

MANUAL OF PROCEDURE

PROCEDURE NUMBER: 2410

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PROCEDURE TITLE: Performance Standards and Appeal Procedure for All Professional Exempt Contractual and Support Employees

STATUTORY REFERENCE: FLORIDA STATUTE 1001.64

BASED ON POLICY: II-2 All Personnel: Personnel Actions and Levels of Appeal
II-71 Full-Time Professional Exempt Non-Contractual and Support
Non-Exempt Personnel: Performance Standards and Grievance/Appeals
II-77 Professional Exempt Contractual Personnel: Requests for Review

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I. PURPOSE

To provide college-wide performance standards for all professional exempt contractual (PEC), professional exempt non-contractual (PENC) and support non-exempt (SNE) employees as well as an appeals process to address employee concerns relative to acts, omissions, regulations, or procedural matters, other than contractual matters or state-mandated regulations. All PEC, PENC and SNE employees are expected to become familiar with this procedure.

II. PERFORMANCE STANDARDS

A. Performance levels for PEC, PENC and SNE personnel are monitored by employee evaluation and assessment on a regular basis. Performance standards are established by the department, based upon the approved job descriptions established by Human Resources and the College-wide standards stated below.

Work rules apply to all PEC, PENC and SNE personnel. The administration of the performance standards and any action that may result from the administration of these standards are the responsibility of the Vice Provost of Human Resources or designee.

The College has a formal employee performance review program supported by supervisory assessment of job performance on a regular basis. This performance review program is designed to maintain and reward individual performance. Performance review programs are designed to provide an accurate assessment of work habits that impact job efficiency. When corrective measures are necessary to improve performance, the supervisor shall initiate

disciplinary procedures, giving warning to the employee that immediate improvement is expected.

The College administration is committed to pursuing fair and objective means to correct and improve employee performance and applying disciplinary actions in an open, uniform, non-discriminatory manner.

Performance expectations must be explained to employees. This procedure provides the College's expectations of performance and indicates the consequences for employees who do not meet those expectations.

The performance standards are published on the Human Resources' web site at www.mdc.edu/hr. The notice shall advise the employee that he/she is required to comply with the standards of performance outlined herein and that failure to comply with these performance standards may result in disciplinary action, up to and including termination of employment. Each employee shall sign a statement acknowledging receipt of this notice and the statement shall be placed in the employee's official personnel file.

B. Steps of Progressive Discipline:

1. When a situation occurs which requires corrective measures, prompt action is essential. The type of action that will be taken will depend upon the facts of the case and will be executed according to the steps of progressive discipline.

a. **Verbal Counseling:** This action should be taken to correct substandard performance when the rule(s) infraction is of a minor nature or is the first occurrence for the employee. Supervisors should be able to recognize a problem when it begins to develop and counsel the employee. Counseling should be constructive and done with a primary view toward helping the employee correct the performance area.

b. **Written Reprimand:** This action should be applied to repeated rule violations or violations sufficiently severe to warrant a written reprimand on the first offense.

The reprimand should state that the employee may be subject to more severe disciplinary action up to and including termination of employment in the event of future violations. A copy of the reprimand should be provided to the employee and should be included in the employee's Human Resources file.

c. **Probation:** Corrective measures may include a period of probation, not to exceed 180 days, with the approval of the Vice Provost of Human Resources or designee. If the employee's performance during the designated probationary period does not improve, such will be documented and the employee will be recommended for termination of employment. If the employee's performance improves during this period, he/she should be advised in writing and returned to regular work status. The notification should indicate that future violation of any College policy or procedure may result in the termination of their employment.

d. **Suspension Without Pay:** This action, with the prior approval of the Vice Provost for Human Resources or designee is to be applied based on the

severity or frequency of the violation and may be administered from one (1) to five (5) work days. The written suspension notice will advise the employee that any future infraction may result in further disciplinary action up to and including termination. Such action shall be documented for the employee's Human Resources file.

Investigative Suspension With Pay: Suspension in itself may not be a disciplinary action when clarification of an incident is required. It is the pause in active employment while investigation of the incident takes place. A typical, appropriate use of suspension with pay could be an investigative review of a fight between employees by the Office of Employee Relations/Equal Opportunity Programs/ADA Coordinator (ER/EOP/ADA). Final disciplinary action will be determined by the findings of the investigation. Only full-time employees may be placed on investigative suspension with pay.

