

Administrative Regulation

Classified Personnel

Causes for Disciplinary Action

A permanent classified employee may be subject to suspension, demotion, involuntary reassignment, or dismissal for one or more of the following causes:

1. Immoral conduct, including, but not limited to, egregious misconduct that is the basis for a sex offense as defined in Education Code 44010, a controlled substance offense as defined in Education Code 44011, or child abuse and neglect as described in Penal Code 11165.2-11165.6
2. Conduct that constitutes a violent or serious felony as defined in Penal Code 667.5(c) or 1192.7(c)
3. Unlawful discrimination, including harassment, against any student or other employee
4. Violation of or refusal to obey state or federal law or regulation, Board policy, or ROP or department procedure
5. Falsification of any information supplied to the ROP, including, but not limited to, information supplied on application forms, employment records, or any other school ROP records
6. Unsatisfactory performance
7. Unprofessional conduct
8. Dishonesty
9. Neglect of duty or absence without leave
10. Insubordination
11. Use of alcohol or a controlled substance while on duty or in such close time proximity thereto as to affect the employee's performance
12. Destruction or misuse of ROP property
13. Failure to fulfill any ongoing condition of employment including, but not limited to, maintenance of 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
14. A physical or mental condition which precludes the employee from the proper performance of duties and responsibilities as determined by competent medical authority, except as otherwise provided by a contract or by law
15. Retaliation against any person 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 or directly related to the job
16. Violation of Education Code 45303 or Government Code 1028 prohibiting the advocacy or teaching of communism

17. Any other misconduct which is of such nature that it causes discredit or injury to the ROP or the employee's position

No disciplinary action shall be taken for any cause which arose before the employee became permanent, nor for any cause which arose more than two years before the date of the filing of the notice of cause unless this cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee would have disclosed the facts to the ROP. (Education Code 45113)

Initiation and Notification of Charges

The Superintendent or designee shall provide notice to the employee of a recommendation for discipline, which includes the charges and materials upon which the recommendation is based. The notification shall identify an impartial ROP official ("Skelly Officer") with whom the employee may meet at a specified time and place or to whom the employee may provide a written response to the recommendation of discipline. After meeting with the employee or considering any response from the employee, the Skelly Officer shall recommend to the Superintendent or designee whether to proceed with the recommendation for discipline.

The Superintendent or designee shall file any final recommendation for a disciplinary action in writing with the Governing 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 notice shall, in ordinary and concise language, inform the employee of the specific charge(s) or cause(s) for the disciplinary action, the specific acts and omissions upon which the action is based, and, if applicable, the ROP rule or regulation that the employee has allegedly violated. In addition, the notice shall include the employee's right to a hearing on those charges, the time within which the hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper which the employee may sign and file to deny the charges and request a hearing. (Education Code 45113, 45116)

Request for Board Hearing

Within the time specified in the notice of the recommendation of disciplinary action, the employee may request a hearing on the charges by signing and filing the card or paper included with the notice. (Education Code 45113)

Any other written document signed and appropriately filed within the specified time limit by the employee shall constitute a sufficient notice of the request for a hearing. The request shall be delivered to the office of the Superintendent or designee during normal work hours of that office. If mailed to the office of the Superintendent or designee, it must be received

or postmarked no later than the time limit specified by the ROP. In cases where an order of suspension without pay has been issued in conjunction with a recommendation of dismissal, any request for a hearing on the dismissal shall also constitute a request to hear the suspension order, and the necessity of the suspension order shall be an issue in the hearing.

Hearing Procedures

1. The hearing shall be held at the earliest convenient date, taking into consideration the established schedule of the 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. If the Board is hearing the appeal, the employee is entitled to a public hearing if the employee demands it. The complainant may also be represented by counsel. The procedure entitled "Administrative Adjudication" commencing with Government Code 11500 shall not apply to any such hearing before the Board or a hearing officer. Neither the Board nor a hearing officer shall be bound by rules of evidence used in California courts. Informally in any such hearing shall not invalidate any order or decision made or approved by the hearing officer or the Board.
2. All hearings shall be heard by a hearing officer selected by the Superintendent or designee from outside the ROP, except in those cases where the Board determines to hear the appeal itself.

