

Volume

1

LOS ANGELES COMMUNITY COLLEGE DISTRICT

Human Resources

Employer/Employee Relations Handbook

LOS ANGELES COMMUNITY COLLEGE DISTRICT

Employer/Employee Relations Handbook

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Keys to Productive Employee Performance Evaluation

Notwithstanding the variety of procedures and forms used in the District for evaluating performance, there are certain basic principles common among and applicable to all performance evaluation.

Evaluation of an employee's performance may be informal, as in the day-to-day judgments that a supervisor regularly makes and the feedback that he or she provides to the employee, or it may be the formal processes for periodic written evaluation that are contained in collective bargaining agreements, Board Rules and Personnel Commission Rules. Ideally, the evaluation process should be a continuous, ongoing review and assessment of an employee's performance of his or her duties and responsibilities that provides feedback to the employee on a regular basis.

Evaluation must be based on a supervisor's (or peer review committee's) and an employee's mutual understanding of the duties and responsibilities of a particular job classification, and a reasonable expectation of how those duties and responsibilities should be performed. Assessments must be objective and must be based on a set of uniformly applied standards. The formal evaluation should contain a measure of the employee's progress toward reaching any specific goals and objectives that were identified and agreed upon during previous evaluations.

If, in a formal evaluation, an evaluator notes improvements that must be achieved by an employee during the next evaluation period, the evaluator must also suggest to the employee ways that he or she can achieve the desired improvements. If, in a prior evaluation, need for improvement was noted, the subsequent evaluation must document the employee's progress toward achieving those improvements.

Finally, the informal and formal evaluation must be communicated to the employee in a manner that is clear and unambiguous. Each [collective bargaining contract](#) contains specific instructions, requirements, rules and forms for the evaluation of employees covered by the agreement. Similarly, Board [Rule 10105.12](#) contains the procedure for the evaluation of unrepresented academic administrators and [Personnel Commission Rule 702](#) addresses the evaluation of unrepresented classified employees

(classified management and confidential). Each of these contains procedures for the communication of the evaluation to the employee.

For classified employees, exemplary performance should be documented in a memo to the employee, or in a Notice of Outstanding Work Performance, [LACCD Form 80.21](#). For all employees, exemplary performance should be noted in the next formal evaluation. Similarly, unsatisfactory performance should be addressed verbally or documented as part of the progressive discipline process described in the following chapters.

Just do it!

Perhaps the single most important statement that can be made about performance evaluation is that it must be accomplished. Informal evaluation should be an ongoing process of communication and feedback between an employee and his or her supervisor, so that ideally, when it comes time to issue the formal evaluation, the information contained in it should not come as a surprise to him or her.

Evaluations are used to communicate the whole spectrum of performance, from outstanding work to unsatisfactory service. However, the processes and procedures associated with performance evaluation alone may not be sufficient to remedy performance or behavior that is less than satisfactory. In the case of an employee who has failed to achieve and maintain the level of performance necessary for the successful accomplishment of a particular job, implementation of the disciplinary processes that are described below becomes necessary.

Progressive Discipline: An Overview

Progressive discipline refers to a set of disciplinary steps of increasingly greater severity that are employed by a supervisor with the aim of resolving behavioral or performance issues as quickly and at the lowest level possible.

From time to time in the course of either informal or formal evaluation, a supervisor might identify behavioral issues or performance deficiencies that are counterproductive and that require remedial action on the part of the employee. Most often, these problems will develop and will become apparent over time, and usually will worsen if not addressed early on. The manner in which these issues are dealt with will depend on their seriousness and what, if anything, had been done in the past to address and correct them.

Although the steps of progressive discipline may resemble a “cook book” kind of hierarchy, in actual practice the situation may not require that one step precisely follow another. The process may begin at a step other than the first, steps may be skipped, and steps may be repeated as often as might be productive. The appropriate approach will depend on the nature of the problems, and the efforts made by the employee to resolve them.

Prior to employing any step in the progressive discipline process, a supervisor or manager must insure that *just cause* for the discipline exists.

Employee Discipline and Just Cause

A District regular classified employee or an academic employee may be disciplined or terminated only for just cause. Just cause means that the District cannot exercise its power to discipline and/or terminate an employee for capricious, arbitrary or discriminatory reasons. Operationally, the following checklist defines just cause:

- ***Forewarning and Notice*** – Was the employee informed, warned or put on notice, either orally or in writing, of the probable disciplinary consequences of his or her less than satisfactory behavior or performance? In most cases, if an employee has not been forewarned, discipline cannot be imposed. However, exempt from forewarning and notice are actions on the part of the employee that he or she would be reasonably expected to know were prohibited without such notice (i.e. theft, violence, dishonesty, etc.).

Note: By following the steps summarized in "[*Progressive Discipline*](#)" below a supervisor or manager will help to insure that an employee receives proper forewarning and notice.

- ***Reasonableness*** – Was the rule, regulation or policy or procedure that was allegedly violated by the employee reasonably related to the orderly, efficient and safe conduct of the District's business?
- ***Investigation*** – Did the District undertake a fair and objective investigation in such detail as to be able to reasonably conclude that the employee did, in fact, violate the specific rule, regulation, policy or procedure that was cited? Usually, a part of a complete investigation would include an investigative interview with that employee.
- ***Evidence*** – Has the District developed substantial, verifiable evidence that a violation has occurred? Will the District be able to prove, through the introduction of evidence and credible testimony, that a violation occurred?
- ***Equal Treatment*** – Has the employee in question been treated in a manner similar to other similarly situated employees? Will the proposed discipline be applied in a *non-discriminatory* manner?
- ***Appropriateness*** – Is the level of proposed discipline commensurate with the seriousness of the violation and does it take into account the employee's prior performance record and other mitigating factors? Have the appropriate steps of progressive discipline been properly applied?

The progressive discipline procedures that are outlined in the following sections will help to insure that employee discipline will only be for just cause.

Progressive Discipline – A Summary of Steps

The major steps in the progressive discipline process are listed below and are briefly described. Specific examples of each step, along with required forms, sample letters, and notices, are included in the chapters on [classified employee discipline](#) and [academic employee discipline](#).

- ***Oral Warning*** – Verbal communication of a performance or behavioral problem to an employee either informally or in a formal counseling session (learn more: [classified](#) or [academic](#) employee discipline.).
- ***Written Warning*** – A written warning is usually issued to an employee who has failed to demonstrate substantial improvement in his or her less than satisfactory performance or inappropriate behavior after having received one or more oral warnings. The written warning should:
 - cite the rule, regulation or procedure that was violated (the *cause*);
 - recall any previous oral warnings, including, to the extent possible, dates, times and subject of each warning;
 - recount the specific details (who, when, where and what happened) of the incidents that serve as examples of the employee's violation (the *"charges"*);
 - state the desired level of performance or behavior that the employee must achieve;
 - suggest efforts and changes on the part of the employee that would lead to improvement; and
 - set forth clearly and emphatically what the disciplinary consequences will be if immediate and sustained improvement is not forthcoming.
- ***Letter of Reprimand or Notice of Unsatisfactory Service*** – If improvement is not noted after having taken the previous steps, or if the disciplinary problem is severe enough to warrant skipping those steps, issuing a letter of reprimand or a Notice of Unsatisfactory Service would be appropriate. Specific instructions for preparing and issuing the Notice of Unsatisfactory Service are given in the sections on [classified employee discipline](#) and [academic employee discipline](#) that follow. In all cases, however, prior to preparing the Notice, the Office of Employer/Employee Relations should be contacted for advice, technical information and guidance.
- ***Unpaid Suspension*** – After one or more Notices of Unsatisfactory Service or letters of reprimand have been issued, and if an employee has not achieved substantial and sustained improvement in the areas found deficient, a college President or a District Office division head may recommend to the Board of Trustees that an employee be suspended without pay for a specific period of time. Procedures governing unpaid suspensions are different for [classified](#) and [academic](#) employees, and are described in chapters 3 and 4.

- ***Demotion*** – This disciplinary step is used *only* for classified employees holding regular status in the District. Demotion means the involuntary return of an employee serving in a higher classification to a lower (lower maximum salary range) classification; most often the lower classification is one in which the employee had previously served.

- ***Dismissal*** – If, after all appropriate steps of progressive discipline have been imposed on an employee, and the deficiencies cited have not substantially improved for a sustained period of time, and in the judgment of the college President or District Office division head, further attempts at remediation would be futile, he or she may recommend to the Board of Trustees that the employee be dismissed from service for cause. Procedures for dismissal of classified and academic employees are different and are explained in chapters 3 and 4.

Disciplinary Procedures for Classified Employees

In this chapter, the authority of the Personnel Commission regarding discipline of classified employees, the causes for classified employee discipline and the implementation of progressive discipline are explored.

The Personnel Commission

Role of the Personnel Commission. The Los Angeles Community College District has adopted the Education Code provisions of the Merit System. [Education Code sections 88060 et seq.](#) provide for the establishment of a Personnel Commission, and gives the Commission the authority to adopt rules that govern the terms and conditions of employment for classified employees. These rules are binding upon the Board of Trustees. However, to the extent that Commission rules address subjects that are within the scope of negotiations, the rule is not applicable to classified employees represented by an exclusive bargaining representative.

In a Merit System district such as the LACCD, classified employee discipline is *not* in the scope of negotiations. Therefore, [Personnel Commission Rule 735](#), Causes And Procedures For Suspension, Demotion, Dismissal, is applicable to *all* regular (non-probationary) District classified employees, regardless of their representation status. Rule 735 sets forth the causes for which a classified employee may be disciplined and establishes the procedures by which a classified employee may appeal a disciplinary action.

Causes for Discipline

Personnel Commission Rule 735 sets out the following *just causes* for discipline:

- 1) Incompetence
- 2) Inefficiency
- 3) Insubordination

- 4) Willful misconduct or any other willful failure of good conduct tending to injure the public service
- 5) Inattention to or dereliction of duty
- 6) Willful and persistent violation of the provisions of the Education Code, public policy, or of policies, rules, regulations, or procedures adopted by the Board of Trustees or the Personnel Commission
- 7) Dishonesty
- 8) Discourteous, abusive, or threatening language or behavior directed toward any person, including sexual harassment, racial harassment, or other legally prohibited actions or behavior
- 9) Immoral conduct
- 10) Appearing for work under the influence of alcohol or controlled substance or using alcohol or a controlled substance illegally while on duty
- 11) Conviction of any controlled substance offense as defined in Education Code Section 87011
- 12) Failure to abide by the conditions of an agreement regarding participation in an alcohol or substance abuse rehabilitation program
- 13) Frequent unexcused absence or tardiness
- 14) Abuse of leave privileges by habitual use of leave for trivial indispositions or by absence so frequent that the efficiency of the service is impaired
- 15) Absence without leave or abandonment of position
- 16) Failure to disclose material facts or the making of any false or misleading statement on any official document of the District or Personnel Commission
- 17) Failure to report for a health examination after reasonable notice
- 18) The discovery or development during an initial probationary period of any physical, emotional, and/or mental condition which precludes an employee from satisfactorily performing the essential duties of the position classification to which assigned
- 19) Failure to disclose material facts regarding criminal records
- 20) Failure to report for review of criminal records after reasonable notice
- 21) One or more criminal convictions which indicate that the person is a poor employment risk in the job classification he/she holds
- 22) Conviction of any sex offense as defined in Education Code Section 87010
- 23) Engagement in political activities during assigned hours of employment
- 24) Advocacy of overthrow of the government of the United States or the State of California by force, violence, or other unlawful means
- 25) Knowingly becoming or knowingly remaining a member of the Communist Party on or after November 12, 1952, as defined in Education Code Section 88122

- 26) Active participation by a management or confidential employee in the affairs of an employee organization which is an exclusive representative
- 27) Unauthorized use or abuse of District or student body property
- 28) Failure to successfully complete a training program or to meet a special entrance qualification that is required for a job classification

Each of these causes is self-explanatory; however, a simple listing of these causes is not sufficient to support any level of progressive discipline. Each cause must be supported by one or more charges that specify in detail the employee's specific acts, omissions, commissions, and/or reasons for discipline.

Appeals

In addition to its rule writing authority in the area of employee discipline, Education Code section 88125 provides that "the commission shall investigate the matter (suspension, demotion or dismissal) on appeal and may require further evidence from either party, and may, and upon request of an accused employee shall, order a hearing. The accused employee shall have the right to appear in person or with counsel and to be heard in his or her own defense. The decision shall not be subject to review by the governing board."

Personnel Commission Rule 735 provides that a permanent (non-probationary) employee, whom the Board of Trustees has suspended, demoted or dismissed, has fourteen (14) *working* days from the date that he or she was informed the Board of Trustees approved the discipline in which he or she may file an appeal with the Commission. Usually the Commission staff will schedule an appeal hearing before an independent hearing officer who is empowered to make findings of fact, and who will make recommendations to the Commission regarding the appropriateness of the discipline. The Commission may choose to adopt, modify or reject the recommendation of the hearing officer, but in no case may it impose discipline more severe than that originally approved by the Board of Trustees.

The Personnel Commission staff will inform Human Resources immediately when an employee files an appeal. Usually an Employer/Employee Relations staff member will be responsible for all of the steps involved in preparing the District's case and for serving as the District's advocate in the appeal hearing. Employer/Employee Relations staff will analyze the case, conduct additional investigation as might be necessary, determine the witnesses that will be required to testify during the hearing, compile the documents that will be submitted as evidence, and prepare the witnesses for examination and cross examination. However, at the discretion of the District, in complex and/or unusual cases, legal counsel might be called upon to perform these functions.

Progressive Discipline Steps for Classified Employees

- **Oral Warning.** An oral warning is a verbal communication from a supervisor or manager to an employee regarding a performance or behavioral problem that must be remedied. This communication may be an informal remark made in passing (i.e. "Mr. Jones, you have been over fifteen minutes late three times in the past two weeks.") or may be in the form of remarks made to the employee in a formal counseling session. In either case, the oral warning must be communicated in *private*, and the employee should be assured of the *confidentiality* of the meeting.

If the oral warning is to be communicated in a meeting, the meeting should be scheduled with the employee to allow enough time for him or her to arrange for a union representative to be present. However, the scheduling of the union representative is not the responsibility of the supervisor or manager, and should not cause an undue delay in conducting the meeting. The manager or supervisor conducting the meeting should be accompanied by another supervisory or management employee.

At the discretion of the supervisor or manager, the contents of the oral warning may be confirmed in a written counseling memo that is issued to the employee after the meeting. This memo does not immediately become part of the employee's official personnel file, but may be included as a part of a Notice of Unsatisfactory Service as evidence of prior counseling and guidance, should the issuance of a Notice later become necessary. However, unlike a letter of reprimand or Notice of Unsatisfactory Service described below, the memo is *not* considered a disciplinary document.

