

**AP 7500 VOLUNTEERS**

**References:**

Education Code Section 72401;  
Government Code Section 3119.5;  
Labor Code Section 3364.5

***NOTE: This procedure is legally advised. The following will satisfy requirements related to workers compensation and other insurance contingencies.***

The purpose of this procedure is to outline the District provisions related to volunteers. **Volunteers may not be used in lieu of classified employees. The District may not refuse to employ a person in a vacant classified position and use volunteers instead, nor may it abolish any classified positions and use volunteers instead.**

Each volunteer is subject to a criminal background check through the Department of Justice.

Volunteers serve the District in an "at will" capacity. The District may terminate a volunteer's services for any reason or no reason at all.

Pursuant to Government Code Section 3119.5, no person aged 60 years or older may be excluded from volunteer service if the person is physically, mentally, and professionally capable of performing the services involved. A person shall be deemed "professionally capable" if he/she can demonstrate reasonable proficiency or relevant certification and performs his/her professional duties in accordance with laws, regulations or the technical standards that govern his/her area of volunteer responsibility.

**Screening/Background Checks**

The District may use a Personnel Action Hiring Packet that requires, at a minimum, the volunteer's name, address, phone number, duties as a volunteer, and assigned department. Background checks provide the District with critical information regarding history of criminal convictions. Fingerprints of each volunteer shall be required. Volunteers with on-going assignments and volunteers who interact with minors shall be required to provide a complete set of fingerprints for the purpose of running a criminal background check.

A volunteer's service record shall be maintained by the District.

Subject to the limitations of this **procedure**, employees assigned to other positions within the District may serve as volunteers during off-hours.

No person may serve as a volunteer in the District if:

- He/she has been convicted of or if he/she has charges pending which pertains to any sex offense (as defined in Education Code Section 87010), or controlled substance offense (as defined in Education Code Section 87011).
- He/she has been convicted of a crime and **Human Resources** determines that:
  - the nature of the crime is too serious to serve as a volunteer;
  - the crime was too recent; and/or
  - the crime is inconsistent with obligations in performing assigned duties as a volunteer.
- He/she has a health condition that would preclude him/her from satisfactorily performing essential duties of the position.
- He/she makes a false statement or omits a statement as to any material fact in the **Personnel Action Hiring Packet**.

### **Benefits**

Volunteers are employees of the District only for the purpose of worker's compensation benefits for injuries sustained while engaged in the performance of any service under the direction and control of the District. With the exception of worker's compensation (Education Code Section 72401), volunteers shall serve without any type of compensation or any other benefits granted to District employees. Volunteers shall not be entitled to defense and indemnity from the District.

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**NOTE:** The **red ink** signifies language that is **legally advised** and recommended by the Policy and Procedure Service and its legal counsel. The language in **green ink** was added on September 24, 2013 during the review with Kit, David, Wyman, and Lydia and on March 28, 2014 with Wyman, David, and Kit.

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### **Date Approved:**

*(This is a new procedure recommended by the Policy and Procedure Service)*

## Legal Citation for AP 7500

No references

***NOTE: The following legal citations are tangentially related to volunteers . . .***

### **Education Code Sections 72401, 87010, and 87011; Government Code Section 3119.5**

**72401.** (a) Notwithstanding any other provisions of law, any person may be permitted by the governing board of any community college district to serve as a non-teaching volunteer aide under the immediate supervision and direction of the academic personnel of the district to perform non-instructional work that serves to assist the academic personnel in the performance of teaching and administrative responsibilities. A non-teaching volunteer aide shall not be an employee of the district, and shall serve without compensation of any type or other benefits accorded to employees of the district, except as provided in Section 3364.5 of the Labor **Code**.

(b) No district may abolish any of its classified positions and utilize volunteer aides, as authorized herein, in lieu of classified employees who are laid off as a result of the abolition of a position. A district shall not refuse to employ a person in a vacant classified position and use volunteer aides in lieu thereof.

(c) Volunteer aides may be used to enhance a district's educational program, but not to displace classified employees, nor to allow districts to utilize volunteers in lieu of normal employee requirements.

**87010.** "Sex offense," as used in Sections 87405, 88022, and 88123, means any one or more of the offenses listed below:

(a) Any offense defined in Section 261.5, 266, 267, 285, 286, 288, 288a, 647.6, or former Section 647a, paragraph (2) or (3) of subdivision (a) of Section 261, paragraph (1) or (2) of subdivision (a) of Section 262, or subdivision (a) or (d) of Section 647 of the Penal **Code**.

(b) Any offense defined in former subdivision 5 of former Section 647 of the Penal **Code** repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision 2 of former Section 311 of the Penal **Code** repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that such an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(c) Any offense defined in Section 314 of the Penal **Code** committed on or after September 15, 1961.

(d) Any offense defined in former subdivision 1 of former Section 311 of the Penal **Code** repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.

(e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal **Code** committed on or after September 15, 1961.

(f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions **Code** repealed by Chapter 1616 of the Statutes of 1961, if the offense was committed prior to September 15, 1961, to the same extent that such an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(g) Any offense defined in Section 286 or 288a of the Penal **Code** prior to the effective date of the amendment of either section enacted at the 1975-76 Regular Session of the Legislature committed prior to the effective date of the amendment.

(h) Any attempt to commit any of the above-mentioned offenses.

(i) Any offense committed or attempted in any other state that, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses.

**Education Code 87011.** "Controlled substance offense" as used in Sections 87405, 88022, and 88123 means any one or more of the following offenses:

(a) Any offense in Sections 11350 to 11355, inclusive, 11366, 11368, 11377 to 11382, inclusive, and 11550 of the Health and Safety **Code**.

(b) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punished as one or more of the above-mentioned offenses.

(c) Any offense committed under former Sections 11500 to 11503, inclusive, 11557, 11715, and 11721 of the Health and Safety **Code**.

(d) Any attempt to commit any of the above-mentioned offenses.

**Government Code Section 3119.5.** Notwithstanding Section 3118, any state or local agency that chooses to utilize volunteers shall implement a policy whereby no person aged 60 years or older may be excluded from volunteer service if the person is physically, mentally, and professionally capable of performing the services involved. A person shall be deemed professionally capable if he or she can demonstrate reasonable proficiency or relevant certification and performs his or her professional duties in accordance with laws, regulations, or technical standards governing his or her area of volunteer responsibility.

## **LABOR CODE - LAB**

### **DIVISION 4. WORKERS' COMPENSATION AND INSURANCE [3200 - 6002]**

( *Heading of Division 4 amended by Stats. 1979, Ch. 373.* )

#### **PART 1. SCOPE AND OPERATION [3200 - 4418]**

( *Part 1 enacted by Stats. 1937, Ch. 90.* )

#### **CHAPTER 2. Employers, Employees, and Dependents [3300 - 3553]**

( *Chapter 2 enacted by Stats. 1937, Ch. 90.* )

### **ARTICLE 2. Employees [3350 - 3371]**

( *Article 2 enacted by Stats. 1937, Ch. 90.* )

#### **3364.5.**

Notwithstanding Section 3351 of the Labor Code, a volunteer, unsalaried person authorized by the governing board of a school district or the county superintendent of schools to perform volunteer services for the school district or the county superintendent shall, upon the adoption of a resolution of the

governing board of the school district or the county board of education so declaring, be deemed an employee of the district or the county superintendent for the purposes of this division and shall be entitled to the workmen's compensation benefits provided by this division for any injury sustained by him while engaged in the performance of any service under the direction and control of the governing board of the school district or the county superintendent.

*(Amended by Stats. 1968, Ch. 1146.)*