Date: April 23, 2009

To: All District Managers and Supervisors

From: Kim Myers, Ed.D., SPHR
Vice Chancellor, Human Resources

RE: Guidelines for Hiring and Employment of Non-Academic Non-Classified Employees (NANCEs)

This memorandum outlines the District's current practice and procedures regarding the hiring and use of Non-Academic Non-Classified Employees (NANCEs), which specifically includes Student Workers, Substitutes, Short-Term workers, Professional Experts, and Personal Services Contract employees. The purpose of this document is to provide clear and comprehensive definitions and instructions on the requirements for hiring non-academic employees (NANCEs) or "hourly worker" outside of the classified service including Students, Substitutes, Short-Term Workers, Professional Experts, and Personal Services Contract Employees.

Section 88003 of the California Education Code states 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 with anyone other than a classified employee, a manager or supervisor should be aware of the very limited nature and length of service that may be filled with non-classified employees.

In cases where a non-academic non-classified worker's employment exceeds the limits of the California Education Code, the courts have ordered the responsible District to place the affected worker into the classified service 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, which is a situation we wish to avoid.

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

Student Workers (full-time load, work-study or work experience only)
Substitutes
Short-Term Workers
Professional Experts
Personal Service Contract employees
Hiring of Non-Academic Non-Classified Employees

Limitation on Use of NANCEs

Specific guidelines are included herein which define the use and limitation of these positions in our District. If at any time you have questions about these guidelines, please do not hesitate to contact the Human Resources Office or me directly.

Throughout these guidelines, reference is made to "less than 75% of a full-time employee schedule" as the maximum number of days that certain types of non-classified workers or positions may be employed in a college year. This limit is equivalent to no more than 194 work days in any college year (July 1- June 30), with a workday being defined as any day in which an employee worked any amount of time, including holidays (not weekends), and is based on the actual number of days worked during the year, even if there are breaks between periods of work. One important exception to this calculation is the sixty (60) calendar day limit established for substitute employees filling in behind a vacant classified position in an active recruitment. All other computations of time, including substitutes filling positions behind an absent classified employee, use actual days worked to compute the number of days.

There are additional limits on when a "short-term employee" can be used. This type of employee can be used only 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.

Short-term workers may not begin their employment until their service has been certified by the Board of Trustees in a public meeting, and the hiring campus has been so notified by the Employment Office in the District Human Resources Department. In cases of urgent business necessity or emergency, the District reserves the right to begin the service prior to certification by the Board of Trustees. Such cases require approval of the respective Cabinet member and the Vice Chancellor, Human Resources before the short-term begins working for the district.

Given the severe consequences of violating the Education Code restrictions, hiring supervisors and managers should carefully monitor and use short-term employees only to perform truly "short-term work" as defined above. To ensure compliance with the legal limit of 194 days for a short-term and 60 days for a substitute, the use of short term and substitute employees is limited to a maximum of 175 work days in any college (fiscal) year, and 50 calendar days while a vacancy is being filled through recruitment.

Any hiring manager or supervisor who intentionally allows a worker to be placed into the classified service due to violation of the employment limits in the Education Code, as summarized in these guidelines, will be subject to disciplinary action.
Hiring of Non-Academic Non-Classified Employees

Student Workers

Section 88003 of the CA Education Code specifically exempts full-time students working part-time and part-time students enrolled in work-study or work experience programs from the classified service.

Key points to consider when hiring a student worker:

- Student workers may work up to a maximum of thirty five (35) hours per week during the school year, with no limit on hours during the summer.

- While there is a limit on the number of hours per week a student may work, there is no limit on the number of days a student worker can work, or on the length of time a student can fill a student worker position, subject to management discretion.

- Students carrying a 12 unit load in the SDCCD, or a full-time student workload if attending a different accredited institution, are exempt from the classified service.

- Work experience and work study students working part-time up to 35 hours per week are also exempt from the classified service.

- Students enrolled in less than 12 units at a single institution, but with a total of more than 12 units from multiple accredited institutions concurrently are considered full-time and are exempt from the classified service.

- Continuing Education students enrolled with a full-time load (15 hours per week), even if not for credit, are also exempt from the classified service.

- Students carrying less than a full-time load who are not enrolled in work-study or work experience are not eligible to be employed as student worker as they are not exempt under Ed Code section 88003.

Full-time student workers in Spring semester may work any number of hours during the following summer. If not a full-time student or enrolled in work-study or work experience in the Spring semester, a student must be enrolled in 6 units or more during the summer to be employed as a student worker.

