


West Hills Community College District

ADMINISTRATOR

Evaluation Duties, Responsibilities, and Requirements

Presented by
Rex Randall Erickson
Erickson Law Firm A.P.C.

San Diego Office:

2878 Camino Del Rio S, Ste. 115
San Diego, CA 92108
(619) 231-9920

Toll Free Number:

800-864-8111



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I.

Overview of the Role, Rights and Employment Terms of Managers and Administrators

A. **ADMINISTRATORS**

1. An "administrator" is any person employed by the governing board of a community college district in a supervisory or management position as defined in the EERA (Govt. Code Section 3540 et seq.) (Education Code Section § 87002(a).)
2. An "educational administrator" is an administrator who is employed in an academic position designated as having direct responsibility for the instructional or student services program of the college or district. (Educ. Code § 87002(b).)
3. A "classified administrator" is an administrator who is not employed as an educational administrator. (Educ. Code § 87002(c).)

B. **ADMINISTRATORS AND MANAGERS ARE IN A POSITION OF TRUST AND CONFIDENCE AND HAVE A DUTY OF LOYALTY TO THE BOARD AND MANAGEMENT TEAM**

1. Top administrators are in an intimate relationship which requires complete trust by the Board. (See, e.g., Grant v. Adams, 69 Cal.App.3d 127, 132; Hentschke v. Sink, 34 Cal.App.3d 19, 22-23.)
2. Mid-level administrators bear an intimate relationship which requires complete trust by top level administrators. (Grant, 69 Cal.App.3d at 132; Hentschke, 34 Cal.App.3d at 22-23.)
3. This policy is in effect because of the close relationship between the Board and administrators and the necessity for day-to-day cooperation which requires complete trust by top administrators in their subordinates. (Grant, 69 Cal.App.3d at 132; Hentschke, 34 Cal.App.3d at 22.)

See District policies on the role of the Administrator:

4. West Hills CCD Board Policy 7250 – Educational Administrators
5. West Hills CCD Board Policy 7260 – Classified Managers

C. **ADMINISTRATORS DO NOT HAVE A STATUTORY RIGHT TO THEIR ADMINISTRATIVE POSITION**

1. Because of these relationships, administrators do not possess statutory rights to their positions. (Barthuli v. Board of Trustees (1977) 19 Cal.3d 717.)
 - a) In California administrators serve at the pleasure of the governing board. (Grant v. Adams (1977) 69 Cal.App.3d 127, 132.)
 - b) Supervisor's and administrators are not permanent employees. (Id.)
 - c) Unlike statutory provisions which apply to other employees, nothing in the California statutory law limits the power of a district to remove an administrator for any reason satisfactory to the District. (Id.; Hentschke v. Sink (1973) Cal.App.3d 19, 22.)
 - d) Accordingly, pre-demotion and pre-termination rights which are applicable to the dismissal of other District employees do not necessarily apply to administrators.
2. However, administrators may hold rights under the terms of their contract or appointment.
 - a) Under Education Code 72411, "educational administrators" shall and "other administrators" may be appointed by a contract or appointment of up to four years.
 - b) This confers no property rights. Instead, the Governing Board may at any time terminate, effective the next succeeding first day of July, terminate the employment of, and the contract of employment with an administrator and reemploy him or her on any terms and conditions mutually agreed upon effective the date of the termination. (Educ. Code § 72411.)

- c) Alternatively, the Board may determine that an administrator is not to be reemployed at the expiration of his or her appointment or contract.
 - (1) If the contract or appointment is longer than a year, the Board must give at least six months' notice unless the contract or appointment provides otherwise.
 - (2) If the contract is for not for longer than one year, the District must give notice if its intent not to reemploy by March 15. (Educ. Code § 72411.)
- d) Administrators without express appointments or contracts serve at the pleasure of the Governing Board. (Educ. Code § 72411.5.)
- e) The only exception is when a decision to rehire somehow deprives an individual of a constitutionally protected liberty or property interest in continued employment. (See Grant, 69 Cal.App.3d at 131.)

3. Discipline/Dismissal

- a) If an administrator has tenure as a faculty member, his or her dismissal or imposed penalties will be in accordance with the provisions applicable to faculty members. (Educ. Code § 72411.5.)
- b) If an employee has a contract or appointment, he or she shall be dismissed or imposed penalties within the terms of the appointment or contract. (Educ. Code § 72411.5.)
- c) Administrators without express appointments or contracts serve at the pleasure of the Governing Board. (Educ. Code § 72411.5.)
- d) The Governing Board may at any time terminate, effective the next succeeding first day of July, terminate the employment of, and the contract of employment with an administrator and reemploy him or her on any terms and conditions mutually agreed upon effective the date of the termination. (Educ. Code § 72411.)

D. **EMPLOYMENT RIGHTS:**

1. Administrators possess no statutory right to their administrative positions

2. Tenured Faculty

- a) An educational administrator who has previously obtained faculty tenure retains that tenure and has the right to retreat to the classroom.
- b) Under Education Code 72411.5, an administrator who has already has tenure as a faculty member must be disciplined or dismissed in accordance with provisions of the Education Code pertaining to faculty.

3. Untenured Faculty

- a) The discipline or dismissal for cause must be done in accordance with the terms of the agreement or appointment for an educational administrator who does not have tenure as a faculty member.
- b) An educational administrator may have the right to retreat to a 1st year probationary teaching position upon the expiration of his/her contract or appointment if certain criteria are met. (Educ. Code 87458; see Entezampour v. North Orange County Comm. Coll. Dist. (2010) 190 Cal. App. 4th 832); Wong v. Ohlone College (2006) 137 Cal.App.4th 1379, 1382.) The criteria includes, among other things:
 - (1) Two years of satisfactory service
 - (2) The dismissal was not for cause; and

- (3) A position for which the administrator meets minimum qualifications is available.
- (4) The District has sufficient funds

4. Classified Manager

- a) A classified administrator who has obtained permanency similarly retains that permanent status as a classified employee.
- b) Classified administrators who have previously obtained permanency as a classified employee may only be dismissed or disciplined in accordance with the procedures for non-administrative classified employees, as typically set forth in board policies.
- c) Classified managers employed under a contract or appointment with a specific term may be disciplined and terminated under the terms of that appointment or contract.
- d) However, a classified administrator who is not employed with a specific contract or appointment “shall serve in his or her administrative assignment at the pleasure of the governing board.” In other words, there is no requirement of either notice or cause and they may be terminated at any time at the discretion of the board. (Educ. Code Section 72411.5.)
- e) Classified administrators are not granted permanent status in the administrator position and may be terminated from the administrator position without notice and hearing. (See Barthuli v. Board of Trustees (1977) 19 Cal.3d 717 and Healdsburg Police Officers Assn. v. City of Healdsburg, 57 Cal.App.3d 444.)
- f) However, a classified manager who previously attained permanent status in a classified position has a statutory property right in their permanent employment and must be provided due process prior to termination from permanent classified employment. (Spanner v. Rancho Santiago Community College Dist. (2004) 119 Cal. App. 4th 584, 591.)
- g) A classified administrator who is removed from the administrator position retains a previously gained property right to employment in the position for which the employee has completed the probationary period.
- h) Because permanent status for classified employees is obtained in a particular classification, rather than for employment with the District generally, a returning classified employee does not have the right to employment in any classification. (E.g., Tucker v. Grossmont Union High School (2008) 168 Cal. App. 4th 640.)
- i) A removed classified administrator may only be separated from his or her permanent classified employment classification for cause or pursuant to a layoff for lack of work or lack of funds. (Educ. Code §§ 88013 and 88017.)
- j) However, a removed administrator may be assigned to an open position as part of a reorganization that does not result in a net increase in the number of employees. (5 C.C.R. § 53021(c)(1).)

