



## Board Policy 409 Classified Staff Disciplinary Actions

Reference: *Education Code Sections 87010, 87011, 88013, 88123*

A permanent classified employee may be demoted, suspended, or dismissed by the Chancellor or his/her designee for cause as provided in these rules; provided, however, that such action shall not be effective until written charges are filed and served upon the employee.

The District retains all of its power and authority to the full extent of the law in the imposition of disciplinary actions on classified employees.

The two categories of classified employees are as follows:

- A. Probationary Employee – All new classified personnel employed to fill a regularly established, full-time position or a part-time position are employed on probationary status for the first one (1) year of service and may be disciplined during this period without right of appeal or hearing. This period shall be used in determining whether or not the employee meets the required standards of work performance.
- B. Permanent Employee – Each person who has successfully served as a probationary employee and has been recommended for regular status shall be classified as a permanent employee or have his/her employment terminated. Permanent employees shall be disciplined during the employment period, cause only, as provided in these rules.

Substitute, temporary, and short-term employees and employees paid for less than seventy-five percent (75%) of the school year (professional experts employed part-time and part-time college students employed part-time in college work study program) shall not be part of the classified service and may be disciplined without a right of hearing or appeal.

“Disciplinary action” includes any action whereby an employee is deprived of any classification or any incident of any classification in which he/she has permanence, including dismissal, suspension, demotion, or any reassignment, without his/her voluntary consent, except a layoff for lack of work or lack of funds.

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 (2) years preceding the date of the filing of the notice of cause unless such cause was concealed or not disclosed by such employee when it could reasonably be assumed that the employee should have disclosed the facts to the District. (Education Code Section 88013).

Grounds for Disciplinary Action or Dismissal of Permanent Classified Employees – One or more of the following causes shall be grounds for suspension, demotion, or dismissal of any permanent classified employee:

A. Job Performance

1. Incompetence or inefficiency in the performance of the duties of the position;
2. Persistent failure to perform position duties in an effective or efficient manner;
3. Inability to perform assigned duties due to failure to meet job qualifications, including, but not limited to, failure to possess licenses or failure to pass required tests;
4. Insubordination, failure to obey reasonable directions or observe reasonable rules and regulations of the District, or willful and persistent violation of the provisions of the Education Code;
5. Excessive or unexcused absenteeism;
6. Excessive tardiness;
7. Abuse of illness leave privileges;
8. Abandonment of position;
9. Absence from duty without prior authorization or failure to report after a leave has expired or after notice has been provided that a leave has been disapproved, revoked, or canceled;
10. Loss of any license or certificate required for the position;
11. Inability to perform assigned duties, including, but not limited to, mental or physical incapacity;
12. Failure to report for work within a reasonable time after notice of recall from layoff.

B. Personal Conduct

1. Carelessness, negligence, or willful misconduct in the performance of duty or in the care or use of District property;
2. Discourteous or offensive behavior towards students, co-workers, or the public;
3. Dishonesty;
4. Drinking alcoholic beverages on the job or reporting for work while intoxicated or with evidence of alcoholic intake;
5. Addiction to the use of narcotics or a restricted substance, use of narcotics or restricted substances while on the job, or reporting to work while under the influence of a narcotic or restricted substance;
6. Any conduct which bears some rational relationship to the employment and is of a character that can reasonably result in the impairment of the public service of the District;
7. Furnishing confidential information and/or material to unauthorized personnel or removal of records from an employee's personnel file;
8. Unauthorized review of an employee's personnel file or unauthorized removal of records from an employee's personnel file;
9. Unauthorized use of a District vehicle, including, but not limited to, transporting unauthorized persons in a District vehicle or driving a vehicle on District business when one's driver's license has expired, been suspended, revoked, or is in violation of any condition specified by the Department of Motor Vehicles;
10. Falsifying any information supplied to the District;

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11. Offering anything of value or offering any service in exchange for special treatment in connection with the employee's job or employment or accepting anything of value or any service in exchange for granting any special treatment to another employee or to any member of the public.

