

1. Title

Discipline/Dismissal of Employees

2. Policy

Sec. 1 Purpose. The purpose of this Policy is to provide a procedure for the discipline and dismissal of classified employees who are subject to the provisions of this Policy. Classified employees are at-will employees who serve without tenure. The provisions and procedures set forth in this Policy shall not confer rights to employees that are contrary to the employment-at-will doctrine.

Sec. 2 Policy Statement. It is the Policy of The University of Texas System Administration to encourage fair and efficient processes to resolve disputes arising out of the employment relationship and to meet the requirements of State and federal law.

Sec. 3 Applicability.

3.1 This policy and its procedures are applicable to conduct or job performance of a classified employee that results in a decision to impose a disciplinary penalty of demotion, suspension without pay, or dismissal.

3.2 This Policy does not apply to:

- (a) police who are subject to other approved discipline or dismissal procedures;
- (b) suspension with pay pending investigation of allegations relating to an employee;
- (c) decisions not to offer reappointment to persons whose appointment for a stated period of one year or less expires at the end of such period without the necessity of notice of nonrenewal as provided in the *Rules and Regulations* of the U. T. System Board of Regents or the U. T. System Administration's Policies;
- (d) administrative and professional employees who are appointed to positions without fixed term and who serve a specific administrative officer;
- (e) persons employed in positions that require student status as a condition of employment; or

- (f) dismissal of employees:
 - (i) who occupy positions that are dependent upon funding from a specific source and such funding is not received;
 - (ii) as a result of a reorganization;
 - (iii) because of financial exigency;
 - (iv) during any probationary period;
 - (v) who are appointed for a stated period that is less than six months;
 - (vi) who are appointed at a per diem or hourly rate and work on an as-needed basis;
 - (vii) who have not attained or maintained the necessary certification, licensure, clearance, or suitability (this includes but is not limited to maintaining a satisfactory criminal background as determined by the appropriate executive officer or his or her designee in accordance with U. T. System's criminal background check policy) for their position; or
 - (viii) who have exhausted applicable leave entitlements.

Sec. 4 Discipline and Dismissal Policy and Procedure.

4.1 Employee Standard of Conduct. Each employee is expected to become familiar with the performance criteria for his or her particular job and with all rules, procedures, and standards of conduct established by the U. T. System Board of Regents, the U. T. System Administration, and the employee's department or unit. An employee who does not fulfill the responsibilities set out by such performance criteria, rules, procedures, and standards of conduct, may be subject to adverse personnel action.

4.2 Conduct Subject to Disciplinary Action.

- (a) Work Performance. Work performance is to be judged by the supervisor's evaluation of the quality and quantity of work performed by each employee. Failure of an employee to maintain satisfactory work performance standards or to meet a reasonable and objective measure of efficiency and productivity may constitute

grounds for disciplinary action including dismissal. The term “work performance” includes all aspects of an employee’s work.

- (b) Unacceptable Conduct.
 - (i) All employees are expected to maintain standards of conduct suitable and acceptable to the work environment. Disciplinary action, including dismissal, may be imposed for unacceptable conduct.
 - (ii) Examples of unacceptable conduct include, but are not limited to:
 - (A) falsification of timesheets, personnel records, or other institutional records;
 - (B) neglect of duties;
 - (C) smoking anywhere except in designated smoking areas;
 - (D) gambling, participating in lotteries, or any other games of chance on the premises at any time;
 - (E) soliciting, collecting money, or circulating petitions on the premises other than within the rules and regulations of the institution;
 - (F) bringing intoxicants or drugs onto the premises of the institution, using intoxicants or drugs, having intoxicants or drugs in one’s possession, or being under the influence of intoxicants or drugs on the premises at any time;
 - (G) abuse or waste of tools, equipment, fixtures, property, supplies, or goods of the institution;
 - (H) creating or contributing to unhealthy or unsanitary conditions;
 - (I) violations of safety rules or accepted safety practices;

