

CHAPTER XIV

DISCIPLINARY ACTION AND APPEALS

Rule 14.1

DISCIPLINARY ACTION - SUSPENSION, DEMOTION, AND DISMISSAL (EDUCATION CODE SECTION 88123)

14.1.1

GENERAL PROVISIONS

- A. A permanent classified employee shall be subject to disciplinary action only for cause as prescribed by law or Section 4 of this Rule. No disciplinary action shall be taken against any permanent employee for any cause which arose prior to the date in which the employee became permanent, nor for any cause which arose more than two years preceding the date of the filing of the Notice of Disciplinary Action, unless such cause was concealed or not disclosed by the employee when it could reasonably be assumed that the employee should have disclosed the facts to the appropriate authority.
- B. No classified employee shall be suspended, demoted, or dismissed, or in any way discriminated against because of his/her affiliations, race, color, national origin, age, marital status, sex, disabilities, ancestry, medical condition (as defined in Government Code Section 12926), or religious or political beliefs or acts, except as provided in Section 4.A.6 of this Rule.
- C. No permanent or probationary classified employee shall be suspended, demoted or dismissed until final approval is given by the Board, except for suspensions processed under Section 5.C of this Rule.

14.1.2

NOTICE OF DISCIPLINARY ACTION

- A. A Notice of Disciplinary Action under this Rule shall contain specific charges in ordinary and concise language of the individual acts or omissions of the employee which have resulted in the recommendation for disciplinary action. The charges shall also include a listing of the cause specified in Section 4 of this Rule which has been violated by the employee and the date(s), time(s) and place(s) when the violation occurred.

- B. The employee shall be advised of his/her right to respond either orally or in writing within 5 working days after receipt of the notice to the person so designated on the notice. The employee shall also be advised of his/her right to review and copy all documents in his/her personnel file on which the disciplinary action is based.
- C. All communications from the District to the employee shall either be:
 - 1. Delivered personally and signed for by the employee.
 - 2. Sent by certified mail, return receipt requested, to the last known address of the employee on file in the Personnel Commission 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 Section 88123 of the Education Code.
- B. Demotion shall mean the involuntary reduction of an employee from a class with a higher pay scale to a class with a lower pay scale or from a higher salary increment to a lower salary increment.
- 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 permanent classified employee may be subject to immediate disciplinary action by the Board only for the following causes:
 - 1. Insubordination, including, but not limited to refusal to do reasonably assigned work or any other serious breach of discipline.
 - 2. Discourteous, offensive or abusive conduct toward other employees, students or the public.

Section 14.1.4.A.3

3. Misuse or theft, destruction or mishandling of District property, or property of employees of the District.
4. Offering anything of value, or offering any service in exchange for special treatment in connection with the employee's job or employment, or the accepting of anything of value or any service in exchange for granting any special treatment to another employee or to any member of the public.
5. Unauthorized possession of opened alcoholic beverage containers or drinking alcoholic beverages or being intoxicated while on the job or unauthorized use of narcotics or habit forming drugs not prescribed by a licensed physician.
6. Engaging in political activities during assigned hours of employment.
7. Immoral conduct.
8. Conviction of a crime of violence or moral turpitude or a serious crime where the nature of the crime is such that it will indicate that the employee is a poor employment risk for the particular job which he/she holds in the District.
9. Conviction of a sex offense or a narcotics offense as defined in Education Code Sections 87010 or 87011.
10. Absence without approved leave or abuse of leave privileges.
11. Knowingly falsifying any information supplied to the District including but not limited to information supplied on application forms, employment records and other records.
12. Persistent violation or refusal to obey District safety rules or other procedures made applicable to the District by the Board, or by any appropriate state or governmental agency.

Section 14.1.4.A.13

13. Any willful failure of good conduct tending to injure the public service or its reputation with particular regards to students.
 14. Abandonment of position, which shall be interpreted to mean an absence without continued notification in excess of 5 working days except in case of dire emergency.
 15. Advocacy of the overthrow of federal, state, or local government by force, violence or other unlawful means.
 16. Willful or persistent violation of these rules or adopted and implemented procedures of a department when such procedures are made known to the employee in writing.
 17. Failure to report for review of criminal records or for a health examination after due notice.
- B. A permanent classified employee shall be subject to disciplinary action for the following causes only after completion of Need for Work Improvement and Unsatisfactory Work Performance Notices as provided in Section 6B of this Rule.
1. Incompetence, below standard work performance, a pattern of inefficiency, or continued negligence in the performance of the duties of his/her position.
 2. Repeated or unexcused tardiness or absence after warning.
- C. A permanent classified employee may be subject to removal from service or change in status under this rule due to physical or mental unfitness for service as determined by the District physician. The employee shall retain his/her right to appeal. The administration shall base its decision to recommend removal or change in status on the following factors:
1. The degree of physical or mental unfitness and the doctor's prognosis as they relate to the duties to be performed.

