

## **RULE 10 – SUSPENSION, DEMOTION, DISMISSAL**

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## **RULE 10**

### **SUSPENSION, DEMOTION, DISMISSAL**

#### **RULE 10.0**

#### **CAUSES FOR SUSPENSION, DEMOTION, DISMISSAL**

The tenure of every employee holding a position in the classified service under the provisions of the Act and of these rules shall be during good behavior, and any such person may be dismissed, demoted, suspended, or otherwise disciplined for any of the following causes:

- A . Dishonesty, drunkenness, immoral conduct, or addition to the use of narcotics.
- B. Consecutive performance rating of “Unsatisfactory” in the group or groups in which the employee was rated, provided the ratings are supported by proof of factors on which they are based.
- C. Political activities engaged in by an employee during assigned hours of employment.
- D. Conviction of serious crime by court of law; a record of one or more convictions which indicate that the person is a poor employment risk; failure to disclose material facts regarding criminal records; and other false or misleading information on application forms or examination and employment record concerning material matters.
- E. Frequent request for casual absences, thereby resulting in disruption and loss of efficiency in the operating unit in which the employee is assigned.
- F. Sick leave when habitually taken for trivial indispositions.
- G. Continuing illness of a disabling nature after exhaustion of sick leave and leave of absence privileges.
- H. Contraction of some infectious disease, or physical ailment, or physical or mental condition such as to incapacitate the employee in the proper performance of the duties of the position.
- I. Incompetency, inefficiency, insubordination, inattention to or dereliction of duty, discourteous treatment of the public or fellow employees, or any other willful or persistent violation of the provisions of the Education Code of rules, regulations or procedures adopted by the

Governing Board or the Personnel Commission pursuant to it, provided that upon demand of the accused employee, specific instances must be set forth as to any of the causes enumerated under this hearing.

- J. Known membership by the employee in the Communist Party.
- K. Violation of any of the provision of Rules 7001 to 7006, inclusive, of the Education Code. (Affiliation with the Communist Party of other subversive group or party).
- L. Conduct specified in Rule 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947. (Membership in an organization advocating violent overthrow of the government.)
- M. Failure to maintain acceptable proficiency in one or more of the prescribed skills or competencies enumerated in the job description, or failure to maintain in full and valid force or effect any license or certificate enumerated in the job description, or failure to maintain insurability by the District's insurance carrier if prescribed in the job description. In the case of failure to maintain in full and valid force of effect any license or certificate, the employee will be notified in writing of deficiency and shall have five (5) work days to obtain any license or certificate or provide proof of satisfaction to the employer that steps are being taken to obtain license or certificate enumerated in the job description.

#### RULE 10.1

#### DISMISSAL OF SUBSTITUTE EMPLOYEE

Substitute classified employees do not have vested rights to their positions with the District. Substitute employees may be removed from the substitute list at any time by the Superintendent or designee without cause and without right of appeal.

#### RULE 10.2

#### NO DISCRIMINATION PERMITTED

No employee in the classified service shall be suspended, demoted, dismissed, or in any way discriminated against because of affiliations, political or religious acts or opinion, race, color, or marital status; nevertheless, no such person shall engage in political activities during assigned hours of employment. [Subject to provisions of Rule X, Rule 10.0 (K).]

RULE 10.3

POLITICAL ACTIVITY

Any employee may be disciplined for improper political activity. Improper political activity includes:

- A. Candidacy for any public office, the duties of which, either by nature or by the time required to perform them, are inconsistent with employment with the School District.
- B. The use of any District property, equipment, or facility for any political purpose.
- C. The use or attempt to use the fact of District employment as any influence on behalf of any candidate for public office.
- D. The support or advancement of the candidacy of any person in return for any favor or advantage, monetary gain, threat, or other consideration, either actual or implied.
- E. Engagement in active campaigning on behalf of any candidate for public office, whether by speaking, soliciting funds or support, distributing hand bills, or otherwise, during the employee's assigned hours of service.

RULE 10.4

APPEAL RIGHTS OF PROBATIONARY EMPLOYEES

An employee serving in the initial probationary period does not have the right to appeal to the Personal Commission. A permanent employee who is serving in a probationary period in a higher class may be demoted to the class from which promoted without recourse to an appeal or hearing by the Commission; provided, that such demotion does not result in separation of the employee from the permanent classified service (Ed. Code 45305).

RULE 10.5

PROCEDURE TO BE FOLLOWED IN SUSPENSION

The District may suspend any employee for not more than 30 days without pay for any of the causes set forth in Rule 10.0 of these Rules. Employees may be suspended for additional periods not exceeding 30 days.

The employee's supervisor shall notify the employee in writing of the employee's right to a pre-disciplinary hearing before the District Director of Personnel, at which the employee and/or representative may present written statements and/or oral and/or documentary and/or testamentary evidence on the

employee's behalf. A proposed date, time and place for such hearing, not less than five working days from the date of notice, shall be included. The employee may request in writing that such hearing date be amended to not later than ten working days from date of notice.

Subsequent to the date set, or amended by the employee's written request, for the pre-disciplinary hearing the District Director of Personnel shall notify the employee, in writing, of whatever action is to be taken by the District, if any, and all particulars thereunto including the specific cause(s) for the suspension and the provision(s) of this Rule that has (have) been violated.

The District shall file written charges with the Commission within three days following the effective date of any suspension, furnish the employee with a copy of the charges filed against the employee. The intent of this provision shall be deemed to have been carried out if a certified letter has been mailed to the last known mailing address of the employee on file in the office of the Commission.