In accordance with the principles of just cause, the employee should be made aware of the reason (cause) for the warning and should be provided with specific examples of the unsatisfactory performance or behavior. The desired level of performance or behavior should be reconfirmed with the employee and he or she should be provided with suggestions for how improvement may be achieved. Finally, the employee should receive a clear statement of the disciplinary consequences that will follow if he or she fails to demonstrate immediate and sustained improvement.

- **Written Warning** - The written warning should specifically recall any previous oral warnings, cite the rule, regulation or procedure that was violated, cite specific examples of the employee's violation, state the desired level of performance or behavior required, suggest actions the employee can take that would lead to improvement, and clearly set forth the what the disciplinary consequences will be if immediate and sustained improvement is not forthcoming.

Counseling Meeting. The written warning should be issued in a formal counseling session with the employee. This meeting should be scheduled with the employee to allow enough time

for him or her to arrange for a union representative to be present. However, the scheduling of the union representative is not the responsibility of the supervisor or manager, and should not cause an undue delay in conducting the meeting. The manager or supervisor conducting the meeting should be accompanied by another supervisory or management employee.

During the meeting, the supervisor or manager must explain to the employee the nature of the unsatisfactory performance or behavior, cite any previous warnings or counseling, cite specific examples of the unsatisfactory service, make suggestions for improvement and clearly inform the employee of the disciplinary consequences that will follow his or her failure to achieve significant and sustained improvement.

➤ ***Notice of Unsatisfactory Service.*** If improvement is not noted after the issuance of oral and written warnings, or if a disciplinary problem is severe enough to warrant skipping those steps, it is appropriate to issue a [Notice of Unsatisfactory Service](#). A Notice of Unsatisfactory Service may be issued by itself, or it may be issued as the basis for additional disciplinary action (suspension, demotion or dismissal). The Notice is issued on District form C1065, and *must* contain the following information:

- **Causes.** The Notice must cite one or more of the causes set forth in [Personnel Commission Rule 735](#), in section 1 of Form C1065.
- **Charges.** A charge is a detailed summary of the employee's specific acts, omissions, commissions, and/or reasons for the issuance of the Notice. If the issue is one of absenteeism or tardiness, a charge simply can be a listing of an employee's absences or tardiness, usually in an attachment to the Notice, which includes the date, the length, and the reason for the absence or tardiness, and a statement of the employee's absence rate. Additionally, the effect that the employee's absences had on the work of his or her unit must be explained.

A charge may also relate the facts of a specific occurrence of unsatisfactory performance, and must include the date, time of day, place and witnesses, if any, to the incident. The incident of unsatisfactory performance must be thoroughly detailed. Such charges should be listed in chronological order in section 2 of Form C1065, using an attached page if not enough space is available on the form itself.

- **Dates.** The "beginning" and "end" dates for the Notice must coincide with the first and last incidents recorded in the Charges section. If the Notice is not the first one issued to the employee, the beginning date of the new Notice should be the date following the end date of the previous Notice, if there has not been an intervening period of satisfactory performance.
- **Plain Language.** A Notice of Unsatisfactory Service must be written in ordinary and concise language that can be easily understood by the employee to whom it is issued.

- **Conferences.** Unless issued for an infraction severe enough that prior progressive discipline steps were skipped, section 3 of the Notice must list the formal and informal counseling and guidance conferences that were conducted with the employee, including the date and time of the conference and a brief description of the issues covered. Copies of written counseling and guidance memos, warning memos and/or letters of reprimand should be appended to the Notice.
- **Directions for Improvement.** The Notice must contain the supervisors' or manager's directions and suggestions for the employee's improvement, unless the Notice is the basis for a recommendation for dismissal. These directions should provide an expected date for improvement to be realized (*immediately* is appropriate).
- **Issuance.** A Notice may be prepared and issued by any supervisory or management employee who exercises supervisory authority over an employee. The Notice must be signed by the person who prepared it and must also contain the signatures of the next higher level of authority and the college President or District Office division head, or his or her designee. The Notice must have *all* of the required signatures in place when it is issued to the employee. Personnel Commission Rule 735 requires that the Notice be issued to a permanent employee "not less than 10 calendar days nor more than 90 calendar days before the effective date of demotion or dismissal, or in the case of suspension, not more than 90 calendar days before the effective date of the suspension."
- **Contact Employer/Employee Relations.** It is advisable for the person preparing the Notice to contact Employer/Employee Relations prior to its issuance. Employer/Employee Relations is available to review all aspects of the matter (documentation, credibility of witnesses, completeness of the Notice, counseling and guidance, etc.) and will provide advice accordingly.

The Notice should be issued to the employee in a private meeting, and the employee should be assured of the confidential nature of the meeting. The person issuing the Notice should have a witness present who can, by his or her signature, indicate that the employee was issued the Notice and offered a copy of it, should the employee refuse to sign it. A thorough counseling session that covers the reasons for issuing the Notice, the level of performance that will be expected of the employee, and the consequences the employee will face if immediate and sustained improvement is not demonstrated.

The employee has the right to have a union representative at the meeting; however the person who arranges the meeting has no responsibility to inform the employee of this right or to arrange for the union representative's attendance. Moreover, the employee's inability to arrange for a representative's presence in a reasonable amount of time (i.e. two or three days) should not be the cause of a delay in the scheduling of the meeting.

The original signed Notice should be forwarded to Employer/Employee Relations for placement in the employee's official personnel file. A copy of the Notice must be given to the employee, and a copy should be retained by the college or division for their files.

Should the employee not be available for issuance of the Notice or if he or she refused to sign the Notice or refused a copy of it, the Notice must be forwarded to the Office of Employer/Employee Relations, with a memo that so indicates. Employer/Employee Relations will then send the Notice to the employee's address of record via U.S. certified and regular mail.

Grievance and Appeal. An employee who has been issued a Notice of Unsatisfactory Service upon which *no* further discipline (suspension, demotion or dismissal) is based may file a grievance to challenge the Notice in accordance with the grievance procedure contained in the appropriate [collective bargaining agreement](#) for represented employees, [Board Rule 10901](#) for management employees, or [Personnel Commission Rule 893](#) for confidential or unrepresented classified employees. If the grievance proceeds to the final step in the procedure, an arbitration hearing will be conducted by a third party neutral in accordance with the appropriate procedure.

If the Notice carries with it a recommendation for formal discipline (suspension, demotion or dismissal), the employee will have the right to file an appeal with the Personnel Commission in accordance with Rule 735, after the Board of Trustees imposes the discipline.

- ***Unpaid Suspension.*** If improvement is not noted after the issuance of one or more Notices of Unsatisfactory Service, or if the disciplinary problem is severe enough to warrant skipping the previous steps, the college President or District Office division head may recommend to the Board of Trustees that an employee be suspended for up to thirty (30) calendar days without pay.

Generally, for performance or behavioral problems that have developed over time, all of the preceding disciplinary steps must have been attempted by an employee's supervisor or manager. The steps below outline the procedure for making a recommendation that an employee be suspended to the Board of Trustees:

- **Notice of Unsatisfactory Service.** A [Notice of Unsatisfactory Service](#) that documents the performance and/or behavioral problems that serve as the basis for the recommendation to suspend an employee must be prepared as outlined in the section above and issued to the employee along with a Notification of Recommended Suspension.
- **Notification of Recommended Suspension.** The Notification of Recommended Suspension, LACCD Form C2004-5 must be completed and signed by the college President or District Office division head prior to issuing it to the employee. This document, along with the Notice of Unsatisfactory Service, must be issued *at the same time* to the employee by the supervisor or manager initiating the action. The employee should be directed to sign the Notice of Unsatisfactory Service. If the

employee refuses to sign, a witness must sign the form to indicate that the employee was offered a copy of the form.

The Notification of Recommended Suspension and the Notice of Unsatisfactory Service should be forwarded immediately after it is issued to the Office of Employer/Employee Relations. If an employee has refused to sign the Notice of Unsatisfactory Service, or if he or she is unavailable for issuance in person, a memo to that effect should be included with the documents, and Employer/Employee Relations will forward the Notice to the employee via U.S. certified and regular mail.

- **Statement of Charges.** Upon receipt of a Notification of Recommended Suspension and a Notice of Unsatisfactory Service, the Office of Employer/Employee Relations will prepare a Statement of Charges. A Statement of Charges is the formal statement of the causes and charges that form the basis of the recommendation for suspension to the Board of Trustees. In addition to the causes and charges, the Statement also must indicate the number of days of unpaid suspension that is being recommended to the Board and the date that the Board is scheduled to consider the recommendation.

The Board will consider the discipline in closed session, and, usually at the same meeting, will act on the recommendation in open session. Employer/Employee Relations will determine the date of the meeting of the Board at which the discipline will be acted on, schedule the matter for consideration during the closed session meeting, prepare a Board action item for inclusion in the agenda for the open session meeting, summarize the recommended discipline for the Board Letter for that meeting, and insure that the college President or District Office division head signs the Statement of Charges, or authorizes staff to sign it in his or her place. Employer/Employee Relations will insure that the college President or District Office division head or his or her representative will be present for the closed session and open session meetings.

- **“Skelly Letter”.** Employer/Employee Relations will send the Statement of Charges to the employee whose discipline has been recommended via U.S. certified mail, return receipt requested, as well as by regular U.S. mail, to the employee’s address of record. Along with the Statement of Charges, the employee will be sent a copy of the Notice of Unsatisfactory Service that is the basis for the discipline and a letter that informs the employee that the discipline has been recommended. This letter is referred to as the “Skelly” letter.

The letter will also inform the employee of the date that the Board will consider the action, and that he or she has the right to request that the Board’s consideration of the discipline that usually occurs in closed session, occur in open session. If the employee makes this request, Employer/Employee Relations will schedule the open session consideration to occur immediately after the Board convenes its meeting (usually 12:30 p.m.) and before the scheduled closed session. The employee will have the right to be

represented at the open session meeting by his or her union representative. Presentations to the Board will be in accordance with the Board's policy for public speakers. Employer/Employee relations will prepare and distribute a "script" for the Chancellor and other staff to follow for this presentation.

The "Skelly" letter will also inform the employee that he or she has the right to respond, either in writing or in person, to the charges contained in the Statement of Charges prior to the Board's consideration of the recommendation for discipline. This opportunity to respond is usually referred to as the "Skelly meeting" or "Skelly hearing." The person to whom the employee must respond will be named in the letter. If the employee chooses to respond in writing, his or her written response must be received within seven (7) working days from the date of the "Skelly" letter; written responses will be made available to the Board in closed session for its consideration. If the employee chooses to respond in person, the meeting with the person designated to hear the response must occur within seven (7) working days from the date of the letter unless special arrangements are made; in no case may this meeting occur on or after the date the Board is scheduled to act on the matter.

- **"Skelly Hearing"**. The California Supreme Court in a 1975 decision (*Skelly v. State Personnel Bd.*, 15 Cal. 3d 194.) has ruled that a public employee whose suspension, demotion or dismissal has been recommended has the right to due process *prior* to the Board of Trustees taking action on the recommendation. The 14th Amendment to the United States Constitution precludes any state from taking property from an individual without due process. In *Skelly*, it was found that an employee's public sector job constituted property. Therefore, the imposition of discipline by the Board of Trustees must be preceded by procedural due process. Although, this due process right is not a right to a full evidentiary hearing, the Court ruled that the employee has the right to:
 - a. receive a statement of the nature of the proposed discipline (contained in the Notification of Recommended Suspension, the Statement of Charges and the "Skelly" letter)
 - b. know the effective date of the proposed discipline (contained in the Statement of Charges)
 - c. be presented with the reasons for the discipline (these are the Commission Rule 735 causes cited in the Statement of Charges)
 - d. know the specific policy or rule violated (the causes and the charges supporting those causes)
 - e. be made available a copy of all materials that were considered in proposing the action (i.e. time cards for absenteeism cases, material prepared by the employee that contains excessive errors, etc.)

- f. receive a statement advising the employee of the right to respond orally or in writing (the "Skelly" letter).

If an employee chooses to respond to the charges in writing, Employer/Employee Relations will include the written response with the materials that are presented to the Board for consideration in closed session. The Board will review and take under advisement the employee's response.

If an employee wishes to respond to the charges in person, he or she must schedule an appointment with the person designated to conduct the "Skelly" hearing within seven (7) working days from the date of the "Skelly" letter. The person who has been so designated must be an objective official of the District, usually a management employee, who is empowered to change the college or division's recommendation for discipline, if necessary.

An employee who is represented by an exclusive collective bargaining agent has the right to be represented by the union at the "Skelly" hearing. During the hearing, the employee or his or her representative has the right to review all of the material that was considered in proposing the discipline. He or she has the right to present information or arguments that would have the effect of causing the person conducting the hearing to change the recommendation for discipline. Although that person is not required to respond to any of the employee's information or arguments during the hearing, he or she must inform the employee of the decision *prior* to the matter being presented to the Board in closed session. This notification should be in writing to the employee with copies to Employer/Employee Relations and the employee's representative.

- **Effective Dates** – The beginning date of the suspension will usually be the Monday following the Wednesday that the Board approved the suspension. This will allow sufficient time for Employer/Employee Relations to notify the employee and the college or division that the action has been approved.

➤ ***Paid Administrative Leave (Paid Non-Disciplinary Suspension).***

From time to time, circumstances may develop that would require an employee to be removed from the worksite either prior to the Board of Trustees acting on a recommendation for unpaid suspension or dismissal, or when an investigation must be conducted. Examples of such circumstances include, but are not limited to, an employee's gross insubordination, allegations of theft of District property, or violence. In such circumstances, the college President or District Office division head has the authority to place an employee on paid administrative leave.

Paid administrative leave (paid suspension, leave pending investigation) is *not* a form of discipline, although discipline may subsequently be imposed by the Board of Trustees. An employee on paid administrative leave suffers no loss of pay, benefits, or other rights and privileges of an active employee. Because it is a paid leave, the amount of time an employee

spends on paid administrative leave should be limited to as brief a period as the situation allows. Also, because it is a paid leave, it does not constitute a break in service.

The following outlines the steps for a college or division to take to place an employee on paid administrative leave.

