

**DISCIPLINARY ACTION OR DISMISSAL**

- 14.1 Management, Supervisory, and Confidential Employees.** Management, supervisory, and confidential employees are expected to conduct themselves in a professional and ethical manner at all times. A breach of this conduct is cause for suspension, demotion or dismissal. At the same time, the employee shall be protected from false or unfair allegations.

The procedures outlined in this section shall not apply to probationary employees. (Refer to Section 4 of this manual.)

**Board Action Required.** Action by the Governing Board is required in all cases of suspension, demotion and dismissal of a management, supervisory, or confidential employee.

- 14.1.1 Academic Managers/Supervisors.** Academic managers/supervisors serve at the pleasure of the Governing Board and may be dismissed by the Governing Board with or without cause. An academic manager/supervisor who does not receive a notice of non-reemployment by March 15th of an academic year shall be deemed to be reemployed for the full succeeding academic year. If the District determines that it wishes to take disciplinary action during the academic year separate from a March 15th notice, the causes of action and hearing process shall be the same as that found in Board Policy 2040.

- 14.1.2 Classified Managers, Supervisors, and Confidential Employees.** Notwithstanding prior regulatory issuances or provisions in individual classification descriptions, henceforth, with the publication of this revision of this manual, all classified confidential employees who are not issued contracts for employment under Education Codes Section 72411 shall be deemed permanent employees after serving a successful initial probationary period of one year.

**14.1.2.1** If the employee had no previous permanency in another classification within the Classified Service of the District, the employee has no right to an evidentiary hearing.

**14.1.2.2** A terminated probationary employee shall have retreat rights to her/his most recently held former classification, including former salary placement.

**14.1.2.2.1** If that classification no longer exists, or the classification has been retitled, but maintains the essential duties and responsibilities of the previously held classification, s/he shall have retreat rights in descending order to existing (or retitled) previously held classifications in which s/he held permanency.

**14.1.2.2.2** If the District, in terminating the probationary employee with prior permanency rights, also proposes to terminate the employee from the District, the employee is entitled to a hearing as outlined in Board Policy 2040.

- 14.1.2.3** A classified manager, supervisor, or confidential employee who has permanent status may be suspended, demoted or dismissed for cause. The causes deemed sufficient and the processes for disciplinary action of a permanent classified manager, supervisor, or confidential employee shall be in accordance with Board Policy 2040.

**14.2 Disciplinary Notice.** The employee is to be served a written notice of the Chancellor's (or designee's) recommendation of suspension, demotion, or dismissal to the Governing Board. Such notice shall include the following:

- 14.2.1** A statement in ordinary and concise language of the specific acts and omissions upon which the proposed action is based, including evidence and witnesses to support the charges.
- 14.2.2** The disciplinary action recommended.
- 14.2.3.** The cause(s) or reason(s) for the action taken.
- 14.2.4** A copy of the applicable regulation(s) where it is claimed a violation of regulation(s) took place.
- 14.2.5** A statement of the employee's right to a Preliminary Hearing before a Skelly hearing officer and/or an Evidentiary Hearing on the charges before the Governing Board or a hearing officer.
- 14.2.6** A form which constitutes a demand for a hearing and either 1) a denial of some or all of the charges or 2) acceptance of the charges, but a dispute over the proposed discipline. If the employee is accepting some or all of the charges, the employee must indicate which charges s/he is accepting.

**14.3 Preliminary Hearing**

- 14.3.1 Demand for Preliminary Hearing.** Such Demand for Preliminary Hearing form shall be delivered, on or before the sixth (6th) working day after receipt of the notice of charges, to the Office of the Vice Chancellor of Human Resources and Organizational Development. In the absence of a demand for a preliminary hearing, the Board shall act upon the recommendation after the time period for a preliminary hearing demand has expired.

Delivery means either hand delivered, faxed, or received via the U.S. mail.

Receipt of the Notice of Charges means that the charges were either hand delivered to the employee, or if mailed, mailed certified mail return receipt requested via the U.S. mail to the employee's last known home address on file in the District's Human Resources Information System. If mailed by U.S. mail, receipt is assumed on the sixth U.S. mail delivery day following the District's mailing of the charges.

**14.3.2 Preliminary Hearing.** All employees who receive a Notice of Charges and submit a demand for a preliminary hearing shall be allowed to have a pre-evidentiary (Skelly) hearing before the Vice Chancellor of Human Resources and Organizational Development. The Vice Chancellor shall have the right to reject, amend, or continue the proposed disciplinary action. If the decision after the Preliminary Hearing is to amend or continue the proposed disciplinary action, the action shall be implemented pending an Evidentiary Hearing before the Governing Board or a hearing officer. If the final decision of the evidentiary hearing rescinds or modifies the action to a lesser penalty, the employee shall be eligible for retroactive restitution.

**14.3.2.1** If the Preliminary Hearing Officer amends the proposed disciplinary action, the amendment shall not provide for a greater adverse action than originally proposed.

**14.3.2.2** The Chancellor or designee (not a regular District employee) shall be the preliminary hearing officer in cases involving the Executive Staff.

