

MANUAL OF PROCEDURE

PROCEDURE NUMBER: 2410

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PROCEDURE TITLE: Performance and Disciplinary Standards, Disciplinary Appeal Process, and Complaint Process for Full-Time Employees

STATUTORY REFERENCE: FLORIDA STATUTE 1001.64

EFFECTIVE DATE: January 10, 1978

LAST REVISION DATE: September 13, 2005, July 9, 2013, June 9, 2016

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I. PURPOSE

To provide college-wide performance and disciplinary standards for full-time employees as well as an appeals process and complaint process to address employee concerns that inappropriate discipline was administered to the employee or College regulations/procedures have not been followed or that state/federal regulations have been violated. All references herein to the Vice Provost of Human Resources or other specific position shall mean that position or his/her designee.

II. PERFORMANCE STANDARDS

Performance standards are established by the department, based upon the validated job descriptions established by Human Resources and the College-wide standards stated below.

Work rules apply to all personnel. The administration of the performance standards is the responsibility of the Vice Provost of Human Resources.

The College has a formal employee performance review process. The performance review process is designed to provide an accurate assessment of an employee's work performance as well as adherence to College rules and policies. . When corrective measures are necessary to improve performance, disciplinary standards may be initiated. The College administration is committed to pursuing fair and objective means to correct and improve employee performance.

The performance standards are published on the Miami Dade College Employee Portal at www.mdc.edu/procedures. Each employee shall sign a statement acknowledging receipt of this notice and the statement shall be placed in the employee's official Human Resources employee file.

III. DISCIPLINARY STANDARDS

1. When a situation occurs which requires corrective measures, the College will review the facts of the case and determine what action will be taken in accordance with the Levels of Progressive Discipline. Depending on the severity of the infraction involved, the initial action may involve disciplinary action, up to and including termination.
 - a. **Counseling:**
Counseling should be used to correct a minor rule infraction or when the rule violation is the first occurrence. Counseling should be constructive and may be delivered verbally or in a written format. The supervisor may use a written format to reinforce previous verbal counseling, coaching and other efforts to encourage corrective action when the employee's performance fails to meet specified expectations.
 - b. **Written Reprimand:** This action may be applied to situations where counseling has been ineffective and which warrants a written reprimand. A copy of the reprimand will be provided to the employee and placed in the Human Resources employee file.
 - c. **Probation:** Corrective measures may include a period of probation, not to exceed 90 work days, with the approval of the Vice Provost of Human Resources. If the employee's performance during the designated probationary period does not improve, appropriate disciplinary action will be taken. If warranted, the disciplinary action may be taken before the conclusion of the designated probationary period.
 - d. **Suspension Without Pay:** This action, with the prior approval of the Vice Provost for Human Resources is utilized based on the severity or frequency of the violation. The suspension without pay may range from one (1) to five (5) work days. A copy of such action shall be provided to the employee and a copy shall be placed in the Human Resources employee file.
 - e. **Administrative Leave with Pay:** Depending on the circumstances, an employee may be placed on administrative leave with pay while an investigation is being conducted. During administrative leave with pay the employee must be available at all times during his/her regular working hours. Final disciplinary action, if any, will be determined based on the findings of the investigation.

Only full-time employees may be placed on administrative leave with pay. Employees may also be reassigned to different responsibilities and/or work locations during an investigation in lieu of administrative leave at the discretion of the Campus President/Vice Provost in consultation with the Vice Provost of Human Resources.
 - f. **Termination:** This action will typically be taken as a result of persistent and/or severe infractions, or failure to successfully complete a probationary period. Termination requires the approval of the Vice Provost of Human Resources.

2. Any time an employee is directed to meet with a supervisor/administrator regarding a disciplinary matter, the employee has the option of bringing an observer to the meeting. The observer must be a College full-time employee. The observer's role is to serve as a witness.

IV. STANDARDS OF CONDUCT

Standards have been established so that employees are aware of the College's expectations with respect to their conduct. The College has established in writing, rules and guidelines, and policies and procedures for employees which serve as standards of conduct.

