



# **ADMINISTRATIVE** **PROCEDURE**

**7365**

**DESERT COMMUNITY COLLEGE DISTRICT**

## **DISCIPLINE AND DISMISSAL** **CLASSIFIED EMPLOYEES**

### **Grounds for Discipline**

Disciplinary process is defined within the Collective Bargaining Agreement is located in Article XIX of the Collective Bargaining Agreement. In this procedure there is also narrative in discussing the disciplinary process. If there is a conflict between the Collective Bargaining Agreement and this Administrative Procedure the Collective Bargaining Agreement will take precedence.

### **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 investigations shall not be provided to those under investigation unless extenuating circumstances arise as determined by the Executive Director of Human Resources and Labor Relations. 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**

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

*Written confirmation of oral counseling: A written confirmation of a meeting conducted by a supervisor in which a unit member is advised of the need to improve performance and/or to exhibit a change in behavior. Unsatisfactory or unacceptable behaviors or actions by the unit member are discussed and strategies for correcting these behaviors or actions shall also be*

*outlined. These are placed in a memo and put in the unit member's personnel file after the unit member has been given the opportunity to respond to its contents. The unit member's written response to the written confirmation of oral counseling is his/her only recourse and shall occur within thirty (30) calendar days of the oral counseling.*

*Written reprimand: Documentation by the supervisor of a unit member's unacceptable behavior or actions and/or performance which do not meet work standards. Such a reprimand can be placed in the unit member's Personnel File after the unit member has been given the opportunity to respond to its contents. The unit member must respond to a written reprimand within 30 days. Both the written reprimand and the response shall be placed in the Personnel file simultaneously. If no response is received within 30 days, the District may place the written reprimand in the member's Personnel file. The content of a written reprimand is not subject to the grievance process.*

*Reduction in pay: A reduction in a unit member's pay for either a definite or indefinite period.*

*Demotion: An assignment to a lower classification or a different position for disciplinary reasons in non-layoff situations.*

*Suspension: Temporary removal from employment of the District for a specific period without pay.*

*Dismissal: Removal from employment of the District.*

### **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 is an assignment to a lower classification or a different position for disciplinary reasons in non-layoff situations.

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

- Notice of Intent
  - The following process does not apply to written confirmation of oral counseling or written reprimand(s). 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 which sets forth the following:
    - The disciplinary action intended;
    - The specific charges upon which the action is based;
    - A factual summary of the grounds upon which the charges are based;
    - A copy of all written materials, reports, or documents upon which the discipline is based;
- A. Any unit member against whom a disciplinary action is initiated by the District shall be given a Notice of Intent to Discipline (e.g. to suspend) from the supervisor.
- B. The notice shall contain the following:

1. That the District is proposing discipline and the date the discipline will be effective.
2. The specific grounds which support the disciplinary action as set forth in Article 19, Section 2.
3. The acts or omissions i.e. the facts which support the grounds for the disciplinary action.
4. That the unit member and/or representative shall have a right to view any attached documents which support the proposed disciplinary action.
5. Reference to any prior discipline which is relevant to the proposed discipline.
6. The unit member's right to a *Skelly* meeting with the Superintendent/President or his/her designee.

### **Paid Administrative Leave**

Any unit member who is issued a notice of intent to discipline may be placed on paid administrative leave by the supervisor recommending discipline from the moment that the notice of intent to discipline is issued. Any unit member may be placed on paid administrative leave at any other time by his or her immediate supervisor or District administrator. The supervisor or administrator will consult with the *Office of Human Resources* prior to placing an employee on paid administrative leave.

### **Skelly Meeting or Written Response**

Each unit member who is issued a notice of intent to discipline shall be entitled to request either a *Skelly* meeting or may provide a written response to the proposed discipline within seven (7) calendar days of the issuance of the notice of intent to discipline. The seven (7) day time limit shall be set forth in the notice of intent to discipline. It will be incumbent upon the unit member to insure that the request for a *Skelly* meeting is received by the individual designated as the *Skelly* Officer within the seven (7) day period.

