

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION

Termination of Probationary Employment

At any time prior to the expiration of the probationary period, the Superintendent or designee may, at his/her discretion, dismiss a probationary classified employee from District employment. A probationary employee shall not be entitled to a hearing. (Education Code 35161)

Involuntary Suspension Without Pay, Demotion, Reduction of Pay Step in Class, or Dismissal of Permanent Classified Employees

Permanent classified employees shall be subject to disciplinary action (suspension without pay, demotion, reduction of pay step in class, dismissal) only for cause. The Board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

1. Causes

In addition to any disqualifying or actionable causes otherwise provided for by statute, policy or administrative regulation of this District, each of the following constitutes cause for disciplinary action against a permanent classified employee:

- a. Falsifying any information supplied to the school District, including, but not limited to, information supplied on application forms, employment records, or any other school District records.
- b. Incompetency.
- c. Unsatisfactory performance.
- d. Inefficiency.
- e. Frequent unexcused tardiness.
- f. Neglect of duty or poor performance.
- g. Inattention to or dereliction of duty.
- h. Insubordination.
- i. Discourteous, abusive, or threatening treatment of the public, fellow employees, or students.
- j. Dishonesty.

- k. Drinking alcoholic beverages while on duty or in such close time proximity thereto as to cause any detrimental effect upon the employee or upon employees associated with him/her.
- l. Possessing or being under the influence of a controlled substance at work or away from work, or furnishing a controlled substance to a minor.
- m. Positive drug test, if in safety sensitive position.
- n. Conviction of a felony, conviction of any sex offense made relevant by provisions of law, or conviction of a misdemeanor which is of such a nature as to adversely affect the employee's ability to perform the duties and responsibilities of his/her position. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction for this purpose.
- o. Abuse of leave privileges by habitual use of illness leave or by frequent absences so that over an extended period of time, the efficiency of the service is impaired.
- p. Absence without leave.
- q. Immoral conduct.
- r. Improper political activity.
- s. Willful disobedience.
- t. Misuse of District property.
- u. Violation of District, Board or departmental rule, policy, or procedure.
- v. Failure to possess or keep in effect any license, certificate, or other similar requirement specified in the employee's job description or otherwise necessary for the employee to perform the duties of the position.
- w. Refusal to take and subscribe any oath or affirmation which is required by law in connection with his/her employment.
- x. A physical or mental disability which precludes the employee from the proper performance of his/her duties and responsibilities as determined by competent medical authority, except as otherwise provided by a contract or by law regulating the retirement of employees.

- y. Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age against students, the public or other employees while acting in the capacity of a District employee.
- z. Unlawful retaliation against any student, other District officer or employee or member of the public who, in good faith, reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any information relative to an actual or suspected violation of state or federal law occurring on the job or directly related thereto.
- aa. Committing or threatening to commit an act of violence in the workplace.
- bb. Any other failure of good behavior either during or outside of duty hours which is of such nature that it causes discredit to the District or his/her employment.

2. **Initiation and Notification of Charges**

The Superintendent or designee may initiate a disciplinary action as defined herein against a permanent classified employee.

In all cases involving a disciplinary action, the person initiating the action shall file a written notice of disciplinary action. A copy of the notice shall be served upon the employee either personally or by registered or certified mail, return receipt requested, at the employee's last known address. The notice shall include:

- a. A statement of the nature of the action (suspension without pay, demotion, reduction of pay step in class, or dismissal).
- b. A statement of the cause or causes for the action, as set forth above.
- c. A statement of the specific acts or omissions upon which the causes are based. If a violation of rule, policy, or regulation of the District is alleged, the rule, policy, or regulation violated shall be stated in the recommendation.
- d. A statement of the employee's right to appeal the recommendation and the manner and time within which the appeal must be filed.
- e. A card or paper, the signing and filing of which shall constitute a demand for hearing and a denial of all charges.

3. Employment Status Pending Appeal or Waiver

Except as provided herein, any employee against whom a recommendation of disciplinary action has been issued shall remain on active duty status and responsible for fulfilling the duties of the position pending his/her appeal or waiver thereof. If the Superintendent or designee determines that it is in the best interest of the District to immediately remove an employee from duty pending disciplinary action, such employee shall be placed on paid administrative leave.

4. Response to Charges

The Superintendent, or designee, shall meet with the employee prior to the imposition of discipline to provide the employee an opportunity to respond to the charges being alleged.

5. Right to Appeal

Within five calendar days after receiving the recommendation for disciplinary action described above, the employee may appeal by signing and filing the card or paper included with the recommendation. Any other written document signed and appropriately filed within the specified time limit by the employee shall constitute a sufficient notice of appeal. A notice of appeal is filed only by delivering the notice of appeal to the office of the Superintendent or designee during normal work hours of that office. A notice of appeal may be mailed to the office of the Superintendent or designee but must be received or postmarked no later than the time limit stated herein. In cases where an order of suspension without pay has been issued in conjunction with a recommendation of dismissal, any appeal of the recommendation of dismissal shall also constitute an appeal of the suspension order, and the necessity of the order will become an issue in the appeal hearing.

