

Administrative Procedures
Chapter 7
Human Resources*

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*Procedures listed in bold text are currently available. All other procedures are being reviewed and will be posted once finalized.

AP 7110 Delegation of Authority

Reference: *Education Code Section 70902(d)*

The Associate Vice President of Human Resources and Training is delegated responsibility from the President/Superintendent to recommend employment, develop job responsibilities, and perform other personnel actions provided that all federal and state law and regulations, Board Policies, and Administrative Procedures are followed.

Adopted: May 2012

AP 7121 Employment of Out-of-State Residents

The Ohlone Community College District does not permit employment of people who reside out of the State of California because the District would face the undue burden of having to comply with the laws of a different state, which have different legal requirements as well as tax requirements. This restriction includes the employment of out-of-state residents to teach online courses.

The Americans with Disabilities Act and the California Fair Employment and Housing Act do not obligate an employer to allow employees to work in a different state; therefore, the District is not obligated to allow an employee to work in another state as an accommodation.

Adopted: October 2017

AP 7125 Verification of Eligibility for Employment

Reference: **8 U.S. Code Section 1324a**

The District will not hire or recruit a person for employment if it knows that the person is not a citizen of the United States and is not authorized to be employed in the United States.

Reliable documentation of eligibility is required for employment from all persons hired. "Reliable documentation" as set out in federal law includes one or more of the following:

- A United States passport or a resident alien card or alien registration card containing a photograph of the prospective employee, that indicates the person is authorized to work in the United States

OR

- A social security card or other documentation issued by the United States government showing authorization to work in the United States AND a driver's license or similar identification document containing a photograph of the prospective employee.

The District will complete for each new employee the verification form or forms required by the United States government. The District will retain such forms for at least three years for persons it does not hire. For persons it does hire, the District will retain such forms for at least three years or until one year after the persons leaves the District's employment, whichever is later.

The District will protect the privacy of the information it collects pursuant to this procedure.

Adopted: July 2012

AP 7145 Personnel Files

References: *Education Code Section 87031; Labor Code Section 1198.5*

Personnel records are private, accurate, complete, and permanent. An employee's official personnel file is located in the Human Resources office.

Every employee has the right to inspect personnel records pursuant to the Labor Code. The Human Resources office will make the employee's personnel file available for review within 24 hours of the employee's request to inspect his/her personnel records.

Information of a derogatory nature shall not be entered into an employee's personnel records unless and until the employee is given notice and an opportunity to review and comment on that information. The employee shall have the right to enter, and have his/her own comments attached to any derogatory statement. The review shall take place during normal business hours and the employee shall be released from duty for this purpose without salary reduction.

The employee shall not have the right to inspect personnel records at a time when the employee is actually required to render services to the District.

Nothing in this procedure shall entitle an employee to review ratings, reports, or records that (a) were obtained prior to the employment of the person involved, (b) were prepared by identifiable examination committee members, or (c) were obtained in connection with a promotional examination or interview.

Adopted: May 2012

AP 7216 Academic Employees: Grievance Procedure for Contract Decisions

Reference: *Education Code Section 87610.1*

This procedure is addressed in the faculty collective bargaining agreement.

Adopted: February 2013

AP 7217 Emeritus Status

References: *Education Code §66700 §70901 & 70902; Title 5 §53200 (d) (1) & (2) and §53203 (d) (1) & (2); AB 1725*

Emeritus is an honorary title awarded to recognize distinguished service and to encourage continued association with the college. The Board of Trustees shall grant emeritus status to all qualified academic staff, classified staff, or trustees upon retirement, separation from the district, or death as recommended by the President/Superintendent per the following procedures:

Emeritus status extends the following privileges to retirees:

1. A permanent staff card indicating emeritus status
2. Emeritus business card
3. Lifetime parking privileges
4. Library checkout privileges
5. Use of campus athletic facilities
6. Free admission to departmental drama and music presentations having performances promoted specifically for emeritus staff. Reservations are required and include the Emeritus and one guest
7. Bookstore discount
8. Continue use of Ohlone e-mail address and a static Ohlone website (Any resigning or retiring staff, faculty, and/or administrator who is ineligible for emeritus status may also retain their e-mail and static website with the consent of their dean or supervisor.)

Emeritus status qualifications:

1. An academic staff member, classified staff member, or trustee who has served the district in a full-time teaching, counseling, administrative, staff, or trustee position for a minimum of 10 years will be eligible for consideration for emeritus status. The President/Superintendent may waive the time requirement for extenuating circumstances.
2. An academic staff member who has served the district in an adjunct teaching, counseling, and/or administrative position for 20 or more years, and who has given outstanding meritorious service in college-wide activities, such as committee work, program development, community service, faculty leadership, or outstanding service to students, will be eligible for consideration for emeritus status. The President/Superintendent may waive the time requirement for extenuating circumstances.

Emeritus status procedures:

1. For eligible faculty, each fall the Faculty Senate of Ohlone College shall review all the names of eligible faculty members to determine which will be recommended for faculty emeritus status. Prior to making a recommendation, the Senate may seek advisory input from the departmental faculty, or in the case of a small department, from allied departmental faculty.
 - a. This determination shall be placed on an agenda of a regularly scheduled Faculty Senate meeting and approved by majority vote.

