

ARTICLE 18

DISCIPLINARY ACTION

18.1 Termination of Probationary Employment

At any time prior to the expiration of the probationary period, the Superintendent or designee may, at his/her discretion, dismiss a probationary classified employee from district employment. A probationary employee shall not be entitled to a hearing.

18.2 Involuntary Suspension without Pay, Demotion, Reduction of Pay Step in Class, or Dismissal of Permanent Classified Employees

Permanent classified employees shall be subject to personnel action (suspension without pay, demotion, reduction of pay step in class, dismissal) only for cause. The Board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

18.3 Causes for Taking Disciplinary Action

In addition to any disqualifying or actionable causes otherwise provided for by statute each of the following constitutes cause for disciplinary action against a permanent classified employee:

- 18.3.1 Falsifying any information supplied to the school district, including, but not limited to, information supplied on application forms, employment records, or any other school district records.
- 18.3.2 Incompetency.
- 18.3.3 Inefficiency.
- 18.3.4 Neglect of duty.
- 18.3.5 Insubordination.
- 18.3.6 Dishonesty.
- 18.3.7 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 associated with him/her.
- 18.3.8 Possessing or being under the influence of a controlled substance at work or away from work, or furnishing a controlled substance to a minor.
- 18.3.9 Conviction of a felony, conviction of any sex offense made relevant by provisions of law, or conviction of a 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 for this purpose.

- 18.3.10** Excessive absenteeism, tardiness or a pattern of abuse of leaves which adversely affects the employee's ability to perform the duties or responsibilities of his/her position. Approved use of vacation or use of available sick leave (as provided by Section 9.1 of this Agreement) shall not be subject to this provision of the article.
 - 18.3.11** Any other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the district or his/her employment.
 - 18.3.12** Discourteous treatment of the public, students, or other employees.
 - 18.3.13** Improper political activity including engaging in political activity during assigned hours of employment.
 - 18.3.14** Misuse of district property.
 - 18.3.15** Violation of district, Board or departmental rule, policy, or procedure.
 - 18.3.16** 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.
 - 18.3.17** Refusal to take and subscribe any oath or affirmation which is required by law in connection with his/her employment.
 - 18.3.18** A physical or mental disability which precludes the employee from the proper performance of his/her duties and responsibilities as determined by competent medical authority, except as otherwise provided by a contract or by law.
 - 18.3.19** Unlawful discrimination, including harassment on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age against the public or other employees while acting in the capacity of a district employee.
 - 18.3.20** Unlawful retaliation against any other district officer or employee 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 an actual or suspected violation of state or federal law occurring on the job or directly related thereto.
 - 18.3.21** Sleeping on the job.
 - 18.3.22** Indifference to the welfare of pupils.
 - 18.3.23** Offering of anything of value or offering any service in exchange for special treatment in connection with the employee's job or employment, or the accepting of anything of value or any service in exchange for granting any special treatment to another employee or to any member of the public.
 - 18.3.24** Theft.
- 18.3.3** No personnel 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 reasonably assumed that the employee would have disclosed the facts to the district.

18.4 Right to Representation:

An employee subject to disciplinary investigation and/or disciplinary action shall be entitled to CSEA representation and shall be notified of this right prior to beginning an investigatory meeting and/or in writing in the Notice of Recommended Disciplinary Action.

18.5 Initiation and Notification of Recommended Disciplinary Action

The Superintendent or designee may initiate disciplinary action as defined herein against a permanent classified employee. In all cases involving a personnel action, the person initiating the 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:

- 18.5.1** A statement of the nature of the personnel action (suspension without pay, demotion, reduction of pay step in class, or dismissal).
- 18.5.2** A statement of the cause or causes for the personnel action, as set forth above.
- 18.5.3** A statement of the specific acts or omissions upon which the causes are based. If a violation of rule, policy, or regulation of the district is alleged, the rule, policy, or regulation violated shall be stated in the recommendation.
- 18.5.4** A statement advising the employee of their right to an administrative review (hereinafter referred to as a Skelly Conference). Such statement shall identify the Administrator who will conduct the *Skelly Conference* and provide a contact number and/or email address which the employee may use to contact the Administrator to set a date and time for the *Skelly Conference*.
- 18.5.5** A statement advising the employee that he/she or his/her CSEA representative must make contact with the Administrator assigned to conduct the *Skelly Conference* within five (5) working days of receipt of the Charges.