Substitutes

Section 88003 also exempts substitute workers from the classified service, and may be used to fill behind a classified employee temporarily absent or behind a vacant classified position. Our District use of substitutes is as follows:

1. One or more Substitute employees may replace an absent classified employee for up to 175 work days in a college (fiscal) year. An individual Substitute
Hiring of Non-Academic Non-Classified Employees

employee may work up to 175 days in a given college year, regardless of the number of positions for which he or she may Substitute. If the classified employee’s absence continues beyond one college year, one or more Substitute employees may fill the absent classified employee’s position for up to an additional 175 days total in each fiscal year while the absence continues.

2. One or more Substitute employees may work for up to 50 calendar days to fill a vacancy in a classified position (non-management or non-supervisory) when the District is actively engaged in recruiting to fill that classified vacancy. The 50 calendar day limit is an overall restriction and applies regardless of the number of substitutes employed in the vacant position during the period of recruitment. The 50 day period need not be continuous. A Short-Term Worker may not be used to fill behind a vacant classified position whose recruitment has exceeded 50 days.

Interim positions, acting positions, training and development assignments and out-of-class assignments for classified management and non-management positions are not considered Substitutes. Interim positions are limited to one year under Title 5, unless an emergency situation exists, when the maximum length of employment as an interim is two years.

Short-Term Workers

Short-Term Workers are “hourly” employees who are not academic employees, classified employees, qualified student workers, substitutes, Professional Experts, or Personal Services Contract employees, as described in this memo. Short-Term workers are specifically exempt from the classified service when hired to perform a service for a maximum of 175 days in any college (fiscal) year, upon the completion of which, the service required or similar services will not be extended or needed on a continuing basis. This means that if a position begins on July 1 of a college year, when the short-term worker has worked 175 days, the service may not continue or be extended in that fiscal year. Again, while the Ed Code maximum is 194 days, the internal District maximum is 175 days, including holidays.

As noted above, short-term workers may not begin their employment until their service has been certified by the Board of Trustees in a public meeting, and the hiring campus has been so notified by the Employment Office in the District Human Resources Department.

The service (work) performed by one or more workers in a Short-Term position that has been certified by the Board may not exceed 175 days during any college (fiscal) year. Any hiring manager or supervisor who allows a short-term worker to be placed into the classified service due to violation of the limits in the Education Code is subject to disciplinary action.

It is critical to ensure that short-term workers are completely aware that they are limited to a maximum of 175 days of work in any college year, and that they do not have continuing employment beyond June 30 of any year.
Hiring of Non-Academic Non-Classified Employees

Professional Experts

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

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

Workers hired for a project of limited duration, which require specialized skills and/or knowledge, and are not available in the classified service may be hired as Professional Experts, who are exempted from the classified service.

In order for an individual to be considered for hire as a Professional Expert, each of the criteria listed above must be demonstrated prior to the approval to hire from the Vice President of Administrative Services and the Vice Chancellor of Human Resources. Any failure to clearly demonstrate meeting each of the criteria will result in the Professional Expert request being denied. Use of Professional Experts is discouraged and is very limited.

Personal Services Contract Employees

Education Code Section 88003.1(b) provides the District the ability to enter into Personal Services Contracts with individuals when the District needs services which may available in the classified service and are of such an urgent, temporary, or occasional nature that the delay experienced in their implementation under the District's regular or ordinary hiring process would frustrate their very purpose. In our District, Personal Services Contracts are only used to hire Accompanists, Lifeguards, Interpreters, Tutors, and Models.

These positions are hired under a contract between the District and the worker, and are not a part of the classified service. A hiring manager should submit a Personal Services Authorization Form and a Personal Services Contract Request, not a PAS Sheet, available from the District HR Department and the Business Office at each campus. Such requests must be approved by the appropriate Vice President of Administrative Services before being forwarded to the District Employment Office for processing.

Other Exceptions to Hiring a Classified employee

The Ed Code section 88003 also provides very limited exceptions beyond those listed above for hiring non-academic employees outside the classified service. These include:

- Apprentices
- Part-time Playground positions
Hiring of Non-Academic Non-Classified Employees

- Persons (Consultants) 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. Hiring managers should consult with Human Resources to determine this on a case by case basis.

**Employing Classified Employees in NANCE Positions**

A hiring manager or supervisor shall not offer additional employment --such as an additional hourly position-- to any person already currently employed in a Classified position. For classified employees in 1.0 FTE positions to do so would typically make the employee eligible for overtime pay; for classified staff with less than a 1.0 FTE contract to do so is a violation of the collective bargaining agreement (Article 5.16). Any exception to this practice requires the approval of the respective President/Vice Chancellor and the Vice Chancellor of Human Resources before filling the position.

**Changes in Terms and Conditions of Employment**

Short-term workers, as well as other categories of NANCEs are represented employees in an exclusive collective bargaining unit. The District is currently negotiating the provisions of a collective bargaining agreement. Should the terms and conditions of the employment of NANCEs change as a result of bargaining, this memo will be revised accordingly.

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.