TO: STATE COLLEGE PRESIDENTS

FROM: Raymond A. Rydell
Executive Vice Chancellor

SUBJECT: Disciplinary Action Procedures for Academic Personnel – Executive Order No. 67

I am pleased to transmit a copy of Executive Order No. 67 which implements the policy on Disciplinary Action Procedure adopted by the Board of Trustees on February 26, 1969.

RAR:bk
Attach.

Copies to: Vice Presidents or Deans of Academic Affairs
Vice Presidents or Deans of Administration
College Business Managers
College Personnel Officers
Chancellor's Office Staff
DISCIPLINARY ACTION PROCEDURES FOR ACADEMIC PERSONNEL
EXECUTIVE ORDER NO. 67

This Executive Order is issued pursuant to, and to implement Sections 42701 and 43520 through 43526 of Title 5 of the California Administrative Code, the resolution of the Board of Trustees of the California State Colleges of February 26, 1969, establishing a policy for Disciplinary Action Procedures for Academic Personnel, and Sections 1 and 2 of Chapter III of the Standing Orders of the Board of Trustees.

1. Except as provided in this Executive Order, the Disciplinary Action Procedures for Academic Personnel (hereinafter sometimes referred to as "Procedures"), as approved by the Board of Trustees on February 26, 1969, are established for the California State Colleges. A copy of these Procedures is attached to this Executive Order as Attachment A.

2. Each California State College President shall review the disciplinary action procedures currently in effect for academic personnel at his State College. Subsequent to such review each President shall initiate action which will result in the modification of existing procedures, or the adoption of new procedures, which are in compliance with these Procedures. The disciplinary action procedures of each State College should, if possible, satisfy the minimum standards of these Procedures by December 15, 1969; except to the extent that the requirements of any provision is waived pursuant to Paragraph 3 of this Order, the disciplinary action procedures for each State College shall meet such standards no later than February 1, 1970.

3. If, in the judgment of the President of a new or small State College, there are particular provisions in the Procedures which appear impractical to institute during an identified period of time, he may request the
Chancellor to waive such requirements in the case of the particular State College. The Chancellor shall review such requests and take action as appropriate.

4. This Executive Order shall also serve to modify the procedure for establishment of a Chancellor's Review Panel and selection from that panel of a Hearing Committee which appears in Paragraph 14 of the Revised Grievance Procedures for Academic Personnel transmitted as Attachment A to Executive Order No. 56. In accord with Section 12.2 of the Disciplinary Action Procedures for Academic Personnel, the membership of the Chancellor's Review Panel shall be the same for both the Revised Grievance Procedures and the Disciplinary Action Procedures. In addition, the procedure for selection of a Hearing Committee set forth in Section 12.1 of the Disciplinary Action Procedures shall also be used for the selection of such committees pursuant to Section 14 of the Revised Grievance Procedures.

5. The provisions of this Executive Order, including its attachments, together with the interpretations and instructions provided in FSA 69-34 and such subsequent FSA letters on this subject as may be issued, should be communicated in printed form to the faculty of each State College.

6. Each President shall furnish, and keep current, copies of his College's disciplinary action procedures to the Office of Faculty and Staff Affairs and the Office of the General Counsel, in the Office of the Chancellor.

Dated: April 24, 1969

No. 67 - Disciplinary Action Procedures for Academic Personnel

Glenn S. Dumke
Chancellor
TO: State College Presidents

FROM: C. Mansel Keene, Assistant Chancellor
Faculty and Staff Affairs


In accordance with Executive Order No. 67, this FSA letter sets forth the course to be taken in implementation of the Disciplinary Action Procedures for Academic Personnel as approved by the Board of Trustees on February 26, 1969.

1. Action should now be undertaken at each State College to bring existing disciplinary action procedures for academic personnel into compliance with the minimum standards adopted by the Board.

