

SOUTHWESTERN COMMUNITY COLLEGE	HUMAN RESOURCES/INFORMATION TECHNOLOGY <b>RIGHT OF APPEAL</b>	Policy 4.03.04
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## I. Right of Appeal

- A. In case of disciplinary action, suspension or dismissal pursuant to Policy 4.03.03 should the College choose to not reappoint an employee at the end of a term of appointment, an employee has a right to appeal the President's decision and must do so within ten (10) business days of the action taken. Appeals must be submitted in writing to the President who shall forward the appeal to the chair of the Board of Trustees. Further, the employee shall state in the notice whether or not the employee has or is seeking legal counsel for the appeal.
- B. Appeals under this policy may only be requested on the grounds that the decision was arbitrary, capricious, discriminatory, or a violation of the law or the relevant College policy. The employee must articulate the grounds for the appeal in the notice of appeal. Failure to state the grounds for appeal will result in the appeal being dismissed without a hearing.
- C. No later than ten (10) business days from the President's receipt of the employee's written appeal, unless mutually agreed by the parties, the Executive Committee ("Committee") of the Board of Trustees shall conduct a hearing pursuant to Section II. The employee's failure to inform the President that he/she has retained legal counsel for the appeal at least three (3) business days prior to the hearing shall be automatic grounds for a continuance of the hearing if so desired by the College.
- D. No later than ten (10) business days from the hearing, the Committee shall provide the employee with its written determination to uphold, reject or modify the original decision. The determination shall be included in the employee's personnel file. If the employee is reinstated, he/she shall receive all lost wages from the date of the suspension without pay and/or dismissal unless otherwise decided by the Committee.
- E. At the next regularly scheduled meeting of the Board of Trustees, the Committee shall report its determination to the full Board of Trustees.

## II. Hearing Procedure

- A. The hearing shall be conducted with only the members of the Committee, the employee, the President and other appropriate College administrators and relevant witnesses. The employee, the Committee, and the President may also be represented by legal counsel. If an employee chooses to have counsel present, the employee is responsible for retaining and paying for those services. The Board's legal counsel shall act as a procedural officer during the hearing and give advice to the Committee regarding necessary rulings and matters of due process. A Committee member who has a significant conflict of interest or bias should disqualify himself/herself or be excused by the

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Committee's adoption of a motion to disqualify him/her. For purposes of the appeal, a simple majority of the Committee members must be present. If the employee asks for a transcript of the proceeding, the transcript shall be made and given to the employee with a bill for the cost of preparing it.

- B. Strict rules of evidence or procedure do not apply to appeal hearings before the Committee. The Committee may consider any and all evidence that it determines to be fair and reliable. All witnesses may be questioned and cross-examined by the Committee members, the employee and the President. The Committee will be the sole judge of the weight given to specific evidence and the credibility of all witnesses. The conduct of the hearing shall be under the Committee chair's control.
- C. The hearing shall begin with the employee's presentation of contentions, limited to those grounds specified in the request for the appeal and supported by such proof the employee desires to offer. The employee has the right to present evidence and examine witnesses, and the President and/or designee may cross-examine any witnesses. At the conclusion of the employee's presentation, the President and/or designee will present testimony which may or may not be his/her own, documentary evidence, and/or witnesses in general support of the decision. The employee may cross-examine any witnesses.
- D. The burden is on the employee to prove that the President's decision was arbitrary, capricious, discriminatory or a violation of the law or relevant College policy.
- E. After the President completes his/her presentation, the Committee shall decide whether the employee met the burden to demonstrate the decision was arbitrary, capricious, discriminatory or a violation of the law or relevant College policy.

### III. Rules

- A. If at any stage of the appeal procedure, the appellant does not take the next step within the time allotted, the appeal shall be settled in the manner recommended or decided by the Administration at the last step.
- B. All reference to number of days in the procedure shall be determined to mean college working days. In the event an appeal is not file or processed in the manner and within the times set forth above, it shall be forever barred.
- C. The appellant may withdraw an appeal at any level.

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- D. Hearings shall be limited to matter relevant to the disciplinary action, suspension and dismissal.
- E. Employees of the college, or the appellant, individually or as a group, are prohibited from communicating in any form with members of the Board of Trustees concerning any matter which is before the Board of Trustees as an action under this procedure unless so directed through official channels.

Cross Reference:     4.03.02 – Employee Code of Conduct  
                               4.03.03 – Disciplinary Action, Suspension and Dismissal  
                               4.03.07 – Resignations  
                               4.03.08 – Reduction in Force / Involuntary Leave without Pay

Adopted:                October 2009

Revised:                October 22, 2013  
                               March 23, 2021