

AP 7365 Discipline and Dismissal - Classified Employees

References:

Education Code Section 88013;
Government Code Sections 3300 et seq.

Grounds for Discipline

If the grounds for dismissal were included in BP 7365 titled Discipline and Dismissal – Classified Employees, it is not necessary to repeat them here.

A permanent member of the classified service shall be subject to disciplinary action, including but not limited to, oral reprimand, written reprimand, 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 your ability to do your 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.

- Mental or physical impairment that render the employee unable 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.
- 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.

Background Checks

Background checks may be conducted as part of disciplinary or harassment investigations. (Civil Code Sections 1786 et seq. Fair Credit Reporting Act)

Advanced notice of discipline/harassment investigations shall not be provided to those under investigation. If the investigation results in action that adversely affects the employee, the employee shall receive oral, written, or electronic notice of:

- the adverse action;
- the name, address, and telephone number of the third party agency that furnished the report;
- the employee's right to obtain a free copy of the report; and
- the employee's right to dispute the accuracy or completeness of any of the information in the report.

Disciplinary Actions

Disciplinary action taken by the District against a permanent member of the classified service may include, but not be limited to oral reprimand, written reprimand, and 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;
- 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;
- 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 of Administrative Services.

Time for Hearing: The Governing Board shall, within a reasonable time from the filing of the appeal, commence the hearing. The 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 Board. However, in every case, the decision of the Board itself shall be final. The Board of Trustees may affirm, modify or revoke the discipline. Any employee, having filed an appeal with the Board and having been notified of the time and place of the hearing, who fails to make an appearance before the Board, may be deemed to have abandoned his/her appeal. In this event, the Board may dismiss the appeal.

Approved by the Board of Trustees: November 11, 2003

Record of Proceedings and Costs: All disciplinary appeal hearings may, at the discretion of either party or the Board of Trustees, 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 Board shall determine relevancy, weight and credibility of testimony and evidence. Decisions made by the 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 Board of Trustees, 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 Board of Trustees. 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 Board may place a time limit on closing arguments. The Board or the parties may request the submission of written briefs.

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After the request for submittal of written briefs, the 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 Board. Objections may be ruled upon summarily or argument may be permitted. The 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 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 Board of Trustees.

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

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

Amended by the Board of Trustees: August 14, 2012

Approved by the Board of Trustees: November 11, 2003