

Chapter 7 – Human Resources

AP 7365 Discipline and Dismissal - Classified Employees

References:

Education Code Section 88013; Government Code Sections 3300 et seq.

Grounds for Discipline

A permanent member of the classified service shall be subject to disciplinary action for just cause, including but not limited to, written reprimand, reduction in pay, demotion, suspension, or discharge, for any of the following grounds:

- Fraud in securing employment or making a false statement on an application for employment.
- Incompetence, i.e., inability to comply with the minimum standard of an employee's position for a significant period of time.
- Inefficiency or inexcusable neglect of duty, i.e., failure to perform duties required of an employee within his/her position.
- Willful disobedience and insubordination; willful failure to submit or conform to duly established orders or directions of persons in a supervisory position or insulting or demeaning the authority of a supervisor or manager.
- Dishonesty involving employment.
- Being under the influence of alcohol or illegal drugs or narcotics while on duty; being impaired in job performance by having alcohol or illegal drugs in their biological system while on duty.
- Excessive absenteeism in violation of contractual requirements.
- Inexcusable absence without leave.
- Abuse of sick leave, i.e., taking sick leave without a doctor's certificate when one is required or misuse of sick leave.
- Improper or unauthorized use of College property.
- Inattention to duty, tardiness, indolence, carelessness, or negligence in the care and handling of College property.
- Mental or physical impairment that renders the employee unable to perform the essential functions of the job with or without reasonable accommodation or without presenting a direct threat to the health and safety of self or others.
- Acceptance from any source of a reward, gift, or other form of remuneration in addition to regular compensation to an employee for the performance of their official duties.

- The refusal of any officer or employee of the College to testify under oath before any court, grand jury, or administrative officer having jurisdiction over any then pending cause of inquiry in which the College is involved.
- Willful violation of any of the provisions of the ordinances, resolutions, or any rules, regulations, or policies which may be prescribed by the College.
- Improper political activity. Example: Those campaigning for or espousing the election or non-election of any candidate in national, state, county, or municipal elections while on duty and/or during working hours or the dissemination of political material of any kind while on duty and/or during working hours.
- Working overtime without authorization.

Background Checks

Background checks may be conducted as part of disciplinary or harassment investigations (Civil Code Sections 1786 et seq. Fair Credit Reporting Act).

Advanced notice of discipline/harassment investigations shall be provided to those under investigation. If the investigation results in action that adversely affects the employee, the employee shall receive written or electronic notice of:

- The adverse action;
- The name, address, and telephone number of the third party agency that furnished the report;
- The employee's right to obtain a free copy of the report; and
- The employee's right to dispute the accuracy or completeness of any of the information in the report.

Disciplinary Actions

Disciplinary action taken by the College against a permanent member of the classified service may include, but not be limited to, oral reprimand, written reprimand, and the following:

- **Reduction in pay or demotion** – The College may reduce the pay or demote an employee for just cause whose performance of the required duties falls below standard or for misconduct.
- **Suspension** – An employee may be suspended for just cause for disciplinary purposes without pay.
- **Discharge** – A permanent member of the classified service may be discharged for just cause at any time.

Procedure for Disciplinary Action

The College may, for disciplinary purposes, suspend, demote, or terminate any employee holding a position in the classified service. Demotion shall include reduction in pay from a range or pay level to one or more lower ranges or pay levels.

For classified employees suspended, demoted, or discharged the College shall follow a pre-disciplinary procedure as follows:

Notice of Intent: Whenever the College intends to suspend an employee, demote an employee, or dismiss an employee, the Vice President of Human Resources shall provide the employee with written notice of discipline which sets forth the following:

- The disciplinary action intended;
- The specific charges upon which the action is based;
- A factual summary of the grounds upon which the charges are based;
- A copy of all written materials, reports, or documents upon which the discipline is based;
- Notice of the employee's right to respond to the charges either orally or in writing to the Vice President of Human Resources and the appropriate vice president of the employee's work assignment;
- Notice of the employee's right to participate in a pre-determination meeting, commonly referenced as a Skelly Hearing, with the appropriate vice president or designee with the authority to impose, modify, or dismiss the proposed discipline but who did not participate in the decision to issue the notice of intent.
- The date and time by which the employee may respond within no less than 15 business days from delivery of the notice;
- Notice that failure to respond by the time specified shall constitute a waiver of the right to respond prior to final discipline being imposed.

