

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION**

**Termination of Probationary Employment**

At any time prior to the expiration of the probationary period, the Governing Board may, at its discretion, dismiss a probationary classified employee from district employment. A probationary employee shall not be entitled to a hearing.

**Suspension Without Pay, Demotion, Reduction of Pay Step in Class, or Dismissal of Permanent Classified Employees**

Permanent classified employees shall be subject to personnel action (suspension without pay, demotion, reduction of pay step in class, dismissal) only for cause. The Board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

1. Causes

In addition to any disqualifying or actionable causes otherwise provided for by statute or by policy or regulation of this district, each of the following constitutes cause for personnel action against a permanent classified employee:

- a. Providing false or materially misleading information to the school district, including, but not limited to, information supplied on application forms, employment records, or any other school district records.
- b. Dishonesty, immoral conduct, or willful disobedience.
- c. Improper political activity.
- d. Conviction of a felony, conviction of any sex offense made relevant by provisions of law, or conviction of a misdemeanor which is of such a nature as to adversely affect the employee's ability to perform the duties and responsibilities of his/her position. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction for this purpose.
- e. Frequent absences or absence without leave.
- f. Habitual unauthorized sick leaves.
- g. A physical or mental disability which precludes the employee from the proper performance of his/her duties and responsibilities as determined by competent medical authority, except as otherwise provided by a contract or by law regulating the retirement of employees.

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- h. Drinking alcoholic beverages while on duty or in such close time proximity thereto as to cause any detrimental/negative effect upon the employee or upon employees associated with him/her.
- i. Possession or being under the influence of a controlled substance at work or away from work, or furnishing a controlled substance to a minor or to another adult.
- j. Incompetency, inefficiency, insubordination, inattention to or dereliction of duty, discourteous treatment of the public, students, or of fellow employees, or any other willful failure of good conduct tending to injure the public service, or any willful or persistent violation of the provisions of the Education Code or rules, regulations or procedures adopted by the Board, provided that upon demand of the accused employee, specific instances must be set forth as to any of the causes enumerated.
- k. Misuse of district property.
- l. Abandonment of position.
- m. Nonpayment of union dues or service fees when authorized in the negotiated contract.
- n. Any other failure of good behavior either during or outside of duty hours which is of such nature that it causes discredit to the district or his/her employment.
- o. Failure to possess or keep in effect any license, certificate, or other similar requirement specified in the employee's class specification or otherwise necessary for the employee to perform the duties of the position.
- p. Failure to satisfactorily pass any proficiency test or other requirement imposed by district policy, rule, or procedure, or as required by state or federal law as a condition of employment or continued employment.
- q. Refusal to take any oath or affirmation which is required by law in connection with his/her employment.
- r. Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age against the public, students, or other employees while acting in the capacity of a district employee.

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- s. 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 an actual or suspected violation of state or federal law occurring on the job or directly related thereto.

Except as defined in "a" and "g" above, no personnel action shall be taken for any cause which arose prior to the employee's becoming permanent, nor for any cause which arose more than two years preceding the date of the filing of the notice of cause unless such cause was concealed or not disclosed by such employee when it could be reasonably assumed that the employee would have disclosed the facts to the district.

**2. Initiation and Notification of Charges**

The district Superintendent or designee may initiate a personnel action as defined herein against a permanent classified employee.

In all cases involving a personnel action, the person initiating said action shall file a written recommendation of personnel action with the Board. A copy of the recommendation shall be served upon the employee either personally or by registered or certified mail, return receipt requested, at the employee's last known address. The recommendation shall include:

- a. A statement of the nature of the personnel action (suspension without pay, demotion, reduction of pay step in class, or dismissal).
- b. A statement of the cause or causes therefor as set forth above.
- c. A statement of the specific acts or omissions upon which the causes are based. If violation of rule, policy, or regulation of the district is alleged, the rule, policy, or regulation violated shall be set forth in the recommendation.
- d. A statement of the employee's right to appeal the recommendation and the manner and time within which his/her appeal must be filed.
- e. A card or paper, the signing and filing of which shall constitute a demand for hearing and a denial of all charges.

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Except as provided herein, any employee against whom a recommendation of personnel action has been issued shall remain on active duty status and responsible for fulfilling the duties of the position pending his/her appeal or waiver thereof.

