

CHAPTER XI
DISCIPLINARY ACTIONS, APPEALS, AND HEARINGS

11.1 CAUSES FOR SUSPENSION, DEMOTION, DISMISSAL

Persons employed in the classified service may be dismissed, demoted, suspended, or otherwise disciplined for any of the following items which the Commission has determined to be reasonable causes depending upon the circumstances of each case:

1. Dishonesty, as defined in Rule 4.2.
2. Immoral or disgraceful conduct as defined in Rule 4.2.
3. Reporting to work with alcoholic beverage, marijuana, or controlled substance in the employee's system; possessing or using any amount of alcoholic beverage, marijuana, or controlled substance during work hours; conducting work duties impaired as a result of either the on or off-duty use of alcoholic beverage, marijuana, or controlled substance; being under the influence of any alcoholic beverage, marijuana, or controlled substance during work hours; failing to notify the employee's supervisor or school district physician when taking any medication(s) which may interfere with the safe and effective performance of duties or operation of district equipment.
4. Consecutive performance ratings of "Unsatisfactory" or "Needs to Improve" in a factor or a group of factors in which the employee was rated, provided the ratings are supported by documentation on which they are based.
5. Political or private business activities engaged in-by an employee during his/her assigned hours of employment.
6. Conviction of a serious crime by a court of law, or a record of one or more convictions which indicate that the person is a poor employment risk, or an overall criminal record indicating he/she is unsuited for working with or around students or in the operating unit in which the employee is assigned.
7. A record of frequent absences or a pattern of casual absences, which results in a disruption of service by and/or loss of efficiency in the operating unit in which the employee is assigned.
8. Incompetency, inefficiency, insubordination, inattention to or dereliction of duty.
9. Discourteous treatment of, or illegal, unwelcome, or inappropriate conduct or behavior toward the public, students, or fellow employees, or any other willful failure of good conduct tending to injure the public service.

10. Any willful or persistent violation of the provisions of the Education Code or Board of Education, Personnel Commission, or administration approved policies, rules, regulations, procedures, or established practices.
11. Use of fraud, deception, misrepresentation, misstatement or omission of material fact(s), whether intentional, unintentional, or negligently, in obtaining employment, or a place on an employment eligibility list.
12. Causes specified in Education Code Section 45303, 44010, 44011, and 45124.
13. Evidence of the advocacy of the overthrow or disruption of governments of the United States, the State of California, or other public bodies, by force, violence, or unlawful means.
14. Violation of state or federal law or regulation, or Board of Education policy regarding the prohibition of unlawful discrimination in employment practices or toward individuals or groups.
15. Failure to meet job requirements such as loss of licenses or expiration of required certificates or licenses.

References: California Education Code: 45302, 45303

11.2 CHARGES BY THE PUBLIC

The public, for proper cause, may file complaints against an employee in the classified service by filing written charges with the Board of Education's authorized agent. The authorized agent may make such investigation and shall take such action as it deems proper. If its decision results in suspension, demotion, or dismissal, the procedures set forth in Rule 11.5 shall be followed.

11.3 DISMISSAL DURING PROBATIONARY PERIOD

The Board of Education may dismiss an employee at any time during his period of probation, but the Commission must be notified in writing within seven days from the date of dismissal.

11.4 PROCEDURE TO BE FOLLOWED IN SUSPENSION, DEMOTION OR DISMISSAL

A. ACTION BY THE BOARD OF EDUCATION

The Board of Education or its authorized agent may suspend an employee for not more than 30 days without pay or may dismiss, demote, or take other disciplinary action for any of the items enumerated in Rule 11.1.

Reference: California Education Code 45304

B. FILING OF WRITTEN CHARGES

The Board of Education or its authorized agent shall file written charges in clear and concise language with the Commission within seven days following the effective date of disciplinary action. The Executive Officer shall, within ten days of the date of disciplinary action, furnish the employee with a copy of the charges filed against him/her. The intent of this provision shall be deemed to have been carried out if a certified letter has been mailed to the last mailing address given by employee to the district on official address change forms provided by the district.

Reference: California Education Code: 45304

C. IMMEDIATE SUSPENSION

Any employee whose services are unsatisfactory for any of the items enumerated in Rule 11.1 may be immediately suspended.

Reference: California Education Code 45304

11.5 APPEAL OF DISCIPLINARY ACTION

A. An appeal under Education Code Section 45305 can only be made on the following grounds:

1. That the procedures set forth in these rules have not been followed.
2. That the removal was made because of affiliations, political or religious beliefs or opinions, race, color, or marital status.
3. That the charges made do not constitute sufficient cause for the action taken.
4. That the action taken was not in accord with the facts.
5. That there has been an abuse of discretion.

