

**Background Checks**

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

If an investigation is conducted by a third party, advanced notice shall be provided to those under investigation. If the third-party investigation results in action that adversely affects the employee, the employee shall receive oral, written, or electronic notice of:

- A. The adverse action.
- B. The name, address, and telephone number of the third-party agency that furnished the report.
- C. The employee's right to obtain a free copy of the report.
- D. 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 district against a permanent member of the classified service may include, but not be limited to the following:

- A. **Warning.** The employee shall be notified verbally and/or in writing by their immediate supervisor of the basis for the action and their right to respond. If written, the notice shall remain in the supervisor's file for a period not to exceed two (2) years. Any further violations will result in the warning being immediately transferred to the employee's permanent personnel file.

**Written reprimand.** The employee shall be notified in writing by their immediate supervisor and/or the department head of the basis for the action. The notice will be placed in the employee's permanent personnel file. This may include a written performance improvement plan (PIP) associated with a performance assessment. The employee shall have five (5) working days from receipt of the notice to submit a written response. The response will be attached to the reprimand and be made a part of the employee's permanent personnel file.

- B. Suspension. An employee may be suspended for disciplinary purposes with or without pay.
- C. Demotion. The district may demote an employee whose performance of the required duties falls below standard, or for misconduct.
- D. Dismissal. A permanent member of the classified service may be dismissed for just cause at any time. Formal written notice of dismissal may be made after considered action during a period of suspension.

### **Procedure for Disciplinary Action and Appeal**

The district may, for disciplinary purposes, suspend, demote or dismiss any employee holding a position in the classified service. Demotion shall include reduction in pay to a lower range.

For classified employees suspended, demoted, or dismissed, the district shall follow a procedure as follows.

#### **Pre-Disciplinary Action**

##### **A. Notice of Intent**

Whenever the district intends to suspend an employee, demote the employee, or dismiss the employee, the employee shall be given a written notice of the proposed discipline that sets forth the following:

1. The disciplinary action intended and the effective date.
2. The specific charges upon which the action is based.
3. A copy of all written materials, reports, or documents upon which the discipline is based.
4. Notice of the employee's right to respond to the charges either orally or in writing.
5. The date, time and person before whom the employee may respond in no less than five (5) working days.
6. Notice that failure to respond at the time specified shall constitute a waiver of the right to respond prior to final discipline being imposed.

##### **B. Response by Employee:**

The employee shall have the right to respond to the superintendent/president or designee orally or in writing. 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 dismiss, the employee's response will be considered before recommending final action to the Board of Trustees.

After the response or the expiration of the employee's time to respond to the Notice of Intent, the superintendent/president or designee shall: (1) dismiss the Notice of Intent and take no disciplinary action against the employee; or (2) recommend final disciplinary action to the Board of Trustees with or without modification and notify the employee of their decision.

### **Post-Disciplinary Action**

A. Final Notice: In the event that the Board of Trustees takes disciplinary action, a final notice shall be given. The final notice of disciplinary action shall include the following:

1. The disciplinary action taken.
2. The effective date of the disciplinary action taken.
3. The specific charges upon which the action is based.
4. The employee's right to appeal.
5. A card or paper, the signing and filing of which shall constitute a demand for hearing and a denial of all charges.

B. Appeal and Request for Hearing

If a classified employee, having been issued a final notice of disciplinary action, wants to appeal the action, they shall within ten (10) calendar days from the date of service of the notice, file the enclosed card or paper or otherwise file an answer to the charges and a request for hearing with the vice president of human resources. Failure to file the request for hearing within ten calendar days shall constitute a waiver of the right to an appeal hearing.

C. Time for Hearing

The Board of Trustees shall, within a reasonable time from the filing of the appeal, commence the hearing. The board may conduct the hearing itself, or it may appoint a hearing officer or administrative law judge 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. The board may affirm, modify or revoke the discipline. Any employee, having filed an appeal 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 appeal. In this event, the board may dismiss the appeal.

D. Record of Proceedings and Costs

All disciplinary appeal hearings may, at the discretion of either party or the board, be recorded by a court reporter. Any hearing that does not utilize a court reporter

shall be recorded by audio tapes. If a court reporter is requested by either party, that party shall pay the cost of the court reporter.

### **Conduct of the Hearing**

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.

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, regardless of the existence of any common law or statutory rules that might make improper the admission of such evidence over objection in civil actions.

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 unless it would be admissible over objection in civil actions.

The rules dealing with privileges shall be effective to the same extent that they are now or hereafter may be recognized in civil actions.

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 motion of either party.

### **Burden of Proof**

In a disciplinary appeal, the district has the burden of proof by preponderance of the evidence.

### **Proceed with Hearing or Request for Continuance**

Each side should be asked if it is ready to proceed. If either side is not ready and wishes a continuance, good cause must be stated.

### **Testimony under Oath**

All witnesses shall testify under oath.

### **Presentation of the Case**

The hearing shall proceed in the following order unless the board or hearing officer, for special reason, directs otherwise:

- A. The party imposing discipline (district) shall be permitted to make an opening statement.

- B. The appealing party (employee) shall be permitted to make an opening statement.
- C. The district shall produce its evidence.
- D. The party appealing from such disciplinary action (employee) may then offer their evidence.
- E. The district followed by the appealing party (employee) may offer rebutting evidence.
- F. Closing arguments shall be permitted at the discretion of the board or hearing officer. The party with the burden of proof shall have the right to go first and to close the hearing by making the last argument. The board or hearing officer may place a time limit on closing arguments. The board or hearing officer or the parties may request the submission of written briefs. After the request for submittal of written briefs, the board or hearing officer will determine whether to allow the parties to submit written briefs and determine the number of pages of briefs.

### **Procedure for the Parties**

The district representative and the employee representative will address their remarks, including objections, to the president of the board or hearing officer. Objections may be ruled upon summarily or argument may be permitted. The board or hearing officer reserves the right to discharge argument at any time and issue a ruling regarding an objection or any other matter, and thereafter the representative shall continue with the presentation of their case.

### **Right to Control Proceedings**

While the parties are generally free to present their case in the order that they prefer, the board or hearing officer reserves the right to control the proceedings, including, but not limited to, altering the order of witnesses, limiting redundant or irrelevant testimony, or by the direct questioning of witnesses.

### **Deliberation upon the Case**

The board or hearing officer should consider all oral and documentary evidence, the credibility of witnesses, and other appropriate factors in reaching their decision. The board may deliberate in closed session at the close of the hearing or at a later fixed date and time.

### **Decision of the Board**

The board may sustain, reject, or modify the disciplinary action invoked against the employee. In the event the board receives a proposed decision from a hearing officer, it may adopt the proposed decision, modify the proposed decision, render a new decision after consideration of the entire record or return the matter to the hearing officer for additional evidence. In all cases, the decision of the Board of Trustees shall be final.

### **Emergency Suspension**

If an employee's conduct presents an immediate threat to the health and safety of the employee or others, the superintendent/president or designee may suspend the employee 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.

### **Record Filed**

When final action is taken, the documents shall be placed in the employee's personnel file.