



# PA State System of Higher Education Board of Governors

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**Effective:** July 15, 1986

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## **Policy 1986-06: Management Employee Retreat Rights**

**See Also:**

**Adopted:** July 15, 1986

**Amended:**

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### **A. Definitions**

**Hornbeck Memorandum** - the June 21, 1974, memorandum from Executive Deputy Secretary of Education David L. Hornbeck to the presidents of the state colleges and university entitled "Management Classes of Positions—State Colleges and Indiana University of Pennsylvania," Part I.

**Managerial Employee** - any individual employed at a State System university as a State University Manager I-V and senior policy executives who vested retreat rights under the Hornbeck Memorandum.

**Preponderance of Evidence** - such evidence as is necessary to convince a reasonable mind that a fact sought to be proved is more likely than not true.

**Presiding Officer** - the chancellor of the State System of Higher Education or any individual appointed by the chancellor as hearing officer to conduct hearings.

**Removal** - the term "removal" shall mean the exercise of discretionary authority by the president to relieve a managerial employee of the duties and responsibilities of his/her position.

**Retreat** - the qualified right of a management employee to an alternate position at his/her employing university, reasonably commensurate with his/her skills and qualifications, if removed from management.

**Terminate, Termination** - the words "terminate," "termination," their conjugations and derivatives as used in these regulations shall mean the extinguishment of the employment of a managerial employee at a State System university.

**University** - the 14 universities of the State System of Higher Education: Bloomsburg, California, Cheyney, Clarion, East Stroudsburg, Edinboro, Indiana, Kutztown, Lock Haven, Mansfield, Millersville, Shippensburg, Slippery Rock, and West Chester.

## **B. Scope**

1. The rights and remedies contained in these regulations shall be applicable only to those permanent and probationary managerial employees who fall within the classes enumerated in section C as of the effective date of the regulations, who have employment retreat rights as a result of the terms of the Hornbeck Memorandum and any custom, practice, or policy arising there from. Senior policy executives who previously vested rights under the Hornbeck Memorandum before implementation of Board of Governors' Policy 1984-14-A shall enjoy the rights and remedies provided by these regulations if terminated from employment.
2. These regulations shall have no prospective effect whatsoever. No individual appointed to a state university manager position after the effective date of these regulations, whether by hire, transfer, promotion, or otherwise shall vest retreat rights.
3. These rules shall supersede and repeal all existing policies, rules, regulations, customs, and usages respecting the retreat rights of management employees in the State System of Higher Education, excluding those adopted by the Board of Governors for executive managers. This shall include, but not be limited to, the following memoranda:
  - a. The November 9, 1973 memorandum from Commissioner of Higher Education, Jerome M. Ziegler, to the presidents of the state colleges and university entitled "Management Classes of Positions - State Colleges and University."
  - b. The June 21, 1974 memorandum from Executive Deputy Secretary of Education David L. Hornbeck to the presidents of the state colleges and university entitled "Management Classes of Positions - State Colleges and Indiana University of Pennsylvania," Part I.
  - c. The July 5, 1974, memorandum from Allan P. Brown, Personnel Director of the Pennsylvania Department of Education, to the presidents of the state colleges and university entitled "Management Classes of Positions."

## **C. Rights**

1. No right of continuous employment shall attach to any management position of employment, including the state university manager classification. All managerial employees shall serve in their managerial positions of employment at the pleasure of the president and may be removed from such positions at any time with or without notice, cause, or reason. Managerial employees who fall within the classes enumerated in paragraph 3 as of the effective date of these regulations shall, if removed from their managerial positions, be entitled to the rights and remedies contained herein. Managerial employees in the state university manager classification appointed after the effective date of these regulations shall be at will

employees and enjoy no rights or remedies hereunder. The president may terminate their employment with or without notice, cause, or reason.