- **Contact Employer/Employee Relations** - When it becomes necessary to place an employee on paid administrative leave, the Office of Employer/Employee Relations should be contacted for advice and guidance.
- **Meet With Employee** – The college President or District Office division head or his or her designee should meet as soon as possible with an employee who has been placed on paid administrative leave. The employee should be informed that he or she has been placed on paid administrative leave for a length of time yet to be determined, that during that time he or she will not suffer any loss of pay or benefits, and that while on paid administrative leave, the employee may not be at the worksite but should be available by telephone, or available to meet in person with college and/or District representatives during normal working hours. Additionally, the employee must be informed that while on leave, he or she may not engage in paid employment during the hours that the employee normally works.
- **Implement Reasonable Security Measures** – Immediate steps must be taken by the college President or division head to limit the employee's access to computer files and records, District documents, District funds, and District property and supplies. The employee must be required to relinquish keys, key cards and any other device that would allow the employee access to District property and information. Similarly, the employee's passwords and other means of access to District electronic information and records must be deactivated.
- **Send Confirming Letter** – Immediately after meeting with the employee, a letter should be sent to him or her that reiterates the information given to the employee verbally. The letter should be sent to the employee's address of record via certified and regular U.S. mail.
- **Conduct an Investigation** – If additional information is necessary to determine whether disciplinary action is warranted, the college President or District Office division head should conduct a thorough investigation. Where appropriate, witnesses should be asked to sign statements that relate what they saw or heard and any relevant documentary or physical evidence should be gathered and secured. The Office of Employer/Employee Relations will be available to assist with or to conduct this investigation.
- **Conduct an Investigative Interview with the Employee** – As part of the overall investigation, it usually will be appropriate and necessary to interview the employee who has been placed on paid administrative leave. The employee should be directed in

writing to report at a specified time to a specified place for this meeting. Questions for the employee pertinent to the investigation should be prepared in advance of the interview. If the employee refuses to meet or refuses to answer questions during the interview, he or she must be informed that such refusals constitute insubordination, for which the employee will receive discipline, up to and including dismissal.

- **Recommend Discipline If Necessary** – If the findings of the investigation indicate that discipline is necessary, the steps outlined in the appropriate section of this chapter should be initiated immediately. Employer/Employee Relations should be informed of the discipline as soon as possible so the matter can be placed on the agenda for the earliest possible Board meeting.
- **Recommendation for Demotion.** Demotion means the involuntary reassignment of a classified employee from a classification in which he or she is currently working to a lower level (lower maximum salary rate) classification that usually is one in which the employee formerly served. Normally, involuntary demotion does not occur as a disciplinary action, but is the outcome of an employee's failure to successfully complete the probationary period that follows a promotion. In exceedingly rare instances, demotion can be used as a step in progressive discipline. One such circumstance would be the discovery, after the employee has completed a probationary period following a promotion, that the employee is actually incompetent to perform the duties of the higher position but could reasonably be expected to serve satisfactorily in the lower level position.

In all cases, before recommending demotion, a supervisor or manager must consider whether the performance or behavioral problems at the root of the discipline are likely to improve with this action. If the answer to that question is "yes," then the steps listed below must be followed. If the answer is "no" and it can be documented that the appropriate progressive discipline steps have been taken, then the employee's dismissal should be considered.

Normally, an employee who has been involuntarily demoted by the Board *will remain assigned to the work location to which he or she was formerly assigned*. The college or division must have a vacant position in the lower classification or it will have to create and fund a new position. For these reasons, involuntary demotions must be closely coordinated with Human Resources, Employer/Employee Relations and the Personnel Commission.

Assuming that the less severe steps in the progressive discipline process (oral warnings, written warnings) were not successful in bringing about necessary change, the following steps should be followed to make a recommendation for involuntary demotion to the Board:

- **Notice of Unsatisfactory Service.** A [Notice of Unsatisfactory Service](#) that documents the performance or behavioral problems and/or the specific incidents that serve as the basis for the recommendation to demote an employee must be prepared and issued to the employee along with a Notification of Recommended Demotion, LACCD Form C2012-3.

- **Notification of Recommended Demotion.** The Notification of Recommended Demotion must be completed and signed by the college President or District Office division head *prior* to issuing it to the employee. This document, along with the Notice of Unsatisfactory Service, must be issued at the same time to the employee by the supervisor or manager initiating the action. The employee should be directed to sign the Notice of Unsatisfactory Service. If the employee refuses to sign, or if the employee is unavailable for issuance, a witness must sign the form to indicate that the employee was offered a copy of the form.

The Notification of Recommended Demotion and the Notice of Unsatisfactory Service should be forwarded immediately after it is issued to the Office of Employer/Employee Relations. If an employee has refused to sign the Notice of Unsatisfactory Service or was unavailable to have it issued in person, a memo to that effect should be included with the documents, and Employer/Employee Relations will forward the Notice to the employee via regular and certified U.S. mail.

- **Statement of Charges.** Upon receipt of a Notification of Recommended Demotion and a Notice of Unsatisfactory Service, the Office of Employer/Employee Relations will prepare a Statement of Charges. A Statement of Charges is the formal statement of the causes and charges that form the basis for the recommendation for demotion to the Board of Trustees.

The Board will consider the discipline in closed session, and, usually at the same meeting, will act on the recommendation in open session. Employer/Employee Relations will determine the date of the meeting of the Board at which the discipline will be acted on, schedule the matter for consideration during the closed session meeting, prepare a Board action item for inclusion in the agenda for the open session meeting, summarize the recommended discipline for the Board Letter for that meeting, and insure that the college President or District Office division head signs the Statement of Charges, or authorizes staff to sign it in his or her place. Employer/Employee Relations will insure that the college President or District Office division head or his or her representative will be present for the closed session and open session meetings.

- **“Skelly Letter”.** Employer/Employee Relations will send the Statement of Charges to the employee whose discipline has been recommended to him or her via U.S. certified mail, return receipt requested, and regular mail to his or her address of record. Along with the Statement of Charges, the employee will be sent a copy of the Notice of Unsatisfactory Service that is the basis for the discipline and a letter that informs the employee that the discipline has been recommended. This letter is commonly referred to as the “Skelly” letter.

The letter will inform the employee of the date that the Board will consider the action and that he or she has the right to request that the Board’s consideration of the discipline that usually occurs in closed session, occur in open session. If the employee makes this request, Employer/Employee Relations will schedule the open session consideration to

occur immediately after the Board convenes its meeting (usually 12:30 p.m.) and before the scheduled closed session. The employee will have the right to be represented at the open session meeting by his or her union representative. Presentations to the Board will be in accordance with the Board's policy for public speakers. Employer/Employee relations will prepare and distribute a "script" for the Board, the Chancellor and other senior staff to follow for this presentation.

The "Skelly" letter will also inform the employee that he or she has the right to respond, either in writing or in person, to the charges contained in the Statement of Charges prior to the Board's consideration of the recommendation for discipline. This opportunity to respond is usually referred to as the "Skelly meeting" or "Skelly hearing." The person to whom the employee must respond will be named in the letter. If the employee chooses to respond in writing, his or her written response must be received within seven (7) working days from the date of the "Skelly" letter. The written response will be made available to the Board of Trustees in closed session for its consideration. If the employee chooses to respond in person, the meeting with the person designated to hear the response must occur within seven (7) working days from the date of the letter, unless other arrangements have been made. In no case may this meeting occur on or after the date the Board is scheduled to consider the matter

- **"Skelly Hearing"**. The California Supreme Court in a 1975 decision (*Skelly v. State Personnel Bd.*, 15 Cal. 3d 194.) has ruled that a public employee whose suspension, demotion or dismissal has been recommended has the right to due process prior to the Board of Trustees acting on the recommendation. The 14th Amendment to the United States Constitution precludes any state from taking property without due process. In *Skelly*, it was found that an employee's public sector job constituted property. Therefore, the imposition of discipline by the Board of Trustees must be preceded by procedural due process. Although, this due process right is not a right to a full evidentiary hearing, the Court ruled that the employee has the right to:
 - a. receive a statement of the nature of the proposed discipline (contained in the Notification of Recommended Suspension, the Statement of Charges and the "Skelly" letter);
 - b. know the effective date of the proposed discipline (contained in the Statement of Charges);
 - c. know the reasons for the discipline (the causes cited in the Statement of Charges);
 - d. be informed of the specific policy or rule violated (the causes and the charges supporting those causes);
 - e. be provided with a copy of all materials considered in proposing the action (i.e. time cards for absenteeism cases, material prepared by the employee that contains excessive errors, etc.); and

- f. receive a statement advising the employee of the right to respond orally or in writing (the "Skelly" letter).

If an employee chooses to respond to the charges in writing, Employer/Employee Relations will include the written response with the materials that are presented to the Board for consideration in closed session. The Board will review and take under advisement the employee's response.

If an employees wishes to respond to the charges in person, he or she must schedule an appointment with the person designated to conduct the "Skelly" hearing within seven (7) working days from the date of the "Skelly" letter. The person who has been so designated must be an objective official of the District, usually a management employee, who is empowered to change the college or division's recommendation for discipline, if necessary.

An employee who is represented by an exclusive collective bargaining agent has the right to be represented by the union at the "Skelly" hearing. During the hearing, the employee or his or her representative has the right to review all of the material that was considered in proposing the discipline. He or she has the right to present information or arguments that could have the effect of causing the person conducting the hearing to change the recommendation for discipline. That person is not required to respond to any of the employee's information or arguments during the hearing, but must inform the employee of his or her decision *prior* to the matter being presented to the Board in closed session. The notification should be in writing to the employee with copies to Employer/Employee Relations and his or her representative.

- ***Recommendation for Dismissal.*** A recommendation to terminate an individual's employment is the final and most severe of the progressive discipline steps. Dismissal should be recommended only when it becomes apparent that, regardless of the disciplinary steps that have already been imposed, improvement has not and *will not* occur.

For chronic performance or behavioral problems, at least one period of suspension should have been approved by the Board prior to making a recommendation for an employee's dismissal. If the employee appealed the suspension, the Personnel Commission must have sustained the discipline. If prior discipline was not sustained by the Commission, it is as if the discipline had not been imposed at all.

Notwithstanding the requirement to utilize progressive discipline in an attempt to bring about improvement in an employee's performance and/or behavior, the occurrence of certain incidents could justify a recommendation for an employee's dismissal without any of the less severe progressive steps in the process having been imposed. Examples of such incidents include, but are not limited to acts of violence, dishonesty, gross insubordination, and the like. If such an extreme incident occurs, a supervisor or manager should immediately contact the Office of Employer/Employee Relations for advice.

Regardless of the nature of the incident, the steps listed below must be accomplished.

- **Notice of Unsatisfactory Service.** A Notice of Unsatisfactory Service that documents the performance or behavioral problems and/or the specific incidents that serve as the basis for the recommendation to dismiss an employee must be prepared as outlined in the section above and issued to the employee along with a Notification of Recommended Dismissal, LACCD Form C2004-5.
- **Notification of Recommended Dismissal.** The Notification of Recommended Dismissal must be completed and signed by the college President or District Office division head prior to issuing it to the employee. This document, along with the Notice of Unsatisfactory Service, must be issued to the employee at the same time by the supervisor or manager initiating the action. The employee should be directed to sign the Notice of Unsatisfactory Service. If the employee refuses to sign, a witness must sign the form to indicate that the employee was offered a copy of the form.

The Notification of Recommended Dismissal and the Notice of Unsatisfactory Service should be forwarded immediately to the Office of Employer/Employee Relations. If an employee has refused to sign the Notice of Unsatisfactory Service, or if the employee was unavailable to have the documents presented to him or her in person, a memo to that effect should be included with the documents, and Employer/Employee Relations will forward the Notice and the Recommendation for Dismissal to the employee via U.S. certified and regular mail.

- **Statement of Charges.** Upon receipt of a Notification of Recommended Dismissal and a Notice of Unsatisfactory Service, the Office of Employer/Employee Relations will prepare a Statement of Charges. A Statement of Charges is the formal statement of the causes and charges that form the basis for the recommendation for dismissal to the Board of Trustees. The Statement also must indicate the effective date of the dismissal; this will usually be the day after the day the Board approves the recommendation in its open session meeting.

The Board will consider the discipline in closed session, and, usually at the same meeting, will act on the recommendation in open session. Employer/Employee Relations will determine the date of the meeting of the Board at which the discipline will be acted on, schedule the matter for consideration during the closed session meeting, prepare a Board action item for inclusion in the agenda for the open session meeting, summarize the recommended discipline for the Board Letter for that meeting, and insure that the college President or District Office division head signs the Statement of Charges, or authorizes staff to sign it in his or her place. Employer/Employee Relations will insure that the college President or District Office division head or his or her representative will be present for the closed session and open session meetings.

- **“Skelly Letter”.** Employer/Employee Relations will send the Statement of Charges to the employee whose discipline has been recommended via U.S. certified mail, return receipt requested, and regular mail to his or her address of record. Along with the Statement of Charges, the employee will be sent a copy of the Notice(s) of Unsatisfactory Service that is the basis for the discipline and a letter that informs the employee that the discipline has been recommended. This letter is commonly referred to as the “Skelly letter.”

The letter will also inform the employee of the date that the Board will consider the action and that he or she has the right to request that the Board’s consideration of the discipline that usually occurs in closed session, occur in open session. If the employee makes this request, Employer/Employee Relations will schedule the open session consideration to occur immediately after the Board convenes its meeting (usually 12:30 p.m.) and before the scheduled closed session. The employee will have the right to be represented at the open session meeting by his or her union representative. Presentations to the Board will be in accordance with the Board’s policy for public speakers. Employer/Employee Relations will prepare and distribute a “script” for the Board, the Chancellor and other senior staff to follow for this presentation.

The “Skelly” letter will also inform the employee that he or she has the right to respond, either in writing or in person, to the charges contained in the Statement of Charges prior to the Board’s consideration of the recommendation for discipline. This opportunity to respond is usually referred to as the “Skelly meeting” or “Skelly hearing.” The person to whom the employee must respond will be named in the letter. If the employee chooses to respond in writing, his or her written response must be received within seven (7) working days from the date of the “Skelly” letter. Written responses will be made available to the Board of Trustees for its consideration in closed session. If the employee chooses to respond in person, the meeting with the person designated to hear the response must occur within seven (7) working days from the date of the letter unless other arrangements have been made. In no case may this hearing be conducted on or after the date the Board is scheduled to consider the matter.

- **“Skelly Hearing”.** The California Supreme Court in a 1975 decision (*Skelly v. State Personnel Bd.*, 15 Cal. 3d 194.) has ruled that a public employee whose suspension, demotion or dismissal has been recommended has the right to due process prior to the Board of Trustees’ action on the recommendation. The 14th Amendment to the United States Constitution precludes any state from taking property without due process. In *Skelly*, it was found that an employee’s public sector job constituted property. Therefore, the imposition of discipline by the Board of Trustees must be preceded by procedural due process. Although, this due process right is not a right to a full evidentiary hearing, the Court ruled that the employee has the right to:
 - a. receive a statement of the nature of the proposed discipline (contained in the Notification of Recommended Suspension, the Statement of Charges and the “Skelly” letter);

- b. know the effective date of the proposed discipline (contained in the Statement of Charges);
- c. know the reasons for the discipline (the causes cited in the Statement of Charges);
- d. the specific policy or rule violated (the causes and the charges supporting those causes);
- e. be provided with a copy of all materials considered in proposing the action (i.e. time cards for absenteeism cases, material prepared by the employee that contains excessive errors, etc.); and
- f. receive a statement advising the employee of the right to respond orally or in writing (the "Skelly" letter).

If an employee chooses to respond to the charges in writing, the written response will be included in the materials that are presented to the Board for consideration in closed session. The Board will review and take under advisement the employee's response.

