

## CONTRACT AND NON-CONTRACT EMPLOYMENT

### I. PURPOSE

This regulation establishes the basis for the employment of contract and non-contract employees.

### II. BACKGROUND and/or LEGAL REFERENCE

A contract of employment with the College District creates a property interest in the position only for the period of time stated in the contract. Such a contract creates no property interest of any kind beyond the period of time stated in the contract. *Perry v. Sindermann*, 92 S.Ct. 2694, 408 U.S. 593 (1972); *Board of Regents of State Colleges v. Roth*, 92 S.Ct. 2701, 408 U.S. 564 (1972)

The Board may enter into an employment contract with an administrator that is to be paid in whole or in part from appropriated funds only if, before the date the contract is executed, the Board determines that the contract is in the best interest of the College District. A contract entered into by the Board may not:

1. Provide for employment for more than three years;
2. Allow for severance or other payments on the termination of the contract to exceed an amount equal to the discounted net present cash value of the contract on termination at a market interest rate agreed upon in the contract;
3. Allow for development leave that is inconsistent with Education Code 51.105; or
4. Award tenure in any way that varies from the College District's general policy on the award of tenure.

The College District may not pay a salary to a person who is reassigned from an administrative position to a faculty or other position at the College District that exceeds the salary of other persons with similar qualifications performing similar duties. *Education Code 51.948* "Administrator" means a person who has significant administrative duties relating to the operation of the College District, including the operation of a department, college, program, or other subdivision of the institution. *Education Code 51.948(g)(1)*

The employment-at-will doctrine is the law of Texas, under which an employer has no duty to an employee regarding continuation of employment. *Jones v. Legal Copy, Inc.*, 846 S.W. 2d (Tex. App.—Houston (1st Dist.) 1993) The employment-at-will doctrine places no duties on an employer regarding an employee's continued employment and thus bars contract and tort claims based on the decision to discharge an employee. *Sabine Pilot Serv., Inc. v. Hauck*, 687 S.W. 2d 733 (Tex. 1985) In Texas, at-will employment is presumed unless shown otherwise.

*Gonzales v. Galveston Ind. Sch. Dist.*, 865 F. Supp. 1241 (S.D.Tex. 1994) Employment for an indefinite term may be terminated at will and without cause, except as otherwise provided by law. *Garcia v. Reeves County, Texas*, 32 F.3d 200 (5th Cir. 1994); *Irby v. Sullivan*, 737 F.2d 1418 (5th Cir. 1984); *Winters v. Houston Chronicle Pub. Co.*, 795 S.W. 2d 723 (Tex. 1990)

An at-will employee cannot be discharged if the sole reason for the discharge was that the employee refused to perform an illegal act. *Sabine Pilot Serv., Inc. v. Hauck*, 687 S.W. 2d 733 (Tex. 1985) [See DG, DGA, DGB for other exceptions] An at-will employment relationship, standing alone without benefit of recognized exception, triggers no due process requirement or right. *Mott v. Montgomery County, Tex.*, 882 S.W. 2d 635, 638 (Tex. App.—Beaumont, 1994)

Termination of employment is a condition of work that is a proper subject for the grievance process. *Fibreboard Paper Products Corp. v. National Labor Relations Board*, 85 S.Ct. 398, 402 (1984); *Sayre v. Mullins*, 681 S.W.2d 25 (Tex. 1984)

### III. POLICY

#### A. Classification of Employees

Employees of the District shall be employed according to one of the following classifications:

1. Contract employees:
  - a. Teaching faculty shall include division chairs, department heads, and instructors.
  - b. Non-teaching professional personnel shall include administrative officers, librarians, and counselors. [See Reg 911 for the most recent classification of college employees, which designates full-time librarians and academic counselors as "faculty."]
2. Non-contract "at will" employees:
  - a. Support staff shall include secretaries, paraprofessionals, and office clerks.
  - b. Auxiliary employees shall include housekeepers, gardeners, maintenance workers, cooks, and bookstore personnel.

(POLICY APPROVAL: 5-30-86, Board of Trustees, amended 1-15-08)

#### B. Term Contracts

1. Term of Contract
  - a. Contractual employees may be employed on a term contract basis. Employment may be discontinued at the end of the contract term by giving reasonable prior notice or during the period of employment in accordance with Reg 887, Termination, and Dismissal.
  - b. For the first three years of service, contract employees shall be hired on a one-year term contract. After three years of service with the College, employees shall be eligible for a two-year contract. Contracts shall be reviewed annually for renewal or extension. There is no right to renewal or extension of a contract. The Board, in all cases, reserves the right to contract with an individual employee for a shorter or longer term, as it deems appropriate.

