Board Policy Manual Tahoe Truckee Unified School District

Status: ADOPTED

Regulation 4218: Dismissal/Suspension/Disciplinary Action

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Reviewed Date: 03/01/2023

Termination of Probationary Employment

At any time prior to the expiration of the probationary period, the Superintendent Chief Learning Officer 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.

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.

1. Causes for Disciplinary Action

In addition to any disqualifying or actionable causes otherwise provided for by statute or by policy or regulation of this district, each of the following constitutes cause for personnel action against a

A permanent classified employee: may be subject to suspension, demotion, involuntary reassignment, or dismissal for one or more of the following causes:

- 1. a. Falsifying-Immoral conduct, including, but not limited to, egregious misconduct that is the basis for a sex offense as defined in Education Code 44010, a controlled substance offense as defined in Education Code 44011, or child abuse and neglect as described in Penal Code 11165.2-11165.6
- 2. Conduct that constitutes a violent or serious felony as defined in Penal Code 667.5(c) or 1192.7(c)
- 3. Unlawful discrimination, including harassment, against any student or other employee
- 4. Violation of or refusal to obey state or federal law or regulation, Board policy, or district or school procedure
- **5. Falsification of** 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.

b. Incompetency.

c. Inefficiency.

- 6. d. Unsatisfactory performance
- 7. Unprofessional conduct
- 8. Dishonesty
- 9. Neglect of duty- or absence without leave
- 10. e. Insubordination.
- f. Use of alcohol or a controlled substance Dishonesty.
- g. 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.
- (cf. 4020 Drug and Alcohol-Free Workplace)
- h. Possessing or being under the influence of a controlled substance at work or away from work, or furnishing a controlled substance to a minor.
 - 11. i. 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.performance
- i. Absence without leave.
- k. Immoral conduct.
- I. Discourteous treatment of the public, students, or other employees.
- m. Improper political activity.
- n. Willful disobedience.
 - 12. o. Misuse Destruction or misuse of district property.
- p. Violation of district, Board or departmental rule, policy, or procedure.
 - 13. q. Failure to possess or keep in effectFailure to fulfill any ongoing condition of employment including, but not limited to, maintenance of 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.
- r. Refusal to take and subscribe any oath or affirmation which is required by law in connection with his/her employment.
 - **14.** s. A physical or mental disabilitycondition 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 regulating the retirement of employees.

t. 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.

- 15. u. Unlawful retaliation against any other district officer or employee or member of the publicRetaliation against any person 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.to the job
- 16. v. Any other failure Violation of good behavior either during Education Code 45303 or outside Government Code 1028 prohibiting the advocacy or teaching of duty hours communism
- **17. Any other misconduct** which is of such nature that it causes discredit **or injury** to the district or his/her employment.the employee's position

Except as defined in item "s" above, no personnel No disciplinary 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.

2. Initiation and Notification of Charges

The Superintendent Chief Learning Officer or designee may initiate a personnel 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 personnel action with the Board. (Education Code 45113)

Initiation and Notification of Charges

The Superintendent Chief Learning Officer or designee shall provide notice to the employee of a recommendation for discipline, which includes the charges and materials upon which the recommendation is based. The notification shall identify an impartial district official ("Skelly officer") with whom the employee may meet at a specified time and place or to whom the employee may provide a written response to the recommendation of discipline. After meeting with the employee or considering any response from the employee, the Skelly officer shall recommend to the Superintendent Chief Learning Officer or designee whether to proceed with the recommendation for discipline.

The Superintendent Chief Learning Officer or designee shall file any final recommendation for a disciplinary action in writing with the Governing 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 notice shall include:

a. A statement of, in ordinary and concise language, inform the nature of the personnel action (suspension without pay, demotion, reduction of pay step in class, employee of the specific charge(s) or dismissal).

b. A statement of the cause or causes(s) for the personnel disciplinary action, as set forth above.

c. A statement of the specific acts orand omissions upon which the causes are action is based. If a violation of, and, if applicable, the district rule, policy, or regulation of the district is alleged, the rule, policy, or regulation that the employee has allegedly violated. In addition, the notice shall be stated in the recommendation.

d. A statement of include the employee's right to appeal the recommendation and the manner and a hearing on those charges, the time within which the appeal must be filed.

e. A card or paper, the signing and filing of which shall constitute a demand for hearing and a denial of all charges.