If an employees wishes to respond to the charges in person, he or she must schedule an appointment with the person designated to conduct the "Skelly" hearing within seven (7) working days from the date of the "Skelly" letter. The person who has been so designated must be an objective official of the District, usually a management employee, who is empowered to change the college or division's recommendation for discipline, if necessary.

An employee who is represented by an exclusive collective bargaining agent has the right to be represented by the union at the "Skelly" hearing. During the hearing, the employee or his or her representative has the right to review all of the material that was considered in proposing the discipline. He or she has the right to present information or arguments that would have the effect of causing the person conducting the hearing to change the recommendation for discipline. That person is not required to respond to any of the employee's information or arguments during the hearing, but must inform the employee of his or her decision *prior* to the matter being presented to the Board in closed session. This notification should be in writing to the employee with copies to Employer/Employee Relations and his or her representative.

Presenting Recommendations for Classified Employee Discipline to the Board of Trustees

The Office of Employer/Employee Relations is responsible for the coordination of the various steps involved in presenting a recommendation for discipline to the Board of Trustees. The following summarizes the steps that occur *after* the Statement of Charges and “Skelly” letter have been sent to the employee.

- **Board Meeting Agenda Item** – The Office of Employer/Employee Relations will prepare a Board of Trustees meeting agenda item and will insure that the item is submitted to the Office of the Chancellor in sufficient time to be included on the agenda for the date intended. The agenda item will include:
 - a. the employee’s employee number
 - b. the causes for the disciplinary action
 - c. the disciplinary action recommended
 - d. the effective date of the disciplinary action
 - e. an assurance that the “Skelly” notification was sent and that the employee had the opportunity to request a “Skelly” hearing
- **Board Letter** - Employer/Employee Relations will prepare a summary of the disciplinary action and will insure that the summary and a copy of the Statement of Charges is included in the Board Letter for the Board meeting at which the discipline is scheduled to be acted on.
- **Closed Session Meeting** – Employer/Employee Relations will insure that a copy of the Statement of Charges and other pertinent documents are included in the closed session Board books for the appropriate closed session meeting. The college President or District Office division head must be informed by Employer/Employee Relations that the discipline is scheduled for that closed session meeting; it will be the college President or division head’s responsibility to present the recommendation for discipline to the Board in closed session and to answer any questions that the Board might have.
- **Requests for Closed Session Discussion to Occur in Open Session** – In accordance with the Brown Act, an employee whose discipline has been recommended may request that the discussion regarding the discipline that the Board normally has in closed session be conducted in open session. The employee will be informed of this right in the “Skelly” letter. If

such a request is made, Employer/Employee Relations will prepare a script for the Board members, the Chancellor and other senior staff to follow to insure that the Board and the employee are informed that the presentation should not be conducted as a hearing. The employee and/or his or her representative will be allowed time to make presentations in accordance with current Board procedures relating to public speakers. This open session discussion will usually be conducted immediately after the Board convenes its meeting and before going into closed session.

- **Open Session Meeting** – During its regular open session meeting, the Board will normally vote on the disciplinary action.
- **Implementation of Discipline** – Employer/Employee Relations will insure that the college or division is notified that the recommendation for discipline was approved, modified or denied by the Board on the morning following the day that the Board acts. If the recommended discipline was dismissal, it will become effective the day immediately following the day that the Board approved the action. If the discipline was suspension, the suspension will usually commence on the Monday following the date the Board approved the action. Employer/Employee Relations will insure that the college or division submits the required personnel actions to implement the discipline.
- **Informing Employee of Appeal Right** – After the Board of Trustees approves a disciplinary action for a permanent (non-probationary) employee, in a letter the Personnel Commission will inform him or her of the approval, and to explain his or her right to appeal. The employee will be given fourteen (14) calendar days from the date he or she receives the letter to file an appeal.
- **Personnel Records** – For all approved disciplinary actions, Employer/Employee Relations will insure that the appropriate documents are filed in the disciplined employee's Official Personnel File. Usually these documents will include Notice(s) of Unsatisfactory Service, the Statement of Charges, a copy of the "Skelly" letter, and a copy of the Board agenda item containing the approved disciplinary action.

Employee Appeals

The Appeal Hearing. A permanent (non-probationary) employee has the right to file an appeal with the Personnel Commission if he or she feels that the discipline was imposed on the basis of one or more of the following grounds:

- 1) that the procedures set forth in these (the Personnel Commission) rules have not been followed;
- 2) that the suspension, demotion or removal was made because of age, race, color, national origin, ancestry, religion, creed, sex, marital status, pregnancy, sexual orientation, disability, medical

condition (cancer related), veterans status, or political affiliation (except as provided by Paragraph C [of Rule 735]);

- 3) that there has been an abuse of discretion; or
- 4) that the action taken was not in accord with the facts.

When a timely appeal has been filed, the Personnel Commission will inform Employer/Employee Relations, Human Resources and General Counsel in writing. Usually, the Personnel Commission will authorize a third party, independent hearing officer to conduct a full evidentiary hearing, and usually the hearing will commence within sixty (60) calendar days from the date the appeal was filed, on a date scheduled by Commission staff. The hearing officer that is appointed will be empowered to issue subpoenas, administer oaths, cause the deposition of witnesses to be taken, make findings of fact, make recommendations to the Personnel Commission, and perform other acts consistent with the Education Code and the Personnel Commission Rules.

The hearing will be limited to those issues contained in the Statement of Charges. The District, as the moving party in the discipline, will have the burden of proof, and will be called on first to present testimony and evidence that support the charges; the disciplined employee has the right to cross-examine the District's witnesses. The disciplined employee will then have the opportunity to respond to the Statement of Charges by calling witnesses and the producing documentary and other evidence; the District will have the right to cross-examine those witnesses. Either by order of the hearing officer or by mutual agreement, the District and the employee representative may present closing arguments orally at the conclusion of testimony or in writing in the form of post-hearing briefs.

Usually within thirty (30) days from the conclusion of the hearing, the hearing officer will make findings of fact and present a recommendation to the Personnel Commission (if post-hearing briefs are ordered by the hearing office or are agreed upon by the parties, the date for the filing of briefs is considered the date that the hearing concluded). The Commission may accept, reject or modify the recommendation of the hearing officer, and will forward its decision to the Board of Trustees and the appellant. Full details regarding the conduct of the hearing and the Commission's actions are contained in [Personnel Commission Rule 735](#).

If the Employee's Appeal is Sustained – If the Personnel Commission decides to sustain the appeal of the disciplined employee, the Commission may order the District to make the employee "whole" by directing it to pay full or partial compensation for the time the employee was suspended or dismissed, by restoring lost seniority, by compensating the employee for appeal expenses, by expunging the employee's personnel record, by ordering the employee transferred, or by any other appropriate action. The Office of Employer/Employee Relations will be responsible for implementing or causing to have implemented the "make whole" remedy ordered by the Personnel Commission.

Abandonment of Position

When a regular classified service employee has been absent from work for three (3) working days or more and no leave has been granted to cover this absence, the college President or District Office division head, or his or her designated representative must request the Office of Employer/Employee Relations to initiate the "abandonment of position" procedure.

- *Request "3-Day" Letter.* The request must be made in writing (email or memorandum) to the associate vice Chancellor of employer/employee relations or to the principal employer/employee relations specialist. This communication must contain the date from which the employee has been absent, the date of the last contact with the employee, the way in which the employee made the contact or was contacted (i.e. in person, voice mail, email, memorandum, telephone conversation), and the efforts made by the college or District Office division to contact the employee. The employees' supervisor or manager must have made at least one (1) attempt to contact the employee by telephone.

- *Issuing the Abandonment Letter.* When a written request for an abandonment of position letter is received by the Office of Employer/Employee Relations, an abandonment of position letter ("3-day Letter; Form C1046) with two originals and two copies will be prepared by the Office of Employer/Employee Relations. One original will be mailed to the employee by U.S. Certified Mail, return receipt requested. The other original will be mailed to the employee by First Class U.S. Mail. A copy of Form C315 (Resignation), Form C1002 (Leave Request) and Form C305 (Attending Physician's Statement) will be included in both letters. A copy of the letter will be mailed to the college President and the college personnel technician at the college or to the District Office division head and the division personnel technician at the District Office. A copy will be placed in the employee's personnel file.

- *Following-up on Abandonment Letter.* If the employee does not comply with the instructions contained in the letter within the allotted time, after making one final attempt to contact the employee by telephone, the Office of Employer/Employee Relations will notify initiating location to proceed with abandonment procedures. The college or District Office division should submit the appropriate personnel action. The Office of Employer/Employee Relations will process the employee's separation from service as a routine action to be approved by the Board of Trustees at the next available Board meeting.

Disciplinary Procedures for Faculty Unit Academic Employees

Although the rules and procedures for the discipline of academic employees that are found in the Education Code differ from those for classified employees, the principles of progressive discipline and just cause apply nonetheless.

Dismissal for Cause, Non-renewal of Contract and Reduction in Force

Dismissal for cause, non-renewal of contract and reduction in force all result in the termination of employment for an academic employee. Nonetheless, it is important to understand the differences and distinctions among the three before beginning a discussion of dismissal and penalization (suspension) for cause.

- ***Dismissal for Cause*** – If an academic employee displays performance and/or behavioral problems, and if those problems do not improve after having been noted in regular performance evaluations, and dealt with through a reasonable amount of counseling, guidance and less severe discipline, it may become necessary to recommend to the Board of Trustees that the individual's employment be terminated *for cause*. It is this type of termination with this chapter deals.
- ***Non-renewal of Contract*** – The term "contract" here refers to the legal document that extends employment to a probationary academic employee; "contract employee" refers to a *probationary* academic employee. Contracts are entered into with a probationary academic employee at the beginning of the *first year*, *second year* and *third year* of employment. The procedures for the non-renewal of a probationary employee's contract, commonly referred to as "[March 15th procedures](#)", are contained in the following chapter. However, it should be noted here that the non-renewal of a probationary employee's contract is *not* disciplinary, and does *not* require that just cause for the termination exists.

- ***Reduction in Force*** – A contract or permanent academic employee's employment may be terminated by a reduction in force, also referred to as a layoff. As was the case with non-renewal of contract, this type of employment termination is *not* disciplinary. The rules, regulations and procedures for this type of action are contained in the following chapter.

Just Cause: Causes for the Discipline of Academic Employees

If it becomes necessary to issue a Notice of Unsatisfactory Service to a faculty member, or if the Board of Trustees agrees to act on a recommendation that the faculty member be penalized or dismissed, one or more of the following just causes, as listed in Education Code section 87732, must be cited:

- a) Immoral or unprofessional conduct.
- b) Dishonesty.
- c) Unsatisfactory performance.
- d) Evident unfitness for service.
- e) Physical or mental condition that makes him or her unfit to instruct or associate with students.
- f) 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 governing board of the community college district employing him or her.
- g) Conviction of a felony or of any crime involving moral turpitude.
- h) Conduct specified in Section 1028 of the Government Code.

These causes should be broadly construed and should be sufficient to encompass all of the performance and behavioral problems that a supervisor or administrator is likely to encounter.

Performance Evaluation and Progressive Discipline

More often than not, if issues regarding a Faculty Unit academic employee's performances exist, those issues will have been first identified in the context of the peer evaluation procedure contained in Article 19 of the collective bargaining agreement between the District and the American Federation of Teachers Faculty Guild. If the provisions in this article for basic, comprehensive and administrative evaluation are followed, and the appropriate evaluation forms, contained in Appendix C of the Agreement, are judiciously and honestly completed, a faculty member will receive a clear and unambiguous assessment of his or her performance. Similarly, if an evaluation process that has been properly implemented results in an assessment of "needs improvement" in one

or more areas, or of “unsatisfactory” for the overall evaluation, the completed evaluation will form the basis for any subsequent progressive discipline that may become necessary.

When a faculty member’s performance has been assessed as needing improvement or has been found to be overall unsatisfactory, the employee must be provided with suggestions and recommendations that would lead to performance improvement in Section D of the evaluation summary. Additionally, in such cases, Article 19 requires that an Administrative Evaluation be completed. In sections 1, “Knowledge of Subject Area,” 2, “Effectiveness,” 3, “Performance of Responsibilities,” and 4, “Participation in Professional Growth Activities,” of the Administrative Evaluation form, the evaluator is required to set out *goals and time lines for improvement* in the areas of concern.

The basic and comprehensive evaluations are the joint responsibilities of faculty peers, department chairs, academic supervisors (i.e. deans and associate deans) and administrators (i.e. Vice Presidents). The responsibility for completion of the Administrative Evaluation and for implementing the steps of progressive discipline lies solely with academic supervisors and administrators.

Progressive Discipline Steps for Faculty Unit Employees

These steps are the progressive discipline “tools” that are available to those responsible for the supervision and evaluation of faculty members. As with all progressive discipline, it is *not* required that these steps follow one after the other in the precise order listed. Similarly, implementation of the lower level steps does not have to wait until a basic or comprehensive performance evaluation has been completed. If a department chair, academic supervisor or administrator has identified a faculty member’s performance or behavioral problem, that, if left unaddressed, has the potential of becoming serious, the issues must be addressed immediately and appropriately through the use of the progressive discipline steps of counseling, warnings and documentation.

- ***Oral Warning.*** An oral warning is a verbal communication from an academic supervisor or administrator to a faculty member regarding a performance or behavioral problem that must be remedied. The warning may be an informal remark made in passing (i.e. “Mr. Jones, students have complained that you have been more than fifteen minutes late for your Political Science 1 class three times in the past two weeks.”), or may be more formally communicated in the context of a counseling session. For example, If, after one or more areas that need to be improved were noted during the course of a faculty member’s basic or comprehensive evaluation or in an Administrative Review, and the employee has not followed through on the goals and timelines for improvement that were identified, a formal counseling session in which an oral warning is issued would be appropriate.

The oral warning must be communicated to the faculty member by an academic supervisor or an administrator in *private*, and the faculty member should be assured of the *confidentiality* of the meeting. This meeting should be scheduled to allow enough time for him or her to arrange for a union representative to be present. However, the scheduling of the union representative is not the responsibility of the academic supervisor or administrator, and should not cause an undue delay in conducting the meeting. Another

supervisory or administrative employee should accompany the administrator or academic supervisor conducting the meeting; the appropriate department chair, may, at his or her option, attend. At the discretion of the academic supervisor or administrator, the contents of the counseling session and oral warning may be summarized in a written counseling memo that is issued to the employee after the meeting. This memo does not immediately become part of the employee's official personnel file, but may be included as a part of a Notice of Unsatisfactory Service as evidence of prior counseling and guidance, should the issuance of a Notice later become necessary. However, unlike a letter of reprimand or Notice of Unsatisfactory Service, a counseling memo is *not* considered a disciplinary document *per se*.

