

AP 7362 Discipline and Dismissals - Classified Administrators and Confidential 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.

For purposes of this policy and related procedures, permanent Classified Administrators and Confidential employees is an employee that has completed 12 months service in their current Classified Administrator or Confidential role.

Grounds for Discipline

A permanent Classified Administrator or Confidential employee shall be subject to disciplinary action, including, but not limited to, oral reprimand, written reprimand, reduction in pay, demotion, suspension, or dismissal, for any of the grounds listed below. This list is not intended to be exhaustive, and the Board reserves the right to discipline classified supervisory/confidential management employees for any conduct or situations which the Board finds to adversely affect the District and the students thereof.

1. Immoral or unprofessional conduct.
2. Dishonesty.
3. Fraud in securing employment or making a false statement on an application for employment.
4. Intentional falsification and/or alteration of District information or record (including, but not limited to, timekeeping records).
5. Unsatisfactory performance.
6. Incompetence, including but not limited to the inability to comply with minimum standard of an employee's position for a significant period of time.
7. Inefficiency or inexcusable neglect of duty, including but not limited to the failure to perform duties required of an employee in the position and the failure to possess required licenses or failure to pass required tests for the position.
8. Evident unfitness for service.
9. Physical or mental condition that makes him or her unfit to instruct or associate with students.
10. Persistent violation of, or refusal to obey, the school laws of the state or reasonable regulations prescribed for the government of the community colleges by the board of governors or by the governing board of the community college district employing him or her.
11. Willful disobedience and insubordination, a willful failure to submit to duly appointed and acting supervision, conform to duly established orders or directions of or insulting or demeaning the authority of a supervisor or manager.

12. Possession, distributing, sale, use, or being impaired by or under the influence of alcohol or illegal drugs or narcotics while on duty which could impact the ability to do the job or while operating a vehicle leased or owned by the District.
13. Excessive absenteeism.
14. Unexcused absence without leave.
15. Abuse or misuse of sick leave, including, but not limited to, working for another employer or business or developing or working for an employee's own business while on District-paid sick leave.
16. The conviction of a misdemeanor, felony, or any crime 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. A plea or verdict of guilty, or a conviction showing a plea of *nolo contendere* made to charge of a felony or any offense involving moral turpitude, is deemed to be conviction within the meaning of this Section.
17. Discourteous treatment of the public or other employees.
18. Improper or unauthorized use or removal of District or personal property.
19. Refusal to subscribe to any oath or affirmation which is required by law in connection with District employment.
20. 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.
21. Inattention to duty, tardiness, indolence, carelessness or negligence in the care and handling of District property.
22. Mental or physical impairment which renders the employee unable to perform the essential functions of the job without reasonable accommodation or without presenting a direct threat to the health and safety of self or others.
23. 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 or her official duties.
24. 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 case 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.
25. Engaging in acts or conduct which constitute a conflict of interest between the District and the employee.
26. Willful violation of policies, procedures, and other rules which may be prescribed by the District, college or departments.
27. Actual or threatened physical violence toward the public or other employees.
28. Violating safety or health rules or practices or engaging in conduct that creates a safety hazard.
29. Sexual harassment or other unlawful harassment of a fellow employee.
30. Bringing on District property dangerous or unauthorized materials such as explosives, firearms, or other similar items.

Probationary Period

The probationary period for Classified Administrator and Confidential 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.