

STATE BOARD FOR COMMUNITY COLLEGES AND OCCUPATIONAL EDUCATION

DUE PROCESS FOR FACULTY

BP 3-20

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ISSUED BY:

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Joe D. May, System President

Policy Statement

It is the purpose of this policy to:

- Promote excellence within the state system community colleges;
- Protect academic freedom and intellectual inquiry;
- Recognize the responsibility of the college presidents to provide leadership and sound fiscal management of their institutions; and
- Provide a fair and orderly process for the involuntary termination of employment of faculty members at state system community colleges.

Scope

This policy applies to any Board employee at a state system community college whose employment is covered by a regular faculty contract for continuing service, with the following conditions:

- The employee is assigned to a position funded entirely by state funds, or is assigned involuntarily or temporarily to a position funded in whole or in part by nonstate funds;

- The employee's contract is for at least 50% of full-time service; and
- The employee's work assignment includes at least one-half of a full-time equivalent workload (.5 FTE) performing duties as a teacher, which may include program coordination/development, and related activities. Counselors and librarians holding faculty contracts prior to July 1, 1995 shall also be covered by this policy.

### Precedence

This policy shall have precedence over all other policies of the Board or college which are in conflict or are inconsistent with this policy.

### Definitions

#### Academic Freedom:

The absence of constraint or coercion of choosing what one will teach (within the constraints of official course descriptions and official course syllabi), investigate, study or present in all fields of learning.

#### Dismissal:

The involuntary termination of a contract of employment during the term or upon the expiration of the contract for reasons other than reduction in force.

#### Evaluation:

The regular formal process used to review and record an employee's performance of his/her assigned duties.

#### Fiscal Emergency:

An emergency caused by a reduction in the sum total of general fund revenues appropriated to the Board and cash funds received by the Board, and/or a reduction in the Board's allocation to a college; which reduction(s) threaten the ability of a college to maintain its previous level of operations or previous standards in the fulfillment of its role and mission, as determined by an affirmative vote of the Board.

#### Nonrenewal:

Failure or refusal to offer to an employee a new contract of employment for the subsequent year.

#### President:

The chief executive officer of a state system community college.

#### Program areas:

Units within a college which may provide the basis for determining which

employee(s) will be reduced when a reduction in force is necessary.

**Reduction in Force:**

Termination of the contract of employment based on reasons other than nonrenewal or dismissal for cause.

**State Funds:**

Funds appropriated to the Board by the General Assembly and allocated by the Board to a college; and/or funds received from a school district for purposes of providing secondary vocational education.

**Time:**

Unless otherwise indicated, holidays, weekends, and faculty non-working days shall not be counted when computing time.

**Reassignment**

At the discretion of the president an employee may be reassigned by changing job title, job description, and/or assignment. If the reassignment occurs during the term of an employment contract, there will be no reduction in compensation during that contract term. The president's decision is final and is not subject to review.

**Provisional Employees**

**Provisional Period:**

Employees shall serve a provisional period from the date of employment until the completion of employment under three consecutive full-year regular contracts. The provisional period may be extended for one additional year, but not to exceed four years, if the college president determines that additional time should be allowed.

**Removal from Provisional Status:**

A provisional employee shall be nonrenewed at the end of the provisional period unless the college president approves removal from provisional status.

**Nonrenewal**

**Grounds:**

A provisional employee's contract may be nonrenewed without cause at the end of any contract.

A nonprovisional employee's contract may be nonrenewed on grounds of below standard evaluations for two consecutive years.

**Notice:**

Notice of nonrenewal shall be given by the president no later than sixty days preceding the end of the contract term. The effective date shall be no sooner than the end of the then current contract.

**Review:**

There shall be no review of nonrenewal of a provisional employee's contract.

A nonprovisional employee whose contract is nonrenewed shall have the right to request within ten days of service of notice a peer review as provided hereinafter.

**Dismissal, Suspension or Other Disciplinary Action for Cause**

**Grounds:**

The following shall constitute grounds for dismissal, suspension, and other disciplinary action:

- Insubordination;
- Neglect of duty;
- Conviction of a felony or acceptance of a guilty plea or a plea of nolo contendere to a felony;
- Moral turpitude;
- Incompetence after notice and opportunity to improve;
- Mental or physical disability which, even with reasonable accommodation, substantially interferes with the persons ability to perform the essential functions of the job in question. Termination under this ground shall be in compliance with Federal law which prohibits discrimination against persons with disabilities;
- Failure to fulfill provisions of employment contract; or
- Other good and just cause as determined by failure to meet reasonable written and published standards.

**Notice:**

Notice of dismissal, suspension, or other disciplinary action may be given by the president at any time and shall state the grounds and effective date.

**Review:**

An employee who is dismissed or suspended in excess of fifteen work days under this policy shall have the right to request within ten days of service of notice a peer review as hereinafter provided.

An employee who is suspended for fifteen or less work days or otherwise disciplined shall have the opportunity to provide a written response to the charges which shall be placed in the employee's personnel file. An employee who is suspended for 15 or less work days may request, within 10 days of service of notice of the suspension, a review by the System President. The review will consist of a meeting between the System President or

his/ her designee, the College President or his/her designee and the faculty member, at which time the faculty member will be given an opportunity to rebut the facts which support the suspension. The decision of the System President will be final and not subject to further review.

### Reduction in Force

#### Grounds:

The grounds for reduction in force shall be:

- justifiable lack of work,
- justifiable reduction in a program area, or
- a reduction or elimination of funds received from a school district for purposes of providing secondary vocational education, as determined by the president; and/or
- a Board declaration of a fiscal emergency as defined in this policy.

