

HUMAN RESOURCES

AP 7365 DISCIPLINE AND DISMISSAL – CLASSIFIED EMPLOYEES

References:

- Education Code Section 88013;
- Government Code Sections 3300-3313 (Peace Officers' Bill of Rights)

Disciplinary procedures for employees represented by an exclusive bargaining representative, such as CCE/AFT, are contained in the appropriate collective bargaining agreement, and nothing herein applies to such employees.

Grounds for Formal Discipline

A permanent member of the classified service shall be subject to disciplinary action, including but not limited to, reduction in pay, demotion, suspension, or discharge, for any of the following grounds:

- Fraud in securing employment or making a false statement on an application for employment
- Incompetence, i.e., inability to comply with the minimum standard of an employee's position for a significant period of time
- Inefficiency or inexcusable neglect of duty, i.e., failure to perform duties required of an employee within his position
- Willful disobedience and insubordination, a willful failure to submit to duly appointed and acting supervision or to conform to duly established orders or directions of persons in a supervisory position or insulting or demeaning the authority of a supervisor or manager
- Dishonesty involving employment
- Being under the influence of alcohol or illegal drugs or narcotics while on duty, being impaired by alcohol or illegal drugs in your biological system while on duty which could impact the ability to do the job
- Excessive absenteeism
- Inexcusable absence without leave
- Abuse of sick leave, i.e., taking sick leave without a doctor's certificate when one is required, or misuse of sick leave
- The conviction of either a misdemeanor or a felony involving moral turpitude shall constitute grounds for dismissal of any employee. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The Office of Human Resources may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or the

determination if such conviction is an offense involving moral turpitude. A plea or verdict of guilty or a conviction showing a plea of nolo contendere made to charge a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.

- Discourteous treatment of the public or other employees
- Improper or unauthorized use of District property
- Refusal to subscribe to any oath or affirmation that is required by law in connection with District employment
- Any willful act of conduct undertaken in bad faith, either during or outside of duty hours which is of such a nature that it causes discredit to the District, the employee's department, or division
- Inattention to duty, tardiness, indolence, carelessness, or negligence in the care and handling of District property
- Violation of the rules and regulations published in any department
- Inability to perform the essential functions of the job with reasonable accommodation or without presenting a direct threat to the health and safety of self or others due to mental or physical impairment
- Acceptance from any source of a reward, gift, or other form of remuneration in addition to regular compensation to an employee for the performance of his/her official duties
- The refusal of any officer or employee of the District to testify under oath before any court, grand jury, or administrative officer having jurisdiction over any then pending cause of inquiry in which the District is involved. Violation of this provision may constitute of itself sufficient ground for the immediate discharge of such officer or employee.
- Willful violation of any of the provisions of the ordinances, resolutions or any rules, regulations, or policies which may be prescribed by the District
- Improper political activity. Example: Those campaigning for or espousing the election or non-election of any candidate in national, state, county, or municipal elections while on duty and/or during working hours or the dissemination of political material of any kind while on duty and/or during working hours.
- Working overtime without authorization

### **Disciplinary Actions**

Where informal discipline fails to adequately address the problem or where otherwise provided in this procedure, formal disciplinary action taken by the District against a permanent member of the classified service may include, but not be limited to the following:

- 73           • Reduction in pay or demotion – The District may reduce the pay or demote an  
74           employee whose performance of the required duties falls below standard or for  
75           misconduct.
- 76           • Suspension – An employee may be suspended for disciplinary purposes without  
77           pay.
- 78           • Discharge – A permanent member of the classified service may be discharged  
79           for just cause at any time. Formal written notice of discharge may be made after  
80           considered action during a period of suspension.

### 81           **Procedure for Disciplinary Action and Appeal**

82           The District may, for disciplinary purposes, suspend, demote, or terminate any  
83           employee holding a position in the classified service. Demotion shall include reduction  
84           in pay from a step within the class to one or more lower steps.

