

CSBA Sample

Board Policy

Classified Dismissal/Suspension/Disciplinary Action (Merit System)

BP 4218.1

Classified Personnel

Note: The following optional policy is for use by districts that have incorporated the merit system for classified employees pursuant to Education Code 45240-45320. For procedures applicable to districts that have not incorporated the merit system, see BP/AR 4218 - Dismissal/Suspension/Disciplinary Action.

Note: The following policy is subject to collective bargaining and may be deleted or revised by any district whose collective bargaining agreement covers classified employee dismissal, suspension, and other disciplinary action. If a negotiated collective bargaining agreement contains different provisions for employee discipline, those negotiated agreements would take precedence over this policy and the accompanying administrative regulation for those employees covered by the collective bargaining agreement.

The Governing Board expects all employees to perform their jobs satisfactorily and exhibit professional and appropriate conduct. A classified employee may be disciplined for unprofessional conduct or unsatisfactory performance in accordance with law, any applicable collective bargaining agreement, Board policy and administrative regulation, and the rules of the personnel commission.

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 4000 - Concepts and Roles)

(cf. 4112.5/4212.5/4312.5 - Criminal Record Check)

(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

(cf. 4119.21/4219.21/4319.21 - Professional Standards)

(cf. 4119.24/4219.24/4319.24 - Maintaining Appropriate Adult-Student Interactions)

(cf. 4141/4241 - Collective Bargaining Agreement)

(cf. 4200 - Classified Personnel)

Disciplinary actions shall be based on the particular facts and circumstances involved and the severity of the employee's conduct or performance. Disciplinary actions may include, but are not limited to, verbal and written warnings, involuntary reassignment, demotion, suspension without pay, reduction of pay step in class, compulsory leave, and dismissal.

The Superintendent or designee shall ensure that disciplinary actions are taken in a consistent, nondiscriminatory manner and are appropriately documented.

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4112.6/4212.6/4312.6 - Personnel Files)

(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)

A probationary classified employee may be dismissed by the Superintendent or designee at any time prior to the expiration of the probationary period.

(cf. 4216 - Probationary/Permanent Status)

Note: Education Code 45302 provides that no permanent classified employee can be demoted or removed except for reasonable cause designated by rule of the personnel commission. See the accompanying administrative regulation.

Any classified employee designated as a permanent employee shall be subject to disciplinary action only for cause as specified in administrative regulation. (Education Code 45302)

Procedures for Disciplinary Proceedings

Note: The following section should be revised to reflect district practice and/or rules of the personnel commission.

If a permanent classified employee receives a notice from the Superintendent or designee of a recommended suspension, demotion, involuntary reassignment, or dismissal, the employee may request a hearing on the matter.

If the employee fails to request a hearing within the time specified in the notice, the employee shall be deemed to have waived the right to do so, and the Board may order the recommended disciplinary action into effect immediately.

If a timely request is submitted, the hearing shall be held at the earliest convenient date, ~~taking into consideration the established schedule of the Board~~ and the availability of legal counsel and witnesses. The parties shall be notified of the time and place of the hearing.

Following a hearing, if a hearing has not been requested following the time period to request a hearing, the Board shall take action on the discipline in closed session and report in open session. matter shall be heard by the Board in closed session, unless the employee may requests that the matter be heard in an open session meeting. (Government Code 54957)

At any time before a matter is submitted to the Board for decision, the Superintendent or designee may, with the consent of the Board, serve on the employee and file with the Board an amended or supplemental recommendation of disciplinary action. If the amended or supplemental recommendation includes new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare a 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.

