

Procedure: 4.4.2p. [III.I]

Adverse Employment Actions

Revised: May 10, 2012, March 8, 2011

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I. PURPOSE:

This procedure addresses the processes accompanying an employee's arrest and/or subsequent conviction for one or more criminal offense(s), as well as the dismissal of the following employees: those considered "at will" working in a full- or part-time, salaried position; tenured faculty; employees remaining in the classified service (i.e., those individuals in an employment status which confers rights of appeal as set forth in O.C.G.A. §45-20-8 and §45-20-9); employees working under the terms of an employment contract and only during the established contract period; and, probationary employees.

NOTE: The decision to non-renew the employment contract of a non-tenured faculty member is not subject to review and is not covered by the provisions of the Procedure.

With limited exceptions (including direct reports to the Commissioner and the dismissal of tenured faculty), the State Board of the Technical College System of Georgia policy on Positive Discipline provides for the steps/levels of disciplinary action for eligible (covered) Technical College System of Georgia (TCSG) employees, including the dismissal of "at will" employees and non-tenured employees working under the terms of an employment contract.

The dismissal of a technical college President shall be accomplished under the provisions of Policy 2.3.1. – Employment of Presidents.

II. RELATED AUTHORITY:

State Personnel Board Rules

O.C.G.A. §20-4-11

O.C.G.A. §45-20-1 et seq.

State Board POLICY: 4.4.1. Positive Discipline

III. APPLICABILITY:

All technical colleges associated with the Technical College System of Georgia

IV. DEFINITIONS:

Adverse Action: disciplinary action resulting in an employee's dismissal from employment.

Arrest: the restraining and seizure of an individual by the police or other person acting under the law in connection with a crime.

“At Will”: employees considered to be “at will” employees may be discharged or may quit for any reason not specifically prohibited by law.

Conviction: the result of a criminal trial or other proceeding in which the defendant has been found guilty of a crime (including a plea bargain/agreement and a plea of nolo contendere).

Classified Service: an employment status which confers certain rights of appeal as promulgated in State Personnel Board Rules. The classified service includes those employees of state departments/agencies (as defined in O.C.G.A. §45-20-1 et. seq.) who were in the classified service as of June 30, 1996 and who have remained in classified positions without a break-in-service since that date.

Dismissal: an involuntary separation from employment other than through a reduction-in-force.

Felony: a crime which generally carries a minimum term/sentence of one year or more in a state or federal prison.

Immediate Supervisor: a supervisor who establishes performance expectations, coaches, develops, and assesses the performance of a subordinate employee.

Reviewing Manager: a manager charged with reviewing the performance plans and evaluations prepared by lower level supervisor(s) in his/her direct line of supervision.

Unclassified Service: with the exception of those employees working under the terms of an employment contract, the term is defined as employment “at will”. By application, the term encompasses all TCSG employees except those in the classified service as defined in O.C.G.A. §45-20-1 et.seq.

V. ATTACHMENTS: N/A

VI. PROCEDURE:

A. Types of Employees:

1. “ At Will” Employees:

By statute and pursuant to the intent of the General Assembly, all employees hired on or after July 1, 1996 shall be included in the unclassified service and are considered “at will” employees. Within the Technical College System of Georgia, all TCSG employees, regardless of hire date, are considered to be employed “at will” unless their status is subsequently changed through a written employment contract (including those with tenure) or they remain in the classified service of the State Merit System. An “at will” employee in a full- or part-time salaried position meeting the established eligibility criteria outlined in the State Board of the Technical College System of Georgia Policy on Positive Discipline (i.e., SB Policy 4.4.1.) may be dismissed from employment pursuant to the accompanying processes. Those newly hired employees in a full- or part-time salaried position not meeting established eligibility criteria are considered probationary employees as referenced in the provisions of Paragraph VI.A.5.

2. Classified Employees:

Classified employees may be dismissed or placed on Suspension Without Pay as provided in Paragraph VI.C.4. pursuant to the provisions of applicable State Personnel Board Rules. Classified employees may also be separated through a Reduction-in-Force plan approved by the Commissioner of the State Personnel Administration.

