

4.9.2P

## MANDATORY SICK LEAVE OR TRANSFER OF FACULTY EMPLOYEE

DUE TO MENTAL INCAPACITY

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The Superintendent/President may place any faculty employee on mandatory leave with pay, or transfer that employee to other duties, if the Superintendent/President has reasonable cause to believe that the employee is suffering from mental incapacity of such a degree as to render him/her unable to satisfactorily perform his/her duties or if he/she poses a danger to himself/herself or others. The Superintendent/President's decision shall be made only after full consultation with the appropriate department chair or instructional manager, the Director of Human Resources, and appropriate educational administrators. While the employee is on mandatory leave the employee shall continue to receive his/her salary in effect at the time he/she begins mandatory leave and all other benefits of employment for which the employee is eligible.

The Superintendent/President shall immediately, upon placing an employee on mandatory leave with pay or transferring an employee under this section, give to the employee a written statement of the facts giving rise to the Superintendent/President's rationale and an opportunity to appear before the Board of Trustees ("the Board") within 30 working days to explain or refute the charges. The employee shall be advised that he/she has the right to be accompanied by a representative of his/her choice.

If, after the employee's appearance before the Board, the Board decides to continue the mandatory leave with pay or transfer, or if the employee chooses not to appear before the Board, the employee shall then be advised, in writing, that he/she will be examined by a medical panel consisting of three persons who are either licensed psychiatrists or psychologists, at least one of whom shall be a psychiatrist, selected by the employee from a list provided by the Superintendent/President. To assist the panel in making its determination, the Superintendent/President shall provide to the panel, prior to the date scheduled for the examination, a list of the job duties of the position from which the employee was relieved or transferred and any other pertinent information relating to the basis for the belief of mental incapacity.

The examination shall be conducted at District expense as quickly as possible after the employee's opportunity to appear before the Board. The employee shall submit to the examination but may appear with a psychiatrist, or psychologist licensed under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, or physician of his/her own choice, and any report of the psychiatrist, psychologist, or physician selected by the employee shall be filed in writing with the panel.

Upon the examination of the employee, a written report of the panel shall be submitted to the Superintendent/President and the Board no later than 20 working days. A copy shall be provided to the employee upon request. The report shall contain a conclusion on whether the employee is suffering from mental incapacity of such a degree as to render him/her unable to satisfactorily perform his/her duties or if he/she poses a danger to himself/herself or others.

If a majority of the panel concludes that the employee should be permitted to return to his/her duties, no written record of the mandatory leave or transfer or the determination of the panel shall be retained in the employee's personnel file, and in all respects any written record concerning the employee's status shall appear as it did prior to the mandatory leave or transfer occurred.

If a majority of the panel finds that the employee is suffering from mental incapacity of such a degree as to render him/her unable to satisfactorily perform his/her duties or if he/she poses a danger to himself/herself or others, the Board may, upon receipt of the report, place the employee on mandatory sick leave of absence. Any use of mandatory sick leave of absence imposed under this section shall not exceed the existing and one successive school year. The employee shall be entitled to use all accrued

sick leave, supplemental sick leave, and unpaid leave as applicable, not to exceed a total of two school years. The District will provide the employee with health, dental, and vision insurance while he/she is in paid status. This total period in which the employee may use all available leaves may not exceed two school years.

If, within these two school years, a majority of the panel concludes after a subsequent review thereof, that the employee should be permitted to return to his/her duties, or if a court of competent jurisdiction so concludes, the Board shall take immediate action to reinstate the employee to the same position from which he/she was relieved of duties, or transferred, or to a substantially similar position for which he/she would be qualified if the same position is no longer available. The District will pay the expenses of the panel examination if the panel determines that the employee is able to return to his/her duties. If the panel determines the employee is unable to return, all expenses related to this subsequent review or reviews shall be at the employee's expense.

Every hearing and action by or before the Board pursuant to this section shall be in Closed Session, and no decision, action, or occurrence therein shall be made public, unless the employee so requests in writing. In the event the employee is unable to return to work after the existing and one successive school year, the District in accordance with the applicable provisions of the Americans with Disabilities Act, the Fair Employment and Housing Act, and the Health Insurance Portability and Accountability Act, reserves the right to initiate dismissal proceedings for one or more reasons set forth in Education Code section 87732.