

## **RULE IX**

### **DISMISSAL, SUSPENSION, AND DEMOTION OF PERMANENT EMPLOYEE**

#### Section 9.1 CAUSES FOR DISMISSAL, SUSPENSION, OR DEMOTION

- A. A permanent classified employee may be subject to disciplinary action under this rule for the following causes:
1. Repeated notices of unsatisfactory performance.
  2. Insubordination (including, but not limited to, refusal to do assigned work and refusal to respond to the directions of a supervisor).
  3. Carelessness or negligence in the performance of duty, or in the care or use of County Office property.
  4. Discourteous, offensive, abusive or immoral conduct or language toward other employees, students or the public.
  5. Dishonesty including, but not limited to, the unauthorized use or taking of County Office property.
  6. Possession or drinking of alcoholic beverages on school district property or reporting for work while under the influence of alcohol.
  7. Addiction to the use of narcotics or a restricted substance, use of narcotics or restricted substances while on the job, reporting to work while under the influence of a narcotic or restricted substance, or conviction of narcotics offense as defined in the Education Code.
  8. Repeated unexcused absence or tardiness.
  9. Habitually taking sick leave for trivial indispositions or other abuses of leave privileges.
  10. Absence without proper notification.
  11. Falsifying any information supplied to office, including information on application forms, employment records, or any other official records which the employer was not aware during the probationary period.
  12. Physical or mental inability to perform assigned duties.

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13. Failure to submit to physical examination upon direction to do so.
14. Offering 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.
15. Engaging in political or personal activities during assigned hours of employment.
16. Conviction for sex or narcotics offense as defined in the Education Code.
17. Persistent violation or refusal to obey safety rules or regulations of the Board or its agents or of any appropriate state or local governmental agency.
18. Any willful failure of good conduct tending to injure the public service or its reputation with particular regards to students.
19. Abandonment of position, which shall be interpreted to mean an absence without continued notification in excess of one day, except in the case of dire emergency.
20. Membership in any organization which advocates the overthrow of federal, state or local government by force, violence or other unlawful means as defined in the Government Code.
21. Willful or persistent violation of the Education Code, or rules or policies of the assigned department within the County Office of Education, Board of Education, or the Personnel Commission.
22. Refusal to accept changes in shift assignment, working hours or work location provided that such changes were made in accordance with these rules.
23. Any conduct that poses a threat to other employees, students or the public.
24. Engaging in any form of sexual harassment.
25. Willful refusal to obey any state or federal law including refusal to submit to required substance abuse testing.

Section 9.2 PROCEDURE FOR DISCIPLINARY ACTION – DISMISSAL,  
SUSPENSION, OR DEMOTION

- A. No disciplinary action shall be taken against any permanent employee for any cause which arose prior to the date upon which the employee became 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 when it could reasonably be assumed that the employee should have disclosed the facts to the appropriate authority.
- B. When a permanent employee is to be suspended, demoted or dismissed, specific written charges shall be prepared and presented for approval of the Superintendent or Assistant Superintendent. The charges must be so clear that the employee will know the exact complaints and may be expected to respond to them.
- C. No permanent classified employee shall be considered to have been dismissed or demoted until final action of approval is taken by the Superintendent or Assistant Superintendent.
- D. When formal disciplinary action has been approved, the action and the charges shall be reported to the Personnel Director in writing within one (1) work day of the action taken by the Superintendent/Assistant Superintendent, who shall give notice to the employee and shall report the action to the Commission at its next meeting.
- E. Notice to the employees shall be made by the Personnel Director and shall include a copy of the charges, a statement of his/her right to appeal, if any, and the requirements for the employee's response to the charges, together with a copy of Personnel Commission Rule 9.1 and must be delivered personally or by registered mail to the employee within five (5) work days.
- F. The employee may, within ten (10) work days after receipt of the notice from the Personnel Director/Designee, appeal to the Commission by filing a written request with the Personnel Director. For purposes of this section the date of receipt shall be construed as day number 1.
  - 1. The employee's written request shall state which one, or more, of the following grounds the appeal is based:
    - a. That the charges made do not constitute sufficient cause for the action taken.