A classified employee may appeal his/her dismissal pursuant to these Rules. Unless a different time period is specifically provided, an appeal must be filed and/or postmarked within ten (10) calendar days after the employee receives written notice of the action or decision or, the effective date of the action or decision, whichever is later. An appeal shall be considered timely if postmarked within the time period allowed for the appeal as provided in the written notice.

3. Employees Working Under an Employment Contract:

Employees working under the terms of an employment contract may be dismissed during the identified contract period for cause (to include, but not limited to, performance/attendance deficiencies, insubordination, misconduct or conduct reflecting negatively on the TCSG or technical college, failure to obtain/maintain educational credentials, inability or unfitness to perform assigned duties and responsibilities, violation(s) of TCSG policy or procedure(s) or technical college operating policies or procedures or, an arrest and/or conviction for those criminal offenses or other category of offenses referenced in Paragraph VI.D.); through a reduction-in-force plan approved by the Commissioner; or, in response to a technical college's loss of enrollment and/or cancellation of one or more academic program(s) of study.

An employee under contract who is dismissed from employment for cause may request a review of this action pursuant to the provisions of the Positive Discipline policy.

An employee under contract who is dismissed from employment as a result of a Reduction-in-Force may file a complaint consistent with the Complaint Resolution Procedure accompanying State Board Policy: 4.4.3. if he/she believes that the Reduction-in-Force has not been followed in the manner previously authorized by the Commissioner.

The dismissal of an employee under contract in response to a routine closing of an academic program as authorized by the State Board of the Technical College System of Georgia shall not be subject to review.

The decision to renew or non-renew the contract of a non-tenured employee rests within the discretion of the Technical College President. In this circumstance, the decision to non-renew a contract is not subject to review.

Employees whose contract will not be renewed for the ensuing academic year of any part thereof must be notified in writing no later than May 31st or, as applicable, at least thirty (30) days prior to the contract's end date.

At the discretion of the President and in conjunction with the expiration of an established contract term, a non-tenured technical college employee may transition to an “at will” employment status and continue his/her employment without an employment contract.

NOTE: Employees are expected to work their full contract period. The decision to accept the resignation of an employee with an employment contract during the established contract period rests with the President.

4. Tenured Faculty:

A faculty member with tenure may be dismissed for cause (to include, but not limited to, performance/attendance deficiencies, insubordination, misconduct or conduct reflecting negatively upon the TCSG or technical college, failure to obtain/maintain educational credentials, inability or unfitness to perform assigned duties and responsibilities, violation(s) of TCSG policy or procedures(s) or technical college operating policies or procedures or, an arrest and/or conviction for those criminal offenses or other category of offenses referenced in Paragraph VI.D.) or, in response to a technical college’s loss of enrollment and/or cancellation of one or more academic programs) of study. An employee may subsequently appeal his/her dismissal as provided in this procedure. A tenured employee may also be dismissed pursuant to a reduction-in-force plan approved by the Commissioner and may request a review of this decision consistent with applicable provisions of Paragraph VI.B.

NOTE: As referenced in the provisions of the Employment Categories Procedure: 4.1.4p., if tenure was conferred on an employee prior to or at the time of conversion of a technical college/institute from operation by a local board of education to state control, he/she shall retain tenure unless he/she later accepts a promotion or transfers to a different position (at his/her college) or, accepts a position at another technical college or the TCSG System Office. The Technical College System of Georgia and its associated technical college do not confer tenure upon its faculty.

5. Probationary Status:

Newly hired full- and part-time salaried employees are not covered by the provisions of the Positive Discipline Policy until they complete twelve (12) months of continuous service. These employees are considered “at will” unless their status is subsequently changed through a written employment contract. During the initial twelve (12) months of service, an employee not working under the terms of an employment contract is considered to be in a probationary status and may be released for any reason not specifically prohibited by law. If released, the action is not subject to review.

B. Dismissal of Tenured Faculty:

1. Except as provided in Paragraph VI.D., tenured faculty working under the terms of an employment contract who are to be dismissed during their contract period shall be notified in writing at least fifteen (15) calendar days in advance of the effective date of the adverse action. During the established notice period, an

employee will be placed/remain on suspension with pay. Tenured faculty whose contract will be non-renewed for the upcoming academic year must be provided written notice no later than May 31st or at least thirty (30) days prior to the contract's end date.

