

DISCIPLINE AND DISMISSAL OF EMPLOYEES

A. Purpose

It is the policy of The University of Texas at Brownsville to encourage fair, efficient and equitable solutions for problems arising out of the employment relationship and to meet the requirements of state and federal law.

B. Scope of Policy

These policies and procedures are applicable to conduct or job performance of an employee that results in a decision to impose a disciplinary penalty of demotion, suspension without pay or dismissal. It does not apply to:

1. University ~~police, faculty or teaching staff~~ who are subject to other approved discipline or dismissal procedures;
2. Suspension with pay pending investigation of allegations relating to an employee;
3. 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 necessity of notice of nonrenewal as provided in the **Rules and Regulations** of the Board of Regents or the rules and regulations of The University of Texas at Brownsville and Texas Southmost College; or
4. Dismissal of employees
 - a. who are appointed to positions without fixed term and under applicable rule or regulation serve at the pleasure of a specific administrative officer,
 - b. who occupy positions that are dependent upon funding from a specific source and such funding is not available
 - c. as a result of a reorganization,
 - d. because of financial exigency,
 - e. during the 180-days probationary period,
 - f. who are appointed for a stated period that is less than 180 days, or
 - g. who are appointed at a per diem or, hourly rate and work on an as needed basis.

(DISCIPLINE AND DISMISSAL OF EMPLOYEES CONT'D)

C. Discipline and Dismissal Policy and Procedures

1. Requisite Standards of Conduct

Employees are expected to acquaint themselves with performance criteria for their particular jobs and with all rules, procedures and standards of conduct established by the Board of Regents of The University of Texas System, the University and the employee's department or unit. When an employee does not fulfill the responsibilities set out by such performance criteria, rules, procedures and standards rules, procedures and standards of conduct the employee may be subject to disciplinary action.

2. Conduct Which is Subject to Disciplinary Action

a. Work Performance

- 1) Work performance is to be judged by the supervisor's evaluation of the quality and quantity of work performed by each employee. When, in the opinion of the supervisor, the work performance of an employee is below standard, the supervisor should take appropriate disciplinary action.

b. Misconduct

- 1) Examples of unacceptable conduct include, but are not limited to:
 - a) falsification of time cards, personnel records or other University records;
 - b) neglect of duties or wasting time during working hours;
 - 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 regulation of the University;

(DISCIPLINE AND DISMISSAL OF EMPLOYEES CONT'D)

- f) bringing intoxicants or drugs onto the premises of the University, 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 supervisor or co-worker, impairment of function of 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) neglect of duty or failure to meet a reasonable and objective measure of efficiency and productivity;
- n) theft, dishonesty or unauthorized use of University property including records and confidential information;
- o) creating a condition hazardous to another person on the premises;
- p) destroying or defacing University property or records or the property of a student or employee;
- q) refusal of an employee to follow instructions or to perform designated work that may be required for an employee or refusal to adhere to established rules and regulations;

(DISCIPLINE AND DISMISSAL OF EMPLOYEES CONT'D)

- r) repeated tardiness or absence, absence without proper notification to the supervisor or without satisfactory reason or unavailability for work; and
- s) violation of policies or rules of The University of Texas at Brownsville and Texas Southmost College, the Board of Regents, or The University of Texas System.

3. Investigations

- a. All incidents that involve the potential for the disciplinary action of demotion, suspension without pay, or dismissal shall be investigated by the employee's supervisor or other designated administrative official.
- b. If the investigation results in evidence that established with reasonable certainty that the employee engaged in conduct which warrants disciplinary action, the supervisor shall follow the predisciplinary hearing procedures before seeking approval for the proposed disciplinary action.