2. If no local policy exists, action to adopt local procedures which comply with the Board's minimum standards should be undertaken. Until such time as such local procedures are adopted, any ad hoc procedures established to handle disciplinary action cases arising prior to such adoption shall conform, insofar as possible, with these minimum standards.

3. It is desirable for the actions required in 1 and 2 above to be completed by the earliest possible date. In no case should such action become operative later than February 1, 1970, except as provided in paragraph 3 of Executive Order No. 67.
4. These procedures do not provide a basis for reopening of cases which have been settled previously. Disciplinary Action matters to which existing procedures have been applied but have not yet been completed should be handled with the procedures in effect when consideration of the matter first began.

5. Your attention is invited to the following interpretations of concepts relating to the Disciplinary Action Procedures and items appearing in them:

A. The statement in Section 2.1 of the Procedures which requires the giving of copies of the Board's provisions and local campus provisions to each person covered by such procedures may be complied with by publication of such procedures in a college handbook distributed to each such person at the normal time and in the normal manner of such distribution, or in any other standard way in which college regulations are made available. Personal "service" is not required.

B. These procedures are intended to apply to the processing of all disciplinary charges against academic personnel. Thus, any person who is defined as a faculty member, regardless of any administrative assignment or academic-related assignment is covered by these procedures.

C. In the adoption of college procedures to implement the Disciplinary Action Procedures for Academic Personnel, it should be kept in mind that reassignment to other appropriate duties of a faculty member holding a particular assignment whether administrative or not is not a disciplinary action.

D. Implementation of the informal solution step covered in Section 4.0 should not permit the use of representatives by any of the parties to the case.
F. The Disciplinary Action Panel provided for in Section 5.0 may, at the option of the college and, as expressed in its procedures, be comprised of, or include the same persons used to form the membership of the faculty grievance committee provided for by paragraph 5 of the Revised Grievance Procedures for Academic Personnel.

F. It is the responsibility of the President to decide which instances are rare and which reasons are compelling in accordance with Sections 4.3, 6.2 and 11.4 of the Procedures.

G. The Chancellor's review committee specified in Section 12.1 will review only claims of material error—that is, errors which may have prevented those at the college level from making an appropriate decision. Errors involving minor technicalities will not be considered sufficient basis for modification of college decisions.

6. FSA 68-52 requested College Presidents to forward nominees for possible service on the Chancellor's review panel. Several Presidents have not yet complied with this request. Such nominees should be submitted without further delay after appropriate consultative procedures which should be summarized in the memorandum forwarding the names of the nominees.

7. Instructions regarding further implementation of the Disciplinary Action Procedures will be issued as the need for such instructions becomes apparent. In the interim, any questions regarding the procedures or this FSA should be directed to the Office of Faculty and Staff Affairs.

8. When action to bring State College procedures into compliance with the minimum standards of the Disciplinary Action Procedures has been completed, copies should be filed with this office and the Office of the General Counsel. These copies should be forwarded no later
than six weeks prior to the date on which they are to take effect and in no case later than December 15, 1969. This procedure will make it possible for this office and that of the General Counsel to provide each college with advice with respect to such disciplinary action procedures.

MD:bk
cc: Vice Presidents or Deans of Academic Affairs
    Vice Presidents or Deans of Administration
    College Business Managers
    College Personnel Officers
    Chancellor's Office Staff
TEXT OF DISCIPLINARY ACTION PROCEDURES FOR ACADEMIC PERSONNEL
AND IMPLEMENTING RESOLUTIONS

Adopted by Board of Trustees
on February 26, 1969

The Academic Senate of the California State Colleges recommends that the Chancellor initiate or take any action necessary to implement these proposals.

Each college shall adopt disciplinary action procedures which shall include these minimal provisions for handling charges that may result in disciplinary action against faculty members. Provisions should be made to permit some deviations from these provisions for the sake of new and developing colleges which do not have faculty in sufficient numbers to implement the requirements relating to committee membership and related matters.

