

AP 7362 Discipline and Dismissals - Classified Supervisory/ Confidential Management Employees

Reference: *Education Code Sections 88013 and 88016*

The Superintendent/President shall enact procedures for the disciplinary proceedings, up to and including dismissal, applicable to permanent classified supervisory and confidential management employees of the District that have completed the 12 month probationary period. Such requirements shall conform to the requirements of the Education Code and the related Board Policy.

Probationary Period

The probationary period for classified supervisory, confidential and management employees shall be one year. Time spent on leave of absence without pay will not apply toward completion of the probationary period. A probationary employee may be demoted, suspended, or dismissed without cause at any time during the probationary period and such action shall not entitle the employee to a hearing before the Board of Trustees.

An employee who serves the required probationary period in a satisfactory manner shall be classified as a regular employee and shall be subject to discipline in accordance with District procedure.

Suspension

When the Superintendent/President or his/her designee determines that the needs of the District so require, an employee may be suspended immediately on an emergency basis pending investigation and disciplinary action. In that case, the suspension and any denial of compensation as provided by statute shall be an issue in the hearing, if one is requested by the employee.

Pre-Discipline Investigation

Any recommendation or request for disciplinary action, up to and including dismissal, against an employee shall be brought to the attention of the Superintendent/President or his/her designee. The Superintendent/President or his/her designee may decide to conduct an investigation into the matter. As part of the investigation process, the Superintendent/President or his/her designee may hold an informal meeting with the employee. Prior to the meeting, the employee shall be notified in writing of the allegation(s) that serve as the basis for the meeting.

Notice of Discipline

If a determination is made to institute disciplinary action, up to and including dismissal, against the employee, the Superintendent/President or his/her designee shall give the employee a written Notice of Proposed Disciplinary Action ("Notice").

1. The Notice shall inform the employee of the charge(s) on which the disciplinary action, including dismissal, is based and shall comply with the provisions of Education Code section 88016. Any document(s) that have been relied upon to support the proposed discipline shall either be attached or otherwise be made available to the employee.
2. The Notice shall be personally served upon the employee and shall be signed for and dated on receipt, or it shall be sent by United States certified mail, return receipt requested, addressed to the employee at the employee's last known address of record. Additionally, the Notice may be sent by first class mail. When a representative of the employee was involved in the process prior to the issuance of the Notice, the representative shall also be sent a copy of the Notice.
3. The Notice shall inform the employee of the right to a meeting with the Superintendent/President or his/her designee and/or to respond in writing to the Superintendent/President or his/her designee. The meeting date and time shall be set forth in the Notice and shall not be less than seven days from the date of the Notice. The deadline for a written response shall be the same day as the scheduled meeting.
4. If, following the meeting or receipt of a written response, the Superintendent/President or his/her designee determine that it is appropriate to proceed with the proposed discipline, the employee shall be informed in writing at the same time that the Notice is communicated to the Board of Trustees. The employee notification shall inform the employee of the effective date of the disciplinary action and shall include a statement of the right to a hearing on the charges and that the employee may request a hearing within five days after service of the notification. The notification shall also include a form, the signing and filing of which shall constitute a demand for hearing and denial of all charges. Failure to file the demand for a hearing as set forth in the notification shall constitute a waiver of the right to a hearing and the proposed discipline, including dismissal, shall be imposed as final.

Disciplinary Hearing

If the employee files the demand and denial, the disciplinary hearing, up to and including dismissal, shall be conducted pursuant to the following:

1. The hearing will be presided over by a hearing officer, who will be an administrative law judge from the Office of Administrative Hearings. In the alternative, the Board will make available to the employee a selection of three hearing officer candidates, of which the employee shall choose one. The hearing officer shall not be employed by the District.
2. The hearing shall be held at the earliest convenient date, taking into consideration the established schedule of the hearing officer and the availability of counsel and witnesses. The employee shall be notified of the time and place of the hearing by the District.
3. The employee shall be entitled to a public hearing if written demand is made at least two (2) calendar days prior to the scheduled hearing. Otherwise, the hearing shall be closed to the public.
4. There shall be no discovery rights by either party under the Administrative Procedure Act or any other discovery procedure except that no more than two depositions may be taken by either party where medical expertise is necessary to determine issues germane to the appeal. Notwithstanding the foregoing, non-privileged documents in support of the District's Notice of Charges which were not previously provided to the employee shall be served by the District no later than fifteen days prior to the hearing or for good cause may be introduced at the hearing in the District's case in chief or as rebuttal evidence. The employee shall disclose any documents refuting the Charges fifteen calendar days before the hearing except expert evidence, medical or financial (accounting) reports shall be simultaneously exchanged twenty calendar days before the scheduled hearing, unless otherwise agreed in writing by the District and the employee to accommodate depositions of medical experts.
5. The employee and, if the employee desires, a representative, may present evidence and/or argument to the hearing officer. The District may be represented by counsel or other representative and may also present evidence and/or argument.
6. The District shall have the burden of proof which shall be by a preponderance of the evidence. The parties may give opening statements. The District will put its evidence first, followed by the employee. The District will then be provided an opportunity to rebut the employee's evidence. If the employee is not called to testify on his/her own behalf, the District shall have the right to call the employee as part of the District's rebuttal to the employee's evidence.

The hearing officer at any time may also inquire of the witnesses. The parties will then proceed to closing arguments

7. Neither the Board nor the hearing officer shall be bound by technical rules of evidence. Informality in the hearing shall not invalidate any order or decision made or approved by the hearing officer or the Board. Evidence may be admitted if it is the kind of evidence upon which reasonable people may rely in the conduct of serious affairs.
8. If the employee, or a representative of the employee, fails to object at the hearing that the hearing procedures are not being properly followed, the objections shall be deemed waived.
9. The hearing officer shall issue prepare a proposed decision, including findings of fact, conclusions, and an advisory recommendation to the Board of Trustees. A copy of the hearing officer's proposed decision shall be furnished to each party when it is filed with the Board.
10. The Board shall adopt, modify, or reject the proposed decision in writing. If the Board rejects the hearing officer's proposed decision, the Board may decide the case upon the record, with or without the taking of additional evidence, or the Board may refer the case to the same or another hearing officer to take additional evidence.
11. If the Board either modifies or rejects the proposed decision, the employee's personnel records shall be adjusted to reflect the Board's decision.
12. The decision of the Board shall be final and shall also be sent to the employee or his/her designated representative.
13. All expenses of the hearing (which shall not include the employee's legal fees and costs), including the cost of the hearing officer and rental, if charged, of the facility for the hearing shall be paid from District funds. If requested by the hearing officer, a legal advisor shall be retained to advise the hearing officer at the expense of the District.

Confidentiality

All information and proceedings regarding any of the above actions or proposed action shall be kept as confidential as possible by all parties to the proceeding. The notification to the employee and any employee's representative set forth above shall not be considered a violation of the terms of this paragraph.