In accordance with the principles of [just cause](#), the faculty member should be made aware of the reason (*cause*) for the warning and should be provided with specific examples of the unsatisfactory performance or behavior (*charges*). The desired level of performance or behavior should be reconfirmed with the employee and he or she should be provided with suggestions for how improvement may be achieved. Finally, the employee should receive a clear statement of the disciplinary consequences that will follow if he or she fails to demonstrate immediate and sustained improvement.

- **Written Warning** - The written warning should specifically recall any previous oral warnings, cite the rule, regulation or procedure that was violated, cite specific examples of the employee's violation, state the desired level of performance or behavior required, suggest actions the employee can take that would lead to improvement, and clearly set forth the what the disciplinary consequences will be if immediate and sustained improvement is not forthcoming.

Counseling Meeting. The written warning should be issued in a formal counseling session with the faculty member. This meeting should be scheduled to allow enough time for him or her to arrange for a union representative to be present. However, the scheduling of the union representative is not the responsibility of the academic supervisor or administrator, and should not cause an undue delay in conducting the meeting. Another supervisory or administrative employee should accompany the administrator or academic supervisor conducting the meeting; the appropriate department chair, may, at his or her option, attend.

During the meeting, the faculty member must be explained the nature of the unsatisfactory performance or behavior. Previous warnings and counseling, if any, must be referenced. The faculty member must be given specific examples of the unsatisfactory service, and must be offered suggestions for ways to achieve improvement. The faculty member must be clearly informed of the disciplinary consequences that will follow his or her failure to achieve significant and sustained improvement.

- **Notice of Unsatisfactory Service.** If improvement is not noted after the issuance of oral and written warnings, or if a disciplinary problem is severe enough to warrant skipping those steps, it is appropriate to issue a Notice of Unsatisfactory Service. Reasons for issuing the Notice include, but are not limited to providing a faculty member with written assistance for improving effectiveness, establishing a written record that some aspects of an employee's performance has been found to be unsatisfactory and that the employee has been informed of it, and to document unsatisfactory performance that may be cited in further disciplinary actions, should the employee not show the required level of improvement.

A Notice of Unsatisfactory Service may be issued by itself, or it may be issued as the basis for additional disciplinary action (suspension or dismissal). The Notice is issued on District form C117, and *must* contain the following information:

- **Dates.** The “from” and “to” dates for the Notice must coincide with the first and last incidents recorded in the Charges section. If the Notice is not the first one issued to the employee, the beginning date of the new Notice should be the date following the end date of the previous Notice, if there has not been an intervening period of satisfactory performance.
- **Plain Language.** A Notice of Unsatisfactory Service must be written in ordinary and concise language that can be easily understood by the employee to whom it is issued.
- **Observations.** A record of classroom or workplace visitations that have been made by the appropriate administrator or supervisory must be listed in *section 1* of the Notice.
- **Conferences.** Unless issued for an infraction severe enough that prior progressive discipline steps were skipped, in *section 2* of the Notice, the formal and informal counseling and guidance conferences that were conducted with the employee, including the date and time of the conference and a brief description of the issues covered, must be listed. All copies of written counseling and guidance memos, warning memos and/or letters of reprimand should be appended to the Notice.
- **Causes.** The Notice must cite, in *section 3*, one or more of the causes set forth in [Education Code section 87732](#).

Unprofessional Conduct and Unsatisfactory Performance. [Education Code section 87734](#) provides that a district “shall not act upon any charges of unprofessional conduct or unsatisfactory performance unless, during the preceding term or half college year prior to the date of the filing of the charge, and at least 90 days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unprofessional conduct or unsatisfactory performance, specifying the nature thereof with specific instances of behavior and with particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge.”

If unprofessional conduct and/or unsatisfactory performance are cited as causes, the faculty member must be informed in writing in *section 5* of the Notice form that he or she will have the opportunity during a 90-day or longer period of time to demonstrate improvement sufficient to avoid the imposition of disciplinary action. If the employee does not demonstrate such improvement, at the end of the 90-day or more period, discipline based on the causes of unprofessional conduct and/or unsatisfactory performance may be imposed.

- **Charges.** A charge is a detailed summary of the employee’s specific acts, omissions, commissions, and/or reasons for the issuance of the Notice. Charges support and give meaning to the causes listed in the previous section of the Notice. For instance, if the issue is one of absenteeism or tardiness, a

charge simply can be a listing of an employee's absences or tardiness, usually in an attachment to the Notice, which includes the date, the length, and the reason for the absence or tardiness, and a statement of the employee's absence rate, along with a statement of the effect that the faculty member's absences had on the academic program.

A charge may also relate the facts of a specific occurrence of unsatisfactory performance, and must include the date, time of day, place and witnesses, if any, to the incident. The incident of unsatisfactory performance must be thoroughly detailed. Such charges should be listed in chronological order in *section 4* of Form C117 using an attached page if not enough space is available on the form itself. An example of such a charge would be a thorough description of an administrator's or academic supervisor's observations of unsatisfactory classroom performance during a scheduled visitation.

- **Directions for Improvement.** The Notice must contain the academic supervisors' or administrator's directions and suggestions for the employee's improvement in *section 5*, unless the Notice is the basis for a recommendation for dismissal. These directions should provide an expected date for improvement to be realized (*immediately* is appropriate). The disciplinary consequences of the faculty member's continued failure to demonstrate improvement should be clearly stated (i.e. continued failure to achieve the improvement required shall result in further, more serious disciplinary action, up to and including dismissal).
- **Issuance.** A Notice may be prepared and issued by any supervisory academic or administrative employee who exercises supervisory authority over a faculty member. The person who prepared the Notice (usually Vice President, dean or associate dean) and the college President or District Office division head, or his or her designee must sign it. The appropriate Vice President should countersign with the dean or associate dean. At his or her option, the department chair *may* sign the Notice. The Notice must have *all* of the *required* signatures in place when it is issued to the employee.

The Notice should be issued to the faculty member in a private meeting, and the employee should be assured of the confidential nature of the meeting. The appropriate Vice President and the appropriate academic supervisor should conduct the meeting. The faculty member must be asked to sign the Notice, and must be offered a copy of the form and any attachments to it. If the faculty member refuses to take a copy of the form, and/or refuses to sign it, a witness present at the meeting must, by his or her signature, indicate that the employee was issued the Notice and offered a copy of it. A thorough counseling session should be held that covers the reasons for issuing the Notice, the level of performance that will be expected of the employee, and the consequences the employee will face if immediate and sustained improvement is not demonstrated.

The faculty member has the right to have a union representative at the meeting; however the person who arranges the meeting has no responsibility to inform him or her of this right or to arrange for the union representative's attendance. Moreover, the employee's inability to arrange for a representative's presence in a reasonable amount of time (i.e. two or three days) should not be the cause of a delay in the scheduling of the meeting.

The original signed Notice should be forwarded to Employer/Employee Relations for placement in the employee's official personnel file. A copy of the Notice must be given to the employee, and the college or division for their files should retain a copy.

Should the employee not be available for issuance of the Notice in person or if he or she refused to sign the Notice or refused a copy of it, the Notice must be forwarded to the Office of Employer/Employee Relations, with a memo that so indicates. Employer/Employee Relations will then send the Notice to the employee's address of record via U.S. certified and regular mail.

- **Grievance and Appeal.** A faculty member who has been issued a Notice of Unsatisfactory Service upon which *no* further discipline (suspension or dismissal) is based may file a grievance to challenge the Notice in accordance with [Article 28, Grievance Procedure](#), of the collective bargaining agreement between the District and the American Federation of Teachers College Faculty Guild. If the grievance proceeds to the final step in the procedure, an arbitration hearing will be conducted by a third party neutral.

If the Notice carries with it a recommendation for formal discipline (suspension or dismissal), the employee will have the right to file an appeal with the Board of Trustees prior to the imposition of discipline, in accordance with the procedure described below.

Dismissal or Penalization of Faculty Members

The Education Code sets forth two types of discipline that may be imposed on contract and regular faculty members if the less severe steps of progressive discipline have not produced the desired level of change in performance or behavior. A faculty unit employee may be dismissed and/or have penalties imposed by the Board of Trustees if one or more of the grounds (causes) for discipline found in [Education Code section 87732](#) exist. The penalties that the Board may impose are *suspension* for up to one year or suspension for up to one year and a *reduction or loss of compensation* during the period of suspension.

The procedural steps associated with dismissal and penalization are identical and are described below.

- **Contact Human Resources and Employer/Employee Relations.** If the less severe progressive discipline steps outlined above have been implemented and have not produced the desired changes in performance and behavior, it will be necessary to take the more severe step of imposing penalization or dismissal. Employer/Employee Relations has the responsibility to implement the complex procedures associated with the discipline process.

For this reason, when it becomes apparent that formal discipline must be imposed, the college or the District Office division must contact Employer/Employee Relations as soon as possible to initiate the process.

➤ ***Satisfaction of Grounds.*** Prior to the Board of Trustees exercising its right to penalize or dismiss a faculty unit employee, [Education Code section 87671](#) requires that the following grounds must have been satisfied:

- **Evaluation.** The faculty member must have been evaluated in accordance with the procedures contained in Article 19 or Article 42 of the [collective bargaining agreement](#) between the District and the AFT College Faculty Guild.
- **Documentation.** The Board must receive *all* statements of evaluation that considered the events for which dismissal or penalties may be imposed. Generally, this means that the Board must be provided with copies of relevant peer and administrative evaluations, letters of warning, Notices of Unsatisfactory Service, and any other evaluative documents that illustrate the reasons that exist for making the recommendation for discipline.
- **Recommendations.** The Board of Trustees must have received from the college President or District Office division head and the Chancellor the written recommendation for dismissal or penalization prior to acting on the recommendation.
- **Consideration of Recommendation.** The Board must consider the statements of evaluation and the recommendations of the Chancellor and the college President or District Office division head in a lawful meeting of the Board. The Board's consideration usually occurs during a regularly scheduled and noticed closed session meeting.

Operationally, Employer/Employee Relations will coordinate and control for the receipt of the evaluation materials and will insure that the college President or District Office division head and the Chancellor have submitted their written recommendations for the Board's consideration. Employer/Employee Relations will initiate a closed session agenda item for the discipline action.

➤ ***Statement of Decision to Dismiss or Penalize.*** [Education Code section 87672](#) requires that, if the Board of Trustees decides to penalize or dismiss a contract or regular faculty member, it shall deliver to the employee a signed written statement that sets forth its complete and precise decision and the reasons that support the decision.

Operationally, Employer/Employee Relation will prepare a Statement of Charges that includes all of the charges that support the causes for the faculty member's discipline. Employer/Employee Relations will schedule a closed session agenda item for the Board's consideration of the recommendation for discipline.

A draft copy of the Statement of Charges shall be sent to the faculty member whose discipline has been recommended along with a letter that informs the faculty member that the Board will be considering the matter of his or her discipline in closed session. The letter must be sent so that the employee receives the notice no less than 24 hours prior to the time the Board will consider that matter. This letter the will inform the employee that, in accordance with the Brown Act, he or she may request that the secretary to the Board of Trustees schedule the Board's discussion of the

discipline that normally would occur in closed session to be conducted in open session. The employee will be given the name and telephone number of the secretary to the Board of Trustees and will be informed of the time and place of the open session meeting. The Board will usually consider the matter in closed session after any presentation by the employee in open session.

- ***Postponement of the Effective Date of the Board's Decision.*** In closed session, the Board will consider the recommendation for discipline. The Board may agree with the recommendation, may modify the recommendation by authorizing the imposition of a lower or higher level of discipline, may reject the recommendation entirely, or may make a decision to discipline but choose to *postpone* the operative date of that decision for a period of up to one (1) year, in accordance with Education [Code section 87672](#).

The purpose of such a postponement would be to allow the employee time to satisfy his or her legal responsibilities as determined by statute and rules and regulations of the District. In effect, the period of time encompassed by the postponement would constitute a *probationary* period for the employee. At the end of this period, the Board may choose to implement its original decision to discipline the employee or may permanently set its decision aside.

- ***Notice to Faculty Member of Board's Decision.*** Immediately after the decision of the Board to impose discipline, a faculty member will be informed of the decision in a letter from Employer/Employee Relations. The faculty member will be informed of the date of the Board's decision and the level of discipline that the Board intends to impose. Moreover, he or she will be put on notice that the discipline will become effective in thirty (30) calendar days from the date this notice was served unless he or she files an *objection* and demands, in writing to the Chancellor *and* the college President or District Office division head, that a hearing be conducted. In addition to the letter, the faculty member will be provided with a fully executed and signed copy of the Statement of Charges. If the employee files a timely objection, discipline will not be imposed by the Board until and if it receives a hearing decision that sustains the Board's intention to penalize or discipline.
- ***Response to Demand for Hearing.*** If the faculty member files an objection to the decision of the Board to impose discipline, [Education Code section 87674](#) requires that he or she will be informed in writing (by Employer/Employee Relations) that, if the Board and the employee agree that the matter should be heard by an arbitrator, an agreement must be reached between the Board and the employee on which arbitrator is to be appointed, and that this agreement must be reached within thirty (30) days from the date the District received the faculty member's objection. If agreement is reached, the agreement must be reduced to writing, signed by the faculty member and the authorized representative of the Board, and entered into the Board's official records. Arbitration proceedings will be conducted in accordance with [Education Code section 87675 and 87676](#). The costs of the arbitrator and hearing expenses, within the limitations set forth in [Education Code section 87677](#), shall be borne by the District

If there is no agreement to appoint an arbitrator, or if an arbitrator cannot be agreed upon, within thirty (30) days from the date the District received the faculty member's objection, in accordance with [Education Code section 87678](#), the matter must be certified by the District to the State of California Office of Administrative Hearings (OAH) for the appointment of an Administrative Law Judge (ALJ) to hear the matter. In certifying the matter to OAH, the Statement of Charges issued to the faculty member will serve as the District's accusation against the employee. In turn, the faculty member's letter of objection will serve as his or her notice of defense. The hearing will be conducted by OAH in accordance with [Education Code sections 87679 through 87681](#).

Unless legal counsel has been appointed, Employer/Employee Relations will be responsible for responding to the faculty member's objection, and for coordinating the assignment of the case to either an arbitrator or OAH. The District shall be responsible for the costs associated with the hearing as levied by OAH.

Whether the matter is heard by an arbitrator or ALJ, in no event may testimony or evidence relating to matters that occurred more than four (4) years prior to the date the Statement of Charges was issued to the faculty member be permitted ([Education Code sections 87675 and 87680](#)).

- ***Operation of Decision.*** The arbitrator or ALJ will issue a decision in the case. If the arbitrator or ALJ finds that there is cause to discipline the faculty member, he or she shall determine whether the employee should be dismissed, and shall determine the precise penalty to be imposed. The arbitrator or ALJ, in accordance with [Education Code sections 87676 and 87681](#), may determine that the operation of his or her decision should be *postponed*. If the arbitrator or hearing officer's decision is not postponed, the Board of Trustees shall impose the discipline by acting on an appropriate agenda item in a duly noticed open session meeting.
- ***Judicial Review.*** Upon petition of either party, the decision of the arbitrator or ALJ is subject to judicial review in a court of competent jurisdiction, in accordance with [Education Code section 87682](#).

