

CHAPTER XIV

DISCIPLINARY ACTION AND APPEAL

Rule 14.1 DISCIPLINARY ACTION - SUSPENSION, DEMOTION AND DISMISSAL

14.1.1 GENERAL PROVISIONS (EDUCATION CODE 45302)

- A. A regular classified employee shall be subject to disciplinary action only for cause as prescribed by law or this Rule. No disciplinary action shall be taken against any employee for any cause which arose more than two (2) years prior to the date of the notice of disciplinary action unless such cause was concealed or not disclosed by the employee when the facts reasonably should have been disclosed.
- B. No employee shall be suspended, demoted or dismissed, sexually harassed, or in any way discriminated against because of his/her affiliations, race, color, national origin, age, marital status, sex, handicapping condition, ancestry, medical condition (as defined in Government Code 12926), or religious or political beliefs or acts, except as provided in Rule 14.1.4.
- C. No permanent or probationary classified employee shall be suspended, demoted or dismissed until final approval is given by the Board except as provided in Rule 14.1.5.

14.1.2 NOTICE OF DISCIPLINARY ACTION

- A. The notice of disciplinary action shall include a list of causes for discipline as specified in Rule 14.1.4. The notice of disciplinary action shall also include a Statement of Charges. The Statement of Charges must be in ordinary and concise language and be clear enough so that the employee will know the precise complaints against him/her and may be expected to be able to respond to them.
- B. When an employee is to be disciplined, he/she shall be advised of his/her right to answer, explain or deny the charges within five (5) working days after receipt

of the notice of disciplinary action. The answer, explanation or denial of charges shall be made to the person sending the notice of disciplinary action. The answer, explanation or denial of charges shall be made to the person sending the notice of disciplinary action. The employee shall be entitled to review any records or materials which are used as part of the discipline and shall be provided copies upon request.

- C. All communications from the District to the employee shall be:
 - 1. delivered personally and signed for by the employee or
 - 2. sent by certified mail, return receipt requested, to the last known address of the employee on file in the Personnel Office.

14.1.3 DEFINITIONS

- A. Suspension shall mean the temporary removal of an employee from a position for cause with loss of pay as a disciplinary measure, or indefinite removal preliminary to investigation of charges pursuant to Education Code 45304.
- B. Demotion shall mean the involuntary reduction of an employee for cause from a class with a higher pay scale to a class with a lower pay scale or from a higher salary step to a lower salary step on the same pay scale. A disciplinary action reducing salary from a higher to a lower step shall specify the number of months of reduction, not to exceed six (6), and shall establish a new salary increment date.
- C. Dismissal shall mean the involuntary separation of an employee from service for cause.

14.1.4 CAUSES FOR SUSPENSION, DEMOTION OR DISMISSAL (EDUCATION CODE 45302, 45303)

- A. A regular classified employee may be subject to disciplinary action by the Board for the following causes:

1. insubordination, including, but not limited to willful refusal to do reasonably assigned work;
2. discourteous, offensive or abusive conduct toward other employees, students or the public;
3. misuse, theft, destruction or mishandling of District property, or property of employees or students of the District;
4. offering anything of value, or offering any service in exchange for special treatment in connection with an employee's job or employment, or the accepting of anything of value or any service in exchange for granting special treatment to another employee or to any member of the public;
5. possession of an alcoholic beverage or drinking alcoholic beverages or being intoxicated while on the job or the unauthorized use or being under the influence of narcotics or any controlled substances not prescribed by a licensed physician;
6. engaging in political, religious or personal activities during assigned hours of employment, which impairs the efficiency of the service;
7. immoral conduct;
8. conviction of a felony or serious crime or a record of one (1) or more convictions which indicate that the person is a poor employment risk for the particular job which he/she holds in the District. (A plea, verdict, or finding of guilty, or a conviction following a plea of nolo contendere is to be deemed a conviction within the meaning of these Rules);
9. conviction of a sex or narcotics offense as defined in Education Code 44010 or 44011;

10. abuse of leave privileges which impairs the efficiency of the service;
11. knowingly falsifying any information supplied to the District including but not limited to information supplied on applications, employment forms, payroll documents or other records;
12. willful or persistent violation of, or failure to enforce, rules, regulations, policies or procedures pertaining to health and safety;
13. any willful failure of good conduct tending to injure the public service or its reputation;
14. any willful or persistent violation of the provisions of the Education Code or of written rules, regulations or procedures adopted or established by the Board, Commission or administration;
15. abandonment of position, which means an absence without continued notification, in excess of five (5) working days, except in case of dire emergency;
16. advocacy of the overthrow of the federal, state or local government by force, violence or other unlawful means;
17. failure to report for a review of criminal records or for a health examination after due notice;
18. failure to maintain a valid license or certificate required by the District for the particular position which he/she holds;
19. sexual harassment of another (Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature, made by someone from or in the work setting) (EDUCATION CODE 212.5, 230);

20. failure to obey a subpoena issued by the Commission and duly served or any refusal to furnish testimony or documents, other than self-incriminating, at a hearing or investigation before the Commission or Board;
21. incompetency, which means below standard work performance, a pattern of inefficiency, continued neglect or dereliction in the performance of assigned duties or
22. repeated or unexcused tardiness or absence.

