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Administrative Regulation

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION

Application of Regulation

This Administrative Regulation is applicable to all classified administrators, confidential classified employees, and all other unrepresented classified employees of the district. Notwithstanding anything therein, the provisions of Administrative Regulations 7365 and 7367 shall have no application to classified administrators, confidential classified employees, and/or any other unrepresented classified employees of the district.

Termination of Probationary Employment

At any time prior to the expiration of the probationary period, the Governing Board may, at its discretion, dismiss a probationary classified administrator, confidential classified employee, and/or any other unrepresented classified employee of the district from district employment. A probationary employee shall not be entitled to a hearing.

Involuntary Suspension Without Pay, Demotion, Reduction of Pay Step in Class, or Dismissal of Permanent Classified Administrators, Confidential Classified Employees, and All Other Unrepresented Classified Employees of the District

Permanent classified administrators, confidential classified employees, and all other unrepresented classified employees of the district shall be subject to disciplinary action only for cause. For purposes of this Administrative Regulation, the term “disciplinary action” shall mean: suspension without pay, demotion to a lower class in which qualified, reduction of pay step within class, and/or dismissal. The Board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

1. Causes

In addition to any disqualifying or actionable causes otherwise provided for by statute or by policy or regulation of this district, each of the following constitutes cause for disciplinary action against a permanent classified administrator, confidential classified employee, and/or any other unrepresented classified employee of the district:

- a. Falsifying any information supplied to the district, including, but not limited to, information supplied on application forms, employment records, or any other district records.
- b. Incompetency.

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- c. Inefficiency.
- d. Unsatisfactory performance.
- e. Neglect of duty.
- f. Insubordination.
- g. Dishonesty.
- h. Unprofessional conduct
- i. Drinking alcoholic beverages while on duty or in such close time proximity thereto as to cause any detrimental effect upon the employee or upon employees/students associated with him/her.
- j. The unlawful use of controlled substances.
- k. Conviction of a felony, conviction of any sex offense made relevant by provisions of law, or conviction of misdemeanor which is of such a nature as to adversely affect the employee's ability to perform the duties and responsibilities of his/her position. A plea or verdict of guilty, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.
- l. Absence without leave.
- m. Immoral conduct.
- n. Discourteous treatment of the public, students, or other employees.
- o. Improper political activity.
- p. Willful disobedience.
- q. Misuse of district property.
- r. Violation of district, Board, or departmental rule, policy, or procedure.

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- s. Failure to possess or keep in effect 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.
- t. Refusal to take and subscribe any oath or affirmation which is required by law in connection with his/her employment.
- u. Physical or mental disability, which disability precludes the employee from the proper performance of his/her duties and responsibilities, with or without reasonable accommodation, except as otherwise provided by law.
- v. Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, sex, sexual orientation, or age against the public, students, or other employees while acting in the capacity of a district employee.
- w. Unlawful retaliation against any other district officer or employee, student, or member of the public who, in good faith, reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any information relative to actual or suspected violation of any law of this State or the United States occurring on the job or directly related thereto.
- x. Misuse of sick leave, including excessive or patterned absenteeism or tardiness.
- y. Sexual harassment or abuse of student, other employees, or members of the public.
- z. Violation of federal, state, or local law or regulation.
- aa. Any other failure of good behavior during duty hours or related to district employment which is of such nature that it causes discredit to the district or his/her employment.

Except as provided by law, no disciplinary action shall be taken for any cause which arose prior to the employee's becoming permanent, nor for any cause which arose more than two years preceding the date of the filing of the notice of cause unless such cause was concealed or not disclosed by such employee

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when it could reasonably be assumed that the employee should have disclosed the facts to the district.

2. Initiation and Notification of Charges

The district Superintendent or designee may initiate a disciplinary action as defined herein against a permanent classified administrator, confidential classified employee, and/or any other unrepresented classified employee of the district.

In all cases involving a disciplinary action, the person initiating said action shall file a written recommendation of disciplinary action with the 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 recommendation shall include:

- a. A statement of the nature of the disciplinary action (suspension without pay, demotion, reduction of pay step in class, or dismissal).
- b. A statement of the cause or causes therefor as set forth above.
- c. A statement of the specific acts or omissions upon which the causes are based. If violation of rule, policy, or regulation of the district is alleged, the rule, policy, or regulation violated shall be set forth in the recommendation.
- d. A statement of the employee's right to a hearing the recommendation and the manner and time within which his/her request for hearing must be filed.
- e. A card or paper, the signing and filing of which shall constitute a demand for hearing and a denial of all charges.

3. Employment Status Pending Hearing or Waiver

Except as provided in this Administrative Regulation, any employee against whom a recommendation of disciplinary action has been issued shall remain on active duty status and shall be responsible for fulfilling the duties of the position pending his/her hearing or waiver thereof.

In cases where authorized by the California Education Code or other provisions of California law, the Superintendent or designee may suspend a classified

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administrator, confidential classified employee, and/or any other unrepresented classified employee of the district without pay pending the administering of disciplinary procedures pursuant to these Administrative Regulations.