1. Summarized below are representative offenses that may lead to counseling, written reprimand, probation, suspension and/or possible termination:
 - a. Willful violations or disregard for safety, fire, traffic or parking regulations.
 - b. Smoking at any time or place on College property.
 - c. Acts that disrupt or interfere with the administration or functions of the College.
 - d. Repeated tardiness or absenteeism; absences without reasonable cause and failure to notify the supervisor 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, in 30-minute increments, for tardiness. (See Procedure 2651: Pay For Non-Exempt Employees).
 - e. Failure to inform the supervisor when leaving a work area.
 - f. Negligence: failure to exercise due care and reasonable diligence in the performance of job duties; careless use of College property, unsatisfactory production or incompetence.
 - g. Refusal to maintain standards of dress, personal grooming or cleanliness which are deemed reasonable and safe for the position held.
 - h. Failure to report an on-the-job personal injury or damage to College property.
 - i. Willful violation or disregard of State Statutes, State Board of Education Rules, College policies and procedures and federal laws.
 - j. Conduct unbecoming a College employee, which includes behavior that reflects adversely on the College.
2. Terminable Offenses: The following are representative causes which may result in 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 conduct on College premises.

- c. Threats, pressure or physical action against another employee or group of employees.
- d. Insubordination: Refusal to perform work as directed.
- e. Sleeping during assigned work hours.
- f. Gambling or conducting other games of chance on College premises.
- g. Possession or use of intoxicants or illegal drugs or other illegal substances on College premises.
- h. 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.
- i. Possession of firearms, weapons of any kind or explosive materials in violation of Florida law and/or College Policy.
- j. Inappropriate manipulation of computer(s) including providing false input causing additions, deletions, changes, omissions or removal of computer data.
- k. Unauthorized duplication and/or sharing (electronic or otherwise) of employee and/or College data.
- l. Inappropriate manipulation of systems used to track time and attendance.
- m. Falsification of personnel, medical or other records.
- n. Improper or unauthorized use of College property or equipment.
- o. Use of official position for personal gain or personal advantage. This is considered a conflict of interest by the College.

These standards may not address all types of misconduct which may result in disciplinary action, up to and including termination.

V. DISCIPLINARY APPEAL PROCESS

This Disciplinary Appeal Process may be used by full-time employees to appeal disciplinary actions which involve a written reprimand or more serious discipline. All references to days in this section shall be work days. Employees hired into full-time positions may not use this Disciplinary Appeal Process until after they have completed their initial 90-day probationary period. The College, at its sole discretion, may elect to proceed or may elect to suspend disciplinary action while other proceedings, either civil or criminal in nature, are pending. College disciplinary action will not be subject to challenge on the grounds that criminal charges involving the same incident have been dismissed or reduced. Employees covered by the Collective Bargaining Agreement should refer to the Agreement between the UFMDC and the District Board of Trustees of MDC.

A. Time Limits and Contents of Appeal

The time limits set forth in this Procedure are of the essence and must be strictly complied with, but may be extended by mutual written agreement of the parties. An Appellant's failure to process an appeal within the time limits set forth in this Procedure shall mean that the appeal shall be treated as withdrawn. Upon the failure of the College to provide a response within the time limits provided in this Procedure, the Appellant may proceed to the next level of appeal. In order to be eligible for processing, an appeal must be timely filed and contain the following:

1. The name of the Appellant.
2. The identification of the event that gave rise to the appeal and the time it occurred and a short, plain statement of the facts surrounding the appeal.
3. A statement of the precise relief sought.

B. Appeal Process

Appeals properly and timely filed shall be processed as follows:

Level I. Within twenty (20) days of the discipline, an eligible Appellant shall file the appeal document simultaneously with the Vice Provost of Human Resources and the immediate supervisor. Within ten (10) days of the receipt of the appeal, the immediate supervisor shall meet with the Appellant in an effort to resolve the problem. The immediate supervisor will be allowed ten (10) days following the meeting to respond to the appeal in writing. This written answer may consist of a notation on the appeal document.

Level II. If no written response is received by the Appellant at Level I, or if the response is not acceptable to the Appellant, the Appellant may appeal to Level II. The appeal must be filed within ten (10) days of the receipt of the answer from the immediate supervisor or, if no written answer is received, within ten (10) days after the expiration of the ten (10) day period specified in Level I. Such appeal shall be in writing and shall include a copy of the appeal filed at Level I and the Level I response, if any. The Level II filing shall be simultaneously filed with the administrator designated by the Vice Provost of Human Resources and the Vice Provost of Human Resources. Once the appeal document has been properly filed at Level II, there shall be fifteen (15) days in which to provide a written response to the Appellant. The written response may consist of a notation on the appeal document. A meeting to discuss the appeal at Level II may be conducted at the discretion of the administrator designated by the Vice Provost of Human Resources.