- b. Once approved, the Senate President will forward the recommendations to the President/Superintendent for approval and referral to the Division Dean.
 - c. The Division Dean will seek input from the departmental faculty and others to create a resolution for inclusion on a subsequent Board of Trustees agenda.
 2. For all eligible classified staff and administrators, each fall the appropriate Division Deans and/or Vice Presidents shall review all the names of eligible classified staff and administrators to determine which will be recommended for emeritus status. Prior to making a recommendation, the Division Deans and Vice Presidents may seek advisory input from the departmental staff, or in the case of a small department, from allied departmental staff.
 - a. The appropriate Vice President will forward the recommendations to the President/Superintendent for approval.
 - b. Once approved, the Division Deans and/or Vice Presidents will seek input from the departmental employees and others to create a resolution for inclusion on a subsequent Board of Trustees agenda.
 - c. Classified staff members and administrators who report directly to the President may be recommended to the Board of Trustees directly by the President.
 - d. The Board of Trustees will determine if a retired President/Superintendent shall be granted emeritus status.
 3. The Board of Trustees will determine if a retired trustee shall be granted emeritus status.
 4. The Board of Trustees will review the recommendations of the President at an open session board meeting and will normally accept the recommendations for approval and presentation of the Emeritus Resolution.
 5. Once accepted by the Board of Trustees, the faculty, administrative staff member, classified staff member, or trustee will have "Emeritus" placed by the title of his/her academic, administrative, classified or trustee position at the time of retirement.

Adopted: June 2015

AP 7234 Overtime

References: *Education Code Sections 88027, 88028, 88029, and 88030*

Overtime is defined to include any time required to be worked in excess of eight hours in any one day and in excess of 40 hours in any calendar week. If the Board establishes a workday of less than eight hours but seven hours or more and a workweek of less than 40 hours but 35 hours or more for all of its classified positions or for certain classes of classified positions, all time worked in excess of the established workday and workweek shall be deemed to be overtime.

The foregoing provisions do not apply to:

- classified positions for which a workday of fewer than seven hours and a workweek of fewer than 35 hours has been established,
- positions for which a workday of eight hours and a workweek of 40 hours has been established, but in which positions employees are temporarily assigned to work fewer than eight hours per day or 40 hours per week when such reduction in hours is necessary to avoid layoffs for lack of work or lack of funds and the consent of the majority of affected employees to such reduction in hours has been first obtained.

For the purpose of computing the number of hours worked, time during which an employee is excused from work because of holidays, sick leave, vacation, compensatory time off, or other paid leave of absence shall be considered as time worked by the employee.

When compensatory time off is authorized in lieu of cash compensation, such compensatory time off shall be granted within 12 calendar months following the month in which the overtime was worked and without impairing the services rendered by the District.

An employee having an average workday of less than four hours during a workweek shall, for any work required to be performed on the seventh day following the commencement of his/her workweek, be compensated for at a rate equal to 1 1/2 times the regular rate of pay of the employee designated and authorized to perform the work.

Persons serving in supervisory, administrative, or executive positions shall be excluded from these procedures regarding overtime.

Adopted: February 2014

AP 7240 Confidential Employees

Reference: *Government Code Section 3540.1(c)*

“Confidential employee” is defined as an employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions in collective bargaining.

The terms and conditions of employment for confidential employees are provided for as necessary by procedures developed by the President/Superintendent.

A Confidential Employee handbook has been developed and is located at <http://www.ohlone.edu/org/hr/docs/confidentialemployeeshandbook.pdf>. The Handbook addresses procedures for evaluation and rules regarding leaves, transfers, reassignments and health and welfare benefits. In addition the handbook outlines and governs the working conditions for Confidential employees.

Adopted: February 2014

AP 7330 Communicable Disease

References: *Education Code Sections 87408, 87408.6, and 88021*

For applicants for positions:

- A medical certificate is required showing that the applicant is free from any communicable disease, including, but not limited to, active tuberculosis, unfitting the applicant to instruct or associate with students.
- The medical certificate shall be submitted by a physician as authorized by code.
- The medical examination is conducted not more than six months before the submission of the certificate and is at the expense of the applicant.
- A contract of employment may be offered to an applicant subject to the submission of the required medical certificate.
- The medical certificate becomes a part of the personnel record of the employee and is open to the employee or his/her designee.
- The district may require employees to undergo periodic medical examination to determine if they are free from any communicable disease, including, but not limited to, active tuberculosis, unfitting the employee to instruct or associate with students.

The term “communicable disease” also includes (but is not limited) to hepatitis.

Please also see AP 7336, Certification of Freedom from Tuberculosis.

Adopted: July 2012

AP 7335 Health Examinations

Reference: *Education Code 88021*

Certain jobs in departments within the District may require a prospective employee to submit to a pre-employment physical examination (that can include x-rays) after a conditional offer of employment, but prior to assuming the duties of the position. Those departments are, but are not limited to: Campus Police Services, Safety and Security and Grounds and Custodial.

Upon receipt of a conditional offer of employment, the prospective employee will be given an order for a physical examination to be performed at a clinic location of the District's choosing and at the District's expense. The clinic will be given a copy of the job description for the prospective employee.

Once the examination is completed the results will be transmitted to the Human Resources office via fax, email, or U.S. Mail. Said results will indicate whether the prospective employee has a disability or condition that poses a direct threat to health or safety, based on the essential job functions.

If the prospective employee is cleared to perform the essential job functions, he/she will be notified and may begin work as soon as he/she has been cleared.

If the prospective employee is not cleared by the pre-employment physical examination to perform the essential job functions, the Human Resources Department will notify the prospective employee, by phone, of the results and inform the prospective employee that he/she does not qualify for the position based on the results. The applicant may get a second opinion, at his/her own expense, from his/her personal physician, which will be taken into consideration. If requested, the District will give the prospective employee a copy of the report showing the results of the pre-employment physical examination.

Adopted: April 2013

AP 7336 Certification of Freedom from Tuberculosis

Reference: *Education Code Section 87408.6*

Except as provided herein, no person shall be initially employed by the District in an academic or classified position unless the person has submitted to an examination within the past 60 days to determine that he/she is free of active tuberculosis, by a physician and surgeon licensed under the California Business and Professions Code. This examination shall consist of an X-ray of the lungs, or an approved intra-dermal tuberculin test, that, if positive, shall be followed by an X-ray of the lungs. This examination is a condition of initial employment and the expense shall be borne by the applicant.

The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a physician and surgeon licensed under the Business and Professions Code.

The Associate Vice President of Human Resources and Training may exempt, for a period not to exceed 60 days following termination of the pregnancy, a pregnant employee from the requirement that a positive intra-dermal tuberculin test be followed by an X-ray of the lungs.

Thereafter, employees who are skin test negative are required to undergo the foregoing examination at least once every four years upon recommendation of the local health officer for so long as the employee remains skin test negative. Once an employee has a documented positive skin test that has been followed by an X-ray, the foregoing examinations shall no longer be required and referral shall be made within 30 days of completion of the examination to the local health officer to determine the need for follow up care.

After the examination, each employee shall cause to be on file with the District a certificate from the examining physician and surgeon showing the employee was examined and found free from active tuberculosis.

This procedure shall not apply to any employee of the District who files an affidavit stating that he or she adheres to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion and that to the best of his or her knowledge and belief he or she is free from active tuberculosis. If at any time there should be probable cause to believe that the applicant is afflicted with active tuberculosis, he/she may be excluded from service until the Associate Vice President of Human Resources and Training is satisfied that he/she is not so afflicted.

A person who transfers his/her employment from another school or community college district shall be deemed to meet the requirements of this procedure if the person can produce a certificate that shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the college previously employing him/her that it has a certificate on file that contains that showing.

A person who transfers his/her employment from a private or parochial elementary school, secondary school, or nursery school to the District shall be deemed to meet the requirements of this procedure if the person can produce a certificate as provided for in Health and Safety Code Section 121525 that shows that he/she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the school previously employing him/her that it has the certificate on file.

Adopted: July 2012

AP 7337 Fingerprinting

References: *Education Code Sections 87013 and 88024; Penal Code Sections 11102.2 and 11077.1*

Academic and Classified Employees

The District, within 10 working days of date of employment, shall require each person to be employed, or employed in, a nonacademic or academic position to be fingerprinted using Live Scan.

Temporary employees

Substitute and temporary employees employed for less than a school year are not exempted from these procedures. In most cases, student workers are not required to be fingerprinted, except if employed in certain areas of the district. The Associate Vice President of Human Resources will make the determination.

The District bears the cost of the fees charged by the applicable agencies for the processing of Live Scan.

NOTE: The Associate Vice President of Human Resources will designate one or more employees to receive, store, disseminate and destroy criminal records furnished by the California Department of Justice and to serve as the contact for the California Department of Justice for related issues. Any such employee must be confirmed by the California Department of Justice as required by law and pursuant to California Department of Justice procedures. The Associate Vice President of Human Resources will notify the California Department of Justice by March 1 of each year beginning on March 1, 2012, of the individuals designated.

The Associate Vice President of Human Resources will ensure that criminal history record information is destroyed once the District's business need for the information is fulfilled.

Adopted: October 2013

AP 7343 Industrial Accident and Illness Leave

References: *Education Code Sections 87787 and 88192*

Academic Employees

Academic employees shall be entitled to not less than 60 days leave on account of an industrial accident or illness in any one fiscal year for the same accident.

Allowable leave shall not be accumulated from year to year.

Industrial accident or illness leave shall commence on the first day of absence.

When an academic employee is absent from his/her duties on account of an industrial accident or illness, the employee shall be paid the portion of the salary due him/her for any month in which the absence occurs as, when added to his/her temporary disability indemnity under the Labor Code, will result in a payment to the employee of not more than his/her full salary. "Full salary," shall be computed so that it shall not be less than the employee's "average weekly earnings" as defined in Labor Code Section 4453. For purposes of this section, however, the maximum and minimum average weekly earnings set forth in Labor Code Section 4453 are not applicable.

Industrial accident or illness leave shall be reduced by one day for each day of authorized absence regardless of a temporary disability indemnity award.

When an industrial accident or illness leave overlaps into the next fiscal year, the employee shall be entitled to only the amount of unused leave due him/her for the same illness or injury.

Upon termination of the industrial accident or illness leave, the employee shall be entitled to the benefits provided in Education Code Sections 87780, 87781 and 87786, and, for the purposes of each of these sections, his/her absence shall be deemed to have commenced on the date of termination of the industrial accident or illness leave. However, if the employee continues to receive temporary disability indemnity, he/she may elect to take as much of his or her accumulated sick leave which, when added to his/her temporary disability indemnity, will result in a payment to the employee of not more than his/her full salary.

During any paid leave of absence, the employee may endorse to the District the temporary disability indemnity checks received on account of his/her industrial accident or illness. The District shall issue the employee appropriate salary warrants for payment of the employee's salary and shall deduct normal retirement, other authorized contributions, and the temporary disability indemnity, if any, actually paid to and retained by the employee for periods covered by the salary warrants.

Any employee receiving benefits as a result of this section, during periods of injury or illness, shall remain within the State of California unless authorized by the District for travel outside the state.

Classified Employees

Classified employees shall be entitled to not less than 60 days leave on account of an industrial accident or illness, in any one fiscal year for the same accident.

Allowable leave shall not be accumulative from year to year.

Industrial accident or illness leave will commence on the first day of absence.

Payment for wages lost on any day shall not, when added to an award granted the employee under the workers' compensation laws of this state, exceed the normal wage for the day.

Industrial accident leave will be reduced by one day for each day of authorized absence regardless of a compensation award made under workers' compensation.

When an industrial accident or illness occurs at a time when the full 60 days will overlap into the next fiscal year, the employee shall be entitled to only that amount remaining at the end of the fiscal year in which the injury or illness occurred, for the same illness or injury.

The industrial accident or illness leave of absence is to be used in lieu of entitlement acquired under Education Code Section 88191. When entitlement to industrial accident or illness leave has been exhausted, entitlement to other sick leave will then be used; but if an employee is receiving workers' compensation, the person shall be entitled to use only so much of the person's accumulated or available sick leave, accumulated compensating time, vacation or other available leave which, when added to the workers' compensation award, provide for a full day's wage or salary.

Periods of leave of absence, paid or unpaid, shall not be considered to be a break in service of the employee.

During all paid leaves of absence, whether industrial accident leave as provided in this procedure, sick leave, vacation, compensated time off or other available leave provided by law or the action of the District, the employee shall endorse to the District wage loss benefit checks received under the workers' compensation laws of this state. The District, in turn, shall issue the employee appropriate warrants for payment of wages or salary and shall deduct normal retirement and other authorized contributions. Reduction of entitlement to leave shall be made only in accordance with this procedure.

When all available leaves of absence, paid or unpaid, have been exhausted and if the employee is not medically able to assume the duties of the person's position, the person, if not placed in another position, shall be placed on a reemployment list for a period of 39 months. When available, during the 39 month period, the person shall be employed in a vacant position in the class of the person's previous assignment over all other available candidates except for a reemployment list established because of lack of work or lack of funds, in which case the person shall be listed in accordance with appropriate seniority regulations.

Any employee receiving benefits as a result of this section, during periods of injury or illness, shall remain within the State of California unless authorized by the District for travel outside the state.

An employee who has been placed on a reemployment list, as provided above, who has been medically released for return to duty and who fails to accept an appropriate assignment, shall be dismissed.

Adopted: October 2013

AP 7345 Catastrophic Leave

Reference: *Education Code Section 87045*

The District has established a catastrophic leave program to permit employees of the district to donate eligible leave credits to an employee when that employee or a family member of his or her family suffers from a catastrophic illness or injury.

For the purposes of this procedure, the following terms are defined as follows:

- "Catastrophic illness" or "injury" means an illness or injury that is expected to incapacitate the employee for an extended period of time, or that incapacitates a member of the employee's family requiring the employee to take time off from work for an extended period of time to care for that family member, and taking extended time off work creates a financial hardship for the employee because he or she has exhausted all of his or her sick leave and other paid time off.
- "Eligible leave credits" means vacation leave and sick leave accrued to the donating employee.

Eligible leave credits may be donated to an employee for a catastrophic illness or injury if all of the following requirements are met:

- The employee who is, or whose family member is, suffering from a catastrophic illness or injury requests that eligible leave credits be donated and provides verification of catastrophic injury or illness.
- The Associate Vice President of Human Resources determines that the employee is unable to work due to the employee's or his or her family member's catastrophic illness or injury.
- The employee has exhausted all accrued paid leave credits. If the transfer of eligible leave credits is approved, any employee may, upon written notice, donate eligible leave credits at a minimum of eight hours, and in one-hour increments thereafter.

The maximum amount of time for which donated leave credits may be used shall not exceed 12 consecutive contractual months.

Verification of catastrophic injury or illness shall be required.

An employee who receives paid leave pursuant to this procedure shall use any leave credits that he or she continues to accrue on a monthly basis prior to receiving such leave.

Unused leave credits will be returned to the leave balances of the employees who donated leave credits on a pro-rated basis.

Adopted: October 2009

AP 7346 Employees Called to Military Duty

References:

Education Code Sections 87018, 87700, 87832 and 88116;
Military and Veteran's Code Sections 389 et seq;
38 U.S. Code Sections 4301 et seq.

The following applies to any District employee, academic or classified, who enters the active military service of the United States of America or of the State of California, including active service in any uniformed auxiliary of any branch of the military service, during any period of national emergency declared by the President of the United States or during any war in which the United States of America is engaged.

Leave

Upon presentation of a copy of orders for active duty in the Armed Forces, the National Guard, or the Naval Militia, the District shall grant a military leave of absence for the period of active duty specified in the orders, but not to exceed five years for a permanent, probationary, or exempt employee, or for the remainder of a limited-term employee's appointment or a temporary employee's appointment.

Salary

Any district employee called to active duty who has been in the service of the District for at least one year will continue to receive his or her salary for the first 30 calendar days of ordered military service. Employees who are members of the National Guard will continue to receive salary for the first 30 calendar days of active service regardless of length of service with the District.

In addition, the district may provide for not more than 180 calendar days as part of the employee's compensation all of the following:

- The difference between the amount of his/her military pay and allowances and the amount the employee would have received as an employee, including any merit raises that would otherwise have been granted during the time the individual was on active military duty.
- All benefits that he/she would have received had he/she not been called to active military duty unless the benefits are prohibited or limited by vendor contracts.
- Employees returning from military leave shall have their salary adjusted to reflect salary increases that are not based on merit.

Health Benefits

An employee on military leave for less than 31 days shall continue to receive health insurance benefits.

Employees on leave for longer than 30 days may elect to continue health care coverage for themselves and their eligible dependents for a maximum period of 18 months.

Returning veteran employees whose coverage was terminated because of military leave will not be subject to any exclusion or waiting period prior to reinstatement of health coverage.

Vacation and Sick Leave

Employees on military leave accrue any benefits the district provides to other employees, e.g. if employees on other approved leaves are permitted to accrue vacation or sick leave, employees on military leave will do so as well.

Employees on military leave shall accrue any benefits afforded by any collective bargaining agreement negotiated during their absence.

Any employee on temporary military leave for training who has worked for the District for at least one year shall continue to accrue vacation, sick leave and holiday privileges up to a maximum period of 180 days.

Reinstatement

An employee on active duty military leave shall be entitled to return to the position held by him/her at the time of his or her entrance into the service within six months after the employee honorably leaves the service or is placed on inactive duty.

In the case of a contract academic employee, absence on military leave shall not count as part of the service required for the acquisition of tenure, but the absence shall not be construed as a break in the continuity of service. If the employee was employed by the district for more than one year, but had not yet become a regular academic employee of the district, he/she is entitled to return to the position for the period of time his/her contract of employment had to run at the time he or she entered military service.

In the case of an academic employee, absence on military leave shall not be construed as a break in the continuity of service.

In the case of a classified employee, absence on military leave shall not be construed as a break in the continuity of service.

Adopted: July 2012

AP 7365 Discipline and Dismissal - Classified Employees

References: *Education Code Section 88013; Government Code Sections 3300 et seq.*

Disciplinary Actions

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

- **Reduction in pay or demotion** – The District may reduce the pay or demote an employee whose performance of the required duties falls below standard, or for misconduct.
- **Suspension** – An employee may be suspended for disciplinary purposes without pay.
- **Discharge** – A permanent member of the classified service may be discharged for just cause at any time. Formal written notice of discharge may be made after considered action during a period of suspension.

Procedure for Disciplinary Action and Appeal

The District may, for disciplinary purposes, suspend, demote or terminate any employee holding a position in the classified service. Demotion shall include reduction in pay from a step within the class to one or more lower steps.

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

Notice of Intent: Whenever the District intends to suspend an employee, demote the employee, or dismiss the employee, the employee shall be given a written notice of discipline which sets forth the following:

- The disciplinary action intended;
- The specific charges upon which the action is based;
- A factual summary of the grounds upon which the charges are based;
- A copy of all written materials, reports, or documents upon which the discipline is based;
- Notice of the employee's right to respond to the charges either orally or in writing to the appropriate manager;
- The date, time and person before whom the employee may respond in no less than five working days;
- Notice that failure to respond at the time specified shall constitute a waiver of the right to respond prior to final discipline being imposed.

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

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

- The disciplinary action taken;
- The effective date of the disciplinary action taken;

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

Appeal and Request for Hearing: If a classified employee, having been issued the final notice of disciplinary action, wants to appeal the action, he/she shall within ten calendar days from the date of receipt of the notice, appeal to the Governing Board by filing a written answer to the charges and a request for hearing with the President/Superintendent.

Time for Hearing: The Governing Board shall, within a reasonable time from the filing of the appeal, commence the hearing. The Board may conduct the hearing itself, or it may secure the services of an experienced hearing officer or Administrative Law Judge, mutually selected by the District and the employee, to conduct a hearing and render a proposed decision for consideration by the Board. However, in every case, the decision of the Board itself shall be final. The Board of Trustees may affirm, modify or revoke the discipline. Any employee, having filed an appeal with the Board and having been notified of the time and place of the hearing, who fails to make an appearance before the Board, may be deemed to have abandoned his/her appeal. In this event, the Board may dismiss the appeal.

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

Conduct of the Hearing:

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

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

Proceed with Hearing or Request for Continuance: Each side should be asked if it is ready to proceed. If either side is not ready and wishes a continuance, good cause must be stated.

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

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

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

- The party imposing discipline (District) shall be permitted to make an opening statement.
- The appealing party (employee) shall be permitted to make an opening statement.
- The District shall produce its evidence.
- The party appealing from such disciplinary action (employee) may then offer their evidence.
- The District followed by the appealing party (employee) may offer rebutting evidence.
- Closing arguments shall be permitted at the discretion of the Board of Trustees. The party with the burden of proof shall have the right to go first and to close the hearing by making the last argument. The Board may place a time limit on closing arguments. The Board or the parties may request the submission of written briefs. After the request for submittal of written briefs, the Board will determine whether to allow the parties to submit written briefs and determine the number of pages of briefs.

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

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

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

Deliberation Upon the Case: The Board of Trustees should consider all oral and documentary evidence, the credibility of witnesses, and other appropriate factors in reaching their decision. The Board may deliberate at the close of the hearing or at a later fixed date and time. In those cases where the Board has received a proposed decision from a hearing officer or Administrative Law Judge, the proposed decision, the record of the hearing and all documentary evidence shall be available for review by the Board when it deliberates.

Written Findings, Conclusion, and Decision: The Board shall render its findings, conclusions and decision as soon after the conclusion of the hearing as possible. A finding must be made by the Board on each material issue. The Board may sustain or reject any or all of the charges filed against the employee. The Board may sustain, reject or modify the disciplinary action invoked against the employee. In those cases where the Board has received a proposed decision from a hearing officer or Administrative Law Judge, the Board may adopt the proposed decision, modify the proposed

decision or render a new decision. If the Board recommends reinstatement of the terminated employee, the employee is only entitled to back pay minus the sum the employee has earned during the period of absence.

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

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

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

Adopted: April 2013

AP 7370 Political Activity

References: *Education Code Sections 7050 et seq.*

No restriction shall be placed on the political activities of any employee of the District except as provided in board policy and these procedures.

No District funds, services, supplies, or equipment may be used to urge the support or defeat of any ballot measure or candidate, including but not limited to any candidate for election to the Governing Board.

District resources may be used to provide information to the public about the possible effects of a bond issue or other ballot measure if both the following conditions are met:

- The informational activities are otherwise authorized by the Constitution or laws of the State of California; and
- The information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

Any administrator or board member may appear before a citizens' group that requests the appearance to discuss the reasons why the Board called an election to submit to the voters a proposition for the issuance of bonds, and to respond to inquiries from the citizens' group.

An officer or employee of the District may solicit or receive political funds or contributions to promote the support or defeat of a ballot measure that would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of officers or employees of the District. Such activities are prohibited during working hours. Solicitation or receipt of political funds or contributions to promote the support or defeat of a ballot measure that would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of officers or employees of the District, is prohibited during working hours on district grounds and/or inside district buildings. Such activities are permitted during nonworking time. "Nonworking time" means time outside an employees' working hours, whether before or after the work day or during the employees' lunch period or other breaks during the day.

Adopted: April 2013

AP 7371 Personal Use of Public Resources

References: *Government Code Section 8314; Penal Code Section 424*

No employee or consultant shall use or permit others to use public resources, except that which is incidental and minimal, for personal purposes or any other purpose not authorized by law.

Adopted: October 2013

AP 7380 Retiree Health Benefits: Academic Employees

References: *Education Code Sections 7000 et seq.*

Pursuant to AB 528, the District shall permit any former academic employee who has retired from the District to enroll in the health and welfare benefit plan currently provided to its current academic employees. In addition, the District shall also permit the enrollment of the surviving spouse of a former academic employee who either retired from the District or was, at the time of his or her death, employed by the District as an academic employee and a member of the State Teacher's Retirement System.

Enrollment pursuant to this procedure shall be at the retiree or surviving spouse's own expense and subject to the health and welfare benefit plan requirements.

A retired academic employee or surviving spouse may enroll in the District's health and welfare benefit plans only once, pursuant to this policy. A retired academic employee or surviving spouse who voluntarily terminates coverage under this policy may be excluded from obtaining coverage again.

The retired academic employee or surviving spouse should contact the district's Human Resources department to obtain current enrollment information and forms, in order to enroll in any eligible health and welfare benefit plan and/or dental care benefit plan.

Adopted: February 2014

AP 7385 Salary Deductions

References: *Education Code Sections 87040, 87833, 87834, and 88167;*
Government Code Sections 3540 et seq.

The district honors employees' request for any and all deductions as outlined in each respective collective bargaining agreement suffice that the employee completes applicable authorization documents in a timely manner. Common deductions include (but not limited to) any or all of the following:

- participation in a deferred compensation program;
- paying premiums on any policy or certificate of group life insurance or disability insurance or legal expense insurance, or any of them;
- paying rates, dues, fees, or other periodic charges on any hospital service contract.

The request provided for above shall be revocable by the employee. The District shall *[with or without charge]* reduce the salary payment by the amount which the employee has authorized in writing for the purpose of paying his or her membership dues in any local, statewide or other professional organization. Revocation of such authorization shall be in writing and shall be effective beginning with the next pay period.

Adopted: May 2012

AP 7400 Travel

- Reference: ***Educational Code Section 87032, Code of Federal Regulations Part 200.474***

Members of the Board of Trustees and District employees shall be reimbursed for approved travel and conference expenses in accordance with the procedures in this section. These procedures do not pertain to students or independent contractors who seek similar reimbursement.

General Travel Guidelines and Allowable Expenditures:

Prior to travel, all employees must obtain written approval by submitting appropriate travel form(s), to their immediate supervisors. Required conference registration, airfare, mileage, car rental, and lodging information (if applicable) must be noted on the appropriate travel form.

Foreign and out of state travel requires approval of the College President/Superintendent.

The reimbursement for international travel will be based on the U.S. Department of State travel guidelines, which can be found at its website:

https://aoprals.state.gov/content.asp?content_id=184&menu_id=78

Registration & Conference Fees

Registration fees for an event or conference at which attendance has been approved should be paid for with a District Cal-Card when possible. Registration fees paid directly by an employee will be reimbursed after the conference is completed and proof of attendance is submitted.

Lodging

While traveling on District business, employees are encouraged to stay at good hotels. Premium accommodations should be avoided unless no other suitable arrangements are available or special circumstances justify their use. Hotel arrangements should only be sought when staying overnight and the hotel is outside a 50-mile radius from the District.

Meals

The District reimbursement for meals is based on the Federal government meals expense rate. The meal cost, periodically adjusted for inflation, is \$70, and shall be paid per the following schedule:

Breakfast	\$15.00
Lunch	\$20.00
Dinner	\$35.00
Total:	\$70.00

For the first day of travel if the trip begins:

- At/before 6 a.m. Breakfast may be claimed
- At/before 11 a.m. Lunch may be claimed
- At/before 5 p.m. Dinner may be claimed

For the end of a trip of more than 24 hours, if the trip ends:

- At/after 8 a.m. Breakfast may be claimed
- At/after 1 p.m. Lunch may be claimed
- At/after 7 p.m. Dinner may be claimed

Mileage

If a personal vehicle is used, the employee is eligible for mileage reimbursement, which recognizes the cost of gas, oil, normal wear and tear, and insurance. The District reimburses actual mileage and shall be paid at the Internal Revenue Service (IRS) rate in effect at the time of the travel. Generally mileage is computed between the employee's working base and approved travel destination. However, if an employee travels from home directly to a conference destination on a workday, he/she will be reimbursed for mileage between working base and destination or between home and destination, whichever is shorter. For travel on a non-workday, the employee may be reimbursed for mileage between home and destination.

Damage to a privately owned vehicle used for district business is covered by the individuals' private insurance, cost for which is also included in the mileage reimbursement.

Intercampus Travel

Work related travel between Fremont and Newark Campuses for full-time employees is reimbursable at the rate 7.45 miles one-way and 14.9 miles round-trip.

Reimbursement for inter-campus travel for part-time faculty is determined by the Bargaining Agreement.

Automobile Rental

The use of rental vehicles is limited to situations where District vehicles or commercial transportation either are not available, or their use is impractical as determined by the direct supervisor. The use of the most economical vehicle will be required, if available and otherwise appropriate. Employees are encouraged to carpool in rented vehicles when possible. The District insurance does not cover physical loss of, or damage to, rental vehicles. Rental agencies normally provide full coverage insurance for a nominal fee and may be purchased and included in the expense reimbursement. Travelers are strongly encouraged to fill the gas tank before returning the vehicle to the rental agency to avoid service fees and more expensive fuel rates. Mileage cannot be claimed when/if a rental vehicle is utilized, but cost of gas is reimbursable to the employee.

Use of District Vehicle

The use of District owned vehicles needs to be approved by an authorized District manager and may only be used for District purposes. Personnel operating District owned vehicles shall not permit persons other than District employees or persons required to be involved in the performance of duty or as otherwise authorized to ride as a passenger in their vehicle.

- All use of District vehicles must be authorized by a Department Supervisor.
- Drivers of District vehicles must be at least 18 years old and have a valid driver's license.
- Drivers of District vehicles must observe all state and local laws.
- Drivers of District vehicles who receive a traffic citation or parking ticket while on official District business will be personally responsible for the citation or ticket.
- An employee of the District may not drive a District vehicle while under the influence of intoxicating liquor or illegal drugs nor may he/she use any tobacco products while in the vehicle.

Air Transportation Cost

District employees can use air transportation only with written pre-approval from the Division Vice President. Employees are strongly encouraged to book well in advance of travel to secure the lowest

fares. Employees should ensure plans are confirmed prior to purchasing tickets with flight restrictions or no-refund clauses.

Other Transportation

Some other allowable transportation related expenses are: parking fees; highway tolls; shuttles; taxi cabs, gas for rental car, or other transportation services (Uber, Lyft, etc.).

Receipts

All claims for reimbursement must be accompanied by "original" itemized receipts. In certain instances (toll, taxi, etc.); when receipts are not furnished, the reimbursement request must clearly explain the nature of the charge and why a receipt was not provided.

Submitting Travel Expense Report

Within 30 days after completion of the travel, employees shall submit the appropriate travel form(s) and supporting documentation with receipts to Accounts Payable. Accounts Payable will verify documentation and required signatures.

L. Non-reimbursable Expenses

Certain travel expenses are considered personal expenses and not essential to District business. Some examples of non-reimbursable expenses include entertainment expense, leisure tours or personal side trips, personal telephone calls, traffic or parking citations, individual membership dues or fees, toiletries, and alcoholic beverages.

