

The City University of New York

Office of the General Counsel and Vice Chancellor for Legal Affairs

535 East 80 Street, New York, N.Y. 10021

Phone: (212) 794-5382

Fax: (212) 794-5426

*Robert E. Diaz
General Counsel*

*Roy P. Moskowitz
Deputy General Counsel*

*Daphna H. Mitchell •
Linda Myles
Lisa Okubo
Nicholas R. Santangelo
Michael D. Solomon •
Jane Sovern
Esdras Tulier
• Associate General Counsel*

**Supplement to
Personnel Advisory
Memorandum # 4**

May 28, 1992

To: College Presidents

From: Vice Chancellor Robert E. Diaz

Re: Staff Disciplinary Charges

In Personnel Advisory Memorandum #4, distributed on November 21, 1991, I indicated that when requested by the college president, my office would represent the college in instructional staff and classified staff disciplinary hearings at both the Step II and arbitration levels.

Set forth below are further guidelines for the provision of consultation and representation for the prosecution of charges, including proceedings for an involuntary leave of absence or termination on account of mental or physical disability (Civil Service Law Sections 72 or 73). These guidelines have been developed following a discussion at a meeting with the legal affairs designees, as well as consultation with individual labor designees and personnel officers. Based upon the experience personnel officers have had with the development and prosecution of charges for the classified staff, I have determined that through the use of their personnel officers, labor designees and special counsel, the colleges may prosecute classified staff cases where the college does not intend to request that the employee be terminated.

CLASSIFIED STAFF DISCIPLINARY CHARGES GUIDELINES**A. Termination Cases**

1. Upon receipt of a request from the college president, this office will assign an attorney to prosecute a case if the college will be seeking to terminate the employee. If such a request is made, this office should be provided with a draft of the specifications and the documentation in support of the charges. An attorney will be assigned to the case and a technical assistance conference will be scheduled to review the proposed charges.

2. A college may, if it wishes, have college personnel (e.g., personnel officer, labor designee, or special counsel) prosecute termination cases at Step II. The college representative would, however, be expected to handle any appeal before the City University Civil Service Commission, since such an appeal is based upon the record established at Step II.

3. If a college representative prosecutes a termination case at Step II, the Office of the General Counsel will still consider a request for representation at Step III, if the Step III appeal is to arbitration where a de novo hearing is held. **However, we will not entertain such a request unless my office has reviewed the evidence prior to the filing of charges and has approved the proposed charges.** It is noted that the employee does not decide, until the Step I decision is appealed, whether the appeal will be to arbitration or to the Civil Service Commission. It is therefore recommended that once a college decides that it will seek an employee's termination, it should also consider whether it will want my office to represent the college at any stage of the proceeding. If General Counsel's assistance is desired, you should begin appropriate consultation prior to initiating disciplinary charges.

B. Non-Termination Cases

1. College personnel will be expected to handle all cases where termination is not sought, both at Steps II and III.

2. Upon the request of the college president, a technical assistance conference will be scheduled to review a draft of the charges and supporting documentation as well as to provide consultation on the case.

3. If a non-termination case is appealed to arbitration where there is a de novo hearing, the General Counsel's office will consider a request from the college president to represent the college at the arbitration if the office has previously reviewed the evidence at a technical assistance conference and approved the proposed charges.

INSTRUCTIONAL STAFF DISCIPLINARY CHARGES GUIDELINES

The guidelines set forth in Personnel Advisory Memorandum #4 will continue to apply. At the request of the college president, this office will assign an attorney to consult with the college on a staff disciplinary case. The request must be received prior to the issuance of the notice of intent to prefer charges, to permit the attorney to review the proposed charges and the evidence in support thereof. This protocol also applies to cases of discharge for just cause (i.e. Higher Education Officer Series and Adjuncts). If the college's special counsel or the labor designee elects to present the college's case at the Step II hearing, the Office of General Counsel will accept a request that we represent the college at the arbitration provided that my office was consulted prior to the preferral of charges and approved the specification of charges.

c: Vice Presidents for Administration
Legal Affairs Designees
Labor Designees
Personnel Officers

MDS/PAM4/iv