18.6 Skelly Conference:

The employee shall have the right to CSEA representation at the *Skelly Conference* and may respond to the charges and allegations contained in the recommendation for discipline either orally or in writing.

The *Skelly Conference* will be conducted by an Administrator (Skelly Officer) who:

- Has no supervisory/managerial authority over the accused employee, and
- Has not been involved in bringing charges against the employee, nor
- Has no prior knowledge of the alleged causes giving rise to the Recommendation for Disciplinary Action.
- Alternatively, an Administrator from another District may conduct the Skelly Conference.

18.7 Skelly Conference Decision:

Within fifteen (15) work days of the Skelly Conference, the Skelly Officer Superintendent or designee shall decide in writing whether to continue imposition of the recommended disciplinary action, reduce the disciplinary action, or dismiss the disciplinary action. This written decision shall immediately be provided to the employee and his/her CSEA representative if one was requested. The decision of the Skelly Officer may be provided later than fifteen work days with mutual agreement of the accused, CSEA and the Skelly Officer. If some of form of disciplinary action is recommended, the Skelly Decision shall include:

- 18.7.1** A statement of the nature of the personnel action (suspension without pay, demotion, reduction of pay step in class, or dismissal) the Administrator is recommending based upon the Conference.
- 18.7.2** A statement of the cause or causes for the personnel action, as set forth above.
- 18.7.3** A statement of the specific acts or omissions upon which the causes are based. If a violation of rule, policy, or regulation of the district is alleged, the rule, policy, or regulation violated shall be stated in the recommendation.
- 18.7.4** A statement of the employee's right to appeal the recommendation and the manner and time within which the appeal must be filed. An appeal must be filed within five (5) working days from receipt of the Skelly Conference Decision.
- 18.7.5** A card or paper, the signing and filing of which shall constitute a demand for hearing and a denial of all charges.

18.8 Employment Status Pending Appeal or Waiver

Except as provided herein, any employee against whom a recommendation of disciplinary action has been issued shall remain on active duty status and responsible for fulfilling the duties of the position pending his/her appeal or waiver thereof. If the Skelly Officer recommends that a permanent classified employee should be dismissed and that his/her continuing in active duty status would present an unreasonable risk of harm to students, staff, or property while proceedings are pending, the Skelly Officer or the Superintendent or designee may order the employee immediately suspended from duty without pay in conjunction with the recommendation of personnel action.

This unpaid suspension order shall be in writing 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.

Except in cases of emergency when the employee must be removed from the premises immediately, the Skelly Officer or the Superintendent or designee shall give the employee written notice of the proposed recommendation of dismissal at least five calendar days before the effective date of any order of unpaid suspension issued in conjunction with a recommendation involving dismissal. This notice shall state that immediate suspension without pay is being considered, the reasons for the proposed dismissal and proposed immediate suspension without pay, materials upon which the proposed action is based, and the employee's right to respond to the Superintendent or designee orally or in writing before the final recommendation and order are issued.

Nothing in this section will preclude the District from placing an employee on a paid administrative leave at any time commencing with the initiation and notification of the Recommended Disciplinary Action.

18.9 Time Limit of Suspension

Except for an unpaid suspension imposed under 18.8 above, any suspension invoked under these rules against any one person for one or more periods shall not aggregate more than 90 calendar days in any 12-month period; however, this time limitation shall not apply to cases in which a personnel action of dismissal is modified by the Board to an unpaid suspension.

18.10 Right to Appeal

Within five calendar days after receiving the recommendation of personnel action from the Skelly Officer as described above, the employee may appeal 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 notice of appeal. A notice of appeal is filed only by delivering the notice of appeal to the office of the Superintendent during normal work hours of that office. A notice of appeal may be mailed to the office of the Superintendent 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 Skelly Officer's recommendation of dismissal, any appeal of the recommendation of dismissal shall also constitute an appeal of the suspension order, and the necessity of the order shall be an issue in the appeal hearing.

If the employee fails to file a notice of appeal within the time specified in these rules, he/she shall be deemed to have waived his/her right to appeal, and the Board may order the recommended personnel action into effect immediately.