Section 1.0 GENERAL

1.1 COVERAGE

These procedures apply only to those actions or conduct that exert a harmful effect upon the academic functions of the college, those that adversely affect the students, the administration, or other faculty members, and those that adversely affect the teaching process or the proper administration of the college.

The American Association of University Professors' Statement of Professional Ethics which has been adopted by the Senate provides, "As a member of his community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person, he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom." At the same time, faculty enjoy the rights of citizens in the community, and it is not intended that
these procedures should reach into and control the personal actions or conduct of faculty members where those actions, or that conduct, do not exert a harmful effect upon the academic functions of the college.

Section 2.0 LOCAL PROCEDURES

2.1 Each college shall develop procedures for handling requests for disciplinary action against any faculty member and shall specify channels for processing such requests. These California State College provisions and the local procedures shall be available to each person covered under the terms of the documents.

Section 3.0 INITIATING ACTION

3.1 Each college in accordance with local procedures shall designate or establish a faculty agency with which all requests for disciplinary action shall be filed.

3.2 It shall be the duty of the aforementioned faculty agency to:

a) Review and process any and all requests for disciplinary action.

b) Determine that informal means available for finding a solution to the problem have been exhausted.

c) Initiate any and all requests with the Disciplinary Action Panel for the establishment of an investigation, when specific written charges have been filed.

d) Prepare a written statement of the charges that are to be presented for investigation.

3.3 Only members of the college faculty or administration shall have the right to originate requests for disciplinary action, except that each college shall establish channels by means of which students and non academic employees may transmit to the faculty agency requests for discipline against members of the college faculty and administration.

Section 4.0 INFORMAL SOLUTION

4.1 Informal discussions to find a solution for the problem that has brought about the request for disciplinary action are strongly encouraged. Such discussions shall be initiated at the next immediate level of administration above that of those against whom disciplinary action is requested. But at no time shall any of the parties in the case or any other persons use the fact if such informal discussions, the fact that disciplinary action has been requested, or the character of the informal discussions for the purpose of strengthening a case for or against a party to the dispute or for any purpose other than finding a solution for the problem.

4.2 In the event that the problem cannot be resolved within a specified
reasonable period of time or is not of a nature to be an appropriate subject for informal resolution, formal written charges stated with reasonable particularity must be filed according to procedures that shall be established by each college.

4.3 If the faculty agency determines that an informal solution for the problem that has brought about the request for disciplinary action has been found, the college president shall be notified and the case shall be considered closed, except that in rare instances and for compelling reasons and within a specific reasonable time period after notification of the college president by the faculty agency, such college president may initiate the investigation provided for in these procedures. In the event that the college president does initiate such investigation, he shall inform the person charged and the faculty agency in writing of the compelling reasons for his decision.

4.4 Should the case be closed as provided for in Section 4.3 no record or reference to the request shall appear in the faculty member's personnel files.

Section 5.0 DISCIPLINARY ACTION PANEL

5.1 Each college shall have a disciplinary action panel. The disciplinary action panel shall consist of faculty members, some of whom must be tenured, selected in accordance with procedures approved by the local faculty. The panel shall elect a chairman. The chairman or an elected committee shall implement the procedures hereinafter set forth.

5.2 When formal written charges have been filed with the Disciplinary Action Panel, an ad hoc investigation committee of at least three members shall be selected from the membership of the Panel by means that will provide for impartiality. The person charged and the faculty agency which has requested the establishment of the investigating committee shall be informed of names of the members of the proposed investigating committee.

5.3 Vacancies on the investigating committee shall be filled by impartial means from among the other members of the Disciplinary Action Panel.

5.4 In any proceedings involving the investigating committee, including those at which this committee is selected, no participant may be represented by an attorney.

5.5 At the request of the Chairman, the college administration shall provide such clerical assistance to all the parties involved in the case as the chairman of the investigative committee may deem necessary.

