

**BP 7368 DISCIPLINE AND DISMISSAL – MANAGEMENT,
SUPERVISORY AND CONFIDENTIAL EMPLOYEES**

References:

Education Code Section 88013
Government Code Sections 3300 et seq.

The Chancellor shall enact procedures for the disciplinary proceedings applicable to permanent management, supervisory and confidential employees of the District. Such procedures shall conform to the requirements of the Education Code. The Board's determination of the sufficiency of the cause for disciplinary action of a management, supervisory or confidential employee shall be conclusive.

Date Adopted: November 16, 2010

**AP 7368 DISCIPLINE AND DISMISSAL – MANAGEMENT,
SUPERVISORY, AND CONFIDENTIAL EMPLOYEES**

References:

Education Code Section 88013 and 88016
87660-87683, 87732, and 87740

Management, supervisory and confidential employees are expected to conduct themselves in an ethical and professional manner at all times. A breach of conduct is cause for disciplinary action, including suspension, demotion, or dismissal.

"Cause" relating to disciplinary action against a management, supervisory or confidential employee means those grounds for discipline or offenses enumerated in the law and the written rules of the District.

"Informal Corrective Measures" include verbal warnings, written warning notices, reprimands, performance evaluations, performance improvement plans, and the like, and do not constitute disciplinary action as defined in this procedure.

Unless expressly provided otherwise by the terms and conditions of an individual employment contract, the causes and procedures for discipline of management, supervisory and confidential employees shall be as specified in this procedure.

Background Checks

Background checks may be conducted as part of disciplinary or harassment investigations. (Civil Code Section 1786 et seq. – Fair Credit Reporting Act)

Advanced notice of discipline/harassment background investigations shall not be provided to those under investigation. If the investigation results in action that adversely affects the employee, the employee shall receive oral, written, or electronic notice of:

- the adverse action;
- the name, address, and telephone number of the third party agency that furnished the report;
- the employee's right to obtain a free copy of the report; and
- the employee's right to dispute the accuracy or completeness of any of the information in the report.

Disciplinary Actions – Classified Management, Supervisory and Confidential Employees

The causes for discipline of classified management, supervisory and confidential employees include, but are not necessarily limited to, the following:

- Incompetence, i.e., inability to comply with the minimum standard of an employee's position for a significant period of time.
- Inefficiency or inexcusable neglect of duty, i.e., failure to perform duties required of an employee in the position, including, but not limited to, legal inability or physical inability such as failure to maintain a license or other certification that is required for the job, inability of the District to provide liability insurance due to the wrongful action of the employee, or failure to meet physical examination requirements.
- Willful disobedience and insubordination, a willful failure to submit to duly appointed and acting supervision, conform to duly established orders or directions of, or insulting or demeaning the authority of a management supervisor.
- Dishonesty affecting the institution or District, including, but not limited to, failing to disclose material facts regarding criminal convictions, fraud in securing employment, or knowingly providing false or misleading information on application forms and employment records concerning material matters, or knowingly falsifying any other institutional or District records.
- Being impaired by or under the influence of alcohol or illegal drugs or narcotics while on duty, which could impact the ability to do the job.
- Excessive absenteeism/tardiness.
- Abandonment of position, including failure to return to duty upon expiration of any authorized leave of absence, or absence of five (5) consecutive working days without prior notification and/or permission, or failure to notify the District of a valid or acceptable reason for absence.
- Abuse or misuse of sick leave, or other leave privileges.
- The conviction of either a misdemeanor or a felony involving moral turpitude shall constitute grounds for dismissal of any employee. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. A plea or verdict of guilty, or a conviction showing a plea of nolo contendere made to charge a felony or any offense involving moral turpitude, is deemed to be a conviction within the meaning of this Section.
- Discourteous treatment of the public, students or other employees.
- Theft or improper or unauthorized use of District property or public resources.
- Refusal to subscribe to any oath or affirmation which is required by law in connection with District employment.
- Any willful act of conduct undertaken in bad faith, either during or outside of duty hours which is of such a nature that it causes discredit to the District, the employee's department, or division.
- Inattention to duty, tardiness, indolence, carelessness, or negligence in the care and handling of District property.
- Mental or physical impairment which renders the employee unable to perform the

essential functions of the job with reasonable accommodation or without presenting a direct threat to the health and safety of self or others.

