

## **Dismissal/Suspension/Disciplinary Action**

### Termination of Probationary Employment

At any time prior to the expiration of the probationary period, the Superintendent or designee may, at its discretion, dismiss a probationary classified employee from district employment. A probationary employee shall not be entitled to a hearing.

### Involuntary Suspension Without Pay, Demotion, Reduction of Pay Step in Class, or Dismissal of Permanent Classified Employees

Permanent classified employees shall be subject to personnel action (suspension without pay, demotion, reduction of pay step in class, dismissal) only for cause. The Board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

#### 1. Causes

In addition to any disqualifying or actionable causes otherwise provided for by statute or by policy or regulation of this district, each of the following constitutes cause for personnel action against a permanent classified employee:

a. Falsifying any information supplied to the school district, including, but not limited to, information supplied on application forms, employment records, or any other school district records.

b. Incompetency.

c. Inefficiency.

d. Neglect of duty.

e. Insubordination.

f. Dishonesty.

g. Drinking alcoholic beverages while on duty or in such close time proximity thereto as to cause any detrimental effect upon the employee or upon employees associated with him/her.

h. Unlawfully possessing or being under the influence of a controlled substance at work or away from work, or furnishing a controlled substance to a minor.

i. Conviction of a felony, conviction of any sex offense made relevant by provisions of law, or conviction of a misdemeanor which is of such a nature as to adversely affect the employee's ability to perform the duties and responsibilities of his/her position. A plea or verdict of guilty, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

j. Absence without leave.

- k. Immoral conduct.
- l. Discourteous treatment of the public, students, or other employees.
- m. Improper political activity.
- n. Willful disobedience.
- o. Misuse of district property.
- p. Violation of district, Board or departmental rule, policy, or procedure.
- q. Failure to possess or keep in effect 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.
- r. Refusal to take and subscribe any oath or affirmation which is required by law in connection with his/her employment.
- s. Any mental or physical disability which substantially limits one of life's major functions and precludes the employee from performing the essential functions of his/her position with or without reasonable accommodation.
- t. Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical disability, marital status, sex, or age against the public or other employees while acting in the capacity of a district employee.
- u. Unlawful retaliation against any other district officer or employee or member of the public who, in good faith, reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any information relative to actual or suspected violation of any law of this State or the United States occurring on the job or directly related thereto.
- v. Any other failure of good behavior either during or outside of duty hours which is of such nature that it causes discredit to the district or his/her employment.

Except as defined in paragraph "s." above, no personnel action shall be taken for any cause which arose prior to the employee's becoming permanent, nor for any cause which arose more than two years preceding the date of the filing of the notice of cause unless such cause was concealed or not disclosed by such employee when it could be reasonably assumed that the employee would have disclosed the facts to the district.

## 2. Initiation and Notification of Charges

The district Superintendent or designee may initiate a personnel action as defined herein against a permanent classified employee.

In all cases involving a personnel action, the person initiating said action shall file a written recommendation of personnel action with the 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 recommendation shall include:

- a. A statement of the nature of the personnel action (suspension without pay, demotion, reduction of pay step in class, or dismissal).
- b. A statement of the cause or causes therefor as set forth above.
- c. A statement of the specific acts or omissions upon which the causes are based. If violation of rule, policy, or regulation of the district is alleged, the rule, policy, or regulation violated shall be set forth in the recommendation.
- d. A statement of the employee's right to appeal the recommendation and the manner and time within which his/her appeal must be filed.
- e. A card or paper, the signing and filing of which shall constitute a demand for hearing and a denial of all charges.

### 3. Informal Conference

The purpose of the informal conference is to review the notification of charges to allow the employee to respond to each charge and incident.

The conference shall be an informal meeting and shall not be conducted by formal evidentiary rules. The conference shall be conducted on the date stated on the original notification of charges provided to the employee, unless a change is mutually agreed to by the Associate Superintendent, Human Resources, or designee and the employee. The Associate Superintendent, Human Resources or designee will serve as the administrator responsible for conducting the conference. During the conference, the employee may be represented by a person of their choice.

The Associate Superintendent or designee shall, after the conclusion of the conference, make a determination of the appropriateness of the recommended disciplinary action and the charges and incidents upon which such disciplinary action is recommended.

The Associate Superintendent, Human Resources may accept, modify or reject the Notification of Disciplinary Action and Charges prior to forwarding the recommendation to the Board.

### 4. Employment Status Pending Appeal or Waiver

Except as provided herein, any employee against whom a recommendation of personnel action has been issued shall remain on active duty status and responsible for fulfilling the duties of the position pending his/her appeal or waiver thereof.

In cases where the Superintendent or designee has determined that a permanent classified employee should be dismissed and that continuation of the employee in active duty status after a written recommendation of such personnel action has been issued would result in an unreasonable risk of harm to self, students, staff, or property during the time the proceedings are pending, the Superintendent or designee may order the employee immediately suspended from his/her duties without pay in conjunction with the recommendation of personnel action. Such suspension order shall be in writing and shall include

a statement setting forth the reasons why such suspension is deemed necessary. Any such suspension order shall be served upon the employee either personally or by registered mail or certified mail, return receipt requested, immediately after issuance.

Except in cases of emergency where the employee must be removed from the premises immediately, at least five calendar days prior to the effective date of any order of suspension without pay issued in conjunction with any recommendation of personnel action involving dismissal, the Superintendent or designee shall give the employee written notice of the proposed recommendation of personnel action of dismissal. The written notice shall include notice that immediate suspension without pay is being considered, the reasons for the proposed dismissal action and for the proposed immediate suspension without pay, materials upon which the proposed action is based, and the right to respond either orally or in writing to the Superintendent or designee prior to the issuance of the final recommendation and order.

