

## **DISCIPLINE & DISMISSAL – CLASSIFIED EMPLOYEES**

**Reference:** *Education Code Section 88001; 88013*

### **1. Disciplinary Actions**

The grounds upon which a permanent classified employee may be subject to disciplinary action are contained in College District Policy No. 7365 BP.

#### **A. Predisciplinary Actions:**

The following steps are designed to assist the supervisor and employee to reach understanding of what is expected in the workplace. They are not disciplinary actions in and of themselves, but may be considered to be justification to begin the “progressive discipline” process if continued action is required.

- **Counseling.** Informal discussion designed to assist the employee to develop or improve skills, abilities or conduct. Counseling may also be used to clarify District policies, solve a problem, or discuss particular weaknesses. Counseling may be verbal or in writing.
- **Written reprimand.** Formal notice to the employee that disciplinary action will be taken unless the performance or behavior improves. A written reprimand will go in the employee’s personnel file. The employee has the opportunity to respond in writing.

#### **B. Disciplinary Actions:**

Discipline includes the following actions:

- **Suspension without pay.** Temporary removal from the employee’s position for serious forms of misconduct or chronic problems.
  - **Emergency Suspension.** If an employee’s conduct presents an immediate threat to the health and safety of the employee or others, the employee may be suspended without compliance with the provisions of this procedure. However, as soon as possible after suspension, the employee shall be given notice as set forth herein.
- **Reduction in pay.** Placement at a lower salary step within the employee’s current pay range permanently or for a specific period of time.
- **Demotion.** Involuntary demotion to a lower-paying classification.

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- **Dismissal.** Termination from employment with the College District. The employment of a permanent classified employee may be terminated for just cause at any time.

### **2. Pre-Disciplinary Procedures**

Prior to issuing discipline, a supervisor must consult with the cognizant Vice President and the Director of Human Resources. When discipline is necessary, the Director of Human Resources shall draft the required documents, maintain a complete record, monitor deadlines, and generally manage the process in conjunction with the cognizant Vice President.

#### **A. Notice of Recommended Discipline & Statement of Charges:**

The employee shall be given a written notice of discipline (“*Skelly* Notice”) 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 recommended discipline is based;
- The name of the College District administrator who will act as *Skelly* meeting officer;
- Notice of the employee’s right to respond to the charges either orally or in writing to the designated *Skelly* meeting officer; and
- Notice that failure to respond within five working days shall constitute a waiver of the right to respond prior to final discipline being imposed.

A form will be included with the *Skelly* Notice for the employee to sign and return, which will constitute a denial of all charges and a request for a *Skelly* meeting.

#### **B. Response by Employee (*Skelly* Rights):**

The employee shall have the right to respond to the Notice of Proposed Discipline and Statement of Charges verbally or in writing.

- The employee is not required to respond. If no response is received within five (5) working days after the date the *Skelly* Notice is delivered to the employee, the proposed discipline will be implemented with no right of appeal, and the employee will be so advised in writing.

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- If, within five days of the delivery of the *Skelly* Notice the employee indicates the desire to respond to the charges contained therein, the *Skelly* Officer shall set a date and time for a meeting not more than fifteen (15) days after the delivery of the *Skelly* Notice. The employee shall be advised of the option to respond in writing to the charges in lieu of the meeting, provided that such written response is received by the scheduled meeting date and time.
- The purpose of a *Skelly* meeting is to offer the employee an opportunity to respond to the Statement of Charges and offer any relevant explanations. The *Skelly* Officer may ask questions of the employee and College District representative to clarify issues and facts to assist in determining whether the recommended discipline should be imposed. No witnesses will be called at the *Skelly* meeting. The employee's response will be considered before the *Skelly* Officer's recommendation is issued.

### **C. Written Recommendation of *Skelly* Officer:**

Within 10 working days after the *Skelly* meeting or the submission of a written *Skelly* response, the *Skelly* Officer shall issue a written recommendation of disciplinary action directly to the employee and to the Director of Human Resources. The *Skelly* Officer may recommend that the College District:

1. dismiss the Statement of Charges and take no disciplinary action against the employee;
2. modify the intended disciplinary action; or
3. uphold the recommended disciplinary action.