2. Notification

Notification of intent to renew, extend, or non-renew employment contracts shall be made by April 1 of each year.

3. Contract Consideration

- a. Contracts for teaching faculty shall normally be considered at the March Board meeting, although the Board reserves the right to consider contracts at other times.
- b. Contracts for non-teaching professional personnel may be considered at or before the April Board meeting, although the Board reserves the right to consider contracts at other times.

4. Contract Acceptance

The deadline for acceptance of a contract shall be stated in the contract, and shall be at least 15 days from the date of offer. The offer of employment shall be withdrawn unless the contract is signed and returned on or before the deadline specified in the contract.

(POLICY APPROVAL: 7-24-89, Board of Trustees, amended 1-15-08)

C. Non-contract Employment

1. Non-contract employees serving without a contract shall be employed from pay period to pay period.
2. The College President shall be responsible for hiring non-contract employees with appropriate skills and qualifications to fill position with the College.
3. Dismissal of “at will” employees serving without a contract shall be in accordance with Board policy. (see Reg 887 Non-renewal, Termination, and Dismissal)
4. No employee other than the College President has any authority to make representations or agreements for employment, length of employment, pay, or other matters regarding employment. The College President may delegate responsibility to communicate his determinations related to employment in writing to other persons in the administrative line of supervision.
5. The Human Resources Director shall have authority to communicate matters of institutional policy, state or federal law and agency regulations to employees of the College as they relate to employment matters in writing.

(POLICY APPROVAL: 7-2-90, Board of Trustees, amended 1-15-08)

D. Reasonable Assurance

The Board shall notify non-contractual employees of reasonable assurance of employment subject to salary and assignment at the beginning of the school year. The receipt of reasonable assurance does not negate the employment “at will” doctrine or guarantee the employee continued employment at the College.

(POLICY APPROVAL: 5-30-86, Board of Trustees, amended 1-15-08)

E. Non-contract Employees

1. All non-contract employees shall be subject to assignment or reassignment by the College President at any time.
2. The non-contract employee's salary shall be adjusted (either increased or decreased) to reflect the job classification of the new assignment. In the case of an administrative decision to reassign an employee, the non-contract employee's steps shall be retained in the new assignment.

F. Contract Employees

1. All contract employees shall be subject to assignment and reassignment by the College President at any time consistent with the employee's professional qualifications (see Reg 891 Employment Requirements and Restrictions). (**Clarification:** Other non-contractual or extra-contractual work assignments such as overloads, PPAs, assignments as division chair or department head or for special projects are governed by policies or procedures elsewhere in college regulations or the Employee Handbook or other college documents.)

2. The contract employee who is reassigned to a responsibility with less pay shall be continued with his current salary for the full term of the contract. The next contract offered the employee shall reflect the lower salary appropriate to the new assignment.
3. The contract employee who is reassigned to a position of greater responsibility or an extended work period shall receive the greater salary compensation due the new assignment. This salary upgrade shall become effective with the date of reassignment.

(POLICY APPROVAL: 7-2-90, Board of Trustees, amended 1-15-08)

G. Workload

1. Teaching Loads

- a. A normal teaching load for regular faculty consists of up to 15 semester hours; up to 24 contact hours; up to 525 student contact hours; and up to three course preparations. (see Reg 465, Faculty Teaching Loads).
- b. A normal teaching load may include day and evening classes, on- and off-campus. An instructor teaching at an off-campus location will be compensated for mileage that exceeds the distance between his/her home and the campus to which he/she has been assigned.. The administration shall consider time spent in travel to off-campus classes when considering an instructor's teaching load. Part-time, minimum, maximum, and overload teaching loads shall be determined by the College President or designee and shall be published in the Employee Handbook.

2. Combined Courses

When two or more classes in a related field are combined into a single class section and taught as part of the instructor's class load, the calculated load shall be determined by the highest semester hour value of any of the courses forming the combination. This calculation shall be based on procedures published in the Employee Handbook.

(POLICY APPROVAL: 7-2-90, Board of Trustees, amended 1-15-08)

## **Background Information on "Non-renewal"**

### **A. Duration of Employment as Stated in Formal Contract**

The following excerpts are from WCJC's standard TERM CONTRACT, which is signed by all contract employees:

#### **Item 11:**

The Board has not adopted any policy, rule, regulation, law, or practice providing for tenure. No right of tenure or any other contractual obligation or other expectancy of continued employment or claim or entitlement is created beyond the Contract term.

