

## **BP 2.7 Termination, Hearings, and Grievances**

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### **Policy**

#### **Section 1. Dismissals, Non-Renewal of Contracts**

##### **Sub-Section 1.1. Definitions:**

- (A) The word “employee” means any person who is full-time non-temporary academic or non-academic employee of McDowell Technical Community College and who is employed under an approved annual contract.
- (B) The term “just cause” means inadequate performance, physical, mental, or emotional inability to perform one’s assignment, felonious conduct, conviction of a felony or a crime involving moral turpitude, willful or negligent failure to comply with rules and regulations of the State Board of Community Colleges, the Board of Trustees of the institution, or lawful directives of the President of the institution, or his designated representative. “Just cause”, shall not be construed to infringe upon the rights of Academic Freedom. (See policy on Academic Freedom)
- (C) The word “dismissal” means termination of employment prior to the expiration date of the employment contract.
- (D) The term “non-renewal” means conclusion of employment at the expiration date of the employment contract.
- (E) The term “prima facie showing” means the presentation of such evidence, which standing alone and unexplained, would maintain the proposition and warrant the conclusion of the involvement of race, sex, or protected First Amendment rights in a decision of non-renewal.
- (F) The “Board” refers to the Board of Trustees of McDowell Technical Community College.
- (G) The word “day” means a regularly scheduled working day and will not include weekends, holidays or days during which the College is not open for regular business transactions. When any time limitation prescribed by these regulations expires on a week-end or institution holiday, said time limitation shall be deemed to expire on the next scheduled workday.
- (H) The word “complaint” means an expression of displeasure or dissatisfaction with some aspect of the college, an action taken by the college, employee/employer

relations, conflicts with other employees, a perceived breach of college policy, etc.

### **Sub-Section 1.2. General Requirements**

- (A) Any notice required or contemplated by these regulations shall be in writing. Additionally, notice of dismissal pursuant to Sub-Section 1.3, and notice of non-renewal pursuant to Sub-Section 1.4, shall be sent by registered or certified mail, return receipt requested.
- (B) Any hearing required or contemplated by these regulations shall be closed to the public unless the employee and Board shall both agree in writing that the hearing be open.
- (C) Any hearing required or contemplated by these regulations shall be transcribed or electrically recorded and a copy made available to the employee upon written request within ten days of the request.
- (D) A copy of all regulations applicable to dismissal and non-renewal shall be made available to every employee, and an copy or copies made accessible in the College library.

### **Sub-Section 1.3. Notice and Hearing Requirements Applicable to Dismissal**

- (A) An employee shall not be dismissed from his employment during the term of his contract of employment except for just cause, bona fide financial exigency or discontinuation or modification of a program, discipline, or department of instruction.
- (B) Except in emergency involving life, physical injury, or substantial disruption or impairment of the educational process, an employee shall receive written notification of the intention of the President to recommend dismissal to the Board of Trustees. The notification shall detail the reasons for the dismissal and the facts to support those reasons. The notification shall advise the employee of his right to a hearing and a copy of these regulations shall be attached.
- (C) The hearing shall take place before the Board or before one or more hearing committees established and selected by the Board. The hearing committee may be composed of persons other than the Board in each case. However, should the hearing take place before the committee other than the Board, an appeal to the Board shall be available as set forth in Sub-Section 1.3, item (I).
- (D) Within ten days after the receipt of the notice of dismissal, the employee shall advise the President whether or not a hearing is desired and the grounds for requesting the hearing. Failure to request a hearing within the time limit will be deemed a waive of the opportunity to have such hearing, unless the hearing committee finds that exceptional circumstances have prevented the employee from requesting a hearing.
- (E) Upon receipt of the request for a hearing, regardless of the grounds stated, the President shall immediately refer the request to the Board. The Board, under its procedures for determining the hearing body,

shall determine to hear the case or to refer the case to the hearing committee. The Board or the hearing committee shall establish a date for the hearing and notify the employee of the date. The hearing will be within a reasonable timeframe and the date will be set by the Board or Hearing Committee.