Except in cases of emergency where the employee must be removed from the premises immediately, at least five calendar days prior to the effective date of any order of suspension without pay issued in conjunction with any recommendation of disciplinary action involving dismissal, the Superintendent or designee shall give the employee written notice of the proposed recommendation of disciplinary action of dismissal including notice that immediate suspension without pay is being considered, the reasons for the proposed dismissal action and for the proposed immediate suspension without pay, materials upon which the proposed action is based, and the right to respond either orally or in writing to the Superintendent or designee prior to the issuance of the final recommendation and order.

4. Administrative Leave With Pay

The Superintendent or designee may place a permanent classified administrator, confidential classified employee, and/or any other unrepresented classified employee of the district on administrative leave with pay during any period in which the district is administering disciplinary procedures pursuant to this Administrative Regulation with respect to the employee or when the district is engaged in an investigation regarding the employee's conduct which may or does give rise to implementation of disciplinary action.

5. Right to Hearing

The employee may, within five calendar days after receiving the recommendation of disciplinary action described above, request a hearing by signing and filing the card or paper included with the recommendation. Any other written document signed and appropriately filed within the specified time limit by the employee shall constitute a sufficient request for hearing. A request for hearing is filed only by delivering the request to the office of the district Superintendent or designee during normal work hours of that office. A request for hearing may be mailed to the office of the Superintendent or designee but must be received or postmarked no later than the time limit stated herein. In cases where an order of suspension without pay has been issued in conjunction with a recommendation of disciplinary action involving dismissal, any request for hearing on the recommendation shall also constitute a request for hearing on the suspension order, and the necessity of the order shall be an issue at the hearing.

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If the employee against whom a recommendation of disciplinary action has been filed fails to file a request for hearing within the time specified in these rules, the employee shall be deemed to have waived his/her right to a hearing, and the Board may order the recommended disciplinary action into effect immediately.

6. Amended/Supplemental Charges

At any time before a recommendation is finally submitted to the Board or to a hearing officer for decision, the district may, with the consent of the Board or hearing officer, serve on the employee and file with the Board an amended or supplemental recommendation of disciplinary action.

If the amended or supplemental recommendation presents new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare his/her defense thereto.

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 in the record.

7. Hearing Procedures

- a. The hearing shall be held at the earliest convenient date, taking into consideration the established schedule of the Board or hearing officer and the availability of counsel and witnesses. The parties shall be notified of the time and place of the hearing. The employee shall be entitled to appear personally, produce evidence, and have counsel and, if demand is made therefor when the Board is hearing the matter, a public hearing. The complainant may also be represented by counsel. The statutes entitled "Administrative Adjudication" commencing at Section 11500 of the Government Code shall not be applicable to any such hearing before the Board or a hearing officer. Neither the Board nor a hearing officer shall be bound by rules of evidence used in California courts.

Informality in any such hearing shall not invalidate any order or decision made or approved by the hearing officer or the Board.

- b. All hearings shall be heard by a hearing officer except in those cases where the Board determines to hear the matter itself. In any case in which the Board hears the matter, the Board may utilize the services of its counsel or a hearing officer in ruling upon procedural questions, objections

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to evidence, and issues of law. If the matter is heard by the Board, it shall affirm, modify or revoke the recommended disciplinary action.

- c. If the matter is heard by a hearing officer, he/she shall prepare a proposed decision in such form that it may be adopted by the Board as the decision in the case. A copy of the proposed decision shall be received and filed by the Board and furnished to each party within 10 days after the proposed decision is filed by the Board. The Board may:
 - 1) Adopt the proposed decision in its entirety.
 - 2) Reduce the disciplinary action set forth therein and adopt the balance of the proposed decision.
 - 3) Reject a proposed reduction in disciplinary action, approve the disciplinary action sought by the district or any lesser penalty, and adopt the balance of the proposed decision.
 - 4) Reject the proposed decision in its entirety.
- d. If the Board rejects the proposed decision in its entirety, each party shall be notified of such action and the Board may decide the case upon the record including the transcript, with or without the taking of additional evidence, or refer the case to the same or another hearing officer to take additional evidence. If the case is so assigned to a hearing officer, he/she shall prepare a proposed decision as provided above, based upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of such proposed decision shall be furnished to each party within 10 days after the proposed decision is filed by the Board.
- e. In arriving at a decision or a proposed decision on the propriety of the proposed disciplinary action, the Board or the hearing officer may consider the records of any prior disciplinary action proceedings against the employee in which a disciplinary action was ultimately sustained and any records contained in the employee's personnel files if such records were introduced into evidence at the hearing.
- f. The decision of the Board shall be in writing and shall contain findings of fact and the disciplinary action approved, if any. The findings may be stated in the language of the pleadings or with reference thereto.

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8. Hearing Decision

The decision of the Board shall be certified to the district and shall be enforced and followed by the district. A copy of the decision shall be delivered to the employee or his/her designated representative personally or by certified mail. The decision of the Board shall be final.

Adopted: 2/18/03

Renumbered from Administrative Regulation 4218.2: 02/02/15