(cf. 9321 - Closed Session)

Formatted: Border: Top: (No border), Bottom: (No border), Left: (No border), Right: (No border), Between : (No border)

An employee may appeal the Board's decision to the personnel commission in accordance with Education Code 45305-45307. The decision of the Personnel Commission shall be final. (Education Code 45306).~~The employee shall be entitled to appeal the Board's action to the Personnel Commission, including. The employee may appear personally, produce evidence, and be represented by legal counsel. The Personnel Commission Board may use the services of its legal counsel in ruling upon procedural questions, objections to evidence, and issues of law. The Personnel Commission Board may review and consider the records of any prior personnel 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. The Personnel Commission Board shall not be bound by rules of evidence used in California courts. Informality in any such hearing shall not invalidate any order or decision made by the Personnel Commission Board.~~

~~At any time before a matter is submitted to the Board for decision, the Superintendent or designee may, with the consent of the Board, serve on the employee and file with the Board an amended or supplemental recommendation of disciplinary action. If the amended or supplemental recommendation includes new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare a 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.~~

Note: Pursuant to Education Code 45305, a permanent classified employee in a merit system district may appeal the Governing Board's decision to the personnel commission within 14 days after receipt of written notice for a suspension, demotion, or dismissal. See the accompanying administrative regulation.

Note: As amended by AB 2234 (Ch. 996, Statutes of 2018), Education Code 45312 requires the personnel commission to delegate its authority to an administrative law judge in cases involving allegations of egregious misconduct with a minor. Egregious misconduct is defined as immoral conduct leading to an allegation of a sex offense pursuant to Education Code 44010, a controlled substance offense pursuant to Education Code 44011, or child abuse or neglect pursuant to Penal Code 11165.2-11165.6. In conducting hearings on such matters, the administrative law judge must comply with Education Code 44990-44994, as added by AB 2234, pertaining to the testimony of minor witnesses.

~~An employee may appeal the Board's decision to the personnel commission in accordance with Education Code 45305-45307. The decision of the personnel commission shall be final. (Education Code 45306)~~

However, if the matter involves an allegation of egregious misconduct as defined in Education Code 44932 and involves a minor, the matter shall be referred to an administrative law judge to determine whether sufficient cause exists for disciplinary action against the employee. The ruling of the administrative law judge shall be binding on the district and the employee. (Education Code 45312)

Legal Reference:

EDUCATION CODE

35161 Delegation of powers and duties
44009 Conviction of specified crimes
44010 Sex offense
44011 "Controlled substance offense" defined
44031 Personnel file
44940 Leave of absence; employee charged with mandatory or optional leave of absence offense
44940.5 Compulsory leave of absence
44990-44994 Testimony of minor witnesses at dismissal or suspension hearings
45101 Definitions (including "disciplinary action," "cause")
45109 Fixing of duties
45123 Employment after conviction of sex or narcotics offense
45124 Dismissal of sexual psychopath
45202 Transfer of accumulated sick leave and other benefits following dismissal
45240-45320 Merit system, classified employees, especially:
45302-45307 Suspension, dismissal, or other disciplinary action; classified employees

CODE OF CIVIL PROCEDURE

1286.2 Grounds for vacating decision of arbitrator

GOVERNMENT CODE

11500-11529 Administrative adjudication
12900-12996 Fair Employment and Housing Act
54957 Brown Act open meeting laws; closed session

HEALTH AND SAFETY CODE

11054 Schedule I; substances included
11055 Schedule II, substances included
11056 Schedule III, substances included
11357-11361 Marijuana
11363 Peyote
11364 Opium
11370.1 Possession of controlled substances with a firearm

PENAL CODE

187 Murder
667.5 Sex offenders
830.32 Peace officers employed by district
1192.7 Violent or serious felony
11165.2-11165.6 Child abuse or neglect, definitions

VEHICLE CODE

1808.8 School bus drivers; dismissal for safety-related cause

UNITED STATES CODE, TITLE 42

12101-12213 Americans with Disabilities Act

COURT DECISIONS

California School Employees Association v. Bonita Unified School District, (2008) No. B200141

California School Employees v. Livingston Union School District, (2007) 149 Cal.App 4th 391

CSEA v. Foothill Community College District, (1975) 52 Cal. App. 3rd 150, 155-156, 124 Cal. Rptr 830

Management Resources:

CALIFORNIA SCHOOL PERSONNEL COMMISSIONERS ASSOCIATION
PUBLICATIONS

Merit Rules and Regulations: CSPA Recommended Personnel Policies and Procedures Manual
for California School Merit Systems, 2014

WEB SITES

California School Personnel Commissioners Association: <http://meritsystem.org>