



SAN DIEGO COMMUNITY COLLEGE DISTRICT

Date: August 14, 2008

To: All District Managers and Supervisors

From: Kim Myers, EdD, SPHR, Vice Chancellor, Human Resources

**RE: Revised Rules on the Use and Hiring of
Non-Academic Non-Classified Employees (NANCES)**

At this time of year many managers and supervisors are assessing their non-academic staffing needs and requesting new positions or “extending” existing hourly positions to meet anticipated needs. While we may casually refer to non-academic non-classified employees as “hourly employees,” under the Education Code there is no such category of employee. The purpose of this document is to provide clear and comprehensive definitions and instructions on the requirements for hiring non-academic employees outside of the classified service (NANCES) including Students, Substitutes, Short-Term Workers, and Professional Experts.

To ensure our compliance with the Section 88003 of the California Education Code, it is important for managers and supervisors to understand that all employees of the District who are not academic shall be part of the classified service unless they are specifically exempted. When considering filling any non-academic positions, including positions considered “hourly,” with anyone other than a classified employee, a manager or supervisor should be aware of the very limited nature and length of services that may be filled with non-classified employees.

In cases where a non-academic non-classified worker’s employment has clearly violated the Education Code, the courts have ordered the responsible district to place the affected worker in a classified position on a probationary basis, without the benefit of a competitive selection process. If a district is not able to fund the classified position, the probationary employee would be subject to layoff. This has not occurred in our district, and it is exactly the situation we wish to avoid, but it is an option we must keep as we review our hiring processes for compliance.

The only exceptions to hiring a classified employee to perform non-academic work are:

- Student Worker (full-time load, work-study or work experience only)
- Substitute
- Short-Term Worker
- Professional Experts

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Student Worker

The first choice when filling a non-academic non-classified position should be to fill it with a full-time student (carrying a 12 unit load within our District, or a full-time student workload if attending a different accredited institution), or with a student that is receiving work-study or work experience, regardless of the number of units. Full-time students, work-study students and work-experience students are specifically exempted from the classified service. Continuing Education students enrolled with a full-time load, even if not for credit, are also exempt. Part-time students who are not in work-study or work experience do not qualify for this exemption. This standard applies to International Students as well as regular students. **Student workers may only work for up to thirty (30) hours per week in exempted positions, except for the summer session.**

A full-time student in Spring semester is not limited to a specific number of hours during the following summer. If not a full-time, work-study or work experience student in Spring semester, a student must carry 6 units of work (half time) to be exempted during the summer.

Substitutes

Substitutes have very specific limitations and requirements, and may only be utilized:

1. To replace a classified employee temporarily absent from duty. The substitute employee, or multiple substitutes, may replace an absent classified employee for up to 195 work days in a fiscal year. An individual substitute employee may not work more than 195 days in a given fiscal year, regardless of the number of positions for which he or she may substitute.

OR

2. To work for up to 60 work days to fill a vacancy in a classified position if the District is actively engaged in recruiting to fill that classified vacancy. The 60 day restriction applies regardless of the number of substitutes employed in the vacant position during the recruitment, and need not be continuous. A Short-Term Worker may not be used to fill behind a vacant classified position whose recruitment has exceeded 60 days.

Note:

Throughout these processes, reference is made to “75% of a full-time employee schedule or 195 days” as the maximum number of days a non-classified workers or position may be used in a fiscal year. This includes holidays (not weekends) and is based on the actual number of days worked, not a span of calendar days. It is highly recommended that hiring supervisors and managers limit the number of days of service to a maximum of 160 days in any two consecutive fiscal years to allow for any potential miscalculation which if over 195 days could result in additional liability to the District to place the position or the worker into the classified service. The 195 day limit is referenced in Ed Code section 88003 .

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Short-Term Workers

Short-Term Workers who are not qualified Student Workers, Substitutes, or Professional Experts may only be utilized to perform a service for the District, upon the completion of which, the service required or similar services will not be extended or needed on a continuing basis. The Education Code also requires that before employing a Short-Term Worker, the Board of Trustees shall specify, in a public session, the service to be performed, and the ending date of the Short-Term employment. The service may be extended but shall not exceed 195 days in any fiscal year. This is the basis of the definition below for Short-Term Workers used by the District.

An **individual** Short-Term Worker may not (1) exceed 195 days in any single fiscal year, or (2) exceed 195 days total in any two (2) consecutive fiscal years, or (3) work any number of days for more than two consecutive fiscal years in the same position.