Abandonment of Position – Faculty Employees

When a faculty member has been absent for more than five (5) consecutive days without permission or more than twenty (20) consecutive working days on an informal leave without a formal leave of absence having been approved, the college or District Office division must attempt to obtain a fully executed Leave of Absence Request from the employee (LACCD Form C 131). The computation of the number of working days the employee has been absent is based on the working days of the location rather than the assigned days of the employee (e.g., an employee assigned one day a week who has been absent for five consecutive assigned days has, therefore, been absent for a period exceeding 20 consecutive working days of the location and should be reported).

If the college or division is unable to contact the employee or if the employee fails to submit a fully executed leave request once contact is established, the Senior Associate Vice Chancellor of Human Resources must be informed, in writing, so the abandonment of position procedures described below can be initiated. This report

should include all of the known circumstances of the absence and the efforts made thus far to obtain a request for leave. For all attempts to contact the faculty member, the college or division should keep careful, written notes to document those attempts (i.e. "Telephoned Dr. Smith on this date. Telephone listed on District's personnel information system is disconnected.") and this record should be included in the notification to the Senior Associate Vice Chancellor.

➤ ***Employer/Employee Relations Attempt to Contact Faculty Member***

The Senior Associate Vice Chancellor will notify the Office of Employer/Employee Relations that a faculty member has been absent without leave and has neither returned to service nor been granted a leave of absence. Employer/Employee Relations will send a letter to the employee via regular mail to his or her address of record that notifies the faculty member that he or she must clarify his/her leave status within ten (10) working days from the date of the letter by either returning to work, filing a Leave of Absence Request or by filing a resignation; a Leave of Absence Request (Form C131) and a Resignation form (Form C315) will be included.

If no reply is received within ten (10) days, the Employer/Employee Relations will send a *second* letter, via certified U.S. mail, that advises the faculty member that he or she is considered absent without leave and steps will be taken to terminate his/her services unless the faculty member replies within ten (10) days from the date of the letter. As with the first letter, the faculty member will be informed that he or she must clarify his/her leave status within ten (10) working days from the date of the letter by either returning to work, filing a Leave of Absence Request or by filing a resignation; a Leave of Absence Request (Form C131) and a Resignation form (Form C315) will be included.

If a reply *is* received to the first or second notice within the time limits specified, Employer/Employee Relations will inform the college or division that the faculty member will be returning to service, or that the employee has resigned, or that he or she has submitted a fully executed Leave of Absence Request. If the faculty member has requested an optional leave, the college or division will be asked by Employee Relations to either approve or deny the request. If the request is denied, the college or division must inform the faculty member, in a letter sent via certified and regular mail, that the request has been denied, and direct him or her to return to service by a date certain. The employee must be informed that if he or she does not return his or her assignment(s) will be terminated because of abandonment of position.

➤ ***Separation From Service***

If Employer/Employee Relations does not receive a reply to this second notice, the college or division will be so informed and will be instructed to initiate an action to terminate the employee's assignment(s). Employer/Employee Relations will insure that this termination is included as a routine action for the Board of Trustees to act on at the next Board meeting. The faculty member will be notified of the impending action by Employer/Employee Relations in a letter sent via certified mail and regular mail.

*Note: Since the action of not reporting to work has been initiated by the employee, this separation is not considered a dismissal but a type of resignation (CC Opinion, Langstaff to Brown, 5-2-56).

Disciplinary Procedures for Academic Supervisors and Administrators

With the exception of the evaluation processes, the basis for and the methods involved in progressive discipline for academic supervisors and administrators are essentially the same as the progressive discipline steps and procedures described for the faculty unit. This chapter will outline the processes and highlight the differences.

Dismissal for Cause, Non-renewal of Contract and Non-reappointment

Dismissal for cause, non-renewal of contract and non-reappointment all result in the termination of employment for an academic administrator or supervisor. Nonetheless, it is important to understand their differences and distinctions among the three before beginning a discussion of dismissal and penalization (suspension) for cause.

- ***Dismissal for Cause*** – If an academic administrator or supervisor displays performance and/or behavioral problems, and if those problems do not improve after having been noted in regular performance evaluations, and if these issues have been dealt with by employing a reasonable amount of counseling, guidance and less severe discipline, it may become necessary to recommend to the Board of Trustees that the individual's employment be terminated *for cause*. It is this type of termination with which this chapter deals.
- ***Non-renewal of Contract*** – The term contract as used here refers to the legal document that may be used to extend employment for up to four (4) years to an academic administrator. [Education Code section 72411](#) provides that, with the agreement of the District and the administrator with whom the District has a contract, the contract may be terminated effective the next succeeding first day of July. In the case of an administrator's contract of more than one (1) year in length that

will expire the next succeeding June 30, the Board of Trustees has the option not to renew the contract, provided that the administrator has been given six (6) months prior notice thereof.

- ***Non-Reappointment*** – Normally, the District's academic administrators and supervisors are not employed by express appointment or contract. Education [Code section 72411.5](#) provides that, "in the absence of an express appointment or contract as provided in section 72411, every administrator shall serve in his or her administrative assignment at the pleasure of the governing board." Notice of such non-reappointment for the following year must be given on or before March 15th of the current academic year.

Just Cause: Causes for the Discipline of Academic Administrators and Supervisors

[Education Code section 72411.5](#) provides that if an administrator is employed pursuant to an appointment or contract in the sense of section 72411, and if that administrator is to be dismissed or penalized *for cause*, if the administrator does *not* have tenure as a faculty member, the discipline shall be imposed in accordance with the terms of the appointment or contract. However, academic administrators and supervisors who *do* have tenure as a faculty member and academic administrators who are not employed by express appointment or contract, shall be dismissed or penalized in accordance with provisions applicable to faculty members. Those provisions are restated in the sections following.

If it becomes necessary to issue a Notice of Unsatisfactory Service to an academic administrator or supervisor, or if the Board of Trustees agrees to act on a recommendation that the administrator or supervisor be penalized or dismissed, one or more of the following [just causes](#), as listed in [Education Code section 87732](#), must be cited:

- i) Immoral or unprofessional conduct.
- j) Dishonesty.
- k) Unsatisfactory performance.
- l) Evident unfitness for service.
- m) Physical or mental condition that makes him or her unfit to instruct or associate with students.
- n) 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 governing board of the community college district employing him or her.
- o) Conviction of a felony or of any crime involving moral turpitude.
- p) Conduct specified in Section 1028 of the Government Code.

These causes should be broadly construed and should be sufficient to encompass all of the performance and behavioral problems that a supervisor or administrator is likely to encounter.

Performance Evaluation and Progressive Discipline

Performance evaluation is an integral and necessary component in addressing performance and/or behavioral problems of academic supervisors or administrators. Timely, thorough, and candid evaluation will allow those responsible for evaluating academic supervisors and administrators to communicate their concerns about performance that needs to be improved, or performance that is less than satisfactory in a constructive manner.

The procedures for evaluating academic supervisors are contained in the [collective bargaining agreement between the District and the Los Angeles Community College District Administrators' Association](#), represented by Teamsters Local 911. The procedure for evaluating administrators is contained in their [evaluation form](#). Although these processes are different, both provide methods for thorough assessment of past performance, the setting of goals and objectives for the future and for identifying remedial steps that the employee must take to improve borderline or less than satisfactory performance.

Notwithstanding the importance of the formal performance evaluation process, it is not necessary and not recommended that the individual responsible for the supervision of an academic supervisor or administrator wait until it is time to initiate an evaluation to address a performance or behavior problem. When a problem is identified, the steps of progressive discipline should be utilized immediately.

Progressive Discipline Steps for Academic Supervisors and Administrators

The following steps are the progressive disciplines “tools” that are available to those responsible for the supervision and evaluation of academic supervisors and administrators. As with all progressive discipline, it is *not* required that the steps follow one after the other in the precise order listed. Similarly, implementation of the lower level steps does not have to wait until a basic or comprehensive performance evaluation has been completed.

- ***Oral Warning.*** An oral warning is a verbal communication to an academic supervisor or administrator from his or her supervisor regarding a performance or behavioral problem that must be remedied. The warning may be an informal remark made in passing (i.e. “Mr. Jones, you have been more than an hour late to work every day for the past two weeks.”), or may be more formally communicated in the context of a counseling session. For example, if, after one or more areas that need to be improved were noted during the course of a supervisor or administrator’s basic or comprehensive evaluation, and the employee has not followed through on the goals and timelines for improvement that were identified, a formal counseling session in which an oral warning is issued would be appropriate.

The oral warning must be communicated to the academic supervisor or administrator in *private*, and the employee should be assured of the *confidentiality* of the meeting. For an academic supervisor, this meeting should be scheduled to allow enough time for him or her to arrange for a union representative to be present. However, the scheduling of the union representative is not the responsibility of that person’s supervisor, and should not cause an undue delay in conducting the

meeting. Academic administrators, because they are unrepresented management employees, have no right to be represented during an oral warning session.

At the discretion of the administrator issuing the oral warning, the contents of the counseling session and oral warning may be summarized in a written counseling memo that is issued to the employee after the meeting. This memo does not immediately become part of the employee's official personnel file, but may be included as a part of a Notice of Unsatisfactory Service as evidence of prior counseling and guidance, should the issuance of a Notice later become necessary. However, unlike a letter of reprimand or Notice of Unsatisfactory Service, a counseling memo is *not* considered a disciplinary document *per se*.

In accordance with the principles of just cause, the academic supervisor or administrator in question should be made aware of the reason (*cause*) for the warning and should be provided with specific examples of the unsatisfactory performance or behavior (*charges*). The desired level of performance or behavior should be reconfirmed with the employee and he or she should be provided with suggestions for how improvement may be achieved. Finally, the employee should receive a clear statement of the disciplinary consequences that will follow if he or she fails to demonstrate immediate and sustained improvement.

- **Written Warning** - The written warning should specifically recall any previous oral warnings, cite the rule, regulation or procedure that was violated, cite specific examples of the employee's violation, state the desired level of performance or behavior required, suggest actions the employee can take that would lead to improvement, and clearly warn the employee what the disciplinary consequences will be if immediate and sustained improvement is not forthcoming.

Counseling Meeting. The written warning should be issued in a formal counseling session. This meeting should be scheduled to allow enough time for an academic supervisor to arrange for a union representative to be present. However, the scheduling of the union representative is not the responsibility of the academic supervisor's supervisor, and should not cause an undue delay in conducting the meeting. Academic administrators, because of their management status, have no right to representation.

During the meeting, the supervisor or administrator must explain the nature of the unsatisfactory performance or behavior. Previous warnings and counseling, if any, must be referenced. The employee must be given specific examples of the unsatisfactory service, must be offered suggestions for ways to achieve improvement, and must be clearly informed of the disciplinary consequences that will follow his or her failure to achieve significant and sustained improvement.

- **Notice of Unsatisfactory Service.** If improvement is not noted after the issuance of oral and written warnings, or if a disciplinary problem is severe enough to warrant skipping those steps, it is appropriate to issue a Notice of Unsatisfactory Service. Reasons for issuing the Notice include, but are not limited to, providing an academic supervisor or administrator with written assistance for improving effectiveness, establishing a written record that some aspects of the employee's performance have been found to be unsatisfactory and that he or she has been

informed of it, and to document unsatisfactory performance that may be cited in further disciplinary actions, should the employee not show the required level of improvement.

A Notice of Unsatisfactory Service may be issued by itself, or it may be issued as the basis for a recommendation for disciplinary action (suspension or dismissal). The Notice is issued on District Form C117 ([Appendix F1](#) and [Appendix F2](#)), and *must* contain the following information:

- **Dates.** The “from” and “to” dates for the Notice must coincide with the first and last incidents recorded in the Charges section. If the Notice is not the first one issued to the employee, the beginning date of the new Notice should be the date following the end date of the previous Notice, if there has not been an intervening period of satisfactory performance.
- **Plain Language.** A Notice of Unsatisfactory Service must be written in ordinary and concise language that can be easily understood by the employee to whom it is issued.
- **Observations.** A record of workplace visitations and observations, if any, that have been made by the person completing the Notice must be listed in *section 1*.
- **Conferences.** Unless issued for an infraction severe enough that prior progressive discipline steps were skipped, in *section 2* of the Notice, the formal and informal counseling and guidance conferences that were conducted with the employee, including the date and time of the conference and a brief description of the issues covered, must be listed. All copies of relevant written counseling and guidance memos, warning memos and/or letters of reprimand should be appended to the Notice.
- **Causes.** The Notice must cite, in *section 3*, one or more of the causes set forth in [Education Code section 87732](#).

- **Unprofessional Conduct and Unsatisfactory Performance.** [Education Code section 87734](#) provides that a district “shall not act upon any charges of unprofessional conduct or unsatisfactory performance unless, during the preceding term or half college year prior to the date of the filing of the charge, and at least 90 days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unprofessional conduct or unsatisfactory performance, specifying the nature thereof with specific instances of behavior and with particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge.”

If unprofessional conduct and/or unsatisfactory performance are cited as causes, the supervisor or administrator must be informed in writing in *section 5* of the Notice form that he or she will have the opportunity during a 90-day period, or longer if agreed upon, to demonstrate improvement sufficient to avoid the imposition of disciplinary action. If the employee does not demonstrate such improvement, at the end of the 90-day or more period of time, discipline (suspension or dismissal) based on the causes of unprofessional conduct and/or unsatisfactory performance may be imposed.

- **Charges.** A charge is a detailed summary of the employee's specific acts, omissions, commissions, and/or reasons for the issuance of the Notice. Charges support and give meaning to the causes listed in the previous section of the Notice. Such charges are detailed in *section 4* of the Notice. For instance, if the issue is one of absenteeism or tardiness, a charge simply can be a listing of an employee's absences or tardiness, usually in an attachment to the Notice, which includes the date, the length, and the reason for the absence or tardiness, and a statement of the employee's absence rate, along with a statement of the effect that the faculty member's absences had on the academic program .

A charge may also relate the facts of a specific occurrence of unsatisfactory performance, and must include the date, time of day, place and witnesses, if any, to the incident. The incident of unsatisfactory performance must be thoroughly detailed.

- **Directions for Improvement.** The Notice must contain directions and suggestions for the employee's improvement in *section 5*, unless the Notice is the basis for a recommendation for dismissal. These directions should provide an expected date for improvement to be realized (*immediately* is appropriate). The disciplinary consequences of the supervisor or administrator's continued failure to demonstrate improvement should be clearly stated (i.e. continued failure to achieve the improvement required shall result in further, more serious disciplinary action, up to and including dismissal).
- **Issuance.** A Notice may be prepared and issued by any administrative employee who exercises supervisory authority over an academic supervisor or administrator. The person who prepared the Notice (usually President or Vice President) and the college President or District Office division head, or his or her designee must sign it. The Notice must have *all* of the *required* signatures in place when it is issued to the employee.

