



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 and October 9, 1997

A. Purpose

The purpose of these general provisions is to establish general personnel policy, consistent with merit principles, by which the Office of the Chancellor and State System universities shall operate under Act 188, § 2006-A (8). The policy is not intended to restrict flexibility, discourage innovation, or create any unwarranted regulatory burden within the State System.

B. Scope

1. Merit principles shall apply to all positions, now existing or hereinafter created, within the State System of Higher Education, with the following categorical exceptions:
 - a. Board of Governors;
 - b. councils of trustees;
 - c. chancellor, vice chancellors and other designated management and administrative positions within the Office of the Chancellor specifically identified in a letter of exemption filed annually with the Secretary of the Board of Governors as exempt from merit principles by policy level;
 - d. senior policy executives and other senior university management and administrative positions specifically identified in a letter of exemption filed annually with the Secretary of the Board of Governors as exempt from merit principles by policy level;
 - e. State System attorneys;
 - f. faculty;

- g. student workers;
 - h. athletic coaches;
 - i. volunteers;
 - j. unskilled labor (exemption limited to recruitment and selection for appointment to an unskilled labor position); and
 - k. temporary employees serving under letters of term appointment and all employees who have retained Civil Service status.
2. Should any conflict arise between this policy and federal and state laws or labor agreements, the laws and/or labor agreement provisions shall prevail.

C. Standards

The merit principals of the State System of Higher Education shall include the following:

- 1. Recruitment, selection, and advancement of employees will be based on relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.
- 2. Equitable and adequate compensation will be provided.
- 3. Employees will be trained as needed to assure high quality performance.
- 4. Employees will be retained on the basis of the adequacy of performance, and provision will be made for correcting inadequate performance and separating employees when inadequate performance cannot be corrected.
- 5. Fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, religion, sex, national origin, political affiliation, age, handicap, or other non-merit factors, and with regard for their privacy and constitutional rights as citizens, will be assured and be consistent with the State System's current social equity plan.
- 6. 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.

D. Policy Administration

- 1. The chancellor, as chief executive officer of the State System, shall provide direction and supervision of the administration of the merit principles, with responsibility and duty to:

- a. Ensure the development and implementation of general personnel policies at each Institution consistent with the State System's merit principles policy.
 - b. Review and monitor administration of the merit principles policy and report findings and recommendations to the State System's Board of Governors, university councils of trustees, and university presidents as necessary and appropriate.
2. Each university president shall develop university policies and procedures to effect the merit principles policy, and shall consult with the chancellor regarding recommendations arising from the review and monitoring process.
 3. An employee complaint alleging violation of the State System's merit principles must be filed in accordance with the provisions contained in the merit principles hearing procedures.

E. Hearing Procedures

These procedures shall be applicable to the classes of employees of the 14 universities and the Office of the Chancellor of the State System of Higher Education set forth in the general provisions of the merit principles policy.

F. Definitions

- **Abandonment**—employee resignation from a position of employment for 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**—oral or written reprimand, suspension, involuntary demotion, or termination of an employee for reasons relating to conduct or performance.
- **Discriminatory Reason**—unlawful discrimination in retention, promotion, discipline, or any other condition of employment because of race, sex, national origin, religion, non-job related handicap, age, political affiliation, or union membership.
- **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.
- **Probationary Employee**—any employee who has not yet completed a prescribed probationary period and been granted regular status. All employees covered by these procedures shall serve at least a six-month probationary period with extensions not to exceed six months beyond the prescribed period.
- **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.
- **Regular Employee**—any employee who has satisfactorily completed a prescribed probationary period.
- **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.

G. Employee Discipline

1. **Regular Employees.** No regular employee shall be terminated from employment or otherwise disciplined except for just cause.
2. **Probationary Employees.** Probationary employees may be terminated without cause during their probationary periods for non-discriminatory reasons, but shall not be subject to any other form of discipline without just cause.
3. **Progressive Discipline.** Appointing authorities shall to the extent feasible in each case use progressive discipline except where the nature of an employee's performance or violation of the appointing authority's rules or policies or violation of law requires immediate and more severe discipline.
4. **Forms of Discipline.** In addition to progressive discipline in performance evaluation, informal and formal reprimands, and involuntary demotion, appointing authorities are authorized to use the following forms of discipline:
 - a. **Suspension.** An employee may be suspended from employment for a period not to exceed 30 days annually, with or without pay, for just cause, including but not limited to insubordination; habitual lateness; misconduct amounting to violation of law or the rules, regulations, or

orders of the State System or university; or scandalous or disgraceful conduct, whether on or off duty, which may cause the State System or university to be held in disrepute.

