TO: STATE COLLEGE PRESIDENTS  
FROM: Mansel Keene, Assistant Chancellor  
       Faculty and Staff Affairs  
SUBJECT: Implementation of Executive Order No. 81 -- Transitional Disciplinary Action Procedures for Academic Personnel

The process of developing locally approved procedures to implement the Disciplinary Action Procedures adopted by the Board of Trustees has proved to be quite time consuming. Although the deadline date for implementation of the Board of Trustees procedures is February 1, 1970, the Chancellor wished to insure that all academic personnel receive the benefits of the Trustees procedures no later than that date and preferably as soon as feasible. These Transitional Disciplinary Action Procedures are being provided for optional use at each campus to insure that all academic personnel receive the benefits that the Trustees intended. These Transitional Procedures have been adopted, with minor changes, from ones developed by a California State College and completely comply with Board policy.

These procedures apply to those campuses where the President has not implemented locally developed procedures and wishes to exercise his option of immediately implementing these Transitional Disciplinary Action Procedures. At such time as locally developed procedures are implemented by the President of a college, the Transitional Disciplinary Action procedures shall no longer apply at that college. We might remind you that concurrent with such implementation copies must be forwarded to the Office of General Counsel and Faculty and Staff Affairs.

Please inform the Office of General Counsel and Faculty and Staff Affairs if these Transitional Disciplinary Action Procedures are adopted for use at your college.
Any questions regarding this FSA letter and the accompanying Executive Order should be directed to Dr. Lee R. Kerschner, State College Dean, Faculty Affairs.

LRK:bk
Attachment
cc: Vice Presidents or Deans of Academic Affairs
    Vice Presidents or Deans of Administration
    College Business Managers
    College Personnel Officers
    Chancellor's Office Staff
To: State College Presidents

From: Harry E. Brakebill
Executive Vice Chancellor

Subject: Transitional Disciplinary Action Procedures for Academic Personnel - Executive Order No. 81

I am transmitting a copy of Executive Order No. 81 which contains Transitional Disciplinary Action Procedures for use at all California State Colleges which have not yet implemented the Disciplinary Action Procedures for Academic Personnel, as approved by the Board of Trustees on February 26, 1969.

HEB:fw

Attachments

cc: Vice Presidents or Deans of Academic Affairs
Vice Presidents or Deans of Administration
College Business Managers
College Personnel Officers
Chancellor's Office Staff
October 9, 1969

Transitional Disciplinary Action Procedures
for Academic Personnel
Executive Order No. 81

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. It supplements Executive Order No. 67, dated April 4, 1969.

1. Until such time as the Disciplinary Action Procedures for Academic Personnel (hereinafter referred to as "Procedures"), as approved by the Board of Trustees on February 26, 1969, have been fully implemented at a California State College pursuant to Executive Order No. 67, the Transitional Disciplinary Procedures attached hereto, and hereby made a part hereof, may, at the option of the president of each California State College, apply to his college. Such application shall be effective as of the date specified by the president in exercising such option.

2. Disciplinary action procedures previously in effect at a college where the Transitional Disciplinary Procedures are made applicable shall no longer apply at that college, except as the president of the college may elect to continue their use in disciplinary actions already initiated pursuant to those prior procedures.

3. Adoption of the Transitional Disciplinary Procedures shall not provide a basis for reopening of disciplinary actions previously settled.
4. At such time as the Procedures are implemented by the president of a college, the Transitional Disciplinary Procedures, if adopted at that college, shall no longer apply there except as to the disciplinary actions initiated prior to the date of such implementation.

5. These Transitional Disciplinary Procedures are being provided to facilitate the making available to all academic personnel the benefits sought to be conferred on them by the Board of Trustees in adopting the Procedures, upon which the Transitional Disciplinary Action Procedures are modeled. These Transitional Disciplinary Action Procedures have been adopted, with minor changes, from ones developed by a California State College. They have been reviewed by both the Offices of General Counsel and Faculty and Staff Affairs and completely comply with Board policy.

6. At those colleges utilizing the Transitional Disciplinary Procedures, a copy of this Executive Order and of the attached Transitional Grievance Procedures shall be published in a college handbook distributed at the normal time and in the normal manner to each faculty member at each California State College, or shall be distributed in any other standard way in which college regulations are made available.