#### 5. Time Limit of Suspension

Any suspensions (except a suspension imposed under #4 above) invoked under these rules against any one person in the classified service for one or more periods shall not aggregate more than 90 calendar days in any 12-month period; provided, however, this time limitation is inapplicable to cases in which personnel action of dismissal is modified by the Board to a suspension.

#### 6. Right to Appeal

The employee may, within five calendar days after receiving the recommendation of personnel action described above, appeal by signing and filing the card or paper included with the recommendation. Any other written document signed and appropriately filed within the specified time limit by the employee shall constitute a sufficient notice of appeal. A notice of appeal is filed only by delivering the notice of appeal to the office of the district Superintendent or designee during normal work hours of that office. A notice of appeal may be mailed to the office of the Superintendent or designee but must be received or postmarked no later than the time limit stated herein. In cases where an order of suspension without pay has been issued in conjunction with a recommendation of personnel action involving dismissal, any appeal from the recommendation shall also constitute an appeal from the order, and the necessity of the order shall be an issue in the appeal hearing.

If the employee against whom a recommendation of personnel action has been filed fails to file a notice of appeal within the time specified in these rules, the employee shall be deemed to have waived his/her right to appeal, and the Board may order the recommended personnel action into effect immediately.

#### 7. Amended/Supplemental Charges

At any time before an employee's appeal is finally submitted to the Board or to a hearing officer for decision, the complainant may, with the consent of the Board or hearing officer, serve on the employee and file with the Board an amended or supplemental recommendation of personnel action.

If the amended or supplemental recommendation presents new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare his/her defense thereto. Any new causes or allegations shall be deemed controverted and any objections to the amended or supplemental causes or allegation may be made orally at the hearing and shall be noted on the record.

#### 8. Hearing Procedures

a. The hearing shall be held at the earliest convenient date, taking into consideration the established schedule of the Board or 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 and, if demand is made therefor when the Board is hearing the appeal, a public hearing. The complainant may also be represented by counsel. The procedure entitled "Administrative Adjudication" commencing at Section 11500 of the Government Code shall not be applicable to any such hearing before the Board or a hearing officer. Neither the Board nor a hearing officer shall be bound by rules or evidence used in California courts. Informality in any such hearing shall not invalidate any order or decision made or approved by the hearing officer or the Board.

b. All hearings shall be heard by a hearing officer except in those cases where the Board determines to hear the appeal themselves. In any case in which the Board hears the appeal, the Board may utilize 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, it shall affirm, modify or revoke the recommended personnel action.

c. If the appeal is heard by a hearing officer, he/she shall prepare a proposed decision in such form that it 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 ten days after the proposed decision is filed by the Board. The Board may:

- (1) Adopt the proposed decision in its entirety.
- (2) Reduce the personnel action set forth therein and adopt the balance of the proposed decision.
- (3) 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.
- (4) Reject the proposed decision in its entirety.

d. 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 refer the case to the same or another hearing officer to take additional evidence. If the case is so assigned to a hearing officer, he/she 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 such proposed decision shall be furnished to each party within ten days after the proposed decision is filed by the Board.

e. 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 contained in the employee's personnel files if such records were introduced into evidence at the hearing.

## 9. 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 findings may reiterate the language of the pleadings or simply refer to them.

The decision of the Board shall be certified to the Superintendent or designee who recommended the personnel action, and he/she shall enforce and follow this decision. A copy of the decision shall be

delivered to the appellant or his/her designated representative personally or by registered mail. The decision of the Board shall be final.

#### 10. Compulsory Dismissal

The district 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 district 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. If any such conviction is reversed and the person acquitted or charges dismissed, except as otherwise provided below, the employee may be reemployed by the district, although reemployment is not a guarantee. (Education Code 45123)

The district 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 by the Board and upheld, an employee will not be reemployed nor compensated for the time he/she was suspended unless otherwise required by law. An employee shall be given notice of the possibility of not being reimbursed during mandatory suspension if he/she is ultimately dismissed for the acts upon which the original charges were based.

Legal Reference:

#### EDUCATION CODE

35161 Delegation of powers and duties

44009 Conviction of specified crimes

44010 Sex offense

44011 "Controlled substance offense" defined

44940 Leave of absence; employee charged with mandatory or optional leave of absence offense

44940.5 Compulsory leave of absence; procedures; extension; compensation; bond or security; reports

45101 Definitions (including "disciplinary action," "cause")

45109 Fixing of duties

45113 Rules and regulations for classified service in districts not incorporating the merit system

45123 Employment after conviction of sex or narcotics offense

45302 Demotion and removal from permanent classified service

45303 Additional cause for suspension or dismissal of employees in classified service

45304 Suspension for reasonable cause; filing of charges; employee charged with mandatory or optional leave of absence offense

VEHICLE CODE

1808.8 Schoolbus drivers; dismissal for safety-related cause

UNITED STATES CODE, TITLE 42

12101 et seq. Americans with Disabilities Act

COURT DECISIONS

California School Employees v. Livingston Union School District, (2007) 149 Cal. App. 4th 391

CSEA v. Foothill Community College District, 52 Cal. App. 3rd 150, 155-156, 124 Cal. Rptr 830 (1975)  
("Conduct unbecoming an employee" too vague)

Regulation FRESNO UNIFIED SCHOOL DISTRICT

approved: March 12, 1993 Fresno, California

revised: August 24, 1995

reviewed: April 25, 2001