GUIDELINES
FOR
SKELLY REVIEW
OFFICERS

Employer-Employee Relations
Human Resources Division
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(Adapted from material developed by the California State University Office of General Counsel.)
GUIDELINES FOR SKELLY REVIEW OFFICERS

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NOTE TO READER: These guidelines represent recommended administrative procedures for complying with legal requirements regarding employee discipline. *This document is not a rule, regulation, or contract, and should not be construed as creating contractual obligations.*

The District reserves the right to revise, amend, supplement, or rescind these guidelines at any time at its sole and absolute discretion. In all questions of actual legal compliance, *actual policies, rules, regulations, procedures and collective bargaining agreements will always be the official documents upon which any ruling will be based or any interpretation made.*

For complete information contact the Personnel Office at your campus or the Division of Human Resources.
GUIDELINES FOR SKELLY REVIEW OFFICERS

I.

ROLE OF THE REVIEW OFFICER

In Skelly v. State Personnel Board (1975) 15 Cal.3d 194, the California Supreme Court ruled that as a part of due process, public employees are entitled to certain procedural safeguards before discipline is imposed against them.¹ These include:

1. Notice of the proposed disciplinary action;
2. A statement of the reasons for the proposed action;
3. A copy of the charges and materials upon which the proposed action is based; and,
4. The right to respond, either orally or in writing, to the authority initially imposing the discipline.

The function of the Review Officer is to provide an objective review of the proposed discipline and the employee's response. The Review Officer is responsible for evaluating whether there are reasonable grounds for believing that the employee engaged in the alleged misconduct and that the misconduct supports the proposed sanction. The Review Officer then makes a recommendation as to whether the disciplinary action should be sustained, modified in some specified way, or revoked. The Review Officer should not substitute his/her judgment with respect to the discipline to be imposed, but rather reach a conclusion as to whether there are reasonable grounds to justify the discipline proposed. As stated by the United States Supreme Court in Cleveland Bd. of Educ. v. Loudermill (1985) 470 U.S. 532, 545-46 [84 L.Ed.2d 494]:

¹Skelly involved an employment termination of a permanent civil service employee. Subsequent decisions have extended the Skelly doctrine to lesser disciplinary actions. See e.g., Ng v. California State Personnel Bd. (1977) 68 Cal.App.3d 600, 606 (demotion). It applies to dismissals, demotions and suspensions, but not to so-called “informal discipline,” such as reprimands, warning letters or oral warnings (It also does not apply to probationary employees because they do not have a property interest in continued employment, unless the employment action is based on conduct which stigmatizes reputation, seriously impairs the opportunity to earn a living, or seriously damages standing in the community. Lubey v. City and County of S.F. (1979) 98 Cal.App.3d 340, 345-46.)
“[T]he pretermination hearing need not definitively resolve the propriety of the discharge. It should be an initial check against mistaken decisions -- essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.”

It is not the function of the Review Officer to conduct a full trial-type hearing of all of the evidence. That opportunity comes later, if the employee elects to appeal the action taken.

II.

IMPARTIALITY OF THE REVIEW OFFICER

The Review Officer must be impartial.² This does not necessarily mean that he/she must be totally unfamiliar with all of the facts and persons involved in the case, but rather that he/she be “reasonably impartial and uninvolved.”³ Obviously, the further removed an individual is from the circumstances giving rise to the case, the less likely there will be any perception of potential bias.

The legal standard of impartiality requires that the person not have a stake in the outcome --- i.e., he/she cannot be a potential witness; have had a role in initially recommending or investigating the discipline; or for other reasons be personally embroiled in the dispute.⁴ It is preferable if the Review Officer is not in the department or division bringing the action and has had some training as to his/her appropriate function. For instance, usually a college President serves as the college’s


Skelly officer. However, if the discipline originates from the President’s office, or involves one of the President’s staff, the President generally should not serve as the Skelly officer, but should instead designate another individual outside the issue.

Similarly, employees in the District Office would have a Skelly review conducted by the Senior Vice Chancellor or her/his designee. If the discipline originates from the Senior Vice Chancellor’s office, or involves one of the Senior Vice Chancellor’s staff, the Senior Vice Chancellor should generally designate another individual outside the issue. Skelly reviews for employees of the Personnel Commission are handled according to Commission policy.