Dated: October 9, 1969

Glenn S. Dumke, Chancellor

No. 81 - Transitional Disciplinary Action Procedures for Academic Personnel

L67-148
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 Academic Senate CSC 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  Initiating Action

2.1 The Executive Committee of the Academic Senate or Faculty Council, or a committee or person designated by the Senate or Council, hereinafter referred to as "Initiator", shall:

2.11 Review and process any and all requests for disciplinary action.

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

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

2.14 Prepare a written statement of the charges that are to be presented for investigation.
2.2 Only members of the college faculty or administration shall have the right to originate requests for disciplinary action, except that students, through the president of the student body or his designee, and non-academic employees, through such person as the president of the college shall designate, may transmit to the Initiator requests for discipline against members of the college faculty and administration. All such requests must be in writing.

Section 3.0 Informal Solution

3.1 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 of 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.

3.2 In the event that the problem cannot be resolved with thirty working days or is not of a nature to be an appropriate subject for informal resolution, formal written changes stated with reasonable particularity shall be filed by the Initiator with the Disciplinary Action Panel. At the same time, a copy shall be furnished to the president of the college.

3.3 If the Initiator 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 so notified and the case shall be considered closed, except that in rare instances and for compelling reasons and within fifteen working days after such notification of the college president by the Initiator, the 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 Initiator in writing of the compelling reasons for his decision.

3.4 Should the case be closed as provided for in Section 3.3, no record or reference to the request shall appear in the faculty member's personnel files.
Section 4.0 Authority and Responsibility of Chairmen

4.1 Unless overruled by a majority of the members, exclusive of alternates, of the panels and committees provided for herein, rulings of each chairman shall be final on all questions except those, if any, pertaining to the substance of the findings and recommendations of his committee which are to be sent to the president of the college.

4.2 Each chairman may establish such other rules within the general guidelines of this document, as may be necessary.

4.3 Each chairman shall be responsible for implementation of the duties assigned herein to him or his committee.

Section 5.0 Disciplinary Action Panel

5.1 The Disciplinary Action Panel shall consist of all tenured faculty holding full-time appointments and assigned at least 2/3 time to teaching or research, or both. The Panel shall elect its chairman. Until such time as a chairman is elected, the chief elected officer of the Faculty Senate or Council shall designate a Disciplinary Action Panel Chairman. The Panel chairman shall implement the procedures hereinafter set forth.

5.2 When formal written charges have been filed with the Disciplinary Action Panel, an ad hoc investigating committee of three members shall be selected by lot by the Panel chairman. The person charged and the Initiator shall be informed of names of the members of the investigating committee.

5.3 Vacancies on the investigating committee shall be filled by lot 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 of the Investigating Committee, the college administration shall provide such clerical assistance to all the parties involved in the case as that chairman may deem necessary.

Section 6.0 Action of the Investigating Committee

6.1 The investigating committee of three shall, at its first meeting, elect one of its members to serve as its chairman.
6.2 The investigating 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 investigating 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 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.

6.3 If the investigating 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 Initiator. Barring the subsequent discovery of new evidence sufficient in the opinion of the Initiator 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 time period of five working days, 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 Initiator shall be informed in detail and in writing of the compelling reasons for his decision.

6.4 If pursuant to Sections 6.2 and 6.3 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.

6.5 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, 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 The Initiator 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 lot, from among the members of the Disciplinary Action Panel, a proposed ad hoc hearing committee of three members. The person charged and the individual(s) appointed pursuant to Section 7.1 shall be present at the time of selection if they wish to challenge the persons selected.

8.2 No member shall be selected who is successfully challenged for cause by the person charged or by the individual(s) designated pursuant to Section 7.1 at the time of the selection by lot provided for in Section 8.1. The sufficiency of the cause shall be determined by the chairman of the Disciplinary Action Panel, and his decision shall be final.

8.3 No member shall be selected who disqualifies himself for cause. The sufficiency of the cause shall be determined by the chairman of the Disciplinary Action Panel, and his decision shall be final.

8.4 At the time of the selection by lot provided for in Section 8.1 the person charged or the individual(s) designated pursuant to Section 7.1 shall be allowed two peremptory challenges.