In cases where the Superintendent or designee has determined that a permanent classified employee should be dismissed and that continuation of the employee in active duty status after a written recommendation of such personnel action has been issued would result in an unreasonable risk of harm to students, staff, or property during the time the proceedings are pending, the Superintendent or designee may order the employee immediately suspended from his/her duties without pay in conjunction with the recommendation of personnel action. Such suspension order shall be in writing and shall include a statement setting forth the reasons why such suspension is deemed necessary. Any such suspension order shall be served upon the employee either personally or by registered mail or certified mail, return receipt requested, immediately after issuance. Except in cases of emergency where the employee must be removed from the premises immediately, at least five calendar days prior to the effective date of any order of suspension without pay issued in conjunction with any recommendation of personnel action involving dismissal, the Superintendent or designee shall give the employee written notice of the proposed recommendation of personnel action of dismissal including notice that immediate suspension without pay is being considered, the reasons for the proposed dismissal action and for the proposed immediate suspension without pay, materials upon which the proposed action is based, and the right to respond either orally or in writing to the Superintendent or designee prior to the issuance of the final recommendation and order.

**4. Time Limit of Suspension**

Any suspensions (except a suspension imposed under #3 above) invoked under these rules against any one person in the classified service for one or more periods shall not aggregate more than 90 calendar days in any 12-month period; provided, however, this time limitation is inapplicable to cases in which personnel action of dismissal is modified by the Board to a suspension.

**5. Right to Appeal**

The employee may, within five calendar days after receiving the recommendation of personnel action described above, appeal by signing and filing the card or paper included with the recommendation. Any other written document signed and appropriately filed within the specified time limit by the employee shall constitute a sufficient notice of appeal.

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A notice of appeal is filed only by delivering the notice of appeal to the office of the district Superintendent or designee during normal work hours of that office. A notice of appeal may be mailed to the office of the Superintendent or designee but must be received or postmarked no later than the time limit stated herein. In cases where an order of suspension without pay has been issued in conjunction with a recommendation of personnel action involving dismissal, any appeal from the recommendation shall also constitute an appeal from the order, and the necessity of the order shall be an issue in the appeal hearing.

If the employee against whom a recommendation of personnel action has been filed fails to file a notice of appeal within the time specified in these rules, the employee shall be deemed to have waived his/her right to appeal, and the Board may order the recommended personnel action into effect immediately.

**6. Amended/Supplemental Charges**

At any time before an employee's appeal is finally submitted to the Board or to a hearing officer for decision, the complainant may, with the consent of the Board or hearing officer, serve on the employee and file with the Board an amended or supplemental recommendation of personnel action.

If the amended or supplemental recommendation presents new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare his/her defense thereto. Any new causes or allegations shall be deemed controverted and any objections to the amended or supplemental causes or allegation may be made orally at the hearing and shall be noted on the record.

**7. Hearing Procedures**

- a. The hearing shall be held at the earliest convenient date, taking into consideration the established schedule of the Board or hearing officer and the availability of counsel and witnesses. The parties shall be notified of the time and place of the hearing. The employee shall be entitled to appear personally, produce evidence, and have counsel and, if demand is made therefor when the Board is hearing the appeal, a public hearing. The complainant may also be represented by counsel. The procedure entitled "Administrative Adjudication" commencing at Section 11500 of the Government Code shall not be applicable to any such hearing before the Board or a hearing officer. Neither the Board nor a hearing officer shall be bound by rules or evidence used in California courts. Informality in any such hearing shall not invalidate any order or decision made or approved by the hearing officer or the Board.

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- b. All hearings shall be heard by a hearing officer except in those cases where the Board determines to hear the appeal themselves. In any case in which the Board hears the appeal, the Board may utilize the services of its counsel or a hearing officer in ruling upon procedural questions, objections to evidence, and issues of law. If the appeal is heard by the Board, it shall affirm, modify or revoke the recommended personnel action.
- c. If the appeal is heard by a hearing officer, he/she shall prepare a proposed decision in such form that it may be adopted by the Board as the decision in the case. A copy of the proposed decision shall be received and filed by the Board and furnished to each party within ten days after the proposed decision is filed by the Board. The Board may:
  - (1) Adopt the proposed decision in its entirety.
  - (2) Reduce the personnel action set forth therein and adopt the balance of the proposed decision.
  - (3) Reject a proposed reduction in personnel action, approve the personnel action sought by the complainant or any lesser penalty, and adopt the balance of the proposed decision.
  - (4) Reject the proposed decision in its entirety.
- d. If the Board rejects the proposed decision in its entirety, each party shall be notified of such action and the Board may decide the case upon the record including the transcript, with or without the taking of additional evidence, or refer the case to the same or another hearing officer to take additional evidence. If the case is so assigned to a hearing officer, he/she shall prepare a proposed decision as provided in #c above, upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of such proposed decision shall be furnished to each party within ten days after the proposed decision is filed by the Board.
- e. In arriving at a decision or a proposed decision on the propriety of the proposed personnel action, the Board or the hearing officer may consider the records of any prior personnel action proceedings against the employee in which a personnel action was ultimately sustained and any records contained in the employee's personnel files if such records were introduced into evidence at the hearing.
- f. The decision of the Board shall be in writing and shall contain findings of fact and the personnel action approved, if any. The findings may be stated in the language of the pleadings or reference thereto.