E. Administrator Contracts Can Not Be Modified

- 1. Administrator contracts cannot be modified by an oral agreement
 - a) District employees cannot receive oral authorization to enter into a contract required to be in writing unless they are provided authorization in writing. (Civil Code § 2309.)
 - b) Agreements must be ratified by the Board. In regard to agreements entered into by District employees on behalf of the District, such agreements can only be ratified if the Board has knowledge of the contract.
 - c) Ratification can be made only in the manner that would have been necessary to “confer original authority for the act ratified.” (Civil Code § 2310.) Thus, any

amendments to a contract originally required to be in writing can only be ratified in writing.

2. Contractual Agreements Are Invalid Absent Board Approval

- a) Approval and ratification of all contracts must be evidenced by a duly passed motion of the Board.
- b) California Education Code section 81655 provides that any contract made pursuant the Board's power to delegate and authorize is not valid or enforceable unless it has been approved or ratified by the board, evidenced by a motion of the Board duly passed and adopted.
- c) A contract that does not comply with the required formalities section 81655 is not an enforceable obligation against the District.
- d) When a statute prescribes the mode by which the power to contract must be exercised, the mode is the measure of power. A public school district cannot exceed the powers granted to it.

II.

EFFECTIVE EMPLOYEE DISCIPLINE AND DISMISSAL

**** NOTE:** For information specific to a particular employee group, such as faculty, classified or contract employees, the section includes the group designation. All other information is generally applicable to employee discipline or dismissal. ******

A. **THE IMPORTANCE OF DOCUMENTING EMPLOYEE MISCONDUCT AND PLACEMENT OF MATERIALS IN EMPLOYEE FILES**

The 14th Amendment to the United States Constitution: “No state . . . shall . . . deprive any person of life, liberty, or property, without due process of law.”

B. **GROUNDINGS FOR DISMISSAL**

- Education Code § 87732 for faculty
 - Education Code § 88013 and Collective Bargaining Agreement for Classified
 - West Hills Rules and Policies
 - Workplace violence policy
 - Drug and alcohol policy
 - Harassment/discrimination policy
 - Physical/mental policy
 - Title 5, California Code of Regulations
 - Educational Employment Relations Act (EERA)
 - Title VII of the Civil Rights Act
 - California Fair Employment and Housing Act (FEHA)
 - California and U.S. Constitutions
1. **Faculty EDUCATION CODE SECTION 87732:** Education Code Section 87732 **permits dismissal of faculty for:**
- 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 college laws of the state or reasonable regulations prescribed for the government of the community colleges by the board of governors or the District Board
 - Conviction of a felony or of any crime involving moral turpitude
 - Advocating the overthrow of government
2. **WHAT IS UNSATISFACTORY PERFORMANCE?**
- a) Employee not performing adequately.
 - b) Employee not meeting established standards of performance.
 - c) Includes incompetence in most extreme examples
3. **WHAT IS EVIDENT UNFITNESS FOR SERVICE**

- a) Employee not qualified or able to perform
- b) Employee beyond remediation
- c) Higher standard than unsatisfactory performance

4. **COMMUNICATING EXPECTATIONS OF PERFORMANCE**

- a) Duties and responsibilities
- b) Objectives and goals
- c) Accepted methods of performing the duties and tasks.
- d) How to improve

If disciplinary action is warranted, the employee should be properly notified. For further guidance on how to properly notify the employee, see the sample notices and letters provided in Appendix B. Please keep in mind that these letters are only samples, for specific legal requirements you should seek the advice of administration and legal counsel.

5. **GROUNDS FOR DISCIPLINE – CLASSIFIED (CBA Article 15.3)**

- a) Unsatisfactory Attendance, including violation or abuse of leave rules
- b) Unsatisfactory Personal Conduct (Discourteous, offensive or abusive conduct or language, dishonesty, possession or use of drugs/alcohol, unbecoming conduct, conviction of certain criminal offenses, etc.)
- c) Unsatisfactory Fulfillment of Job Responsibilities (Incompetence, inefficiency, incapacity, failure to perform job duties, insubordination, carelessness or negligence, violation of laws/rules/regulations, etc.)

6. **DISCIPLINE PROCEDURE – CLASSIFIED**

- a) Discipline: A regular classified employee may only be subject to disciplinary action for cause as prescribed by rule or regulation of the Governing Board. (Educ. Code § 88013(b).)
- b) Termination: Prior to suspending or terminating a permanent classified employee, the District must afford the employee pre-deprivation due process including notice of the charge and recommendation for discipline, documentary evidence on which the charges are based, and notice of the right to a “Skelly” conference to review the charges. (Skelly v. State Personnel Board (1975) 15 Cal. 3d 194.)
- c) Hearing: The District is required to provide a permanent classified employee with notice of the right to request a hearing on the charges. (Educ. Code § 88013(c).) The hearing must be scheduled at least 5 days after notice of the charges. The employee must be notified of the hearing at least 24 hours in advance, and may request that the charges be heard in an open session. (Gov’t Code § 54957(b)(2).)

7. **INVESTIGATING ALLEGATIONS**

- a) Further Investigation Warranted:
 - (1) Rumors
 - (2) Speculation
 - (3) Insufficient or incomplete facts
 - (4) Unclear that there is a violation

- (5) There is a denial of the allegations
- (6) Conflicting stories
- (7) Credibility

b) Seek advice from Human Resources/Legal Counsel if:

- (1) You wish to discipline the employee for something he/she communicated verbally or in writing.
- (2) The employee has communicated matters which may be of public concern.
- (3) The employee has been active in any employee organization activities.
- (4) The employee has sustained a work injury or reported a work injury recently or has a pending claim.
- (5) You are aware or the employee has put the District on notice of a disability.
- (6) The employee has required or has used Family Medical Care Leave within the prior year.
- (7) You wish to discipline the employee for conduct which occurred off the job.
- (8) A disciplinary action against the employee would not be consistent with disciplinary actions imposed against other employees similarly situated.

Note: The presence of any of these factors does not mean discipline would be inappropriate. Instead, it simply calls for a closer scrutiny of the legalities surrounding the proposed discipline for which the Human Resources Department and/or legal counsel should be consulted.

8. **TAKING ACTION**

a) Terms Thrown About Regarding The Appropriate Action

Fundamental Fairness	Good Cause
<i>Reasonableness</i>	Just Cause
Progressive Discipline	

b) What Is Appropriate Response?