The selection of the Review Officer can be made by persons who themselves would be inappropriate to serve in that role, including the supervisor who made the initial decision to discipline.\(^5\)

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III.
BEGINNING THE PROCESS

The employee has a limited period of time to respond to the initial charges. District classified employees have seven (7) days after the receipt of the Charges to schedule a Skelly review. The running of the response time is calculated beginning with the first day after the notice is served on the employee and ending on the first day after the allotted time has elapsed. Saturdays, Sundays and other days when a campus is closed are not included in the calculation of time. If the Notice of Charges was sent to the employee by mail, rather than handed to him/her personally, five days are added to the applicable response times.

Depending on the seriousness and complexity of the charges, reasonable requests for extensions of the time to respond may be entertained by the Review Officer. It is better policy to delay submitting discipline to the Board of Trustees in order to accommodate an employee’s request for more time to prepare for the Skelly review than to deny an extension which might be viewed as denying the employee due process. The Review Officer has discretion as to whether to receive or review materials submitted by an employee after the time established for his/her response.

If the employee requests a Skelly review, but does not then submit any formal response or request or attend a meeting, the Review Officer should still complete a review of the materials provided by management.
IV.

THE REVIEW

The Review Officer has the responsibility to read the notice of discipline, the materials upon which it is based, and any response submitted by the employee. If the employee chooses to make an oral response, the Review Officer must make that opportunity available for him/her. Review of the written materials should occur before any meeting with the employee. It is helpful for the Review Officer to outline his/her role, and the limited scope of his/her authority, to the employee at the hearing, consistent with the description in section I above.

In most cases, a meeting with the employee is all that is required to complete a *Skelly* review. In a very few cases, the information presented in the *Skelly* review may require some corroboration. In those rare instances, the Review Officer may speak with others, or review additional written information. But the Review Officer must be extremely careful not to go beyond the initial information presented in the *Skelly* review which the employee has had an opportunity to confront.

If the employee chooses to respond orally, the law does not require that the review meeting be conducted as “a full trial-type evidentiary hearing,” but rather as an opportunity for the employee to be heard. The employee is entitled to be accompanied by representation when he/she meets with the Review Officer, if the employee chooses. Under normal circumstances, there will be no need for additional persons other than the employee’s representative(s) to attend the review meeting.
Given the limited role of the Skelly review officer, a formal representative of management is typically not required. If the employee is accompanied by representation, the Review Officer should make clear that the primary purpose of the meeting is to hear the employee’s response to the disciplinary charges.

V.

THE REPORT

After completing the review, the Review Officer should submit a written report to the administrator who will make the final decision (who may or may not be the same person who signed the notice of discipline) with a copy to the complaining employee. Even when the Review Officer is the college president, it is good practice to document that the Skelly review occurred and advise the employee of its outcome. The report should describe the charges, what was done in the course of the review, and the reasons for the Review Officer’s conclusion. The Review Officer should not substitute his/her judgment with respect to the discipline to be imposed, but rather reach a conclusion as to whether there are reasonable grounds to proceed with the proposed discipline, or whether it should be modified or revoked. If the employee submitted anything in writing during the review process, it should be attached. If the employee made any oral response, it should be summarized in the report.

The Review Officer’s conclusion should be stated in the form of a recommendation to the officer proposing the discipline. The Review Officer should submit the report to the President or his/her designee within a reasonable time after the meeting, receipt of a written response from the employee or completion of the Review Officer’s review. The Review Officer should be aware that no action can be taken to the Board of Trustees
unless the *Skelly* review has either been completed or has been waived by the employee. The campus is required to notify the Employer-Employee Relations Office if the *Skelly* review has not been completed prior to the scheduled submission of the matter to the Trustees.

**VI.**

**QUESTIONS**

These instructions set out the basic parameters of the *Skelly* review process. Each case is unique and may present issues that are not covered by these general instructions. The Office of Employer-Employee Relations is always available to respond to questions about the *Skelly* review process as it applies to a particular set of facts.
Los Angeles Community College District
Interoffice Memorandum

To: 
From: 
Date: 
Re:  ________________

Job Title: ____________________________________________________________

Requested Discipline: ________________________________________________

Skelly Review Date: _________________________________________________

Following your Skelly review, the above requested discipline is recommended as follows:

☐ Approved; No change.

☐ Modified as follows: ______________________________________________

☐ Deferred for further investigation. You will be notified of the final decision.

☐ Revoked.

Reason for Recommendation: _________________________________________

______________________________________________________________

NOTE: Attach any written response or documents received from the employee. Summarize any verbal response from employee on additional sheets and attach.

cc:  Employer/Employee Relations