

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION**

The Governing Board expects all employees to perform their jobs satisfactorily and to exhibit professional and appropriate conduct. A classified employee may be disciplined for unprofessional conduct or unsatisfactory performance in accordance with law or any applicable collective bargaining agreement, Board policy, or administrative regulation.

- (cf. 1312.1 - Complaints Concerning District Employees)*
- (cf. 4000 - Concepts and Roles)*
- (cf. 4112.5/4212.5/4312.5 - Criminal Record Check)*
- (cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*
- (cf. 4119.24/4219.24/4319.24 - Maintaining Appropriate Adult-Student Interactions)*
- (cf. 4119.21/4219.21/4319.21 - Professional Standards)*
- (cf. 4141/4241 - Collective Bargaining Agreement)*
- (cf. 4200 - Classified Personnel)*

Disciplinary actions shall be based on the particular facts and circumstances involved and the severity of the employee's conduct or performance. The Superintendent or designee shall ensure that disciplinary actions are taken in a consistent, nondiscriminatory manner and are appropriately documented.

- (cf. 4030 - Nondiscrimination in Employment)*
- (cf. 4112.6/4212.6/4312.6 - Personnel Files)*
- (cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)*

Disciplinary actions may include, but are not limited to, verbal and written warnings, involuntary reassignment, demotion, suspension without pay, reduction of pay step in class, compulsory leave, and dismissal.

A probationary classified employee may be dismissed by the Superintendent or designee at any time prior to the expiration of the probationary period.

- (cf. 4216 - Probationary/Permanent Status)*

Permanent classified employees shall be subject to disciplinary action only for cause as specified in the accompanying administrative regulation. (Education Code 45113)

**Procedures for Serious Disciplinary Proceedings**

The Superintendent or designee shall develop disciplinary procedures for use when dismissal, suspension, demotion, involuntary reassignment, or other serious disciplinary action is contemplated against an employee. The procedures for such discipline shall include an opportunity for an employee for whom any such disciplinary action is recommended to meet with, or respond in writing to, a designated district official ("Skelly officer") who will determine whether the recommended discipline should proceed further or be modified or withdrawn.

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION** (continued)

After meeting with the employee or considering the employee's written response, if the Skelly officer determines that the recommended discipline should proceed, the Superintendent or designee shall send the employee a notice of the recommended disciplinary action, a statement of charges, and the results of the Skelly hearing. The notice shall include a statement advising the employee of the right to request a Board hearing on the matter.

If the employee fails to request a hearing within the time specified in the notice, the employee is deemed to have waived the right to do so, and the Board may order the recommended disciplinary action into effect immediately.

If a timely request is submitted, a hearing shall be conducted by the Board. (Education Code 45113, 45312)

The hearing shall be held at the earliest convenient date, taking into consideration the established schedule of the Board and the availability of legal counsel and witnesses. The employee shall be notified of the time and place of the hearing.

The hearing shall be held in closed session, unless the employee requests that the matter be heard in an open session meeting. (Government Code 54957)

*(cf. 9321 - Closed Session)*

The employee shall be entitled to appear personally, produce evidence, and be represented by legal counsel.

The Board may use the services of its legal counsel in ruling upon procedural questions, objections to evidence, and issues of law. The Board may review and consider the records of any prior personnel action proceedings against the employee in which a disciplinary action was ultimately sustained and any records contained in the employee's personnel files and introduced into evidence at the hearing. The Board shall not be bound by rules of evidence used in California courts. Informality in any such hearing shall not invalidate any order or decision made by the Board.

At any time before a matter is submitted to the Board for decision, the Superintendent or designee may, with the consent of the Board, serve on the employee and file with the Board an amended or supplemental recommendation of disciplinary action. If the amended or supplemental recommendation includes new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare a defense. Any new causes or allegations shall be deemed controverted and any objections to the amended or supplemental causes or allegations may be made orally at the hearing and shall be noted on the record.

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION** (continued)

Following the hearing or, if the employee has not requested a hearing, after reviewing the Superintendent or designee's recommendation for disciplinary action, the Board shall affirm, modify, or reject the recommended disciplinary action. The decision of the Board shall be in writing and shall contain findings of fact and the disciplinary action approved, if any. The decision of the Board shall be final.

Within 10 working days of the Board's final decision, a copy of the decision shall be delivered to the employee and/or designated representative personally or by registered mail.

