

AP 7365 Discipline and Dismissal, Classified Employees

Reference:

Education Code Section 88013

7365.1 Dismissal and Other Action

- A. Probationary Employees. Probationary employees may be dismissed at the recommendation of the Chief Executive Officer (CEO) to the Board of Trustees.
- B. Permanent Employees. If a permanent employee is found to be performing unsatisfactory work at any time during the period of employment, or is found to be unsatisfactory with respect to conduct, capacity, moral responsibility, or other essentials, it shall be the duty of the CEO or his/her designee to recommend the employee's suspension, demotion, or dismissal from the service of the District.
- C. This policy applies to classified employees, classified confidential employees and classified management staff.

7365.2 Causes

The District may suspend, demote, reassign, or dismiss a permanent employee in the classified service for reasonable cause, including but not limited to the following:

- A. Unsatisfactory attendance, such as:
 - 1. Repeated absence without notification
 - 2. Excessive absence
 - 3. Repeated unexcused absence or tardiness
 - 4. Abandonment of position
 - 5. Abuse of sick leave privilege
 - 6. Incarceration adversely affecting job performance
 - 7. Failure to keep the District informed of the date of expected return to duty.
- B. Unsatisfactory conduct, such as:
 - 1. Conviction of a felony
 - 2. Conviction of a crime involving moral turpitude
 - 3. Immorality
 - 4. Discourteous, offensive, or abusive conduct or language toward another employee, a student or a member of the public.
 - 5. Dishonesty
 - 6. Reporting for work while intoxicated, drinking alcoholic beverages on the job, working while under the influence of alcohol or possession of alcoholic beverages on District property
 - 7. Addiction to the use of narcotics or controlled substances, using such substances on the job, working while under the influence of controlled substances not taken by lawful prescription or possession of illegal drugs or narcotics on District property.
 - 8. Conviction or proof of commission of any sex offense as defined in the Education Code 87010 or Penal Code 261.5
 - 9. Conviction or proof of commission of any narcotics offense as defined in Education Code 87011 or Health and Safety Code 11361
 - 10. Falsifying any information supplied to the District, including but not limited to, information supplied on application form, employment records, or any District records.
 - 11. Altering or falsifying records of the District
 - 12. Repeated malingering during the work day

13. Engaging in political activities during work hours
 14. Unauthorized release of personal information concerning any student
 15. Possession of dangerous weapons or firearms on District property
- C. Unsatisfactory fulfillment of job responsibilities such as:
1. Incompetence or inefficiency in the performance of the duties of the position
 2. Insubordination including, but not limited to, refusal to do assigned work.
 3. Carelessness or negligence in the performance of duty or in the care and use of District property
 4. Misuse or misappropriation of property or funds
 5. Working overtime without authorization.
 6. Willful violation of the Education Code, Title V of the California Administrative Code, any other administrative code, or any rules of the Governing Board, or any lawful regulation or order made by a line superior, or safety rules or regulations.
 7. Loss or non-renewal of licenses, permits, or other documents required by the nature of the position
 8. Receipt by the District from the District's insurance carrier of a request for an endorsement excluding the employee from coverage under the District's insurance policy while driving a motor vehicle because of increased risk due to the employee's poor driving record.
 9. Violation of firearms guidelines for security patrol officers
 10. Physical inability to perform duties of the assignment
 11. Refusal to take a physical examination when requested to do so in writing by the District
- D. Other reasons, such as:
1. Advocacy of the overthrow of federal, state, or local government by force, violence or other unlawful means
 2. Membership in the Communist Party
 3. Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the District

7365.3 Emergency Suspension

1. Pending investigation by the District of accusations against an employee involving insubordination, misappropriation of public funds or property, furnishing drugs to students of the District, committing any sex offense as defined in Education Code 87010 or Penal Code 261.5 on District grounds or adjacent thereto, or during a District field trip or outing, assault or battery upon another person while on the job or while on District premises or adjacent thereto or while on a District field trip or outing, committing any act of immorality, or any act which would constitute a felony or a misdemeanor involving moral turpitude, or any act which presents a risk to person or property, the District CEO or his/her designee may, without complying with the Procedure for Disciplinary Action and Appeal, suspend the employee. During this suspension the employee will remain in paid status. The suspension may be terminated by the District by giving a 24-hour written notice to the employee.
2. An emergency suspension does not preclude the imposition of due process as established by this article.