85           For classified employees suspended, demoted or discharged the District shall follow a  
86           pre-disciplinary procedure as follows:

87           **Notice of Intent:** Whenever the District intends to suspend an employee, demote the  
88           employee, or dismiss the employee, the employee shall be given a written notice of  
89           discipline which sets forth the following:

- 90           • The disciplinary action intended
- 91           • The specific charges upon which the action is based
- 92           • A factual summary of the grounds upon which the charges are based
- 93           • A copy of all written materials, reports, or documents upon which the discipline is  
94           based
- 95           • Notice of the employee's right to respond to the charges either orally or in writing  
96           to the appropriate manager
- 97           • The date, time, and person before whom the employee may respond in no less  
98           than five working days and
- 99           • Notice that failure to respond at the time specified shall constitute a waiver of the  
100          right to respond prior to final discipline being imposed

101          **Response by Employee:** The employee shall have the right to respond to the  
102          appropriate manager orally or in writing. The employee shall have a right to be  
103          represented at any meeting set to hear the employee's response. In cases of  
104          suspensions, demotions, or dismissal, the employee's response will be considered  
105          before final action is taken.

106          **Final Notice:** After the response or the expiration of the employee's time to respond to  
107          the notice of intent, the appropriate authority shall: 1) dismiss the notice of intent and  
108          take no disciplinary action against the employee; or 2) modify the intended disciplinary

109 action; or 3) prepare and serve upon the employee a final notice of disciplinary action.  
110 The final notice of disciplinary action shall include the following:

- 111 • The disciplinary action taken
- 112 • The effective date of the disciplinary action taken
- 113 • Specific charges upon which the action is based
- 114 • A factual summary of the facts upon which the charges are based
- 115 • The written materials reports and documents upon which the disciplinary action is  
116 based and
- 117 • The employee's right to appeal

118 **Appeal and Request for Hearing:** If a classified employee, having been issued the  
119 final notice of disciplinary action, wants to appeal the action, he/she shall within ten  
120 calendar days from the date of receipt of the notice, appeal to the Governing Board by  
121 filing a written answer to the charges and a request for hearing with the Chief Human  
122 Resources Officer.

123 **Time for Hearing:** The Governing Board shall, within a reasonable time from the filing  
124 of the appeal, commence the hearing. The Governing Board may conduct the hearing  
125 itself or it may secure the services of an experienced hearing officer or Administrative  
126 Law Judge, mutually selected by the District and the employee, to conduct a hearing  
127 and render a proposed decision for consideration by the Board. However, in every  
128 case, the decision of the Governing Board itself shall be final. The Governing Board  
129 may affirm, modify, or revoke the discipline. Any employee, having filed an appeal with  
130 the Board and having been notified of the time and place of the hearing, who fails to  
131 make an appearance before the Governing Board, may be deemed to have abandoned  
132 his/her appeal. In this event, the Board may dismiss the appeal.

133 **Record of Proceedings and Costs:** All disciplinary appeal hearings may, at the  
134 discretion of either party or the Governing Board, be recorded by a court reporter. Any  
135 hearing which does not utilize a court reporter shall be recorded by audio tapes. If a  
136 court reporter is requested by either party, that party shall pay the cost of the court  
137 reporter.

138 **Conduct of the Hearing:**

- 139 • The hearing need not be conducted in accordance with technical rules relating to  
140 evidence and witnesses but hearings shall be conducted in a manner most  
141 conducive to determination of the truth
- 142 • Any relevant evidence may be admitted if it is the type of evidence on which  
143 responsible persons are accustomed to rely in the conduct of serious affairs,  
144 regardless of the existence of any common law or statutory rules which might  
145 make improper the admission of such evidence over objection in civil actions

- 146 • Hearsay evidence may be used for the purpose of supplementing or explaining  
147 any direct evidence that shall not be sufficient in itself to support a finding unless  
148 it would be admissible over objection in civil actions
- 149 • The rules dealing with privileges shall be effective to the same extent that they  
150 are now or hereafter may be recognized in civil actions
- 151 • Irrelevant and unduly repetitious evidence may be excluded
- 152 • The Governing Board shall determine relevancy, weight, and credibility of  
153 testimony and evidence. Decisions made by the Governing Board shall not be  
154 invalidated by any informality in the proceedings
- 155 • During examination of a witness, all other witnesses, except the parties, shall be  
156 excluded from the hearing upon motion of either party

157 **Burden of Proof:** In a disciplinary appeal the District has the burden of proof by  
158 preponderance of the evidence.

