

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION

The Governing Board expects all employees to perform their jobs satisfactorily, exhibit professional and appropriate conduct, and serve as positive role models both at school and in the community. A certificated employee may be disciplined for conduct or performance in accordance with law, the applicable collective bargaining agreement, Board policy, and administrative regulation.

(cf. 4000 - Concepts and Roles)
(cf. 4112.5/4212.5/4312.5 - Criminal Record Check)
(cf. 4119.21/4219.21/4319.21 - Professional Standards)
(cf. 4141/4241 - Collective Bargaining Agreement)

Disciplinary action shall be based on the particular facts and circumstances involved and the severity of the conduct or performance. Disciplinary actions may include, but are not limited to, verbal warnings, written warnings, reassignment, suspension, freezing or reduction of wages, compulsory leave, or dismissal.

(cf. 4114 - Transfers)

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

(cf. 1312.1 - Complaints Concerning District Employees)
(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)
(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

Suspension/Dismissal Procedures

The Superintendent shall notify the Board whenever he/she believes that there is cause to suspend or dismiss an employee pursuant to Education Code 44932 or 44933.

When the Board finds that there is cause to suspend or dismiss an employee pursuant to Education Code 44932 or 44933, it may formulate a written statement of charges specifying instances of behavior and the acts or omissions constituting the charge, the statutes and rules that the employee is alleged to have violated when applicable, and the facts relevant to each charge. The Board shall also review any duly signed and verified written statement of charges filed by any other person. (Education Code 44934, 44934.1)

Based on the written statement of charges, the Board may, upon majority vote, give notice to the employee of its intention to suspend or dismiss him/her at the expiration of 30 days from the date the notice is served. (Education Code 44934, 44934.1)

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)

Prior to serving a suspension or dismissal notice that includes a charge of unsatisfactory performance, the district shall give the employee written notice of the unsatisfactory performance that specifies the nature of the unsatisfactory performance with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his/her faults and overcome the grounds for any unsatisfactory performance charges and, if applicable, that includes the evaluation made pursuant to Education Code 44660-44665. The written notice of the unsatisfactory performance shall be provided at least 90 days prior to the filing of the suspension or dismissal notice or prior to the last one-fourth of the school days in the year. (Education Code 44938)

(cf. 4115 - Evaluation/Supervision)

Prior to serving a suspension or dismissal notice that includes a charge of unprofessional conduct, the district shall give the employee written notice that describes the nature of the unprofessional conduct with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his/her faults and overcome the grounds for any unprofessional conduct charges and, if applicable, that includes the evaluation made pursuant to Education Code 44660-44665. The written notice of the unprofessional conduct shall be provided at least 45 days prior to the filing of the suspension or dismissal notice. (Education Code 44938)

Except for notices that only include charges of unsatisfactory performance, the written suspension or dismissal notice may be served at any time of year. Such notice shall be served upon the employee personally if given outside of the instructional year or, if given during the instructional year, may be served personally or by registered mail to the employee's last known address. Notices with a charge of unsatisfactory performance shall be given only during the instructional year of the school site where the employee is physically employed, and may be served personally or by registered mail to the employee's last known address. (Education Code 44936)

If an employee has been served notice and demands a hearing pursuant to Government Code 11505 and 11506, the Board shall either rescind its action or schedule a hearing on the matter. (Education Code 44941, 44941.1, 44943, 44944)

Pending suspension or dismissal proceedings for an employee who is charged with egregious misconduct, immoral conduct, conviction of a felony or of any crime involving moral turpitude, incompetency due to mental disability, or willful refusal to perform regular assignments without reasonable cause as prescribed by district rules and regulations, the Board may, if it deems it necessary, immediately suspend the employee from his/her duties. If the employee files a motion with the Office of Administrative Hearings for immediate reversal of the suspension based on a cause other than egregious misconduct, the Board may file a written response before or at the time of the hearing. (Education Code 44939, 44939.1, 44940)

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)