Section 6.0 ACTION OF THE INVESTIGATING COMMITTEE

6.1 The committee shall submit the charge or charges to the person charged who shall be given an opportunity to present a written answer to the charge or charges. The committee shall conduct an investigation of the written charge or charges and any answer to these, including a review of the documentary and other material available to

1/ The term "president" as used in these procedures shall mean the college president or acting chief administrative officer of the college.
it, to determine whether or not additional proceedings are warranted. Such determination must be made normally within twenty working days after the person charged has been initially informed of the formal charge against him by the investigating committee.

6.2 If the committee determines that the charge or charges are not of sufficient merit to warrant further proceedings, it shall dismiss the charge or charges, and so notify the person charged, the President, and the faculty agency. Barring the subsequent discovery of new evidence sufficient in the opinion of the faculty agency to warrant reopening the case, action is then considered closed, except that in rare instances and for compelling reasons, the college president may, within a reasonable time period to be specified in local college procedures, initiate the action provided for in Section 8 of these procedures. In the event that the president does initiate such action, the person charged, the investigating committee and the faculty agency shall be informed in detail and in writing of the compelling reasons for his decision.

6.3 If pursuant to Sections 6.1 and 6.2 no further action is deemed necessary, the investigating committee shall cause all record of or reference to the charge to be removed from all personnel files relating to the person charged.

6.4 If the investigating committee finds evidence sufficient to warrant further proceedings, it shall submit to the Chairman of the Disciplinary Action Panel, the person charged, and the college President and to the person or persons provided for in Section 7.1 below a formal written statement of charges stated with reasonable particularity.

Section 7.0 ASSEMBLING AND PRESENTATION OF EVIDENCE TO THE HEARING COMMITTEE

7.1 Local college procedures shall provide for the designation of one or more faculty members who shall be assigned the responsibility of assembling and presenting the available evidence to the hearing committee provided for herein. The investigating committee shall furnish such person or persons with the record of its investigation. Such individual(s) shall have the right to be advised by counsel provided by the college administration.

Section 8.0 ESTABLISHMENT OF THE HEARING COMMITTEE

8.1 Within three working days of the receipt of the formal written charges from the investigating committee, the Chairman of the Disciplinary Action Panel shall then cause to be selected by the established impartial means, from among the members of the Disciplinary Action Panel, a proposed ad hoc hearing committee of not less than three nor more than seven members. The person charged and the individual(s) appointed pursuant to Section 7.1 shall be informed of the names of the members of the proposed hearing committee. Provisions shall be made for the person charged and the individual(s) appointed pursuant to Section 7.1 to exercise peremptory challenges and challenges for cause. The Chairman of the Disciplinary Action Panel shall rule on the validity of all such challenges, and his rulings shall be final. Any person directly involved in the case shall be excused for cause from membership on the hearing committee. Vacancies on the proposed hearing committee caused by challenge shall be
filled by the same impartial means from among other members of the Disciplinary Action Panel and the foregoing procedure on challenges shall again apply, except that the number of peremptory challenges provided for each party in this section shall not exceed a number equal to the number constituting a majority of the Committee membership.

8.2 At least one alternate shall be selected in accordance with provisions of Section 8.1. Such alternates shall attend all hearings held by the ad hoc hearing committee as observers, but until such time as they replace a regular committee member, they shall not participate in these proceedings nor vote. If, in spite of the use of available alternates, the number of members on the hearing committee falls below the number provided for in local procedures, hearing committee hearings may only continue upon consent thereto first being given by both the hearing committee chairman and the person charged.

Section 9.0 DUTIES AND OBLIGATIONS OF THE HEARING COMMITTEE

9.1 It shall be the duty of the Hearing Committee to hold hearings for the purpose of hearing evidence pertaining to the charge or charges against the person charged. Such hearings shall commence no later than ten working days from the date of submission of formal written charges to the person charged by the Investigating Committee pursuant to Section 6.4 except that with the mutual consent of the Hearing Committee and the person charged, the commencement of the hearings may be delayed for an additional period of time. The hearings shall terminate within ten working days of their commencement, except that the hearings may be extended as necessary by a majority vote of the committee.

