

**DISCIPLINARY ACTION AND APPEAL: CLASSIFIED SERVICE**

## A. Causes for Disciplinary Action

Any of the following may constitute grounds for discipline of a District employee:

1. Incompetency, below standard work performance, a pattern of inefficiency, or continued negligence in the performance of assigned duties.
2. Insubordination including, but not limited to, refusal to do reasonably assigned work or any other serious breach of discipline.
3. Discourteous, offensive, or abusive conduct toward other employees, pupils, or the public.
4. Misuse, unauthorized use, theft, destruction or mishandling handling of District property or property of employees.
5. Offering anything of value or any service in exchange for special treatment in connection with the employee's job or employment or the accepting of anything of value or any service in exchange for granting any special treatment to another employee or to any member of the public.
6. Possession of opened alcoholic beverage containers, drinking alcoholic beverages, being intoxicated while on the job, or unauthorized use of narcotics or controlled substances not prescribed by a licensed physician.
7. Engaging in unauthorized political or personal activities during assigned hours of employment.
8. Conviction of any felony or crime.
9. Arrest for or conviction of a sex offense as defined in Education Code Section 44010 or a narcotics offense as defined in Education Code Section 44011.
10. Repeated or unexcused absence or tardiness.
11. Abuse of leave privileges.
12. Physical or mental unfitness for service.
13. Unsafe conduct.
14. Loss of license or certificate required in the performance of assigned duties.
15. Knowingly falsifying any information supplied to the District, including but not limited to information supplied on application forms, employment records, and other records.

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16. Willful violation of the Education Code or rules and regulations of the governing board.
17. Abandonment of position or absence without notification for two or more days.
18. Behavior which has an adverse effect on the work performance of the employee or other employees.
19. Personal conduct which reflects unfavorably on the District or tends to injure the public service.
20. Persistent violation or refusal to obey safety rules or other procedures made applicable to the District by the Board or by any appropriate state or governmental agency.
21. Failure to report for review of criminal records or for a health examination after due notice.

This list does not exhaust all possible grounds for disciplinary action nor does it imply that the school district is obliged to take formal disciplinary action if an employee commits any of these offenses. It is intended to help division managers and principals define and state as clearly as possible the charges on which they may wish to base disciplinary action.

**B. Review by Assistant Superintendent, Human Resources**

Managers or supervisors shall review with the Assistant Superintendent, Human Resources, proposed disciplinary actions prior to taking any action beyond an oral warning to ensure that they are applied fairly and consistently.

**C. Dismissal During Probationary Period**

The Board of Trustees may dismiss an employee at any time during the period of probation. Dismissal need not be for cause. The employee shall be notified in writing of the action taken. The employee does not have the right of appeal of disciplinary action before the Board of Trustees.

**D. Dismissal of Limited-Term and Substitute Employees**

A limited-term or substitute employee may be terminated at any time during an assignment without regard to procedures set forth in this regulation.

**E. Procedure for Disciplinary Action and Appeal**

The following steps must be taken prior to a disciplinary action against a "permanent" employee:

1. The employee will normally receive a preliminary written notice of the **proposed action** by his/her supervisor prior to the disciplinary action unless immediate suspension has been authorized by the Assistant Superintendent, Human Resources.

The notice shall include:

- a. The **date** it will be effective.
- b. The **nature of the proposed action**; (i.e., suspension without pay for three working days).
- c. A specific statement of the **causes or grounds** upon which discipline is based; (i.e., refusal to obey safety rules).
- d. A **detailed statement of the facts or charges** upon which the disciplinary action is based; i.e., on March 9, 11, and 16 you were warned "orally" by your leadman, Al Jones, to wear safety glasses when using the power edger. On March 25, 1998, you were given a "written" warning by me for not wearing your glasses at FUHS while edging the grass area in front of the administration building at 10:15 a.m. on March 24, 1998 (see attached copy of written warning issued March 25, 1998).

Generalities such as "employee fails to follow orders" are too vague. Such charges should be supported by specific instances of misconduct.

- e. A statement informing employee that he/she may have "**access**" to and review **materials** on which the disciplinary action is based, if he/she requests it. This material would generally include all matters in the employee's personnel file (i.e., prior written warnings) and related items such as accident reports, damaged equipment, etc.
  - f. A statement that allows the employee **reasonable time** to respond to the charges, whether orally or in writing. The reason for this is that an employee is to be provided an opportunity to refute the charges, present any explanation or justification for the alleged misconduct, or to offer alternatives to the proposed action in order to avoid erroneous or inappropriate disciplinary action. It is recommended that a minimum of five days be afforded an employee in which to prepare a response if he/she desires. The response should be directed to the supervisor proposing the disciplinary actions, with a copy to the Assistant Superintendent, Human Resources.
2. Once the notice of preliminary letter of charges action has been served, the employee within the specified time, if he/she desires, should contact the Assistant Superintendent, Human Resources.

If after following the above steps, the decision is made to discipline the employee, a formal statement of charges will be served upon the employee by the Assistant Superintendent, Human Resources.