C. Violation of Laws, Policies, Procedures, and Other Agreements

1. Conviction of a felony or a misdemeanor involving moral turpitude. A plea of guilty or a plea of nolo contendere to a charge of a felony or any misdemeanor involving moral turpitude is deemed to be a conviction within the meaning of this section;
2. Conviction of a sex offense as defined in Education Code Section 87010 or other provisions of law;
3. Conviction of a controlled substance offense as defined in Education Code Section 87011;
4. Violation of or failure to comply with established procedures in the work unit, provision of the Education Code, District policies, rules, or regulations, or rules and regulations made applicable to public community college by the Governing board or by an appropriate federal, state, or local government;
5. Inducement or attempt to induce any employee to commit an unlawful act or to act in violation of any District policy, rule, or regulation;
6. Failure to report for a District required medical examination after due notice;
7. Advocacy or overthrow of federal, state, or local government by force, violence, or other unlawful means;
8. Engaging in an illegal work stoppage;
9. Engaging in political activity during assigned hours of employment.

This section shall not be construed to prevent layoffs for lack of work or lack of funds.

Notice of Proposed Disciplinary Action to Permanent Classified Employee – Notification to a permanent employee of proposed disciplinary action shall be deemed sufficient when it is delivered in person to the employee or when it is deposited in the U.S. Certified Mail, postage prepaid and addressed to the last known address of the employee. The notification to the employee shall contain the following:

- A. A statement of the specific acts and omissions upon which the disciplinary action is based;
- B. A statement of the cause for the action taken;
- C. If it is claimed that the employee has violated a rule or regulation of the District, a statement of the rules or regulation;
- D. A statement of the action proposed;
- E. A statement that the employee has a right to a hearing on such charges, if demanded, within five (5) days after service of the notice on the employee; and
- F. A card or paper, the signing and filing of which with the Board of Trustees shall constitute a demand for hearing and denial of all charges.

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Unpaid Status Pending Board Hearing – If the Chancellor or his/her designee determines that, pending a Board of Trustees hearing of demotion, suspension, or dismissal, leave without pay would be in the best interest of the District, the following procedure shall be initiated prior to imposing the unpaid demotion, suspension, or dismissal:

- A. In addition to the written notice of the proposed disciplinary action, the employee shall be given written notice of the demotion or suspension without pay and the charges upon which that action is based, and his right to respond to those charges both orally at a conference and in writing;
- B. The employee shall be given notice of the immediate demotion or suspension sufficiently in advance of the action to review the charges and to frame a response;
- C. The employee shall be notified of his right to file a written response or to have a conference with the appropriate administrator; and
- D. The demotion or suspension action shall be discussed at a Skelly conference with the Chancellor or his/her designee, during which time the employee shall have the right to present any rebutting evidence. Nothing in this section shall be construed to prohibit an immediate interim five (5) days suspension prior to notice and a conference where immediate suspension is required in the best interest of the District.

Any employee charged with the commission of any sex offense as defined in Education Code Section 87010 or any controlled substance offense as defined in Education Code Section 87011 by complaint, information, or indictment may be suspended as provided for Education Code Section 88123.

Hearing on Suspension, Demotion, or Dismissal of Permanent Classified Employee – Not less than five (5) work days after receipt of a demand for a hearing by a permanent employee who has been given notice of proposed suspension, demotion, or dismissal, a hearing, if ordered by the Board, shall be scheduled. The Board of Trustees or a Hearing Officer shall hold such hearing at a time and place designated by the Board. The employee shall be given at least five (5) work days' written notice of the time and place of a hearing unless such notice is specifically waived by him/her. The employee and the school administration shall be afforded equal opportunity to present evidence. The burden of proof, however, rests with the administration. At the close of the hearing, the Board of Trustees shall render its decision which shall be final.

Waiver of Hearing on Suspension, Demotion, or Dismissal of Permanent Classified Employee – If the employee fails to make a timely request for a hearing, the Board of Trustees may act upon said charges without a hearing and without notice to the employee of the time and place of the Board's meeting to act on the charges. If an employee who has demanded a hearing fails to appear at the time and place of the hearing as designated in the notice to the employee, the Board may act upon the charges without a hearing and without further notice to the employee.

The hearing date/time may be postponed upon the mutual consent of the employee and the Chancellor or his/her designee.

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If the Board of Trustees finds that sufficient cause exists, it may impose disciplinary action proposed by the Chancellor or his/her designee, it may impose a lesser disciplinary penalty, or it may refer the matter back to the Chancellor for the processing of a disciplinary action to impose a greater disciplinary penalty.

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