

2-23 Termination of Employment (23 NCAC 02C.0210)

Termination of employment shall be at the discretion of and based upon the recommendation of the President of the college. In exercising such judgment, the President shall take into consideration those factors relevant to the college's mission, needs and best interests. No qualified employee may be dismissed or disciplined for reasons which would constitute unlawful discrimination based on the employee's race, color, religion, national origin, sex, age, or disability nor which would constitute unlawful retaliation against an employee for exercising any legally protected right. Termination shall be preceded by a discussion between the employee and appropriate supervisor(s).

The President has the right and responsibility to impose sanctions, up to and including dismissal when the conduct or performance of any employee warrants disciplinary measures. Sanctions may be in the form of informal oral warnings, formal written warnings or reprimands, or disciplinary suspensions with or without pay.

Definitions

"Employee" means any person who is hired by the college in any full-time or part-time position under any terms.

"Just Cause" means, but is not limited to:

- a. Inadequate performance, insubordination, neglect of duty, or misconduct of such a nature as to indicate that the individual is unfit to continue as an employee of the college;
- b. Conviction of a felony or a crime involving moral turpitude;
- c. The physical or mental inability to perform the essential functions of the employee's position unless the employee can perform those essential functions with a reasonable accommodation; and
- d. Failure to comply with any policies, rules or regulations of the State Board of Community Colleges, the Board of Trustees of College of The Albemarle, or any lawful directives of the President of the college or his or her designated representative.

"Dismissal" means the termination of employment prior to the expiration date of the employment contract.

“Nonrenewal” means conclusion of employment at the expiration date of the employment contract.

“Impermissible reasons” is used in reference to nonrenewal of contracts and refers to (1) action based on the employee’s exercise of rights guaranteed by either the First Amendment to the United States Constitution or Article I of the North Carolina Constitution or (2) discrimination based upon the employee’s race, national origin, color, religion, sex, disability (if the employee is otherwise able to perform the essential function of their job with or without a reasonable accommodation), age, or political affiliation.

“Prima facie showing” means the presentation of such evidence which, standing alone and unexplained, would maintain the proposition and warrant the conclusion that impermissible reasons are involved in a decision of nonrenewal.

“Board” refers to the Board of Trustees of College of The Albemarle.

“Day” means each calendar day, including weekends and holidays. When any time limitation prescribed by these regulations expires on a weekend or institution holiday, the time limitation expires on the next scheduled workday.

“Contract” as used in these policies means a written agreement of employment, signed by the President of the college and the employee, specifying the employee’s job classification, working title, period of employment, and rate of pay.

General Requirements

Any notice required or contemplated by these regulations shall be in writing. Additionally, notice of dismissal and notice of nonrenewal shall be sent by registered or certified mail, return receipt requested, overnight personal delivery service, or hand delivered to the employee by the supervisor or delegate with a signed acknowledgment that the letter was received by the employee.

Any hearing required or contemplated by these regulations shall be conducted in closed session (unless prohibited by law) by either the full Board of Trustees or by a committee of Trustees, appointed by the Chair.

Any hearing required or contemplated by these regulations shall be transcribed or recorded and a copy made available to the employee upon written request within thirty (30) days from such a request. Such requests must be made within thirty (30) days of the hearing.

A copy of all regulations applicable to dismissal and nonrenewal shall be made available to every employee through the Office of Human Resources.

A. Dismissal or Suspension of Employees

1. Notice Requirements Applicable to Dismissal and Suspension

All employees who are employed pursuant to a contract with the college shall not be dismissed during the term of their contracts except for just cause; bona fide financial exigency; or discontinuation or modification of a program, discipline, or department of instruction.

Employees shall receive written notification of the intention of the President to recommend dismissal to the Board of Trustees. The notification shall include notice of the employee's right, upon written request, to both written specification of the reasons for the intended dismissal and a hearing before the Board. If written reasons are requested, they shall be given to the employee within ten (10) working days from the President's receipt of the request.

