

CP 2.5.1

Disciplinary Action, Suspension, and Dismissal

Related Board of Trustee Policy: BP 2.5

Responsible Official *President*
Approvals *03/15/09*
Revision

Procedure

I. Job Performance Discipline and Dismissal

This category covers all types of performance-related inadequacies. This policy does not require that progressive warnings all concern the same type of unsatisfactory performance; this policy only requires that the progressive warnings all relate to job performance. Warnings administered under this policy are intended to bring about a permanent improvement in job performance. Should the required improvement later deteriorate, or other inadequacies occur, the supervisor may deal with this new unsatisfactory performance at the next level of discipline.

Employees who are dismissed for unsatisfactory job performance shall receive at least three warnings; first, one or more oral warnings; second, a written warning to the employee documenting all relevant points covered in the disciplinary discussion; and third, a final written warning which notifies the employee that failure to make the required performance improvements may result in dismissal.

A. Oral Warning

The supervisor is responsible for assuring the satisfactory performance of work assigned to his/her unit. When, in judgment of the supervisor, unsatisfactory performance occurs, then, use of the disciplinary process may be appropriate.

1. Inform the employee that this is a warning, and not some other non-disciplinary process such as counseling.
2. Inform the employee of the specific performance deficiencies that are the basis for the warning.
3. Tell the employee what specific improvement must be made to correct the unsatisfactory performance.
4. Let the employee know what time is being allowed to make the required improvements.
5. Tell the employee of the consequences of failing to make the required improvements.

NOTE: Reference may be made in this warning to document an earlier oral warning. All written warnings should all be placed in the employee's personnel file and discussed with the President of the College.

B. Written Warning

In a private meeting with the employee, the supervisor shall do the following:

1. Conduct a disciplinary conference with the employee. This disciplinary conference should follow the same steps as set forth for an oral warning.
2. Tell the employee he/she will receive a written warning covering all significant points of this conference.
3. Prepare and send to the employee a written warning covering significant points of the disciplinary conference; care should be taken to include the specific reasons for the warning.

NOTE: Reference may be made in this warning to document an earlier oral warning. All written warnings will be placed in the employee's personnel file and discussed with the President of the College.

C. Final Written Warning

Before issuing the final written warning, the supervisor and President should review the contents of the warning. The following steps shall be taken in issuing a final written warning.

1. Prepare a final written warning to the employee; care should be taken to include the specific reasons for the warning.
2. In private, conduct a disciplinary conference with the employee; at this conference, the specific reasons for the action, the necessary improvements, and the time allowed to make improvements should be discussed.
3. Present the warning to the employee at the end of the conference; the employee should be informed, either orally or in the warning, that failure to correct the unsatisfactory performance may result in dismissal.

During the period after a final written warning has been given, management, in its discretion, may choose to counsel with the employee concerning his/her employment status before a decision to dismiss is made.

Such counseling should involve a discussion of the necessity for the employee's commitment to improve performance. As a part of this counseling, management may request the employee to take up to a day's leave with pay to consider whether or not the employee wishes to continue his/her employment with the agency. This time away from the job site shall not be charged to the employee's vacation or sick leave; it shall be considered as a type of disciplinary leave with pay, set aside for the employee to review his/her work situation and make a decision for the future. It should be stressed to the employee that a decision to continue employment with the agency will require a commitment to improve performance, and that a lack of improvement will lead to dismissal. Clearly, such a procedure is not suitable in all situations; management is expected to use its discretion to determine where such a procedure would benefit the employee and the agency.

D. Dismissal

Before a permanent employee may be dismissed on the basis of job performance, the following shall occur:

1. The supervisor recommending dismissal should discuss the recommendation with, and receive the approval of the President and the Board of Trustees.
2. A pre-dismissal conference shall be held between management representative(s) and the employee. No attorneys or other such representatives for either party shall be present at this conference; a witness or security personnel may be present if management deems necessary. The management representative shall present the employee with the specific reasons for the proposed dismissal. The employee shall have a right to respond to that notice of proposed dismissal in the conference.
3. If, at the end of the pre-dismissal conference, the management representative determines that dismissal is justified, he/she may present the employee with a letter of dismissal. However, the management representative may elect to defer the dismissal, based on information presented by the employee, and to reconsider the proposed dismissal. If, following such re-considerations, the decision is to dismiss, then no further pre-dismissal conference is required.

II. Personal Conduct

Employees may be dismissed, demoted, suspended, warned, or otherwise disciplined on the basis of unacceptable personal conduct. Discipline may be imposed, as a result of unacceptable conduct. Discipline may be imposed, as a result of unacceptable conduct, up to and including dismissal without any prior warning to the employee.

Disciplinary demotions, suspensions, or dismissals for personal conduct require written notification to the employee. Such notification must include specific reasons for the discipline and notice of the employee's right of appeal.

Prior to dismissal of a permanent employee on the basis of personal conduct, there shall be a pre-dismissal conference between the employee and the management representative. This conference shall be held in accordance with the provisions of Paragraph D, Dismissal.

