

## CHAPTER XIV

### DISCIPLINARY ACTION AND APPEAL

#### Rule 14.1 DISCIPLINARY ACTION - SUSPENSION, DEMOTION AND DISMISSAL

The subject of this Rule is within the scope of representation under Section 3543.2 of the Government Code. If an agreement on this subject is in effect between the District and an exclusive representative of employees in a recognized bargaining unit, the agreement shall supersede the provisions of this Rule as they apply to employees in that unit.

##### 14.1.1 GENERAL PROVISIONS

- A. A 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 race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, sexual orientation, or military or veteran status (as defined in Government Code 12926), or religious or political beliefs or acts, except as provided in Rule 14.1.4.
- C. No classified employee shall be suspended, demoted or dismissed except as provided in Rule 14.1.5.

References: California Education Code 45302

##### 14.1.2 NOTICE OF DISCIPLINARY ACTION

- A. The notice of disciplinary action shall include causes or charges 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 charges against him/her and 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 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 Human Resources 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 salary range to a class with a lower salary range.
- C. Dismissal shall mean the involuntary separation of an employee from service for cause.

#### 14.1.4 CAUSES FOR SUSPENSION, DEMOTION OR DISMISSAL

- A. A classified employee may be subject to disciplinary action by the Board of Education for the following causes:
1. insubordination, including, but not limited to refusal or failure 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 alcohol, narcotics or any controlled substances not prescribed to the employee 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 Codes 44010, 44011, or 45124
10. abuse of leave privileges which impairs the efficiency of the service;
11. falsifying information supplied to the District including, but not limited, to information supplied on applications, employment forms, payroll documents or other records;
12. violation of, or failure to enforce, rules, regulations, policies or procedures pertaining to health and safety;
13. engaging in unprofessional conduct that may injure the District or its reputation;
14. violation of the provisions of the Education Code or of written rules, regulations or procedures adopted or established by the Board of Education, Personnel 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 includes but is not limited to

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 or education setting, under any conditions listed in Education Codes 212.5 and 230;

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

References: California Education Codes 45302, 45303 and 45304

- B. A classified employee may be subject to dismissal from service or change in status due to physical or mental unfitness as determined by a District authorized physician. The employee shall retain the right to appeal to the Personnel Commission. Administration shall base the decision to recommend dismissal from service or change of status based on the degree of physical or mental unfitness and the physician's prognosis as they relate to the duties to be performed.
- C. Permanent classified management and confidential employees 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 and Rule 14.1.5D.

Represented employees shall be subject to disciplinary action in accordance with the collective bargaining agreement.

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, or
3. abuse of leave privileges which impairs the efficiency of the service.

#### 14.1.5 SUSPENSION FOR SPECIFIC CAUSES

(a) For reasonable causes, an employee may be suspended without pay for not more than thirty (30) days, except as provided in this section, or may be demoted or dismissed. In this case, the school district shall, within ten (10) days of the suspension, demotion, or dismissal, file written charges with the Personnel Commission. The personnel director shall give to the employee or deposit in the United States registered mail with postage prepaid, addressed to the employee at his or her last known place of address, a copy of the charges and inform the employee of his or her appeal rights.

(b) Whenever an employee of a school district or county office of education is charged with a mandatory leave of absence offense, as defined in subdivision (a) of Section 44940, the Board of Education shall immediately place the employee upon a compulsory leave of absence for a period of time extending for not more than ten (10) days after the date of entry of the judgment in the proceedings.

Once the employee is placed on leave of absence, he or she is subject to the provisions of Section 44940.5.

(c) Whenever an employee of a School District or county office of education is charged with an optional leave of absence offense, as defined in subdivision (b) of Section 44940, the Board of Education may immediately place the employee upon a compulsory leave of absence in accordance with the provisions of Section 44940.5.

Reference: California Education Code 45304

- A. An employee may be suspended immediately for up to two (2) days without pay upon recommendation of his/her immediate supervisor and 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. A conference shall be scheduled 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 a regular meeting of the Board of Education.
  
- B. 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.
  
- C. In cases of disciplinary action arising from causes listed in Rule 14.1.4B, the immediate supervisor shall initiate a Needs to Improve cycle to 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 Need for Work Improvement – First Notice, 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 First and Second Notices, performance standards not met and the recommended disciplinary action. Procedure for disciplinary action shall be followed.
4. A supervisor may remove an employee from the Needs to Improve cycle if job performance has been corrected. An employee who subsequently resumes the behaviors noted during the Needs to Improve cycle may be subject to disciplinary action for up to one (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 cycle and the employee shall be deemed to be working at an acceptable performance standards.

