

## **Procedure IV.4002.B.a, Termination or Demotion of Contractual Employees**

### **Associated Policy**

Policy IV.4002.B, Termination or Demotion of Contractual Employees

### **Introduction**

This procedure specifies the procedures for termination or demotion of a contractual employee during the term of an existing contract.

This procedure does not apply to non-renewal of contractual employees. Non-renewal is subject to [Policy IV.4002.D, Renewal and Non-Renewal of Contractual Employees](#).

This procedure does not apply to Reduction in Force (RIF) decisions. RIF decisions are subject to [Policy IV-G-5: Policy on Reduction in Force](#).

### **Procedure**

Terminations and demotions will be based on evidence demonstrating the existence of just cause and/or good cause. Just cause and/or good cause include, but are not limited to:

1. Physical or mental incapacity that prohibits the employee from performing their 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:
  - a) Crimes related to fraud, theft, and burglary.
  - b) Homicide.
  - c) Kidnapping.
  - d) Aggravated assault.
  - e) Robbery.
  - f) Violation of Title IX regulations (sexual harassment, sexual assault, dating violence, domestic violence, and stalking).
  - g) Prostitution.
  - h) Indecency with a minor.
  - i) Public lewdness.
  - j) 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 or a written notice.
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:
  - a) Making false statements or failing to disclose information to a leader that a reasonable employee would have disclosed under similar circumstances.
  - b) Failure to participate in good faith regarding an on-going investigation.
  - c) Fraud, theft, embezzlement.
  - d) 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 email, telephones, cell phones, smart phones, computer tablets, fax machines, laptops, computers, internet, social media, or any other online or electronic technology.
12. Failure to maintain any license, registry, or certificate required by the employee'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 that indicate an unacceptable pattern of ongoing behaviors.
15. Failing to perform duties or to take action that another College employee reasonably would have done under the same or similar circumstances.
16. Engaging in conduct that would tend to injure or impair the College's interests, reputation, or operations.

17. Engaging in conduct that is contrary to the mission and values of the College, or that is inconsistent with the employer/employee relationship.
18. Violating College policy.
19. Violating state or federal law, including:
  - a) [Section 51.252 of the Texas Education Code](#) (relating to the failure to make a mandatory report of sexual harassment, sexual assault, dating violence, and stalking).
  - b) [Section 51.3525 of the Texas Education Code](#) (relating to prohibited diversity, equity, and inclusion programs and activities designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation). When evaluating an alleged violation of Section 51.3525, the College administration will consider whether the employee's conduct constitutes academic course instruction or falls within another exception established in Section 51.3525 of the Texas Education Code.
20. For other good cause.

#### Evaluation of Termination Proposal:

1. The relevant leaders, in conjunction with Human Resources, Employee Relations, will 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 will also consider the nature and severity of the misconduct and the outcome of any investigation pertaining to the allegation. Employee Relations will review the proposed recommendation and documentation to ensure compliance with College's policies and procedures.
2. Written notice of intent to terminate will be provided to the employee.
3. When it is in the College's best interest, the Chancellor, or designee, may place contractual employees on paid administrative leave or reassign the employee during an investigation due to allegations of wrongdoing, or when a proposal to terminate or demote is pending before the Board of Trustees.

#### **Hearing Procedure**

If termination or demotion is proposed for a contractual employee during the term of a contract, certain procedural steps will 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.

1. Discussions with the Employee

The respective Strategic Leadership Team (SLT) member, or designee, will discuss any possible termination or demotion with the employee prior to the Chancellor 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.

## 2. Approval by the Chancellor

- a) Any proposed termination or demotion must be approved by the Chancellor, or designee. If the Chancellor, or designee, approves the proposed action, the Chancellor, or designee, will notify the contractual employee of the proposed action, the grounds for the action, and of the right to a hearing before the Hearing Committee.
- b) The notice of a proposed termination or demotion may be hand delivered, sent via email, or delivered by other postal service provider.

## 3. Employee's Response

An employee's failure to update their postal address, refusal to accept delivery of a letter, or refusal or failure to open email will not constitute good cause for failure to comply with the deadlines stated in the notice of the proposed termination or demotion.

