Purpose

The purpose of this document is to establish an administrative complaint and appeal procedure with respect to discipline and workplace safety consistent with Sec. 66.0509 (1m) of the Wisconsin Statutes. This document applies when an employee ("complainant" as defined below) believes that he or she has been subjected to unfair or illegal discipline and/or unsafe working conditions (as defined below) provided the alleged wrongful behavior had a significant connection to employment of complainant and the activities of the College.

To the extent that the provisions of Sec. 118.22, Wis. Stats are applicable, those statutory procedures shall be followed as required by law.

Definition

“Discipline” for the purposes of this procedure is defined as disciplinary demotion, suspension without pay, or disciplinary termination.

“Discipline” under this policy shall not include:

- Voluntary termination;
- An employee’s termination from work which was temporary, or limited term;
- Retirement;
- Layoff or failure to be recalled from layoff;
- Termination 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;
- 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; or
- Actions taken to address work performance including providing guidance, counseling, or evaluation.
“Workplace safety” is defined as conditions of employment affecting an employee’s physical health or safety, the safe operation of workplace equipment and tools, safety of the physical work environment, and personal protective equipment. 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.

“Complainant” is defined as a full-time, part-time, project, or limited term College employee, on the payroll of Nicolet Area Technical College who has a personal complaint as defined in this procedure. This procedure does not apply to student employees. 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.

“Complaint” is defined as any written allegation of impropriety regarding discipline or workplace safety as defined in this procedure. The written signed complaint shall include a clear and concise statement of the facts upon which the complaint is based, the specific policies alleged to have been violated if any, and the relief sought. If mutually agreed upon by both parties, written complaints with the same or sufficiently similar underlying facts and policy issues may be combined at any time.

“Days” are defined as Monday through Friday when the College is open for business. Weekends, holidays, and days when the College is closed are excluded.

Procedure

Step 1

An issue related to employee discipline, or workplace safety as defined in this procedure should be discussed informally with the complainant’s immediate supervisor within ten (10) days after the facts upon which the complaint is based first occurred. The supervisor will meet with the complainant within seven (7) days, and provide his or her written response within ten (10) days of the meeting. At the option of the College, a complaint relating to employee discipline may be referred to be initiated at Step 2. In such case the complaint must be filed as specified in Step 2 within ten (10) days after the facts upon which the complaint is based first occurred.

Step 2

The complainant may, within seven (7) days after receipt of the written response of the immediate supervisor, request a review of the decision of his or her supervisor in writing to his or her Vice President or designee. The complainant shall provide, in writing, full and complete information on the facts underlying the complaint and the policy alleged to have been violated. The College may provide a written statement with supporting documents.

A. Review of Complaint

The Vice President or designee, within seven (7) days of receipt of the request for review, shall review the complaint to determine whether the complaint is valid. Validity is not a determination of whether or not the actions that gave rise to the complaint occurred, but whether or not the action underlying the complaint is within the scope of the complaint procedure. The Vice President or designee shall establish validity upon determining all of the following:

• That the complaint involves discipline or workplace safety as defined in this procedure;
• That the alleged conduct had a significant connection to the employment of the individual complainant and activities of the College;

• That the complainant is a College employee as defined in this procedure; and

• That the complainant was the party harmed by the activity or action set forth in the complaint.

If the Vice President or designee concludes that the complaint lacks validity, he or she shall dismiss the complaint. The complainant shall be notified of such dismissal within seven (7) days of such decision.

B. Meeting Regarding Merits

If the Vice President or designee concludes the complaint is valid, he or she may meet with the complainant and/or other College personnel within ten (10) days of receipt of the request for review to evaluate the merits. The Vice President or designee shall provide a written decision on the merits of the complaint within fifteen (15) days after the meeting.

The written complaint may not be amended following this decision; however, the remedy requested may be modified at any time without prejudice to the complainant’s position in the appeal.

If the Vice President or designee finds that there was no violation, he or she will dismiss the complaint. The Vice President or designee shall uphold the decision if it was not arbitrary or capricious.

At any point in the investigation, the Vice President or designee 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.