2. Except as provided in section 4 (a-f), those managerial employees who fall within the classes set forth in subsection 3 (a), including current probationary employees who successfully complete their one-year probationary periods, shall, if removed from their managerial positions of employment, be reassigned to other positions of employment within their employing universities, reasonably commensurate with their skills and qualifications, except as provided in section 4 (a-f). Such persons shall not be entitled to any particular position nor to any particular rate of compensation but shall be compensated at rates applicable to the positions to which they are assigned.
3. The rights and remedies contained in these regulations shall be applicable only to persons who fall within the following classes as of the effective date of the regulations:
  - a. State University Managers I-V who were classified as Faculty Rank Managers immediately before classification as State University Managers I-V.
  - b. State University Managers I-V who held tenured faculty positions with their employing universities immediately before appointment as managers.
  - c. State University Managers I-V who were originally hired within these classifications and are so classified at the time of removal from their positions by the president.
  - d. Senior policy executives, formerly classified as State University Managers VI-VIII, who vested rights under the terms of the Hornbeck Memorandum before implementation of the Board of Governors' Policy 1984-14-A.

The foregoing enumeration of covered employees is exclusive. The rights created herein shall not be applicable to any management employee hired after the effective date of these regulations.

Former managerial employees who have been reassigned to other positions of employment within their employing universities pursuant to the Hornbeck Memorandum or any policy arising therefrom shall not have resort to the rights and remedies provided herein if terminated from employment. Such persons shall have resort to those rights and remedies prescribed for their classifications and positions by statute, regulation, policy, or collective bargaining agreement.

4. The president may decline to provide a reassignment to any managerial employee covered by paragraph 3 and instead elect to terminate an employee at the time he/she removes the employee from his/her managerial position. Employees covered by these regulations may be terminated for cause, which shall be any of the following reasons:

- a. Disciplinary or performance based considerations including but not limited to misconduct or incompetence;
  - b. Fiscal considerations, including program curtailment, program elimination, or fiscal exigency;
  - c. Lack of an available position reasonably commensurate with the affected employee's skills, qualifications, and credentials;
  - d. Lack of institutional need for the skills, qualifications, or credentials of the affected employee;
  - e. Refusal of an academic department, bargaining unit, or other university constituency to grant its contractually or legally required approval to reassignment of the affected employee;
  - f. The refusal or failure of an affected employee to accept a reassignment to another position of employment when the position offered is reasonably commensurate with the employee's skills, qualifications, or credentials.
5. Any managerial employee covered by paragraph 3 whose employment is terminated by the president shall have the right to appeal to the chancellor, who shall conduct a hearing to determine whether cause for termination exists.
  6. The rights created by these regulations shall not preclude the president from disciplining any managerial employee, or from transferring managerial employees between managerial positions, and to other positions and classifications within the university; nor shall the president be precluded from terminating, at his/her pleasure, the employment of any probationary management employee.
  7. The rights created by these regulations shall apply to managerial employees covered by paragraph 3 only if removed from their managerial positions by the president. No management employee shall have the right to demand reassignment.

#### **D. Appeal Procedures**

1. Prior to the termination of a managerial employee covered by section C (3) of these rules, the president shall formally notify the affected employee of the terminal date of his/her employment and shall state the reason or reasons for termination of the affected employee's employment. The notice shall offer the employee an informal pretermination hearing and inform the employee of his/her appeal rights. This notice may be transmitted to the affected employee by personal delivery or by means of U.S. Postal Service.
2. The president, if requested by the affected employee, shall convene an informal hearing prior to the effective date of termination to give the

employee an opportunity to be heard with respect to the reasons for termination. Hearings shall be attended by such persons as the president may designate. The president shall within 10 days notify the affected employee in writing whether the termination will stand.

3. Any managerial employee who has received a termination notice may appeal to the chancellor if the president reaffirms his/her decision after an informal hearing. This shall be done by filing a written appeal with the chancellor within 20 calendar days after receipt of the president's final decision in which the employee shall state the grounds of appeal. Failure to file a written appeal within the 20-day period shall act as a bar to any hearing under these rules. All appeals shall be transmitted to the following address:

Office of the Chancellor  
State System of Higher Education  
301 Market Street, P.O. Box 809  
Harrisburg, PA 17108.

4. Upon receipt of a timely filed appeal, the chancellor shall acknowledge same and notify the university president of the appeal.
5. Within 30 days after receipt of a timely filed appeal, the chancellor shall provide written notice of the date, time, and location of the hearing to the president and the affected employee by means of personal delivery or certified mail.
6. The chancellor may partially or fully affirm, reverse, or modify the decision of the president.

