

AP 7365 DISCIPLINE AND DISMISSAL – CLASSIFIED EMPLOYEES**References:**

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

The following three sections apply to all classified employees:**1. Grounds for Discipline**

The grounds for discipline are outlined in BP 7365 titled Discipline and Dismissal – Classified Employees.

2. Background Checks

Background checks may be conducted as part of disciplinary or harassment investigations. (Civil Code Sections 1786 et seq.; Investigative Consumer Reporting Agencies Act; 15 U.S. Code Sections 1681 et seq. (Fair Credit Reporting Act).)

Advanced notice of discipline/harassment investigations shall 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.

3. 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.

The following procedures apply to unrepresented classified employees. For CSEA and SEIU employees, see the applicable collective bargaining agreement.

For unrepresented classified employees suspended, demoted, or discharged, the District shall follow a pre-disciplinary procedure.

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 an unrepresented 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 Board of Trustees by filing a written answer to the charges and a request for hearing with the Chief Human Resources Officer.

Alternative/Informal Hearing

As an alternative to the type of hearing described below, the employee may request that the hearing be conducted informally by so stating in his/her demand for hearing. In the event the employee requests an informal hearing, the Superintendent/President or designee shall arrange with the

employee for the type of informal hearing to be conducted. The parties may agree in writing upon what person shall hear the matter and how the hearing shall be conducted. In the event the parties fail to agree in writing within five working days after filing of the notice of Demand for Hearing upon who shall hear the matter and how it shall be conducted, the hearing shall be conducted as provided below. The findings of the alternative/informal hearing shall be submitted to the Board of Trustees and in all cases, the Board's decision shall be final.

Time for Hearing -- The Board of Trustees shall, within a reasonable time from the filing of the appeal, commence the hearing. The Board of Trustees may conduct the hearing itself, or it may secure the services of an experienced hearing officer or Administrative Law Judge, to conduct a hearing and render a proposed decision for consideration by the Board. However, in every case, the decision of the Board of Trustees itself shall be final. The Board of Trustees may affirm, modify, or revoke the discipline. Any employee, having filed an appeal with the Board of Trustees 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.

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 of Trustees shall determine relevancy, weight, and credibility of testimony and evidence. Decisions made by the Board of Trustees 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 of Trustees may place a time limit on closing arguments. The Board of Trustees or the parties may request the submission of written briefs. After the request for submittal of written briefs, the Board of Trustees 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 of Trustees. Objections may be ruled upon summarily or argument may be permitted. The Board of Trustees 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 of Trustees 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 of Trustees may deliberate at the close of the hearing or at a later fixed date and time. In those cases where the Board of Trustees 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 of Trustees 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 of Trustees on each material issue. The Board of Trustees 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 of Trustees 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 of Trustees 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 of Trustees 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.

Date Approved: December 13, 2011

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