- (1) Look at:
 - (a) Offense
 - (b) Longevity
 - (c) Prior discipline
 - (d) Performance record
 - (e) How others are treated for the same or similar offense
- (2) Examine
 - (a) Extenuating Factor
 - (b) Impact on operations
 - (c) Degree of orientation to expectations

- c) For further guidance on what type of discipline is appropriate, please reference Appendix A, "GOOD CAUSE CHECKLIST."

9. **MORRISON FACTORS:** Factors to be Considered in Terminating a Faculty Employee

- a) Likelihood that the conduct may have adversely affected students or fellow employees.
- b) Degree of such adversity anticipated.
- c) Proximity or remoteness in time of the conduct.
- d) Type of certificate held by the party involved.
- e) Extenuating or aggravating circumstances, if any, surrounding the conduct.
- f) Likelihood of the recurrence of the questioned conduct.
- g) Extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional right of the employee involved or other employees.

(Morrison v. State Board of Education (1969) 1 Cal.3d 214.)

10. **90 DAY NOTICE – FACULTY**

- a) Prior to dismissing a faculty member for "unprofessional conduct" or "unsatisfactory performance"
- b) The employee must receive written notice of specific instances of bad behavior or performance
- c) So as to give the employee an opportunity to correct his or her faults and overcome the grounds for discipline
- d) The notice must include the most recent evaluation

(Educ. Code § 87734.)

11. **OTHER PARTICULAR DISCIPLINE PROBLEMS:**

- a) Absenteeism and Tardiness (See Appendix A, "Supervisor's Checklist for Excessive Absenteeism")
- b) Abuse of Sick Leave (See Appendix A, "Elements of Proof Checklist for Abuse of Sick Leave Cases")
- c) Incompetence
- d) Insubordination
- e) Violation of District rules
- f) Misconduct outside working hours
- g) Horseplay

12. **INSUBORDINATION REQUIREMENTS:**

- a) Order must be lawful and safe.
- b) Order must be communicated to the employee.
- c) Employee must have understood the order.
- d) Person giving the order has the authority to do so.
- e) Refusal to comply

13. **UNSATISFACTORY PERFORMANCE ISSUES**

- a) Probationary (or contract) v. Regular
- b) Regular evaluations essential
- c) Accuracy essential
- d) Reasonable expectations
- e) Communicated to Employee
- f) Proper training
- g) Progressive discipline – alternate approach last chance

14. **INSTITUTING EMPLOYEE DISCIPLINARY ACTION WHICH WILL WITHSTAND CHALLENGE**

- a) Proper, sufficient and timely documentation. (See Appendix A, Documentation Checklist)
- b) Proper and timely placement of documentation in the employee's personnel file.
- c) Due process/just cause (See Appendix A, Good Cause Checklist & Just Cause – Due Process Checklist)
- d) Follow collective bargaining agreement provisions/local rules/practice/Education Code requirements.

15. **TOP 10 ERRORS IN EMPLOYEE DISCHARGE**

- a) Too many issues and causes for discipline.
 - (1) Mixing major and minor issues
 - (2) Confusion
 - (3) Lacking evidence on some issues
 - (4) "When you hear hoof beats think horses, not zebras" (keep it simple)
- b) Failure to comply with evaluation requirements.
 - (1) Compliance with evaluation requirements
 - (2) The need to improve versus unsatisfactory performance
 - (3) Evidence to back up the evaluation
- c) Failure to file documents in the personnel file.
 - (1) Evidentiary value of documents that have not been filed
 - (2) Limitations period for filing documents
 - (3) Loss of advantage in knowing employee's defense
- d) Failure to provide due process regarding proposed charges.
 - (1) Procedural due process
 - (2) Substantive due process
 - (3) Fairness
 - (4) Consistent application of rules
 - (5) Employee disruption of due process
- e) Failure to provide progressive discipline.
 - (1) Express collective bargaining/policy provision

- (2) Implied requirements
- (3) Just cause
- (4) Examples: lateness, insubordination, theft, violence, etc.
- f) Causes which appear to be mixed motive of discrimination.
 - (1) Worker's compensation
 - (2) Sexual harassment
 - (3) ADA
 - (4) Age
 - (5) Gender
- g) Failure to show the harm to the institution.
 - (1) Harm to students
 - (2) Harm to employees
 - (3) Harm to community
- h) Inconsistent evidence and witness testimony.
 - (1) Employer's burden to prove
 - (2) Surprise evidence
 - (3) Witness bias
 - (4) "Locking in" testimony
- i) Lack of preparation
 - (1) Locating supportive evidence
 - (2) Presentation order of evidence
 - (3) Neutralizing damaging evidence
- j) Lack of will to discipline/discharge.
 - (1) Lack of sufficient evidence
 - (2) Failure to follow procedural protocols
 - (3) Failure of commitment

16. **Avoiding Common Pitfalls**

- a) **Condonation** - An employer cannot ignore or "shut his/her eyes" to rule violations and misconduct and then, without warning, suddenly discipline employees for violating the rule or engaging in such misconduct.
- b) **Investigation** - In most cases an employee should be advised of the charge and given a fair opportunity to explain or justify his conduct before the final discipline and penalty decisions are made.
- c) **Representation** - Employees should be informed of their alleged misconduct at the beginning of any investigatory meeting or discussion.
- d) **Notification** - The employee and, if required, his union should be properly notified (preferably in writing) of the reason or reasons for the issuance of the discipline. Remember, you are "stuck" with the reason given.

- e) Disparate Treatment - Ordinarily, employees violating the same rule should receive the same discipline.
- f) Follow Procedures - Whatever they are, consistently follow your own contractual requirements and/or internal procedures.
- g) Damaging Precedents - Avoid making exceptions to rules, procedures, or established penalties without sound justification and settling disciplinary grievances without proper safeguards.

III.

Conducting Effective Classified and Faculty Evaluations

A. EVALUATIONS

1. The Purpose of Evaluation

a) Proper evaluations:

- Are a valuable management tool.
- Show a need for closer employee scrutiny and remediation.
- Demonstrate which employees have the potential for leadership and advancement.
- Provide employees with an accurate picture of where they stand.

An evaluation, done properly, is a valuable management tool that benefits both administrators and employees. It can show management which employees need closer scrutiny and remediation, and which employees have the potential for leadership and advancement. It will provide employees with an accurate picture of where they stand in the eyes of administration, and will give them the ability to focus during the next evaluation cycle on those areas in their performance that needs additional work.

b) Poor evaluations

- Allow poor employees to become part of the permanent landscape.
- Are not adequately documented.
- Fail to memorialize unsatisfactory behaviors and other concerns.
- May lead to litigation and damages for wrongful termination.

When done poorly, evaluations can become a disaster. Poor employees slip through the cracks and become part of the permanent landscape. Often they are not even classified as poor. While the negative effects of poor evaluations do not always immediately *become* evident, they are likely to come back with damaging effects. It is a disservice to employees and the District to tolerate poor performance, and to fail to recognize superior service. Poor employees rarely improve, and even assume they must be doing okay, because you have not written them up. Industrious employees will feel as though they are being taken advantage of. They will have to put in extra effort to perform their duties and to take up slack for the poor employee, and never get a higher rating than the sluggard.

