

**PERSONNEL: CLASSIFIED****Disciplinary Procedures for Classified Employees**1. Definition of Probationary Period and Permanent Status

1.1 All employees in regular positions not requiring certification qualifications shall be classified employees. The following employees are excluded from the classified service: substitute and short-term employees, part-time playground positions, apprentices and professional experts employed on a temporary basis for a specific project and full-time or part-time students employed part-time in any work study or work experience education program which is conducted by the district and financed by state or federal funds.

1.2 The probationary period of all members of the classified service shall be as defined in the appropriate collective bargaining agreement, which shall be deemed to include days of absence for illness or injury to which the employee is entitled without loss of pay pursuant to the requirements and authority of Section 45191 of the Education Code.

1.3 During the probationary period, any employee in the classified service shall be subject to disciplinary action, including termination. The employee shall not have a right to a hearing regarding any disciplinary action taken during the probationary period.

1.4 Upon satisfactory completion of the probationary period, a member of the classified service is designated as a permanent employee who shall be subject to disciplinary action only for cause as prescribed in this policy.

2. Cause for Discipline

A permanent classified employee shall be subject to disciplinary action for cause, including suspension, demotion, and dismissal. Cause for discipline shall include, but is not limited, to the following:

2.1 Incompetency or inefficiency.

2.2 Absence and/or repeated tardiness without authorization or sufficient reason.

2.3 Abuse or misuse of sick leave or any other authorized leave.

2.4 Being under the influence of alcohol or controlled substances without authorization while on duty or using or possessing alcohol or controlled substances without authorization while on duty. "Controlled substance" means any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana or any other controlled

substance defined in state federal law. A determination of whether an employee is under the influence of alcohol controlled substances will be based on specific contemporaneous, articulable, observations concerning the employee's appearance, behavior, speech, or body odors and may include indications of the chronic and withdrawal effect of controlled substances.

- 2.5 Insubordination or discourteous treatment toward superiors or other employees.
- 2.6 Dishonesty.
- 2.7 Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, disability, marital status, sex, sexual orientation, or age against members of the public or other employees while acting in the capacity of a district employee.
- 2.8 Unlawful retaliation against any 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 actual or suspected violation of any law of this state or the United States occurring on the job or directly related hereto.
- 2.9 Conviction of a felony, any crime involving moral turpitude, or any crime bringing discredit upon the district.
- 2.10 Immoral conduct.
- 2.11 Evident unfitness for service.
- 2.12 Physical or mental condition unfitting him/her for service.
- 2.13 Violation of or refusal to obey the laws of the state or rules, regulations and policies of the district.
- 2.14 Discourteous treatment of members of the public, students or other employees while on duty.
- 2.15 Conduct in violation of Section 1028 of the Government Code, which provides:  
  
"It shall be sufficient cause for the dismissal of any public employee when such public employee advocates or is knowingly a member of the Communist Party or of an organization which during the time of his/her membership he/she knows advocates overthrow of the government of the United States or any state by force or violence."  
  
2.16 Any conduct contrary to the welfare of the schools or the students.

- 2.17 Failure to perform adequately requirements of the position held.
- 2.18 Failure to work with others, to the detriment of the district.
- 2.19 For employees who are required to drive a vehicle in the regular course of their employment:
  - Loss of his/her driver's license; or
  - Any restriction or limitations on the employee's driver's license or ability to drive ordered by the Department of Motor Vehicles or any other lawful authority; or
  - Failure to maintain a good personal or business driving record; or
  - Failure to satisfy the insurability requirements of the district's insurance carrier under the district's regular insurance policies. The district's ability to obtain insurance for the employee under a high risk or any policy other than the regular insurance policies does not mitigate this failure.
- 2.20 Neglect of duty.
- 2.21 Material and intentional misrepresentation or concealment of any fact in connection with obtaining employment.
- 2.22 Falsifying any information submitted to the district.
- 2.23 Willful damage to district property, waste of district supplies or equipment, or excessive carelessness with district property or funds.
- 2.24 Misappropriation of district funds or property.
- 2.25 Failure to possess or keep in effect any license, certificate or other similar requirement specified in the law or the employee's class specification or otherwise necessary for the employee to perform the duties of the position.