Step 3

The complainant or the College may submit a written request for a hearing on the Vice President or designee’s decision with regard to merit within seven (7) days of the written response from the Vice President or designee. The written request for a hearing shall state the specific basis for disagreement with the decision of the Vice President or designee and shall be submitted to the Director of Human Resources. Upon receipt of the request, the College shall retain the services of an Independent Hearing Officer (IHO) and a hearing shall be scheduled within thirty (30) days. After selection of the IHO, the hearing will be conducted according to procedures established by the College in advance.

A record of the hearing shall be made and any related cost will be equally shared between the College and the complainant. The complainant shall have the burden of proof that the complaint is meritorious, which must be shown by evidence that is clear, satisfactory, and convincing. In his or her written decision, the IHO shall make relevant findings of fact, shall decide for or against the complainant, and state his or her reasons. The decision of the IHO shall be limited to the issues raised in the complaint. The IHO shall overture the decision of the College if the decision was arbitrary or capricious. The IHO shall have no authority to add to, modify, or delete from the policies of the College. If the IHO rules in favor of the complainant, the IHO will determine the appropriate remedy. The IHO’s decision will be provided in writing to the parties within thirty (30) days of the hearing.
Step 4

Either party may, within seven (7) days after receipt of the written decision of the IHO, appeal the decision of the IHO to the Nicolet College Board of Trustees by filing a written appeal specifically stating the basis for contesting the findings and/or decision of the IHO. The appeal shall be filed with the Executive Administrative Assistant to the President and the other party simultaneously. The other party may submit a supplementary statement for Board consideration. No new evidence can be submitted by either party. Upon receipt of a request for an appeal, the College will provide a record of the IHO hearing for use by the Board. Upon receiving the record, the Board shall schedule a record review within thirty (30) days. The deliberations will be conducted according to procedures established by the Board. The Board shall overturn the decision of the IHO if the decision was arbitrary or capricious.

The Board shall issue its written decision within fifteen (15) days following the conclusion of the Board’s deliberations. The decision shall be by simple majority vote and shall be limited to holding for or against the appealing party. The decision shall be limited to the precise issue raised in the written appeal and shall be final and binding.

Timeline Requirements

If the College fails to give a written answer at Steps 1 or 2 within the designated timeframe, the complainant may immediately proceed to the next step. Failure by complainant to meet applicable deadlines may be the basis for dismissal of any complaint. If it is impossible to comply with the time limits specified because of extenuating circumstances, these time limits may be extended by mutual consent in writing.

The written complaint must state the reason(s) why the appealing party disagrees with the action or decision in the underlying step of this procedure, or the complaint will not move forward.

Representation

Either party may utilize a designated representative at their own expense.

Confidentiality

All participants in all proceedings under this procedure shall observe confidentiality to the extent reasonably possible.
Nicolet College Board Complaint Hearing Procedures
Before the Independent Hearing Officer

1. A hearing of a complaint from a decision by the College will be conducted by the Independent Hearing Officer (IHO) designated by the College pursuant to Board policy Complaint Procedure – Discipline and Safety.

2. During the conduct of the hearing, all attendees will be required to refrain from in any way interfering with or disturbing the hearing. Anyone interfering with or disturbing the hearing will be removed from the premises.

3. Appearances and attendance will be recorded. A transcript will be prepared for the hearing, and the College and the complainant shall share the costs equally.

4. All witnesses will be sworn.

5. The rules of evidence to be applied shall be reasonably determined by the IHO.

6. All questions shall be directed to the IHO exclusively by the College and Complainant or designated representatives.

7. The parties will each be limited to a maximum of 2 hours to present their case including opening statements, direct-examination of witness, closing arguments and rebuttals. Time limits may be altered at the discretion of the IHO but only for good cause. The IHO will use his/her discretion in extending the length of time allowed for proceedings based on the testimony presented.

