

HUMAN RESOURCES

AP 7365 DISCIPLINE AND DISMISSAL – CLASSIFIED ADMINISTRATORS

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 or without 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:

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

Procedure for Disciplinary Action and Appeal

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

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

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

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

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

Final Notice: After the response or the expiration of the employee's time to respond to the notice of intent, the appropriate authority shall: 1) dismiss the notice of intent and take no disciplinary action against the employee; or 2) modify the intended disciplinary action; or 3) prepare and serve upon the employee a final notice of disciplinary action. The final notice of disciplinary action shall include the following:

- The disciplinary action taken
- The effective date of the disciplinary action taken
- Specific charges upon which the action is based
- A factual summary of the facts upon which the charges are based
- The written materials reports and documents upon which the disciplinary action is based and
- The employee's right to appeal

Appeal and Request for Hearing: If a classified employee, having been issued the final notice of disciplinary action, wants to appeal the action, he/she shall within ten calendar days from the date of receipt of the notice, appeal to the Governing Board by filing a

written answer to the charges and a request for hearing with the Vice President for Human Resources.

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

Record of Proceedings and Costs: All disciplinary appeal hearings may, at the discretion of either party or the Governing Board, 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.

Conduct of the Hearing:

- 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
- 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
- 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
- The rules dealing with privileges shall be effective to the same extent that they are now or hereafter may be recognized in civil actions
- Irrelevant and unduly repetitious evidence may be excluded
- The Governing Board shall determine relevancy, weight, and credibility of testimony and evidence. Decisions made by the Governing Board shall not be invalidated by any informality in the proceedings
- During examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon motion of either party

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

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.

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?”

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

- The party imposing discipline (District) shall be permitted to make an opening statement.
- The appealing party (employee) shall be permitted to make an opening statement.
- The District shall produce its evidence.
- The party appealing from such disciplinary action (employee) may then offer their evidence.
- The District followed by the appealing party (employee) may offer rebutting evidence.
- Closing arguments shall be permitted at the discretion of the Governing Board. 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 Governing Board may place a time limit on closing arguments. The Governing Board or the parties may request the submission of written briefs. After the request for submittal of written briefs, the Governing Board will determine whether to allow the parties to submit written briefs and determine the number of pages of briefs.

Procedure for the Parties: The District representative and the employee representative will address their remarks, including objections, to the President of the Governing Board. Objections may be ruled upon summarily or argument may be permitted. The Governing 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 their case.

Right to Control Proceedings: While the parties are generally free to present their case in the order that they prefer, the Governing 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.

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 Governing Board.

Deliberation upon the Case: The Governing Board should consider all oral and documentary evidence, the credibility of witnesses, and other appropriate factors in reaching their decision. The Governing Board may deliberate at the close of the hearing or at a later fixed date and time. In those cases where the Governing 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 Governing Board when it deliberates.

Written Findings, Conclusion, and Decision: The Governing 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 Governing Board on each material issue. The Governing Board may sustain or reject any or all of the charges filed against the employee. The Governing Board may sustain, reject, or modify the disciplinary action invoked against the employee. In those cases where the Governing Board has received a proposed decision from a hearing officer or Administrative Law Judge, the Governing Board may adopt the proposed decision, modify the proposed decision, or render a new decision. If the Governing 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.

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

Emergency Suspension: If an employee's conduct presents an immediate threat to the health and safety of the employee or others, the employee may be suspended without compliance with the provisions of this procedure. However, as soon as possible after suspension, the employee shall be given notice as set forth herein.

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

Office of Primary Responsibility: Human Resource Services