#### **E. Hearing Procedures**

1. Hearings shall be conducted in accordance with the requirements of the Commonwealth Administrative Agency Law, Act of April 27, 1978, P.L. 202, No. 53, 2 P.S. § 101, *et seq.* The chancellor may hear cases personally or may appoint hearing officers whose adjudications shall be recommended to the chancellor who may accept, reject, or modify such adjudications.
2. The following requirements shall be adhered to in hearings:
  - a. Parties may conduct reasonable prehearing discovery with the consent of the presiding officer.
  - b. Parties shall have the right to be represented by legal counsel in all phases of the proceedings.
  - c. Parties shall be allowed to introduce evidence. The formal rules of evidence shall not be applicable, but all evidence must be relevant, material, and inherently reliable in order to qualify for admission.

- d. Parties shall be allowed to engage in reasonable examination and cross examination of witnesses.
  - e. Parties shall have the right to submit written briefs to the presiding officer who shall determine briefing schedules.
  - f. The chancellor shall prepare and maintain stenographic transcriptions of all hearings. The costs of preparation shall be borne by the university. Parties may have copies of transcriptions prepared at their own costs or may review the chancellor's in the Office of the Chancellor.
  - g. The chancellor shall prepare written adjudications of all cases. Every adjudication shall contain findings of fact and a discussion of the rationale for the determination. The chancellor shall issue adjudications within 90 days after receipt of stenographic transcriptions or briefs, whichever is applicable, but failure to comply with the 90-day limitation shall not invalidate any adjudication. Adjudications shall be served upon parties by means of personal delivery or by certified mail.
  - h. Adjudications shall be based upon the preponderance of credible evidence. The foregoing requirements shall supersede the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1 *et seq.*
3. Except in those cases where discrimination has been alleged or where an affected employee's status under section C (3) is in dispute, hearings shall be conducted according to the following order:
- a. The presiding officer shall open the hearing by identification of those parties present and such documents and pleadings as may be appropriate for identification at that time.
  - b. The presiding officer may then allow the parties to present opening statements.
  - c. The parties shall present their cases-in-chief. The university shall first go forward and establish a *prima facie* case. After the presentation of the president's case-in-chief, the affected employee shall present his/her case-in-chief. The president shall establish the cause for termination by a preponderance of evidence.
  - d. After the presentation of both cases-in-chief the presiding officer may allow the parties to present rebuttal evidence.
  - e. At the conclusion of the introduction of all evidence, the presiding officer may allow both parties to make closing statements.
4. In cases where discrimination is alleged by an affected employee, the employee shall have the burden of going forward and the burden of proving by a preponderance of evidence that he/she was terminated from employment because of race, sex, national origin, religious creed, or

handicap. After the affected employee has presented his/her case-in-chief the university may present rebuttal evidence. Hearings shall conform in all other respects to the order set forth in section seven.

5. In cases where the initial question is whether the affected employee is covered under these regulations, the presiding officer shall have the discretion of ordering a preliminary hearing in which evidence of the affected employee's claim shall be heard, or the presiding officer may direct that a joint hearing be held at which evidence of the affected employee's status as well as the cases-in-chief both parties shall be heard.
  - a. The affected employee shall have the burden of going forward and the burden of proof in demonstrating by a preponderance of evidence that he/she falls within one of the classes enumerated in section C (3) of this policy. After presentation of the affected employee's case-in-chief, the university may present rebuttal evidence. Hearings shall conform in all other respects to the order set forth in section seven.
  - b. When the hearing is a preliminary hearing the presiding officer shall render an adjudication within 30 days after receipt of the stenographic transcription or briefs, if briefs are submitted, but failure to comply with the 30-day limitation shall not invalidate any adjudication.
  - c. When a joint hearing is convened the presiding officer shall require the affected employee to go forward and present evidence in support of his/her claim of inclusion in the classes enumerated in section C (3) and then allow the university to present rebuttal evidence. At the conclusion of the presentation of testimony on the issue of coverage the presiding officer may either make a ruling or reserve ruling and require the parties to present their cases-in-chief on the issue of termination. Hearings under this provision shall conform in all other respects to the order set forth in section seven.
6. The conduct of all hearings shall be committed to the presiding officer who shall make all evidentiary and procedural rulings and such rules as reasonably necessary to insure that hearings are conducted in an orderly and expeditious fashion.
7. These procedures shall be used to adjudicate any claim of continuous employment arising from the provisions of Board of Governors' Policy 1984-14-A.