

ADMINISTRATIVE REGULATION 7365

SOUTH ORANGE COUNTY
COMMUNITY COLLEGE DISTRICT

HUMAN RESOURCES

DISCIPLINARY ACTION OF CLASSIFIED EMPLOYEES

The continued employment of any permanent classified employee is contingent upon the appropriate performance of the assigned duties and the employee's personal fitness. A permanent classified employee may be disciplined for just cause.

I. GROUNDS FOR DISCIPLINE:

The causes for discipline shall include, but shall not be limited to, the following factors:

- A. Incompetency, inefficiency, insubordination, inattention to or dereliction of duty, discourteous treatment of the public or co-workers, or any willful failure of good conduct that tends to injure the public service, or any willful or persistent violation of the provisions of the California Education Code, or policies, rules, regulations, or procedures adopted by the Board.
- B. Engaging in a political activity during assigned working hours by the employee.
- C. Immoral or unprofessional conduct, dishonesty, unsatisfactory performance, evident unfitness for service, or a physical or mental condition that renders an employee unfit to associate with students.
- D. Frequent requests for unexcused absences that result in the disruption and loss of efficiency in the operating unit in which the employee is assigned.
- E. Continuing unexcused absences because of illness after the exhaustion of sick leave benefits or when sick leave is taken for trivial dispositions.
- F. The use of fraud, deception, or misrepresentation of material facts in obtaining an appointment or a place on the eligibility list.
- G. The refusal to cooperate in any District-initiated investigation, or the refusal to truthfully respond to questions relating to job performance so long as the employee is not compelled to waive their right against self-incrimination. Violation of this provision may itself constitute sufficient ground for immediate discharge.
- H. Any cause that has been duly negotiated and adopted with the exclusive representative of a bargaining unit of classified employees.

II. NON-DISCIPLINARY ACTIONS:

Prior to taking any disciplinary actions, the District may pursue non-disciplinary corrective action in an attempt to remediate employee conduct. Non-disciplinary actions may include oral counseling, oral warnings, oral reprimands, written warnings, and written reprimands. Non-disciplinary actions do not deprive the employee of any incidents of employment and are

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intended to assist the employee in correcting behaviors prior to the imposition of a more serious disciplinary action.

III. DISCIPLINARY ACTIONS:

Disciplinary action taken by the District against a permanent member of the classified service may include, but is not limited to, the following:

- A. Reduction in pay or demotion – the District may reduce the pay or demote an employee whose performance of the required duties falls below standard, or for misconduct. Demotion shall include reduction in pay from a step within the class to one or more lower steps.
- B. Suspension – An employee may be suspended for disciplinary purposes without pay.
- C. Termination – A permanent member of the classified service may be terminated for just cause at any time. Formal written notice of discharge may be made after considered action during a period of suspension.

IV. PROCEDURES FOR DISCIPLINARY ACTION AND APPEAL

All recommendations for disciplinary action shall be completed by the appropriate administrator or the Vice Chancellor of Human Resources. They shall be in writing and shall state all the charges and conditions involved. Recommendations shall be routed to the Vice Chancellor of Human Resources for review and forwarded to the Chancellor.

In cases where disciplinary action is recommended, the Vice Chancellor of Human Resources will notify the Board and the employee stating the reasons. Notice to the employee shall be in writing and shall be served upon the employee personally by the Vice Chancellor of Human Resources or an appointed designee. If the employee cannot be contacted on the job or at the last known place of residence, the provisions of this regulation shall be deemed to have been complied with if a copy of the charges is mailed at a United States Post Office, addressed to the employee's last known mailing address as recorded in the Office of Human Resources.

When the employee is classified as a permanent employee, a written notice of the specific charges shall include a statement of the employee's right to a hearing on the charges and the period within which such a hearing will occur. The investigation, hearing, and defense shall be limited to the reasons for the charge(s) identified in the notice.

For permanent classified employees to be suspended, demoted, or discharged, the District shall follow a pre-disciplinary procedure as follows:

A. Notice of Intent to Discipline:

The employee shall be notified, in writing, of any intent to discipline and given the opportunity to respond orally and/or in writing to the specific charges at a pre-disciplinary (Skelly) meeting before a neutral District administrator (Skelly officer). After the employee has received a due process (Skelly) meeting, the Skelly officer shall submit to the Vice Chancellor of Human Resources a recommendation of action, including a statement as to whether the proposed disciplinary action should be sustained, modified, or dismissed.

B. Notice of Discipline:

The Vice Chancellor of Human Resources shall consider the recommendation of the Skelly officer and determine whether to sustain, modify, or dismiss it. After consideration, and when the disciplinary action involves a suspension, demotion, or discharge, the employee shall be notified in writing of the specific acts and/or omissions upon which the proposed disciplinary action is based (“Notice of Discipline”); the rule or regulation, policy, practice, or law which the employee has violated; the proposed level of discipline to be imposed; any materials upon which the proposed action is based; and the length of time in which the employee will have to appeal the proposed disciplinary action. The “Notice of Discipline” shall include a statement of the unit member’s right to appeal the proposed disciplinary action to the Board by the filing of a written request for an evidentiary hearing before the Board.

