

# North Orange County Regional Occupational Program

## Administrative Regulation

ROP AR 4218 (a)

### Classified Personnel

#### DISMISSAL-SUSPENSION-DISCIPLINARY ACTION

##### Termination of Probationary Employment

At any time prior to the expiration of the probationary period, the Superintendent or designee may, at his/her discretion, dismiss a probationary classified employee from ROP employment. A probationary employee shall not be entitled to a hearing.

##### Involuntary Suspension Without Pay, Demotion, Reduction of Pay Step in Class, or Dismissal of Permanent Classified Employees

Permanent classified employees shall be subject to personnel action (suspension without pay, demotion, reduction of pay step in class, dismissal) only for cause. The Board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

##### 1. Causes

In addition to any disqualifying or actionable causes otherwise provided for by statute or by policy or regulation of this ROP, each of the following constitutes cause for personnel action against a permanent classified employee:

- a. Falsifying any information supplied to this ROP, including, but not limited to, information supplied on application forms, employment records, or any other ROP records.
- b. Incompetency.
- c. Inefficiency.
- d. Neglect of duty.
- e. Insubordination.
- f. Dishonesty.

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- g. Drinking alcoholic beverages while on duty or in such close time proximity thereto as to cause any detrimental effect upon the employee or upon employees associated with him/her.
- h. Possessing or being under the influence of a controlled substance at work or away from work, or furnishing a controlled substance to a minor.
- i. Conviction of a felony, conviction of any sex offense made relevant by provisions or law, or conviction of a misdemeanor which is of such a nature as to adversely affect the employee's ability to perform the duties and responsibilities of his/her position. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction for this purpose.
- j. Absence without leave.
- k. Immoral conduct.
- l. Discourteous treatment of the public, students, or other employees.
- m. Improper political activity.
- n. Willful disobedience.
- o. Misuse of ROP property.
- p. Violation of Board policy, administrative regulation, departmental rule or procedure.
- q. Failure to possess or keep in effect any license, certificate, or other similar requirement specified in the employee's class specification or otherwise necessary for the employee to perform the duties of the position.
- r. Refusal to take and subscribe any oath or affirmation which is required by law in connection with his/her employment.
- s. A physical or mental disability which precludes the employee from the proper performance of his/her duties and responsibilities as determined by competent medical authority, except as otherwise provided by a contract or by law regulating the retirement of employees.

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- t. Unlawful discrimination, including harassment, on the basis of race, color, religion, ancestry, national origin, age, handicap, disability, or sexual orientation against the public or other employees while acting in the capacity of a ROP employee.
- u. Unlawful retaliation against any other ROP officer or employee or member of the public who, in good faith, reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any information relative to an actual or suspected violation of state or federal law occurring on the job or directly related thereto.
- v. Any other failure of good behavior either during or outside of duty hours which is of such nature that it causes discredit to this ROP or his/her employment.

Except as defined in item "s" above, no personnel action shall be taken for any cause which arose before the employee became permanent, nor for any cause which arose more than two years before the date of the filing of the notice of cause unless this cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee would have disclosed the facts to the ROP.

### **2. Initiation and Notification of Charges**

The Superintendent or designee may initiate a personnel action as defined herein against a permanent classified employee.

In all cases involving a personnel action, the person initiating the action shall file a written recommendation of personnel action with the Board. A copy of the recommendation shall be served upon the employee either personally or by registered or certified mail, return receipt requested, at the employee's last known address. The recommendation shall include:

- a. A statement of the nature of the personnel action (suspension without pay, demotion, reduction of pay step in class, or dismissal).
- b. A statement of the cause or causes for the personnel action, as set forth above.

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- c. A statement of the specific acts or omissions upon which the causes are based. If a violation of rule, policy, or regulation of the ROP is alleged, the rule, policy, or regulation violated shall be stated in the recommendation.
- d. A statement of the employee's right to appeal the recommendation and the manner and time within which the appeal must be filed.
- e. A card or paper, the signing and filing of which shall constitute a demand for hearing and a denial of all charges.

### **3. Employment Status Pending Appeal or Waiver**

Except as provided herein, any employee against whom a recommendation of personnel action has been issued shall remain on active duty status and responsible for fulfilling the duties of the position pending his/her appeal or waiver.

If the Superintendent or designee determines that a permanent classified employee's continuing in active duty status would present an unreasonable risk of harm to students, staff, or property while proceedings are pending, the Superintendent or designee may order the employee immediately placed on leave of absence without pay in conjunction with the recommendation of personnel action. The leave of absence order shall be served upon the employee either personally or by registered or certified mail, return receipt requested, immediately after issuance.

