

## **CHAPTER XIV DISCIPLINARY ACTION AND APPEAL**

### **14.01 Definitions**

- A. Suspension is the enforced absence of an employee not to exceed thirty (30) days for disciplinary purposes pending investigation of charges made against the employee.
- B. Demotion is the assignment of an employee from a position in one class to a position in another class that is allocated to a lower salary range.
- C. Dismissal is the permanent removal of an employee from the classified service of the County Office of Education.

### **14.02 Causes for Suspension, Demotion and Dismissal**

- A. Persons employed in the classified service may be suspended, demoted or dismissed for any of the following causes:
  - 1. Inability or unwillingness to perform the duties of the position in a competent, satisfactory manner (includes but is not limited to incompetence, inefficiency, inattention to or dereliction of duties).
  - 2. Inability to perform assigned duties due to failure to meet job qualifications. (Includes but is not limited to failure to possess required licenses; failure to pass required tests or failure to meet the insurance requirements of the County Office.)
  - 3. Insubordination (including, but not limited to, refusal to perform the duties assigned).
  - 4. Carelessness or negligence in the performance of duty or in the care or in the use of property belonging to the County Office of Education.
  - 5. Discourteous, offensive, or abusive conduct or language toward other employees, pupils or the public while on duty and/or while on County Office property and/or while performing any County Office function.
  - 6. Dishonesty.
  - 7. Drinking alcoholic beverages on the job, or reporting for work while intoxicated.
  - 8. Addiction to the use of narcotics or a restricted substance, use or possession of narcotics or restricted substances while on the job or reporting for work while under the influence of a narcotic or restricted substance.
  - 9. Personal conduct unbecoming an employee of the County Office of Education.
  - 10. Engaging in political activity during assigned hours of employment.
  - 11. Conviction of any crime involving moral turpitude (Education Code Section 45267 crime which violates accepted moral standards.)
  - 12. Arrest for a sex offense as defined in Education Code Section 44010, and as set forth in Education Code Section 45304.
  - 13. Conviction of a narcotics offense as defined in Education Code Section 44011.
  - 14. Repeated and unexcused absence or tardiness.
  - 15. Abuse of paid leave other than vacation leave.
  - 16. Falsifying any information supplied to the County Office, including but not limited to information supplied on application forms, employment records, or any other County Office records.
  - 17. Violation of or refusal to obey safety rules, regulations made applicable to public schools by the Board of Education, Personnel Commission or by an appropriate state or local government agency.
  - 18. 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.
  - 19. Willful or persistent violation of the school laws of the State or the rules and regulations of the County Office.

20. Willful conduct tending to injure the public service.
  21. Abandonment of position, and/or failure to return from Leave of Absence.
  22. Advocacy of overthrow of federal, state, or local government by force, violence or other unlawful means.
  23. Membership in the Communist party.
  24. Physical or mental incapacity to perform regular assigned duties.
  25. Theft or willful misuse or misappropriation of County Office property or aiding and abetting such theft or willful misuse or misappropriation of County Office property; or theft of private property while on County Office time and/or while on County Office property and/or while performing any County Office function or aiding and abetting such theft.
  26. Threatening bodily harm or causing bodily harm to anyone while on County Office time and/or while on County Office property and/or while performing any County Office function.
  27. Willful destruction or causing damage to public or private property while on County Office time and/or while on County Office property and/or while performing any County Office function.
  28. Failure to provide adequate proof of legal ability to work in the United States.
  29. The unjustified or unlawful use of physical force on a student.
  30. Sexual harassment or any other conduct prohibited by the County Office policies on nondiscrimination.
- B. The causes contained in this section shall not be applied for the purpose of layoff of a classified employee because of lack of work or funds.

#### **14.03 Procedures for Suspension, Demotion and Dismissal**

- A. No employee in the classified service shall be suspended, demoted, or dismissed or discriminated against because of race, color, sex, disability, marital status, age, national origin or ancestry, political affiliation or religion or because of the race, color, sex, disability, marital status, age, national origin or ancestry, political affiliation or religion of another person the employee is associated with
- B. Nothing in this rule is intended to restrict the right of the County Superintendent of Schools or his/her designee to reasonably regulate, for reasons of supervision, security, or morale, the employment of close relatives in the same department, division, or facility (see Rule 16.03).
- C. Nothing in this rule is intended to restrict the County Office in any of its employment decisions relative to an employee's religious beliefs or observances if it can demonstrate that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibility of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the County Office of Education.
- D. Nothing in this rule is intended to restrict the ability of the County Office to discharge an employee who, because of the employee's medical condition or disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.
- E. When the suspension, demotion, or dismissal of a permanent classified employee is proposed, specific written charges shall be prepared and sent by registered or certified mail to the last known address of the employee or personally delivered to the employee. The charges shall include a statement in ordinary and concise language of the specific acts and/or omissions upon which the disciplinary action is based, a statement of the cause for the action taken and if it is claimed that the employee has violated a rule or regulation, such rule shall be set forth in the charges. The charges must be so clear that the employee will know the exact complaints and must be afforded the opportunity to respond to them. A statement of charges which cites as cause or grounds for disciplinary action, a violation of a rule, regulation, or statute in the language of the rule, regulation, or statute is insufficient for any purpose.
- F. Prior to effectuation of a suspension, demotion, or dismissal, a permanent classified employee shall receive proposed specific charges as set forth in Sub Rule B, above, and afforded an opportunity to respond at a conference and/or in writing, to the charges.