B. A permanent classified employee shall be subject to disciplinary action for the following causes only after completion of Need for Work Improvement, Unsatisfactory Work Performance and Recommendation of Disciplinary Action notices as provided in Rule 14.1.4B, Rule 14.1.5D.

1. incompetency, which means below standard work performance, a pattern of inefficiency, continued neglect or dereliction in the performance of assigned duties or
2. repeated or unexcused tardiness or absence.

C. A regular classified employee may be subject to removal from service or change in status under this Rule due to physical or mental unfitness as determined by a District authorized physician. The employee shall retain the right to appeal. Administration shall base the decision to recommend removal or change of status under this Section on the following factors:

1. the degree of physical or mental unfitness and the physician's prognosis as they relate to the duties to be performed;
2. The number of positions in the employee's classification, the uniqueness and the degree of specialty required by the position and the availability of a qualified substitute and

3. The degree and frequency of precious sick leave use. Particular attention should be paid to employees who have extraordinary use or lack of use of sick leave with consideration of the circumstance surrounding previous use of sick leave.

14.1.5 SUSPENSION FOR SPECIFIC CAUSES (EDUCATION CODE 45304)

- A. A regular employee charged with the commission of any sex offense defined in Section 44010 or narcotics offense defined in Section 44011 of the Education Code, Sections 11357 to 11361, inclusive, 11363, 11364 or 11377 to 11382, inclusive, insofar as such sections relate to any controlled substances in paragraph four (4) or five (5) of subdivision (b) of Section 11056, or any controlled substances in subdivision (d) of Section 11054, except paragraphs ten (10), eleven (11), twelve (12), and seventeen (17) of such subdivisions, of the Health and Safety Code by complaint, information, or indictment filed in a court of competent jurisdiction, may be suspended as provided in Section 45304 of the Education code.
 1. When a regular employee is under investigation of charges specified in paragraph A above and the employee has not been charged by complaint, information or indictment filed in a court of competent jurisdiction, the District may suspend such employee, without pay, for up to thirty (30) days after which the employee may be suspended with pay until charges are filed or a decision is made not to pursue the case by the investigating agency.
 2. The paid leave of absence requires notice to the employee regarding the reasons for the leave and shall be approved by the Board at their next regular meeting.
- B. An employee may be suspended immediately for up to two (2) days without pay by his/her immediate supervisor with the approval of the Superintendent or

his/her designee. Immediate suspension shall be for cause as listed in Rule 14.1.4A when such suspension is necessary for the safety and/or best interests of students, parents, staff, the District or the employee.

1. Such suspension shall be documented on an appropriate notice of disciplinary action and presented to the employee upon return from suspension.
2. The immediate supervisor shall schedule a conference with the employee and the Assistant Superintendent-Human Resources to discuss the suspension.
3. All procedures for disciplinary action shall be followed.
4. The disciplinary action shall be ratified at the next regular meeting of the Board.

C. An employee may be suspended, without pay, pending recommended termination by the Superintendent or his/her designee. Such suspension shall be for cause as listed in Rule 14.1.4 when the suspension is in the best interest of students, parents, staff, the employee or the District. Suspension under this provision shall otherwise follow the procedure in Rule 14.1.6.

D. In cases of disciplinary action arising from causes listed in Rule 14.1.4B, the immediate supervisor shall provide the employee with the following three notices before disciplinary action can be taken.

1. Need for Work Improvement - First Notice. This notice shall include performance standards, areas of needed improvement and suggestions for improvement. The first notice shall provide a minimum thirty (30) calendar day period for the employee to improve.
2. Unsatisfactory Job Performance - Second Notice. This notice shall include the date of previous evaluation, performance standards,

areas of unsatisfactory performance and improvement required. The second notice shall provide a minimum thirty (30) calendar day period for the employee to improve.