Level III. If no written response is received at Level II or if the disposition of the appeal is unacceptable to the Appellant, the Appellant may file an appeal simultaneously with the administrator designated by the Vice Provost of Human Resources and the Vice Provost of Human Resources. The response (or lack of response at Level II) document must be appealed within ten (10) days after the receipt of the answer at Level II, or if no answer is received, within ten (10) days after expiration of the fifteen (15) day period applicable to Level II. Once the appeal document has been properly filed at Level III, there shall be fifteen (15) days in which to provide a written response to the Appellant. The written response may consist of a notation on the appeal document. A meeting to discuss the appeal at Level III will be conducted by the administrator designated by the Vice Provost of Human Resources.

The action of the College at Level III is final and not appealable to any individual, Board, court, or administrative body.

VI. COMPLAINT PROCESS

A complaint may involve an issue as to whether College regulations/procedures have not been followed or that state/federal regulations have been violated. Complaints must be filed in a timely manner within thirty (30) work days after the occurrence of the alleged act or failure to act. At the discretion of the Offices of ER and/or EOP/ADA/TITLE IX, the date may be extended due to extenuating circumstances. All references to days in this section shall be work days.

Employees hired into full-time positions may not use this Complaint Process until after they have completed their initial 90-day probationary period. The College prohibits retaliation against employees who file complaints or who participate in the resolution of complaints.

Shift assignments, reduction-in-force actions, promotions, transfers, annual performance reviews, annual contract renewal or non-renewal decisions, and such rights of the College to direct the workforce shall not be subject to this Complaint Process.

A. Informal Resolution of Complaint:

Informal complaints will typically be made verbally or by an informal email or other form of communication. Complainants 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 Offices of ER and/or EOP/ADA/TITLE IX will be available to provide assistance to the department in order to resolve the complaint.

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
2. The Offices of ER and/or EOP/ADA/TITLE IX.

The Complainant will be directed to the appropriate office as referred to above, and will have an opportunity to address his/her complaint. If the complaint involves an interaction with his/her supervisor/administrator, then that individual may be present for the meeting. If the complaint cannot be informally resolved, a formal complaint may be filed as outlined in this procedure. If the College determines that the complaint is appropriate as defined under “Complaint Procedure” above, the matter may proceed as a formal complaint. Confidentiality of the investigation shall be maintained to the extent authorized by law.

B. Formal Complaint Process:

All formal complaints must be in writing and on the “Complaint Form,” which may be obtained from the Office of Employee Relations (ER) or Equal Opportunity Programs/ADA/TITLE IX (EOP/ADA/TITLE IX) or from the College’s website (www.mdc.edu). The complaint shall include the employee’s name, signature, and a description of the complaint; identify the person or persons purportedly responsible; and indicate the dates 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 employee; employee’s desired resolution; and any other information the employee believes is relevant. Once a complaint is verified as being in compliance with this procedure an investigation may be conducted. As a condition of employment, employees of the College are required to cooperate with these types of investigations by providing truthful and complete information. It is the College's expectation that the employee will answer all questions and provide any knowledge he/she possesses that may be helpful to the inquiry. Employees who refuse to answer questions related to their employment are subject to discipline, up to and including termination of employment. The investigation may include, but not be limited to:


1. Interviews with material persons who may have relevant information;
2. Reviewing relevant files and records such as Human Resources employee files, departmental and/or unit files, and others;
3. Comparing the treatment of complainant to that of others similarly situated in the department or unit; and
4. Reviewing applicable policies, procedures and practices.

The investigation should be concluded within forty-five (45) work days of its inception, and ER or EOP/ADA/TITLE IX shall issue a written report making findings of fact and any appropriate recommendations; however, the timeframe may be extended by the Vice Provost of Human Resources. Copies of the report will be provided to the Complainant and the Campus President/District Vice Provost, Vice Provost of Human Resources and the appropriate College Provost. Confidentiality of the investigation shall be maintained to the extent authorized by law.

If ER or EOP/ADA/TITLE IX concludes that the Complainant’s allegations are substantiated, the report will recommend that a directive be issued to stop the violating practice, if it is ongoing; and, if appropriate, recommend provisions for the Complainant, such as reinstatement, hiring, reassignment, training, back pay, or other compensation or benefits.

The College Provost will make a determination, upon review of the ER/EOP/ADA/TITLE IX report, in consultation with the appropriate area head, the Vice Provost of Human Resources, and any other appropriate Department head; and upon consideration of any other relevant information, including aggravating or mitigating circumstances, whether a rule, regulation or law has been violated. The College shall take such corrective action as may be appropriate under the circumstances.

The action of the College is final and not appealable to any individual, Board, court or administrative body.

	
PRESIDENT	6/09/2016
	DATE