

DISCIPLINARY ACTION APPEALS POLICY

POLICY STATEMENT:

Fort Hays State University Disciplinary Action Hearing Board (referred to hereafter as the Hearing Board) hears appeals of disciplinary actions taken to suspend, demote or dismiss a university support staff member with permanent status. The following procedures outline the appeal process, composition and appointment of the Hearing Board and Hearing Board panels, EEO Office responsibilities, and Hearing Board procedures.

Appeal Process

1. A university support staff employee not serving a probationary period may appeal a suspension, demotion or dismissal to the Board up to 30 calendar days after the effective date of the disciplinary action. Appeals must be made in writing to EEO Director.
2. The appellant may, at his/her own expense, have representation and must provide the name of the representative and the phone number at which the representative may be contacted at the time of filing the appeal, or if not known at the time, not later than 14 calendar days prior to the date of the hearing.

Composition and Appointment of the Hearing Board

3. The Hearing Board will be composed of four university support staff who represent the university support staff at large, four unclassified professional staff, and four faculty/unclassified academic staff. All have three-year rotating terms.
4. The President will appoint board members from nominations by each of the respective governance organizations (university support staff, unclassified professional staff, and faculty/unclassified academic staff). If the President does not find a sufficient number of acceptable nominees, the President will request additional nominees from the respective governance organizations. At least two of the Hearing Board members must have supervisory experience. The President may reappoint Hearing Board members or alternates for subsequent terms.
5. The chair and vice chair of the Hearing Board will be elected by the board members and officially appointed by the President. The chair and vice chair will serve a one-year term in those roles. The chair, or vice chair in the absence or recusal of the chair, will conduct the hearing.
6. Members of the Hearing Board will be required to attend training presented by representatives of Human Resources. The training will include information on the appropriate methods for conducting hearings, the rules regarding discipline governing the university support staff, and the role and responsibilities of Hearing Board members and the chair.

Composition and Appointment of the Hearing Board Panel

7. A Hearing Board panel will be composed of three university support staff, one unclassified professional staff, and one faculty/unclassified academic staff.
8. Members of the Hearing Board panel cannot be from the same department as those involved in the appeal. Prior to serving on the panel for a particular hearing, the participating panel members will be expected to sign a statement confirming that the member is unaware of any reason that would preclude the member from acting fairly and impartially in deciding the matter before the Hearing Board panel and is not knowledgeable of the case. The Director of EEO and the Hearing Board Chair shall designate the Hearing Board members, as provided for in item number 7.

Office of EEO Responsibilities

9. The Director of EEO will provide staffing for the Hearing Board and Hearing Board panels. Those duties will include: maintaining the appeal files, making arrangements for an audio recording of the hearing, establishing deadline dates for receipt of witness lists and exhibits, copying and distribution of witness lists and exhibits, scheduling of all meetings and hearings, etc.
10. The EEO Office in conjunction with the Human Resources Office will provide annual statistical reports to University administration regarding the activities of the Hearing Board, without revealing any confidential personnel information. The information will include: number of appeals received; number of actions affirmed, modified or overturned; and number of the Board's recommendations accepted or amended by the President.

Hearing Procedures

11. When a written appeal is received by the EEO Director, a copy of the appeal will be provided as soon as possible to all parties involved in the appeal.
12. Hearings should be scheduled by EEO Director within 45 calendar days of the receipt of the appeal. Continuances will be considered by and may be granted by EEO Director in consultation with the Hearing Board Chair if received no later than 14 calendar days before the date of the hearing. Requests for continuance must be in writing to EEO Director and state the reason for the request and show that the opposing party or his or her representative has been notified. The request must also contain alternative dates on which the requesting party is available for the hearing.
13. Parties involved in the hearing will also have the opportunity to indicate whether a Hearing Board panel member should be precluded from a particular hearing based on concerns about impartiality. The objecting party will have five calendar days from notice of Hearing Board panel appointment to notify EEO of those concerns. EEO, in consultation with the Hearing Board Chair will determine whether an alternate should be appointed.
14. Each party must provide in writing a statement of facts relevant to the matter, a list of all witnesses who are expected to testify, and a brief written statement of the anticipated testimony of each witness, showing the relevancy of the testimony, a list of identified exhibits and the exhibits themselves. All statements of facts, witness lists and exhibit lists, and exhibits must be received in the EEO at least 7 calendar days in advance of the hearing. The appellant's and respondent's exhibits shall be marked. Each party provides one original, and the EEO Office reproduces the necessary copies for the hearing participants.
15. When a witness list has been provided to the University EEO Office by the parties to the hearing, EEO Director, on behalf of the President, will send an advisory letter to the University witnesses with a copy to their supervisors and department heads. The letter will advise the recipients that the University supports every effort to accommodate the availability of witnesses for a hearing before the Disciplinary Action Board. The letter will also clarify that witnesses have a choice to participate in the hearing, that they must request time off for the hearing from their departments in advance in accordance with normal time off work notice procedures, and that the time to participate in the hearing is considered as "work time." The letter will advise that witnesses will not be subjected to any form of intimidation or retaliation by any party for their decision to participate or to not participate in the hearing; that attempts at intimidation or retaliation should be reported to the President's office; that any complaint alleging intimidation or retaliation will be appropriately investigated; and that appropriate disciplinary action will be taken if intimidation or retaliation is determined to have occurred.
16. All parties who testify at the hearing will be asked to swear or affirm as to the truthfulness of their statements before beginning their testimonies. A notary public will administer the oath to the witnesses.
17. The evidentiary phase of the hearing is only open to those directly participating in the hearing. After the evidentiary phase of the hearing, the Hearing Board panel will adjourn to a closed session to deliberate on the personnel matter of disciplinary action against the employee.