Employees may also be reassigned to different responsibilities and/or work locations during an investigation in lieu of suspension.

- e. **Termination of Employment:** This action should only be taken as a result of serious rule violations, and unsuccessful probation. Discharged employees should be advised in writing of the reasons for their termination. This action requires the approval of the Vice Provost, Division of Human Resources or designee. The official notice of termination will be issued by the Area Head with a copy forwarded to the Vice Provost of Human Resources or designee, and documented in the employee's Human Resources file.
2. The sequence of disciplinary actions designed to correct a given behavioral pattern should be reasonably spaced to allow the employee to take corrective action. For disciplinary documentation, once the problem is corrected, the employee must be notified by memorandum, signed by the Area Head. This memorandum is attached to the appropriate notice of disciplinary action documentation on file in Human Resources.
- C. **Standards of Conduct/Work Rules:** To provide an orderly and reasonable approach to the supervision of employees, the College has established in writing, rules and guidelines, and policies and procedures for employees which serve as minimal standards of performance.
1. Summarized below are representative offenses that may lead to verbal counseling, official written reprimand, probation, suspension and/or possible termination:
 - a. Willful violations or disregard for safety; fire, traffic or parking violations.
 - b. Smoking at a time or place where smoking is not authorized.
 - c. Wasting work time or being out of the work area without permission.
 - d. Solicitation of employees on College premises for membership in, or donations for, organizations without the specific approval of the College President.
 - e. Posting of notices, circulation or distribution of literature or articles of any

kind on College premises without the specific approval of the College President or designee.

- f. Acts that disrupt or interfere with the administration or functions of the College.
 - g. Repeated tardiness or absenteeism; absences without reasonable cause and failure to notify the College of absence within one (1) hour of the start of the scheduled work period. An employee may be docked for a fractional part of a day for tardiness.
 - h. Failure to inform the supervisor when leaving a work station.
 - i. Repeatedly leaving the work station for excessively long periods.
 - j. Negligence: failure to exercise due care and reasonable diligence in the performance of job duties; careless use of College property, unsatisfactory production or incompetence.
 - k. Threats, pressure or physical action against another employee or group of employees.
 - l. Refusal to maintain standards of dress, personal grooming or cleanliness which are deemed reasonable and safe for the position held.
 - m. Charging personal telephone toll calls to the College's account.
 - n. Failure to report an on-the-job personal injury or damage to College property.
 - o. Loafing during assigned duty hours. The first offense will result in a three (3) day suspension. A second offense may result in termination.
 - p. Willful violation or disregard of State Statutes, State Board of Education Rules or College policies and procedures.
 - q. Conduct unbecoming a College employee, including a failure to be courteous, considerate, respectful to students, the public or other employees.
2. Summary Termination: The following are representative causes for immediate termination of employment. They are not listed in order of severity.
- a. Theft and pilferage: Unauthorized removal or possession of property belonging to or in the care of the College.
 - b. Committing acts of violence: Fighting or improper or immoral conduct on College premises.
 - c. Insubordination: Refusal to perform work as directed or willful neglect of duty.
 - d. Sleeping during assigned work hours: This violation will normally result in termination. Mitigating circumstances such as illness, medication or

oversleeping the lunch period may, at the discretion of the supervisor, result in a three (3) day suspension without pay for first offenders with a satisfactory work record. Second offenders will be terminated.

- e. Gambling or conducting other games of chance on College premises.
- f. Possession or use of intoxicants or illegal drugs or other illegal substances on College premises.
- g. Loaning or permitting the duplication of College keys (metal, electronic or otherwise) or any means of access to College facilities provided to employees by the College.
- h. Possession of firearms, weapons of any kind or explosive materials on College premises.
- i. Conduct outside the College of a criminal, dishonest or immoral nature; habitual use of intoxicants; drug addiction; moral turpitude or conduct likely to reflect unfavorably upon the College.
- j. Manipulation of computer data banks by providing false input causing additions, deletions, changes, omissions or removal of computer data.
- k. Falsification of time cards or time sheets or other methods used to track time and attendance.
- l. Falsification of personnel, medical or other records; omission of pertinent facts or giving false testimony.
- m. Improper or unauthorized use of College property or equipment.
- n. Use of official position for personal gain or personal advantage. This is considered a conflict of interest by the College.