2. WHAT IS EVALUATION?

- Evaluation is the careful, systematic appraisal of an employee's work effectiveness by measuring the employee's performance against the elements, objectives, and responsibilities of the position, as defined by the employee's job description.
- The purpose of the evaluation is to develop, strengthen and maintain effective performance in all areas of responsibility in alignment with District goals.

- While the evaluation may concentrate upon selected areas of performance, the individual employee is expected to maintain effective standards in all areas of responsibility as identified in the job description.

3. **WHY SUPERVISORS DO NOT EVALUATE PROPERLY**

- Time consuming and requires constant vigilance.
- To avoid discomfort.
- Belief that one poor evaluation creates poor morale among all employees.
- No knowledge that their professional survival depends upon a smooth operation.
- Inadequate legal training.
- Inadequate training in supervision.
- Fear political problems – real and imagined.
- Fear legal problems – real and imagined.
- Lack of commitment to management in general.
- Lack of commitment to educating students.

B. **EVALUATION OF ACADEMIC EMPLOYEES**

1. **WHY BOTHER?** Generally, the “how” does not matter to someone who does not understand and agree with the “why”

- a) The law requires it.
- b) The collective bargaining agreement requires it.
- c) Academic integrity
- d) Employee integrity

No matter how carefully the preparation of a course, course outline, course objectives, etc. is done, none of that will transmit information to students by osmosis. This cannot occur unless the faculty who are on the front lines are competently handling the subject matter, and presenting it in a satisfactory manner.

2. **LEGAL REQUIREMENTS**

- a) **Discipline/Termination:** A contract or regular employee may only be dismissed or penalized if one or more of the grounds set forth in Section 87732 are present and, among other things, the employee has been evaluated in accordance with standards and procedures set forth in the Education Code. (Educ. Code § 87671(a).)
- b) **Non-Renewal of Probationary/Contract Employee:** In order to be non-renewed, a contract (i.e., probationary) employee must be evaluated in accordance with the evaluation standards and procedures established in accordance with the provisions of the Education Code. (Educ. Code § 87607(a).)

- c) Classified Employee: The collective bargaining agreement requires the evaluation of classified employees at least once per year. (CSEA CBA, Article 14.)
- d) Generally, the standards and procedures for the evaluation of academic employees are established by the rules and regulations of the governing board. (Educ. Code § 87663(b).) However, faculty evaluation procedures may be negotiated as part of the collective bargaining process. (Educ. Code § 87663(e).)
- e) A probationary faculty member has the right to be evaluated under clear, fair, and equitable evaluation procedures locally defined through the collective bargaining process where the faculty has chosen to elect an exclusive representative. Those procedures shall ensure good-faith treatment of the probationary faculty member without according him or her de facto tenure rights. (Educ. Code § 87663(h).)
- f) Among the requirements found in the Education Code for evaluations:
- Regular employees shall be evaluated at least once in every three academic years. (Educ. Code § 87663(a).)
 - Contract (probationary) employees must be evaluated at least once in each academic year during their probationary period. (Educ. Code § 87663(a).)
 - Evaluations must include a peer review process conducted on a departmental or divisional basis, addressing the demographics of California and the principles of affirmative action. (Educ. Code § 87663(c),(d).) Peers must represent the diversity of California and be sensitive to affirmative action concerns, all without compromising quality and excellence in teaching. (Educ. Code § 87663(d).)
 - Student Evaluation: The faculty evaluation should include, to the extent practicable, student evaluation. (Educ. Code § 87663(g).)
- g) Court cases have held that while the statutory requirements for evaluations (i.e., frequency, peer component, student component) are fairly rigidly adhered to, procedures and requirements in a collective bargaining agreement require substantial performance.

Substantial compliance means the certificated employee has received an evaluation within a time period such that due process is not violated, which gives him or her clear notice of areas needing improvement. (Governing Board v. Commission on Professional Competence (1985) 171 Cal. App. 3d 324, 335 (decided under provisions of the Education Code relating to K-12 teachers containing nearly identical procedural requirements.)

However, the point is that District employer does not want to be in a position where it has to argue substantial compliance. It is much better to argue that all of the procedural requirements have been met.

3. **THE PURPOSE OF EVALUATION**

a) **What Evaluation Should Do For the Employer**

- Maximize efficiency in workforce utilization.
- Provide a profile of group performance.
- Provide insights into educational effectiveness.
- Serve as a basis for merit or step salary increases.
- Serve as a check on recruitment and hiring practices.
- Provide a basis for retention, transfer or dismissal of personnel.

b) **What Evaluation Should Do For the Administrator/Supervisor**

- Identify employees in need of improvement, and employees performing at an exceptional level.
- Pinpoint weak spots in operation.
- Identify in-service needs of employees.
- Identify employees with leadership potential.
- Identify training needs.
- Provide a check on proper placement.
- Provide feedback on morale.
- Head off serious disciplinary problems.
- Encourage communication between administrator/supervisor and employee.

c) **What Evaluation Should Do For the Employee**

- Let him/her know his/her strengths and weaknesses.
- Suggest ways to improve.
- Improve morale by providing feedback as to “where he/she stands.”
- Recognizes good work.
- Serves as a warning to below-standard work.

4. **PREPARATION FOR EVALUATION**

Review and understand:

- Education Code requirements –
- Union contract
- District policies
- Forms
- Job descriptions
- Time and calendar requirements
- Management system

5. **GENERAL GUIDELINES FOR ADMINISTRATORS REGARDING EMPLOYEE EVALUATION AND DISCIPLINARY PROCEDURES AND PRACTICES**

a) **Two purposes of employee evaluation and disciplinary procedures:**

- (1) To improve unsatisfactory employee performance.
- (2) To document the basis for discipline of an unsatisfactory employee.

Note: Both purposes must be kept in mind in carrying out the District's procedures and practices.

- Obviously, if the supervisor's efforts result in the employee's performance improving sufficiently, the problem is solved
- If the employee fails to improve, but the District has pointed out the problems, attempted to help the employee improve, and can show the employee a well-documented case against him. A resignation is the frequent result. It is also the cheapest and most efficient method of terminating an unsatisfactory employee.
- The supervisor who uses evaluation procedures properly lets employee know the supervisor is fair and yet determined to improve employee performance or replace the employee.
- However, in the final analysis, the "acid test" of the adequacy of the District's evaluation procedures and practices will be the formal disciplinary proceeding.

b) **In general, the hearing officer or judge will concentrate on the following in deciding whether there are grounds for discipline:**

(1) Has the District followed the required procedures?

- The Education Code, District Policy, and the applicable collective bargaining agreement must all be consulted and followed.
- See Appendix C for Evaluation Requirements of Education Code § 87663
- Since most dismissals involve the evaluation process, scrutiny will probably cover several years and the practices of several supervisors.

(2) Has the District documented, in writing, a consistent pattern of employee deficiencies?

(3) Has the District documented, in writing, clear, unambiguous communication of the deficiencies to the employee?

