

Human Resources

AP 7365 DISCIPLINE AND DISMISSAL – CLASSIFIED EMPLOYEES

References:

Education Code, Section 88013

Government Code, Sections 3300 et seq.

Discipline

No employee in the classified service shall be disciplined because of his/her/their political or religious opinions or affiliations, race, color, gender, gender identity, gender expression, medical condition, genetic information, sexual orientation, physical or mental disability, age, national origin, ancestry, marital status, or other category prohibited by law.

The Board of Trustees retains broad discretionary powers in the matters of imposition of disciplinary actions on classified employees. A permanent classified employee of the District shall be accorded rights to due process in relation to disciplinary actions.

Probationary Dismissal

At any time prior to the expiration of the probationary period, the Board of Trustees may, at its sole discretion, dismiss a probationary classified employee from District employment without cause. A probationary classified employee shall not be entitled to an appeal or to a hearing.

Cause for Discipline

A permanent classified employee shall be subject to disciplinary action for cause including but not limited to demotion, suspension, or dismissal from employment.

The term "cause" shall include, but shall not be limited to the following:

- 1) Incompetence or inefficiency in the performance of the duties of the position held.
- 2) Insubordination (including, but not limited to, refusal to do assigned work), or insolence or disrespect toward authority.
- 3) Carelessness or negligence in the performance of duty or in the care or use of District property.
- 4) Discourteous, offensive, or abusive conduct or language toward other employees, students, or the public.
- 5) Dishonesty.
- 6) Possession, consumption, or being under the influence of alcoholic beverages or intoxicants while on duty.
- 7) Unauthorized use or possession during working time of any illegal drugs or controlled substances or prescription drugs for which an employee does not have a valid, current prescription issued to him/her/them.

- 8) Personal conduct unbecoming an employee of the District, whether or not such conduct amounts to a crime.
- 9) Conviction of a felony or of any crime involving moral turpitude, or any crime bringing discredit upon the District.
- 10) Conviction of a sex offense as defined in Education Code Section 87010.
- 11) Absence and/or repeated tardiness without authority or sufficient reason.
- 12) Excessive absenteeism and/or tardiness regardless of reason.
- 13) Abuse of leave privileges.
- 14) Falsification or omission of any information supplied or required to be supplied to the District, including but not limited to, information supplied on application forms, employment records, or any other college District records.
- 15) Violation or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of community colleges by the Board of Governors or by the Board of Trustees of the District.
- 16) Offering of anything of value or offering any service in exchange for special treatment in connection with the employee's job or employment, or accepting anything of value or any service in exchange for granting any special treatment to another employee or to any member of the public.
- 17) Willful refusal to follow the lawful directives of the employee's supervisor or other supervisory or managerial directives.
- 18) Willful failure of good conduct tending to injure the public service.
- 19) Abandonment of position, by being absent without authorization for five (5) or more days.
- 20) Immoral conduct.
- 21) Evident unfitness for service.
- 22) Engaging in political activities during assigned hours of duty.
- 23) Inability to meet requirements of job description, including but not limited to, possession of licenses, etc.
- 24) Any conduct that threatens or tends to threaten the welfare and/or the property of the students or employees of the District, including the employee(s) involved in the conduct.
- 25) The refusal of any officer or employee of the District to testify under oath before any court, grand jury, or administrative officer having jurisdiction over any then pending cause of inquiry in which the District is involved. Violation of this provision may constitute of itself sufficient grounds for the immediate discharge of such officer or employee.
- 26) Working overtime without prior authorization.

Disciplinary Actions

Disciplinary action taken by the District against a permanent member of the classified service may include, but not be limited to, oral reprimand, written reprimand, and the following:

- **Reduction in pay or demotion** – The District may reduce the pay or demote an employee whose performance of the required duties falls below standard, or for misconduct.