8.5 One alternate shall be selected in accordance with provisions of Section 8.1. Such alternate shall attend all hearings held by the hearing committee as an observer, but until such time as he replaces a regular committee member, he shall not participate in these proceedings nor vote. If, in spite of the use of the alternate, 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 The hearing committee of three shall, at its first meeting, elect one of its number to serve as its chairman.

9.2 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 6.5 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 hearing committee.

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

9.4 Normally the hearing will be closed to all persons except the members of the hearing committee, its advisor, if any, the persons designated pursuant to Section 7.1, his advisor, if any, the tape recorder operator and witnesses. Witnesses shall be excluded except during the time they give evidence.

9.5 The hearing may be opened to members of the faculty upon the advance consent of the person charged.

9.6 Hearing Panel members shall treat all evidence, proceedings, findings and recommendations as confidential except to the extent such matters are made public by the person charged or by the president.

Section 10.0 Rights and Duties in Disciplinary Action Proceedings

10.1 In any proceedings before it, the hearing 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) of 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 hearing committee proceedings except those meetings that the hearing committee shall hold at the close of the hearings for the purpose of arriving at a judgment concerning the disposition of the case.

(f) Subject to prior recognition by the chairman, members of the hearing committee, the persons designated pursuant to Section 7.1, and the person charged may question all witnesses.

(g) If the person charged does not appear, without satisfactory explanation for his absence having been made in advance, or should he leave the hearing before its conclusion, or adjournment, the hearing shall proceed without him and the hearing committee shall render a decision based on the available evidence and make a recommendation to bring the matter to a conclusion just as though the person charged had been present throughout the hearing.

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

(d) 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 chairman of the hearing 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, unless overruled by a majority of the full committee, shall:

(a) Determine the relevancy of, and the admissibility 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) Maintain order during the entire hearing. He may eject and exclude for the 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 he may not eject or exclude the person charged, any member of the hearing committee, its advisor, if any, the person designated pursuant to Section 7.1, his advisor, if any, and the tape recorder operator.

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

(e) Conduct the hearing as expeditiously as possible.

(f) Make such arrangements for security of the hearing as he deems necessary.

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 At the termination of the hearing, the hearing committee shall prepare its written report. That report, which shall be submitted to the president of the college within 10 working days following completion of the hearing, with a copy to the person charged, shall contain:

(a) Findings of fact.

(b) A recommendation of penalty. This may include:

1) Dismissal with denial of access to the campus and all college facilities for a period not to exceed one year.

2) Dismissal.

3) Demotion.

4) Suspension with denial of access to the campus and all college facilities for the period of the suspension.

5) Suspension.

6) A written reprimand.

7) A verbal reprimand.

8) No action.

Or a combination of these.

11.2 In reaching its decision, the hearing committee shall not consider or review any document, testimony or other material to which the person charged is not afforded access with ample time for response.

11.3 The hearing committee's decision shall be reached by majority vote.

11.4 Upon arriving at a decision, the hearing committee shall forthwith transmit to the president of the college and to the person charged a written statement of the hearing 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.
11.5 In the event that the president of the college 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.

11.6 After specific written charges have been filed with the Initiator, 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.

11.7 Within five working days after his receipt of the report of the hearing committee, the president of the college 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, except as provided in Section 12.0.

11.8 The president of the college shall be furnished with a complete record of the hearing committee's proceedings and the president's recommendation to the Chancellor, if any, shall be based entirely on that record.

11.9 Upon reaching a final decision, the president of the college 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.
11.10 In any subsequent proceedings it shall be the duty of the president of the college to make available to the person charged and to any other person authorized by the president or by the Chancellor of the California State Colleges 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 of the college 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. Follow the committee's decision, the person charged shall have no further appeal within the California State College system.

12.2 The previously selected panel referred to in Section 12.1 shall consist of such members as may be necessary, acceptable to the Chairman of the Academic Senate, CSC, drawn from the State Colleges and University of California, with particular consideration to the principle that academic matters are involved.
12.3 The Chancellor's Review Committee 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.

Section 13.0 Construction of these Procedures

13.1 "Shall" is mandatory and "may" is permissive.

13.2 "President" means chief administrative officer.

13.3 These procedures shall be considered complied with despite minor departures from them, so long as the minor departures are not substantially prejudicial to the person charged or to the college.