(4) Has the District documented, in writing good faith attempts to assist the employee in correcting the deficiencies?

(5) Has the district documented, in writing, that the employee has been given fair notice of the consequences of failure to correct the deficiencies?

(6) Has the District documented, in writing, that the employee has been given a reasonable amount of time to correct the deficiencies?

- See Appendix A, “Documentation Checklist” for more detailed guidance on best practices for documentation by administrators.
- c) In a probationary faculty non-renewal hearing, the sole issue to be determined by the hearing officer is whether the District violated, misinterpreted or misapplied any of its evaluation procedures when it evaluated Respondent. (Educ. Code § 87610.1.)
- d) **Avoid the three most common errors**
- (1) Be specific rather than general.
 - (2) Be clear and direct rather than tactful and circumspect.
 - (3) Set forth the facts forming the basis for the conclusion, include names of witnesses, dates, times and all other relevant facts.
- e) **Written Documentation**: Four kinds of written evaluation and disciplinary documents are normally used. Remember to consult District policy and the applicable collective bargaining agreements for procedures and forms. If they are unsatisfactory, they should be changed or renegotiated—but they control in the meantime.
- (1) **Goals and objectives**
 - (a) Should be based specifically on prior areas of deficiency.
 - (b) This is an extremely useful device for giving a basis against which actual performance can be compared.
 - (2) **Written reprimand** (also called “incident report” or “corrective interview”).
 - (a) Used to describe specific act or series of acts constituting deficiency (ex. tardiness, insubordination, hitting a student).
 - (b) Normally used when oral reprimands and warnings have not resulted in performance improvement.
 - (c) Once written reprimand is given, all future reprimands for similar deficiency should be written. Do not mix oral and written reprimands.
 - (d) In first written reprimand, summarize all previous oral conferences and warnings.
 - (e) Be specific and factual—dates, times names of witnesses.
 - (f) what would have been correct conduct.
 - (g) This should be referred to and used in the annual evaluation and the next year’s goals and objectives.
 - For additional guidance on how to prepare a written reprimand, please see Appendix A, “WRITTEN REPRIMAND CHECKLIST.”
 - (3) **Classroom observation** (Faculty)
 - (a) Used normally as part of overall evaluation policy. Consult collective bargaining agreement and board policy.
 - (b) Both announced and unannounced observations are useful.

- (c) Do not hesitate to observe a problem employee more often than the satisfactory employee—that is appropriate. Obviously, observations so frequent as to constitute harassment are to be avoided.
- (d) Refer to previous evaluations and reprimands where relevant. If deficiency still exists, specifically so state, providing facts.
- (e) Relate observed deficiencies specifically to the previously-developed goals and objectives.
- (f) Relate observations to each other.
- (g) First concentrate on important performance issues, then on peripheral items (ex: whether the bulletin board is tidy).
- (h) Be concise, specific, and thorough!

(4) Evaluation

- (a) Normally once per year, sometimes more often. Consult the collective bargaining agreement and board policy. (See Appendix C)
- (b) Don't forget to evaluate temporary employees. Their service time may count toward permanent status, and the District does not want to lose a period of documentation.
- (c) Refer to and use goals and objectives, classroom observations, and written and oral reprimands.
- (d) Specifically compare performance to the previously-developed goals and objectives.
- (e) Be specific and direct-avoid meaningless jargon and generalities.

f) When to Use a lawyer

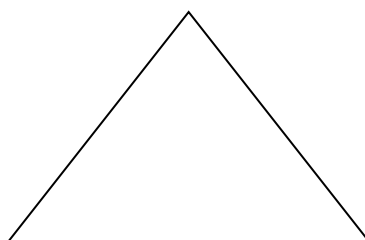
- (1) It is advisable to contact the District's attorney early if there is a problem employee.
- (2) The attorney will be more than willing to help the District plan an evaluation strategy for an employee—it will make the attorney's job easier in the event dismissal is eventually sought.
- (3) It is helpful to consult the attorney when drafting a reprimand, observation, or evaluation in a difficult case
- (4) In general, attorney services early in the process will save more in legal and other costs later.

g) Evaluation Triangle

Needs Assessment

Period

- * Objectives
- * Assess standard weakness



Evaluation / Remediation

- * Monitoring
- * Identifying areas of concern
- * Feedback to employee
- * Document
- * Assist improvement
- * More observations

Summary Evaluation

- * Noting satisfactory/unsatisfactory performance
- * Writing the summary evaluation
- * Communicating expectations for improved performance

h) **COMPONENTS OF A PERFORMANCE OBJECTIVE:** A well written objective will communicate the same intended outcome to everyone who reads it. To assure that the same intended outcome will be communicated, a performance objective should include six components which will answer the questions WHO, DOES WHAT, WHEN, UNDER WHAT CONDITIONS, HOW MUCH and HOW WILL IT BE MEASURED?

(1) **WHO?**

- (a) The WHO relates to the person to perform an activity
- (b) E.g. All of the students

(2) **DOES WHAT?**

- (a) DOES WHAT is that which is to be known or done
- (b) E.g. Will be able to correctly name objects in Spanish

(3) **WHEN?**

- (a) WHEN relates to a specific point in time when something will have been learned or done:
- (b) E.g. At the completion of the instructional unit

(4) **UNDER WHAT CONDITIONS?**

- (a) UNDER WHAT CONDITIONS relates to the program or activity
- (b) E.g. In the Spanish program

(5) **HOW MUCH?**

- (a) HOW MUCH relates to the minimum level to be achieved
- (b) E.g. all of textbook basic vocabulary

(6) **HOW WILL IT BE MEASURED?**

- (a) HOW WILL IT BE MEASURED relates to assessment techniques
- (b) E.g. Each student will respond individually examined by the instructor and the instructor will note correct/incorrect responses.

By rearranging the above example, one is able to write a measurable objective, e.g.:

Objective: At the completion of the instructional unit, all students in the Spanish program will be able to correctly state all the textbook basic vocabulary. Each student will respond individually to the instructor who will not correct/incorrect responses.

i) **PREPARATION FOR OBSERVATION**

- o Previous evaluations
- o Employee objectives
- o Job description

- Pre-observation interview
- Employee plans
- Curriculum

j) **COMMUNICATING EXPECTATIONS OF PERFORMANCE**

- Duties and responsibilities
- Objectives and goals
- Accepted methods of performing duties and tasks
- Specific duties and tasks that need improvement
- How to improve

k) **NARRATIVE EVALUATION**

- Less structured
- Describes performance
- Informal
- Personal
- Dependence on writing skills

l) **IDENTIFYING UNSATISFACTORY PERFORMANCE FAIR AND REASONABLE ONLY IF...**

- The employee clearly knows what is expected.
- The employee has been given training and an opportunity to achieve the expected level of performance.
- It is clear that the employee has failed to meet the expected level of performance

6. **UNSATISFACTORY PERFORMANCE OF AN INSTRUCTOR WILL TYPICALLY (BUT NOT EXCLUSIVELY) BE CATEGORIZED IN THE FOLLOWING AREAS**

a) Observable Behavior in Instructor-Learning Situation:

- Failure to follow adopted curriculum.
- Unsatisfactory classroom organization.
- Deficient subject matter knowledge.
- Inadequate subject matter presentation to students.
- Failure to maintain classroom order.
- Exercising poor judgment regarding student problems.
- Inadequate preparation for teaching lesson.
- Lack of adequate self-control and/or proper judgment in the presence of students.

b) Observable Non-Compliance with Rules, Policies, Regulations and Laws.