- b. An employee may also 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.
- c. **Termination.** An employee may be terminated from employment for refusal or inability to perform the prescribed duties of his/her position, for willful misconduct, negligence, or any other similar reason, including those enumerated as cause for suspension.

H. **Notice of Potential Basis for Contemplated Action and Informal Opportunity to be Heard**

Before any final determination (defined as the last written determination made before the action takes effect) is made to involuntarily demote, suspend without pay, or terminate a probationary or regular 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.

I. **Notice of Final Determination**

1. Notice Required

Prior to the effective date of the following personnel actions, each appointing authority shall provide its employees written notice of its action:

- a. appointment;
- b. promotion;
- c. suspension;
- d. involuntary demotion;
- e. furlough;
- f. unsatisfactory performance rating;
- g. termination; and

h. written reprimand.

2. Content of Notice

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 therefore, sufficient to apprise the employee of the nature and grounds upon which the charges are based. Notice of furloughs and placement rights shall be governed by the applicable collective bargaining agreement or the policies of the Board of Governors or chancellor, whichever is applicable.

3. Violations

With regard to any violation of any of the provisions 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 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 the 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.

J. Interim Personnel Action

Suspensions without pay. When necessary, the appointing authority may place an employee on an interim suspension without pay. This action may be done 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. Following the provision of such written notice and informal opportunity to be heard, the appointing authority shall make its final determination in the matter, and shall so notify the employee with the provisions of Section I. Notice of Final Determination.

K. Formal Hearings

1. **Regular Employees.** Any regular employee who has received a written reprimand or been involuntarily demoted, furloughed, suspended, or terminated from employment, or who alleges discriminatory treatment or non-merit reasons for an unsatisfactory evaluation, shall be provided a formal hearing if a timely request is made. Hearings shall be held at least ten calendar days after advance notice of the date, time, and place of the hearing

has been given by certified mail to the employee, the appointing authority, and others interested in the case.

2. **Probationary Employees.** Any probationary employee who alleges discriminatory or non-meritorious imposition of discipline, other than termination, shall be entitled to a hearing subject to the timeliness requirements of Section K.3., Formal Hearings: Election of Rights. Any probationary employee who alleges that his/her employment was terminated for discriminatory reasons shall be entitled to a hearing if a timely request is made.
3. **Election of Rights.** These hearing procedures shall not be available to any employee who elects to use the grievance procedure of a collective bargaining agreement. Once a grievance is filed, an employee is barred from using this procedure.
4. **Requests for Hearings.** Following unsatisfactory response from the appointing authority, university employees shall make requests for hearings to the chancellor in writing not more than 20 calendar days after the appointing authority has given notice of the disciplinary action. Following an unsatisfactory response from the chancellor, Office of the Chancellor employees shall make written requests for hearings to the Chairman of the Executive Committee of the Board of Governors not more than 20 calendar days after the chancellor has given notice of the disciplinary action.
5. **Form of Appeal.** When requesting a hearing, 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.
6. **Dismissal for Lack of Specificity.** Appeals which do not conform with the requirements stated in Section K.3., Formal Hearings: Election of Rights above or are not reasonably specific may be dismissed.

L. **Special Rules of Hearing Procedures**

1. **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. The chancellor and Executive Committee are hereby authorized to retain hearing officers to conduct hearings and issue recommendatory adjudications.
2. Hearings shall conform to the procedural requirements of the Administrative Agency Law, 2 Pa.C.S.A § 101 *et seq.*
3. **Burden of Proof.** In cases involving written reprimands, demotions, suspensions, furloughs, and terminations from employment, the appointing authority shall have the burden of proof and the burden of going forward to

establish a *prima facie* case. In cases of discrimination or unsatisfactory evaluations, employees shall have the burden of proof and the burden of going forward to establish a *prima facie* case. In evaluation cases, employees must prove by a preponderance of evidence that the appointing authority abused its discretion.

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 a *prima facie* case exists.
 - c. If a *prima facie* case has been made, the opposing party shall then present a defense or otherwise rebut the moving party's *prima facie* 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.

M. 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.

N. Practice and Pleading

1. **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.
2. **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 merit service regulations, 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 deuces tecum*.

3. 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 hearing officer, accompanied by certificates of service.
4. **Service of Pleadings.** Pleadings may be served by personal service or first class U.S. Postal Service.
5. **Representation.** Employees may represent themselves or be represented by attorneys or any other individual admitted to practice before the chancellor or Executive Committee. Attorneys shall file praecipes of appearance. Non-attorney representatives shall apply to the chancellor for permission to appear at hearings.

O. Implementation

The chancellor and Executive Committee may make such rules as may be necessary to implement these regulations.

P. Supersession

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

Q. Witnesses and Production of Evidence

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

R. 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.

S. Effective Date

July 1, 1983