Reference: California Education Code: 45305, 45306

B. TIME AND CONDUCT OF HEARING

An appeal shall be presented to the Personnel Commission at the next regularly scheduled meeting. The Commission shall coordinate the hearing of said charges within a reasonable length of time from the receipt of the appeal. The investigation and hearing shall be confined to the reasons for action as charged by the Board of Education or its assignee and the relevant defenses set forth in the appeal and answer. The Board of Education or its assignee shall first present evidence in support of the charges to the

Commission. The appealing employee or his/her representative shall then have the right to present evidence.

Witnesses desired by either side shall be subpoenaed by the Commission as provided in the Act, but requests for subpoenas must be filed with the Commission at least five working days prior to the date of the hearing. A list of witnesses shall be submitted to the Commission at least five working days prior to the date of the hearing. At the conclusion of the hearing, the matter shall be given consideration, either in open or executive session after which a decision shall be made. The accused employee may waive his rights to a public hearing.

Testimony of all witnesses shall be presented orally at the hearing. If, in the opinion of the Commission, a witness has good and sufficient reason for being unable to be present, written testimony will be accepted under the following conditions:

1. Such evidence must be submitted by sworn affidavit of the witness. The affidavit shall be confined to a statement of facts bearing on the case and within the knowledge of the witness, and shall not contain any conclusions of the witness, except that a witness who qualifies as an expert may express his opinion based upon the facts which he has recited.
2. Copies of all such affidavits must be filed with the Commission at least three days prior to the date of the hearing, and may be inspected by the other party to the hearing, who shall be notified of the filing of such affidavits.
3. The Commission may reject any such affidavit submitted which fails to comply with any of the foregoing conditions.

Reference: California Education Code 45311

C. TECHNICAL RULES OF EVIDENCE NOT FOLLOWED

All hearings before the Commission shall be governed by the Rules and Regulations of the Classified Service. Neither the Commission nor any Commissioner, nor the Personnel Commission Executive Officer nor other authorized agent of the Commission shall be bound by the technical rules of evidence. No informality in any proceeding or in the manner of taking testimony before the Commission or any Commissioner, or the Personnel Commission Executive Officer or any authorized agent of the Board shall invalidate any order, division or rule or regulation made, approved, or confirmed by the Commission.

D. HEARING OFFICER'S REPORT

Whenever the Commission appoints a hearing officer to conduct an appeal hearing, the hearing officer shall submit a written report of findings and recommendations to the Commission within a reasonable period of time after the hearing is completed. Soon after the receipt and review of the hearing officer's report of findings and

recommendations, the Commission shall provide a copy of such hearing officer's report to the appealing employee and to his/her designee and to the representative of the Board of Education. Before making a final decision regarding the hearing officer's recommendations, the Commission shall provide both parties an opportunity to address the Commission in open or closed session regarding the hearing officer's recommendations.

Reference: California Education Code 45312

E. FINDINGS AND JUDGMENT OF THE COMMISSION

The findings and judgment of the Commission, arrived at by majority action, shall be rendered in written form within 30 days from receipt of the hearing officer's report. Copies shall be sent to Board of Education and the employee concerned and or his/her representative

F. FAILURE TO APPEAL OR ANSWER

If the accused employee fails to appeal within the time provided herein, or if the accused employee files written notice of appeal, but does not file his written answer as herein provided, the order of disciplinary action shall be final without any action of the Commission.

11.6 COMPENSATION UPON SUSTAINING THE APPEAL

REINSTATEMENT AND COMPENSATION UPON SUSTAINING THE EMPLOYEE. If the Commission sustains the employee, it may order all or part of his full compensation from the time of suspension, demotion, or dismissal, and it shall order his reinstatement upon such terms and conditions as it may determine appropriate. The Commission may modify the disciplinary action, but may not make the action more stringent than that approved by the Board. In addition, the Commission may direct such other action as it may find necessary to effect a just settlement of the appeal, including, but not limited to, compensation for all or part of the legitimate expenses incurred in pursuit of the appeal, seniority credit for off-duty time pending reinstatement, transfer or change of location of the employee, and expunction from the employee's personnel record of disciplinary actions, cause, and charges which were not sustained by the Commission. Upon receipt of the Commission's written decision the Board shall forthwith comply with the provisions thereof. When the Board has fully complied with the Commission's decision it shall so notify the Commission in writing.

Reference: California Education Code 45307

11.7 DISMISSED OR CONVICTED EMPLOYEES NOT ELIGIBLE FOR RE-EMPLOYMENT

Any classified employee dismissed from employment with the district shall be removed forthwith from all eligibility lists and may not take examinations thereafter without specific consent of the Board of Education or designee.

11.8 APPLICANT, CANDIDATE OR ELIGIBLES DISQUALIFIED FROM PARTICIPATION IN EXAMINATIONS OR CERTIFICATION ON ELIGIBILITY LISTS

Any applicant, candidate or eligible, rejected, refused examination or certification, disqualified from an examination or removed from an eligibility list, shall be removed forthwith from all other eligibility lists and may not take examinations thereafter without specific consent of the Personnel Commission.