- (J) failure to cooperate with a supervisor or coworker, impairment of function of the work unit, or disruptive conduct;
- (K) disorderly conduct, harassment of other employees (including sexual harassment), or use of abusive language on the premises;
- (L) fighting, encouraging a fight, or threatening, attempting, or causing injury to another person on the premises;
- (M) theft, dishonesty, or unauthorized use of institutional property including records and confidential information;
- (N) creating conditions hazardous to another person on the premises;
- (O) destroying or defacing institutional property or records, or the property of a student or employee;
- (P) refusal of an employee to follow instructions or to perform designated work that may be required of an employee, or refusal to adhere to established rules and regulations;
- (Q) repeated tardiness or absence, absence without proper notification to the supervisor or without satisfactory reason, failure to report for work or to make appropriate contact with the supervisor to report an absence from work, or unavailability for work; and
- (R) violation of U. T. System Administration or U. T. System's Policies and Rules.

4.3 Discipline Procedures. The following procedures will be followed when an employee is subject to this Policy, and the employee is demoted for disciplinary reasons, suspended without pay, or dismissed.

- (a) Review by Supervisor. The supervisor will review the evidence and proposed disciplinary action with the Director of Employee Services, or his or her delegate.

- (b) Concurrence Sought and Obtained. Once the supervisor has sought and obtained the concurrence of the Director of Employee Services or his or her delegate, he or she must then obtain the concurrence of the department head or administrative equivalent to whom he or she reports before proceeding with the proposed disciplinary action. The Director of Employee Services or his or her delegate will review proposed disciplinary actions for Equal Employment Opportunity compliance.
- (c) Pre-disciplinary Notice to Employee. The supervisor shall inform the employee in writing of the reasons for the proposed disciplinary action and the facts upon which the supervisor relies. The employee shall be provided with an opportunity to respond to the charges either verbally or in writing within a reasonable time, but not to exceed two working days, and to persuade the supervisor that the grounds for the disciplinary action are mistaken or incorrect before a final decision is made to take disciplinary action. This pre-disciplinary notification serves as an opportunity to avoid mistaken decisions to impose discipline and is not intended to definitively resolve the propriety of the disciplinary action being considered.
- (d) Imposing Discipline. If the supervisor is not persuaded by the employee's response that the decision to take disciplinary action is incorrect or mistaken, the supervisor will proceed to impose the disciplinary action. The supervisor shall inform the employee in writing of the following:
 - (i) whether the disciplinary penalty is demotion, suspension without pay, or dismissal and its effective date;
 - (ii) a specific period for a suspension without pay, not to exceed two weeks;
 - (iii) the specific incident, conduct, course of conduct, unsatisfactory work performance, or other basis for the disciplinary action;
 - (iv) any previous efforts to make the employee aware of the need to change or improve work performance or conduct; and

(v) reference to any relevant rule, regulation, or Policy.

4.4 Effect Upon Employee Benefits. An employee who is demoted or suspended without pay, continues to accrue vacation and sick leave, to be covered by group insurance, and to be entitled to other employee benefit programs. If a demotion or suspension without pay is appealed and the appeal of the demotion or suspension is successful, the employee shall be entitled to payment for wages lost as a result of the demotion or suspension. If an appeal of dismissal is successful, the employee shall be reinstated to the same or similar position and shall be entitled to payment of back wages less any unemployment compensation insurance benefits received by the employee after the date of dismissal. Employee benefits such as vacation and sick leave shall be credited back to the date of dismissal.

Sec. 5 Procedure for Appeal. Disciplinary actions resulting in dismissal, suspension without pay, or demotion may be appealed by the affected employee pursuant to the process set out below by submitting a written request for a hearing to the vice chancellor or administrative equivalent for the employee's department. To be considered, the request must be made within ten working days following the date of the disciplinary action. The appeal shall contain a clear and concise statement of why the disciplinary action is inappropriate. The failure of the employee to submit the appeal in a timely manner shall constitute a withdrawal of the appeal. The vice chancellor or administrative equivalent shall, at his or her discretion, either hear the appeal in person or appoint a delegate(s) to hear the appeal. The hearing shall be conducted as soon as practical pursuant to the following procedures.