In lieu of holding a Board hearing on the sufficiency of the causes for disciplinary action, the Board may delegate its authority to an impartial third-party hearing officer. When the matter is heard by a third-party hearing officer, the Board retains the authority to review the determination and to adopt or reject the recommended decision. (Education Code 45113)

If the matter involves an allegation of egregious misconduct as defined in Education Code 44932 and involves a minor, the matter shall be referred to an administrative law judge to determine whether sufficient cause exists for disciplinary action against the employee. In such cases, the ruling of the administrative law judge shall be binding on the district and the employee. (Education Code 45113)

*Legal Reference:*

EDUCATION CODE

35161 Delegation of powers and duties

44009 Conviction of specified crimes

44010 Sex offense

44011 "Controlled substance offense" defined

44031 Personnel file

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

44990-44994 Testimony of minor witnesses at dismissal or suspension hearings

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

45124 Dismissal of sexual psychopath

45202 Transfer of accumulated sick leave and other benefits following dismissal

45240-45320 Merit system, classified employees

CODE OF CIVIL PROCEDURE

1286.2 Grounds for vacating decision of arbitrator

GOVERNMENT CODE

11500-11529 Administrative adjudication

12900-12996 Fair Employment and Housing Act

54957 Brown Act open meeting laws; closed session

HEALTH AND SAFETY CODE

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION** (continued)

*11054 Schedule I; substances included*

*11055 Schedule II, substances included*

*11056 Schedule III, substances included*

*11357-11361 Marijuana*

*11363 Peyote*

*11364 Opium*

*11370.1 Possession of controlled substances with a firearm*

PENAL CODE

*187 Murder*

*667.5 Sex offenders*

*830.32 Peace officers employed by district*

*1192.7 Violent or serious felony*

*11165.2-11165.6 Child abuse or neglect, definitions*

VEHICLE CODE

*1808.8 School bus drivers; dismissal for safety-related cause*

UNITED STATES CODE, TITLE 42

*12101-12213 Americans with Disabilities Act*

COURT DECISIONS

*California School Employees Association v. Bonita Unified School District, (2008) No. B200141*

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

*CSEA v. Foothill Community College District, (1975) 52 Cal.App. 3rd 150, 155-156, 124 Cal. Rptr 830*

*Skelly v. State Personnel Board (1975) 15 Cal. 3d 194*

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION**

**Causes for Disciplinary Action**

A permanent classified employee may be subject to suspension, demotion, involuntary reassignment, or dismissal for one or more of the following causes:

1. Immoral conduct, including, but not limited to, egregious misconduct that is the basis for a sex offense as defined in Education Code 44010, a controlled substance offense as defined in Education Code 44011, or child abuse and neglect as described in Penal Code 11165.2-11165.6

*(cf. 4112.5/4212.5/4312.5 - Criminal Record Check)*

*(cf. 4119.24/4219.24/4319.24 - Maintaining Appropriate Adult-Student Interactions)*

*(cf. 5141.4 - Child Abuse Prevention and Reporting)*

2. Conduct that constitutes a violent or serious felony as defined in Penal Code 667.5(c) or 1192.7(c)

3. Unlawful discrimination, including harassment, against any student or other employee

*(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*

*(cf. 5145.3 - Nondiscrimination/Harassment)*

*(cf. 5145.7 - Sexual Harassment)*

4. Violation of or refusal to obey state or federal law or regulation, Board policy, or district or school procedure

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

6. Unsatisfactory performance

7. Unprofessional conduct

8. Dishonesty

9. Neglect of duty or absence without leave

10. Insubordination

11. Use of alcohol or a controlled substance while on duty or in such close time proximity thereto as to affect the employee's performance

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)**

*(cf. 4020 - Drug and Alcohol-Free Workplace)*  
*(cf. 4112.41/4212.41/4312.41 - Employee Drug Testing)*  
*(cf. 4112.42/4212.42/4312.42 - Drug and Alcohol Testing for School Bus Drivers)*  
*(cf. 4159/4259/4359 - Employee Assistance Program)*

12. Destruction or misuse of district property

*(cf. 4040 - Employee Use of Technology)*

13. Failure to fulfill any ongoing condition of employment including, but not limited to, maintenance of 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

*(cf. 4112.4/4212.4/4312.4 - Health Examinations)*  
*(cf. 4212 - Appointment and Conditions of Employment)*

14. A physical or mental condition which precludes the employee from the proper performance of duties and responsibilities as determined by competent medical authority, except as otherwise provided by a contract or by law

*(cf. 4030 - Nondiscrimination in Employment)*  
*(cf. 4032 - Reasonable Accommodation)*