### **4. Right to Appeal**

Within five calendar days after receiving the recommendation of personnel action described above, the employee may appeal by signing and filing the card or paper included with the recommendation. A notice of appeal is filed only by delivering the notice of appeal to the office of the Superintendent or designee during normal work hours of that office. A notice of appeal may be mailed but must be received or postmarked no later than the time limit stated herein.

If the employee fails to file a notice of appeal within the time specified in these rules, he/she shall be deemed to have waived his/her right to appeal, and the Board may order the recommended personnel action into effect immediately.

**5. Amended/Supplemental Charges**

At any time before an employee's appeal is finally submitted to the hearing officer or the Board for decision, the complainant may, with the consent of the hearing officer or the Board, serve on the employee and file with the Board an amended or supplemental recommendation of personnel action.

If the amended or supplemental recommendation presents new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare his/her defense. Any new causes or allegations shall be deemed controverted and any objections to the amended or supplemental causes or allegation may be made orally at the hearing and shall be noted on the record.

**6. Hearing Procedures**

- a. The hearing shall be held at the earliest convenient date, taking into consideration the established schedule of the hearing officer and the availability of counsel and witnesses. The parties shall be notified of the time and place of the hearing. The employee shall be entitled to appear personally, produce evidence, and have counsel. If the Board is hearing the appeal, the employee is entitled to a public hearing if he/she demands it. The complainant may also be represented by counsel. The procedure entitled "Administrative Adjudication" commencing with Government Code 11500 shall not apply to any such hearing before the Board or a hearing officer. Neither the Board nor a hearing officer shall be bound by rules of evidence used in California courts. Informality in any such hearing shall not invalidate any order or decision made or approved by the hearing officer or the Board.
- b. All hearings shall be heard by a hearing officer selected by the Superintendent or designee from outside the ROP, except in those cases where the Board determines to hear the appeal itself.

In any case in which the Board hears the appeal, the Board may use the services of its counsel or a hearing officer in ruling upon procedural questions, objections to evidence, and issues of law. If the appeal is heard by the Board, the Board shall affirm, modify or revoke the recommended personnel action.

- c. If the appeal is heard by a hearing officer, he/she shall prepare a proposed decision in a form that may be adopted by the Board as the decision in the case. A copy of the proposed decision shall be received and filed by the Board and furnished to each party within 10 days after the proposed decision is filed by the Board. The Board may:
- (1) Adopt the proposed decision in its entirety.
  - (2) Reduce the personnel action set forth in the proposed decision and adopt the balance of the proposed decision.
  - (3) Reject a proposed reduction in personnel action, approve the personnel action sought by the complainant or any lesser penalty, and adopt the balance of the proposed decision.
  - (4) Reject the proposed decision in its entirety.
- d. If the Board rejects the proposed decision in its entirety, each party shall be notified of such action and the Board may decide the case upon the record including the transcript, with or without the taking of additional evidence, or may refer the case to the same or another hearing officer to take additional evidence. The hearing officer shall prepare a proposed decision, as provided in "c" above, upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of this proposed decision shall be furnished to each party within 10 days after the proposed decision is filed by the Board.
- e. In arriving at a decision or a proposed decision on the propriety of the proposed personnel action, the Board or the hearing officer may consider the records of any prior personnel action proceedings against the employee in which a personnel action was ultimately sustained and any records that were contained in the employee's personnel files and introduced into evidence at the hearing.

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### **7. Hearing Decision**

The decision of the Board shall be in writing and shall contain findings of fact and the personnel action approved, if any.

The decision of the Board shall be certified to the Superintendent or designee who recommended the personnel action, and he/she shall enforce and follow this decision. A copy of the decision shall be delivered to the appellant or his/her designated representative personally or by registered or certified mail, return receipt requested. The decision of the Board shall be final.

### **8. Compulsory Dismissal**

The ROP shall not employ or retain in employment any person who has been convicted of any sex offense as defined in Education Code 44010 or any controlled substance offense as defined in Education Code 44011. However, the ROP may employ a person convicted of a controlled substance offense if the Board determines from the evidence it requires that the person has been rehabilitated for at least five years.

The ROP reserves the right to dismiss an employee for any acts upon which the original criminal charges were based, despite the disposition by the courts. If dismissal is recommended and upheld, and employee will not be re-employed or compensated for the time he/she was suspended unless otherwise required by law. An employee shall be given notice of the possibility of not being reimbursed during mandatory suspension if he/she is ultimately dismissed for the acts upon which the original charges were based.

### **9. Extension of Compulsory Leave**

The Board may extend an employee's compulsory leave of absence by giving him/her notice, within 10 days after the entry of judgment in the proceedings, that he/she will be dismissed in 30 days unless he/she demands a hearing. Employee compensation during the period of compulsory leave shall be made in accordance with law.

June 21, 2001