

**ARTICLE 13  
DISCIPLINARY ACTION**

**1. Cause for Disciplinary Action**

**Definition:**    **Dismissal** - Removal from the employment of the District

**Suspension** - Temporary removal from employment of the District for a specific period.

**Involuntary Demotion & Involuntary Reassignments** – Involuntary assignment to a lower classification or a different position for disciplinary reasons in non-layoff situations.

A permanent classified employee shall be subject to disciplinary action, for any of the following causes:

- a. Incompetency or inefficiency.
- b. Absence and/or repeated tardiness without authority or sufficient reasons.
- c. Insobriety or unauthorized use of narcotics or habit-forming drugs during duty hours.
- d. Insubordination or insolence or disrespect toward superiors.
- e. Dishonesty.
- f. Conviction of a felony, any crime involving moral turpitude, or any crime bringing discredit upon the District.
- g. Immoral conduct.
- h. Evident unfitness for service.
- i. Physical or mental condition unfitting him/her for service.
- j. Violation of or refusal to obey the education laws of the State or regulations of the District.
- k. Discourteous treatment of the public, pupils or other employees while on duty.
- l. Conduct in violation of Section 1028 of the Government Code (advocating the overthrow of the Government of the United States or of any state by force or violence).
- m. Any conduct inimical to the welfare of the District or the students.
- n. For employees who drive a vehicle in the regular course of their employment:
  - 1. Failure to maintain a good personal or business driving record;
  - 2. Failure to satisfy the insurability requirements of the District's insurance carrier under the District's regular insurance policies. The District's ability to obtain insurance for the employee under a high risk or any policy other than the regular insurance policies does not mitigate this failure.
- o. Neglect of duty.

- p. Material and intentional misrepresentation or concealment of any fact in connection with obtaining employment.
- q. Willful damage to public property or waste of public supplies or equipment.
- r. Failure to possess or keep in effect any license, certificate or other similar requirement specified in the law or the employee's position description or otherwise necessary for the employee to perform the duties of the position.
- s. Violation of a collective bargaining agreement.
- t. Abandonment of Job.

## 2. Hearings

### a. Notice of Proposed Disciplinary Action/Employee Right to Evidentiary Hearing

Prior to the implementation of disciplinary action, any permanent classified employee against whom such action is initiated by the District shall be given written notice by the Superintendent/President or his/her authorized representative of the specific charges. The notice shall contain the reasons for the proposed action, a copy of the charges and all the material upon which it is based. The notice shall also contain a statement of the right to a hearing on such charges. If the employee wishes a hearing, the request for hearing must be submitted within ten (10) calendar days after service of the notice on the employee, and said notice shall be accompanied by a paper, the signing and filing of which with the Superintendent/President or authorized representative shall constitute a demand for a hearing and a denial of all charges. Failure of the employee to file a request for hearing within the time specified shall constitute a waiver of the employee's right to a hearing.

### b. Conduct of the Hearing

- i. **Hearing Board** -- The Governing Board shall determine whether any hearing will be conducted before the entire Governing Board or one or more named members of the Governing Board or a Hearing Board or officer appointed by the Governing Board, and shall make such appointments as may be necessary. The term "Hearing Board" shall mean any board, board member or other person named or appointed under this Article to hear any hearing. The hearing shall be in executive session (closed) unless the employee requests in writing that the hearing be held in open (public) session.
- ii. **Notice of Hearing** -- The Governing Board or the Hearing Board shall set the matter for hearing and shall give the employee at least five (5) working days notice in writing of the date and place of such hearing.
- iii. **Released Time** -- If the hearing is held during the work hours of employee(s), witness(es) and such employee(s) shall be released without any loss of pay or benefits, to appear at the hearing.
- iv. **Rights of Employee** -- The employee shall attend any hearing, unless excused by the Governing Board or the Hearing Board and shall be entitled to:
  - 1. The employee may, upon request, have copies of the materials upon which the charges are based;
  - 2. be represented by counsel or any other person at such hearing;

3. testify under oath;
4. compel the attendance of other employees of the District to testify in his or her behalf;
5. cross-examine all witnesses appearing against him or her and all employees of the District whose actions are in question or who have investigated any of the matters involved in the hearing and whose reports are offered in evidence before the Hearing Board;
6. impeach any witness;
7. present such affidavits, exhibits and other evidence as the Hearing Board deems pertinent to the inquiry;
8. argue his or her case.

The party attempting to substantiate the charges against the employee shall be entitled to the same privileges.

- v. **Evidence** - The hearing shall be informal and need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be admitted for any purpose but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege and of official or judicial notice shall be effective to the same extent as in civil actions. Irrelevant and repetitious evidence shall be excluded. Oral evidence shall be taken only under oath or affirmation.
- vi. **Exclusion of Witnesses** - The Hearing Board may at its discretion exclude witnesses not under examination, except 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 in the hearing may be excluded.
- vii. **Burden of Proof** - The burden of proof shall be upon the party attempting to substantiate the charges.
- viii. **Findings and Decision** - Upon completion of the hearing, Findings of Fact and Conclusions of Law shall be signed and filed by the Governing Board, which shall constitute its decision. If the hearing is not before a quorum of the Governing Board, written findings and conclusions shall be submitted by the Hearing Board to the Governing Board for its approval. If the Governing Board accepts such findings and conclusions, it need not read the record of the hearing; if it declines to accept such findings and conclusions, it must read the record or hold a new hearing, after which it may adopt the findings and conclusions made by the Hearing Board, or make its own findings and conclusions.

Unless the decision provides otherwise, it shall be effective immediately. Notice of the decision shall be mailed promptly to the employee or his/her counsel or representative. Except for the correction of clerical error, such decision shall be final and conclusive, subject only to judicial review.

- c. **Report of Hearings** - The hearing shall be recorded by the District. At least two (2) work days prior to the hearing, the employee may inquire how the hearing will be recorded. If a court reporter is not to be used and the employee requests that such reporter be used, the cost shall be borne by the employee unless the District desires a copy of the transcript and then the cost of the reporter and of the transcript shall be borne equally between the District and the employee.
- d. **Transcripts of Hearings** - Transcripts of hearings shall be furnished to any person on payment of the cost of preparing such transcripts. When transcripts are provided by the employees of the District, the cost shall be determined by the Vice President of College Operations. When transcripts are provided by an independent contractor, the cost will be established by the independent contractor.
- e. **Continuances** - The Hearing Board may grant a continuance of any hearing upon such terms and conditions as it may deem proper, including in its discretion the condition that the employee shall be deemed to have waived salary for the period on continuance. Any request for continuance made less than 48 hours prior to the time set for the hearing will be denied unless good cause is shown for the continuance.

### 3. **Alternative Hearing**

As an alternative to the type of hearing provided for in subdivision 3. above, the employee may request that the hearing to be conducted be an informal one by so stating in his/her demand for hearing. In the event the employee requests an informal hearing, and his or her collective bargaining representative agrees, the Superintendent/President or designee shall arrange with the employee for the type of informal hearing to be conducted and the parties may agree in writing upon what person or persons shall hear the matter and how the hearing shall be conducted. In the event the parties fail to agree in writing within five (5) working days after filing of the notice of demand for hearing upon who shall hear the matter and how it shall be conducted, the hearing shall be conducted as provided for in subdivision 3. above. In the event the matter is informally heard as agreed upon in writing, the decision of the persons hearing the matter shall be final and conclusive, and there shall be no right of appeal by the employee to the Governing Board or to the courts unless otherwise stipulated in the written agreement to handle as an informal hearing.