3. Recommendation of Disciplinary Action - Final Notice. This notice shall include the date of previous evaluation, performance standards not met and the recommended disciplinary action. Procedure for disciplinary action shall be followed.
4. Job Performance Progress Report - This report may be filed at any time prior to submission of the Recommendation of Disciplinary Action. This report shall include performance standards met and a summary of job performance. Submission of this report removes an employee from the Needs to Improve cycle. After a Job Performance Progress Report has been filed an employee who subsequently resumes the behaviors noted during the Needs to Improve Evaluation cycle may be subject to disciplinary action for up to on (1) year without the necessity of completing any of the above steps completed within the previous twelve (12) months.
5. Failure to complete the second or the final notice within ninety (90) calendar days shall remove an employee from the Needs to Improve evaluation cycle and the employee shall be deemed to be working at an acceptable level.

14.1.6 PROCEDURE FOR DISCIPLINARY ACTION (EDUCATION CODE 45304)

- A. An employee may be suspended, without pay, for cause as listed in this Rule for not more than thirty (30) calendar days upon recommendation of the Assistant Superintendent - Human Resources and the Superintendent with approval by the Board.
- B. When a regular classified employee is recommended for disciplinary action for cause as listed in this Rule,

the recommendation shall be prepared by the immediate supervisor, approved by the Departmental Administrator, if any, and forwarded to the Assistant Superintendent - Human Resources for approval.

- C. The Assistant Superintendent - Human Resources shall prepare a notice of disciplinary action.
- D. Upon completion of the notice of disciplinary action and prior to action by the Board, the Assistant Superintendent - Human Resources shall notify the employee that disciplinary action may be taken and schedule a meeting to discuss the matter. The employee shall be notified that he/she is entitled to be represented by any person of his/her choice.
- E. If, subsequent to the above meeting, it is determined that the District is to proceed with the discipline, the notice of disciplinary action shall be delivered to the employee personally, if practicable, and he/she shall be requested to sign acknowledgement of receipt. If an employee refuses to sign an acknowledgement that the notice has been personally delivered and the notice has been presented in the presence of a witness, that witness may certify to personal delivery to the employee. When personal delivery is impracticable, the notice shall be sent to the employee's last known address by certified mail with return receipt requested. The notice shall be mailed and available to the employee at least five (5) working days prior to the scheduled Board action. A copy of the notice of disciplinary action shall immediately be filed with the Director of Classified Personnel.
- F. An employee who has permanent status in the classified service and who has been promoted to a higher class may be involuntarily demoted during the probationary period to his/her former class without right of appeal. If the demotion results in the separation of the employee from the classified service or is as a result of violation of Rule 14.1.1B, the employee shall have the right of appeal.
- G. Dismissal shall cause removal of the employee's name from all reemployment and eligibility lists.

14.1.7

PROCEDURE FOR NOTIFICATION OF RIGHT TO APPEAL

- A. When the Board has taken final action to discipline an employee, the Assistant Superintendent-Human Resources shall, within three (3) working days, notify the Director of Classified Personnel of the Board's action.
- B. The Director of Classified Personnel shall, within ten (10) days of the Board's action to discipline, notify the employee and file written charges with the Commission.
- C. This notification to the employee shall contain:
 - 1. a copy of written charges,
 - 2. the time allowed to file an appeal,
 - 3. the right of an employee to a hearing on the appeal and
 - 4. the requirements for employee's response as set forth in Rule 14.2.1

Rule 14.2 PROCEDURE FOR APPEAL AND HEARING

14.2.1 PROCEDURE FOR APPEAL (EDUCATION CODE 45305)

- A. A permanent employee who has been suspended, demoted or dismissed may appeal to the Commission within fourteen (14) days after receipt of the notification of charges from the Director of Classified Personnel by filing a written answer to the charges and he/she may request a hearing.

- B. The employee's written answer to the charges must include facts based on the following grounds:
 - 1. that the charges made do not constitute sufficient cause for the action taken:

 - 2. that the action taken was not in accord with the facts.

 - 3. That there was abuse of discretion;

 - 4. That the procedure set forth in these Rules have not been followed or

 - 5. That the disciplinary action was taken because of political affiliations, religious beliefs or opinions, race, color, national origin, ancestry, sex, employee organization membership or non-membership, marital status, handicapping condition or medical condition as defined in Government Code 12926.

- C. For purposes of this rule, if a notice is mailed, the working day following the postmark date of the notice shall be considered to be the official date of receipt.

- D. Failure to appeal disciplinary action as provided in this Rule shall make the action of the Board final.

14.2.2 PROCEDURE FOR HEARING (EDUCATION CODE 45306, 45311, 45312)

- A. After an employee has made and filed an appeal in answer to the charges against him/her, the Commission shall investigate, or cause to be

investigated, the matter on appeal and may require further evidence from either party. The Commission may, and upon request of the appellant, shall order a hearing. If a hearing is so ordered, the Commission shall fix the time and place of the hearing. The hearing shall be held within a reasonable length of time from the receipt of the appeal and the Director of Classified Personnel shall provide written notification to all parties.