18. At the hearing, the burden of proof shall be upon the employee to establish that the Appointing Authority or his/her designee did not act reasonably in suspending, demoting or dismissing the employee, which means that the employee must prove by a preponderance of the evidence that the disciplinary action taken was arbitrary, unreasonable, or without factual basis.
19. All hearings of the Hearing Board panel shall be recorded by means of audio. All such recordings constitute part of the record of the hearing and shall be maintained by the EEO office. Access to the audio shall be limited to the parties, their authorized representatives, and the members of the Hearing Board panel. Transcripts may be made of the contents of an audiotape at the sole expense of the requesting party or by other agreement of the parties.
20. The Chair of the Hearing Board panel has authority to conduct the hearing, and such authority shall include, but not be limited to, setting reasonable time limits for the presentation and cross examinations, and conducting the hearing in an orderly manner.
21. Each party to the appeal shall have an equal opportunity to present arguments to the Hearing Board panel. Each party may present a 10-minute opening statement at the beginning of the hearing before calling witnesses for testimony. The respondent shall present his or her case first, calling witnesses. The appellant may cross examine each witness after his/her testimony, with the respondent having the opportunity for redirect. The appellant shall present his or her case, calling witnesses for testimony. The respondent may cross examine each witness after his/her testimony, with the appellant having the opportunity for redirect. The respondent and the appellant may each present a 10-minute closing argument. The Hearing Board panel may question any party to the hearing. At the close of the evidentiary phase, the Board will adjourn into a closed session to deliberate on their recommendation.
22. After deliberation in the closed session and when the hearing is reconvened with all parties present, the Chair will solicit a motion and second to recommend that the President uphold, modify or rescind the disciplinary action. Each Hearing Board panel member will vote in public on the motion. The vote will be determined by a majority. The Hearing Board panel will make every effort to render a decision on its recommendation at that time. If the Hearing Board panel cannot reach a decision because it has to deliberate for a greater length of time than available at the hearing, the Hearing Board panel will return to the hearing room and announce that more deliberation time is needed and that the findings of fact, the vote, and recommended determination will be sent by mail to the parties.
23. The Hearing Board panel shall prepare its findings of fact and recommended determination within 15 calendar days from the date on which the hearing was conducted. However, the Chair of the Hearing Board panel may extend this time limit for good cause. The Hearing Board panel will make findings based on the information presented by the parties at the hearing and recommend in writing to the President whether the action to suspend, demote or dismiss the employee was reasonable and should be upheld, modified or overturned. The written recommendations must be supported by statements of fact and conclusions based on the application of University rules regarding disciplinary process for university support staff. The findings of fact and recommended determination will include the names of the committee members making and seconding the motion, and the members' votes on the matter resulting in the findings and recommended determination.
24. After review of the recommendations, the President will provide a written decision to both parties within 15 calendar days of receiving the Hearing Board panel's written recommendation. The President may take into account any relevant evidence. It is anticipated that the President will ordinarily follow the Hearing Board panel's recommendation. If the President, based on his/her understanding of the matter or other relevant factors, does not follow the recommendations of the Hearing Board panel, the President will meet with the Hearing Board panel to discuss his/her decision. The President's decision is a final agency action, and judicial review of the decision is pursuant to the Act of Judicial Review and Civil Enforcement of Agency Actions (K.S.A. 77-601 et seq.).

EXCLUSIONS OR SPECIAL CIRCUMSTANCES:

These appeal procedures are available only to University Support Staff with permanent status. They are not available to USS employees in probationary or temporary status or to members of the unclassified professional or academic staff.

CONTACTS:**Responsible Office:**

Office of the President

Contact:

312 Sheridan Hall
Fort Hays State University
Hays, KS 67601-4099
785-628-4231

APPROVED BY:**APPROVED ON:****EFFECTIVE ON:****REVIEW CYCLE:****BACKGROUND:**

USS members were formerly members of the Kansas Civil Service (“classified staff”) and had access to the Kansas Civil Service Commission in appeals of demotion, suspension, and dismissal. When the University implemented the move of this employee group from the Kansas Civil Service to the new University Support Staff, the USS Disciplinary Action Hearing Board was created and these guidelines for appeals were developed to afford USS employees due process in matters of demotion, suspension, and dismissal.

RELATED DOCUMENTS:

University Support Staff Handbook

<http://www.fhsu.edu/personnel/uss/>

KEYWORDS:

Disciplinary Action Hearing Board, appeals of disciplinary actions; suspension, demotion, dismissal, University Support Staff

REVIEW/CHANGE HISTORY: