



# MONTEREY PENINSULA College

## ADMINISTRATIVE PROCEDURES

### Chapter 7 Human Resources

7360

#### AP 7360 Discipline and Dismissal – Academic Employees

##### Causes for Discipline

A regular employee or academic employee may be dismissed or penalized for one or more of the following causes:

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

##### Placement on Involuntary Paid Administrative Leave Pending Investigation of Misconduct

An academic employee who is placed on involuntary paid administrative leave and is subject to accusations of misconduct is entitled to be provided with the general nature of the accusations against them at least two business days before the employee is placed on leave. At least two business days before the employee is placed on involuntary paid administrative leave, the employee shall be notified in writing of the general nature of the allegation or allegations of misconduct upon which the decision to place the employee on leave is based.

The two business day advance notice requirement does not apply in the event of a serious risk of physical danger or other necessity arising from the specific allegations, and the employee may immediately be placed on involuntary paid administrative leave. The employee shall be provided with, at minimum, the general nature of the accusations made against them within five business days of the employee being placed on leave.



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Within 90 days of placing an employee on involuntary paid administrative leave, the District should complete its investigation of the accused misconduct and initiate disciplinary proceedings against, or reinstate, the employee.

### **Background Checks**

Background checks may be conducted as part of disciplinary or harassment investigations. [*Civil Code Sections 1786 et seq. (Investigative Consumer Reporting Agencies Act); 15 U.S. Code Sections 1681 et seq. (Fair Credit Reporting Act)*].

Advanced notice of discipline/harassment investigations shall be provided to those under investigation. If the investigation results in action that adversely affects the employee, the employee shall receive oral, written, or electronic notice of:

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

### **Notice and Appeal**

The 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 employee against whom the charge is filed has been given written notice of the unprofessional conduct or unsatisfactory performance, specifying the nature of the conduct with specific instances of behavior and with particularity to permit the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the most recent evaluation of the employee.

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

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



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If the employee objects to the decision on any ground, the employee shall give written notice of the objection to the Board of Trustees and the Superintendent/President of their objection within 30 days of the date of the service of the notice.

Within 30 days of receipt of the employee's demands for a hearing, the employee and the Chief Human Resources and Employee Relations Officer (CHRO) shall attempt to agree upon an arbitrator to hear the matter. When there is agreement as to the arbitrator, the CHRO shall enter into the records of the Board of Trustees written confirmation of the agreement signed by the employee and an authorized representative of the District. Upon entry of such confirmation, the arbitrator shall assume complete and sole jurisdiction over the matter.

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

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

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

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

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

See Board Policy 7360 – Discipline and Dismissal: Academic Employees



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See also the collective bargaining agreement(s) for the applicable employee group(s)

**References:** *Education Code Sections 87623, 87669, and 87732*

**Formerly Board Policy 5325 – Personal Conduct/Suspension and Dismissal**

**President’s Cabinet Approved:** October 10, 2018

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