3. Employment Status Pending Appeal or Waiver

Except as provided herein, any employee against whom a recommendation of personnel hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper which the employee may sign and file to deny the charges and request a hearing. (Education Code 45113, 45116)

Request for Board Hearing

Within the time specified in the notice of the 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 Superintendent Chief Learning Officer or designee determines 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 Superintendent Chief Learning Officer or designee may order the employee immediately suspended from duty without pay in conjunction with the recommendation of personnel action. This 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 Superintendent Chief Learning Officer 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 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 Chief Learning Officer or designee orally or in writing before the final recommendation and order are issued.

4. Time Limit of Suspension

Except for a suspension imposed under #3 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 a suspension.

5. Right to Appeal

Within five calendar days after receiving the recommendation of personnel action described above, the employee may appealmay request a hearing on the charges by signing and filing the card or paper included with the recommendation. notice. (Education Code 45113)

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 appealthe request for a hearing. The request shall be delivered to the office of the Superintendent Chief Learning Officer or designee during normal work hours of that office. A notice of appeal may belf mailed to the office of the Superintendent Chief Learning Officer or designee-but, it must be received or postmarked no later than the time limit stated hereinspecified by the district. In cases where an order of suspension without pay has been issued in conjunction with a 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 or the dismissal shall also constitute a request to hear the suspension order, and the necessity of the suspension order shall be an issue in the hearing.

Employment Status Pending a Disciplinary Hearing

A classified employee against whom a recommendation for disciplinary action has been issued may remain on active duty or may be placed on paid leave pending a hearing on the charges. The employee shall not be suspended without pay, suspended or demoted with a reduction in pay, or dismissed pending the outcome of a timely requested hearing, except as specified below. (Education Code 45113)

However, the disciplinary action may be imposed prior to the decision if the Board, or an impartial third-party hearing officer provided pursuant to a collective bargaining agreement, finds by a preponderance of the evidence that at the time discipline was imposed, the employee (1) engaged in criminal misconduct, (2) engaged in misconduct that presents a risk of harm to students, staff, or property, or (3) committed habitual violations of the district's policies or regulations. Such finding(s) must be made at the conclusion of the Skelly review process. (Education Code 45113)

In such cases where the disciplinary action is imposed prior to the decision, the employee shall be given written notice of the disciplinary action and the findings made at the conclusion of the Skelly review process. Such written notice shall be served upon the employee personally.

In addition, the district may cease paying the employee if a decision has not been rendered by an impartial third-party hearing officer, pursuant to a collective bargaining agreement, or the Board within 30 days of the date the hearing was requested. (Education Code 45113)

Compulsory Leave of Absence

Upon being informed by law enforcement that a classified employee has been charged with a "mandatory leave of absence offense," the Superintendent Chief Learning Officer or designee shall immediately place the employee on a leave of absence. A mandatory leave of absence offense includes:

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.

6. 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 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.

7. Hearing Procedures

a. 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 counsel and witnesses. The parties shall be notified of the time and place of the hearing. The employee shall be entitled to appear personally, produce evidence, and have counsel. The employee shall be entitled to a public hearing if he/she demands it when the Board is hearing the appeal. The complainant may also be represented by counsel. The procedure entitled "Administrative Adjudication" commencing with Government Code 1150 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.

b. 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. If the appeal is heard by the Board, the Board shall affirm, modify or revoke the recommended personnel action.

c. 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 10 days after the proposed decision is filed by the Board. The Board may:

- (1) Adopt the proposed decision in its entirety.
- (2) Reduce the personnel action set forth in the proposed decision and adopt the balance of the proposed decision.
- (3) Reject a proposed reduction in personnel action, approve the personnel action sought by the complainant or any lesser penalty, and adopt the balance of the proposed decision.
- (4) Reject the proposed decision in its entirety.

d. 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 "c" 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.

e. In arriving at a decision or a proposed decision on the propriety of the proposed personnel action, the Board or the hearing officer may consider the records of any prior personnel action proceedings against the employee in which a personnel action was ultimately sustained and any records that were contained in the employee's personnel files and introduced into evidence at the hearing.