18.11 Amended/Supplemental Charges

At any time before an employee's appeal is finally submitted to the Board or to a hearing officer for decision, the complainant 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 personnel action. If the amended or supplemental recommendation presents new causes or allegations, the employee and/or his/her CSEA representative shall be afforded a reasonable opportunity to prepare his/her defense. Any new causes or allegations shall be deemed controverted and any objections to the amended or supplemental causes or allegation may be made orally at the hearing and shall be noted on the record.

18.12 Hearing Procedures

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 the CSEA representative, counsel and witnesses. The parties shall be notified of the time and place of the hearing after ensuring availability of all necessary parties. The employee shall be entitled to appear personally, produce evidence, and have CSEA representation. The employee shall be entitled to a public hearing if he/she demands it when the Board is hearing the appeal.

- 18.12.1** The complainant may also be represented by counsel. The procedure entitled "Administrative Adjudication" commencing with Government Code 11500 shall not apply 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.
- 18.12.2** All hearings shall be heard by a hearing officer (who shall be an attorney licensed in the State of California) except in those cases where the Board determines to hear the appeal itself. In any case in which the Board hears the appeal, the Board may use the services of its counsel or a hearing officer in ruling upon procedural questions, objections to evidence, and issues of law. However, the Board must employ separate counsel from the one presenting the case for the complainant.
- 18.12.3** If the appeal is heard by the Board, the Board shall affirm, modify or revoke the recommended personnel action.
- 18.12.4** If the appeal is heard by a hearing officer, he/she shall prepare a proposed decision in a form that 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 ten days after the proposed decision is filed by the Board. After furnishing the proposed decision to each party, the Board may:
- 18.1.4.1** Adopt the proposed decision in its entirety.
 - 18.1.4.2** Reduce the personnel action set forth in the proposed decision and adopt the balance of the proposed decision.
 - 18.1.4.3** Reject a proposed reduction in personnel action, approve the disciplinary action sought by the complainant or any lesser penalty, and adopt the balance of the proposed decision.
 - 18.1.4.4** Reject the proposed decision in its entirety.
- 18.12.5** 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 may 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 in item Section 18.12.4 above, upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of this proposed decision shall be furnished to each party within 10 days after the proposed decision is filed by the Board.
- 18.12.6** 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 that were contained in the employee's personnel files and introduced into evidence at the hearing.

18.13 Hearing Decision

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 reiterate the language of the pleadings or simply refer to them. The decision of the Board shall be certified to the Superintendent, and he/she shall enforce and follow this decision. A copy of the decision shall be delivered to the appellant or his/her designated CSEA representative personally or by registered mail. The decision of the Board shall be final.

18.14 Compulsory Dismissal

The district shall not employ or retain in employment any person who has been convicted of any sex offense as defined in Education Code 44010 or any controlled substance offense as defined in Education Code 44011. However, the district may employ a person convicted of a controlled substance offense if the Board determines from the evidence it requires that the person has been rehabilitated for at least five years.

If any such conviction is reversed and the person acquitted or charges dismissed except as otherwise provided below, the employee may be reemployed by the district, although reemployment is not a guarantee. (Education Code 45123) The district reserves the right to dismiss an employee for any acts upon which the original criminal charges were based, despite the disposition by the courts. If dismissal is recommended and upheld, an employee will not be reemployed or compensated for the time he/she was suspended unless otherwise required by law. An employee shall be given notice of the possibility of not being reimbursed during mandatory suspension if he/she is ultimately dismissed for the acts upon which the original charges were based.

Legal Reference:

EDUCATION CODE

35161 Delegation of powers and duties

44009 Conviction of specified crimes

44010 Sex offense

44011 "Controlled substance offense" defined

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; reports

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

45302 Demotion and removal from permanent classified service

45303 Additional cause for suspension or dismissal of employees in classified service

45304 Suspension for reasonable cause; filing of charges; employee charged with mandatory or optional leave of absence offense

VEHICLE CODE

1808.8 School bus drivers; dismissal for safety-related cause

UNITED STATES CODE, TITLE 4212101 - 12213 Americans with Disabilities Act

COURT DECISIONS

CSEA v. Foothill Community College District, 52 Cal. App. 3rd 150, 155-156, 124 Cal. Rptr

830 (1975) ("Conduct unbecoming an employee" too vague