The Notice should be issued to in a private meeting, and the employee should be assured of the confidential nature of the meeting. As appropriate, the President or Vice President should conduct the meeting. The employee to whom the Notice is issued must be asked to sign it, and must be offered a copy of the form and any attachments to it. If the employee refuses to take a copy of the form, and/or refuses to sign it, a witness present at the meeting must, by his or her signature, indicate that the employee was issued the Notice and offered a copy of it. A thorough counseling session that covers the reasons for issuing the Notice, the level of performance that will be expected of the employee, and the consequences the employee will face if immediate and sustained improvement is not demonstrated.

An academic supervisor has the right to have a union representative at the meeting; however the person who arranges the meeting has no responsibility to inform him or her of this right or to arrange for the union representative's attendance. Moreover, the employee's inability to arrange for a representative's presence in a reasonable amount of time (i.e. two or three days) should not be the cause of a delay in the scheduling of the meeting. An academic administrator has no right to representation.

The original signed Notice should be forwarded to Employer/Employee Relations for placement in the employee's official personnel file. A copy of the Notice must be given to the employee, and the college or division for their files should retain a copy.

Should the employee not be available for issuance of the Notice or if he or she refused to sign the Notice or refused a copy of it, the Notice must be forwarded to the Office of Employer/Employee Relations, with a memo that so indicates. Employer/Employee Relations will then send the Notice to the employee's address of record via U.S. certified and regular mail.

- **Grievance and Appeal.** An academic supervisor who has been issued a Notice of Unsatisfactory Service upon which *no* further discipline (suspension or dismissal) is based may file a grievance to challenge the Notice in accordance with [Article 18, Grievance Procedure, of the collective bargaining agreement between the District and the Los Angeles Community College District Administrators' Association](#). If the grievance proceeds to the final step in the procedure, an arbitration hearing will be conducted by a third party neutral. Similarly, an academic administrator may file a grievance using the procedure contained in [Board Rule 10901](#).

If the Notice carries with it a recommendation for formal discipline (suspension or dismissal), the employee will have the right to file an appeal with the Board of Trustees *prior to* the imposition of the discipline, in accordance with the procedure described below.

Dismissal or Penalization of Academic Supervisors or Administrators

The Education Code sets forth two types of discipline that may be imposed on academic supervisors or administrators should the steps of progressive discipline not produce the desired level of change in performance or behavior. An academic supervisor or administrator may be dismissed and/or have penalties imposed by the Board of Trustees if one or more of the grounds (causes) for discipline found in [Education Code section 87732](#) exist. The penalties that the Board may impose are *suspension* for up to one year or suspension for up to one year and a *reduction or loss of compensation* during the period of suspension.

The procedural steps associated with dismissal and penalization are identical and are described below.

- **Contact Human Resources and Employer/Employee Relations.** If the progressive discipline steps outlined above have been implemented and have not produced the desired changes in performance and behavior, it will be necessary to take the more severe step of imposing penalization or dismissal. Employer/Employee Relations has the responsibility to implement the complex procedures associated with the discipline process.

For this reason, when it becomes apparent that formal discipline must be imposed, the college or the District Office division must contact Employer/Employee Relations as soon as possible so the process will be initiated in a timely manner.

- **Satisfaction of Grounds.** Prior to the Board of Trustees exercising its right to penalize or dismiss an academic supervisor or administrator, [Education Code section 87671](#) requires that the following grounds have been satisfied:
 - **Evaluation.** The academic supervisor must have been evaluated in accordance with the procedures contained in [Article 18, Grievance Procedure, of the collective bargaining agreement between the District and the Los Angeles Community College District Administrators' Association](#); the academic administrator must have been evaluated in accordance with xxx.
 - **Documentation.** The Board must receive *all* statements of evaluation that considered the events for which dismissal or penalties may be imposed. Generally, this means that the Board must be provided with copies of relevant evaluations, letters of warning, Notices of Unsatisfactory Service, and any other evaluative documents that illustrate the reasons that exist for making the recommendation for discipline.
 - **Recommendations.** The Board of Trustees must have received from the college President or District Office division head and the Chancellor a written recommendation for the employee's dismissal or penalization prior to acting on the recommendation.
 - **Consideration of Recommendation.** The Board must consider the statements of evaluation and the recommendations of the Chancellor and the college President or District Office division

head in a lawful meeting of the Board. The Board's consideration usually occurs during a regularly scheduled and noticed closed session meeting.

Operationally, Employer/Employee Relations will coordinate and control for the receipt of the evaluation materials and will insure that the college President or District Office division head and the Chancellor have submitted their written recommendations for the Board's consideration. Employer/Employee Relations will initiate a closed session agenda item for the discipline action.

- ***Statement of Decision to Dismiss or Penalize.*** [Education Code section 87672](#) requires that, if the Board of Trustees decides to penalize or dismiss an academic supervisor or administrator, it shall deliver to the employee a signed written statement that sets forth its complete and precise decision and the reasons that support the decision.

Operationally, Employer/Employee Relation will prepare a Statement of Charges that includes all of the charges that support the causes for the employee's discipline. Employer/Employee Relations will schedule a closed session agenda item for the Board's consideration of the recommendation for discipline.

A draft copy of the Statement of Charges shall be sent to the employee whose discipline has been recommended along with a letter that informs him or her that the Board will be considering the matter of his or her discipline in closed session. The letter will inform the employee that, in accordance with the Brown Act, he or she may request that the secretary to the Board of Trustees schedule the Board's discussion of the discipline that normally would occur in closed session to be conducted in open session. The employee will be given the name and telephone number of the secretary to the Board of Trustees and will be informed of the time and place of the open session meeting. The Board will usually consider the matter in closed session after any presentation by the employee in open session.

- ***Postponement of the Effective Date of the Board's Decision.*** In closed session, the Board will consider the recommendation for discipline. The Board may agree with the recommendation, may modify the recommendation by authorizing the imposition of a lower or higher level of discipline, may reject the recommendation entirely, or may make a decision to discipline but choose to *postpone* the operative date of that decision for up to one (1) year, in accordance with Education [Code section 87672](#).

The purpose of such a postponement would be to allow the employee time to satisfy his or her legal responsibilities as determined by statute and rules and regulations of the District. In effect, the period of time encompassed by the postponement would constitute a *probationary* period for the employee. At the end of this period, the Board may choose to implement its original decision or may permanently set its decision aside.

- ***Notice of Board's Decision.*** Immediately after the decision of the Board to impose discipline, an academic supervisor or administrator will be informed of the decision in a letter from Employer/Employee Relations. The employee will be informed of the date of the Board's decision

and the level of discipline that the Board intends to impose. Moreover, he or she will be put on notice that the discipline will become effective in thirty (30) calendar days from the date this notice was served unless he or she files an *objection* and demands, in writing to the Chancellor *and* the college President or District Office division head, that a hearing be conducted. In addition to the letter, the faculty member will be provided with a fully executed and signed copy of the Statement of Charges along with relevant Education Code citations. If the employee files a timely objection, the Board will not impose the recommended discipline until and if it receives a hearing decision that sustains the Board's intention to penalize or dismiss.

- ***Response to Demand for Hearing.*** If the academic supervisor or administrator files an objection to the decision of the Board to impose discipline, [Education Code section 87674](#) requires that he or she will be informed in writing (by Employer/Employee Relations) that, if the Board and the employee agree that the matter should be heard by an arbitrator, an agreement must be reached between the Board and the employee on which arbitrator is to be appointed, and that this agreement must be reached within thirty (30) days from the date the District received the employee's objection. If agreement is reached, the agreement must be reduced to writing, signed by the academic supervisor or administrator and the authorized representative of the Board, and entered into the Board's official records. Arbitration proceedings will be conducted in accordance with [Education Code section 87675 and 87676](#). The costs of the arbitrator and hearing expenses, within the limitations set forth in [Education Code section 87677](#), shall be borne by the District

If there is no agreement to appoint an arbitrator, or if an arbitrator cannot be agreed upon, within thirty (30) days from the date the District received the objection, in accordance with [Education Code section 87678](#), the matter must be certified by the District to the State of California Office of Administrative Hearings (OAH) for the appointment of an Administrative Law Judge (ALJ) to hear the matter. In certifying the matter to OAH, the Statement of Charges will serve as the District's accusation against the employee. In turn, the academic supervisor or administrator's letter of objection will serve as his or her notice of defense. The hearing will be conducted in accordance with [Education Code sections 87679 through 87681](#). The District shall be responsible for the charges levied by OAH.

Unless legal counsel has been appointed to represent the District, Employer/Employee Relations will be responsible for responding to the objection, and for coordinating the assignment of the case to either an arbitrator or OAH. Whether the matter is heard by an arbitrator or ALJ, in no event may testimony or evidence relating to matters that occurred more than four (4) years prior to the date the Statement of Charges was issued to the faculty member be permitted ([Education Code sections 87675 and 87680](#)).

- ***Operation of Decision.*** The arbitrator or ALJ will issue a decision some time after the conclusion of the case. If the arbitrator or ALJ finds that there is cause to discipline the supervisor or administrator, he or she shall determine whether the employee should be dismissed, and shall determine the precise penalty to be imposed. The arbitrator or ALJ, in accordance with [Education Code sections 87676 and 87681](#), may determine that the operation of his or her decision should be *postponed*. If the arbitrator or hearing officer's decision is not postponed, the Board of Trustees

shall impose the discipline by acting on an agenda item, prepared by Employer/Employee Relations, in open session.

- ***Judicial Review.*** Upon petition of either party, the decision of the arbitrator or ALJ is subject to judicial review in a court of competent jurisdiction, in accordance with [Education Code section 87682](#).

Abandonment of Position – Academic Supervisors and Administrators

When an academic supervisor or administrator has been absent for more than five (5) consecutive days without permission or more than twenty (20) consecutive working days on an informal leave without a formal leave of absence having been approved, the college or District Office division must attempt to obtain a fully executed Leave of Absence Request from the employee (LACCD Form C 131).

If the college or division is unable to contact the employee or if the employee fails to submit a fully executed leave request once contact is established, the Senior Associate Vice Chancellor of Human Resources must be informed, in writing, so the abandonment of position procedures described below can be initiated. This report should include all of the known circumstances of the absence and the efforts made thus far to obtain a request for leave. The college or division should keep careful, written notes to document all attempts to contact the employee (i.e. "Telephoned Dr. Smith on this date. Telephone listed on District's personnel information system is disconnected."), and this record should be included in the notification to the Senior Associate Vice Chancellor.

- ***Employer/Employee Relations Attempt to Contact the Academic Supervisor or Administrator***

The Senior Associate Vice Chancellor will notify the Office of Employer/Employee Relations that an academic supervisor or administrator has been absent without leave and has neither returned to service nor been granted a leave of absence. Employer/Employee Relations will send a letter to the employee via regular mail to his or her address of record that notifies the academic supervisor or administrator that he or she must clarify his/her leave status within ten (10) working days from the date of the letter by either returning to work, filing a Leave of Absence Request or by filing a resignation; a Leave of Absence Request (Form C131) and a Resignation form (Form C315) will be included with the letter.

If no reply is received within ten (10) days, the Employer/Employee Relations will send a *second* letter, via certified U.S. mail, that advises the academic supervisor or administrator that he or she is considered absent without leave and steps will be taken to terminate his/her services unless he or she replies within ten (10) days from the date of the letter. As with the first letter, the employee will be informed that he or she must clarify his/her leave status within ten (10) working days from the date of the letter by either returning to work, filing a Leave of Absence

Request or by filing a resignation; a Leave of Absence Request (Form C131) and a Resignation form (Form C315) will be included.

If a reply *is* received to the first or second notice within the time limits specified, Employer/Employee Relations will inform the college or division that the academic supervisor or administrator will be returning to service, or that the employee has resigned, or that he or she has submitted a fully executed Leave of Absence Request. If the employee has requested an *optional* leave, the college or division will be asked by Employee Relations to either approve or deny the request. If the request is denied, the college or division must inform the employee, in a letter sent via certified and regular mail, that the request has been denied, and direct him or her to return to service by a date certain. The employee must be informed that if he or she does not return his or her assignment(s) will be terminated because of abandonment of position.

➤ *Separation From Service*

If Employer/Employee Relations does not receive a reply to this second notice, the college or division will be so informed and will be instructed to initiate an action to terminate the employee's assignment(s). Employer/Employee Relations will insure that this termination is included as a routine action for the Board of Trustees to act on at the next Board meeting. The academic supervisor or administrator will be notified of the impending action by Employer/Employee Relations in a letter sent via certified mail and regular mail.

*Note: Since the action of not reporting to work has been initiated by the employee, this separation is not considered a dismissal but a type of resignation (CC Opinion, Langstaff to Brown, 5-2-56).

Non-Disciplinary Termination of Probationary Classified and Academic Employees; Non- Disciplinary Termination of Academic Supervisors and Administrators

A probationary period may be viewed as an extension of the selection process that resulted in the hiring of a regular classified or contract academic employee. This period of time allows for on-the-job evaluation of performance. If, during the probationary period, it becomes evident that the employee is not suitable for the position, the procedures outlined in this chapter should be implemented.

An academic supervisor or administrator without an express contract or appointment serves at the pleasure of the Board and may be terminated from his or her position without cause at the end of an academic year.

Termination of Probationary Classified Employees

- ***Probationary Period: Policy.*** The probationary period for classified employees is an extension of the classified examination and hiring process. It is an opportunity for supervisors and managers to assess a new employee's ability to effectively perform in the workplace. Although the majority of probationary employees are successful, on occasion it becomes necessary to terminate a probationary period.
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Termination of the probationary period is *not* a disciplinary action, and therefore, disciplinary documents (Notice of Unsatisfactory Service, Recommendation for Dismissal, Statement of Charges) are *not* required. Accordingly, the Board of Trustees approves probationary terminations as routine personnel actions.

➤ ***Procedure for the Termination of a Classified Probationary Period.*** The following steps should be taken when it becomes apparent that a probationary classified employee is not suited for the position to which he or she is assigned.

- ***Evaluation.*** Collective bargaining agreements require that an employee be evaluated twice during the probationary period. In most cases, at least one (1) evaluation should have been completed for an employee whose assignment is to be terminated. However, when a probationary employee's performance or conduct in the workplace is deficient, and the employee has been counseled regarding those deficiencies but has shown no improvement, there is no need to wait to terminate the employee until the first or second evaluation is due. Similarly, in the event a probationary employee's termination is in response to an emergency situation (i.e. dishonesty, assault, gross insubordination, etc.), it is not necessary that an evaluation be issued.
- ***Counseling.*** In most cases, there should be some evidence of verbal or written counseling having been conducted by a supervisor in an attempt to identify and remedy deficiencies exhibited by an employee.
- ***Authorization.*** The supervisor or manager must get the proper authorization to terminate a probationary assignment through the appropriate chain of command.