7365.4 Procedure for Disciplinary Action – Proposed Notice of Disciplinary Action

1. The District may, for disciplinary purposes, suspend, demote, reassign, or dismiss any employee holding a position in the classified service. Demotion may include

- reduction in pay from a step within the class to one or more lower steps or a reduction in compensation per the classified manager's employment contract.
2. For employees suspended, demoted, reassigned, or dismissed the District shall follow a pre-disciplinary procedure as follows:
 - a. Notice of Proposed Disciplinary Action: Whenever the District intends to suspend a employee, demote the employee, reassign a employee, or dismiss the employee, the employee shall be given a written notice of the proposed discipline, signed by the CEO or his/her designee, which sets forth the following:
 - 1) The disciplinary action intended;
 - 2) The specific charges upon which the proposed action is based;
 - 3) A factual summary of the grounds upon which the charges are based;
 - 4) A copy of all written materials, reports, and documents upon which the proposed discipline is based; Notice of the employee's right to respond to the charges either orally or in writing to the appropriate manager (Skelly Rights);
 - 5) The date, time and person before whom the employee may respond, in no more than seven (7) working days from the time the Notice is postmarked;
 - 6) Notice that failure to respond at the time specified shall constitute a waiver of the right to respond prior to final discipline being imposed.

7365.5 Response by Employee (Skelly Meeting)

1. The employee shall have the right to respond to a district appointed manager orally or in writing, within seven (7) working days from the time the Notice is postmarked. At the Skelly meeting set to hear the employee's response, the employee shall have a right to be represented if they so desire. In cases of suspensions, demotions, reassignment, or dismissal, the employee's response will be considered before final action is taken.
2. Skelly Recommendation: After the Skelly meeting or the expiration of the employee's time to respond to the Notice of Proposed Disciplinary Action, the appointed manager (Skelly Officer) shall: (1) accept the Notice of Proposed Disciplinary Action, or (2) modify the intended disciplinary action or (3) recommend that no disciplinary action be taken against the employee. The appropriate authority (Skelly Officer) shall report his/her decision to the Office of Human Resources in writing.
3. After considering the recommendation of the Skelly Officer and reviewing associated materials, the CEO shall send a written notice of the disciplinary decision to the employee and their representative. This written notice will constitute the District's Final Notice of Disciplinary Action.

7365.6 Final Notice of Disciplinary Action:

1. The Final Notice of Disciplinary Action shall include the following:
 - a. The disciplinary action taken by the Board's designee;
 - b. The effective date of the disciplinary action;
 - c. Specific charges upon which the action is based
 - d. A factual summary of the facts upon which the charges are based;
 - e. The employee's right to appeal. (Notice of Defense - See appendix F)

7365.7 Appeal of Disciplinary Action and Request for Hearing

1. If a employee, having been issued the Final Notice of Disciplinary Action, wants to appeal the action, he or she shall, within seven (7) working days from the date it was postmarked, appeal to the Board of Trustees by filing a written answer to the charges and a request for hearing with Human Resources, on the form provided for that purpose. The Notice of Defense form is available in Human Resources.

2. Hearing
 - a. Time for Hearing: The Board of Trustees shall, within a reasonable time from the filing of the appeal, commence the hearing. The Board may conduct the hearing itself, or it may secure the services of an experienced Hearing Officer or Administrative Law Judge, selected from a list provided by the California State Mediation and Conciliation Service. In the event the Board of Trustees chooses to secure the services of a Hearing Officer or Administrative Law Judge, the Board of Trustees and the employee shall attempt to agree upon the individual to hear the matter. If no agreement can be reached, they shall request the California State Mediation and Conciliation Service to provide a roster of five names of persons experienced in hearing disciplinary matters in public agencies. Each party shall alternately strike a name until only one name remains. The order of striking shall be determined by lot. The remaining name shall be that of the hearing officer or administrative law judge. If this individual will not be available for the hearing within a reasonable time not to exceed sixty (60) days, the parties shall secure another list and repeat the selection unless they mutually agree to waive this time provision. The Board of Trustees may accept, modify or reject the discipline. The decision of the Board shall be final.
 - b. Any employee, having filed an appeal with the Board and having been notified of the time and place of the hearing, who fails to make an appearance before the Board, may be deemed to have abandoned his or her appeal. In this event, the Board may dismiss the appeal.
3. Conduct of the Hearing:
 - a. Record of Proceedings and Costs: All disciplinary appeal hearings may, at the discretion of either party or the Board of Trustees, be recorded by a court reporter. Any hearing which does not utilize a court reporter shall be recorded by audio tapes. If a court reporter is requested by either party, that party shall pay the cost of the court reporter.
 - b. The Hearing:
 - 1) The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses but hearings shall be conducted in a manner most conducive to determination of the truth.
 - 2) Any relevant evidence may be admitted if it is the type 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 rules which might make improper the admission of such evidence over objection in civil actions.
 - 3) Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence that shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
 - 4) The rules dealing with privileges shall be effective to the same extent that they are now or hereafter may be recognized in civil actions.
 - 5) Irrelevant and unduly repetitious evidence may be excluded.
 - 6) The Board shall determine relevancy, weight and credibility of testimony and evidence. Decisions made by the Board shall not be invalidated by any informality in the proceedings.
 - 7) During examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon the motion of either party.
 - 8) The hearing shall be conducted in the English language. The proponent of any testimony to be offered by a witness who does not speak English proficiently shall provide an interpreter. The cost of the interpreter shall be paid by the side calling the witness who uses the interpreter.