## 4. Appeal Rights

An employee whose employment contract is proposed for termination or demotion during the term of the contract will be afforded due process. However, if the termination recommendation is a result of a Title IX violation, and the full-time contractual employee was provided a hearing under [Procedure III.3006.D.a](#), the employee will not be afforded an additional hearing. The employee may request a review by the Chancellor and will proceed to section 10 of this procedure, Action of the Chancellor.

## 5. Request for a Hearing

If the contractual employee wishes to contest the proposed action, they may request a hearing before the Hearing Committee. Requests for a hearing must be made in writing to the Chancellor, or designee, 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, or designee, may recommend to the Board of Trustees that the contractual employee be terminated or demoted, and the Board of Trustees will take the action it deems proper.

## 6. Appointment of the Hearing Committee

- a) 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.

- b) The Hearing Committee will be comprised of three (3) impartial contractual employees. One member is to be designated by the respective SLT member, one member by the contractual employee, and one member by the Chancellor.
- c) The Chancellor, in consultation with the SLT, will 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 chairperson of the Hearing Committee.

#### 7. Impartiality of Hearing Committee Members

- a) If any contractual employee appointed to serve on the Hearing Committee believes that they cannot hear the evidence and make a fair and impartial recommendation, the member will notify the committee immediately.
- b) 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 will be disqualified from serving on the committee.
- c) Upon such disqualifications, the Chancellor will appoint a member of the same classification to serve.

#### 8. Conduct of Hearing

The Hearing Committee will 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.

##### a) Rights of Parties

- i. 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 will 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.
  - ii. 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.
  - iii. Each party will have the right to testify.
  - iv. The hearing will be closed to the public.
- b) Expenses of the hearing will be borne by the College; however, the employee is responsible for their own attorneys' fees and for incidental costs, such as photocopy costs.

- c) The hearing will be held at a place and time named by the Chairperson of the Committee, in consultation with the Provost / Vice Chancellor and Human Resources.
- d) Documents submitted as evidence will be noted and identified by the chairperson of the Hearing Committee and included in the final report to the Chancellor.
- e) The strict rules of evidence are not in force at the hearing; however, general concepts of relevancy and materiality will prevail at the hearing. The chairperson may limit cumulative or repetitious testimony or evidence.
- f) At least three (3) working days before the hearing, each party will 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 will 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.
- g) The chairperson of the Hearing Committee will rule on any objections made during the hearing. The chairperson is free to consult with other committee members as needed.
- h) The Hearing Committee will ensure that all parties are afforded a fair procedure and substantial justice.
- i) The Hearing Committee may allow breaks or recesses at its discretion.
- j) Hearing Committee members may question the witnesses or counsel; however, witnesses and counsel may not question committee members.
- k) 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.
- l) 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.
- m) 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 will be avoided as much as possible. Public statements, if any, concerning the decision or recommendation of the Hearing Committee will be withheld until final disposition.
- n) In cases pertaining to a recommendation for termination or demotion, the proceedings will 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.

## 9. Recommendation of the Hearing Committee

- a) The panel by a majority of its total membership will:
  - i. Make findings of fact.

- ii. Determine whether the facts constitute good cause for demotion or termination.
  - iii. Such findings and conclusions will be based solely on the evidence presented at the hearing.
- b) Transcripts of the proceeding will be sent to the committee within fifteen (15) working days.
  - c) Within ten (10) working days after receipt of the written transcript of the proceedings, the committee will submit a written recommendation for disposition to the Chancellor. The recommendation will 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 will be transmitted to the Chancellor.

10. Action of the Chancellor

The Chancellor will review the committee's recommendation. Within fifteen (15) working days of the receipt of the recommendation, the Chancellor will accept, reject, or modify the committee's recommendation and advise the parties in writing of the decision. The decision of the Chancellor is final; however, nothing in this procedure precludes the employee from appearing before the Board of Trustees during the public comment portion of a scheduled Board meeting.

**Definitions**

**Employment contract:** A formal, signed agreement between the employee and the employer. It explains the rights, responsibilities, and obligations of both the employee and the employer.

**Contractual employee:** An employee that enters into an agreement with the College through an employment contract to complete a specific job for a period of up to 12 months for a predetermined salary.

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Primary Owner of Policy Associated with the Procedure	Vice Chancellor, Human Resources, Organizational and Talent Effectiveness
Secondary Owner of Policy Associated with the Procedure	Vice President, Human Resources