



PA State System of Higher Education Board of Governors

Effective: July 1, 1983

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Policy 1983-01-A: Merit Principles

See Also:

Adopted: May 23, 1983

Amended: July 15, 1987; October 9, 1997; January 24, 2013

A. Purpose

The purpose of these provisions is to establish general personnel policy, consistent with the merit principles described herein, by which the Office of the Chancellor and State System universities shall operate under 24 P.S. § 20-2006-A (8). The policy is not intended to restrict flexibility, discourage innovation, or create any unwarranted regulatory burden within the State System of Higher Education. The chancellor, as chief executive officer, shall administer the merit principles.

B. Personnel management should be implemented consistent with the following merit principles:

1. Recruitment shall be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society; and selection, and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition that assures all receive equal opportunity.
2. Fair treatment of applicants and employees in all aspects of personnel administration without regard to one's status in a legally protected class, as defined by federal or state law, and with regard to constitutional rights.
3. Employees shall be protected from coercion for partisan political purposes and are prohibited from using their employee authority to interfere with or affect an election or a nomination for office.
4. Employees shall be retained on the basis of their performance. Substandard performance shall be corrected and employees who cannot or will not improve their performance to meet required standards shall be separated.
5. Employees shall maintain high standards of integrity, conduct, and concern for the mission of the State System of Higher Education.
6. Discipline of merit-covered employees shall be consistent with the merit principle standards set forth in this policy.

C. **Management Personnel Policies**

The chancellor shall ensure the development and implementation of a procedure/standard regarding general personnel policies for management personnel.

D. **Scope for Requests for Review of Final Discipline**

Merit principles requests for review of final discipline as outlined in this Policy shall apply only to non-represented, non-probationary employees who occupy management positions (classification 190 and below) who are not part of a bargaining unit within the State System of Higher Education. Merit principles requests for review of final discipline as outlined in this Policy shall not apply to executive leadership, strategic leadership, and tactical/senior professional positions (managers in classification 200 and above), now existing or hereinafter created, within the State System of Higher Education. Furloughs and job abolishment decisions are not subject to this policy.

E. **Definitions**

Abandonment. Employee's failure to report to work for a period of five consecutive working days without giving advance notice of absence to the appointing authority.

Appointing Authority. The university president or the chancellor of the State System of Higher Education or their designees.

Appointment. A new hire into a position of employment in the State System of Higher Education.

Discipline. Suspension, involuntary demotion, or termination of an employee for reasons relating to conduct or performance. Discipline shall not include a temporary or permanent furlough/job abolishment, a formal or informal reprimand, or a suspension with pay pending the outcome of a fitness-for-duty evaluation or an investigation.

Discriminatory Reason. Unlawful discrimination because of one's status in a legally protected class, as defined by federal or state law.

Final Determination. The last written determination made before the action takes effect.

Furlough. The termination of an employee's employment either for a specified period of time or permanently as part of a reduction in workforce effort.

Involuntary Demotion. The movement or reclassification of an employee from a position classification to another position classification assigned to a lower pay grade level. Such movement may result in an involuntary reduction in an employee's wages and benefits.

Non-Probationary Employee. Any employee who has completed any prescribed probationary period or extension of probationary period related to their appointment and/or promotion.

Promotion. An increase in wages and benefits accrued as the result of a movement or reclassification to a position having a higher level of wages and benefits than the employee's current position.

Suspension. The temporary removal of an employee from his/her official duties for disciplinary reasons or pending investigation of an employee's fitness to continue in employment.

Termination. The permanent removal of an employee from employment with the State System of Higher Education.

F. Employee Discipline

1. Appointing authorities may discipline employees for inadequate performance, up to and including, termination.
2. The appointing authority may place an employee on an interim suspension without pay without prior notice and an opportunity to be heard, provided that written notice of the basis for the interim suspension and other contemplated action, and an informal opportunity to be heard with respect thereto, is afforded to the employee within a reasonable time thereafter.
3. An employee may be suspended not more than 30 days pending investigation of the employee's fitness to remain in employment. If no cause for disciplinary action is found, then the action shall be purged from the employee's personnel file and any lost pay and benefits retroactively restored. If cause is found, then the suspension, if appropriate, may be converted to disciplinary action.
4. Furlough does not constitute disciplinary action. Decisions and actions resulting in the furlough of employees are not reviewable under this policy.

G. Notice to Employee

1. Notice Prior to Discipline. Before any final determination is made to discipline an employee, the appointing authority shall provide the employee with advance written notice of the potential basis for the contemplated action, as well as an informal opportunity to be heard with respect thereto. Following such written notice and informal opportunity to be heard, the appointing authority shall make its final determination in the matter.
2. Notice of Discipline. Notice of termination, including termination by abandonment, involuntary demotion, suspension, or any other disciplinary action issued to employees, shall include a clear statement of the reasons sufficient to apprise the employee of the nature and grounds upon which the action is based.