III. Suspension

Investigatory or disciplinary suspension may be used by management in appropriate circumstances. However, the following provisions shall control its use:

- A. An employee who has been suspended for either investigatory or disciplinary reasons must be placed on compulsory leave of absence without pay.
- B. Investigatory suspension without pay may be used to provide time to investigate, establish facts, and reach a decision concerning an employee's status in those cases where it is determined the employee should not continue to work pending a decision. Investigatory suspension without pay may be appropriately used to provide time to schedule and hold a pre-dismissal conference.

Also, management may elect to use investigatory suspension in order to avoid undue disruption of work or to protect the safety of persons or property. An investigatory suspension without pay shall not exceed 45 calendar days. However, the college may, in the exercise of its discretion, extend the period of investigatory suspension without pay beyond the 45 day limit. The employee must be informed in writing of the extension, the

length of the extension, the specific reasons for the extension, and his/her right of appeal. A copy of the above communication shall be sent to the President's Office. If no action has been taken by management by the end of 45 calendar days, and no extension has been made, one of the following must occur: reinstatement of the employee with full back pay, appropriate disciplinary action based on the results of the investigation, or reinstatement of the employee with up to three days' pay deducted from the back pay. (See D below).

- C. Investigatory suspension of an employee shall not be used for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.
- D. An employee who has been suspended for investigatory reasons may be reinstated with up to three (3) day's pay deducted from his/her salary. Such determination is to be based upon management's determination of the degree to which the employee was responsible for or contributed to the reasons for the suspension. This period constitutes a disciplinary suspension without pay and must be effected in accordance with E and F below.
- E. An employee may be suspended without pay for disciplinary purposes for causes relating to any form of personal conduct or in conjunction with a final written warning for performance of duties. However, a disciplinary suspension without pay must be for at least one full working day, but more than three (3) days. Prior to placing an employee on disciplinary suspension without pay, a management representative shall conduct a pre-suspension conference with the employee. This second conference shall be carried out in the same fashion as a pre-dismissal conference.
- F. An employee may be suspended without pay but must be furnished a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension and the employee's appeal rights. A pre-suspension conference is required only when the employee is suspended without pay for disciplinary reasons; a pre-suspension conference is not required where an employee is suspended without pay for the purpose of investigation.

IV. Demotion

Any employee may be demoted as a disciplinary measure. Demotion may be made on the basis of either unsatisfactory job performance or unacceptable personal conduct.

- 1. Job Performance. An employee may be demoted for unsatisfactory job performance after the employee has received at least two prior warnings on his/her performance. At least one of the warnings prior to demotion must be in writing.
- 2. Personal Conduct. An employee may be demoted for unacceptable conduct without any prior warnings. Cause for demotion on the basis of personal conduct does have to be as serious as cause for dismissal.
- 3. Notice. An employee who is demoted must receive written notice of any specific reasons for the demotion, as well as notice of his/her appeal rights.

*Disciplinary demotions may be accomplished in several ways. The employee may be demoted to a lower classification without a loss in pay, except that no salary may exceed the maximum rate of the range, or, the employee may be reduced to a lower step in the same pay grade with a corresponding loss of pay. In no event shall an employee's pay be lowered below step one of his/her current grade, unless the employee is demoted to a lower classification. Prior to the

decision to demote an employee for disciplinary reasons, a management representative must conduct a pre-demotion conference with the employee. This pre-demotion conference shall be accomplished in the same fashion as the pre-dismissal conference.

Special Provisions: Credentials

1. Applicant Information and Application

When credentials or work history falsification is discovered, disciplinary action is required and shall be administered in accordance with the following criteria:

- A. If an employee was determined to be qualified and was selected for a position based on fraudulent work experience, education, registration, licensing, or certification information which was a requirement of the position, the employee is to be dismissed, regardless of length of service.
- B. In all other post-hire discovery cases of false or misleading information, disciplinary action will be taken, but the severity of such action shall be at the discretion of the agency head. The actions may include: dismissal, demotion, reduction in pay, or written reprimand.

The President's decision, while discretionary, should consider: sensitivity of the College's mission; sensitivity of the employee's position, effect of the false information on the hiring decision, advantage gained by the employee over other applicants; effect of the false information on the starting salary; and the advantage gained by employee in subsequent promotion and salary increases. Job performance shall not be considered in such cases. Nor can decisions be made on the basis of race, creed, color, religion, national origin, sex, age, handicapping condition, sexual orientation, gender identity, or political affiliations.

Providing false information on an employee application or concealing information shall be considered personal conduct for the purposes of implementing the dismissal procedure.

2. Failure to Maintain Required Credentials

By statute, some duties assigned to position in the State service may be performed only by persons who are duly licensed, registered, or certified as required by the relevant law. All such requirements and restrictions are specified in the statement of essential qualifications or recruitment standards for such classifications established by the State Personnel Commission.

***Right to Appeal**

A permanent employee who has been demoted, suspended, or dismissed shall have the right to file an appeal using the college grievance procedure. Grievances which do not allege discrimination must follow the Termination, Hearings, and Grievance procedure (BP 2.7).