8. Hearing Decision

The decision of the Board shall be in writing and shall contain findings of fact and the personnel 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 Chief Learning Officer or designee who recommended the personnel action, and he/she shall enforce and follow this decision. A copy of the decision shall be delivered to the appellant or his/her designated representative personally or by registered mail. The decision of the Board shall be final.

9. Compulsory Dismissal

- 1. The district shall not employ or retain in employment any person who has been convicted of anyAny sex offense as defined in Education Code 44010-or any
- 2. Violation or attempted violation of Penal Code 187, prohibiting murder or attempted murder
- 3. Any offense involving the unlawful sale, use, or exchange to minors of controlled substance offense as substances as listed in Health and Safety Code 11054, 11055, and 11056

The Superintendent Chief Learning Officer or designee may place on an immediate compulsory leave of absence a classified employee who is charged with an "optional leave of absence offense," defined in Education Code 44011. However, the district may employ a person convicted of as 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) specified in Education Code 44011 and Health and Safety Code 11357-11361, 11363, 11364, and 11370.1 except as it relates to marijuana, mescaline, peyote, or tetrahydrocannabinols.

An employee's compulsory leave for a mandatory or optional leave of absence offense may extend for not more than 10 days after the entry of judgment in the criminal proceedings. However, the compulsory leave may be extended if the Board gives notice, within 10 days after the entry of judgment in the proceedings, that the employee will be dismissed within 30 days from the date of service of the notice unless the employee demands a hearing on the dismissal.

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.

Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State CA Constitution Article 1, Section 1	Description Inalienable rights	
Ed. Code 35161	Board delegation of any powers or duties	
Ed. Code 44009	Conviction of specified crimes	
Ed. Code 44010	Sex offense; definitions	
Ed. Code 44011	Controlled substance offense	
Ed. Code 44940	Compulsory leave of absence for certificated persons	
Ed. Code 44940.5	Procedures when employees are placed on compulsory leave of absence	
Ed. Code 45101	Definitions; disciplinary action and cause	
Ed. Code 45109	Fixing of duties	
Ed. Code 45113	Notification of charges; classified employees	
Ed. Code 45123	Employment after conviction of controlled substance offense	
Ed. Code 45302	Demotion and removal from permanent classified service	
Ed. Code 45303	Additional cause for suspension or dismissal of employee charge with mandatory or optional leave of absence offense	
Ed. Code 45304	Compulsory leave of absence for classified persons	
Veh. Code 1808.8	School bus drivers; dismissal for safety-related cause	
Federal 42 USC 12101-12213	Description Americans with Disabilities Act	
U.S. Constitution	Amendment 1;, Free exercise, free speech, and establishment clauses	
Management Resources Court Decision	Description Kennedy v. Bremerton (2022) 142 S.Ct. 2407	
Court Decision	California School Employees v. Livingston Union School District (2007) 149 Cal. App. 4th 391	
Court Decision	CSEA v. Foothill Community College District (1975) 52 Cal. App. 3rd 150	
Court Decision	Skelly v. California Personnel Board (1975) 15 Cal.3d 194	
Website	Office of the Attorney General	
Website	Office of Administrative Hearings	

Website Department of General Services, About Teacher Dismissal

Case Type

Website CSBA District and County Office of Education Legal Services

Cross Reference	S
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Code 1114	Description <u>District-Sponsored Social Media</u> District-Sponsored Social Media
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