- Failure and/or refusal to adhere to rules, policies, regulations and requirements of the District as well as applicable law.
- Failure and/or refusal to submit timely and complete reports and required.
- Failure and/or refusal to accept and implement suggestions for improvement.
- Uncooperativeness with co-workers and/or administrative staff.

- c) Observable Personal Behavior.
 - o Failure to exhibit courtesy in contacts with students, co-workers, and other citizens.
 - o Excessive tardiness and/or absenteeism
 - o Insubordinate behavior
 - o Temperamental unfitness for classroom instruction

7. **SUGGESTED CONTENTS (AND FACTORS TO CONSIDER) FOR ANY DOCUMENTATION OF MISCONDUCT OR UNSATISFACTORY PERFORMANCE**

a) **REPORT FACTUALLY**

- (1) *Who? What? Where? When?*
- (2) Do not use ambiguities, mere conclusions or “educationeeze.”
- (3) Be very specific.
- (4) E.g. Do not simply say “You behaved inappropriately in class on Thursday” Rather, state “In your 8:00 a.m. English Composition class on Thursday, July 10, 2008, you used profanity towards a student, after the student repeated a question. Specifically, numerous witnesses have agreed that you told the student in question, John Doe, to “shut the f_____ up,” after he repeated a question regarding the proper sentence structure for a particular project.”

b) **CITE RULE AND AUTHORITY VIOLATED**

- (1) *Did the employee violate a rule, statute, policy, regulation, etc?*
- (2) E.g. District Board Policy 6320 requires that a course syllabus, consistent with the course outline of record, must be submitted to the Office of Instruction prior to the end of the first week of instruction each semester. However, during the fall semester 2007, it was discovered that you did not submit a syllabus for any of the 4 courses you taught. This violates Board Policy 6320.

c) **CONNECT CONDUCT TO INSTRUCTION OR THE CLASSROOM**

- (1) **HARM CAUSED** - To students, other instructors, classified staff, administration, community.
- (2) **NOTORIETY OF CONDUCT** - Complaints from students, members of the community, other instructors.
- (3) **PROXIMITY OR REMOTENESS** - Timeliness of supervisor’s intervention. Incidents should be documented at the earliest possible time, after the conduct is discovered, and appropriate disciplinary action taken at that time.
- (4) **EXTENUATING AGGRAVATING CIRCUMSTANCES** - For example, in the “F” word example above, if the conduct occurred in the course of a normal lecture, the conduct is reprehensible. However, if the “F” word occurred as the instructor was attempting to administer CPR to a collapsed student, and was trying to hear a heartbeat, obviously it takes a different light. The choice of words might have been inappropriate, but most reasonable people would understand the situation.

- (5) **STATE OF MIND AND MOTIVE OF ACADEMIC EMPLOYEE** - See D above.
 - (6) **PRIOR ASSISTANCE GIVEN** - If conduct is recurring, list specific help previously given, including any previous warnings.
 - (7) **LIKELIHOOD OF RECURRENCE** - Anticipation of continued pattern of conduct.
 - (8) **CHILLING EFFECT** - Balance impact on students and continued conduct with constitutional rights of instructor.
- d) **IDENTIFY PRECISE AREAS TO BE IMPROVED**
- (1) Not “you need to use better materials in your English 1 course.”
 - (2) Rather “You must follow the approved course outline for English 1. You are not to substitute your course outline from your former employment in xyz district for the curriculum committee authorized outline for the District.”
- e) **MAKE SPECIFIC RECOMMENDATIONS FOR IMPROVEMENT** - If you can identify a problem, you should be able to identify a solution.
- f) **MAKE DEFINITE OFFERS FOR ASSISTANCE** (if warranted)
- (1) If warranted, make an offer to assist, even if it’s general (please see me if you need assistance)
 - (2) It helps prevent an employee from later claiming “I didn’t know how to improve.”
- g) **IDENTIFY MEANS BY WHICH IMPROVEMENT WILL BE MEASURED** - e.g. Review of future lesson plans; review of future course syllabi, etc.
- h) **IDENTIFY SCHEDULE OF SUBSEQUENT FOLLOW-UP BY EVALUATOR**, e.g.:
- (1) “You will be reevaluated in 3 months.”
 - (2) “You are to submit on a bi-weekly basis a summary of your progress toward achieving goal # 1.”
- i) **FURTHER THOUGHTS ON PROPER DOCUMENTATION**
- (1) Proper documentation needs to include:
 - Specific guidance on how to fix the problems.
 - A reasonable amount of time to fix the problems.
 - Follow up on whether the problem is fixed.

- Documentation and imposition of sanctions for un-remediated problems.
 - One type of documentation is not acceptable.
 - Documentation should be throughout the year.
- (2) Documentation throughout the year is a critical part of the evaluation process.
- (a) If you have had excessive student complaints against a faculty member, he or she should not first be advised of the issue during the evaluation. However, if that is a part of the fabric of the instructor's performance during the year, then it should be noted in the evaluation.
- (b) Even if the employee has corrected the problem, the proper practice is to note that the employee had the problem during the year, and then list that the employee has taken steps to address the problem. This documents the issue in case the "fix" is temporary, and at the same time gives the employee credit for attempting to address the issue.
- For more information on how to properly document performance problems, please see Appendix A, "Documentation Checklist."

8. **PREPARATION FOR POST-EVALUATION INTERVIEW**

- Privacy Considerations.
- Center on employee work performance.
- Give a copy of the form to the employee.
- Use a positive approach.
- Listen to Employee's response.
- Two-way communication.
- Put employee at ease.
- Don't interrupt.
- Avoid argument.
- Praise good performance.
- Indicate how to improve.
- Make plans.
- Don't rush.
- Focus on timely remediation.
- Invite employee to comment orally or in writing.

9. **RECORDKEEPING**

- a) Be accurate
 - b) Stick to behavioral descriptions
 - c) Be consistent
- See Appendix A, Documentation Checklist for more detailed guidance on recordkeeping.

IV.

Appendices

APPENDIX A

CHECKLISTS FOR BEST PRACTICES

GOOD CAUSE CHECKLIST

A “no” answer to anyone of the following questions signifies that good cause does not exist. Please keep in mind that these are only guidelines.

- Did you give the employee forewarning or foreknowledge of the rule or requirement and the possible or probable disciplinary consequences for violating it?
- Was your rule or managerial order reasonably related to the orderly, efficient and safe operation of the department or District?
- Have you, before administering discipline, made an effort to discover if the employee did, in fact, violate or disobey the rule, standard or order?
- Have you conducted a fair and objective investigation of the situation?
- Did the investigation produce substantial evidence or proof that the employee is guilty of the misconduct alleged?
- Have you applied the rule, order and penalty evenhandedly and without discrimination to all employees in comparable situations?
- Did you use a progressive discipline approach?
- Is the degree of discipline you plan to administer reasonably related to the seriousness of the employee's proven offense? The record of the employee's service with the District?
- Are the penalties similar to those imposed previously in the department or District in comparable circumstances?