9.2 The committee shall arrange for making an audio tape of any and all proceedings conducted by the hearing committee except those meetings that the committee shall hold at the close of the hearings for the purpose of arriving at a judgment concerning the disposition of the case.

Section 10.0 RIGHTS AND DUTIES IN DISCIPLINARY ACTION PROCEEDINGS

10.1 In any proceedings before a hearing committee, the committee shall:

a) Presume that the person charged did not engage in the conduct upon which the charge is based until the contrary is proved by clear and convincing evidence.

b) Determine if such conduct constitutes a basis for discipline, if it is established pursuant to subdivision a) Section 10.1 that the person charged did engage in the conduct.

c) Determine the appropriate disciplinary action to be recommended.

d) Request, at its discretion, witnesses to appear before the Hearing
Committee or to request depositions, subject to the provisions in subdivision a) of Section 10.4.

e) At the request of the person charged, or at its own discretion, permit a representative of a recognized professional faculty organization to attend as an observer at all committee proceedings except those meetings that the committee shall hold at the close of the hearings for the purpose of arriving at a judgment concerning the disposition of the case.

10.2 Additional Rights of the Person Charged

In any proceedings pertaining to disciplinary action for cause, the person charged shall have the right:

a) To be present at all proceedings of the Hearing Committee whenever any evidence is being presented.

b) To examine all documents or other evidence which the committee will consider.

c) To question any witness who shall appear before the Hearing Committee.

d) To introduce any evidence available to him in aid of his defense and to present an oral or written summary of augments in his defense at the conclusions of any hearings.

e) To be accompanied by counsel of his own choosing.

10.3 Normally, the person charged shall present his own case; however, the person charged may be represented by another faculty member of his choice. The committee may consent at times during the course of the proceedings to direct representation by an attorney or other persons.

10.4 The Chairman of the Hearing Committee shall, unless overruled by a simple majority of the full committee:

a) Determine the relevancy of and the admissability of any and all written, oral, or other evidence that may be offered for the committee’s consideration.

b) Determine who shall be required or permitted to attend any hearings of the Hearing Committee subject to the following conditions:
(1) Attendance at such hearings is limited to those persons authorized or required by the provisions of this document except that the person charged may request that the hearing be opened to members of the college faculty and administration.

(2) The chairman may not exclude any person from such hearings whose attendance is otherwise authorized in this document.

c) At his discretion, eject for duration of any one hearing any person who shall refuse or fail to observe proper order or who shall refuse or fail to display proper respect for the rights and dignity of other participants in the hearing, except that neither the person charged nor any member of the Hearing Committee may be so ejected.

d) Have access to advice of counsel supplied by the college administration during any and all proceedings of the committee.

10.5 Responsibilities of all Employees of the California State Colleges

It shall be the responsibility of every employee of the California State Colleges, if requested, to offer evidence in any disciplinary proceeding except when the refusal is based on constitutional grounds.

Section 11.0 FINDINGS AND RECOMMENDATIONS OF THE HEARING COMMITTEE

11.1 Upon arriving at a decision, the Hearing Committee shall forthwith transmit to the College President and to the person charged a written statement of the committee findings and recommendations. Such written statement shall also include a notification to the person charged that upon request and under supervision, he may, at his own expense, utilize the audio tape of the Hearing Committee's proceedings to obtain a record of the hearings.

11.2 In the event that the President recommends that no disciplinary action be taken, he shall cause any record of, or reference to, the charge to be removed from any and all personnel files relating to the person charged. Action on the case is then closed.