- b. That the action taken was not in accord with the facts.
  - c. That there has been an abuse of discretion.
  - d. That the procedures set forth in these rules have not been followed.
  - e. That the disciplinary action was taken because of protected political affiliations, or religious beliefs or opinions, race, color, national origin, ancestry, sex, employee organization membership or non-membership, marital status.
- G. In the event of a timely appeal by the employee, the employee's position may not be filled on a regular basis until such time as the Commission renders its final judgment.
- H. Failure to appeal, as provided, shall make the action of the Superintendent/Assistant Superintendent final and conclusive.
- I. Provisions for disciplinary actions against probationary employees shall be in accordance with Rule VIII, Section 8.3.
- J. Provisions for disciplinary action against limited-term and substitute employees shall be in accordance with Rule VIII, Section 8.3.

Section 9.3 HEARINGS

- A. If an employee has timely made and filed his/her appeal in answer to the charges, the Personnel Commission shall investigate or cause to be investigated the matter on appeal and may require further evidence from either party. The Commission may, and upon request of an accused employee shall, order a hearing. If a hearing is to be conducted, the Personnel Commission shall then fix the time and place of the hearing which shall be within fifteen (15) work days from the receipt of the appeal.

The Personnel Commission may appoint an independent hearing officer to conduct any hearing and report findings and recommendations to the Commission. Such recommendations shall not be binding on the Commission.

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- B. Hearings shall be conducted in the manner most conducive to determination of the truth, and neither the Commission nor its hearing officers shall be bound by technical rules of evidence. Decisions made by the Commission shall not be invalidated by any informality in the proceedings. Hearings shall be recorded by a court reporter or electronic equipment.
- C. The Personnel Commission or its hearing officer shall determine the relevancy, weight, and credibility of testimony and evidence. It shall base its findings on a preponderance of evidence.
- D. The burden of proof shall be on the employer.
- E. Each party will be permitted an opening statement, with the Superintendent or his/her designated representative opening first. The employer shall next present witnesses and evidence to sustain the charges, and the employee will then present witnesses and evidence in defense. Rebuttal testimony shall also be permitted upon request. Each party shall be permitted to question witnesses and offer closing arguments with the employee closing first.
- F. Each party will be allowed to examine and cross-examine witnesses.
- G. The employer, the Commission and the employee will be allowed to be represented by separate legal counsel or other designated representatives.
- H. The Commission or the Personnel Director may and shall, if requested by the employer or the employee, subpoena witnesses and/or require the production of records or other material evidence.
- I. The Commission may, prior to or during a hearing, grant a continuance for any reason it believes to be important to its reaching a fair and proper decision.
- J. A hearing shall be held in closed session unless an open hearing is requested by the employee. Such request must be made in writing to the Personnel Director no less than 48 hours in advance of the start of the scheduled hearing. The Commission may, at its discretion, exclude witnesses not under examination, except for the employee and the party attempting to substantiate the charges against the employee and their respective counsel. When hearing testimony on scandalous or indecent conduct, all persons not having a direct interest may be excluded.

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The Commission may deliberate its decision in closed session and exclude all persons other than members of the Commission and their staff or counsel. If the Commission's counsel also served the employer, he/she shall be barred from the Commission's final deliberations.

- K. The Commission shall render its judgment as soon after the conclusion of the investigation or hearing as possible, and in no event later than ten (10) work days. Its decision shall set forth which charges, if any, are sustained or rejected and the reasons therefor.
- L. The Commission may sustain or reject any or all of the charges against the employee. If the Commission finds in favor of the employee, it may:
  - 1. Order the employee's reinstatement upon such terms and conditions as it may determine appropriate.
  - 2. Modify the disciplinary action but not make more stringent the action taken by the employer.
  - 3. Order paid all or part of the employee's compensation from the time of suspension, demotion, or dismissal.
  - 4. Order the employee transferred or changed in work location if a vacant position exists.
  - 5. Order removal from the employee's personnel file of all records pertaining to the disciplinary action or charges which were not sustained by the Commission.
- M. Copies of the transcripts of the hearing shall be furnished the appellant or his/her representative upon written request. The cost of copies shall be borne by the party requesting such copies.

(Education Codes 45620, 45621, 45302, 45303, 45304, 45305, 45306, 45307, 45311, 45312, 45313, 44010, 44011 and 45122)

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