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The decision of the Board shall be certified to the complainant from whose recommendation the appeal is taken and shall be enforced and followed by him/her. A copy of the decision shall be delivered to the appellant or his/her designated representative personally or by registered mail. The decision of the Board shall be final.

9. Compulsory Dismissal

The district shall not employ or retain in employment any person who has been convicted of any sex offense as defined in Education Code 44010 or any controlled substance offense as defined in Education Code 44011. If, however, any such conviction is reversed and the person acquitted or charges dismissed, except as otherwise provided below, the employee may be reemployed by the district, although reemployment is not a guarantee. (Education Code 45123) The district reserves the right to dismiss an employee for any acts upon which the original criminal charges were based, despite the disposition by the courts. If dismissal is recommended by the Board and upheld, an employee will not be reemployed nor compensated for the time he/she was suspended unless otherwise required by law. An employee shall be given notice of the possibility of not being reimbursed during mandatory suspension if he/she is ultimately dismissed for the acts upon which the original charges were based.

10. Extension of Compulsory Leave

The Board may extend an employee's compulsory leave of absence by giving him/her notice, within ten days after the entry of judgment in the proceedings, that he/she will be dismissed in 30 days unless he/she demands a hearing. Employee compensation during the period of compulsory leave shall be made in accordance with law. (Education Code 44940.5)

11. Definitions

Dismissal means an involuntary separation from service initiated by the employee's supervisor and approved by the Board of Education.

Demotion means an involuntary change in the employee's classification resulting in a reduction in pay rate, either rate per month or rate per hour.

Demotion due to reclassification when the employee is performing satisfactorily shall not be considered disciplinary action.

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Suspension means an involuntary absence from work, whether with pay or without pay, imposed by the Superintendent or his designee subject to the following conditions:

1. An employee may be suspended with pay by the Superintendent or designee for up to three working days. The Superintendent or designee may not impose such suspension until having verbally informed the employee of the specific act(s) or omission(s) causing the suspension.
2. A permanent employee may be suspended without pay by the Superintendent or designee for up to three working days without referring the action to the Board for approval. Prior to such suspension, the employee shall be notified in writing of the specific act(s) or omission(s) causing the suspension, and shall be provided the right to a hearing with the Superintendent or designee.
3. A permanent employee may be suspended without pay by the Superintendent or designee for more than three days and up to ten working days, exclusive of days of suspension with pay. Any such suspension shall be referred to the Board for approval at the earliest possible time, but not later than 30 calendar days after the beginning date of the suspension. All legal requirements and district regulations regarding notice to the affected employee, appeal and hearing rights shall apply.

## Legal Reference:

## EDUCATION CODE

44009 Conviction of specified crimes

44010 Sex offense

44011 "Controlled substance offense" defined

44940 Leave of absence; employee charged with mandatory or optional leave of absence offense

44940.5 Compulsory leave of absence; procedures; extension; compensation; bond or security; reports

45101 Definitions (including "disciplinary action," "cause")

45109 Fixing of duties

45113 Rules and regulations for classified service in districts not incorporating the merit system

45123 Employment after conviction of sex or narcotics offense

45302 Demotion and removal from permanent classified service

45303 Additional cause for suspension or dismissal of employees in classified service

45304 Suspension for reasonable cause; filing of charges; employee charged with mandatory or optional leave of absence offense

California School Employees v. Livingston Community College District (2007) 149 Cal. App. 4<sup>th</sup> 391CSEA v. FOOTHILL COMMUNITY COLLEGE DISTRICT, 52 Cal. App. 3<sup>rd</sup> 150, 155-156, 124 Cal. Rptr 830 (1975) ("Conduct unbecoming an employee" too vague)

Regulation  
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EL RANCHO UNIFIED SCHOOL DISTRICT  
Pico Rivera, California