- 9) Burden of Proof: In a disciplinary appeal the District has the burden of proof by preponderance of the evidence.
 - 10) Proceed with Hearing or Request for Continuance: Each side should be asked if it is ready to proceed. If either side is not ready and wishes a continuance, good cause must be stated.
 - 11) Testimony under Oath: All witnesses shall be sworn in for the record prior to offering testimony at the hearing. The chairperson will request the witnesses to raise their right hand and respond to the following:
"Do you swear that the testimony you are about to give at this hearing is the truth, the whole truth and nothing but the truth?"
 - 12) Presentation of the Case: The hearing shall proceed in the following order unless the Board of Trustees, for special reason, directs otherwise:
 - (1) The party imposing discipline (District) shall be permitted to make an opening statement.
 - (2) The appealing party (the employee or his/her representative) shall be permitted to make an opening statement.
 - (3) The District shall produce its evidence.
 - (4) The party appealing from such disciplinary action (the employee or his/her representative) may then offer their evidence.
 - (5) The District, followed by the appealing party (the employee or his/her representative) may offer rebutting evidence.
 - (6) Closing arguments shall be permitted at the discretion of the Board of Trustees. The party with the burden of proof shall have the right to go first and to close the hearing by making the last argument. The Board may place a time limit on closing arguments. The Board or the parties may request the submission of written briefs. After the request for submittal of written briefs, the Board will determine whether to allow the parties to submit written briefs and determine the number of pages of briefs.
- c. Procedure for the Parties: The District's representative and the employee's representative will address their remarks, including objections, to the President of the Board. Objections may be ruled upon summarily or argument may be permitted. The Board reserves the right to terminate argument at any time and issue a ruling regarding an objection or any other matter, and thereafter the representative shall continue with the presentation of his/her case.
 - d. Right to Control Proceedings: While the parties are generally free to present their case in the order that they prefer, the Board reserves the right to control the proceedings, including, but not limited to, altering the order of witnesses, limiting redundant or irrelevant testimony, or by the direct questioning of witnesses.
 - e. Hearing Demeanor and Behavior: All parties and their attorneys or representatives shall not, by written submission or oral presentation, disparage the intelligence, ethics, morals, integrity or personal behavior of their adversaries or members of the Board of Trustees.
 - f. Deliberation Upon the Case: The Board of Trustees may choose to either deliberate the case in public or adjourn to closed session to deliberate. The Board of Trustees should consider all oral and documentary evidence, the credibility of witnesses, and other appropriate factors in reaching their decision. The Board may deliberate at the close of the hearing or at a later fixed date and time. In those cases where the Board has received a proposed decision from a Hearing Officer or Administrative Law Judge, the proposed decision, the record of the hearing and all documentary evidence shall be available for review by the Board when it deliberates.

- g. **Written Findings, Conclusion and Decision:** The Board shall render its findings, conclusions and decision as soon after the conclusion of the hearing as possible. A finding must be made by the Board on each material issue. The Board may sustain or reject any or all of the charges filed against the employee. The Board may sustain, reject or reduce the disciplinary action invoked against the employee. In those cases where the Board has received a proposed decision from a Hearing Officer or Administrative Law Judge, the Board may adopt the proposed decision, modify the proposed decision or render a new decision. If the Board recommends reinstatement of the terminated employee, the employee is only entitled to back pay minus the sum the employee has earned during the period of absence.
- h. **Decision of the Board to be Final:** The decision of the Board of Trustees in all cases shall be final.

7365.8 Record Filed

When final action is taken, the documents shall be placed in the employee's personnel file.

7365.9 Judicial Review

Judicial review may be had by filing a petition for writ of mandate in accordance with the provisions of the Code of Civil Procedure. Any such petition shall be filed within 30 days after the effective date of the decision.

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