In any case in which the Board hears the appeal, the Board may use 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, the Board shall affirm, modify or revoke the recommended personnel action.

3. If the appeal is heard by a hearing officer, a proposed decision shall be prepared in a form that 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 10 days after the proposed decision is filed by the Board. The Board may:
 - a. Adopt the proposed decision in its entirety.
 - b. Reduce the personnel action set forth in the proposed decision and adopt the balance of the proposed decision.
 - c. 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.

- d. Reject the proposed decision in its entirety.
4. 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 may refer the case to the same or another hearing officer to take additional evidence. The hearing officer 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 this proposed decision shall be furnished to each party within 10 days after the proposed decision is filed by the Board.
5. 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 that were contained in the employee’s personnel files and introduced into evidence at the hearing.

Hearing Decision

The decision of the Board shall be in writing and shall contain findings of fact and the personnel action approved, if any.

The decision of the Board shall be certified to the Superintendent or designee who recommended the personnel action and shall enforce and follow this decision. A copy of the decision shall be delivered to the appellant or the employee’s designated representative personally or by registered or certified mail, return receipt requested. The decision of the Board shall be final.

Compulsory Dismissal

The ROP 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. However, the ROP may employ a person convicted of a controlled substance offense if the Board determines from the evidence it requires that the person has been rehabilitated for at least five years.

The ROP 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 and upheld, an employee will not be re-employed or compensated for the time while suspended unless otherwise required by law. An employee shall be given notice

of the possibility of not being reimbursed during mandatory suspension if the employee is ultimately dismissed for the acts upon which the original charges were based.

Employment Status Pending a Disciplinary Hearing

A classified employee against whom a recommendation for disciplinary action has been issued may remain on active duty or may be placed on paid leave pending a hearing on the charges. The employee shall not be suspended without pay, suspended or demoted with a reduction in pay, or dismissed pending the outcome of a timely requested hearing, except as specified below. (Education Code 45113)

However, the disciplinary action may be imposed prior to the decision if the Board, or an impartial third-party hearing officer provided pursuant to a collective bargaining agreement, finds by a preponderance of the evidence that at the time discipline was imposed, the employee (1) engaged in criminal misconduct, (2) engaged in misconduct that presents a risk of harm to students, staff, or property, or (3) committed habitual violations of the district's policies or regulations. Such finding(s) must be made at the conclusion of the Skelly review process. (Education Code 45113)

In such cases where the disciplinary action is imposed prior to the decision, the employee shall be given written notice of the disciplinary action and the findings made at the conclusion of the Skelly review process. Such written notice shall be served upon the employee personally.

In addition, the district may cease paying the employee if a decision has not been rendered by an impartial third-party hearing officer, pursuant to the Board within 30 days of the date the hearing was requested.

Compulsory Leave of Absence

Upon being informed by law enforcement that a classified employee has been charged with a "mandatory leave of absence offense," the Superintendent or designee shall immediately place the employee on a leave of absence. A mandatory leave of absence offense includes:

1. Any sex offense as defined in Education Code 44010
2. Violation or attempted violation of Penal Code 187, prohibiting murder or attempted murder
3. Any offense involving the unlawful sale, use, or exchange to minors of controlled substances as listed in Health and Safety Code 11054, 11055, and 11056

The Superintendent or designee may place on an immediate compulsory leave of absence a classified employee who is charged with an "optional leave of absence offense," defined as a controlled substance offense specified in Education Code 44011 and Health and Safety

Code 11357-11361, 11363, 11364, and 11370.1 except as it relates to marijuana, mescaline, peyote, or tetrahydrocannabinols.

An employee's compulsory leave for a mandatory or optional leave of absence offense may extend for not more than 10 days after the entry of judgment in the criminal proceedings.

However, the compulsory leave may be extended if the Board gives notice, within 10 days after the entry of judgment in the proceedings, that the employee will be dismissed within 30 days from the date of service of the notice unless the employee demands a hearing on the dismissal.