8. The order of presentation will be as follows:
   a. Each side, if they choose, may make an opening and closing statement.
   b. Any appropriate stipulation as to facts agreed to by the parties will be accepted by the IHO and made part of the record.
   c. While neither party is required to present witnesses, if used they will be sworn. Any witness presented by the party proceeding will be subject to cross-examination by the opposing party at the conclusion of his/her testimony.
   d. After the conclusion of the examination of each witness by each of the parties and/or their representative, the IHO may ask questions. The IHO may ask the parties if the IHO’s questions give rise to additional questions.
   e. The opposing party may then call witnesses for his/her case in chief related to the issue in this proceeding. Thereafter, subsections 8(d) and (e) will be repeated.
   f. Rebuttal witnesses will be allowed as necessary.

9. All exhibits which either party intends to use for its presentation must be submitted to the IHO and the opposing party or their representative at least seven (7) calendar days before the date of the hearing. The only other exhibits which will be utilized are rebuttal exhibits which have a direct relationship to the issue and were not anticipated. A list of witnesses must also be submitted by both parties to the IHO, and the opposing party or their representative at least seven (7) calendar days before the date of the hearing. In addition, the Independent Hearing Officer may require that the College and the complainant provide the nature of the witnesses anticipated testimony.
10. All documents referred to by either party or any witness during the course of the hearing will be marked as an exhibit and made part of the record. Parties must pre-mark all exhibits in order to expedite the process.

11. Both the Complainant and the College may be represented by a designated representative and may compel the attendance of witnesses by subpoenas which shall be issued by the IHO on request. The designated representatives(s) are required to serve subpoenas no later than seven (7) calendar days prior to the first day of the hearing. Proper service of subpoenas will be the responsibility of the requesting party. Copies of the subpoenas issued will also be served on the other party and the IHO no later than the time it is served on the other party.

12. Each party will designate one spokesperson to conduct various portions of the hearing (for example motions, correspondence, examination of witnesses, opening statement, closing statement, questions to the IHO, etc.)

13. After all the evidence has been presented concerning the complaint, the IHO may, at his/her sole discretion, allow parties to file written statements setting forth their respective positions. Written statements will only be allowed in those isolated circumstances wherein the IHO will require additional guidance. A time frame for such filing and mutual exchange of written statements shall be established by the IHO. The IHO must issue a written decision as provided in Step 3. That is, consistent with the College policy, the decision of the IHO shall be based on a determination of whether the decision of the College at Step 1 was arbitrary or capricious.

14. All correspondence will be conducted via email unless otherwise agreed upon. The IHO may make changes to the mailing process as needed.
Nicolet College Complaint and Appeal Procedures for the District Board of Trustees

Per the Nicolet College Employee Complaint and Appeal Procedure for Discipline and Workplace Safety Issues Pursuant to Wis. Stats. Sec. 66.0509 Board Policy 4.04, either party may, within seven (7) days after receipt of the written decision of the Independent Hearing Officer (IHO), appeal the decision of the IHO to the Nicolet Area Technical College District Board of Trustees (Board) by filing a written appeal specifically stating the basis for contesting the findings and/or decision of the IHO. The written appeal shall be filed with the Executive Administrative Assistant to the President. This record review procedure relates only to a complaint submitted under this policy.

Neither party in the appeal may engage in communication with any Board member(s) on any substantive issues. Board members must not discuss the complaint with any person prior to the review.

The Board may designate a person to handle all procedural issues and communications associated with this appeal. The procedures below may be modified at the option of the Board, so long as they are consistent with Board Policy 4.04.

Procedures

1. Upon receipt of a written request for an appeal of the decision of the IHO to the Board, the College will provide a record of the IHO hearing for use by the Board. Copies of all documents and the record from the proceedings before the IHO will be made available to the Board members at least ten (10) days prior to the meeting.

2. Upon receipt of the record, the Board Chair shall schedule the review within thirty (30) days. Board deliberations will be conducted in closed session. Only Board members and the Board’s legal counsel shall be present.

3. The Board must consider only evidence submitted during the hearing before the IHO.

4. At its sole discretion, the Board may request clarification from the IHO prior to the scheduled deliberations.

5. The Board shall overturn the decision of the IHO if the decision was arbitrary or capricious.

6. The decision shall be by simple majority vote of the Board and shall be limited to holding for or against the appealing party. The decision shall be limited to the precise issue raised in the appeal and shall be final and binding.

7. The Board shall issue a written decision within fifteen (15) days following the conclusion of the Board’s review.