#### Initial Determination:

It is the responsibility of the president to determine whether one of the above situations will require a reduction in force. As soon as it becomes apparent to the president that a reduction in force is necessary, the president shall determine the number of reductions which may be accommodated by retirements, resignations, dismissals, nonrenewals, leaves, or other types of normal attrition. Faculty not holding regular full-time or regular part-time contracts and faculty holding provisional contracts in program area(s) affected shall be reduced prior to the reduction in force of any regular nonprovisional faculty member in the same program area.

#### Criteria for Reduction:

When staff reduction cannot be satisfied by any of the above methods, the president shall identify the person(s) to be reduced in affected program area(s) based upon consideration of service credit as provided hereinafter, evaluations as defined in this policy, and affirmative action.

#### Notice:

The president shall give a minimum of sixty days written notice prior to termination due to a reduction in force.

#### Review:

An employee who is reduced in force shall have the right to request within ten days of service of notice a peer review as hereinafter provided. There shall be no right to peer review of a Board declaration of fiscal emergency.

#### Rehire:

Regular employees who have been reduced in force under this policy shall have

the right to be rehired into the program area at the institution from which they were reduced when an opening occurs in a regular position. Such right shall extend for a period of three years from the effective date of their reduction. Employees who are so rehired shall have all the benefits of service credit, salary, and fringe benefits reinstated.

Regular employees who have been reduced in force under this policy shall have the right to request that their name be placed on a systemwide rehire list maintained by the System President. When there are openings in regular positions at any state system community college and there are no employees who have the right to rehire under the above provision, the president of the hiring institution may decide to waive the institutional hiring procedures and hire directly from the rehire list. If the president hires from the rehire list he may require a one-year provisional period. Other terms and conditions of employment shall be negotiated at the time of employment.

#### Procedure for Determining Program Area and Service Credit

Program areas:

The following provisions regarding Program Areas shall apply:

- The college president shall give written notice to each employee of the program area to which they are assigned at the time of employment.
- Employees shall be notified of any changes in their program area assignment.
- Upon request, any employee covered by this policy shall be given a list of faculty members in his/her respective program area(s) with notation of service credit earned under this policy by each.

Service Credit:

In an effort to provide a fair and equitable determination of reduction in force and yet recognize the benefit of assignment flexibility, service credit shall be granted in accordance with the following guidelines:

- Employees shall accrue service credit on the basis of each year's assignment, as follows:

Assignment of greater than 50% of the workload in a given program area will result in one year's service credit in that program area.

If the faculty member does not have more than 50% of the workload in any one program area, the president will determine the area in which the faculty member is to receive one-year's service credit. In addition to that one-year's service credit, one quarter (.25) year's service credit will be given in each additional program area where the

work assignment is 50% or less.

Faculty members involuntarily assigned to another program area shall be allowed to carry to their new program area the service credit earned in their original program.

Faculty members who are appointed to an administrator position and subsequently return to a faculty position shall have any service credit they earned in their previous faculty assignment reinstated.

Employees who are on an interim assignment as an administrator shall continue to accrue service credit in their designated program area during the period of the interim assignment up to a maximum of two years.

Employees hired prior to September 1, 1988, will be given one year's service credit in their 1988-89 designated program area for each year of institutional seniority accrued as a faculty member. Seniority credit granted to employees for service as an administrator prior to July 1, 1986, shall also be credited to the employee's 1988-89 designated program area.

Part-time employees covered by this policy shall receive service credit on the same basis as full-time employees, but prorated in terms of the percentage contract they hold.

#### Peer Review Process

Employees who are covered by this policy at each college shall elect a hearing panel of thirteen members in September of every even-numbered year. If a college does not have 14 or more employees covered by this policy, the panel shall include all employees covered by this policy at that college.

If there is a request for a hearing, the following steps apply:

- Within three days, the president shall strike four names from the list of panel members and send the list to the employee. Upon receipt of the list, the employee shall strike four names from the remaining panel members on the list and return it to the president within three days. If for any reason the faculty member fails to strike names, the president shall strike a sufficient number to reduce the members to five. The five panel members whose names remain on the list shall constitute the peer review committee. If the college has fewer than 13 members on its panel, this process shall be modified in order to provide for three members on the peer review committee.

- The president shall notify the members on the peer review committee in writing that they have been selected to constitute the committee and shall designate one member to convene a meeting to select a chairperson.
- The chairperson shall give written notice of the time and place for hearing the appeal. The peer review hearing must begin within five days of the committee's notification by the president.
- A full record of the hearing will be taken stenographically or by recording and thereafter made available to the employee and to the college.
- The employee and the college shall have the right to have advisory or legal counsel. Each party shall pay their own costs. The committee shall conduct a full and fair hearing on the issues raised by the parties.
- Within five days after the hearing, the committee shall deliver to the president the record with written findings of fact and recommendations and shall provide a copy to the employee.
- Within five days after receiving the written recommendations, the president shall issue a decision in writing to the employee.
- If the president agrees with the peer review committee's decision, such decision shall be final. If the decisions of the president and the peer review committee differ, the employee may send to the System president a written notice of appeal to the Board. Such notice must be sent by certified mail within ten days of service of the president's decision.
- The Board review shall be limited to a review of the record. The Board shall consider the appeal within ninety days of receipt of the notice of appeal. The Board shall give written notice of its decision to the parties.
- Any and all deadlines may be extended by mutual written consent of both parties.

#### Revisions

No revisions of this policy shall be adopted except after consultation with the State Faculty Advisory Council.

#### Procedures

The System President shall promulgate procedures as necessary to implement this policy.