- Acceptance from any source of a reward, gift, or other form of remuneration in addition to regular compensation to an employee for the performance of his or her official duties.
- Engaging in political activity during assigned hours of employment.
- 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 in and of itself sufficient ground for the immediate discharge of such officer or employee.
- Willful or persistent violation of policies, procedures, and other rules which may be prescribed by the District, colleges, or departments.
- Sexual or racial harassment and/or unlawful discrimination against a subordinate, student or fellow employee.
- Inducing or attempting to induce any person, firm or corporation doing business with the District to give employment to any person.
- Inducing or attempting to induce an employee of the District to commit an unlawful act or to act in violation of any lawful and reasonable departmental or official regulation or order.

No disciplinary action shall be taken for any cause that arose prior to the employee becoming permanent or for any cause that arise more than two years preceding the date of the filing of any charge against the employee, unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the District.

Procedure for Discipline of Probationary Classified Management, supervisory and confidential Employee

Probationary classified management, supervisory and confidential employees may be subject to disciplinary action, including dismissal, without benefit of notice or hearing.

Procedure for Discipline of Permanent Classified Management, supervisory and confidential Employee

For classified management, supervisory and confidential employees suspended, demoted or discharged the District shall follow a pre-disciplinary procedure as follows:

Notification Requirements: Whenever the District intends to suspend an employee, demote the employee, or dismiss the employee, the employee shall be given a written notice of discipline.

The written notice shall include:

1. Notification of the specific charge or charges against the employee.
2. Statement of the employee's right to a hearing on such charge or charges and the time within which such hearing may be requested, which shall be not less than five (5) working days after service of the notice to the employee.

3. Demand for Hearing form, the signing and filing of which shall constitute a denial of the charge or charges and a demand for a hearing. Failure of the employee to file a Demand for Hearing form by the date and time specified in the notice shall constitute waiver of the employee's right to a hearing.

Hearing Procedure: Employees facing disciplinary action shall be entitled to a hearing. All such hearings shall be conducted by an administrator appointed by the Chancellor. The hearing shall be conducted in accordance with all applicable sections of the Education Code. The hearing officer's findings and/or recommendation will be provided to the Chancellor, who will make the final decision. In case of termination, the Board of Trustees will make the final decision. The employee will be provided with a written copy of the decision.

The District has the burden of establishing sufficient cause for disciplinary action by a preponderance of evidence. The "preponderance of evidence" standard is met when the evidence in favor of a proposition has more convincing force than the evidence opposed to it.

The hearing will be conducted according to the following procedures:

1. Stipulations, if any, will be received;
2. The District or its representative will be allowed an opening statement;
3. The employee or representative will be allowed an opening statement;
4. The District's representative will be allowed to present evidence in the form of witness testimony, documents, or other relevant items having a bearing on the case;
5. The employee or representative will be allowed to cross-examine any of the District's witnesses;
6. Redirect and recross-examination will be allowed;
7. The employee or representative will be allowed to present evidence in the form of witness testimony, documents, or other items having a bearing on the case;
8. The District's representative will be allowed to cross-examine any witnesses presented;
9. Redirect and recross-examination will be allowed; and
10. Both parties will be allowed to make closing statements, with the District being provided an opportunity to make a final rebuttal.

All testimony presented will be on oath or affirmation. The hearing shall not be conducted according to technical rules relating to evidence and witnesses, but all parties shall observe the substance of the rules of evidence. 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 business affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. Hearsay evidence may be admitted, but it will be accorded weight appropriate to its nature.

Record of Proceedings and Costs: All disciplinary appeal hearings may, at the discretion of either party, be recorded by a court reporter. Any hearing which does not utilize a court reporter shall be recorded by audio tapes. If a court reporter is requested by either party, that party shall pay the cost of the court reporter.

Following the hearing, the hearing officer will prepare written findings of fact and a recommendation to the Chancellor, who will make the decision whether to affirm, reverse or modify the proposed discipline. In cases of termination, either party may appeal the Chancellor's decision to the Board by filing a written appeal.

Appeal and Request for Hearing: If a classified employee, having been issued a final notice of termination, wishes to appeal the action, he or she shall within ten (10) calendar days from the date of receipt of the notice, file an appeal to the Board of Trustees by filing a written brief responding to the charges with the Vice Chancellor, Diversity and Human Resources. The Chancellor may file a response to the appellant's brief within ten (10) days of receipt of appellant's brief.

Time for Review: The Board of Trustees shall, within a reasonable time from the filing of the appeal, consider the appeal. The Board of Trustees may affirm, modify, or revoke the discipline.