- **Suspension** – An employee may be suspended for disciplinary purposes without pay.
- **Discharge** – A permanent member of the classified service may be discharged for just cause at any time. Formal written notice of discharge may be made after considered action during a period of suspension.

Procedure for Disciplinary Action and Appeal

The District may, for disciplinary purposes, suspend, demote or terminate any employee holding a position in the classified service. Demotion shall include reduction in pay from a step within the class to one or more lower steps. For classified employees suspended, demoted, or discharged the District shall follow a pre-disciplinary procedure as follows:

Notice to Employees

The District shall give notice to any permanent employee subject to dismissal from employment prior to taking the disciplinary action. The notice shall be in writing, and shall contain the following information:

- 1) The specific charge(s) against the employee, including a description of the conduct giving rise to the charge(s) and the specific cause(s) for discipline in accordance with Board Policy.
- 2) The date, time, and place at which a pre-disciplinary administrative review meeting will be conducted. The meeting shall be conducted not less than five (5) days and not more than ten (10) days after the date of service of notice to the employee.
- 3) A statement informing the employee that failure to appear at the pre-disciplinary administrative review meeting will result in his/her/their waiver of the right to such a review.

Pre-Disciplinary Administrative Review

The pre-disciplinary administrative review shall be before the Vice President of Human Resources or designee, and shall constitute the administrative review required by these policies. The administrative review shall be convened at a time designated by the District. The employee may elect to be represented by the recognized employee association, outside counsel, or the employee may elect to represent himself/herself/themselves. The administrative review meeting shall be informal, and the employee shall have the opportunity to present to the Vice President of Human Resources or designee any relevant evidence in the form of a narrative presentation or documents relative to the disciplinary action of which the employee received notice. Following the administrative review meeting, the Vice President of Human Resources or designee shall decide whether the disciplinary action shall be imposed, and if not, whether lesser disciplinary action shall be imposed.

Notice of Disciplinary Action/Demand for Hearing

Any permanent employee against whom disciplinary action is initiated by the District shall be given written notice by the Vice President of Human Resources or designee. Such notice shall indicate the nature of the disciplinary action, the

cause(s) for such action, and the specific charge(s) against the employee. If the disciplinary action is suspension, demotion, and/or dismissal from employment, the notice shall contain a statement of his/her/their right to a hearing on such charges, the time within which such hearing may be requested (which shall not be less than five (5) workdays after service of the notice on the employee), and said notice shall be accompanied by a card or paper, the signing and the filing of which with the Vice President of Human Resources or his/her/their authorized representative shall constitute a demand for a hearing and a denial of all charges. Failure of the employee to file a request for hearing within the time specified shall constitute a waiver of the employee's right to a hearing.

At any time before an employee's appeal is submitted to the Board of Trustees or to a Hearing Officer for decision, the District may serve on the employee and file with the Board or the Hearing Officer an amended or supplemental recommendation of disciplinary action. If the amended or supplemental recommendation presents new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare his/her/their defense thereto. Any new causes or allegations shall be deemed controverted and any objections to the amended or supplemental causes or allegations may be made orally at the hearing and should be noted on the record.

Conduct of Hearing

Hearing Officer

The Board of Trustees shall appoint a Hearing Officer to hear the matter unless the Board of Trustees determines to hear the matter.

Notice of Hearing

The Vice President of Human Resources or designee shall set the matter for hearing and shall give the employee in at least five (5) workdays, notice in writing of the date, time, and the place of such hearing.

Rights of Employee and the District

The employee shall attend the hearing, and shall be entitled to:

- 1) Be represented by counsel or any other person at such hearing;
- 2) Testify under oath;
- 3) Compel the attendance of other employees of the District to testify in his/her/their behalf;
- 4) Cross-examine all witnesses appearing against him/her/them and all employees of the District whose actions are in question or who have investigated any of the matters involved in the hearing and whose reports are offered in evidence before the Hearing Officer or the Board;
- 5) Impeach any witness;
- 6) Present such evidence as the Hearing Officer or the Board deems pertinent to the inquiry; and
- 7) Argue his/her/their case.