2. The written notice must include: the basis for the action to be taken in sufficient detail to provide the employee with the ability to respond to the outlined reasons/charges; the effective date of the action; a statement advising the employee that he/she has a right to appeal his/her dismissal to the Commissioner within ten (10) calendar days after receipt of the notice; a statement that the ten (10) calendar day period includes weekends and State Holidays; a statement advising the employee that if there is no timely appeal, the dismissal action will become effective on the date specified without further notice and no further appeal rights will be available; and, a copy of this Procedure. An appeal shall be considered timely if postmarked within the time period provided in the written notice.
3. An employee who exercises his/her right to appeal in a timely manner may provide the Commissioner with any document(s)/material(s) of his/her choosing which supports the appeal. The employee should send a copy of all such document(s)/material(s) to his/her technical college President should additional information be requested by the Commissioner or his/her reviewing official.
4. After reviewing the information/materials submitted by the college and the employee, the Commissioner shall issue a final written determination.
5. If the employee's appeal is upheld, the written notice shall include a statement that the employee shall be reinstated and the accompanying terms and conditions.
6. If the dismissal is upheld, the written notice shall include the basis for the decision, the effective date of the action (which may be no earlier than the proposed effective date), and a statement that the employee may appeal this decision to the State Board of the TCSG within ten (10) calendar days from the date the employee receives written notice of the Commissioner's decision. A statement should also be included that the ten (10) calendar day period includes weekends and State Holidays. An appeal will be considered timely if postmarked within the ten (10) calendar day period outlined in the Commissioner's correspondence. The appropriate mailing address for any such appeal will be included in the written notice.
7. An appeal to the State Board will be referred to the Office of State Administrative Hearings for an evidentiary hearing.

C. Employee Arrest/Conviction:

1. Pursuant to the provisions of the TCSG Background Investigations Policy: 4.1.9., all employees must report any arrest (and subsequent conviction) no later than two (2) business days following the date of the arrest (or conviction) to his/her immediate supervisor and/or reviewing manager. Failure to provide such

notification is grounds for the delivery of disciplinary action consistent with the provisions of the Positive Discipline Policy: 4.4.1.

2. At Will Employees or those Employees Working under the Terms of an Employment Contract:
 - a. If an employee in either of these employment categories is arrested for one or more felony or misdemeanor offense(s) referenced in Paragraph VI.D, he/she may (at the discretion of his/her Technical College President, the Commissioner, or their designee) be placed on suspension without pay pending criminal court action or, as an alternative, may be permitted to use accrued annual and/or personal leave or, as applicable, accumulated Fair Labor Standards Act Compensatory Time to remain in pay status after the technical college or System Office has been notified of the arrest. The use of sick leave shall not be permitted. NOTE: for FLSA exempt employees subject to the salary basis test, an employee should not be placed on suspension without pay until the beginning of the next established seven (7) day work period, i.e., work week.
 - b. Placement on suspension without pay pending criminal court action shall not exceed sixty (60) calendar days, inclusive of any time spent on paid leave, unless an extension is authorized by the Commissioner or his/her designee.
 - c. An employee may be dismissed at any time during the above referenced sixty (60) day period or may be dismissed in lieu of placement on suspension without pay based on his/her arrest for one or more criminal offenses or category of offenses referenced in Paragraph VI.D.
 - d. If the pending criminal charge(s) has/have not been successfully resolved at the conclusion of the sixty (60) day suspension without pay period (inclusive of any time spent on paid leave) and if no extension has been authorized, the employee may be dismissed from employment or, as an alternative, may request placement on Contingent Leave Without Pay. The decision as to whether to authorize a leave of absence without pay for this purpose shall be made by the Technical College President, Commissioner, or their designee. If dismissal is the course of action, it will be processed consistent with the provisions of the Positive Discipline Policy.
 - e. If charges are dismissed or a decision made by the prosecutor not to pursue the matter further (e.g., Nolle-Prosequi) during the suspension without pay period, the employee will be returned to active duty.
 - f. If, during the suspension without pay period, an employee is convicted or pleads nolo contendere to one or more of the criminal offense(s) referenced in Paragraph VI.D., he/she may be dismissed from employment pursuant to the provisions of the Positive Discipline Policy. If the employee is found guilty of or pleads nolo contendere to one or more lesser charge(s) and is placed on probation for said offense(s), he/she

may, based on the relationship of the criminal offense(s) and the terms of the probation with his/her assigned duties and responsibilities, be dismissed from employment; be placed on suspension without pay for the duration of his/her probation; or, returned to active duty.