5.1 Naming of Delegate. If the vice chancellor or administrative equivalent elects to appoint a delegate(s) to hear the appeal, the name or names will be furnished to the employee as soon as practical after the selection is made. If more than one person is appointed, one of the appointees shall be designated in the notice to the employee to serve as chair.

5.2 Role of Hearing Officer. The vice chancellor or administrative equivalent, or the delegate designated as chair shall preside at the hearing as hearing officer and ensure the order of presentation as well as decide on questions of relevancy. The hearing officer shall also have the discretion to determine the form and scope of cross-examination allowed during the hearing. Upon request, the hearing officer may consult with and be advised by an attorney from the Office of General Counsel.

- 5.3 **Hearing Officer Challenge.** An employee may challenge the fairness and impartiality of the hearing officer. The challenge must be in writing and must clearly state the factual basis for the challenge. A challenge must be made within five working days from the date the employee received notice that the vice chancellor or administrative equivalent would be hearing the matter or within five working days after receiving notice that a delegate(s) was appointed. The employee shall have no right to disqualify any person serving as hearing officer. It shall be up to the person challenged to determine whether he or she can serve with fairness and impartiality. If the challenged vice chancellor or administrative equivalent voluntarily disqualifies himself or herself, he or she shall appoint a delegate(s) to hear the appeal and provide him or her written findings and a recommendation. If a challenged delegate determines that he or she cannot serve with fairness and impartiality, the vice chancellor or administrative equivalent shall appoint another delegate.
- 5.4 **Exchange of Information.** At least five working days prior to the time set for the hearing, the university representative for the appeal and the employee shall furnish each other with the names of the witnesses to be called; a summary of their expected testimony; and a copy of each document, record, or exhibit to be introduced at the hearing.
- 5.5 **Right to Representation.** The employee has the right to be represented at the hearing by an attorney or other individual representative. If the employee is represented by an attorney or an individual from an employee organization that does not claim the right to strike, the System may be represented by an attorney from the Office of General Counsel.
- 5.6 **Record of the Hearing.** In all appeal hearings, the System shall make a tape recording of the hearing and make a copy of the tape available to the employee on request. The tape recording of the proceedings shall be the official record of the hearing.
- 5.7 **Burden of Proof.** The System shall demonstrate by the greater weight of the credible evidence that the disciplinary action should be sustained. The System shall present its case first then the employee shall present his or her case.
- 5.8 **Evidence.** The hearing shall consist of testimony by witnesses called by the System and the employee, with both parties having the right to cross-examine witnesses. Relevant exhibits

may be introduced by either party, and the hearing officer shall take notice of the employee's personnel record.

5.9 Witnesses. Any employee can be asked to appear as a witness for either party. It shall be the duty of an employee requested to testify to do so as to any facts that may be relevant to the appeal. It is the responsibility of each party to assure attendance by its witnesses.

5.10 Post-Hearing.

- (a) If a delegate(s) was appointed, the delegate(s) shall deliberate, prepare, and forward written findings and recommendations to the vice chancellor or administrative equivalent within ten working days after the close of the hearing. The vice chancellor or administrative equivalent shall mail his or her decision to the employee within ten working days following the receipt of the findings and recommendations from the delegate(s).
- (b) If the vice chancellor or administrative equivalent has heard the appeal, he or she shall mail a written decision to the employee within ten working days after the close of the hearing.
- (c) The decision of the vice chancellor or administrative equivalent is final.

Sec. 6 Records of Disciplinary Action. Copies of all documents pertaining to disciplinary actions shall be filed in the employee's personnel file.

3. Definitions

Work Performance – all aspects of an employee's work.

4. Relevant Federal and State Statutes, Policies, and Standards

None

5. Relevant System Policies, Procedures, and Forms

[Board of Regents' Rules and Regulations, Rule 30601, Discipline and Dismissal of Classified Employees](#)

[INT131, Probationary Period for Classified Employees](#)

6. System Administration Office(s) Responsible for Policy

Office of Employee Services

7. Dates Approved or Amended

February 1, 2001

February 21, 2011

November 15, 2012