The District shall be entitled to the same rights.

Evidence

The hearing shall be informal and need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be admitted for any purpose, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege and of official or judicial notice shall be effective to the same extent as in civil actions. Irrelevant and repetitious evidence shall be excluded. Oral evidence shall be taken only under oath or affirmation.

Exclusion of Witness

The Hearing Officer of Board of Trustees may, in his/her/their discretion, exclude witnesses not under examination, except the employee and the party attempting to substantiate the charges against the employee and their respective counsel. When hearing testimony on scandalous or indecent conduct, all persons not having a direct interest in the hearing may be excluded.

Burden of Proof

The burden of proof shall be upon the party attempting to substantiate the charge(s).

Findings and Decision

Upon completion of the hearing, written Findings of Fact and Conclusions of Law shall be signed and filed by the Hearing Officer with the Board of Trustees and shall constitute his/her/their decision. If the case is heard by the Board of Trustees, it shall prepare written Findings of Fact and Conclusions of Law.

Decision of a Hearing Officer

The Board of Trustees may accept, reject, or modify the decision of a Hearing Officer. Final decision regarding disciplinary matters rests with the Board of Trustees.

Final Decision – Effect and Notice

Unless the decision by the Board of Trustees provides otherwise, it shall be effective immediately. Notice of the decision shall be mailed promptly to the employee or his/her/their counsel or representative. Except for the correction of clerical error, such decision shall be final and conclusive.

199 ***Report of Hearing***

200 Hearings shall be recorded by use of a stenographic reporter or electronic
201 recording machine.

202 ***Transcripts of Hearings***

203 Transcripts of hearing shall be furnished to any party involved in the disciplinary
204 action on payment of the cost of preparing such transcripts. When transcripts are
205 provided by the employees of the District, the cost shall be determined by the Vice
206 President of Business Services. When transcripts are provided by an independent
207 contractor, the cost will be established by the independent contractor.

208 ***Continuances***

209 The Board of Trustees or a Hearing Officer may grant a continuance of any hearing
210 upon such terms and conditions as it may deem proper.

211 ***Emergency Suspension***

212 If an employee's presence on District facilities creates or has the potential of
213 creating a danger or threat to the District's property or to the safety or health of
214 students or employees, including the employee at issue, the District may
215 immediately suspend without pay any employee for a period not to exceed 30 full
216 days pending an investigation of the situation. After the investigation of the
217 employee's conduct in creating an emergency situation the information obtained
218 may be used as the basis, in whole or in part, for disciplinary action as provided in
219 the policy.

220 ***Record Filed***

221 When final action is taken, the documents shall be placed in the employee's
222 personnel file.

223 ***Pay During Proceedings***

224 Except as specified below, the District shall not suspend without pay, suspend with
225 a reduction in pay, demote with a reduction in pay, or dismiss an employee who
226 timely requests a hearing on the charges before a decision is rendered after the
227 hearing unless the governing board, or an impartial third-party hearing officer, finds
228 that at the time the District imposed the discipline, the District demonstrated by a
229 preponderance of the evidence that the employee engaged in criminal misconduct,
230 misconduct that presents a risk of harm to students, staff, or property, or committed
231 habitual violations of the District's board policies and administrative procedures.

232 If an impartial third-party hearing officer or the governing board conducts a hearing
233 on the charges, the District may stop paying the employee before a decision is
234 rendered after 30 calendar days from the date the employee timely requests a
235 hearing.

236 To the extent that this provision conflicts with a provision of a collective bargaining
237 agreement entered into before January 1, 2023, this provision shall not apply to
238 the District until the expiration or renewal of that collective bargaining agreement.

239 Office of Primary Responsibility: Vice President, Human Resources

Date Approved: 12/10/08

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Date Reviewed: 5/15/19