If discipline is modified or upheld, the written recommended decision shall include the following:

- The date of the meeting and the attendees;
- The disciplinary action to be taken;
- The written materials reports and documents upon which the disciplinary action is based;
- A brief statement indicating why alternative explanations or exculpatory information supplied by the employee were not persuasive.

### **D. Final Notice and Imposition of Disciplinary Action:**

Upon receipt of the *Skelly* Officer's written recommendation, the Director of Human Resources will issue a "Final Notice of Disciplinary Action," including the following information:

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- The effective date of the disciplinary action to be taken;
- Specific charges upon which the action is based;
- The employee's right to appeal, and the manner specified therein.

The Director of Human Resources may, in his discretion, modify the *Skelly* Officer's recommendation, provided such modification conforms to the original Notice of Recommended Discipline & Statement of Charges.

The Vice President for Employee Services will inform the Governing Board at its next regularly scheduled meeting of any discipline imposed.

### **3. Appeal**

To appeal the Final Notice of Disciplinary Action, the employee must file, in writing, a request with the Vice President for Employee Services within ten (10) working days after service of the Final Notice.

### **4. Appeal Procedures**

- A. Hearing Officer:** The Governing Board shall act as the Hearing Officer, and the decision of the Board itself shall be final. General Counsel for the College District shall act as parliamentarian for such hearings, and advise the Board's presiding officer on the proper conduct of the hearing including, but not limited to: the admissibility of evidence, the grounds or lack thereof for objections, and the timeliness and relevance of motions.
- B. Time for Hearing:** The hearing will be held at the next available regular Board meeting, but no sooner than ten working days after the request for appeal has been filed. The appealing employee will be notified in writing of the date, time and place of the hearing. The hearing will be held in closed session, unless the employee requests a public hearing.
- C. Failure to Appear:** If an employee who has filed an appeal and been notified of the time and place of the hearing fails to appear, the appeal shall be deemed to have been abandoned and will be dismissed with prejudice.
- D. Right to Control Proceedings:** While the parties are generally free to present their case in the order that they prefer, the Governing Board reserves the right to control the proceedings, including, but not limited to:
  - excluding or terminating redundant or irrelevant testimony
  - altering the order of witnesses
  - questioning witnesses directly

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- terminating argument and/or testimony disparaging the ethics, morals, or integrity of the parties or members of the Governing Board
- E. Presentation of the Case:** The College District representative and the employee representative will address their remarks, including objections, to the Governing Board. The hearing shall proceed in the following order unless the Governing Board directs otherwise:
- The College District shall produce its evidence, including witness testimony.
  - The employee may then offer evidence, including witness testimony.
  - Rebuttal evidence, if any, provided by College District, then employee.
- F. Evidence:** The College District is the party with the burden of proof. It shall provide evidence establishing the facts upon which it relied on in the Final Notice of Disciplinary Action.
- Any relevant evidence may be admitted regardless of whether such evidence is typically admitted in a court of law.
  - Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence that is not sufficient in itself to support a finding.
- G. Witness Testimony:**
- The Hearing Officer shall swear in all witnesses for the record prior to them offering testimony at the hearing.
  - All witnesses shall be excluded from the hearing room unless testifying, regardless of whether the hearing is held in closed or open session.
- H. Written Findings and Decision:** The Governing Board shall consider the evidence in closed session and render its findings and decision in writing within 30 days after the appeal hearing. The Board will decide:
1. Whether the evidence supports the finding that the employee committed the misconduct alleged; and
  2. Whether the level of discipline is appropriate under the circumstances.

The Governing Board may affirm or reject any or all of the charges filed against the employee. The Board may affirm, modify or reject the disciplinary action.

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- I. Record of Proceedings and Costs:** The appeal hearing shall be recorded by audio tape or by a certified court reporter. If a court reporter is requested by either party, that party shall pay the cost of the court reporter.
- J. Record Filed:** The documentary evidence, written records of the hearing (if any) and the Governing Board's written decision shall be placed in the employee's personnel file.