RULE 10.6

APPEAL FROM ORDER OF SUSPENSION

An employee who has been so suspended may appeal to the Commission within fourteen days after having been furnished with a copy of the written charges by filing a written answer to such charges.

RULE 10.7

IMMEDIATE SUSPENSION POSSIBLE

Any employee who, for any of the causes enumerated in Rule 10.0 of this Rule, would, if permitted to perform normal duties, be likely, in the judgment of the prudent supervisor, to inflict, or cause to be inflicted, physical damage to property and/or persons of the District or property and/or persons served by the District, may be immediately suspended for one work day by the employee's immediate supervisor. The provisions of Rule 10.5 shall then apply, provided that repeated immediate one work day suspension is permitted for the reasons enumerated in this Rule.

RULE 10.8

DEMOTION AND DISMISSAL OF PERMANENT EMPLOYEES

A permanent employee with status of classified service may be reduced in rank or dismissed for any of the causes set forth in Rule 10.0.

RULE 10.81

SPECIFIC CHARGES FILED

Charges filed against a permanent employee shall be stated in clear and concise language. The District must file written charges with the Commission within three (3) days following any demotion or dismissal.

RULE 10.82

SERVICE UPON EMPLOYEE

Within ten days of the date of suspension, demotion or dismissal, a copy of the charges must be served upon the employee, personally by the Personnel Director, or by a person designated by the Personnel Director, or if the employee cannot be found at last known place of residence on file in the office of the Commission.

The provisions of this Rule shall be deemed to have been complied with if a copy of said charges is deposited in the United States Post Office, addressed to the employee at last known address on file in the office of the Commission.

RULE 10.83

APPEAL

The employee so demoted, dismissed, or suspended may appeal to the Commission within fourteen days after service of the charges, by making a written answer to such charges, and filing said answer in the office of the Commission. Appeal can be made only on the following grounds:

- A. That the procedures set forth in these Rules have not been followed.
- B. That the removal was made because of affiliations, political or religious beliefs or opinions, race, color, or marital status.
- C. That the charges made do not constitute sufficient cause for the action taken.
- D. That the action taken was not in accord with the facts.
- E. That there has been an abuse of discretion.

RULE 10.84

TIME AND CONDUCT OF HEARINGS

After the employee has made and filed an appeal and answer to the charges, the Commission shall investigate the matter on appeal and may require further evidence from either party. The Commission shall fix the time and place of the hearing of said charges which will be within a reasonable length of time from

the receipt of the appeal. The investigation and hearing shall be confined to the reasons for action as charged by the Board of Trustees and the relevant defenses set forth in the appeal and answer.

The representatives of the Board of Trustees shall first present evidence in support of the charges to the Commission. The appealing employee shall then have the right to present evidence. Witnesses desired by either side shall be subpoenaed by the Commission as provided in the Act, but requests for subpoenas must be filed with the Commission at least 72 hours prior to the date of the hearing. A list of witnesses shall be submitted to the Commission at least 24 hours prior to the date of the hearing. At the conclusion of the hearing, the matter shall be given consideration, either in open or closed session after which a decision shall be made. The accused employee may waive rights to a public hearing.

Testimony of all witnesses shall be presented orally at the hearing. If, in the opinion of the Commission, a witness has good and sufficient reason for being unable to be present, written testimony will be accepted under the following conditions:

- A. Such evidence must be submitted by sworn affidavit of the witness. The affidavit shall be confined to a statement of facts bearing on the case and with the knowledge of the witness, and shall not contain any conclusions of the witness, except that a witness who qualifies as an expert may express his opinion based upon the facts which the said witness recited.
- B. Copies of all such affidavits must be filed with the Commission at least three days prior to the date of the hearing, and may be inspected by the other party to the hearing, who shall be notified of the filing of such affidavits.
- C. The Commission may reject any such affidavit submitted which fails to comply with any of the foregoing conditions.

#### RULE 10.85

#### TECHNICAL RULES OF EVIDENCE NOT FOLLOWED

All hearings before the Commission shall be governed by the above procedure, and in the conduct thereof neither the Commission nor any Commissioner, nor the Personnel Director, nor other authorized agent of the Commission shall be bound by the technical rules of evidence. No informality in any proceeding or in the manner of taking testimony before the Commission or any Commissioner, or the Personnel Director,

or any authorized agent of the Board shall invalidate any order, division or rule or regulation made, approved, or confirmed by the Commission.

RULE 10.86      FINDINGS AND JUDGMENT OF THE COMMISSION

The findings and judgment of the Commission, arrived at by majority action, shall be rendered in written form within ten days after the hearing is completed. Copies shall be sent to the Board of Trustees and the employee concerned.

RULE 10.87      FAILURE TO APPEAL OR ANSWER

If the accused employee fails to appeal within the time provided herein, or if the accused employee files written notice of appeal, but does not file a written answer as herein provided, the order of demotion or dismissal shall be final without any action of the Commission.

RULE 10.9      CHARGES

Persons, for proper cause, may prefer charges against an employee in the classified service by filing written charges with the Board of Trustees or its proper agent. The Board of Trustees may make such investigation and shall take such action as it deems proper. If its decision results in suspension, demotion, or dismissal, the procedures set forth in this Rule shall be followed.

RULE 10.91      DISMISSED OR CONVICTED EMPLOYEES NOT ELIGIBLE

Any classified employee dismissed for cause from employment shall be removed from all eligibility lists. Individuals who have been dismissed for cause may not submit an application for employment. Any eligible or employee convicted of a felony shall under the terms of these Rules, be dismissed from the service of the District, and shall have their name stricken from all eligibility lists.