- g. If, after dismissal, an individual is found not guilty, the charge(s) are dismissed, or the pending charge(s) are no longer pursued by the prosecutor, he/she will be eligible for re-employment

3. Tenured Faculty Working under the Terms of an Employment Contract:

- a. Tenured faculty working under the terms of an employment contact may, at the discretion of a Technical College President or his/her designee, be placed on suspension without pay following an arrest for one or more criminal offense(s) referenced in Paragraph VI.D., pending criminal court action. As provided in Paragraph VI.C.2.a., the employee may be permitted to use accrued annual and/or personal leave, or as applicable, accumulated Fair Labor Standards Act Compensatory Time to remain in pay status during this period.
- b. Except as provided in Paragraph VI.D., a tenured faculty member placed on suspension without pay following an arrest or conviction for one or more criminal offense(s) may appeal this decision in the manner provided in Paragraph VI.B. NOTE: any appeal to the State Board involving a suspension without pay will not be referred to the Office of State Administrative Hearings. The appeal will, instead, be considered by the State Board and the Board's decision will be final.
- c. A tenured faculty member placed on suspension without pay or separated following an arrest and who is subsequently found not guilty; the charges are dismissed; or, a decision is made by the prosecutor not to pursue the matter further (i.e., Nolle Prosequi), shall be reinstated to active duty with full back pay and benefits. The employee will, as appropriate, receive pay, benefits, and leave as though there had been no placement on suspension without pay and/or break-in-service, minus monies received by the employee during this period from other employment and/or wage substitutes, including, but not limited to, unemployment insurance compensation. Any paid leave used by the employee while on suspension without pay will be restored. Any terminal leave pay delivered after dismissal (including, as applicable, FLSA Compensatory time, holiday pay, personal leave, etc.) must be repaid by the employee and all annual leave, personal leave, holiday time, and/or FLSA Compensatory Time will be restored.
- d. A tenured faculty member who has remained on suspension without pay through adjudication and who is found guilty of or pleads nolo contendere to one or more lesser offense(s) for which dismissal is appropriate, may be dismissed from employment pursuant to the provisions of Paragraph VI.B. An employee who has been placed on suspension without pay or dismissed will not be eligible for the restoration of pay, leave, or benefits

referenced in Paragraph VI.C.3.c. above if the dismissal, upon appeal, is upheld by the State Board.

- e. A tenured faculty member who has remained on suspension without pay through adjudication and who is found guilty of or pleads nolo contendere to one or more lesser offense(s) for which disciplinary action other than dismissal is appropriate may be disciplined under the provisions of the Positive Discipline Policy. The employee will be eligible for back pay, leave restoration, and benefits as provided in Paragraph VI.C.3.c.

4. Classified Employees:

- a. A classified employee may, at the discretion of a Technical College President, the Commissioner, or their designee, be placed on suspension without pay following an arrest for one or more criminal offense(s) referenced in Paragraph VI.D., pending criminal court action. As provided in Paragraph VI.C.2.a., an employee may be permitted to use accrued annual and/or personal leave, or as applicable, accumulated Fair Labor Standards Act Compensatory Time to remain in pay status.
- b. Except as provided in Paragraph VI.D., an employee may appeal this decision in a manner pursuant to applicable State Personnel Board Rules.
- c. An employee placed on suspension without pay or separated following an arrest and who is subsequently found not guilty or, the charges are dismissed or a decision is made by the prosecutor not to pursue the matter further (i.e., Nolle Prosequi), shall be reinstated to duty with full back pay and benefits in a manner outlined in Paragraph VI.C.3.c. and consistent with applicable State Personnel Board Rules.
- d. An employee who has remained on suspension without pay through adjudication and who is found guilty of or pleads nolo contendere to one or more lesser offense(s) for which dismissal is appropriate, may be dismissed pursuant to State Personnel Board Rules.
- e. An employee who has remained on suspension without pay through adjudication and who is found guilty of or pleads nolo contendere to one or more lesser offense(s) for which disciplinary action other than dismissal is appropriate may be disciplined under the provisions of the Positive Discipline Policy. The employee will be eligible for back pay, leave restoration, and benefits as provided in Paragraph VI.C.3.c. and applicable State Personnel Board Rules.