4. Predisciplinary Hearings

a. Policy

An employee shall be informed of the basis for any proposed disciplinary action resulting in demotion, suspension without pay or dismissal and have an opportunity to respond before a final decision is made to take disciplinary action. The hearing 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.

b. Procedures

There is no prescribed form for this hearing. It should be informal. However, before reaching a final decision to impose discipline, the supervisor shall:

- 1) inform the employee, either in person or in writing, of the reasons for the proposed disciplinary action, the facts upon which the supervisor relies, the names of any persons who have made statements about the disciplinary incident and the content of such statements;

(DISCIPLINE AND DISMISSAL OF EMPLOYEES CONT'D)

- 2) give the employee access to any documentary material which the supervisor has relied upon; and
- 3) give the employee an opportunity to respond to the charges either orally or in writing within a reasonable time [not to exceed five (5) working days] and to persuade the supervisor that the evidence supporting the charges is not true. If the supervisor is not persuaded that the evidence is untrue, the supervisor will review the evidence and proposed disciplinary action with the Director of Human Resources or his or her delegate and will obtain the approval of the appropriate Vice President before proceeding to impose the disciplinary penalty.

5. Imposing the Disciplinary Penalty

a. Notice

Upon completing the predisciplinary hearing procedures and obtaining the approval of the appropriate department head or administrative equivalent, the supervisor shall inform the employee in writing of the following:

- 1) Whether the disciplinary penalty is demotion, suspension without pay or dismissal;
- 2) the effective date of demotion, or dismissal;
- 3) a specific period for a suspension without pay, not to exceed five working days;
- 4) the specific incident, conduct, course of conduct, unsatisfactory work performance or other basis for the disciplinary penalty;
- 5) any previous efforts to make the employee aware of the need to change or improve work performance or conduct; and
- 6) reference to any relevant rule, regulation or policy. The supervisor shall also inform the employee of the right to appeal the disciplinary action and provide them a copy of the appeal procedure.

(DISCIPLINE AND DISMISSAL OF EMPLOYEES CONT'D)

b. Effect Upon Employee Benefits

- 1) 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.
- 2) If a demotion or suspension without pay is appealed and it is determined that there was not good cause for the demotion or suspension, the employee shall be entitled to payment for wages lost as a result of the demotion or suspension.
- 3) If it is determined upon appeal that a dismissal was not for good cause, the employee shall be reinstated to the same or similar position and shall be entitled to payment of back wages less any unemployment 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.

D. Procedure for Appealing Disciplinary Actions

Disciplinary actions resulting in dismissal, suspension without pay, or demotion may be appealed by the affected employee pursuant to the process set out below. The time limits set forth in the appeal procedure must be adhered to by both the employee and the appropriate supervisory and administrative personnel unless extended for good cause by the Director of Human Resources. The failure of the employee to process the appeal in a timely manner to the next level shall constitute a withdrawal of the appeal. The failure of supervisory or administrative personnel to timely respond to an appeal shall constitute authorization for the employee to process the appeal to the next step.

1. Step One

The employee may present a written appeal to the Dean or Director with administrative responsibility for the employee's department within five (5) working days of the date of the disciplinary action. The appeal shall contain a clear and concise statement of why the disciplinary action is inappropriate. Within ten (10) working days of the date of the appeal, a written decision shall be mailed to the employee.

2. Step Two

If the employee is not satisfied with the step one decision, the employee may present a written request for a hearing before the vice president or administrative

(DISCIPLINE AND DISMISSAL OF EMPLOYEES CONT'D)

equivalent for the employee's department. The request for a hearing must state with particularity why the disciplinary action was inappropriate and/or why the decision of the step one official should be changed. The request must be made within five (5) working days following the date of the appealed decision. The vice president 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 pursuant to the procedure set out in Paragraph 5 below.

3. Step Three

If the employee is not satisfied with the step two decision, a written appeal may be made to the President of The University of Texas at Brownsville and Texas Southmost College within five (5) working days of the date of the step two decision and must state why such decision is incorrect. The review by the President shall be based solely upon the step two record and shall not include any new issue or evidence. Within a reasonable period of time, not to exceed thirty (30) days following the date of the appeal, a written decision shall be mailed to the employee. The decision of the President is final.

4. Records of Disciplinary Actions

Copies of all documents pertaining to disciplinary actions shall be filed in the employee's personnel file.

