

Policy Title: **COMPLAINT PROCEDURE – DISCIPLINE AND SAFETY**

Introduction

The following policy is issued in compliance with Sec. 66.0509 (1m) Wis. Stats. relating to appeals of discipline and safety issues. The College seeks to promptly address and resolve complaints at the lowest level. The College reserves the right to determine whether a complaint appropriately falls within the scope of this policy.

This policy applies when a College employee (“complainant” as defined below) believes that he or she has been subjected to discipline or subject to unsafe working conditions as defined in this policy provided that at least a substantial portion of the alleged wrongful behavior either occurred on College-controlled, College-leased or College-owned property, or otherwise had a significant connection to the employment of the individual employee and the activities of the College.

I. Definitions

A. Complaint: Complaint means any complaint regarding the discipline or workplace safety as defined in this policy.

“Discipline” shall include written discipline (oral reprimand, written reprimand, suspension, disciplinary termination) submitted to an employee’s personnel file.

“Discipline” under this policy **shall not** include:

- voluntary separation
- an employee’s separation from work which was temporary, project or limited term
- retirement
- layoff or failure to be recalled from layoff
- separation due to lack of work or position elimination
- any action taken due to lack of qualifications or license/certification for the position (WTCS or occupation related)
- medical inability to perform the functions of the position
- nondisciplinary demotion
- transfer
- change in assignment or location
- awarding, reassignment or assignment of work (including amount of work),
- hiring or selection decisions
- reorganization
- administrative leave (unpaid or paid); however, any discipline related to an administrative leave may be appealed using this process and any remedy requested may address the period of unpaid leave

- actions taken to address work performance including providing guidance or counseling, a performance improvement plan, incident/observation reports or adverse performance evaluation

“Workplace safety” shall be defined as conditions of employment relating to safety of the complainant’s physical work environment, tools and equipment, protective equipment, training and warning requirements. This complaint procedure does not apply to an appeal of a determination by a state or federal agency or regulatory body relating to workplace safety involving a College employee.

This policy applies when a College employee (“complainant” as defined below) believes that he or she has been subjected to discipline or subject to unsafe working conditions as defined provided that at least a substantial portion of the alleged wrongful behavior either occurred on College controlled, leased or owned property, or otherwise had a significant connection to the employment of the individual complainant and the activities of the College.

- B. Complainant:** Complainant means an employee of Fox Valley Technical College who has a personal complaint as defined in this policy. At the College’s discretion, personal and individual written complaints with the same or sufficiently similar underlying facts and policy issues may be combined at any step in the proceeding.
- C. Days:** All days listed in this policy are regular business days when the College is open for business. Weekends, holidays and days when the campus is closed for business are excluded.
- D. Impartial Hearing Officer (IHO):** The Impartial Hearing Officer is an individual who is not an employee of the College, who has no prior relationship with the complainant and who has no financial or personal interest in the outcome of the matter to be reviewed, and who is designated by the College to hear the complaint and make a determination.

II. Complaint Procedure

- A. Step 1: Appeal to the Executive Team Member of the Division/Department**
 - 1. Within five (5) days of the date of action causing the complaint, the complainant shall provide, in writing, full and complete information on the facts underlying the complaint and the policy alleged to have been violated. Upon receipt of the complaint, the Executive Team member shall determine whether this policy applies. The following are reasons why the policy may not apply:
 - a. The complaint does not involve discipline or safety as defined in this policy, even if the complainant’s allegations or issues are true.

Policy Section: Human Resources

Policy Title: Complaint Procedure – Discipline and Safety

- b. The alleged conduct did not occur on College owned, leased or controlled property or did not otherwise have a significant connection to the employment of the individual complainant and activities of the College.
- c. The complainant is not a College employee as defined in this policy.
- d. The complainant was not the party harmed by the activity or action set forth in the complaint.
- e. The complaint is not timely.

This list is not exclusive. If the determination is made that the policy does not apply, the complainant may appeal the decision to the Impartial Hearing Officer (IHO) within five (5) days of receipt of the decision.

- 2. If the Executive Team member determines that this policy applies, he or she shall conduct an investigation of the complaint in any manner he or she thinks is appropriate. If the complainant has not had an informal conversation with his or her supervisor to resolve the situation, the Executive Team member may request that this action be taken prior to any investigation.
- 3. Not later than fifteen (15) days after receipt of the written complaint, the Executive Team member shall provide the Vice President for Human Resources and the complainant with a written summary of his or her findings.
- 4. If the Executive Team member finds that there was no violation, he or she will dismiss the complaint.
- 5. At any point in the investigation, the Executive Team member may attempt to conciliate the informal complaint through contact with all parties involved. Any agreement reached shall be in writing and signed by all parties involved. This agreement shall be final and binding on the parties.

B. Step 2: Appeal to the Impartial Hearing Officer

- 1. If not settled at Step 1, the complainant may appeal the decision to an Impartial Hearing Officer (IHO) designated by the College. The complainant must provide written notice to Vice President for Human Resources within five (5) days of the decision in Step 1.
- 2. The Vice President for Human Resources will secure an Impartial Hearing Officer within thirty (30) days of receipt of the written appeal. If this is not possible within this time frame, he or she will notify the complainant. The College will pay for the cost of the IHO.
- 3. The Impartial Hearing Officer may require that the College and the complainant provide written pre-hearing statements to the IHO and the other party, providing the name of witnesses and the nature of their anticipated testimony.