A memo, ***signed by the college President or District Office division head***, must be issued to the employee that explains the reasons for the termination of the probationary period. The reasons may be specific, however, *a general statement that the employee did not meet the expectations of his/her supervisor during the probationary period will be sufficient.* The memo also must inform the employee of the date of his or her final day of employment in the probationary position. The Office of Employer/Employee Relations is available to review these memos prior to their being issued.

- ***Processing*** - A personnel action to terminate the assignment must be prepared by the college or location immediately.

If the employee is serving an initial probationary period, and does not have permanent status in the District in a lower level classification, termination of the probationary period will mean that the employee will be separated from service. However, when the probationary employee has permanent status in a lower level classification, the probationary assignment will be terminated, and the employee will be assigned to a position in the lower level classification at the college or District Office location from which he/she promoted ([Personnel Commission Rule 762](#)).

Copies of both the memo to the employee and the personnel action terminating the assignment should be forwarded to Employer/Employee Relations immediately after issuance of the memo. Employer/Employee

Relations will coordinate ratification of the termination by the Board of Trustees and will insure that the appropriate documents are placed in the employee's personnel file.

Faculty Employees: Tenure Review, Non-Renewal of Contract and Denial of Tenure

- **Tenure Review** – Requirements for the evaluation of probationary (contract) academic employees and the issuing of successive employment contracts are governed by [Education Code sections 87600 through 87612](#) and [Article 42](#) of the contract between the District and the American Federation of Teachers College Guild, Local 1521. Article 42 incorporates the requirements of these Education code sections into a procedure for probationary evaluation that is rigorous in its standards and is focused on providing the probationary faculty member with support and opportunities for professional development, growth and success.

The Probationary Period. The normal length of a probationary period is four (4) years. During the probationary period, a faculty member is employed by contract. The first and second contracts are each one (1) year in length; the third contract is for two (2) years, covering the third and fourth probationary years. Recommendations regarding the ongoing employment of the probationary faculty member must be made during the first, second and fourth years. The recommendation during the first and second years is for renewal or non-renewal of contract; the decision during the fourth year is for granting or not granting tenure.

However, notwithstanding the length of the contract, the Education Code and the collective bargaining agreement require that a faculty member be evaluated during *each* of the four (4) probationary years.

Essentially, the process of tenure review and evaluation of a probationary faculty member begins the first day the employee reports for duty. Article 42 of the collective bargaining agreement provides that the employee's Tenure Review Committee be appointed *within twenty (20) working days of the probationary employee's first day of service*. If the steps outlined in that article are carefully followed, a probationary faculty member will receive the kind of feedback and assistance intended to promote his or her success.

- **First and Second Year Evaluations** – The Tenure Review Committee, as specified in Article 42, must be appointed by the college President or his/her designee, *within twenty (20) working days of the first day of a probationary employee's assignment*. Each step in the evaluation process must be carefully and completely accomplished in a timely manner. Problems that occur during the process must be identified and resolved immediately to avoid losing valuable time and to insure that the employee being evaluated will receive the feedback and guidance necessary. The evaluation must be completed and issued to the employee in sufficient time for an Administrative Evaluation to be completed, if necessary, and for a recommendation to be made that the employee will or will *not* be offered a contract for the next (second or third) year in accordance with Education Code requirements.

➤ ***Non-renewal of First or Second Year Contract*** – If, during the evaluation process, it becomes evident that the Tenure Review Committee will recommend that an employee not be offered a second or third year contract, the following steps must be accomplished:

1. The evaluation summary must be completed by the Tenure Review Committee, approved by the Vice President or his or her designee, and delivered to the contract faculty member by the Vice President or his or her designee. The document must be signed by the contract faculty member; if he or she refuses to sign, the signature of a witness who can attest that the faculty member was offered a copy of the document must be obtained.
2. An Administrative Review must be completed by the Vice President in accordance with [Article 42, section F.](#), and delivered to the contract faculty member; if he or she refuses to sign, the signature of a witness must be obtained, to indicate that the faculty member was offered a copy of the document.
3. The Senior Associate Vice Chancellor of Human Resources must be informed that the recommendation for non-renewal of contract has been made. Ideally, Human Resource's assistance should be solicited as early on in the evaluation process as possible. This will enable the college to obtain advice and guidance regarding the collective bargaining and legal issues that might arise.
4. Before March 15th of the academic year in which the evaluation was conducted, in accordance with Article 42, the college President must forward his or her written recommendation that the probationary employee in question not receive a second or third year contract to the Chancellor and the Board of Trustees. The Chancellor must forward his or her written recommendation to the Board of Trustees as well.
5. Before March 15th of the academic year in which the evaluation was conducted, in accordance with [Education Code 87607](#), the Board of Trustees must:

- *receive a statement of the most recent evaluations of the employee*

Operationally, Human Resources will insure that copies of the performance evaluation, the Tenure Review Committee's evaluation summary and recommendation, the Administrative Evaluation, and any other documents that might be relevant, are sent to each Board member in a Board Letter that precedes the date that the Board is scheduled to consider the recommendation. Human Resources will insure that these documents are also placed in the Board's closed session books on the appropriate meeting date.

- *receive the recommendations of the Chancellor and the college President*

Operationally, Human Resources will forward these documents to the Board in the Board Letter along with the evaluation materials and will insure that the documents are placed in the Board members' closed session books.

- *consider the statement of evaluation and the recommendations from the Chancellor and the college President in a lawful meeting of the Board prior to March 15th of the academic year in which the evaluation was conducted*

Operationally, Human Resources will schedule appropriate time on the Board's closed session agenda for a Board meeting that occurs with sufficient time prior to March 15th to allow a notification letter to be prepared and placed in the mail to the employee on or before March 15th.

6. On or before March 15th of the academic year in which the evaluation was conducted, Human Resources shall convey, in writing, the decision of the Board of Trustees not to offer the employee a contract for the next academic year. Human Resources shall place a notice of the Board's decision in certified or registered United States mail and regular mail to the employee's address of record on or prior to March 15th, and shall maintain appropriate control of the USPS return receipt. The notice shall contain relevant Education Code citations, including reference to the employee's right to file a grievance in the matter.

➤ ***Grievance Procedure for Non-renewal of First and Second Year Contracts.*** [Education Code section 87610.1\(b\)](#) provides, in part:

"...Allegations that the community college district in a decision to reappoint a probationary employee violated, misinterpreted, or misapplied any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances..."

A contract employee whose first or second year contract was not renewed has the right to file a grievance under the procedure set forth in [Article 28 of the collective bargaining agreement](#). Unlike other grievances, the first two steps of the procedure are skipped, and the matter will proceed directly to arbitration. Additionally, unlike other grievances, the employee does not need the approval of the AFT to proceed to arbitration; however, if the AFT does not carry the matter for the employee, [Education Code section 87610.1\(c\)](#) requires that the employee must post with the arbitrator "... adequate security to pay the employee's share of the cost of arbitration." Finally, grievances are limited in scope to alleged misapplication, misinterpretation or violation of the procedures contained in Article 42.

➤ ***Evaluations Recommending Retention but Requiring Improvement.*** In cases where a first or second year probationary employee's Tenure Review Committee recommends that the employee be offered a contract for the next academic year despite having found that the employee's performance needs improvement in one or more areas, the employee should be counseled regarding steps necessary to achieve the required improvements. These steps should be incorporated into a written plan that identifies the deficiencies and sets out specific performance goals and objectives for their remedy. This plan can be part of the evaluation itself, or may be issued separately. In such cases, a mentor should be appointed in accordance with the provisions of [Article 42](#).

- **Third Year Evaluation** – The contract that a second year probationary faculty member is offered is a two-year contract. The third year evaluation should be conducted in the same manner as the first and second year evaluations, as detailed in [Article 42](#), but because the employee's contract is for the third and fourth probationary year, during the third year, the Tenure Review Committee makes no recommendation for the employee's continued service.

If previous years' evaluations included plans aimed at improving an employee's deficiencies, the current year's evaluation should make special note of the employee's progress toward attaining the specific goals and objectives that were identified in the plan.

- **Fourth Year Evaluation** - The fourth year evaluation should be conducted in the same manner as the first, second and third year evaluations, as detailed in [Article 42](#). If previous years' evaluations included plans aimed at improving an employee's deficiencies, in this year's evaluation, special note of the employee's progress toward attaining the specific goals and objectives that were identified in the plan should be evaluated and commented on.

If the Tenure Review Committee has recommended that a probationary faculty member ***not be granted tenure***, the Vice President or his or her designee must exercise great care to insure that there is sufficient credible evidence to support that recommendation. Such evidence would include, but would not be limited to one or more of the following:

- specific evidence that no or insufficient progress was made by the employee toward successfully achieving the goals and objectives that were presented in a plan for improvement in previous evaluations, and that the problems that had been identified were such that a recommendation to grant tenure would not be reasonable, and would not be in the best interest of the students and/or the college;
- specific evidence that problems developed during the third and/or fourth probationary years that were not evident or not significant during the first and second years and were of such a nature that a reasonable recommendation for the granting of tenure could not be made;
- specific evidence that once problems had been identified during the third or fourth year of the probationary period, the employee did not make sufficient progress toward the remediation of the problem(s) once they were identified and a plan for improvement was developed; and/or
- specific evidence that the employee failed to accept an offer to assign him or her a mentor, or that the employee failed to heed the advice and counsel provided by a mentor.

A recommendation not to grant tenure should focus on the negative effect the probationary faculty member's performance and/or behavior has had and will reasonably continue to have on students and the overall academic program. Such a recommendation should be supported by written evidence of having identified the problem(s) to the employee, of having counseled and provided guidance to the employee (by the department chair, the dean, the Vice President, etc.), of having presented the employee with written a plan(s) for improvement that were either part of previous evaluations or that were presented to the

employee apart from an evaluation, of having made specific observations in the form of written classroom visitation summaries, of documentation of investigated student complaints and of other written examples of the employee's unsatisfactory performance and/or behavior on the job.

As with first or second year recommendations for non-renewal of contract, a recommendation not to grant tenure must proceed as follows:

➤ ***Recommendation Not to Grant Tenure*** – If, during the evaluation process, it becomes evident that the Tenure Review Committee will recommend that an employee not be granted tenure, the following steps must be accomplished:

1. The *evaluation summary* must be completed by the Tenure Review Committee, approved by the Vice President or his or her designee, and delivered to the contract faculty member by the Vice President or his or her designee. The document must be signed by the contract faculty member; if he or she refuses to sign, the signature of a witness must be obtained, indicating that the faculty member was offered a copy of the document.
2. An *Administrative Review* must be completed by the Vice President in accordance with Article 42, section F., and delivered to the contract faculty member; if he or she refuses to sign, the signature of a witness must be obtained, indicating that the faculty member was offered a copy of the document.
3. The *senior associate vice Chancellor of Human Resources* must be informed that the recommendation for not granting tenure has been made. Ideally, Human Resource's assistance should be solicited as early on in the evaluation process as possible. This will enable the college to obtain advice and guidance regarding the collective bargaining and legal issues that might arise.
4. Before March 15th of the fourth probationary year, in accordance with Article 42, the college President must forward his or her *recommendation* that the probationary employee in question not be granted tenure to the Chancellor and the Board of Trustees. The Chancellor must forward his or her recommendation to the Board of Trustees as well.
5. Before March 15th of the fourth probationary year, in accordance with Education Code section 87607, the Board of Trustees must:

a) *receive a statement of the most recent evaluations of the employee*

Operationally, Human Resources will insure that copies of the performance evaluation, the Tenure Review Committee's evaluation summary and recommendation, the Administrative Evaluation, and any other documents that might be relevant, are sent to each Board member in a Board Letter that precedes the date that the Board is scheduled to consider the recommendation.

b) *receive the recommendations of the Chancellor and the college President*

Operationally, Human Resources will forward these documents to the Board in the Board Letter along with the evaluation materials.

- c) *consider the statement of evaluation and the recommendations from the Chancellor and the college President in a lawful meeting of the Board prior to March 15th of the fourth probationary year*

Operationally, Human Resources will schedule appropriate time on the Board's closed session agenda for a Board meeting that occurs with sufficient time prior to March 15th to allow a notification letter to be placed in the mail to the employee on or before March 15th.

- 6. On or before March 15th of the fourth probationary year, Human Resources shall convey, in writing, the decision of the Board of Trustees not to grant the employee tenure. Human Resources shall place a notice of the Board's decision in certified or registered mail to the employee's address of record on or prior to March 15th. The notice shall contain relevant Education Code citations, including reference to the employee's right to file a grievance in the matter.

➤ ***Grievance Procedure for Employees Whose Tenure Has Been Denied.***
Education Code section 87610.1(b) provides, in part:

"...Allegations that the community college district in a decision to grant tenure, made a negative decision that to a reasonable person was unreasonable, or violated, misinterpreted, or misapplied any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances..."

As with contract employees whose first or second year contract was not renewed, an employee not granted tenure has the right to file a grievance under the procedure set forth in Article 28 of the collective bargaining agreement. Unlike other grievances, the first two steps of the procedure are skipped, and the matter goes directly to arbitration. Additionally, unlike other grievances, the employee does not need the approval of the AFT to proceed to arbitration; however, if the AFT does not carry the matter for the employee, Education Code section 87610.1(c) the employee must post with the arbitrator "... adequate security to pay the employee's share of the cost of arbitration."

Significantly, the scope of a grievance an employee not granted tenure may file is not limited to only alleged misapplication, misinterpretation or violation of the evaluation procedures contained in Article 42. *The decision itself not to grant tenure is open to the scrutiny of the arbitrator.* The arbitrator must be convinced that the decision would not be considered *unreasonable* by a *reasonable* person. This effort to convince the arbitrator will be greatly supported if the steps of the evaluation procedure, as contained in Article 42, have been meticulously followed, and that careful, methodical documentation, as described above, was compiled during the employee's probationary period.

Academic Administrators and Supervisors: Non-renewal of Contract and Non-reappointment

- ***Non-renewal of Contract*** – The term contract here refers to the legal document that may be used to extend employment for up to four (4) years to an academic administrator. Education Code section 72411 provides that, with the agreement of the District and the administrator with whom the District has a contract, the contract may be terminated effective the next succeeding first day of July. In the case of an administrator's contract of more than one (1) year in length that will expire the next succeeding June 30, the Board of Trustees has the option not to renew the contract, provided that the administrator has been given six (6) months prior notice thereof.
- ***Non-Reappointment*** – Normally, the District's academic administrators and supervisors are not employed by express appointment or contract. Education Code section 72411.5 provides that, "in the absence of an express appointment or contract as provided in section 72411, every administrator shall serve in his or her administrative assignment at the pleasure of the governing board." Notice of such non-reappointment must be given on or before March 15th.