159 **Proceed with Hearing or Request for Continuance:** Each side should be asked if it  
160 is ready to proceed. If either side is not ready and wishes a continuance, good cause  
161 must be stated.

162 **Testimony under Oath:** All witnesses shall be sworn in for the record prior to offering  
163 testimony at the hearing. The chairperson will request the witnesses to raise their right  
164 hand and respond to the following:

165 “Do you swear that the testimony you are about to give at this hearing is the truth, the  
166 whole truth and nothing but the truth?”

167 **Presentation of the Case:** The hearing shall proceed in the following order unless the  
168 Governing Board, for special reason, directs otherwise:

- 169 • The party imposing discipline (District) shall be permitted to make an opening  
170 statement.
- 171 • The appealing party (employee) shall be permitted to make an opening  
172 statement.
- 173 • The District shall produce its evidence.
- 174 • The party appealing from such disciplinary action (employee) may then offer their  
175 evidence.
- 176 • The District followed by the appealing party (employee) may offer rebutting  
177 evidence.
- 178 • Closing arguments shall be permitted at the discretion of the Governing Board.  
179 The party with the burden of proof shall have the right to go first and to close the  
180 hearing by making the last argument. The Governing Board may place a time  
181 limit on closing arguments. The Board or the parties may request the submission

182 of written briefs. After the request for submittal of written briefs, the Governing  
183 Board will determine whether to allow the parties to submit written briefs and  
184 determine the number of pages of briefs.

185 **Procedure for the Parties:** The District representative and the employee  
186 representative will address their remarks, including objections, to the President of the  
187 Board. Objections may be ruled upon summarily or argument may be permitted. The  
188 Governing Board reserves the right to terminate argument at any time and issue a ruling  
189 regarding an objection or any other matter, and thereafter the representative shall  
190 continue with the presentation of their case.

191 **Right to Control Proceedings:** While the parties are generally free to present their  
192 case in the order that they prefer, the Governing Board reserves the right to control the  
193 proceedings, including, but not limited to, altering the order of witnesses, limiting  
194 redundant or irrelevant testimony, or by the direct questioning of witnesses.

195 **Hearing Demeanor and Behavior:** All parties and their attorneys or representatives  
196 shall not, by written submission or oral presentation, disparage the intelligence, ethics,  
197 morals, integrity, or personal behavior of their adversaries or members of the Governing  
198 Board.

199 **Deliberation Upon the Case:** The Governing Board should consider all oral and  
200 documentary evidence, the credibility of witnesses, and other appropriate factors in  
201 reaching their decision. The Board may deliberate at the close of the hearing or at a  
202 later fixed date and time. In those cases where the Governing Board has received a  
203 proposed decision from a hearing officer or Administrative Law Judge, the proposed  
204 decision, the record of the hearing and all documentary evidence shall be available for  
205 review by the Board when it deliberates.

206 **Written Findings, Conclusion, and Decision:** The Governing Board shall render its  
207 findings, conclusions, and decision as soon after the conclusion of the hearing as  
208 possible. A finding must be made by the Board on each material issue. The Governing  
209 Board may sustain or reject any or all of the charges filed against the employee. The  
210 Board may sustain, reject, or modify the disciplinary action invoked against the  
211 employee. In those cases where the Governing Board has received a proposed  
212 decision from a hearing officer or Administrative Law Judge, the Board may adopt the  
213 proposed decision, modify the proposed decision, or render a new decision. If the  
214 Governing Board recommends reinstatement of the terminated employee, the employee  
215 is only entitled to back pay minus the sum the employee has earned during the period of  
216 absence.

217 **Decision of the Board to be Final:** The decision of the Governing Board in all cases  
218 shall be final.

219 **Emergency Suspension:** If an employee's conduct presents an immediate threat to  
220 the health and safety of the employee or others, the employee may be suspended

221 without compliance with the provisions this procedure. However, as soon as possible  
222 after suspension, the employee shall be given notice as set forth herein.

223 **Record Filed:** When final action is taken, the documents shall be placed in the  
224 employee's personnel file.

225 Office of Primary Responsibility: Human Resource Services