

Regulation 4218: Dismissal/Suspension/Disciplinary Action

Status: DRAFT

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Causes for Suspension or Dismissal

A certificated employee with permanent status may be suspended without pay or dismissed only for one or more of the following causes: (Education Code 44932)

1. Immoral conduct including, but not limited to, egregious misconduct that is the basis for a sex offense or controlled substance offense described in Education Code 44010 or 44011 or child abuse and neglect as described in Penal Code 11165.2-11165.6
2. Unprofessional conduct
3. Commission, aiding, or advocating the commission of acts of criminal syndicalism
4. Dishonesty
5. Unsatisfactory performance
6. Evident unfitness for service
7. Physical or mental condition unfitting the employee to instruct or associate with children
8. Persistent violation of or refusal to obey the school laws or reasonable regulations of the state or district
9. Conviction of a felony or of any crime involving moral turpitude
10. Violation of Education Code 51530 or Government Code 1028 prohibiting the advocacy or teaching of communism
11. Alcoholism or other drug abuse that makes the employee unfit to instruct or associate with children

An employee may be suspended or dismissed on grounds of unprofessional conduct consisting of acts or omissions not listed above if the charge specifies instances of behavior deemed to constitute unprofessional conduct. (Education Code 44933)

Suspension/Dismissal of Permanent Employees

When a permanent certificated employee is charged with one or more of the offenses specified in the section "Causes for Suspension or Dismissal" above, the following procedures shall apply:

1. The person preparing a written statement of charges that there is cause to suspend or dismiss an employee shall submit the signed statement to the Governing Board, or a written statement of charges shall be formulated by the Board that cause to suspend or dismiss the permanent employee exists (Education Code 44934, 44934.1)
2. The employee, upon receiving notice of the Board's intent to suspend or dismiss, may request a hearing on the matter. The hearing shall be conducted by the Commission on Professional Competence, except that any case involving only egregious misconduct shall be heard instead by an administrative law judge and, in any other case, the hearing may be conducted by an administrative law judge when both the district and the employee so stipulate. (Education Code 44943, 44944, 44944.05, 44944.1, 44944.3)
3. Except when the employee is charged solely with egregious misconduct, the district may amend the charges less than 90 days before the hearing only upon showing of good cause and upon approval of the administrative law judge. (Education Code 44934)
4. The employee shall be suspended or dismissed when the Commission on Professional Competence or administrative law judge has issued its decision upholding supporting suspension or dismissal or, if the employee did not request a hearing, at the expiration of 30 days after service of the notice of intent to suspend or dismiss. (Education Code 44941, 44943, 44944)

The Superintendent or designee shall notify the Commission on Teacher Credentialing when the employment status of a certificated employee has been changed as a result of alleged misconduct or while an allegation of misconduct is pending. (Education Code 44030.5, 44242.5, 44940; 5 CCR 80303)

Suspension/Dismissal of Probationary Employees

The district may choose not to rehire probationary employees for the following school year without giving a statement of reasons, if proper notice is provided by March 15 of the employee's second, complete, consecutive year of employment. (Education Code 44929.21, 44929.23)

During the school year, a probationary employee who is in the first or second year of service may be dismissed only for one or more of the causes listed in Items #1-11 in the section "Causes for Suspension or Dismissal" above or for unsatisfactory performance determined pursuant to Education Code 44660-44665. (Education Code 44948.2, 44948.3)

Whenever a first- or second-year probationary employee is so charged, the following procedures shall apply for dismissing the employee during the school year: (Education Code 44948.3)

1. The Superintendent or designee shall give 30 days' prior written notice of dismissal, not later than March 15 in the case of second-year probationary employees. The notice shall include a statement of the reasons for the dismissal, notice of the opportunity to appeal, and, if the cause is unsatisfactory performance, a copy of the evaluation conducted pursuant to Education Code 44664.
2. Upon receipt of the notice of dismissal, the employee may be dismissed if no request for a hearing is submitted to the Board within 15 days.
3. If a hearing is requested, the district may arrange for the appointment of an administrative law judge to conduct the hearing and to recommend a decision to the Board.

A probationary employee may be suspended without pay for a specified period of time as an alternative to dismissal. (Education Code 44948.3)

Compulsory Leave of Absence

Upon being informed by law enforcement that a certificated 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: (Education Code 44830.1, 44940)

1. Any sex offense as defined in Education Code 44010
2. Violation or attempted violation of Penal Code 187 prohibiting 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 certificated 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. (Education Code 44940)

If an employee is charged with an offense that falls into both the mandatory and optional leave of absence definitions, the offense shall be treated as a mandatory leave of absence offense. (Education Code 44940)

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 a hearing is demanded. (Education Code 44940, 44940.5)

During the period of compulsory leave, the employee shall be compensated in accordance with Education Code 44940.5.

Upon receipt of telephone or electronic notification from the Department of Justice that a current temporary, substitute, or probationary employee serving before March 15 of the second probationary year has been convicted of a violent or serious felony, the Superintendent or designee shall immediately place the employee on leave without pay. Upon receipt of electronic notification of the conviction from the Department of Justice, such employee shall be automatically terminated and without regard to any other termination procedure. (Education Code 44830.1)

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
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
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
12. Destruction or misuse of district property
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
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
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
16. Violation of Education Code 45303 or Government Code 1028 prohibiting the advocacy or teaching 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

No disciplinary action shall be taken for any cause that arose before the employee became permanent, nor for any cause that 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 reasonably assumed that the employee would have disclosed the facts to the district. (Education Code 45113)

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 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)

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 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 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 Disciplinary Hearing

A classified employee against whom a recommendation for disciplinary action has been issued may remain on active duty or may be placed on paid leave pending a hearing on the charges. The employee shall not be suspended without pay, suspended or demoted with a reduction in pay, or dismissed pending the outcome of a timely requested hearing, except as specified below. (Education Code 45113)

However, the disciplinary action may be imposed prior to the decision if the Board, or an impartial third-party hearing officer provided pursuant to a collective bargaining agreement, finds by a preponderance of the evidence that at the time discipline was imposed, the employee (1) engaged in criminal misconduct, (2) engaged in misconduct that presents a risk of harm to students, staff, or property, or (3) committed habitual violations of the district's policies or regulations. Such finding(s) must be made at the conclusion of the Skelly review process. (Education Code 45113)

In such cases where the disciplinary action is imposed prior to the decision, the employee shall be given written notice of the disciplinary action and the findings made at the conclusion of the Skelly review process. Such written notice shall be served upon the employee personally.

In addition, the district may cease paying the employee if a decision has not been rendered by an impartial third-

party hearing officer, pursuant to a collective bargaining agreement, or the Board within 30 days of the date the hearing was requested. (Education Code 45113)

Compulsory Leave of Absence

Upon being informed 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: (Education Code 44940, 45304)

1. Any sex offense as defined in Education Code 44010
2. Violation or attempted violation of Penal Code 187, prohibiting 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 tetrahydrocannabinol. (Education Code 44940, 44940.5, 45304)

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. (Education Code 44940, 44940.5)