Any **service** provided by one or more Short-Term workers may not (1) exceed 195 days during any fiscal year, or (2) exceed 195 days total in any two (2) consecutive fiscal years, or (3) extend beyond two consecutive fiscal years, regardless of the number of days worked or the number of Short-Term Workers that provided the service. There is not any provision for employment of non-classified employees based on work that is “sporadic and infrequent” outside of these criteria.

Within this specific definition of Short-Term Worker limitations, seasonal work which has continued for more than 2 years, regardless of the number of persons filling the position, should be filled with classified employees. Short-Term service performed by current 1.0 FTE classified employees in addition to their regular classified position is subject to the 195 day limitation over two years. If the additional Short-Term service exceeds this limit, it should be part of the classified service, as it is a continuing need.

Professional Experts

Under Ed Code section 88003, the District may employ persons with specialized skills as Professional Experts to perform temporary work, regardless of length of time. Professional Experts may only be used to perform work:

- For which they have a specialized expertise
- Which is of a temporary basis, regardless of the duration
- On a specific project, again regardless of duration
- That is not available in the classified service.

Under this definition, tutors hired for a limited duration, such as the length of a class, and requiring specialized skills and/or knowledge which are not available in the classified service are exempted from the classified service. **Accompanists, tutors**, and other skilled workers performing duties not available in the classified service employed for a specific event, class, project or other temporary basis should be hired as Professional Experts.

Seasonal Workers: Lifeguards and other reoccurring seasonal workers employed in positions that have been used for three (3) or more consecutive fiscal years, regardless of the persons providing

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the service, are not Professional Experts, because the work is not of a temporary and project nature. Such seasonal positions should be filled with classified employees. Tutors providing service on a continuing need basis, i.e. for a class offered each semester for more than 3 years, also would not qualify as temporary and could not be hired as a Professional Expert.

Other Exceptions to Hiring a Classified employee

The Ed Code provides very limited exceptions beyond those listed above for hiring non-academic employees outside the classified service. They include:

Apprentices

Part-time Playground positions

Persons specially trained, experienced, and competent to furnish services and advice in financial, economic, accounting, engineering, legal, or administrative matters to the District.

The uses of these “other exceptions” are very rare and require special approval from the Vice Chancellor, Human Resources. Positions that are hired to meet special Americans with Disability Act accommodations may meet the criteria as Professional Experts if the services are not available in the classified service. Hiring managers should consult with Human Resources to determine this on a case by case basis.

All other non-academic work shall be filled with full-time or part-time classified positions.

HIRING PROCESSES FOR NON-ACADEMIC NON-CLASSIFIED EMPLOYEES

The processes for hiring Student Workers, Substitutes, Short-Term Workers, and Professional Experts are detailed below. In each case, the hiring manager, supervisor and VPAS must identify whether a proposed hire is a Short-Term, Student, Substitute, or Professional Expert on the PAS sheet. Do not submit a Short-Term Authorization Form if you are hiring a Student Worker, Substitute, or Professional Expert, as these are not Short-Term Workers.

Student Worker Hiring Process

In order to hire a full-time student, work-study student, or work experience student, a manager or supervisor should request a student employee from to their campus administrative services office, who will review the request, and if approved, contact the student placement office to post the position. A faculty member or hiring manager may also refer a student to the campus administrative services office to initiate this request, but it must be approved by the Vice President of Administrative Services in order to proceed. Student Verification Form verifying workload or work-study/work experience is required.

When a student applies for the position and is selected, the PAS is forwarded from the campus business services office to the Employment Office/Human Resources department at the District office, along with a complete application packet. The District Payroll department will then enter

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the student information into the Colleague database (HR information system), and the employee and the hiring manager will be notified by email and district mail that his or her employment may begin.

The duration of a student position may be for up to one fiscal year, at the discretion of the hiring manager. The administrative office of the campus may limit the length of a student position to a semester by semester basis if they choose, since it is their responsibility to ensure that the student worker maintains a full-time load or work-study/work experience each semester. Human Resources will routinely audit the list of student workers against District enrollment data to ensure compliance with the student status and workload requirements.

Under no circumstances should a manager or supervisor allow a student worker to begin working until they have received notice from HR that the student's employment may begin.

The notification will also specify that should the student no longer carry a full-time load or remain in work-study or work experience, his or her employment will end. A student worker is limited to a maximum of thirty (30) hours per week, except in the summer, but may work any number of days in a fiscal year.

When a student worker position ends, or at the end of the fiscal year, whichever occurs first, a new PAS must be submitted to the HR department. Effective October 1, 2008, only Human Resources may extend the employment dates of an employee in the HR Info/Payroll System (Colleague).