4. The hearing before the Impartial Hearing Officer will be held within thirty (30) days of the selection of the IHO. If this timeframe is not possible, the IHO will notify the Vice President for Human Resources and the complainant. A transcript will be prepared for each hearing, and the parties shall share the costs equally. The hearing will be conducted according to procedures established by the College in advance.
5. The Impartial Hearing Officer shall provide a written decision to the parties within thirty (30) days of the hearing. The IHO's decision shall be based on the preponderance of the evidence and whether a rational basis exists to support the decision of the College at Step 1.
6. The Impartial Hearing Officer's decision shall be limited to denial of the complaint, granting the complaint or remanding the complaint to the Executive Team member at Step 1 for additional proceedings. The IHO's decision shall be limited to the precise issue raised in the complaint at the time of the appeal to the IHO under the terms of the applicable College policy. The IHO shall have no authority to add to, modify or delete from the policies of the College.

C. Step 3: Appeal to the Board of Trustees – Final Decision

1. If not settled in Step 2, the Vice President for Human Resources on behalf of the College or the complainant may, within five (5) days, appeal the decision of the Impartial Hearing Officer by filing a written appeal with the Board's Chairperson. If requested by the appealing party, the Board shall schedule a meeting to review the record and the decision of the IHO. This meeting shall occur as soon as practicable after the receipt of the transcript. The meeting will be conducted according to procedures established by the Board in advance.
2. If a meeting is requested, the complainant and the College have the opportunity to meet with the Board to explain the complaint, review the proceedings before the Impartial Hearing Officer and to state their respective positions on the complaint. Neither the complainant nor the College may present additional witnesses, nor may either party question individual Board members.
If a meeting is not requested the Board shall review the evidence from the hearing before the IHO and the decision of the IHO. No new evidence may be offered at this step in the procedure.
3. As soon as practicable the Board shall issue a written decision regarding the complaint. The decision shall be by simple majority vote of the full Board. The Board's decision shall be based on the preponderance of the evidence and whether a rational basis exists to support the decision of the College.
4. The Board's decision shall be limited to denial of the complaint, granting the complaint or remanding the complaint to the IHO for additional proceedings. The Board's decision shall be limited to the precise issue

raised in the complaint and the relevant College policies and shall be final and binding.

5. To the extent that the provisions of Sec. 118.22, Wis. Stats are applicable to any complaint filed, Step 2 shall be eliminated and those statutory procedures will be followed with the Board as required by law.

D. Procedural Requirements

1. **Timeline Requirements:** The parties agree to follow each step of the procedure outlined in this policy. If the College fails to give a written answer at Step 1 within the time limit, the Complainant may immediately appeal to the next step. Complaints not processed to the next step within the prescribed time limits shall be considered dropped. However, if it is impossible to comply with the time limits specified in the procedure because of work schedules, illness, vacations, etc., these limits may be extended by mutual consent in writing.
2. **Dispute Statement and Remedy:** The written signed complaint shall give a clear and concise statement of the alleged complaint including the facts upon which the complaint is based, the issue involved, the date the event occurred, the specific policies alleged to have been violated if any, the supervisor's name and date of the informal conversation to resolve the complaint, and the relief sought. At each stage of the appeal process the appealing party must state the reason(s) why the appealing party disagrees with the action or decision. The written complaint will only be processed if all of the required information is provided by the complainant. While the written complaint may not be amended following the decision at Step 1, the remedy requested may be modified at any time without prejudice to the complainant's position in the appeal.
3. **Representation:** The College or the complainant may use one designated representative at their own expense to assist in processing the complaint at any step. The representative must be identified at least three (3) days in advance of every step of the proceeding.
4. **Information**
The College shall provide complainant and the representative with access to copies of relevant College policies, upon request.

Restrictions

Neither the complainant nor the College shall arbitrarily delay action of the complaint procedure.

It is not intended that the outcome of a complaint be determined by a non-substantial procedural violation.

All procedures and hearings shall be in closed session unless the matter is related to discipline and the complainant specifically requests that any hearing before the Board be held in open session.

All participants in all proceedings under this policy will observe confidentiality to the extent reasonably possible. However, in the event of a breach of confidentiality, the Vice President for Human Resources will take appropriate action.

The College may also use any information obtained in the proceedings to defend itself against any claims, complaints or allegations brought against it or as may be required by law.

The College shall not be restricted in its right to designate the person to handle complaint proceedings at any step in lieu of the individual designated in this policy.

No Retaliation

No person shall be subjected to any form of retaliation for having used or assisted others in the use of the complaint process.

Role of the Vice President for Human Resources

It is the primary responsibility of the Vice President for Human Resources to ensure the effective implementation, maintenance, processing, recordkeeping, and notification required by the complaint procedure.

Interpretation

The authority to interpret this policy rests with the President and is generally delegated to the Vice President for Human Resources.

Adopted: 09/21/11

Reviewed: 08/10/11

Revised: 09/21/11