#### **Just above the employee's signatory line:**

I have read this Contract and agree to abide by its terms and conditions. I understand that the duration of this Contract is only for the time specified above, and this agreement does not create any expectation of employment beyond the time specified above.

### **B. Information on Non-renewal of Contracts**

Contractual employees have contracts for a specific term: one year or two years. At the end of the contract term, an employee may be non-renewed as long as notice is given by May 1 of the year in which the contract will expire (Reg 887, II.B; Reg 892, II.B.2). If an employee is not renewed, he or she is not given another contract, and the employee is no longer employed by the college at the expiration of the current contract. According to Reg 886, an employee may be non-renewed for no reason or any reason (as long as the reason is not unlawful). The employee may file a grievance or complaint disputing any decision not to renew by following the provisions of Reg 877, Employee Grievances and Complaints.

#### **Reg 877, Section IV.G**

2. No employee on contract is guaranteed employment beyond the term of his or her contract, and the college is under no obligation to provide reasons, explanations, or justifications for allowing an employee's contract to expire without renewing that contract. Nevertheless, the college allows an employee on contract to invoke this regulation if the employee's contract is not renewed, and the employee wishes to contest the non-renewal if the employee alleges violation of law or college policy.

#### **Reg 886, Section III**

- G. The college may decide not to renew a person's contract or not to offer further employment at the expiration of the term of the contract period for any reason or no reason so long as the reason is not illegal (see Reg 887, Non-renewal, Termination, and Dismissal, section II.A; Reg 892, Contract and Non-contract Employment, section II.B.1.a) . . . .

#### **Reg 887, Section II**

- A. Non-renewal of Contract Employment  
Employees may be non-renewed at the end of the contract term. Non-renewal shall not be based on an employee's exercise of rights guaranteed by the Constitution or be based unlawfully on an employee's race, color, religion, sex, national origin, handicap, or age.

#### **Reg 892, Section III.B**

1. Term of Contract
  - a. Contractual employees shall be employed on a term contract basis. Employment may be discontinued at the end of the contract term by giving reasonable prior notice or during the period of employment in accordance with Regulation 887.

### C. Additional Information

The following is quoted from *A Practical Guide to Legal Issues Affecting College Teachers* (P. A. Hollander, D. P. Young, D. D. Gehring; The Higher Education Administration Series, © 1995 College Administration Publications, Inc., Asheville, NC, p. 21):

The general rule, except where there is evidence of statutory, contractual, or constitutional rights to the contrary, is that most non-tenured faculty have no expectation of continued employment, no right to a hearing, and no right to reasons for non-reappointment.

### D. "Non-renewal" and Evaluation

The Employee Handbook contains the following comments on the relationship between performance reviews and employment:

- 12.2.1 Faculty members are employed by the college on term contracts. At the sole discretion of the college, faculty members may be offered a new employment contract before their current contracts expire (known as contract "extension") or at the end of the current contracts (known as contract "renewal"); and both options constitute *actions*—that is, they must be explicitly acted upon by the President of the College and the Board of Trustees.
- 12.2.2 Also at the sole discretion of the college, faculty members' contracts may be allowed to expire without a new contract or additional employment being offered; and the college makes no promise or guarantee of employment to any contractual employee beyond the expiration date of the employee's current contract. Contract "renewals" or "extensions" (as defined above) are actually offers of *new* employment under a *new* contract, not a continuation of current employment; and the college is under no obligation to re-employ anyone. Accordingly, no employee has an expectation or legal right to employment beyond the expiration date of the current contract. "Non-extension" of an employment contract and "non-renewal" of employment occur automatically *unless* the college, in its sole discretion, decides to intervene and offer an employee a new employment contract. Therefore, unlike "extension" and "renewal," which are action items, "non-extension" and "non-renewal" require no action on the college's part except that, in the case of "non-renewal," the college must notify the employee of its intent not to renew employment by May 1 of the year in which the employee's contract expires (Reg 887, section II.B).
- 12.2.3 Since the college may choose not to act to renew an employment contract for no reason or for any reason, so long as the reason is not illegal or unconstitutional (Reg 886, section III.G; Reg 887, section II.A; Reg 892, section II.B.1.a), the decision not to offer further employment need not be related to the results of a faculty member's performance review (either APR or CPR)—that is, though an unsatisfactory performance review may result in "non-extension" or "non-renewal," a satisfactory performance review does not automatically guarantee that an employee will be extended or renewed (In other words, no *necessary* connection exists between performance reviews and future employment. While satisfactory reviews are a *necessary condition* for additional employment, they are not a *sufficient condition* for additional employment.)