If you can answer yes to all of these questions, your action will probably be upheld throughout the appeal process should the employee appeal the actions.

**SUPERVISOR'S CHECKLIST FOR
EXCESSIVE ABSENTEEISM DISCIPLINE**

- √ Number of incidents or absences
- √ Is the absenteeism well above average?
- √ Length of time employee has had an attendance problem
- √ Reasons for employee's absences
- √ Nature of employee's job
- √ Impact on the operation
- √ Disciplinary policy regarding absenteeism
- √ Was the employee adequately warned?
- √ Has the employee had the opportunity to improve
- √ What is the likelihood of improvement
- √ What is the employee's record since the last warning?

**ELEMENTS OF PROOF CHECKLIST FOR
ABUSE OF SICK LEAVE CASES**

Consideration of the Justification for the absence

	Yes	No
Does it meet the basic policy requirements for sick leave absence?	<input type="checkbox"/>	<input type="checkbox"/>
Is it believable?	<input type="checkbox"/>	<input type="checkbox"/>
Is it consistent with surrounding circumstances?	<input type="checkbox"/>	<input type="checkbox"/>
Has the excuse been used in the past?	<input type="checkbox"/>	<input type="checkbox"/>
Was the previous request for leave rejected?	<input type="checkbox"/>	<input type="checkbox"/>
Is this part of a pattern of absence?	<input type="checkbox"/>	<input type="checkbox"/>
Is the doctor's excuse consistent with the claimed reason for the absence?	<input type="checkbox"/>	<input type="checkbox"/>
Do investigator or eye witness reports contradict the employee?	<input type="checkbox"/>	<input type="checkbox"/>

JUST CAUSE – DUE PROCESS CHECKLIST

When any suggestions are provided to or corrective action is taken with an employee the administrator should be able to answer the questions below with “Yes”:

1. Was the statute, rule, order, policy, regulation, or expected conduct known or should have it been known to the employee?
2. Does the rule, order, policy, regulation, or expected conduct relate to the efficient and orderly operation of the college or education program?
3. Was the employee informed of the expected behavior, as well as the unacceptable behavior?
4. Was the employee informed of or should he/she have known that non-compliance with the statute, rule, order, policy or regulation could have disciplinary consequences?
5. Was the employee allowed to be heard and explain his/her actions prior to any disciplinary action?
6. Was there, in fact, a clear violation, disobedient act, or disregard of common judgment?
7. Are there specific data, documentation, and other information that exists to substantiate and verify the situation?
8. Was the disciplinary action taken consistent with the seriousness and the nature of the offense?
9. Was the disciplinary action taken consistent with the treatment of others in a similar situation, including the other employee’s previous record?
10. Has available assistance been provided to help the employee succeed or correct unacceptable behavior?
11. Has an attitude of “help and assist” rather than a “vendetta to get rid of” prevailed?
12. Were all proper and timely procedures followed?

DOCUMENTATION CHECKLIST

Documentation is perhaps the single most significant element in due process. It must contain everything important about the incident of employee behavior. When preparing your documentation it may be helpful to review the following checklist to ensure completeness and accuracy.

1. Did you record the documentation promptly, while your memory was still fresh?
2. Have you indicated the date, time, location of and witness to the incident(s) documented?
3. Did you record the specific factual circumstances of the incident or behavior exhibited?
4. Did you indicate the person(s) or work products involved?
5. Have you listed the specific standards violated or unmet?
6. Have you indicated specific rules or regulations violated or surpassed?
7. Did you record the consequences of the action or behavior on the employee's total work performance and/or the operation of the work unit in the documentation?
8. Have you been objective, recording observations and not impressions/conclusions?
9. Did you indicate your response to the action or behavior and prior communication with the employee regarding his/her behavior?
10. Did you indicate the employee's reaction to your efforts to modify his/her behavior?
11. Did you specify the consequences of future similar actions or behavior?
12. Did you include a notice that the employee has the right to respond and did you deliver a copy of the document to the employee?

CHECKLIST FOR A WRITTEN REPRIMAND

1. Conduct investigation
2. The reprimand must state specific material facts such as date, time, place, specific acts of the individual involved constituting the violation.
3. The reprimand must include reference to the rule, regulation, collective bargaining agreement section violated or breached. Attach copies of board policies, rules and regulations violated.
4. It may be appropriate to outline previous reprimands or disciplinary actions against the employee. Attach documentation of such previous disciplinary actions or reprimands.
5. State how the conduct affects the students, staff, District operations, etc.
6. The reprimand must be explicit and to the point. Avoid assumptions, purely hearsay evidence or conclusions.
7. It must be clear that the letter or memorandum constitutes a written reprimand.
8. State what is expected by way of improvement.
9. If appropriate, it should state that if the staff member does not improve, he/she will be subject to further disciplinary action.
10. Provide a "received" signature line with date.
11. Include ten (10) day right to reprimand information at the bottom of the reprimand.
12. Preferably hand deliver a copy of the letter to the employee. If this is not possible, it should be sent to his/her home address by certified mail, return receipt requested and by regular mail. Type "Personal and Confidential" on the envelope.
13. File a copy of the letter to the Personnel Office to be included in the employee's permanent personnel file.

Appendix B

Employee Discipline and Dismissal Sample Letters

Note: The following are only samples of what employee discipline and dismissal letters and do not represent all of the procedures and process which must be followed. Administrators should work with their superiors, the human resource department and/or the departments legal advisor whenever disciplining and/or dismissing an employee.

[SAMPLE MEMORANDUM OF SERIOUS CONCERNS]

MEMORANDUM

TO: **[Employee's name]**

FROM: **[Name of Disciplinary Authority]**

RE: SERIOUS CONCERNS

DATE: **[Date]**

Please accept this Memorandum which expresses my serious concerns with regard to **[state concerns]** during **[dates of occurrences]**. You are advised that your **[conduct and/or performance]** must be improved in the following areas:

[List conduct or performance to be improved]

The above-named areas of concern must be improved immediately in order that your **[teaching effectiveness and/or adherence to District rules and regulations]** can be satisfactorily met.

I suggest that you take the following steps to alleviate each of the above-listed concerns:

[List instructions to alleviate the listed concern.]

You are instructed to meet with me in **[meeting place]** at **[time]** to discuss these serious concerns. You may be accompanied by a representative of your Association or anyone else of your choosing.

THIS MEMORANDUM WILL BE PLACED IN YOUR PERSONNEL FILE IN TEN (10) DAYS. YOU HAVE A RIGHT TO RESPOND IN WRITING **WITHIN [NUMBER OF DAYS SPECIFIED IN THE COLLECTIVE BARGAINING AGREEMENT OR BOARD POLICY, ETC.]** DAYS. SHOULD YOU RESPOND, YOUR COMMENTS WILL BE ATTACHED TO THIS MEMORANDUM FOR INCLUSION IN YOUR PERSONNEL FILE.