- B. The Commission may appoint a hearing officer to conduct any hearing and report Findings and Recommendations to the Commission. The Commission may accept, reject or amend any of the Findings or Recommendations in the proposed decision. Any rejection or amendment shall be based on a review of the transcript or upon the results of such supplemental hearing or investigations as the Commission may order.
- C. Prior to the hearing, each party shall have the right to copy any written documents that may be presented during the hearing and to a list of all witnesses to be called.
- D. Hearings shall be conducted in the manner most conducive to the determination of the truth, and neither the Commission nor its hearing officer shall be bound by technical Rules of Evidence. Decisions made by the Commission shall not be invalidated by any informality in the proceedings.
- E. The hearing shall be electronically tape-recorded. However, either party may request that the hearing be recorded by a court reporter, in which case the party making the request shall bear the cost.
- F. The Commission or its hearing officer shall determine the relevancy, weight and credibility of testimony and evidence. Hearsay evidence may be admitted, but shall not be sufficient in and of itself to support a Finding. The Findings of the Commission or its hearing officer shall be based on a preponderance of the evidence.

- G. The burden of proof shall be on the District except in cases of discrimination.
- H. Each party will be permitted an opening statement, with the District opening first. The District shall next present its witnesses and evidence to sustain its charges, then the employee will present witnesses and evidence in defense. Each party shall then be permitted closing arguments with the District closing first except in appeals alleging discrimination, in which case the order is reversed.
- I. Each party will be allowed to examine and cross-examine witnesses, including adverse witnesses. If the appellant does not testify on his/her own behalf, he/she may be called and examined as an adverse witness. (Evidence Code 772)
- J. The Commission, appellant and District may be represented by separate legal counsel or other designated representative.
- K. On request of the District or the appellant the Commission shall order the Director of Classified Personnel to issue subpoenas to require the presence of witnesses or the production of records or information pertinent to the hearing. Subpoenas shall be delivered to the requesting party for service.
- L. The commission may, at any time, grant a continuance for any reason it believes important to its reaching a fair and proper decision.
- M. Disciplinary hearings shall be held in closed session unless an open hearing is requested by the appellant. The Commission may, at its discretion, exclude witnesses not under examination except the appellant, District representative and their respective counsel or designated representative. When hearing testimony on alleged scandalous or indecent conduct, all persons not having direct interest in the hearing shall be excluded.
- N. The Commission may deliberate its decision in closed session and exclude all persons other than members of the Commission, its staff or counsel. If counsel

also served as counsel for the District, he/she shall be excluded from the final deliberations.

14.2.3 FINDINGS AND DECISION (EDUCATION CODE 45306, 45307)

- A. The Commission shall render its Decision as soon after the conclusion of the investigation or hearing as possible and unless an agreement for an extension is agreed to by all parties, the Decision shall be made within fourteen (14) calendar days after conclusion of the deliberations.
- B. The Commission's Decision shall set forth which charge(s), if any, are sustained or rejected and the reasons therefor. The Decision shall be set forth in writing by the Director of Classified Personnel and signed by a Commissioner. A true copy of the Decision shall be sent to all parties in interest.
- C. The Commission may sustain or reject any or all of the charges filed against the employee. If the Commission rejects any or all of the charges against the employee, it may:
 - 1. modify the disciplinary action, but not make the action more stringent than that approved by the Board;
 - 2. order all or part of the employee's full compensation from the time of suspension, demotion or dismissal paid;
 - 3. order the employee's reinstatement upon such terms and conditions as it may determine appropriate;
 - 4. order the employee transferred or changed in work location;
 - 5. order seniority credit for off-duty time pending reinstatement;
 - 6. order that the employee's personnel file be expunged of all records pertaining to the

disciplinary action on charges which were not sustained by the Commission;

7. order the District to pay compensation for all or any part of the legitimate expenses incurred by the parties in pursuit of appeal and/or
 8. order such other action as it may find necessary to effect a just settlement of the appeal.
- D. The decision of the Commission shall be final and shall not be subject to review by the Board.
- E. Upon receipt of the Commission's written decision the Board shall forthwith comply with the provisions thereof. When the board has fully complied with the Commission's decision it shall so notify the Commission in writing.

14.2.4 HEARING TRANSCRIPT

- A. A copy of the hearing transcript shall be prepared and furnished to either party, under the following conditions:
1. the cost of the transcript and copies if requested, shall be born by the party making the request;
 2. the request shall be in writing and a cash deposit made in an amount determined by the Director of Classified Personnel prior to preparation;
 3. the final cost of the transcript shall be the actual cost of preparation plus the cost of copies as determined by the Director of Classified Personnel and
 4. the transcript shall only be release upon payment in full. When the deposit is greater than the actual costs, plus copies, of the document the remainder shall be refunded.