- G. Within three (3) work days (holidays excluded) of the approval of the suspension, demotion or, dismissal by the County Superintendent of Schools or his/her designee, the employee shall be sent by U. S. mail a notice of the disciplinary action or personally served; and a copy of the charges supporting the discipline shall be filed with the Personnel Commission, whose director shall notify the employee by certified mail of his/her appeal rights under Personnel Commission Rule 14.04 and inform the Personnel Commission at their next regular meeting.
- H. Notwithstanding the procedures in Sub Rules B-D, above, an employee may be placed on administrative leave with pay at the direction of the Superintendent, Assistant Superintendent, Human Resources, or other designee. Administrative leave with pay may be implemented at any point in the disciplinary process.
- I. A regular employee charged with the Commission of any sex offense as defined in Education Code Section 44010 by complaint, information, or indictment filed in a court of competent jurisdiction may be suspended as provided for in Education Code Section 45304. Such a suspension will be processed as an involuntary personal leave in accordance with the provisions of this rule relative to suspensions. The employee may receive compensation as provided for in the Code section. The Personnel Commission shall review such suspension every 90 days, thereafter.
- J. Dismissal shall cause removal of the employee's name from all employment lists.
- K. Failure to appeal, pursuant to Rule 14.04, shall make the disciplinary action final and conclusive.
- L. A suspension with loss of pay shall not exceed 30 days except as provided in Education Code Section 45304.

#### **14.04 Appeal of Disciplinary Action**

A permanent employee who has been suspended, demoted, or dismissed may appeal to the Personnel Commission within 14 days after having been furnished with a copy of the written charges by filing a written answer to such charges. Appeal can be made only on the following grounds:

- A. That the procedures set forth in these rules have not been followed;
- B. That the action was made because of affiliations, political or religious acts or opinions, race, color, sex, or marital status;
- C. That there has been abuse of discretion, including excessive punishment based on listed charges;
- D. That the action taken was not in accordance with the facts.

#### **14.05 Hearing Procedure**

- A. The Personnel Commission may conduct hearings of appeals or may appoint a hearing officer to conduct the hearing and report findings and recommendations to the Commission.
- B. Hearings shall be conducted in the manner most conducive to determination of the truth and neither the Commission nor its hearing officer shall be bound by technical rules of evidence. Decisions made by the Commission shall not be invalidated by any informality in the proceedings.
- 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 the preponderance of evidence.
- D. Each side will be permitted an opening statement (County Office first) and closing arguments (employee first). The County Office of Education shall first present its witnesses and evidence to sustain its charges and the employee will then present his/her witnesses and evidence in defense.
- E. Each side will be allowed to examine and cross-examine witnesses.
- F. Both the County Office and the employee will be allowed to be represented by legal counsel or other designated representation.
- G. The Commission may subpoena witnesses and/or require the production of records or other material evidence.
- H. 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.
- I. Whether the hearing is held in a public or closed session, the Commission, after it concludes the hearing, may deliberate its decision in closed session. No persons other than members of the Commission, its counsel and its staff shall be permitted in the deliberations. If the Director or any staff member is not

serving full-time for the Commission and/or was a witness in the proceedings, he/she shall also be barred from the Commission's final deliberations. If the Commission's counsel also served as counsel for the County Office of Education, he/she shall be barred from the Commission's final deliberations.

- J. The Commission shall render its judgment as soon after the conclusion of the hearing as possible and in no event later than 14 days after receipt of the findings and recommendations of the hearing officer. Its decision shall set forth which charges, if any, are sustained and the reasons.
- K. The Commission may sustain or reject any or all of the charges filed against the employee. It may sustain, reject, or modify the disciplinary action invoked against the employee. It may not provide for discipline more stringent than that invoked by the County Office of Education.
- L. The Commission's order of judgment will be filed with the County Office of Education and the charged employee and will set forth its findings and decision. If any action is not sustained, its order shall set forth the effective date the employee is to be reinstated, which may be any time on or after the date of disciplinary action.