### 3. Progressive Discipline

#### 3.1 Progressive Discipline

The following progressive discipline procedure shall be applied in disciplinary actions, which are generally subject to remediation:

- 3.1.1 Verbal Counseling/Warning. Verbal counseling/warning may result in a post conference summary memorandum. Any written memorandum shall be placed in the unit member's personnel file. The memorandum shall be clearly labeled, limited to a statement that the meeting took place and the topic discussed.
- 3.1.2 Written Reprimand. Written reprimands usually shall not be used unless the unit member has been verbally warned about similar actions within the last three (3) preceding years. The unit member shall sign the reprimand to acknowledge receipt and a copy shall be placed in the unit member's personnel file. The unit member has the right to write a response and that response shall be attached to the reprimand and retained in the personnel file.
- 3.1.3 Suspension Without Pay For Repeated Offenses. Suspension usually shall not be used unless the unit member has received a written reprimand about similar actions.
- 3.1.4 Demotion or Dismissal. Demotion or dismissal will be used when an employee's conduct does not meet district standards after other progressive discipline procedures have been utilized. However, the district may demote or dismiss an employee without first suspending the employee for similar conduct.

### 3.2 Discipline Without Progression

Nothing in this provision shall prohibit the district from disciplining a unit member for just cause, up to and including termination in instances where the district determines that remediation is inappropriate.

## 4. Procedure for Discipline

### 4.1 Preliminary Written Notice

- 4.1.1 A permanent classified employee shall receive a preliminary written notice of the proposed discipline. The written notice must contain a specific statement of charges or grounds upon which the proposed disciplinary action is based and the date the proposed disciplinary action will be effective.
- 4.1.2 Any known written materials, reports or documentation upon which the proposed disciplinary action is based must be attached to the preliminary written notice.
- 4.1.3 The classified employee shall have the right to respond either orally or in writing within ten (10) calendar days to the Superintendent or his/her designee. The purpose of the meeting shall be to permit the employee to

respond to charges against him/her, to offer information regarding the proposed discipline and to examine the materials, if any, on which the proposed action is based.

- 4.1.4 The Superintendent or designee shall consider the employee's response and recommend within fifteen (15) calendar days that the proposed disciplinary action either be taken or not taken.

#### 4.2 Notice of Intention to Suspend or Demote or Dismiss

Any permanent classified employee against whom suspension without pay or demotion or termination action is initiated by the district shall be given written notice by the Superintendent or his/her designee of the specific charges against him/her. The notice shall contain a statement of the employee's rights to a hearing on such charges. The time within which a hearing may be requested shall not be less than five (5) calendar days after service of the notice on the employee, and the notice shall be accompanied by a paper, the signing and filing of which with the Superintendent or designee shall constitute a demand for a hearing and a denial of all charges. Failure of the employee to file a request for hearing within the time specified shall constitute a waiver of the employee's right to a hearing.

#### 4.3 Employee's Status

- 4.3.1 **Administrative Leave.** Any permanent classified employee may be placed on administrative leave from duty with pay pending a determination of whether or not discipline will be recommended by the Superintendent.
- 4.3.2 **Suspension.** An employee against whom dismissal is recommended shall be suspended without pay from the date of the intent to dismiss notice until the effective date of his/her dismissal.

#### 4.4 Sex or Narcotics Offenses: Compulsory Leave

- 4.4.1 Any classified employee charged with the commission of any sex offense as defined in, but not limited to, Education Code Section 44010, or with the commission of any narcotics offense as defined in, but not limited to Education Code Section 44011, may be placed upon compulsory leave of absence pending a final disposition of such charges.
- 4.4.2 An employee placed on compulsory leave shall continue to be paid his or regular salary during such leave if he or she furnishes to the district a suitable bond as a guarantee that the employee will repay the salary paid during the compulsory leave in case the employee is convicted of such charges, or fails to return to service following expiration of the compulsory leave. If the employee does not furnish a bond and if the employee is acquitted of such offense or the charges dropped, the district shall pay the employee upon his

or her return the service the full amount of salary which was withheld during the compulsory leave.