When a suspension or dismissal hearing is to be conducted by a Commission on Professional Competence, the Board shall, no later than 45 days before the date set for the hearing, select one person with a currently valid credential to serve on the Commission. The appointee shall not be an employee of the district and shall have at least three years' experience within the past 10 years at the same grade span or assignment as the employee, as defined in Education Code 44944. (Education Code 44944)

*Legal Reference:*EDUCATION CODE

44008 *Effect of termination of probation*
 44009 *Conviction of specified crimes*
 44010 *Sex offense; definitions*
 44011 *Controlled substance offense; definitions*
 44242.5 *Reports and review of alleged misconduct*
 44425 *Conviction of a sex or narcotic offense*
 44660-44665 *Evaluation and assessment of performance of certificated employees*
 44830.1 *Criminal record summary certificated employees*
 44929.21 *Notice of reelection decision; districts with 250 ADA or more*
 44929.23 *Reelection and dismissal of probationary employees; districts with ADA less than 250*
 44930-44988 *Resignations, dismissal, and leave of absence*
 45055 *Drawing of warrants for teachers*
 48907 *Exercise of free speech, expression*
 48950 *Speech and other communication*
 51530 *Advocacy or teaching of communism*

GOVERNMENT CODE

1028 *Advocacy of communism*
 3543.2 *Scope of representation*
 11505-11506 *Hearing*

HEALTH AND SAFETY CODE

11054 *Schedule I; substances included*
 11055 *Schedule II, substances included*

HEALTH AND SAFETY CODE (continued)

11056 *Schedule III, substances included*
 11357-11361 *Marijuana*
 11363 *Peyote*
 11364 *Opium*
 11370.1 *Possession of controlled substances with a firearm*

Legal Reference continued: (see next page)

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)

Legal Reference: (continued)

PENAL CODE

187 Murder

291 School employees arrest for sex offense

667.5 Prior prison terms, enhancement of prison terms

1192.7 Plea bargaining limitation

11165.2-11165.6 Child abuse or neglect; definitions

CODE OF REGULATIONS, TITLE 5

80303 Reports of change in employment status

80304 Notice of sexual misconduct

COURT DECISIONS

Crowl v. Commission on Professional Competence, (1990) 225 Cal. App. 3d 334

Morrison v. State Board of Education (1969) 1 Cal.3d 214

Management Resources:

COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS

California's Laws and Rules Pertaining to the Discipline of Professional Certificated Personnel, 2007

WEB SITES

CSBA: <http://www.csba.org>

Commission on Teacher Credentialing: <http://www.ctc.ca.gov>

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION

Causes for Suspension or Dismissal

A certificated employee with permanent status may be suspended without pay or dismissed only for one or more of the following causes: (Education Code 44932)

1. Immoral conduct including, but not limited to, egregious misconduct that is the basis for a sex offense or controlled substance offense described in Education Code 44010 or 44011 or child abuse and neglect as described in Penal Code 11165.2-11165.6
2. Unprofessional conduct
3. Commission, aiding, or advocating the commission of acts of criminal syndicalism
4. Dishonesty
5. Unsatisfactory performance
6. Evident unfitness for service
7. Physical or mental condition unfitting the employee to instruct or associate with children

(cf. 4112.4/4212.4/4312.4 - Health Examinations)

8. Persistent violation of or refusal to obey the school laws or regulations of the state or district
9. Conviction of a felony or of any crime involving moral turpitude
10. Violation of Education Code 51530 or Government Code 1028 (advocacy of communism)
11. Alcoholism or other drug abuse that makes the employee unfit to instruct or associate with children

(cf. 4115 - Evaluation/Supervision)

An employee may be suspended or dismissed on grounds of unprofessional conduct consisting of acts or omissions not listed above if the charge specifies instances of behavior deemed to constitute unprofessional conduct. (Education Code 44933)

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)

An employee shall not be suspended, disciplined, reassigned, transferred, dismissed, or otherwise retaliated against solely for acting to protect a student, or for refusing to infringe on a student's protected conduct, when that student is exercising his/her free speech or press rights pursuant to Education Code 48907 or 48950. (Education Code 48907, 48950)