III. PROCEDURE

PEC, PENC and SNE employees having an appeal and wishing to discuss acts, omissions, regulations, or procedural matters (other than contractual matters or State-mandated regulations) should discuss their concerns with an appropriate College official, as more fully described below.

- A. All complaints must be in writing and on the “Complaint Form”, which may be obtained from the Office of ER/EOP/ADA or from the College’s website (www.mdc.edu). Appeals must be filed in a timely manner within 30 work days after the occurrence of the most recent alleged act. At the discretion of the Office of ER/EOP/ADA, the date may be extended due to extenuating circumstances.
- B. The complaint should include the appellant’s name and signature; describe the act omission, procedural matter or regulation complained of; identify the person or persons purportedly responsible (the “Respondent”); and indicate the date(s) or approximate date(s) on which the act or acts occurred. The complaint should also include names, addresses, and phone

numbers of potential witnesses; the effect the alleged acts have had on the appellant; appellant's desired resolution; and any other information the appellant believes is relevant.

C. Informal Resolution of Complaint:

Appellants are encouraged, where appropriate, to attempt initially to resolve complaints by informal resolution. The informal resolution process is an attempt to resolve complaints quickly and to the satisfaction of all parties, while protecting confidentiality to the extent authorized by law. The Office of ER/EOP/ADA will be available to provide assistance to the employment unit or academic department in order to resolve the complaint. If the complaint cannot be resolved through the informal resolution process, a formal complaint may be filed as outlined in this procedure.

The informal resolution process shall be handled by the following offices:

1. The Office of the Campus President, Vice Provost, College Provost or designee (collectively referred to in this procedure as the “Area Head”) or the Office of ER/EOP/ADA.
2. The Office of ER/EOP/ADA.

No later than ten (10) work days after the filing of the complaint, the appropriate office, as referred to above, will meet separately with the appellant and respondent to determine the factual allegations on which the complaint is based and to discuss the complaint procedures. If it is determined that the complaint is suitable for informal resolution, that option will be discussed and offered to the appellant and the respondent, who will be given five (5) work days to decide whether to proceed with informal resolution. The complaint will be advanced to formal level review if the complaint is deemed by the appropriate office to be unsuitable for informal resolution, or if either party declines to participate in, to make a decision regarding informal resolution or elects to terminate the informal process within ten (10) work days of notification to the Office of ER/EOP/ADA.

Generally, the Area Head or Office of ER/EOP/ADA will not involve any person other than the appellant and respondent in that informal resolution process, except as it may be necessary to consult with appropriate College officials regarding College policies and procedures. Informal resolution should be completed no later than thirty (30) days after the appellant and the respondent have agreed to this process.

If the complaint is successfully resolved, each party will sign a "Memorandum of Understanding", prepared by the Area Head or Office of ER/EOP/ADA, which describes fully the agreed-upon terms. A copy of the complaint and the “Memorandum of Understanding “ will be available to the appellant, the respondent and the appropriate Area Head as defined in this procedure.

If the Office of ER/EOP/ADA concludes that the appellant’s allegations are substantiated, the report will recommend that a directive be issued to stop the practice or action, if it is ongoing; recommend disciplinary or other corrective action against the respondent and others; and, if appropriate, recommend provisions for the appellant, such as reinstatement, hiring, reassignment, promotion, training, back pay, or other compensation or benefits. If the Office of ER/EOP/ADA concludes that the appellant’s allegations are not substantiated, the

report may suggest other avenues, both internal and external, for the appellant should he/she wish to pursue the matter and, if appropriate, recommend reasonable steps to restore the reputation of the respondent.

Copies of the report will be provided to the appellant, the respondent, and the Campus President, Vice Provost, Vice Provost of Human Resources, and College Provosts as appropriate. Confidentiality of the investigation shall be maintained to the extent authorized by law.

