DISCIPLINARY PROCEDURES FOR EXCLUDED INSTRUCTIONAL STAFF

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OFFICE OF HUMAN RESOURCES MANAGEMENT  
CODE OF PRACTICE  
REGARDING DISCIPLINARY PROCEDURES FOR EXCLUDED INSTRUCTIONAL STAFF

Article 7.2 of the Board of Trustees' Bylaws, as amended on November 28, 2011, delegates to the Chancellor or his/her designee the authority to establish the disciplinary procedures for instructional staff that are excluded from representation in collective bargaining. The Chancellor has designated the Vice Chancellor for Human Resources Management as his designee for this purpose.

The disciplinary procedures described herein apply to instructional staff employees who are serving in functions or titles that are excluded from collective bargaining representation (hereinafter referred to as "excluded instructional staff" or "excluded employees"), other than members of the Executive Compensation Plan. These procedures apply when a decision has been made to terminate an employee from his/her excluded position before the expiration of his/her appointment thereto or to impose a lesser form of discipline. It is not necessary to invoke these procedures, however, if an employee who is being removed from an excluded function or title is reassigned to an included function or title in the same payroll title and at the same salary for the remainder of the excluded appointment period. These procedures do apply when an excluded instructional staff member has an underlying included appointment in a lower payroll title in the same title series, or in an underlying title in a different title series, and the college seeks to remove him/her from the excluded position and return him/her to the included title from which he/she is on leave.

1 The term "College" as used herein encompasses all units of the University, including, but not limited to, senior Colleges, community colleges, the William E. Macaulay Honors College, the Graduate School, the CUNY Graduate School of Journalism, the CUNY School of Law, the CUNY School of Professional Studies, the CUNY School of Public Health, and the Central Office. The term "President" as used herein includes the senior executive of such units that do not have a President, e.g., the Dean of the CUNY School of Law. At the Central Office, the disciplinary proceedings will be initiated by the Executive Vice Chancellor and Chief Operating Officer.

2 See Article 1.1 of the PSC/CUNY collective bargaining agreement for a list of such "excluded titles or functions. The rights of employees in the Executive Compensation Plan are set forth in "The Terms and Conditions of Employment for Staff in the Executive Compensation Plan."

3 The procedures described in Section 1 hereof would also apply to employees represented in collective bargaining, other than employees who have tenure pursuant to Section 6212 of the New York State Education Law, in the rare case that the expired collective bargaining agreement has not been continued by operation of Article 14 of the Civil Service Law: for employees who have tenure, the provisions of Section 6212(9) would apply in such circumstances.
1. Immediate Termination

An excluded employee is subject to immediate discharge from an excluded position, when the circumstances giving rise to the decision to remove the person from the excluded positions are so serious in the College's view that they render it inappropriate for the person to continue in employment for the remainder of the appointment.

Disciplinary proceedings shall be initiated by the College's President by service of a written notice of intent for immediate discharge upon the employee. Upon issuance of the notice of intent for immediate discharge, the employee may, at the discretion of the College, be suspended with pay pending disposition of the notice of intent for immediate discharge, as set forth below. The notice of intent for immediate discharge, which must be sent by certified mail or overnight mail, as well as by regular mail, shall set forth the charge(s) against the excluded employee and the proposed penalty of immediate discharge. Within five (5) business days of the mailing of the notice of intent for immediate discharge, the President or designee shall conduct a meeting with the excluded employee to discuss the charge(s), during which the excluded employee may submit relevant information or documents. As these procedures concern removal from a position that is not represented in collective bargaining, the excluded employee is not entitled to union representation. The excluded employee may, however, be accompanied by another individual who is not a union representative. Within five (5) business days of the meeting described above, the President or designee shall write to the excluded employee and either (1) issue a notice of immediate discharge, which shall be effective immediately, (2) impose a suspension or other appropriate penalty, or (3) withdraw the notice of intent for immediate discharge. If the excluded employee fails to appear at the meeting, the President or designee may issue a notice of immediate discharge, which shall be effective immediately. Communication of the decision of the President or designee must be sent by certified mail or overnight mail, as well as by regular mail.

If the excluded employee is on leave from an underlying title that is represented in collective bargaining and the college wishes to terminate the employee from employment in the underlying title as well, it is necessary to follow the disciplinary procedures in the collective bargaining agreement applicable to the underlying title.

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4. As used herein “business days” refers to all calendar days excluding Saturdays, Sundays, and legal holidays.
5. If the excluded employee wishes to have a non-union representative attend the meeting, he/she must notify the President or designee in advance of the meeting. The representative must be available to attend the meeting; the meeting will not be delayed more than one (1) business day because of the representative’s unavailability. The representative’s role is limited to attending the meeting and advising the excluded employee at appropriate times.

2. Lesser Forms of Discipline

Disciplinary proceedings seeking a penalty less than immediate termination from the excluded position shall be initiated by the College’s Labor Designee by service of a written notice setting forth the basis for the disciplinary action and the proposed penalty. The notice must be sent to the excluded employee by certified mail or overnight mail, as well as by regular mail. Within five (5) business days of the mailing of the notice, the College’s Labor Designee shall conduct a meeting, during which the excluded employee may submit relevant information or documents. Within five (5) business days of the meeting described above, the Labor Designee shall write to the excluded employee and either (1) notify the employee of the penalty to be imposed, or (2) withdraw the notice. If the employee fails to appear at the meeting, the Labor Designee may impose the penalty forthwith. Communication of the decision of the Labor Designee must be sent by certified mail or overnight mail, as well as by regular mail. Except as provided below for suspensions of more than ten (10) business days, the decision of the Labor Designee is final and not subject to appeal.

3. Appeal of Immediate Discharge or Suspension of More Than Ten (10) Business Days

Within ten (10) business days of the date of the notice of immediate discharge or notice of a penalty of suspension of more than ten (10) business days, the excluded employee may file a written appeal to the Vice Chancellor for Human Resources Management. This appeal must be sent by certified mail or overnight mail to the Vice Chancellor, with a copy by regular mail to the College’s Director of Human Resources. The Vice Chancellor shall render a decision on the appeal within ten (10) business days of receipt, which decision must be sent by certified mail or overnight mail, as well as by regular mail. The decision of the Vice Chancellor is final.

6. It is not necessary to invoke these disciplinary procedures to put a letter of reprimand in an excluded employee’s personnel file.