- (F) At the hearing, the President, his counsel or delegate, shall present evidence showing the reason or reasons as set forth in Sub-Section 1.3, item (A), above, for the dismissal and shall have the burden of satisfying the hearing committee that such reason or reasons exist. The President, his counsel or delegate, shall be entitled to present witnesses and evidence and cross-examine witnesses.
- (G) After presentation of evidence by the President, his counsel or delegate, the employee shall be entitled to present evidence. The employee shall be entitled to present witnesses and evidence, cross-examine witnesses, and be represented by counsel.
- (H) If the hearing takes place before a committee, the hearing committee shall promptly make its findings and recommendations then notify the employee of same within five days of the conclusion of the hearing. If the hearing took place before the Board, the Board shall promptly make its findings, recommendations and decision, and notify the employee of same within five days of the conclusion of the hearing. The decision of the Board shall be the final administrative action. Any further recourse shall be to the courts.
- (I) If the hearing takes place before a hearing committee rather than the Board, and if the employee is not satisfied with the determination of the case by the hearing committee, the employee shall receive a review of the findings and recommendations of the hearing committee by the Board by requesting in writing such appeal within twenty days of the decision of the hearing committee. The Board shall then grant an appellate hearing within ten days of receipt of notice of appeal. Such appellate hearing shall include, in addition to the above, opportunity for comment and argument by the employee, his counsel or delegate. Within five days of the conclusion of the appellate hearing, the Board shall notify the employee of the decision. The decision of the Board shall be the final administrative action. Any further recourse shall be to the courts.
- (J) In those cases in which there is no appeal, the hearing committee, within five days after the expiration of the deadline for appeal, shall submit to the Board its findings and recommendations. The Board, within thirty days, shall approve, disapprove, or modify the findings and recommendations. The action of the Board will be final.
- (K) In the case of an emergency dismissal as contemplated by Sub-Section 1.3 item (B), of these regulations, the employee may be immediately suspended either with or without pay; provided, however, that the dismissal procedure and requirements set forth herein shall be initiated and complied with as soon as practical.

**Sub-Section 1.4. Notice and Hearing Requirements Applicable to the Non-Renewal of Contracts**

- (A) Thirty-days prior to the expiration of the employee's contract of employment, the employee shall be notified by the President if a new contract of employment will not be offered. No reasons shall be given for a decision not to offer a new contract.
- (B) If a new contract of employment is not offered, the employee shall be notified that no right to a hearing exists unless the employee believes the failure to offer a new contract has been due to the person's race, sex or the exercise of protected First Amendment Rights.
- (C) If the employee has reason to believe that a new contract of employment is not being offered because of race, sex or exercise of protected First Amendment Rights, the employee shall so notify the President within ten days of receipt of the notice of non-renewal and shall summarize the basis of the persons' belief that race, sex or exercise of protected First Amendment Rights are involved.
- (D) Upon notification by the employee that the employee reasonably believes race, sex or exercise of protected First Amendment Rights is involved in the non-renewal of the contract, the President shall notify the employee, within ten days of receipt of the notice from the employee, of his/her right to a hearing. The Board or Hearing Committee shall establish a date for the hearing and notify the employee of the date. The hearing will be within a reasonable timeframe and the date will be set by the Board.
- (E) The hearing shall take place before the Board which shall have authority to take final action. There shall be no appeal from a decision.
- (F) At the hearing, the employee shall have the burden of establishing a prima facie showing of the involvement of race, sex or exercise of protected First Amendment Rights in the decision of non-renewal. The employee shall have the right to present witnesses and to be represented by counsel. If the employee does not establish a prima facie case, the hearing shall be terminated. In the event the employee does establish a prima facie case, the hearing shall be adjourned for a period of not less than ten nor more than thirty days, with the Board or Board Committee specifying at the time of adjournment the date on which the hearing shall resume. Within three days of adjournment of the hearing, the President shall notify the employee of the reasons for the non-renewal of his contract and the basis of that decision.
- (G) When the hearing resumes, the President, his counsel, or delegate, shall have the burden of going forward with the evidence and satisfying the Board that the decision on non-renewal was made for permissible reasons. The President, his counsel or delegate, shall be entitled to present witnesses and evidence and cross-examine witnesses.
- (H) At the conclusion of the President's evidence, the employee, his counsel or delegate, shall be given opportunity to show that the reasons advanced for non-renewal are a pretext.
- (I) Within five days of the conclusion of the resumed hearing, the Board shall notify the employee of its decision. The action of the Board shall be the final administrative action. Any further recourse shall be to the courts.

- (J) Any provision contained herein may be changed with the approval of the Board of Trustees of McDowell Technical Community College and the State Board of Community Colleges.

## **Section 2. Employee Appeals & Grievances**

It is the policy of McDowell Technical Community College to provide every non-probationary employee the opportunity to present a problem or grievance in accordance with the procedures prescribed from interference, coercion, restraint, discrimination or reprisal. The policy and procedure of McDowell Technical Community College shall provide for prompt and orderly consideration and determination of employee problems or grievances and be in compliance with policies established by the State Board of Community Colleges.

A college employee who has reason to believe that employment, promotion, training, or transfer was denied him/her or that demotion, lay-off or termination of employment was forced upon him/her on the basis of age, sex, race, color, national origin, religion, creed, political affiliation, or physical disability, except where specific age, sex, sexual orientation, gender identity, or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration, shall have the right to appeal directly to the Board of Trustees, through the College President. The employee will have the burden of establishing a prima facie showing. A college employee has the right to appeal using the grievance procedure if he/she so desires. An employee must appeal an alleged act of discrimination to the Board of Trustees, through the College President, within 20 days of the alleged discriminatory action.