D. Formal Complaint Process:

Formal Level I:

Upon being advised by the Office of ER/EOP/ADA that an appeal has been filed and that informal resolution is not appropriate, is not agreed to by both parties, or was unsuccessful, the appropriate Dean, Associate Dean, or Area Head shall review the letters of memorandum and related documentation and within five (5) work days, convene a meeting with the parties separately or together to hear the appeal. The employee may have a College employee of his/her choice present throughout the appeal procedure acting as a consultant and observer. The administrator chairing this meeting will issue a decision by memorandum to the appellant within ten (10) work days of the conclusion of the Level I hearing, with a copy to the Director of ER/EOP/ADA. If, upon receipt, the decision is acceptable or not acceptable to the appellant, he/she must advise the Director of ER/EOP/ADA by memorandum within five (5) work days to conclude the matter or advance the matter to Level II review.

Formal Level II:

Upon being advised by the Director of ER/EOP/ADA that the appeal has not been resolved, the Campus President or appropriate Area Head will review the recommendations, evidence and findings of fact from Level I and, if required, convene a meeting of the parties together or separately for further appeals discussions within five (5) work days. No evidence, other than that submitted at Level I, may be submitted for review at Level II. The Campus President or Area Head will prepare his/her decision in writing to the parties involved in the appeal, with a copy to the Director of ER/EOP/ADA. The decision at this level must be accomplished within ten (10) work days after conclusion of Level II hearings. The decision of the Campus President or Area Head will be final unless the appellant within five (5) work days of the decision, and in writing, requests through the Director of ER/EOP/ADA that the dispute be evaluated by an ad hoc appeals panel.

Formal Level III:

If, after the Campus President or Area Head has issued his/her decision, the dispute remains unresolved, the appellant may request through the Director of ER/EOP/ADA that the dispute be evaluated by an ad hoc appeals panel. The ad hoc appeals panel will consist of three (3) persons, not involved in earlier stages of the appeals procedure, and selected as follows:

1 person selected by the appellant;

1 person selected by the respondent;

1 person selected by the two (2) selected panel members.

The panel chairperson is selected by the Director of ER/EOP/ADA

The three (3) ad hoc appeals panel members shall convene on the appellant's campus within ten (10) work days of the final selection of the panel chairperson. The selected panel members shall be voting members and their recommendations shall be advisory to the subsequent level. The chairperson shall coordinate notices to the appropriate College officials, establish schedules, and govern the hearing procedure.

The role of the ad hoc appeals panel will be to investigate, review evidence from Levels I and II and hear the testimony of both parties and witnesses so that they may evaluate the merits of the appeal. No evidence, other than that submitted at Level I, may be submitted to the ad hoc appeals panel except in rare cases where the panel has mutually agreed that the new evidence will resolve the dispute in an equitable manner.

The ad hoc appeals committee will issue its findings of fact and recommendations in writing within ten (10) work days of the conclusion of its hearings to the College President with copies to the appellant and the responding Area Head.

Formal Level IV:

If, after the ad hoc appeals panel has issued its recommendations, and the dispute remains unresolved, the appellant or the responding Area Head may within (5) work days of the recommendation, request that the dispute be evaluated by the College President or designee. The College President may affirm the recommendation established by the panel, remand it back to the Campus President, Vice Provost or Area Head for further evaluation, or arrive at an independent decision. The College President's decision shall be in writing and should be issued in twenty (20) work days, excluding absences required of the College President. The College President's decision shall represent the final position of the College.

The employee's use of this procedure may be terminated at any level, if the appeal has been mutually resolved or if the employee concurrently seeks relief through sources external to the College.


It is to be expressly understood that this complaint procedure is separate from and does not in any way amend to abrogate the policies relating to contractual matters established by the College under Florida Statutes or Florida State Board of Education Regulations.

E. Other Provisions:

1. Serious rule infractions (Section "C (2)" Standards of Conduct) or documented disciplinary actions that are timely and of a repetitive nature (Section "C (1)" Standards of Conduct resulting in termination shall not be subject to this Grievance Procedure.
2. Newly hired employees may not use this grievance process until they have completed their initial 90-day probationary period.

3. Shift assignments, reduction-in-force actions, transfers, annual performance reviews and such rights of the College to direct the work force shall not be subject to the Grievance Procedure. Complaints relating to these exclusions may be discussed through administrative channels to the Vice Provost for the Division of Human Resources or designee.

An employee who disagrees with any component of his/her performance review may prepare an objection/rebuttal. The objection of the employee shall be attached to the performance review form and will be placed in the employee’s Human Resources file along with the performance review. The employee has five (5) work days to submit to their supervisor an objection to their performance review.

	
	9/13/05
PRESIDENT	DATE