

## Daggett Community Services District & Daggett Water Company – Employment

**POLICY TITLE: Disciplinary Action**

**POLICY NUMBER: 3104**

3104.1 The District expects all of its employees to act in the best interest of the District and its customers and residents. It is the responsibility of all employees to observe all rules, guidelines, and operating procedures of the District. The District further expects that each of its employees will act in a polite and professional manner when dealing with members of the public and other employees. These General Rules of Conduct, along with the “Examples of Unacceptable Conduct” listed below, are not meant to be all-inclusive, but rather to provide illustrations of acceptable conduct versus problematic conduct.

3104.2 Examples of Unacceptable Conduct. The following list presents examples of some of the types of unacceptable conduct that may result in disciplinary action, up to and including immediate termination. This list is not an exhaustive list of what conduct may result in discipline, but is merely meant to be illustrations of unacceptable conduct:

- 3104.2.1 Discourteous treatment of the public or fellow employees.
- 3104.2.2 Use, possession, or being under the influence of alcohol or illegal drugs (including marijuana) while on duty or on District premises.
- 3104.2.3 Habitual absence or tardiness.
- 3104.2.4 Abuse of sick leave.
- 3104.2.5 Disorderly conduct.
- 3104.2.6 Incompetence or inefficiency.
- 3104.2.7 Being wasteful of material, property, or working time.
- 3104.2.8 Violation of any lawful or reasonable regulation or order made and given by an employee's supervisor.
- 3104.2.9 Neglect of duty.
- 3104.2.10 Dishonesty or fraud.

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3104.2.11 Misuse of District property.

3104.2.12 Willful disobedience or Insubordination.

3104.2.13 Conduct unbecoming a District employee.

3104.2.14 Violation of the District's Unlawful Harassment Policy.

3104.2.15 Possession of firearms or dangerous weapons on District property.

3104.2.16 Theft.

3104.2.17 Falsifying records

3104.2.18 Any act or failure to act during or outside of work hours, which is detrimental to the best interest of the District as determined by the General Manager or the Board.

The District also reserves the right to discipline an employee for unsatisfactory job performance including incompetence and/or inefficiency, permanent or chronic physical or mental ailment (including impairment from alcohol or drugs) or other condition which renders the employee unable to perform the essential duties of his or her job, or failure to satisfactorily perform job tasks or responsibilities.

3104.3 Prior to Disciplinary Action - Depending on the nature of the conduct or the performance deficiency, the District will generally give an employee an oral warning, which is corrective and is non-disciplinary in nature, prior to taking formal disciplinary action. An oral warning is encouraged but is not required before issuing formal disciplinary action.

An oral warning is a communication to an employee that his or her performance or behavior must be improved and failure to do so may result in discipline. An employee's supervisor or the General Manager may note the date, time, and content of oral warning, but no record of an oral warning shall be placed in the employee's personnel file unless subsequent disciplinary action is taken.

3104.4 Types of Disciplinary Action. Disciplinary action includes written warning, , suspension, reduction in salary, demotion, or termination of employment.

3104.4.1 Written Warning: a formal written notice to an employee that further disciplinary action will be taken unless his or her performance or behavior improves. A copy of the written reprimand is given to the employee and the original is placed in the employee's personnel file. The employee must acknowledge receipt of the written warning by signing the letter at the time of presentation; this signature signifies only the receipt of the document, it does not signify the employee's agreement with the allegations.

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- 3104.4.2 Suspension: the temporary removal of an employee from his or her duties without pay for disciplinary purposes for up to thirty (30) working days. Employees suspended from his or her employment with the District forfeit all rights, privileges, and salary with the exception of group health and life insurance benefits.
- 3104.4.3 Reduction in Salary: a decrease in salary paid to an employee for a specified period of time for disciplinary purposes.
- 3104.4.4 Demotion: the removal of an employee from a position to another position carrying a lower maximum rate of pay as a result of a disciplinary action.
- 3104.4.5 Discharge: the removal of an employee from District services, as provided for in these Guidelines.

### 3104.5 Disciplinary Notice/Appeal Procedure

This Section does not apply to at-will, probationary, temporary, volunteers, or seasonal employees.

#### 3104.5.1 Written Notice of Proposed Action

In the event the District imposes a suspension, reduction in salary, demotion, or discharge, the employee will be given a notice of the disciplinary action and an opportunity to respond.

A. Notice of Disciplinary Action. Whenever a suspension, reduction in salary, demotion, or discharge is to be taken against an employee, the employee shall be notified in writing of the proposed disciplinary action to be taken. The notice may be served upon the employee, either personally or by certified mail (if the employee is not at the work location), and shall contain the following information:

1. A statement of the proposed disciplinary action to be taken.
2. The specific policy, rule, or regulation which the employee is alleged to have violated and the factual basis for the violation.
3. The reasons for the disciplinary action.
4. A summary of the facts upon which the charges in the disciplinary are based.
5. Copies of all documents and materials upon which the disciplinary action is based.
6. Notice that the employee will have an opportunity to respond to the proposed disciplinary action in writing and/or have an opportunity to meet with a Skelly Officer, a neutral third party selected by the District (usually a manager or Department Head in department separate from the employee), to present the employee's point of view. Such response or request for a meeting shall be submitted to the identified Skelly Officer within five (5) working days from the date the notice of the proposed disciplinary action is received.
7. Notice that if there is a Skelly meeting, the employee is entitled to be represented by a person of his or her choice.