If the employee fails to file a notice of appeal within the time specified in these rules, he/she shall be deemed to have waived his/her right to appeal, and the Board may order the recommended disciplinary action into effect immediately.

6. Amended/Supplemental Charges

At any time before an employee's appeal is finally submitted to the Board or to a hearing officer for decision, the complainant may, with the consent of the Board or hearing officer, serve on the employee and file with the Board an amended or supplemental recommendation of disciplinary action.

If the amended or supplemental recommendation presents new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare his/her defense. Any new causes or allegations shall be deemed controverted and any objections to the amended or supplemental causes or allegation may be made orally at the hearing and shall be noted on the record.

7. Hearing Procedures

- a. The hearing shall be held at the earliest convenient date, taking into consideration the established schedule of the Board or hearing officer and the availability of counsel and witnesses. The parties shall be notified of the time and place of the hearing. The employee shall be entitled to appear personally, produce evidence, and have counsel. The employee shall be entitled to a public hearing if he/she demands it when the Board is hearing the appeal. The complainant may also be represented by counsel. The procedure entitled "Administrative Adjudication" commencing with Government Code 11500 shall not apply to any such hearing before the Board or a hearing officer. Neither the Board nor a hearing officer shall be bound by rules of evidence used in California courts. Informality in any such hearing shall not invalidate any order or decision made or approved by the hearing officer or the Board.
- b. All disciplinary hearings shall be heard by a hearing officer appointed by the Board, except in those cases where the Board determines to hear the appeal itself. In any case in which the Board hears the appeal, the Board may use the services of its counsel or a hearing officer in ruling upon procedural questions, objections to evidence, and issues of law. If the appeal is heard by the Board, the Board shall affirm, modify or rescind the recommended disciplinary action.
- c. If the appeal is heard by a hearing officer, he/she shall prepare a proposed decision in a form that may be adopted by the Board as the decision in the matter. A copy of the proposed decision shall be received and filed by the Board and furnished to each party within 10 days after the proposed decision is filed by the Board. The Board may:
 - (1) Adopt the proposed decision in its entirety.
 - (2) Reduce the disciplinary action set forth in the proposed decision and adopt the balance of the proposed decision.
 - (3) Reject a proposed reduction in disciplinary action, approve the personnel action sought by the complainant or any lesser penalty, and adopt the balance of the proposed decision.
 - (4) Reject the proposed decision in its entirety.

- d. If the Board rejects the proposed decision in its entirety, each party shall be notified of such action and the Board may decide the matter upon the record including the transcript, with or without the taking of additional evidence, or may refer the case to the same or another hearing officer to take additional evidence. If the case is so assigned to a hearing officer, he/she shall prepare a proposed decision, as provided in item "c" above, upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of this proposed decision shall be furnished to each party within 10 days after the proposed decision is filed by the Board.
- e. In arriving at a decision or a proposed decision on the propriety of the proposed disciplinary action, the Board or the hearing officer may consider the records of any prior disciplinary action proceedings against the employee in which a disciplinary action was ultimately sustained and any records that were contained in the employee's personnel files and introduced into evidence at the hearing.

8. Hearing Decision

The decision of the Board shall be in writing and shall contain findings of fact and the disciplinary action approved, if any. The findings may reiterate the language of the charges or simply refer to them.

The decision of the Board shall be certified to the Superintendent or designee who recommended the personnel action, and he/she shall enforce and follow this decision. A copy of the decision shall be delivered to the employee or his/her designated representative personally or by registered mail. The decision of the Board shall be final.

9. Compulsory Dismissal

The District shall not employ or retain in employment any person who has been convicted of any sex offense as defined in Education Code 44010 or any controlled substance offense as defined in Education Code 44011. However, the District may employ a employee convicted of a controlled substance offense if the Board determines from the evidence it requires that the employee has been rehabilitated for at least five years. If any such conviction is reversed and the person acquitted or charges dismissed except as otherwise provided below, the employee may be reemployed by the District, although reemployment is not a guarantee. (Education Code 45123)

The District reserves the right to dismiss an employee for any acts upon which the original criminal charges were based, despite the disposition by the courts. If dismissal is recommended and upheld, an employee will not be reemployed or compensated for the time he/she was suspended unless otherwise required by law. An employee shall be given notice of the possibility of not being reimbursed during mandatory suspension if he/she is ultimately dismissed for the acts upon which the original charges were based.

Legal Reference:

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EDUCATION CODE

35161 Delegation of powers and duties

44009 Conviction of specified crimes

44010 Sex offense

44011 "Controlled substance offense" defined

45101 Definitions (including "disciplinary action," "cause")

45109 Fixing of duties

45113 Rules and regulations for classified service in Districts not incorporating the merit system

45123 Employment after conviction of sex or narcotics offense