Section 14.1.4.C.2

2. The number of positions in the employee's classification and subsequent uniqueness or degree of specialty in the position, and the availability of a person qualified to substitute during the absence of the employee.
3. The degree and frequency of previous sick leave usage. Particular attention shall be paid to employees who have extraordinary use or lack of use of sick leave, together with consideration for the circumstances surrounding previous use of sick leave.

14.1.5

PROCEDURE FOR SUSPENSION

- A. An employee may be suspended for cause as listed in Section 4.A of this Rule without pay for no more than 30 calendar days upon the approval of the Superintendent or the District Personnel Administrator subject to ratification by the Board of Trustees at their next regular meeting.
- B. When a request for suspension is made, a Notice of Disciplinary Action must be completed by the immediate supervisor and submitted to the District Personnel Administrator for final approval after approval by the departmental administrator. The Notice of Disciplinary Action must contain specific charges as required in Section 2 of this Rule and must be delivered to the employee not less than 1 working day prior to the effective date of the suspension. A copy of the notice shall be filed with the Personnel Director.
- C. An employee may be peremptorily suspended for up to one day without pay by his/her immediate supervisor with the approval of the departmental administrator for cause as listed in Section 4.A of this Rule when such suspension is necessary to safeguard the best interest of the District or the employee. Such suspensions shall be documented on the appropriate Notice of Disciplinary Action and presented to the employee prior to his/her return to work at a conference with the employee's supervisor(s) and the Personnel Administrator. All procedures for notification required in these rules shall then be complied with.
- D. Preemptory Board suspensions are subject to ratification by the Board at the next meeting following the suspension.

14.1.6

PROCEDURE FOR DEMOTION AND DISMISSAL

- A. When a regular classified employee is recommended for demotion or dismissal for cause as listed in Section 4.A of this Rule, a Notice of Disciplinary Action shall be prepared by the immediate supervisor, approved by the departmental administrator, and transmitted to the District Personnel Administrator for final approval. A copy of the Notice shall be presented to the employee at least 5 working days prior to Board action as provided in section 2 of this Rule. A copy of this Notice shall also be filed with the Personnel Director. The District Personnel Administrator shall then present the recommendation for demotion or dismissal of the employee to the Board for action at their next meeting.

- B. In cases of disciplinary action arising from causes listed in Section 4.B of this Rule, the immediate supervisor and departmental administrator shall provide the employee with the following three Notices before demotion or dismissal can be recommended:
 - 1. First Notice: Need of Work Improvement
 - 2. Second Notice: Unsatisfactory Work Performance
 - 3. Final Notice: Recommendation of Disciplinary Action

The Notices shall be prepared according to procedures provided in Section 2 of this Rule and each notice shall provide a minimum 30 calendar day period for the employee to improve. Should the employee improve his/her performance to a satisfactory level, the immediate supervisor and departmental administrator shall document the employee's performance on the following form:

- 4. Job Performance Progress Report

Should the employee's performance not improve, the disciplinary action may proceed as specified in part A of this section.

Section 14.1.6.C

- C. An employee who has permanent status in the classified service and who has been promoted to a higher class may be demoted involuntary during the probationary period to his/her former class without right of appeal, unless the demotion shall result in separation of the employee from the classified service, or the employee's appeal falls under the provision of Section 1.B of this Rule.
- D. Dismissal shall cause removal of the employee's name from all employment lists.

14.1.7

PROCEDURE FOR NOTIFICATION OF CHARGES

- A. When the Board has taken final action to demote or dismiss the employee, the District Personnel Administrator shall, within 3 working days, notify the Personnel Director in writing of the Board's action.
- B. The Personnel Director shall, within 10 working days of the Board's action to approve suspension, demotion, or dismissal, notify the employee. The Personnel Director shall, at the next regular meeting, file written charges with the Commission.
- C. The notification of charges to the employee shall contain:
 - 1. A copy of the written charges.
 - 2. The time allowed to file an appeal.
 - 3. The right of the employee to a hearing on the appeal.
 - 4. The requirements for the employee's response as set forth in these Rules.

Rule 14.2

PROCEDURE FOR APPEAL AND HEARING (EDUCATION CODE SECTIONS 88124, 88125 ?)