### **Permanent Employees**

- a. A permanent employee who is to be demoted or dismissed typically will be given ten days notice. Suspension action may be taken immediately depending upon the infraction.
- b. A proposed suspension must have prior approval of the location administrator and Assistant Superintendent, Human Resources, unless it is an "emergency" situation involving the immediate safety or welfare of the employee, students, or other staff.
- c. Notices of disciplinary actions must be delivered by hand or sent by registered mail, return receipt requested, to the employee and state the charges or causes, the employee's right to a hearing, and the time limit for request for a hearing. All formal letters of charges and notices of suspension or District charge will be accomplished by the Human Resources Office. It is important to keep in mind that the supervisor' preliminary letter of charges and notice of proposed action is in addition to and does not replace the actual "formal" notice of the disciplinary action.
- d. A permanent employee or his/her representative may request a hearing through a written appeal to the Board of Trustees. This must be done within ten days after the date of notification of disciplinary action through a written request directed to the Assistant Superintendent, Human Resources.
- e. The Board of Trustees shall have the responsibility and authority to grant or deny an appeal.

### **Probationary Employees**

- a. A probationary employee who is to be demoted or dismissed may be given five days notice at the discretion of the Assistant Superintendent, Human Resources.
- b. Notice of demotion or dismissal will be delivered by hand or sent by registered mail, return receipt requested, to the employee.
- c. A probationary employee does not have the right to appeal a notice of demotion or dismissal or any other disciplinary action.

### **Definitions**

A "day" shall be defined as a day in which the Education Center is open for business.

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

"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.

"Suspension" means an involuntary absence from work without pay imposed by the employee's immediate supervisor or the Assistant Superintendent, Human Resources.

#### **F. Appeal Procedure for Demotion, Suspension, or Dismissal of Permanent Employees**

1. The written request for an appeal hearing before the Board of Trustees must be signed and filed as designated by the Board in the notice of disciplinary action and shall constitute a demand for a hearing and a denial of all charges.
2. Upon receipt of the appeal notice submitted by a permanent employee, the Assistant Superintendent, Human Resources, may confer with the employee following the submission of the written appeal request.
3. The Assistant Superintendent, Human Resources, shall be present at the hearing to represent the District and coordinate the summoning of witnesses, if any, for the Board of Trustees.
4. The Board of Trustees' decision must be delivered by hand or sent by registered mail, return receipt requested, to the appellant employee by the Assistant Superintendent, Human Resources.

#### **G. Failure to Appeal**

If the employee fails to appeal within the time provided herein, or if the employee files written notice of appeal but does not file his/her written answer as herein provided, the order of demotion or dismissal shall be final without the right of appeal to the Board.

#### **H. Hearing Procedure for Appeal by Permanent Employee**

After an employee has filed an appeal in answer to charges against him/her, the Board of Trustees shall order a hearing. If a hearing is to be conducted, the Board shall then fix the time and place of the hearing which shall be within a reasonable length of time from the receipt of the appeal, but in no event will the hearing be held less than five days after service of the notice of disciplinary action to the employee.

A hearing officer shall be jointly selected by mutual agreement of CSEA and the District to conduct any hearing and report findings and recommendations to the Board. Such recommendations shall not be binding on the Board.

Hearings shall be conducted in the manner most conducive to determination of the truth, and neither the Board nor its hearing officers shall be bound by technical rules of evidence. Decisions made by the Board shall not be invalidated by any informality in the proceedings.

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The Board or its hearing officer shall determine the relevancy, weight, and credibility of testimony and evidence. It shall base its findings on a preponderance of evidence.

The District and the employee may be represented by separate legal counsel and/or other designated representatives.

A hearing shall be conducted in the following order:

1. Opening statement by the Assistant Superintendent, Human Resources\*
2. Opening statement by the employee or the employee's designated representative\*
3. The District's presentation of witnesses and evidence\*
4. The employee's presentation of witnesses and evidence\*
5. Closing argument by the employee or the employee's designated representative\*
6. Closing argument by the Assistant Superintendent, Human Resources\*

(\*) Asterisk indicates an optional step in the procedure.

Each party will be allowed to examine and cross-examine witnesses.

The Board or its hearing officer may, prior to or during a hearing, grant a continuance for any reason believed to be important to reaching a fair and proper decision.

A hearing shall be held in closed session unless an open hearing is requested by the employee. The Board or its hearing officer may, at their discretion, exclude witnesses not under examination except the employee and the party attempting to substantiate the charges against the employee and their respective counsel.

If a hearing officer has been appointed, a written report of the hearing officer's findings and recommendations shall be submitted to the Board with copies sent to both parties involved. When the Board meets to decide a matter using a hearing officer's report in making its decision, involved parties may come before the Board to challenge significant errors or omissions reflected in the report, and the Board may amend the report in the interests of fairness and accuracy; however, the hearing shall not be reopened.

The Board shall render its judgment as soon after the conclusion of the hearing as possible. The Board may deliberate its decision in closed session and exclude all persons other than member of the Board and its staff or counsel.

The Board may sustain or reject any or all of the charges filed against the employee.

NOTE: Former Regulation 4583.14 incorporated into 4583.11 on January 12, 1983

Regulation approved: February 10, 1970; September 19, 1978; January 12, 1983; March 22, 1999; September 12, 2000; September 12, 2001; January 12, 2010; July 13, 2010