

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 14.1.4 of this Rule. No disciplinary action shall be taken against any permanent employee for any cause which arose more than two years preceding the date of the Notice of Disciplinary Action, unless such cause was concealed or not disclosed by the employee.
- B. No classified employee shall be suspended, demoted, or dismissed, because of their ethnic group identification, race, color, national origin, religion, age, marital status, , sexual orientation, gender, gender identity, gender expression, disabilities, ancestry, medical condition (as defined in Government Code Section 12926), language, accent, citizenship status, parental status, economic status, veteran status, or political beliefs or acts, except as provided in Section 14.1.4.A.6 of this Rule. No classified employee shall be suspended, demoted, or dismissed because of their associations or perceived affiliations with protected groups listed in this section.
- 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 14.1.5.C of this Rule.

14.1.2

NOTICE OF DISCIPLINARY ACTION

- A. An employee recommended for disciplinary action shall be served with a notice of recommended disciplinary action which shall, in ordinary and concise language, set forth the following information:
 - 1. A statement of the nature of the disciplinary action being recommended (e.g. suspension without pay, dismissal).

2. The specific causes and charges for disciplinary action.
3. A statement of the specific acts or omissions on which the causes are based. If a violation of a rule, policy, or regulation of the District is alleged, the rule, policy or regulation shall be stated.
4. Information about the employee's right to present information relative to the causes and charges for disciplinary action at a Pre-Disciplinary Conference (commonly called a "Skelly review meeting"), which shall take place not less than five (5) working days after receipt of this notice.
5. The date, time, and place of the Skelly review meeting.
6. The employee's right to contact their Union representative if applicable and to be accompanied by a representative of the employee's choice.
7. The employee shall be advised of their right to review and receive a copy of any documents in their personnel file

B. A notice of recommended disciplinary action from the District to the employee shall either be:

1. Delivered personally
2. Emailed along with certified mail, return receipt requested, to the last known address of the employee on file with the District.

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 change of assignment of an employee from a class with a higher pay range to a class with a lower pay 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 permanent classified employee may be subject to disciplinary action for the following causes:

1. Insubordination, including, but not limited to refusal to do reasonably assigned work or any other serious breach of discipline. The refusal to follow an unlawful order or directive does not constitute insubordination.
2. Dishonesty when it undermines the trust and confidence required in an employment relationship.
3. Offensive or abusive conduct toward other employees, students or the public.
4. Misuse, theft, destruction or mishandling of District property, or property of employees or students of the District.
5. 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.
6. Unauthorized possession of opened alcoholic beverage containers or drinking alcoholic beverages or being intoxicated while on the job
Unauthorized use of unlawful drugs, or being under the influence of drugs not prescribed by a licensed physician while on the job.
7. Engaging in political activities during assigned hours of employment.
8. 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 they hold in the District.

10. Conviction of a sex offense or a narcotics offense as defined in Education Code Sections 87010 or 87011. Note: An employee convicted of a sex offense as defined in the Education Code shall be dismissed.
11. Abandonment of position, which shall be interpreted to mean an absence without continued notification in excess of five (5) working days except in case of dire emergency.
12. Knowingly falsifying any information supplied to the District including but not limited to information supplied on application forms, employment records and other records.
13. 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.
14. Any willful failure of good conduct tending to injure the public service or its reputation with particular regards to students.
15. Advocacy of the overthrow of federal, state, or local government by force, violence or other unlawful means.
16. Failure to report for review of criminal records or for a health examination after due notice.
17. Harassment of any student, employee, or any member of the public as prohibited by Board Policy.

B. A permanent classified employee shall be subject to disciplinary action for the following performance -related causes:

1. Incompetence, below standard work performance, a pattern of inefficiency, or continued negligence in the performance of the duties of their position.
2. Repeated or unexcused tardiness or absence after warning.
3. Persistent discourteous conduct towards other employees, students or the public.
4. Persistent violation or refusal to obey District safety rules or other procedures made applicable to the District by the Board or any appropriate state or federal agency.
5. 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.

14.1.5

PROCEDURE FOR DISCIPLINARY ACTION

- A. An employee may be demoted, or suspended without pay for no more than 30 calendar days, or dismissed for cause as listed in Section 14.1.4 of this Rule
- B. In connection with misconduct-related causes set forth in Section 14.1.4.A of this Rule, the District may take action appropriate to the misconduct, which may range from an oral warning to dismissal, depending on the severity of the misconduct. The District may use the steps set forth in this Section for such misconduct as it deems appropriate.
- C. In connection with performance-related causes set forth in Section 14.1.4.B of this Rule, the District may take appropriate action, which may range from oral warning to dismissal, depending on its severity and only after providing the employee with notice of the deficiency and opportunity to correct it.
- D. The employee shall be served with notice of disciplinary action in accordance with 14.1.2 of this Rule.
- E. After the employee has had an opportunity to respond to the notice of recommended disciplinary action or has not requested such an opportunity to respond, the Superintendent/President or designee shall determine whether to proceed with the recommendation for disciplinary action. In the event that the Superintendent/President determines to recommend disciplinary action, such recommendation shall be submitted to the Board of Trustees.
- F. The Board of Trustees may accept, modify or reject the recommendation for disciplinary action. In the event that the Board of Trustees takes action to impose discipline, such disciplinary action shall be implemented on the day following the Board of Trustees' action or such other day as determined by the Board of Trustees.
- G. No disciplinary action shall be implemented prior to action by the Board of Trustees except as authorized by the Education Code or by a written agreement signed by the employee.
- H. An employee who has permanent status in the classified service and who has been promoted to a higher class may be reinstated during the probationary period to their former class without right of appeal, unless this would result in separation of the employee from the classified service. (Education Code Section 88124)
- I. Dismissal of a permanent classified employee shall cause removal of the employee's name from all employment and eligibility lists.

14.1.6 PROCEDURE FOR NOTIFICATION TO THE PERSONNEL
COMMISSION

- A. When the Board has taken final action to demote, suspend or dismiss the employee, the Vice President of Human Resources or designee shall, within 3 work days, notify the Director of the Personnel Commission in writing of the Board's action.

- B. The Director of the Personnel Commission shall, within 10 work days of the Board's action to approve suspension, demotion, or dismissal, notify the employee. The Director of the Personnel Commission 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, 88126)

14.2.1

PROCEDURE FOR APPEAL

- A. A permanent employee who has been , demoted, suspended or dismissed may appeal to the Personnel Commission within 14 calendar days after receipt of the Notice of Charges from the Director of the Personnel Commission by filing a written answer to the charges and they may request a hearing.
- B. The employee's written answer to the charges must include facts based on one or more of the following grounds:
 - 1. The charges made do not constitute sufficient cause for the action taken.
 - 2. The action taken was not in accord with the facts.
 - 3. There was an abuse of discretion.
 - 4. The procedures set forth in these rules have not been followed.
 - 5. 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 5 work days following the postmark date of the notice shall be considered to be the official date 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 their appeal in answer to the charges against them, 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 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 Director of the Personnel Commission.
- 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.

- 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 Director of the Personnel Commission 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, they 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 Director of the Personnel Commission 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 Director of the Personnel Commission 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 Director of the Personnel Commission to be representative of the actual costs of preparation.