#### 4.5 Appeal Procedure for Suspension Without Pay or Demotion or Dismissal

- 4.5.1 Hearing Authority. The hearing will be conducted before a Hearing Officer mutually selected by the Governing Board, or designee, and bargaining unit representative.
- 4.5.2 Notice of Hearing. The Hearing Officer shall set the matter for hearing and shall give the employee at least twenty (20) calendar days' notice in writing of the date and place of the hearing. The hearing and the Board's consideration of the Hearing Officer's proposed decision shall be conducted in closed session unless the employee requests an open hearing in the employee's written request for a hearing.
- 4.5.3 Rights of Employee. The employee shall attend any hearing, unless excused by the Hearing Officer, and shall be entitled to:
- 1) be represented by counsel or any other person at the hearing;
  - 2) testify under oath;
  - 3) compel the attendance of other employees of the district to testify in his/her behalf;
  - 4) cross-examine all witnesses appearing against him/her and all employees of the district whose actions are in question or who have investigated any of the matters involved in the hearing and whose reports are offered in evidence before the Hearing Officer.
  - 5) impeach any witness;
  - 6) present such evidence as the Hearing Officer deems pertinent to the inquiry;
  - 7) argue his/her case.

The party attempting to substantiate the charges against the employee shall be entitled to the same privileges.

- 4.5.4 Evidence. The hearing shall be informal and need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be admitted for any purpose but shall not be sufficient in itself to support a finding unless it would be admissible in civil actions. The rules of privileges and of official or judicial notice shall be effective to the same extent as in civil actions. Irrelevant and repetitious evidence shall be excluded. Oral evidence shall be taken only under oath or affirmation.

- 4.5.5 Exclusion of Witnesses. The Hearing Officer may in his/her discretion exclude witnesses not under examination, except the employee and the party attempting to substantiate the charges against the employee, and their respective counsel. When hearing testimony which may bring disrepute to persons other than the accused employee, all persons not having a direct interest in the hearing may be excluded.
- 4.5.6 Burden of Proof. The burden of proof shall be upon the party attempting to substantiate the charges.
- 4.5.7 Findings and Decision. Upon completion of the hearing, written Proposed Findings of Fact and Conclusions shall be signed and filed with the Governing Board by the Hearing Officer which shall constitute his/her decision. If the Governing Board adopts the Hearing Officer's findings and conclusions, it need not review the record of the hearing; if it declines to accept the findings and conclusions, it must review the record or provide for an additional opportunity to be heard, after which it may adopt the findings and conclusions made by the Hearing Officer, or adopt its own findings and conclusions.

Unless the decision provides otherwise, it shall be effective immediately. Notice of the decision adopted by the Governing Board shall be mailed promptly to the employee or the employee's counsel or representative. Except for the correction of clerical error, the decision shall be final and conclusive.

- 4.5.8 Report of Hearings. Hearings may be conducted without a stenographic reporter or audio tape recording machine unless either party requests that the hearing be reported or recorded. Both parties shall share equally the cost or fee for the reporting or recording.
- 4.5.9 Transcripts of Hearings. Transcripts of hearings shall be furnished to any person on payment of the cost of preparing such transcripts. When transcripts are provided by employees of the district, the cost shall be determined by the employee in charge of business affairs of the district. When transcripts are provided by an independent contractor, the cost will be established by the independent contractor.
- 4.5.10 Continuances. The Hearing Officer may grant a continuance of any hearing upon such terms and conditions as he/she may deem proper. The employee shall remain on unpaid suspension for the period of any continuance. Any request for continuance made less than 48 hours prior to the time set for the hearing will be denied unless good cause is shown for the continuance.
- 4.6 Judicial Review. Judicial review of the Governing Board's decision is available pursuant to Code of Civil Procedure, Section 1094.5 only if the petition for writ of mandate is filed within the time limit specified in Code of Civil Procedure Section 1094.6.

Legal References: California Education Code

45113. Rules and Regulation for Classified Service in Districts  
Not Incorporating the Merit System

45116. Notice of Disciplinary Action  
Government Code, Section 20981

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