14.2.1

PROCEDURE FOR APPEAL

- A. A permanent employee who has been suspended, demoted, or dismissed may appeal to the Personnel Commission within 14 calendar days after receipt of the Notice of Charges from the Personnel Director 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 an abuse of discretion.
 - 4. That the procedures set forth in these rules have not been followed.
 - 5. That the disciplinary action was taken because of political affiliations, or religious beliefs or opinions, race, color, national origin, ancestry, sex, employee organization members or non-membership, marital status, disability, or medical condition (as defined in Government Code Section 12926).
- C. For purposes of this Rule, if a notice is mailed, the working day following the postmark date and time of the notice shall be considered to be the official date and time of receipt.
- D. Failure to appeal as provided in this Rule shall make the action of the Board final and conclusive.

14.2.2

PROCEDURE FOR HEARING

- A. After an employee has made and filed his/her appeal in answer to the charges against him/her, the Personnel 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 an accused employee, shall order a hearing. If a hearing is to be conducted, the Personnel Commission shall then fix the time and place of the hearing which shall be within a reasonable length of time from the receipt of the appeal and shall provide written notification to all parties.

The Personnel Commission may appoint a hearing officer to conduct any hearing and report the findings and recommendations to the Commission. Such recommendations shall not be binding on the Commission.

- B. Hearings shall be conducted in the manner most conducive to determination of the truth, and neither the Commission nor its hearing officers shall be bound by technical rules of evidence. Decisions made by the Commission shall not be invalidated by any informality in the proceedings.
- C. 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 as determined by the Personnel Director.
- D. The Personnel Commission or its hearing officer shall determine the relevancy, weight, and credibility of testimony and evidence. It shall base its findings on a preponderance of evidence.
- E. The burden of proof shall be on the Board.

Section 14.2.2.F

- F. Each party will be permitted an opening statement, with the Board or its designated representatives opening first. Each party shall be permitted closing arguments with the employee closing first. The Board shall next present its witnesses and evidence to sustain its charges, and the employee will then present his witnesses and evidence in defense.
- G. Each party will be allowed to examine and cross examine witnesses.
- H. The Board, the Commission and the employee will be allowed to be represented by separate legal counsel or other designated representatives.
- I. The Commission or the Personnel Director may and shall, if requested by the Board or the employee, subpoena witnesses and/or require the production of records or other material evidence.
- J. The Commission may, prior to or during a hearing, grant a continuance for any reason it believes to be important to its reaching a fair and proper decision.
- K. A hearing shall be held in closed session unless an open hearing is requested by the employee. The Commission may, at its 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 on alleged scandalous or indecent conduct, all persons not having a direct interest in the hearing may be excluded.
- L. The Commission may deliberate its decision in closed session and exclude all persons other than members of the Commission and its staff or counsel. If its counsel also served as counsel for the Board, he/she shall be barred from the Commission's final deliberations.

14.2.3

FINDINGS AND ORDER

- A. The Commission shall render its judgment as soon after the conclusion of the investigation or hearing as possible, and unless an agreement for an extension is accepted by all parties, the decision shall be made within 14 calendar days after conclusion of the hearing. Its decision shall set forth which charges, if any, are sustained or rejected and the reasons therefore.
 - 1. The Commission's decision shall be set forth in writing by the Personnel Director and signed by the chairman of the Commission and be sent to all parties of interest.

- B. The Commission may sustain or reject any or all of the charges filed against the employee. If the Commission finds in favor of the employee, it may:
 - 1. Order the employee's reinstatement upon such terms and conditions as it may determine appropriate.
 - 2. Modify the disciplinary action, but not to make more stringent the action taken by the Board.
 - 3. Order paid all or part of the employee's full compensation from the time of suspension, demotion, or dismissal.
 - 4. Order paid by the Board compensation for all or part of the legitimate expenses incurred by all parties in pursuit of the appeal.
 - 5. Order the employee transferred or changed in work location.
 - 6. Order seniority credit for off-time pending reinstatement.
 - 7. Order expunction from the employee's personnel file all records pertaining to the disciplinary action on charges which were or were not sustained by the Commission.

- C. The decision of the Commission shall be final.

14.2.4

TRANSCRIPT OF HEARING

- A. A copy of the transcript of the hearing shall be furnished to either party upon written request made within 90 calendar days of the decision of the Commission. The Personnel Director shall cause the transcript to be typed and the cost of copies shall be borne by the party requesting such copies in an amount as determined by the Personnel Director to be representative of the actual costs of preparation.