#### 14.1.6 PROCEDURE FOR DISCIPLINARY ACTION

- A. An employee may be suspended without pay for cause as listed in this Rule for not more than thirty (30) days upon recommendation of the Assistant Superintendent - Human Resources and the Superintendent with approval by the Board of Education.

- B. When a classified employee is recommended for suspension for cause as listed in this Rule, the recommendation shall be prepared by the supervisor 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 of Education, 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 will proceed with disciplinary action, the notice of disciplinary action 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. Alternatively, the Notice of Disciplinary Action may be delivered to the employee personally and he/she shall be requested to sign acknowledgement of receipt. 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 may be involuntarily demoted with the right of appeal.
- G. 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 if the employee alleges that the disciplinary action was taken because of prohibited basis of discrimination, the employee shall have the right of appeal.

- H. Dismissal may cause removal of the employee's name from all reemployment and eligibility lists.

Reference: California Education Code 45304

14.1.7      PROCEDURE FOR NOTIFICATION OF RIGHT TO APPEAL

- A. When the Board of Education has taken final action to discipline an employee, the Assistant Superintendent-Human Resources shall, within three (3) working days, notify in writing the Director of Classified Personnel of the Board of Education's action.
- B. The Director of Classified Personnel shall, within ten (10) days of the Board of Education's action, notify the employee in writing of the Board of Education's decision and the employee's right to appeal the Board of Education's decision with the Personnel 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

- A. A permanent employee who has been suspended, demoted or dismissed may appeal to the Personnel Commission within fourteen (14) days after receipt of the Board of Education's decision and the employee's right to appeal.
- B. To appeal, the employee shall submit in writing the reasons for which the appeal is based and request a hearing before the Personnel Commission. The grounds for appeal are:
  - 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 the penalty involved by the District was excessive.
  - 4. That the procedure set forth in these Rules has not been followed. or
  - 5. That the disciplinary action was taken because of prohibited basis of discrimination.
- C. For purposes of this Rule, if a notice is mailed, the official date of receipt shall be two (2) working days from the postmark date of the notice.
- D. Failure to appeal disciplinary action as provided in this Rule shall make the action of the Board of Education final.

14.2.2 PROCEDURE FOR HEARING

- A. After an employee has filed an appeal in answer to the charges against him/her, the Personnel Commission shall order a hearing. If a hearing is so ordered, the Personnel Commission shall schedule 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 Personnel Commission may conduct the hearing or may appoint a hearing officer to conduct the hearing to report Findings and Recommendations to the Personnel Commission. The Personnel 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 any supplemental hearing(s) or investigation(s) as the Personnel 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 Personnel Commission nor its hearing officer shall be bound by technical Rules of Evidence. Decisions made by the Personnel Commission shall not be invalidated by any informality in the proceedings.
- E. The hearing shall be electronically 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 Personnel 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 Personnel 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. (California Evidence Code 772)
- J. The Personnel 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 Personnel Commission shall order the Director of Classified Personnel to issue subpoenas to require the presence of witnesses, the production of records, or for information pertinent to the hearing. Subpoenas shall be delivered to the requesting party for service.
- L. The Personnel 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 Personnel 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 Personnel Commission shall deliberate its decision in closed session and exclude all persons other than members of the Personnel 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 OF APPEAL HEARING

- A. The Personnel Commission shall render a decision within fourteen (14) calendar days after the conclusion of deliberations unless all parties agree to an extension.
- B. The Personnel 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 Personnel Commissioner. A copy of the Decision shall be sent to all parties.
- C. The Personnel Commission may sustain or reject any or all of the charges filed against the employee. If the Personnel 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 of Education;
  - 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 a change of 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 Personnel 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 Personnel Commission shall be final and shall not be subject to review by the Board of Education.
- E. Upon receipt of the Personnel Commission's written decision the Board of Education shall forthwith comply with the provisions thereof. When the Board of Education has fully complied with the Personnel Commission's decision it shall so notify the Personnel Commission in writing.

#### 14.2.4 HEARING TRANSCRIPT

- A. If requested, 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 borne 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 released upon payment in full. When the deposit is greater than the actual costs, plus copies, of the document the remainder shall be refunded.