5. Step Two Hearing Procedure

a. Pre-Hearing Rules and Procedures

1) Naming the Delegate(s)

If the vice president 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 such persons shall be designated to serve as chair in the notice to the employee.

2) Challenges to Impartiality

An employee may challenge the fairness and impartiality of the vice president or administrative equivalent or an appointed delegate(s).

(DISCIPLINE AND DISMISSAL OF EMPLOYEES CONT'D)

The challenge must be in writing and must clearly state the factual basis for the challenge. A challenge of the vice president or administrative equivalent must be made within five (5) days of the date of the request for a hearing and a challenge of a delegate(s) must be made within five (5) days after the date of the notice appointing the delegate(s). It shall be up to the person challenged to determine whether he or she can serve with fairness and impartiality. If the challenged vice president or administrative equivalent determines that he or she cannot be fair and impartial in the consideration of the appeal, he or she shall appoint a delegate(s) to hear the appeal. If the challenged delegate(s) determines that he or she cannot be fair and impartial in the consideration of the appeal, the vice president or administrative equivalent shall appoint another delegate(s).

3) Time Limits

The hearing shall be conducted as soon as practical, but not later than twenty (20) working days following the date of the appeal or the appointment of delegate(s).

4) Discovery Rights and Document Exchange

- a) The employee may request University documents, records or exhibits. Such requests must accompany the step two written appeal. The requested records will be furnished if, in the opinion of the vice president or administrative equivalent or the designated chair, as the case may be, they are relevant to the appeal and are not made confidential by law.
- b) At least five (5) 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.

(DISCIPLINE AND DISMISSAL OF EMPLOYEES CONT'D)

b. Hearing Rules and Procedures

1) Role of Hearing Chair

- a) The vice president or administrative equivalent or the delegate designated as chair shall preside at the hearing and ensure the order of presentation as well as decide on questions of relevancy. The chair shall also have the discretion to determine the form and scope of cross-examination allowed during the hearing.
- b) Upon request, the chair may consult with and be advised by counsel during the hearing.

2) 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 University may be represented by an attorney from the Office of General Counsel of The University of Texas System.

3) Hearing Record

In all appeal hearings where the employee is represented by an attorney or an individual from an employee organization, a court reporter shall be furnished by the University to transcribe the hearing and swear in witnesses. The party requesting a copy of the transcript of the proceedings shall be responsible for its cost. In all other appeal hearings the University shall tape the hearing and make a copy of the tape available to the employee on request. The transcript of the court reporter or the tape of the proceedings shall be the official record of the hearing.

4) Burden of Proof

The University has the burden of proving by a preponderance of credible evidence that good cause exists for the disciplinary action and, therefore, shall have the right to open and close the proceedings.

(DISCIPLINE AND DISMISSAL OF EMPLOYEES CONT'D)

- 5) Order of Presentation and Right to Cross-Examination
 - a) The hearing shall consist of opening statements on behalf of the University and the employee and testimony by witnesses called by the University and the employee, with both parties having the right to cross-examine witnesses and make closing statements.
 - b) Relevant exhibits may be introduced by either party and the chair shall take notice of the employee's personnel record.
- 6) University Employees as Witnesses
 - a) Any employee can be asked to appear as a witness for either party.
 - b) It shall be the duty of an employee requested to testify to do so as to any facts which may be relevant to the appeal.
 - c) Post-Hearing Rules and Procedures
 - 1) The delegate(s) shall deliberate, prepare and forward written findings and recommendations to the vice president or administrative equivalent within ten (10) working days after the close of the hearing.
 - 2) The vice president or administrative equivalent shall mail his or her decision to the employee within ten (10) working days following the receipt of the findings and recommendations from the delegate(s).
 - 3) If the vice president or administrative equivalent has heard the appeal, he or she shall mail a written decision to the employee within ten (10) days after the close of the hearing.

E. Review

This document shall be reviewed annually by the Director of Human Resources, by June 15th.