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8. Notice that if the employee fails to provide a written response or request a Skelly meeting within five (5) working days then the employee shall be deemed to have waived all rights to respond to the proposed disciplinary action and the proposed disciplinary action shall become final.

### 3104.5.2 Skelly Meeting (if requested)

The appointed Skelly Officer shall meet with the employee and his or her representative no more than ten (10) working days after the request for a meeting has been submitted by the employee. During the meeting, the employee will have the opportunity to refute the charges against him or her included in the proposed disciplinary action and/or present mitigating factors which the employee believes should have been considered by the supervisor when issuing the proposed disciplinary action. The employee shall not be entitled to call witnesses or take testimony during the meeting.

Within ten (10) working days of the receipt of the employee's written response or from the date of the meeting with the employee, the Skelly Officer shall issue a final decision regarding whether to uphold, reduce, or overturn the proposed disciplinary action. This decision shall be provided to the employee and the employee's supervisor. A copy of the decision will also be provide to the District's HR Manager.

### 3104.5.3 Post-Skelly Final Notice

Within five (5) days after the Skelly Hearing, the supervisor shall: 1) dismiss the notice and take no disciplinary action against the employee; 2) issue disciplinary action that is less severe than the proposed disciplinary action; or 3) prepare and serve upon the employee a final notice of disciplinary action.

The final notice of disciplinary action shall include the following:

1. The disciplinary action taken.
2. The effective date of the disciplinary action taken.
3. Specific charges upon which the action is based.
4. A summary of the facts upon which the charges are based.
5. The written materials, reports and documents upon which the disciplinary action is based.
6. The employee's right to appeal.

If an employee fails to respond to the notice for a Skelly Hearing, the supervisor shall notify the employee in writing that his or her time to respond has expired and that the discipline shall be imposed.

Disciplinary action other than a suspension, reduction in pay, demotion or termination shall not be subject to appeal. Disciplinary action consisting of a suspension, reduction in pay, demotion or termination may be appealed by regular employees pursuant to section 3104.4.4.

### 3104.5.4 Appeals of Disciplinary Action

Any regular employee shall have the right to appeal to the General Manager from any disciplinary action taken by his or her supervisor following a Skelly hearing. Such appeal shall be in writing and must be

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filed with the General Manager within ten (10) business days after receipt of written notice of such disciplinary action. Failure to file an appeal within such period constitutes a waiver of right to appeal.

The General Manager shall conduct a hearing as provided in Section 3104.5.6 below. Neither the provisions of this section or this Chapter shall apply to layoffs, reductions in force or reductions in pay, which are part of a general plan to reduce or adjust salaries and wages. However, any reduction in pay is subject to the meet and confer process pursuant to Government Code sections 3504.5 and 3505.

In the event the General Manager institutes the disciplinary action against an employee, he or she shall be disqualified from presiding at the appeal hearing. In such case, the hearing officer will be appointed by mutual agreement of the parties.

### **3104.5.5 Selection of Hearing officer for Appeal of Disciplinary Action**

If the General Manager is disqualified, the appeal shall be heard by a hearing officer provided to the District by a non-profit organization or governmental agency with whom the District has contracted to conduct hearing pursuant to these Guidelines. No hearing officer shall be compensated or evaluated, directly or indirectly, based upon the outcome of any hearing.

### **3104.5.6 Appeal Hearing**

The General Manager, or the appointed hearing officer, shall conduct an appeal within thirty (30) days of receipt of employee's request for appeal. The General Manager, or the appointed hearing officer, may continue the hearing either for the convenience of the District or for good cause upon written application of the appellant or District, for a period not to exceed an additional thirty (30) days from the receipt of the appeal. Written notice of the time and place of the hearing shall be conducted in accordance with the provisions of section 11509 of the Government Code of the State of California, except that the appellant and other persons may be examined as provided in section 19580 of said Government Code, and the parties may submit all proper and competent evidence against, or in support of the causes.

### **3104.5.7 Representation at Appeal**

Any District employee, other than those appointed to supervisory, management, and confidential classifications, shall be permitted to represent another District employee or group of District employees at the hearing of the appeal. The appellant may appear in person or be represented by counsel (at the appellant's cost) .

### **3104.5.8 Notices to Witnesses: Cost**

The General Manager shall issue notice for the appearances of witnesses for the appellant upon his written request and at his cost. The General Manager may require such cost to be prepaid.

### **3104.5.9 Failure of Employee to Appear at Appeal Hearing**

Failure of the appellant to appear at the hearing, without the prior written approval of the hearing officer, shall be deemed a withdrawal of his or her appeal and the action of the General Manager or supervisor shall be final.

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### 3104.5.10 Decision on the Appeal

The General Manager or appointed hearing officer shall render a written decision within thirty (30) days after concluding the hearing unless an extension is mutually agreed to by the parties. The General Manager or hearing officer's decision shall be final. A copy of such decision shall be forwarded to the appellant and to the supervisor. If the disciplinary action taken against the employee is reversed or modified by the General Manager or an appointed hearing officer, the employee will be compensated for the time lost, if any, that resulted from the reversed disciplinary action.

3104.6 – This policy applies to volunteers except 3104.5 which only applies to permanent employees.