C. Appeal and Request for Hearing:

Permanent classified employee(s) who have been issued a notice of disciplinary action and want to deny the charges and appeal the action shall, within five (5) calendar days from the date of receipt of the notice, appeal to the Board by filing a written answer to the charges and a request for a hearing. The Board shall, within a reasonable time from the filing of the appeal, commence the hearing. The Board may conduct the hearing itself, or it may secure the services of an experienced hearing officer, or Administrative Law Judge to conduct a hearing and render a proposed decision for consideration by the Board. However, in every case, the decision of the Board itself shall be final and binding. The Board may affirm, modify, or revoke the discipline. Any employee, having filed an appeal with the Board and having been notified of the time and place of the hearing, who fails to make an appearance before the Board, experienced hearing officer, or Administrative Law Judge, as applicable, may be deemed to have abandoned their appeal. In this event, the Board may dismiss the appeal.

D. Conduct of the Hearing:

At the hearing, the parties shall have the right to speak and present evidence.

The representative of the District shall first present evidence to support the charges of the Board. The employee shall then have the right to present evidence. Witnesses called by either side shall be subpoenaed by the Board. Requests for subpoenas must be filed with the Vice Chancellor of Human Resources at least seventy-two (72) hours prior to the date of the hearing. A list of witnesses shall be submitted to the Vice Chancellor of Human Resources at least twenty-four (24) hours prior to the date of the hearing. At the conclusion of the hearing, the charges shall be considered, either in open or closed session, and a decision shall be made. The employee may waive the right to a public hearing.

E. Evidence at the Hearing:

The following rules of evidence shall apply.

1. Oral evidence shall be taken only on oath or affirmation.

2. Each party shall have the following rights:
 - a. To call and examine witnesses;
 - b. To introduce exhibits;
 - c. To cross-examine opposing witnesses on any matter relevant to the issues, even though the matter was not covered during direct examination;
 - d. To impeach any witness, regardless of which party called the witness to testify;
 - e. To rebut the evidence against the witness.
3. If the employee respondent does not testify, the employee may be called and examined as if under cross-examination.
4. The hearing need not be conducted according to technical rules related to presenting evidence and calling witnesses. Any relevant evidence shall be admissible if it is the type of evidence responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make the admission of the evidence improper over an objection in civil actions.
5. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. The rules of privilege shall be effective to the same extent they are recognized in civil actions. Irrelevant or unduly repetitious evidence shall be excluded.

F. Hearing Before the Board

All hearings before the Board shall be governed by the aforementioned procedure.

If the Board retains the services of a hearing officer to conduct the hearing, the hearing officer shall submit a written recommended decision to the Board within 10 days of the hearing. At its next appropriate scheduled meeting, the Board shall review the hearing officer's recommended decision and make a final decision. The Board shall make the judgment that the recommendation of the hearing officer, the appropriate administrator, or the Chancellor was taken for reasonable cause or that the recommendation of the hearing officer, the appropriate administrator, or the Chancellor be sustained in full, modified, or rescinded.

If the Board concludes that the disciplinary action was for a reasonable cause and the recommendation of the appropriate administrator or the Chancellor should be modified, the modification may provide that in lieu of dismissal, the employee should be demoted to a lower classification for which the employee is properly qualified or restored to the position formerly held, subject to forfeiture of pay for all or a portion of the period the employee was removed from duty.

Any finding by the Board shall be conclusive and shall not be subject to judicial review. In addition, the determination of the sufficiency of cause for disciplinary action shall be conclusive.

G. Pay During Proceedings

Except as specified below, the District shall not suspend without pay, suspend with a reduction in pay, demote with a reduction in pay, or dismiss an employee who timely requests a hearing on the charges before a decision is rendered after the hearing unless the governing board, or an impartial third-party hearing officer finds that at the time the District imposed the discipline, the District demonstrated by a preponderance of the evidence that the employee engaged in criminal misconduct, misconduct that presents a risk of harm to students, staff, or property, or committed habitual violations of the District's board policies or administrative regulations.

If an impartial third-party hearing officer or the governing board conducts a hearing on the charges, the District may stop paying the employee before a decision is rendered after 30 calendar days from the date the employee timely requests a hearing.

V. NON-PERMANENT CLASSIFIED EMPLOYEES

The foregoing procedures, including the requirements of notice and an opportunity to respond to charges, are inapplicable to any non-permanent classified employees. Non-permanent classified employees are those employees who are designated to serve at the pleasure of the Board or who have not successfully completed a probationary period. Non-permanent classified personnel are "at-will" employees and may be disciplined within the sole discretion of the District.

Reference:

California Education Code, Section 88013