Response by Employee: The employee shall have the right to respond orally or in writing to the Vice President of Human Resources and the appropriate vice president of the employee's work assignment wherein such a response will include a request for a Skelly Hearing or refusal of such right. If requested, a Skelly Hearing will be conducted within 15 business days of receipt of the request or at a time mutually agreed between the employee and the Vice President of Human Resources. The employee shall have a right to be represented at any meeting set to hear the employee's response. In cases of suspensions, demotions, or dismissal, the employee's response will be considered before final action is taken.

Final Notice: After the conclusion of the Skelly Hearing or the expiration of the employee's time to respond to the notice of intent, the Vice President of Human Resources shall inform the employee of the administrative determination:

1. Dismiss the notice of intent and take no disciplinary action against the employee; or
2. Modify the intended disciplinary action; or
3. Prepare and serve upon the employee a final notice of disciplinary action. The final notice of disciplinary action shall include the following:
 - The disciplinary action taken;
 - The effective date of the disciplinary action taken;
 - Specific charges upon which the action is based;

- A summary of the facts upon which the charges are based;
- The written materials, reports, and/or documents upon which the disciplinary action is based; and
- The employee's right to a hearing before the Board of Trustees.

Request for Board Hearing: Within five business days from the date of receipt of the final notice of disciplinary action, the employee may request a hearing before the Board of Trustees by filing with the Vice President of Human Resources a written answer to the charges and a request for the hearing.

Time for Board Hearing: The Board of Trustees shall, within a reasonable time from the filing of the written request, commence the hearing. The decision of the Board shall be final. The Board of Trustees may affirm, modify, or revoke the discipline. Any employee, having filed a request for hearing with the Board and having been notified of the time and place of the hearing, who fails to make an appearance before the Board, may be deemed to have abandoned their right to such a hearing. In this event, the Board shall affirm the administrative determination of discipline or dismissal.

Conduct of the Hearing:

- The Board may conduct the hearing itself, or it may secure the services of an experienced hearing officer or Administrative Law Judge, mutually selected by the College and the employee, to conduct the hearing and render a proposed decision for consideration by the Board. However, in every case, the decision of the Board itself shall be final.
- Hearings are conducted in noticed closed sessions of regular or special meetings of the Board of Trustees.
- The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner most conducive to determination of the truth.
- The classified employee is entitled to representation during the hearing.
- Any relevant evidence may be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence that shall not be sufficient in itself to support a finding.
- Irrelevant and unduly repetitious evidence may be excluded.
- The Board shall determine relevancy, weight, and credibility of testimony and evidence. Decisions made by the Board shall not be invalidated by any informality in the proceedings.
- During examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon request of either party.

Deliberation Upon the Case: The Board of Trustees should consider all oral and documentary evidence, the credibility of witnesses, and other appropriate factors in reaching their decision.

Findings and Decision: The Board shall render its findings and decision as soon after the conclusion of the hearing as possible. A finding must be made by the Board on each charge. The Board may sustain or reject any or all of the charges filed against the employee. The Board may sustain, reject, or modify the disciplinary action invoked against the employee.

Decision of the Board to be Final: The decision of the Board of Trustees in all cases shall be final.

Emergency Suspension: Employees may be suspended prior to the Board of Trustees' final decision following a Skelly hearing before the President or designee. The employee may be suspended without pay following the meeting only if the employee's presence at work could prove injurious, harmful, or seriously disruptive to the College or the employee's misconduct causes an actual or reasonable foreseeable risk to the health or safety of students or other employees or loss or damage to College property. Employees charged with a sex, controlled substance, or criminal offense may be suspended pursuant to Education Code Section 88123. If, after a hearing, the suspension is upheld, the Board of Trustees shall determine whether the suspension is with or without pay.

Record Filed: When a final action results in discipline or dismissal, the documents cited in this procedure shall be placed in the employee's personnel file. The employee shall be given a minimum of 15 working days to respond.

Approved: September 13, 2017