H. Review of the Appointing Authority's Notice of Final Discipline

1. **Timeliness and Form.** An employee covered by the scope of this policy and alleging a violation may request a review of the appointing authority's notice of final discipline. This request must be made in writing not more than 20 calendar days after the appointing authority has given notice of the discipline. The employee shall state clearly and concisely the grounds for the appeal, the facts relied upon to support the appeal, and the relief the employee seeks. When the appointing authority is a university, an employee alleging a violation of this policy may request review by the chancellor. When the appointing authority is the chancellor, an employee alleging a violation of this policy may request review by the Chair of the Board of Governors.
2. **Dismissal.** Requests for review that do not conform to the requirements stated in this section may be dismissed without a review.
3. **Violations.** With regard to any violation of this merit principles policy, so long as such violation would not constitute a violation of the applicable laws or provisions of the constitutions of the United States or the Commonwealth of Pennsylvania, such violation shall not, in and of itself, constitute a basis for the reversal or invalidation of any decision regarding disciplinary or other adverse action taken by any appointing authority. In the event that violation is also a violation of an applicable provision of federal or Commonwealth law or constitutional provision, the remedy intended by this merit principles policy is not to in any way be construed as in excess of the remedy that would otherwise be required by the applicable law or constitutional provision.

I. Review

The chancellor or his/her designee shall provide a written explanation of the reason for the final decision to the employee. Prior to issuing a final determination, the chancellor or his/her designee shall conduct a hearing for university employees and the Executive Committee of the Board of Governors shall do so for Office of the Chancellor employees.

J. Special Rules of Hearing Procedures

1. **Procedure.** Hearings shall conform to the procedural requirements of the Administrative Agency Law, 2 Pa.C.S.A § 101 *et seq.*
2. **Conduct of Hearings.** The chancellor or his/her designee shall conduct hearings for university employees and the Executive Committee of the Board of Governors shall do so for Office of the Chancellor employees-who appeal a decision or action taken by the chancellor. The chancellor and Executive Committee are hereby authorized to retain hearing officers to conduct hearings and issue recommendatory adjudications.

3. Burden of Proof. In cases involving discipline, the appointing authority shall have the burden of proof and the burden of going forward to establish its case by a preponderance of the evidence. Where an employee makes a claim of discriminatory action as the basis for discipline, the employee shall have the burden of proof and the burden of going forward to establish a *prima facie* case. If the *prima facie* case is established by the employee, the burden shall then shift to the appointing authority to prove by a preponderance of the evidence that discipline was imposed for a non-discriminatory reason.
4. Order of Hearings. Hearings shall be conducted according to the following procedure:
 - a. The party having the burden of going forward shall present its case, utilizing witnesses and such other evidence as may be relevant to establish a *prima facie* case.
 - b. At the conclusion of the moving party's case-in-chief, the presiding officer, upon motion or in response to an opposing party's motion to dismiss, shall determine whether the party has met its burden.
 - c. If the party has met its burden, the opposing party shall then present a defense or otherwise rebut the moving party's case by such evidence as may be relevant. At the conclusion of both presentations, the presiding officer may allow each party to present such other evidence as may be relevant. Each party shall be allowed reasonable cross-examination of the opposing party's witnesses.
5. Standard of Proof. The standard of proof shall be that of a preponderance of evidence. The term "preponderance of evidence" shall mean evidence sufficient to convince a reasonable mind that a matter is more likely than not true.
6. Evidence. The parties shall not be bound by the formal rules of evidence in the adjudication of cases; however, all evidence must be inherently reliable to qualify for admission to the record of the case. Hearsay evidence shall not be used to establish any material fact.
7. Discovery. The employee shall have the opportunity to review his/her personnel file and any documentation that was used for, or to support, the disciplinary action at issue. There shall be no other discovery.
8. Motion Practice. Motions shall be considered for the following purposes, but not limited to:
 - a. dismissing complaints for lack of timeliness, failure to state a violation of policy, or lack of specificity;
 - b. requesting a continuance, extension, or other delay of proceedings;

- c. seeking relief or clarification concerning any other procedural matter;
and
- d. issuing of *subpoenas duces tecum*.

9. Pleadings and Exhibits

- a. All briefs and motions shall be typewritten and double spaced on 8 ½ x 11-inch paper with a one-inch margin, and shall be limited to 50 pages. Case captions and attorneys' addresses and telephone numbers shall appear on all pleadings.
- b. Pleadings and exhibits in which factual matters are averred shall be signed by the party filing it.
- c. Pleadings shall be filed in duplicate with the prothonotary, accompanied by certificates of service.
- d. An electronic copy of all pleadings and exhibits (if practicable) shall be provided to all parties.

10. Service of Pleadings. The Request for Review shall be submitted via first class U.S. Postal Service. All other pleadings may be served by personal service; first class U.S. Postal Service; facsimile; or via electronic mail (email).

11. Representation. Employees may represent themselves or be represented by attorneys. Attorneys shall file praecipes of appearance.

K. Implementation

The chancellor and Executive Committee may make such rules as may be necessary to implement this policy.

L. Supersession

Except as otherwise provided, these procedures supersede the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1 *et seq.*

M. Witnesses and Production of Evidence

The Board of Governors or its designee may compel the appearance of witnesses and production of evidence by *subpoenas duces tecum* in accordance with § 520 of the Administrative Code of 1929, 71 P.S. § 200.

N. Leave for Attendance at Hearings

Any employee who is required to attend a hearing during his/her working hours shall be granted civil leave by the appointing authority.

O. Effective Date

This amended Policy is effective July 1, 2013.