The purpose of the *Skelly* meeting is to give the bargaining unit member an opportunity to respond to the charges. The *Skelly* meeting or written response is not a hearing. The bargaining unit member may not call witnesses. However, he/she may have one Chapter representative and may also have a CSEA Labor Relations Representative present and may bring written material in his/her attempt to convince the *Skelly* Officer that the discipline should not be imposed. If the employee chooses to have two representatives present during the *Skelly* meeting, only one of the representatives may act as the spokesperson for the employee during the meeting. However, the employee may caucus with both representatives at any time during the meeting. If the employee chooses to participate in a *Skelly* meeting, the meeting shall take place within five (5) days of the employee's request for the meeting unless the employee's and District's representatives mutually agree to a later date for the meeting.

The *Skelly* Officer (i.e. the District's representative at the *Skelly* meeting) shall be either the Superintendent/President or his/her designee. However, the designee may not be personally embroiled in any of the incidents giving rise to the proposed discipline. It is the intent of the District that the *Skelly* Officer be neutral, i.e. that he/she should not have been made part of the decision making process with respect to the proposed discipline. However, the *Skelly* Officer will have access to all of the evidence which the supervisor relied on in making his/her

recommendations to propose discipline against the unit member prior to or after the *Skelly* meeting.

### **Notice of Discipline**

After the *Skelly* meeting or written response, the *Skelly* Officer shall make a recommendation to the Superintendent/President as to whether the proposed discipline should be sustained, overruled or modified. The Superintendent/President shall then prepare a notice of discipline to the unit member (assuming that *the* discipline is either sustained or modified) which shall contain the following elements:

1. That, after carefully considering the response of the unit member and/or his/her representative, the proposed discipline or modified discipline is being imposed and the date the discipline will be effective. The unit member will be taken off the payroll on the effective date of the discipline if a suspension or termination is imposed.
2. The specific grounds which support the disciplinary action as set forth in *the Collective Bargaining Agreement*.
3. The acts or omissions (i.e. the facts) which support the grounds for the disciplinary action.
4. All documents in support of the action will be attached.
5. Reference to any prior discipline which is relevant to the discipline.
6. The unit member's right to a hearing before the District's Board of Trustees to challenge the discipline. The notice will inform the unit member that he/she shall be given ten (10) calendar days in which to request a hearing before the District's Board of Trustees.

### **Hearing Before the Board of Trustees**

The discipline hearing shall be held before the Board of Trustees. The Chair of the Board or designee shall preside. The hearing shall be held in closed session unless the bargaining unit member requests, in writing, an open hearing at least 24 hours prior to the hearing. The following guidelines shall be used in conducting hearings.

1. The District has the burden of proving that the recommended discipline is warranted. Therefore, the District must present its case first.
2. The unit member may request that District employees be present as witnesses at the hearing by making a written request to the District's Vice President of Human Resources and Employee Relations at least five (5) calendar days before the hearing.
3. The hearing will be recorded by the District and a copy of the tape will be made available to the employee upon his/her request.
4. Oral evidence shall be taken only on oath or affirmation.
5. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses; to impeach any witness regardless of which party first called his/her to testify; and to rebut the evidence against him/her. If the accused unit member (respondent) does not testify in his/her own behalf, he/she may be called and examined as if under cross examination.

6. The hearing 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 admissions of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing and examining other evidence but shall not be sufficient standing by itself to support a finding unless it would be admissible over objection in civil actions.
7. At the conclusion of the hearing, the Board shall retire and deliberate in private. The Board can sustain, modify or rescind the proposed disciplinary action. The Board shall announce its decision and the vote of each Board member in public session at the meeting at which it makes the decision (which shall either be at the meeting immediately following the hearing or the next regularly scheduled meeting) in accordance with Government Code Section 54957.1.

### **Response by Employee**

The employee shall have the right to respond to the appropriate manager orally or in writing. The employee shall have a right to be represented at any meeting set to hear the employee's response. In cases of suspensions, demotions, or dismissal, the employee's response will be considered before final action is taken.

### **Final Notice**

After the response or the expiration of the employee's time to respond to the notice of intent, the appropriate authority shall: 1) dismiss the notice of intent and take no disciplinary action against the employee; or 2) modify the intended disciplinary action; or 3) prepare and serve upon the employee a final notice of disciplinary action. The final notice of disciplinary action shall include the following:

- The disciplinary action taken;
- The effective date of the disciplinary action taken;
- Specific charges upon which the action is based;
- A factual summary of the facts upon which the charges are based;
- The written materials reports and documents upon which the disciplinary action is based;
- The employee's right to appeal.