Deliberation Upon the Case: The Board of Trustees should consider all the briefs and may also consider the transcript and documentary evidence from the hearing and the credibility of witnesses, and other appropriate factors in reaching its decision. The Board may conduct its deliberations in closed session.

Written Findings, Conclusion, and Decision: The Board of Trustees shall render its findings, conclusions, and decision as soon after the conclusion of its deliberation as possible. The Board of Trustees may sustain or reject any or all of the charges filed against the employee. The Board may sustain, reject, or modify the disciplinary action invoked against the employee. If the Board of Trustees recommends reinstatement of the terminated employee, the employee is only entitled to back pay minus the sum the employee has earned during the period of absence.

Decision of the Board to be Final: The decision of the Board of Trustees in all cases shall be final.

Emergency Suspension: If an employee's conduct presents an immediate threat to the health and safety of the employee or others, the employee may be suspended without compliance with the provisions of this procedure. However, as soon as possible after suspension, the employee shall be given notice as set forth herein.

Record Filed: When final action is taken, the documents shall be placed in the employee's personnel file.

Disciplinary Actions – Academic Management Employees

Academic management employee may be dismissed or penalized for one or more of the following causes:

- Immoral or unprofessional conduct;
- Dishonesty;
- Unsatisfactory performance;
- Evident unfitness for service;
- Physical or mental condition that makes him or her unfit to instruct or associate with students;
- Persistent violation of, or refusal to obey, the school laws of the state or reasonable regulations prescribed for the government of the community colleges by the Board of Governors or by the Board of Trustees of the District;
- Conviction of a felony or of any crime involving moral turpitude;
- Any sex offense or controlled substance offense as defined in Sections 87010 and 87011 of the education code; and/or
- Conduct specified in Section 1028 of the Government Code. (i.e., knowing membership in the Communist Party or of any organization which advocates the overthrow of the government of the United States by force or violence).

Procedure for Discipline of Academic Management Employees

The District shall not act upon any charges of unprofessional conduct or unsatisfactory performance unless during the preceding term or half academic year prior to the date of the filing of the charge, and at least 90 days prior to the date of the filing, the employee against whom the charge is filed has been given written notice of the unprofessional conduct or unsatisfactory performance, specifying the nature of the conduct with specific instances of behavior and with particularity to permit the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the most recent evaluation of the employee.

If the Board of Trustees decides it intends to dismiss or penalize an academic management employee, a written statement, signed and verified, shall be delivered to the employee setting forth the complete and precise decision of the Board and the reasons for the decision.

The written statement shall be delivered by serving it personally on the employee or by mailing it by United States registered mail to the employee at his or her address last known to the District.

If the employee objects to the decision on any ground, the employee shall give written notice of the objection to the Board, the Chancellor, and the President of the college at which the employee serves of his or her objection within 30 days of the date of the service of the notice.

Within 30 days of receipt of the employee's demand for a hearing, the employee and the Vice Chancellor, Diversity and Human Resources or the District's legal counsel shall attempt to agree upon an arbitrator to hear the matter. When there is agreement as to the arbitrator, the Vice Chancellor, Diversity and Human Resources or the District's legal counsel shall enter into the records of the Board of Trustees written confirmation of the agreement signed by the employee and an authorized representative of the District. Upon entry of such confirmation, the arbitrator shall assume complete and sole jurisdiction over the matter.

If within 30 days of the receipt of the employee's demand for hearing, no written agreement has been reached between the employee and the District, regarding appointment of an arbitrator, the District will certify the matter to the California State Office of Administrative Hearings and request the appointment of an administrative law judge.

Upon appointment, the arbitrator or the Administrative Law Judge shall conduct the proceedings in accordance with the California Administrative Procedures Act, except that the right of discovery shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court. In all cases, discovery shall be completed prior to one week before the date set for hearing.

The arbitrator or Administrative Law Judge shall determine whether there is cause to dismiss or penalize the employee. If the arbitrator finds cause, the arbitrator shall determine whether the employee shall be dismissed, the precise penalty to be imposed, and whether the decision should be imposed immediately or be postponed.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters that occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the District concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

The decision of the arbitrator or Administrative Law Judge will be made in writing and provided to all parties.

Record Filed: When final action is taken, the documents shall be placed in the employee's personnel file.

Office of Primary Responsibility: Vice Chancellor, Diversity and Human Resources

Date Approved: November 29, 2010