11.3 After specific written charges have been filed with the faculty agency, the President of the college shall conduct no independent investigation, but he may render such assistance as he deems desirable to the investigatory agencies provided for in Sections 5.2 and 7.1 of these procedures. Except as is necessary to render such assistance, he shall not discuss the specific elements of a case with others while it is before a hearing committee, unless required to do so by the Office of the Chancellor. He shall not, except as a witness before the committee, attempt to influence the decision of a Hearing Committee nor shall he take any action on charges while they are being heard, except as provided for in Section 43522 of Title 5 of the California Administrative Code.

11.4 Within a specified reasonable number of days after his receipt of the report of the hearing committee, the President shall reach a decision regarding his recommendations, if any, to the Chancellor for the disposition of a case. The decision of the President except in rare instances and for compelling reasons shall concur with
the judgment of the Hearing Committee. In the event that the President's recommendation is not in accord with the Hearing Committee's judgment, the compelling reasons for his decision shall be stated in detail and in writing to the person charged and to the Hearing Committee. At this time, the President and the Hearing Committee shall make an effort to resolve their differences regarding the disposition of the case. In the event that no such resolution of differences is possible, the decision of the President on each case is final on each campus.

11.5 The President shall be furnished with a complete record of the Committee's proceedings and the President's recommendation to the Chancellor, if any, shall be based entirely on that record.

11.6 Upon reaching a final decision the President shall so notify both the person charged and the Hearing Committee in writing. Such notification shall include, at a minimum, an explicit statement of each charge and, with respect to each charge, the President's recommendations. Notification of the person charged shall be given in person or by certified mail, return receipt requested.

11.7 In any subsequent proceedings it shall be the duty of the President to make available to all authorized persons a complete record of the local campus proceedings including, but not limited to, supervised access to the tape recording of the proceedings for the purpose of copying such recording, a copy of the Hearing Committee's findings and recommendations, and other relevant documents and photographs of material evidence.

Section 12.0 APPEAL TO THE CHANCELLOR

12.1 The person charged may appeal to the Chancellor after the President's decision has been reached if the President does not concur with the recommendations of the Hearing Committee. Notice of such appeal must be filed within three working days of the time the person charged receives notification of the President's decision. If the person charged appeals, the Chancellor shall appoint a committee of three persons from a previously selected panel, which is acceptable to the Chairman of the Academic Senate, CSC; except that, at the option of the person charged, the committee shall be selected by lot from the panel; or, one member shall be chosen by the President whose decision is being appealed, one member shall be chosen by the person charged, and a third member shall be chosen by the two previously selected, all from the previously selected panel, but if the two members are unable to agree, a third member shall be chosen by lot from the panel. This committee shall review the case and arrive at a decision which shall be binding on all parties; provided that no decision may require an action that is beyond the authority of the California State Colleges to take. Following the Committee's decision, the person charged shall have no further appeal within the California State College System.

12.2 The membership of the Chancellor's Review Panel referred to in Section 12.1 above shall be the same as that provided for in the existing grievance procedures for academic personnel, Executive Order No. 50, except that the Chancellor shall augment the existing panel on grievances with ten or more members as may be necessary, acceptable to the Chairman of the Academic Senate drawn from the State Colleges and University of California, with particular consideration to the principle that academic matters are involved.
Disciplinary Action Procedures for Academic Personnel

RESOLVED, By Board of Trustees of the California State Colleges, that the policy recommended by the Academic Senate of the California State Colleges for Disciplinary Action Procedures (AS-192-68 as amended) is approved as the policy of the Board of Trustees, and the Chancellor is authorized and requested to publish Disciplinary Action procedures in a form consistent with this resolution; and be it further

RESOLVED, That the Chancellor is authorized to provide a reasonable interim period of time for those State Colleges needing to revise their local Disciplinary Action Procedures to meet the minimum standards of these Procedures to do so; and be it further

RESOLVED, That the Chancellor is authorized to waive specific requirements of the Disciplinary Action Procedures that may be impractical during a limited period of time for new or small State Colleges and to authorize substitutions for such specific requirements.