15. Retaliation against any person who, in good faith, reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any information relative to an actual or suspected violation of state or federal law occurring on or directly related to the job

*(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)*

16. Violation of Education Code 45303 or Government Code 1028 (advocacy of communism)

17. Any other misconduct which is of such nature that it causes discredit or injury to the district or the employee's position

An employee shall not be suspended, disciplined, reassigned, transferred, dismissed, or otherwise retaliated against solely for acting to protect a student, or for refusing to infringe on a student's protected conduct, when that student is exercising free speech or press rights pursuant to Education Code 48907 or 48950. (Education Code 48907, 48950)

*(cf. 5145.2 - Freedom of Speech/Expression)*

No disciplinary action shall be taken for any cause which arose before the employee became permanent, nor for any cause which arose more than two years before the date of the filing of the notice of cause unless this cause was concealed or not disclosed by the employee when it could be

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)**

reasonably assumed that the employee would have disclosed the facts to the district. (Education Code 45113)

*(cf. 4216 - Probationary/Permanent Status)*

**Initiation and Notification of Charges**

The Superintendent or designee shall provide notice to the employee of a recommendation for discipline, which includes the charges and materials upon which the recommendation is based. The notification shall identify an impartial district official ("Skelly officer") with whom the employee may meet at a specified time and place or to whom the employee may provide a written response to the recommendation of discipline. After meeting with the employee or considering any response from the employee, the Skelly officer shall recommend to the Superintendent or designee whether to proceed with the recommendation for discipline.

The Superintendent or designee shall file any final recommendation for a disciplinary action in writing with the Governing 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 notice shall, in ordinary and concise language, inform the employee of the specific charge(s) or cause(s) for the disciplinary action, the specific acts and omissions upon which the action is based, and, if applicable, the district rule or regulation that the employee has allegedly violated. In addition, the notice shall include the employee's right to a hearing on those charges, the time within which the hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper which the employee may sign and file to deny the charges and request a hearing. (Education Code 45113, 45116)

*(cf. 4112.9/4212.9/4312.9 - Employee Notifications)*

**Request for Board Hearing**

Within the time specified in the notice of the recommendation of disciplinary action, the employee may request a hearing on the charges by signing and filing the card or paper included with the notice. (Education Code 45113)

Any other written document signed and appropriately filed within the specified time limit by the employee shall constitute a sufficient notice of the request for a hearing. The request shall be delivered to the office of the Superintendent or designee during normal work hours of that office. If mailed to the office of the Superintendent or designee, it must be received or postmarked no later than the time limit specified by the district. In cases where an order of suspension without pay has been issued in conjunction with a recommendation of dismissal, any request for a hearing

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)**

on the dismissal shall also constitute a request to hear the suspension order, and the necessity of the suspension order shall be an issue in the hearing.

**Employment Status Pending a Hearing**

A classified employee against whom a recommendation of disciplinary action has been issued shall remain on active duty status pending any hearing on the charges, unless the Superintendent or designee determines that the employee's continuance in active duty would present an unreasonable risk of harm to students, staff, or property. The Superintendent or designee may, in writing, order the employee immediately suspended from duty without pay—and shall state the reasons that the suspension is deemed necessary. The suspension order shall be served upon the employee either personally or by registered or certified mail, return receipt requested, immediately after issuance.

**Compulsory Leave of Absence**

Upon being informed by law enforcement that a classified employee has been charged with a "mandatory leave of absence offense," the Superintendent or designee shall immediately place the employee on a leave of absence. A mandatory leave of absence offense includes:

1. Any sex offense as defined in Education Code 44010
2. Violation or attempted violation of Penal Code 187 (murder or attempted murder)
3. Any offense involving the unlawful sale, use, or exchange to minors of controlled substances as listed in Health and Safety Code 11054, 11055, and 11056

The Superintendent or designee may place on an immediate compulsory leave of absence a classified employee who is charged with an "optional leave of absence offense," defined as a controlled substance offense specified in Education Code 44011 and Health and Safety Code 11357-11361, 11363, 11364, and 11370.1 except as it relates to marijuana, mescaline, peyote, or tetrahydrocannabinols.

An employee's compulsory leave for a mandatory or optional leave of absence offense may extend for not more than 10 days after the entry of judgment in the criminal proceedings. However, the compulsory leave may be extended if the Board gives notice, within 10 days after the entry of judgment in the proceedings, that the employee will be dismissed within 30 days from the date of service of the notice unless the employee demands a hearing on the dismissal.