Any requests for a hearing must be in writing and submitted to the President within ten (10) working days from the employee's receipt of the specifications of reasons for dismissal or, if such specification was not requested, then within ten (10) working days from the employee's receipt of the notice of dismissal. If within ten (10) working days of the notice referred to in the preceding paragraph the employee makes no written request for either a specification of reasons or a hearing, the employee shall be deemed to have waived the opportunity to receive written specification of reasons and a hearing. In the event the employee waives their right to a hearing, the President will present his or her recommendation to the Board for official action at its next regularly scheduled meeting.

2. Hearing Requirements Applicable to Dismissal and Suspension

Upon receipt of the request for a hearing, the President shall refer the request to the Board at its next regularly scheduled meeting. The Board shall establish a date for the hearing and notify the employee of the date. Any such hearing will be conducted no less than ten (10) working days and no more than thirty (30) days after notification of the hearing is delivered by the Board to the employee, unless the President and the employee agree to a different time schedule.

At least ten (10) working days prior to the hearing, the President and the employee shall provide to each other and to the Chair of the Board (or to the Chair of the Trustee Committee), a list of the witnesses and documents, if any, they plan to present at the hearing and a statement of the issues they contend to present for a decision. The Chair may direct the parties to make such

disclosures to the Board's counsel and may also allow the Board's counsel to establish procedural guidelines for the hearing. Failure to comply with disclosure requirements or other guidelines may result in a continuance of the hearing.

At the hearing, the President, his or her counsel or delegate, shall present evidence showing the reason or reasons as set forth above for the dismissal and shall have the burden of satisfying the hearing committee by the greater weight of the evidence that such reason or reasons exist. The President, his or her counsel or delegate, shall be entitled to present witnesses and evidence and cross-examine witnesses.

After presentation of evidence by the President, his or her counsel or delegate, the employee shall be entitled to present evidence. The employee shall be entitled to present witnesses and evidence, to cross-examine witnesses, and to be represented by counsel. The evidence must be relevant to the purpose of the hearing.

The Board (or the Trustee Committee) shall make its findings, recommendation, and decision and notify the employee of such within ten (10) working days of the conclusion of the hearing. The decision of the Board (or the Trustee Committee) shall be final.

In the event of a situation involving life, physical injury, or substantial disruption or impairment of the individual's ability to contribute to the educational process, the employee may be immediately suspended, either with or without pay, provided the dismissal procedure and requirements set forth herein shall be initiated within ten (10) working days.

B. Contracts

1. Nonrenewal of Contracts

If the intent of the college is not to offer a new contract of employment to an employee in a full-time position, the President or delegate shall notify the employee no less than fourteen (14) days prior to the contract expiration date. No advance notice is required when the college decides not to offer a new contract of employment to a part-time employee. The decision not to offer a contract to any employee may not be based upon (1) the employee's exercise of rights guaranteed by either the First Amendment of the United States Constitution or Article I of the North Carolina Constitution or (2) discrimination based upon the employee's race, national origin, color, religion, sex, disability (if the employee is otherwise able to perform the essential function of their job with or without a reasonable accommodation), age, or political affiliation.

2. Hearing Requirements Applicable to Nonrenewal of Contracts

A full-time employee who believes a new contract of employment is not being offered because of impermissible reasons listed previously may request a hearing under this policy. No hearing is provided for part-time employees who are not offered new or additional employment.

The full-time employee's request for a hearing must be submitted in writing to the President within ten (10) working days of receipt of notice of nonrenewal. The request must also state the grounds upon which the employee contends the decision was impermissibly based, together with a short and plain statement of the facts and forecast of evidence which support that contention.

Submission of such a request constitutes on the part of the employee (1) a representation that he or she can support his or her contention by factual proof and (2) an agreement that the college may offer in rebuttal of his or her contention any relevant information within its possession.