Substitute Hiring Process

To hire a Substitute, the hiring manager must complete a PAS Form and submit it to the Vice President of Administrative Services at the campus or to the appropriate Vice Chancellor. The VPAS/VC will review to ensure that the substitute is replacing an absent classified employee for up to 195 days or filling behind a vacant classified position in active recruitment for up to 60 days before approving the request, and will indicate the specific vacant position or absent employee. The PAS is then submitted to the District Human Resources department for processing, along with a complete application packet. Upon receipt, the HR department will then review the packet for completeness, including the application materials for the selected candidate, and enter the worker's information into the Payroll system.

Effective October 1, 2008, the campus/department staff may view this data on Colleague, but may not extend the "wageline" or change payroll/employee information, as this access is secure and limited to the HR department.

As with the student worker, the HR department will notify the VPAS, the employee and the manager of the employment approval, after which time the employee may begin working in the substitute position. It is not necessary for substitute positions to be approved by the Board of Trustees prior to employment, but the substitute must be entered into the payroll system by HR prior to employment commencing employment.

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Short-Term Worker Hiring Process

Unlike substitutes and student employee positions, Short-Term positions must be approved by the Board of Trustees in a public meeting before the employee can begin working.

The process for hiring a Short-Term Worker (not a student) is as follows:

1. The hiring manager must submit a Short-Term Position Authorization Form which indicates the proposed beginning date of the Short-Term position, the ending date of the Short-Term position (not to exceed 195 days), and the description of the service (duties) which will not be extended or needed on a continuing basis to the campus Vice President of Administrative Services or appropriate Vice Chancellor.

It is critical that the rationale for hiring a Short-Term Worker is clearly communicated on the form. **"Temporary increase in workload" or "Short-Term need for help" without clear explanation of the temporary nature or cause will not be accepted as justification for the exception.**

2. The campus Vice President of Administrative Services or appropriate Vice Chancellor will certify that the position will not be performing services (work) which may be or are being extended or needed on a continuing basis. If approved, the VPAS/VC will identify the funding and general ledger (GL) number on the Short-Term authorization form and forward it and the PAS sheet to the Employment Office at the District HR Department no later than eight (8) business days prior to the regularly scheduled Board meeting.
3. After review, the HR department will prepare a Board item, and list the Short-Term positions to be approved by the Board in public session. Upon approval by the Board, the Human Resources department will notify the campus administrative office/department, the hiring manager and the Short-Term employee via email and campus mail that the employee may begin to work in the Short-Term position.

Requests for Extension of Short-Term Service: On or before the ending date of service for the position approved by the Board of Trustees, the Short-Term service (worker and position) must stop. As with the initial approval, extensions require the approval of the Board before the employment (into the extended time) begins. A request to extend the Short-Term position request will not be considered if:

- The requests extend the service provided to more than 195 days in a single fiscal year, or
- The request extends the total number of work days over two (2) consecutive fiscal years to more than 195 days.
- The request extends the service into a third (or more) consecutive fiscal year.

These limits apply to both individual Short-Term Workers and the Short-Term “service” (position) performed, regardless of the number of Short-Term Workers in the position.

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NOTE: Until October 1, 2008, each Vice Chancellor or President has the authority to extend the Short-Term position of any person who, as of July 1, 2008,

- Had exceeded 195 days of employment from July 1, 2006 and June 30, 2008, **or**
- Who worked for more than two consecutive fiscal years as of June 30, 2008.

Such approvals may result in the Short-Term Worker being placed in a classified position if it is found that the service was in excess of the maximums for Short-Term service. Persons who have worked for less than 195 days in the previous 2 fiscal years will not have their service extended beyond 195 days in the 2 year period, or for a third consecutive year, as it would then constitute continuing service. Exceptions to this process should be forwarded to the President or Vice Chancellor responsible for the area and will be considered by the Vice Chancellor, Human Resources and the Chancellor or designee.

Hiring Professional Experts

To hire a Professional Expert, a hiring manager would contact their campus administrative services office, or the district HR office for district office departments. The hiring manager or supervisor should complete a Professional Expert / Consultant Authorization form explaining how the service to be provided requires specialized knowledge or skills, is not available in the classified service, and is of a finite length. The VPAS or responsible Vice Chancellor reviews the request, and if approved, the PAS and complete application packet should be sent to the Employment Office at the District Office.

The District Payroll department will then enter the Professional Expert employment data into the payroll/HR system, and notify the administrative services office, the Professional Expert and the hiring manager or supervisor by email and district mail that the Professional Expert's employment may begin. Professional Experts are not required to be approved by the Board of Trustees prior to employment, but they must be notified by HR before they are allowed to begin working.

If you have any questions regarding these processes, please contact your campus Business Office or the Human Resources Office at extension 6589. Thank you for your help and cooperation.