Sincerely,

[Name of Disciplinary Authority]

I acknowledge receipt of this document and the exhibits noted hereon on _____, 20__.

[Date Signed]

[Name]

[SAMPLE NOTICE OF UNPROFESSIONAL CONDUCT/UNSATISFACTORY PERFORMANCE]

MEMORANDUM

TO: **[Employee's name]**

FROM: **[Name of Disciplinary Authority]**

SUBJECT: Notice of Unprofessional Conduct/Unsatisfactory Performance
Education Code Section 87734

DATE: **[Date]**

Pursuant to California Education Code 87734, I am giving you this Notice of Unprofessional Conduct/Unsatisfactory Performance. Failure to correct the conduct and/or performance problems addressed in this notice will result in disciplinary action up to and including discharge.

The following conduct by you is unprofessional and demonstrates unsatisfactory performance of a faculty member:

[List unprofessional/unsatisfactory performance]

The District will not tolerate this continuing unprofessional behavior and unsatisfactory performance. To assist you in remediating your conduct and raising your performance to acceptable levels, you are hereby directed to:

[List instructions to alleviate the listed concern.]

In the event sufficient improvement is not made in the specified areas, I will recommend to the Board that you be dismissed from the District for unprofessional conduct.

Copies of Education Code section 87732 and 87734 are attached hereto. In accordance with Education Code section 87734 you are given this Notice, which sets forth the nature of your unprofessional conduct and unlawful acts so that you can correct your unprofessional conduct and unlawful acts described herein. Also attached is a copy of your most recent performance evaluation.

Sincerely,

[Name of Disciplinary Authority]

I acknowledge receipt of this document and the exhibits noted hereon on _____, 20__.

[Date Signed]

[Name]

A copy of this document and any attachments will be placed in your personnel file in ten (10) working days. You may make any signed written comments you wish. These comments will also be placed in your personnel file.

[SAMPLE NOTICE OF INTENT TO TERMINATE (OR SUSPEND)]

[To inform employee of intended disciplinary action prior to taking such action]]

MEMORANDUM

TO: **[Employee's name]**

FROM: **[Name of Disciplinary Authority]**

SUBJECT: Notice of Intent to Terminate **[or Suspend or Demote]**

DATE: **[Date]**

This is to advise you that I have received a recommendation from **[immediate supervisor]** that you be terminated from you job **[job title]**.

The action is proposed to be taken for the following listed grounds **[List all applicable rules or ordinance numbers]**.

- [e.g. 1. Evident unfitness**
- 2. Immoral conduct.]**

The above grounds are based on the following acts or omissions: **[Set forth clearly and specifically all of the details, dates, places and events which give rise to the action]**.

As you will recall, on **[date]** **[list all previous oral reprimands, written reprimands and suspension relevant to this disciplinary action]**.

Copies of all the following documents which I considered in making this recommendation are attached:

[list of documents]

[or]

Copies of all documents, your personnel file and other material which support the proposed action will be made available in the **[location]** upon request during regular office hours.

If you believe action is not appropriate, you have the right to respond to **[name/title of official]**, either orally or in writing, by **[date]**. Your response will be considered before final action is taken. You have the right to representation.

If you wish to respond orally please contact **[person's name]** so that a specific time can be set for your oral response. Written responses must be sent to **[person's name]** at [address].

[Name of Disciplinary Authority]

I acknowledge receipt of this document and the exhibits noted hereon on _____, 20__.

Date Signed

[Name]

[SAMPLE NOTICE OF DISCIPLINE]

[To inform employee of disciplinary action finalized after the Skelly meeting]

TO: **[Employee's Name]**

FROM: **[Name of Supervisor Conducting Hearing]**

SUBJECT: Notice of Discipline **[following Pre-Discipline hearing]**

DATE: **[Date]**

After carefully considering your oral **[written]** response on [date] to the Notice of Intent to Terminate letter dated **[date]** I have decided that it is appropriate to proceed with the action recommending that you be terminated from your job of **[job title]**.

This action is based on the following listed grounds:

- [e.g. 1. Evident unfitness
2. Immoral conduct]**

The above grounds are based on the following acts or omissions: **[Set forth clearly and specifically the details, dates, places, and events which gave rise to the action; essentially, you may duplicate the provisions of the Notice of Intent letter].**

The action took into consideration the fact that the following prior actions have proved ineffective: **[List all previous oral reprimands, written reprimands, and suspensions relevant to this disciplinary action, essentially you may duplicate the provisions of the Notice of Intent letter.]**

[Name of Disciplinary Authority]

I acknowledge receipt of this document and the exhibits noted hereon on _____, 20__.

[Date Signed]

[Name]

APPENDIX C

REQUIREMENTS FOR EVALUATIONS

FACULTY EVALUATIONS

CALIFORNIA EDUCATION CODE REQUIREMENTS (Education Code Section 87663)

<p>Frequency of evaluation for contract, regular and temporary employees</p>	<p>(a) Contract employees shall be evaluated at least once in each academic year. Regular employees shall be evaluated at least once in every three academic years. Temporary employees shall be evaluated within the first year of employment. Thereafter, evaluation shall be at least once every six regular semesters, or once every nine regular quarters, as applicable.</p>
<p>Faculty evaluation based on Board rules and regulations</p>	<p>(b) Whenever an evaluation is required of a faculty member by a community college district, the evaluation shall be conducted in accordance with the standards and procedures established by the rules and regulations of the governing board of the employing district.</p>
<p>Peer review process</p>	<p>(c) Evaluations shall include, but not be limited to, a peer review process.</p> <p>(d) The peer review process shall be on a departmental or divisional basis, and shall address the forthcoming demographics of California, and the principles of affirmative action. The process shall require that the peers reviewing are both representative of the diversity of California and sensitive to affirmative action concerns, all without compromising quality and excellence in teaching.</p>
<p>Negotiation of faculty evaluation procedures</p>	<p>(e) The Legislature recognizes that faculty evaluation procedures may be negotiated as part of the collective bargaining process.</p> <p>(f) In those districts where faculty evaluation procedures are collectively bargained, the faculty's exclusive representative shall consult with the academic senate prior to engaging in collective bargaining regarding those procedures.</p>
<p>Student evaluation</p>	<p>(g) It is the intent of the Legislature that faculty evaluation include, to the extent practicable, student evaluation.</p>

<p>Negotiation of probationary faculty evaluation procedures</p>	<p>(h) A probationary faculty member shall be accorded the right to be evaluated under clear, fair, and equitable evaluation procedures locally defined through the collective bargaining process where the faculty has chosen to elect an exclusive representative. Those procedures shall ensure good-faith treatment of the probationary faculty member without according him or her de facto tenure rights.</p>
<p>Dissemination of written evaluation procedures for administrators</p>	<p>(i) Governing boards shall establish and disseminate written evaluation procedures for administrators. It is the intent of the Legislature that evaluation of administrators include, to the extent possible, faculty evaluation.</p>