidence shall be transmitted to the Chancellor.

I. Action of the Chancellor

The Chancellor shall review the committee's recommendation. Within fifteen (15) working days of the receipt of the recommendation, the Chancellor shall accept, reject or modify the committee's recommendation and advise the parties in writing of his or her decision. The decision of the Chancellor is final; however, nothing in this guideline precludes the employee from appearing before the Board of Trustees during the hearing of citizens.

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