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

(cf. 5145.2 - Freedom of Speech/Expression)

Suspension/Dismissal of Permanent Employees

When a permanent certificated employee is charged with one or more of the offenses specified in the section "Causes for Suspension or Dismissal" above, the following procedures shall apply:

1. The person preparing a written statement of charges that there is cause to suspend or dismiss an employee shall submit the signed statement to the Governing Board. (Education Code 44934, 44934.1)
2. Upon receiving notice of the Board's intent to suspend or dismiss him/her, the employee may request a hearing on the matter. The hearing shall be conducted by the Commission on Professional Competence, except that any case involving only egregious misconduct shall be heard instead by an administrative law judge and, in any other case, the hearing may be conducted by an administrative law judge when both the district and employee so stipulate. (Education Code 44943, 44944, 44944.05, 44944.1, 44944.3)
3. Except when an employee is charged solely with egregious misconduct, the district may amend the charges less than 90 days before the hearing only upon showing of good cause and upon approval of the administrative law judge. (Education Code 44934)
4. The employee shall be suspended or dismissed when the Commission on Professional Competence or administrative law judge has issued its decision supporting suspension or dismissal or, if the employee did not request a hearing, at the expiration of 30 days after service of the notice of intent to suspend or dismiss. (Education Code 44941, 44943, 44944)

The Superintendent or designee shall notify the Commission on Teacher Credentialing when the employment status of a certificated employee has been changed as a result of alleged misconduct or while an allegation of misconduct is pending. (Education Code 44030.5, 44242.5, 44940; 5 CCR 80303)

(cf. 4117.7/4317.7 - Employment Status Reports)

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)

Suspension/Dismissal of Probationary Employees

The district may choose not to rehire probationary employees for the following school year without giving a statement of reasons provided that it is done in accordance with AR 4117.6 - Decision Not to Rehire and proper notice is provided by March 15. (Education Code 44929.21, 44929.23)

(cf. 4116 - Probationary/Permanent Status)

(cf. 4117.6 - Decision Not to Rehire)

During the school year, probationary employees in their first or second year of service may be dismissed only for one or more of the causes listed in items #1-11 in the section "Causes for Suspension or Dismissal" above or for unsatisfactory performance determined pursuant to Education Code 44660-44665. (Education Code 44948.2, 44948.3)

Whenever a first- or second-year probationary employee is so charged, the following procedures shall apply for dismissing the employee: (Education Code 44948.3)

1. The Superintendent or designee shall give 30 days' prior written notice of dismissal, not later than March 15 in the case of second-year probationary employees. The notice shall include a statement of the reasons for the dismissal, notice of the opportunity to appeal, and, if the cause is unsatisfactory performance, a copy of the evaluation conducted pursuant to Education Code 44664.

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

2. Upon receipt of the notice of dismissal, the employee may be dismissed if no request for a hearing is submitted to the Board within 15 days.
3. If a hearing is requested, the district may arrange for the appointment of an administrative law judge to conduct the hearing and to recommend a decision to the Board.

A probationary employee may be suspended without pay for a specified period of time as an alternative to dismissal. (Education Code 44948.3)

Compulsory Leave of Absence

The Superintendent or designee may place on an immediate compulsory leave of absence a certificated employee who is charged with an "optional leave of absence offense," defined as a controlled substance offense 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. (Education Code 44940)

DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)

If an employee is charged with an offense that falls into both the mandatory and optional leave of absence definitions, the offense shall be treated as a mandatory leave of absence offense. (Education Code 44940)

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 he/she demands a hearing. (Education Code 44940, 44940.5)

During the period of compulsory leave, the employee shall be compensated in accordance with Education Code 44940.5.

Upon receipt of telephone or electronic notification from the Department of Justice (DOJ) that a current temporary, substitute, or probationary employee serving before March 15 of his/her second probationary year has been convicted of a violent or serious felony, the Superintendent or designee shall immediately place the employee on leave without pay. Upon receipt of electronic notification of the conviction from the DOJ, such employee shall be automatically terminated and without regard to any other termination procedure. (Education Code 44830.1)

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