The Board shall consider the request at its next meeting. If the Board determines that the request contains alleged facts, which if established, would support a decision that not offering a new contract was because of impermissible reasons, a hearing shall be scheduled before the Board (or the Trustee Committee). The hearing shall be held no less than ten (10) working days and no more than thirty (30) days after notification of the hearing is delivered by the Board to the employee, unless the President and the employee agree to a different time schedule. If the request is not granted, the decision to not offer the employee a new contract becomes final. There shall be no appeal of this decision.

At least ten (10) working days prior to the hearing, the President and the employee shall provide to each other and to the Chair of the Board (or to the Chair of the Trustee Committee), a list of the witnesses and documents, if any, they plan to present at the hearing and a statement of the issues they contend to present for a decision. The Chair may direct the parties to make such disclosures to the Board's counsel and may also allow the Board's counsel to establish procedural guidelines for the hearing. Failure to comply with disclosure requirements or other guidelines may result in a continuance of the hearing.

At the hearing, the employee shall have the burden of establishing by the greater weight of the evidence that an impermissible reason caused the decision not to renew the contract. The employee shall have the right to present witnesses and relevant evidence, to cross examine witnesses, and to be represented by counsel. At the conclusion of the employee's presentation, the Board (or the Trustee Committee) shall recess to consider the employee's evidence. If the

Board (or Trustee Committee) determines that the employee has not made a prima facie showing in support of the employee's contention, the proceeding shall be terminated and the decision not to offer a new contract shall be upheld.

If the Board (or the Trustee Committee) does not terminate the proceedings at this stage, the hearing shall continue. The President, or his or her delegate, shall have the right to present witnesses and evidence and to cross-examine witnesses. At the end of that presentation, the witnesses and parties will be excused and the Board (or the Trustee Committee) shall make its findings. If the Board (or the Trustee Committee) determines that an employee has not established by the greater weight of the evidence that a new contract was not offered for impermissible reasons, it shall, within ten (10) working days from the conclusion of the hearing, so notify the employee by a written statement of its decision. Such a determination shall be the final decision by the college not to offer a new contract of employment. If the Board (or the Trustee Committee) determines that an employee has established by the greater weight of the evidence that a new contract was not offered for impermissible reasons, it shall, within ten (10) working days of the conclusion of the hearing, so notify the employee by means of a written statement of its decision which shall also specify the corrective action, if any, which is to be taken by the college.

C. Dismissal Due to Financial Exigency and Program, Disciplinary, or Departmental Changes (Reduction in Force)

Any full-time or part-time employee may be dismissed because of (1) demonstrable, bona fide financial exigency as determined by the college President or (2) program, disciplinary, or departmental changes for demonstrable, bona fide institutional reasons as determined by the college President. Dismissals, under this section, must follow the procedures, including hearing requirements, for nonrenewal of contracts.

The primary consideration in dismissal for the reasons given above shall be the maintenance of a sound and balanced educational program, which is consistent with the mission of the college.

Two guidelines shall be used in determining where personnel reductions will occur, and they are as follows:

1. Reductions in personnel shall be made which will have the least impact on the college's ability to accept students into the college or into the college's programs; and

2. All other factors being equal insofar as can be determined by the President (e.g. job performance, total years of experience in the currently assigned area of responsibility in the institution, educational level, etc.), reductions shall be based on seniority in the affected program area. Notice will be given to the employee at least fourteen (14) days prior to dismissal.

Personnel who are dismissed due solely to financial exigency shall be given priority during the next two calendar years if they apply for a position similar to the one from which they were dismissed and if they have remained active in their discipline.

D. Other Employment

There shall be no obligation to employ any employee unless and until a contract for employment is signed by the college President and the employee, and the employee has returned the contract to the Office of Human Resources.

The employment of any employee, who is not employed under a current contract, may be terminated at will by the employee or the college.