M. Exceptions

Any exceptions to the stated District Travel Guidelines will need to be approved by the College President/Superintendent.

See Board Policy #7400, Travel.

Adopted: September 2018

AP 7700 Whistleblower Protection

References:

Education Code Sections 87160-87164;

Government Code Section 53296;

Labor Code Section 1102.5;

Private Attorney General Act of 2004 (Labor Code Section 2698)

Individuals are encouraged to report suspected incidents of unlawful activities by District employees in the performance of their duties. Reports will be investigated promptly and appropriate remedies applied. Employees who, in good faith, reported such activities and/or assist the district in the investigation will be protected from retaliation.

This procedure sets out the processes for responding to and investigating reports of unlawful activities, as defined in BP 7700 titled Whistleblower Protection, and addressing complaints of retaliation for making such reports.

Filing a Report of Suspected Unlawful Activities

Any person may report allegations of suspected unlawful activities. Knowledge or suspicion of such unlawful activities may originate from academic personnel, staff, or administrators carrying out their assigned duties, internal or external auditors, law enforcement, regulatory agencies, customers, vendors, students, or other third parties.

Anonymous reports will be investigated to the extent possible. However, employees are strongly encouraged not to report anonymously because doing so impedes the District's ability to thoroughly investigate the claim and take appropriate remedial measures. As set forth fully below, retaliation against individuals who report suspected unlawful activities will not be tolerated.

Normally, a report by a District employee of allegations of a suspected unlawful activity should be made to the reporting employee's immediate supervisor or other appropriate administrator or supervisor within the operating unit. However, if the report involves or implicates the direct supervisor or others in the operating unit, the report may be made to any another District official whom the reporting employee believes to have either responsibility over the affected area or the authority to review the alleged unlawful activity on behalf of the District. When the alleged unlawful activity involves the President/Superintendent, the report should be made to the chair of the board of trustees. When the alleged unlawful activity involves the board of trustees or one of its members, the report should be made to the President/Superintendent who will confer with the president of the board of trustees and/or legal counsel on how to proceed.

Allegations of suspected unlawful activities should be made in writing so as to assure a clear understanding of the issues raised, but may be made orally. Such reports should be factual and contain as much specific information as possible. The receiving supervisor or administrator should elicit as much information as possible. If the report is made orally, the receiving supervisor or administrator shall reduce it to writing and make every attempt to get the reporter to confirm by his/her signature that it is accurate and complete.

Once the receiving supervisor or administrator has received and/or prepared a written report of the alleged unlawful activity, he/she must immediately forward it to the President/Superintendent. However, if this process would require submitting the report to an employee implicated in the report, the receiving supervisor or administrator should follow the reporting options outlined, above. The high-level administrator or trustee who receives the written report pursuant to this paragraph is

responsible for ensuring that a prompt and complete investigation is made by an individual with the competence and objectivity to conduct the investigation, and that the assistance of counsel and/or an outside investigator is secured if deemed necessary.

In the course of investigating allegations of unlawful conduct, all individuals who are contacted and/or interviewed shall be advised of the District's no-retaliation policy. Each individual shall be: a) warned that retaliation against the reporter(s) and/or others participating in the investigation will subject the employee to discipline up to and including termination; and b) advised that if he or she experiences retaliation for cooperating in the investigation, then it must be reported immediately.

In the event that an investigation into alleged unlawful activity determines that the allegations are accurate, prompt and appropriate corrective action shall be taken.

Protection from Retaliation

When a person makes a good-faith report of suspected unlawful activities to an appropriate authority, the report is known as a protected disclosure. District employees and applicants for employment who make a protected disclosure are protected from retaliation.

Any employee who believes he/she has been (1) subjected to or affected by retaliatory conduct for reporting suspected unlawful activity, or (2) for refusing to engage in activity that would result in a violation of law, should report such conduct to the appropriate supervisory personnel (if such supervisory personnel is not the source of or otherwise involved in the retaliatory conduct). Any supervisory employee who receives such a report, or who otherwise is aware of retaliatory conduct, is required to advise the President/Superintendent. If the allegations of retaliation, or the underlying allegations of unlawful conduct involve the President/Superintendent, the supervisor shall report to the highest level administrator and/or trustee who is not implicated in the reports of unlawful activity and retaliation.

All allegations of retaliation shall be investigated promptly and with discretion, and all information obtained will be handled on a "need to know" basis. At the conclusion of an investigation, as appropriate, remedial and/or disciplinary action will be taken where the allegations are verified and/or otherwise substantiated.

Whistleblower Contact Information

Employees who have information regarding possible violations of state or federal statutes, rules, or regulations, or violations of fiduciary responsibility by a corporation or limited liability company to its shareholders, investors, or employees should contact the California Community Colleges Chancellor's Office or the District's Board of Trustees. Employees can contact the State Personnel Board with complaints of retaliation resulting from whistleblower activities. The State Personnel Board hotline is (916) 653-1403.

Other Remedies and Appropriate Agencies

In addition to the internal complaint process set forth above, any employee who has information concerning allegedly unlawful conduct may contact the appropriate government agency.

Adopted: July 2012