D. Emergency Situations:

- 1. After consultation with the TCSG General Counsel and/or Director, Office of Human Resources, the Commissioner or a Technical College President may take immediate action to place an employee in a suspension without pay status or dismiss an employee at the time of notification of an arrest or at any time during

the suspension without pay period in response to one of the following circumstance:

- a. The employee has been charged with and it is likely that he/she has committed a serious, violent felony referenced in O.C.G.A. § 17-10-6.1 (e.g., murder or felony murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, aggravated sexual battery, or other felony offenses involving violent behavior referenced in Paragraph VI.B.1.a. of the Background Investigations State Board Policy 4.1.9.;
 - b. The employee has been charged with and it is likely that he/she has committed a sexual offense referenced in O.C.G.A. Title 16 (e.g., incest, sodomy, statutory rape, child molestations, enticing a child for indecent purposes, the sexual exploitation of children, etc.);
 - c. For an employee working in a technical college's day care/child care center when he/she has been charged with and it is likely that he/she has committed simple battery or simple assault when the victim is a minor, cruelty to children, criminal attempt/battery, or contributing to the delinquency, unruliness or deprivation of a minor;
 - d. The employee has been charged with and is likely to have committed a drug-related felony offense or any other felony/misdemeanor offense that may impact the safe and efficient operation of a technical college or the System office; technical college or System Office employees; the general public; or, as applicable, students: or,
 - e. If in similar circumstances, criminal attempt when the crime attempted is any of the criminal offenses referenced above or any offense committed in another jurisdiction which, if committed in Georgia, would be one of these offenses.
2. The separation of a classified employee or the movement of a classified employee to a suspension without pay status shall conform to and follow applicable provisions of the State Personnel Board Rules governing emergency situations.
 3. The separation notice of an "at will" employee or an employee working under the terms of an employment contract who is covered by the Positive Discipline policy shall reference the employee's "right to review" (of the decision) by the Commissioner.
 4. The following steps should be followed for tenured faculty working under the terms of an employment contract if an emergency dismissal or his/her immediate placement on suspension without pay is pursued under the provisions of this paragraph:
 - a. The written notice of adverse action initiated under this paragraph is the final determination of adverse action and must include: the basis for the action taken in sufficient detail to provide the employee with the ability to

respond to the outlined reasons/charges (i.e., a statement explaining the emergency situation that caused this provision to be invoked); the effective date of the action; a statement advising the employee that he/she has a right to appeal the dismissal action to the State Board of Technical College System of Georgia within ten (10) calendar days after receipt of the notice (including weekends and State Holidays); and, a statement advising the employee that if there is no timely appeal, the dismissal action will become effective on the date specified without further notice and no further appeal rights will be available. An appeal will be considered timely if postmarked within the time period provided in the written notice; and,

- b. An appeal to the State Board pertaining to an emergency dismissal will be referred to the Office of State Administrative Hearings for an evidentiary hearing. An appeal to the State Board pertaining to an emergency suspension without pay will not be referred to the Office of State Administrative Hearings. The appeal will, instead, be considered by the State Board and the Board's decision will be final.
- c. If on appeal, it is determined that the dismissal action or placement on suspension without pay was correct but an emergency situation did not exist, the State Board may remedy the situation through the delivery of back pay to the employee for the normal notice period stipulated in Paragraph VI. B. 1.
- d. If on appeal, it is determined that neither dismissal or placement on suspension without pay is appropriate, the employee shall be returned to active duty and the Board shall remedy the situation in the manner outlined in Paragraph VI.C.3.c.

VI. RECORD RETENTION

All documents placed in an official personnel file shall be retained for a period of seven (7) years after an employee leave State service.