**14.3.3 Notice of Decision of Preliminary Hearing.** The employee shall be sent the Notice of Decision of Preliminary Hearing within five (5) working days from the conclusion of the hearing. If the Notice of the Decision of Preliminary Hearing contains an action to either amend or continue the proposed decision, the employee shall receive a form that constitutes a denial of the charges and a demand for an Evidentiary Hearing.

#### **14.4 Evidentiary Hearing**

**14.4.1 Demand for an Evidentiary Hearing.** The Demand for an Evidentiary Hearing Form must be received by District Human Resources on or before the sixth (6<sup>th</sup>) working day after receipt of the Notice of the Decision of Preliminary Hearing to the Office of the Vice Chancellor of Human Resources and Organizational Development. In the absence of a demand for an Evidentiary Hearing, the Board shall act upon the recommendation after the time period for an evidentiary hearing demand has expired.

Delivery means either hand delivered, faxed, or received via the U.S. mail.

Receipt of the Notice of the Decision of Preliminary Hearing means that the decision was either hand delivered to the employee, or if mailed, mailed via the U.S. mail return receipt requested to the employee's last known home address on file in the District's Human Resources Information System. If mailed by U.S. mail, receipt is assumed on the sixth U.S. mail delivery day following the District's mailing of the notice.

**14.4.2 Evidentiary Hearing.** Evidentiary hearings shall be held by the Governing Board or in the alternative by a three-member sub-committee of the Governing Board or hearing officer selected by the Governing Board (in which case the District would pay all expenses for the hearing officer) or a mutually selected hearing officer (in which case the cost of the hearing officer would be split between the District and the employee or employee's representative). If the employee chooses to use a mutually selected hearing officer, and the parties cannot agree on a hearing officer, the District shall request a list of seven potential hearing officers from the California State Mediation Service and selection shall be done by means of alternate striking. For hearings conducted by a Board sub-committee or a hearing officer, the hearing findings shall be advisory to the full Governing Board. Only the Governing Board shall have the authority to make the final decision.

- 14.4.2.1 Hearing Held within 60 Days.** Such hearing shall be held within 60 days whenever administratively possible, unless extended by mutual agreement.
  - 14.4.2.2 Closed Session.** The hearing shall be held in closed session unless the employee requests an open/public hearing.
  - 14.4.2.3 Presiding Officer.** Hearings will be presided over by the presiding officer of the Board, the Board member designee, or the hearing officer.
  - 14.4.2.4 Rights to Representation.** The employee shall have a right to appear in person on her/his own behalf, with counsel, or such representatives as s/he requests to represent her/his defense.
- 14.4.3 Evidentiary Hearing Procedure.** The presiding officer/hearing officer shall conduct the hearing and rule on questions, evidence and procedure.
- 14.4.3.1** Either party may call witnesses, introduce evidence, testify and question witnesses.
  - 14.4.3.2** The charging party has the burden of proof and shall first present evidence and testimony.
  - 14.4.3.3** Normal procedures shall be followed, i.e., charging party presentation, defense cross-examination, defense presentation, charging party cross-examination and rebuttal evidence from each party.
  - 14.4.3.4** Hearings will be recorded at the request of the parties or the presiding officer/hearing officer.
- 14.4.4 Evidentiary Hearing Decision.** The following procedures shall apply for the evidentiary hearing decision:
- 14.4.4.1 Hearing Officer Decision.** Recommendations shall be advisory only and shall be submitted to the Board in writing, stating the facts, findings and a recommended decision.
  - 14.4.4.2 Board Sub-Committee.** Recommendations shall be advisory only and shall be submitted to the Board in writing, stating the facts, findings and a recommended decision.
  - 14.4.4.4 Board Acting as a Hearing Body.** The Board may make its decision at the hearing, or take the matter under consideration for decision at a specified future time. Where the Board itself upholds a disciplinary action, it shall state the facts found and upon which its decision is based. If the appeal of the employee was sustained in the proposed decision or by the Board, the Board shall order all such records pertaining to the charges expunged from the employee's personnel file. The Board's findings and decisions shall be:

- X Expressed in writing and a copy provide to the employee.
- X Effective when announced in public session.
- X Final and conclusive.

**14.5 Temporary Removal.** The Chancellor or her/his designee may temporarily remove an employee with pay from duty pending action by the Preliminary Hearing Officer. Prior to such removal, other than emergencies, the employee shall be served notice in accordance with 14.2 - Disciplinary Notice. Where an emergency is deemed to exist, such notice shall be furnished the employee within five (5) working days.

**14.6 Limits on Disciplinary Action.** No disciplinary actions shall be taken for any cause which arose prior to the employee becoming permanent nor for any cause which arose more than two (2) years preceding the date of the filing of the notice of cause, unless such cause was concealed or not disclosed by the employee when it could reasonably be assumed the employee should have disclosed the facts to the District. Disciplinary action taken shall be commensurate with the offense charged.

**14.7 Disciplinary Action Resulting in Demotion.** If the District determines that the appropriate discipline for an employee is demotion to a lower classification in which the employee held permanency, the District must indicate in the proposed disciplinary action whether the employee is going to be demoted and allowed to exercise retreat rights that would include displacing an existing employee or if the employee will be demoted and allowed to be placed only in a vacant position in the classification.