### **Time for Hearing**

The governing board shall, with five (5) days from the filing of the appeal, commence the hearing. However, in every case, the decision of the Board itself shall be final. The Board of Trustees may affirm, modify or revoke the discipline. Any employee, having filed an appeal with the Board and having been notified of the time and place of the hearing, who fails to make an appearance before the board, may be deemed to have abandoned his or her appeal. In this event, the Board may dismiss the appeal.

### **Record of Proceedings and Costs**

All disciplinary appeal hearings may, at the discretion of either party or the Board of Trustees, 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.

### **Conduct of the Hearing**

- The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses but hearings shall be conducted in a manner most conducive to determination of the truth.
- Any relevant evidence may be admitted if it is the type 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 rules which might make improper the admission of such evidence over objection in civil actions.
- Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence that shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
- The rules dealing with privileges shall be effective to the same extent that they are now or hereafter may be recognized in civil actions.
- Irrelevant and unduly repetitious evidence may be excluded.
- The Board shall determine relevancy, weight and credibility of testimony and evidence. Decisions made by the Board shall not be invalidated by any informality in the proceedings.
- During examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon motion of either party.

### **Burden of Proof**

In a disciplinary appeal the District has the burden of proof by preponderance of the evidence.

### **Proceed with Hearing or Request for Continuance**

Each side should be asked if it is ready to proceed. If either side is not ready and wishes a continuance, good cause must be stated.

### **Testimony under Oath**

All witnesses shall be sworn in for the record prior to offering testimony at the hearing. The chairperson will request the witnesses to raise their right hand and respond to the following:

“Do you swear that the testimony you are about to give at this hearing is the truth, the whole truth and nothing but the truth?”

### **Presentation of the Case**

The hearing shall proceed in the following order unless the Board of Trustees, for special reason, directs otherwise:

- The party imposing discipline (District) shall be permitted to make an opening statement.
- The appealing party (employee) shall be permitted to make an opening statement.
- The District shall produce its evidence.
- The party appealing from such disciplinary action (employee) may then offer their evidence.
- The District followed by the appealing party (employee) may offer rebutting evidence.

- Closing arguments shall be permitted at the discretion of the Board of Trustees. The party with the burden of proof shall have the right to go first and to close the hearing by making the last argument. The Board may place a time limit on closing arguments. The Board or the parties may request the submission of written briefs. After the request for submittal of written briefs, the Board will determine whether to allow the parties to submit written briefs and determine the number of pages of briefs.

### **Procedure for the Parties**

The District representative and the employee representative will address their remarks, including objections, to the Chair of the Board. Objections may be ruled upon summarily or argument may be permitted. The Board reserves the right to terminate argument at any time and issue a ruling regarding an objection or any other matter, and thereafter the representative shall continue with the presentation of their case.

### **Right to Control Proceedings**

While the parties are generally free to present their case in the order that they prefer, the Board reserves the right to control the proceedings, including, but not limited to, altering the order of witnesses, limiting redundant or irrelevant testimony, or by the direct questioning of witnesses.

### **Hearing Demeanor and Behavior**

All parties and their attorneys or representatives shall not, by written submission or oral presentation, disparage the intelligence, ethics, morals, integrity or personal behavior of their adversaries or members of the Board of Trustees.

### **Deliberation Upon the Case**

At the conclusion of the hearing, the Board shall retire and deliberate in private. The Board can sustain, modify or rescind the proposed disciplinary action. The Board shall announce its decision and the vote of each Board member in public session at the meeting at which it makes the decision (which shall either be at the meeting immediately following the hearing or the next regularly scheduled meeting) in accordance with Government Code Section 54957.1.

### **Written Findings, Conclusion and Decision**

The Board shall render its findings, conclusions and decision as soon after the conclusion of the hearing as possible. A finding must be made by the Board on each material issue. The Board 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. In those cases where the Board has received a proposed decision from a hearing officer or Administrative Law Judge, the Board may adopt the proposed decision, modify the proposed decision or render a new decision. If the Board 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 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.

**Reference: Education Code Section 88013, 212.5; 66281.5; Title IX, Education Amendments of 1972; Title 5, Sections 59320 et seq. ; Title VII of the Civil Rights Act of 1964, 42 U**

College Council Approved: March 24, 2008  
Next Review: March 2013

Administrator: E.D. Human Resources