

**Regulation 4218: Dismissal/Suspension/Disciplinary Action**

**Status:** DRAFT

**Original Adopted Date:** 10/05/2010 | **Last Revised Date:** 06/13/2023

**Causes for Disciplinary Action**

A permanent classified employee may be subject to suspension, demotion, involuntary reassignment, or dismissal for one or more of the following causes:

1. Immoral conduct, including, but not limited to, egregious misconduct that is the basis for a sex offense as defined in Education Code 44010, a controlled substance offense as defined in Education Code 44011, or child abuse and neglect as described in Penal Code 11165.2-11165.6
2. Conduct that constitutes a violent or serious felony as defined in Penal Code 667.5(c) or 1197(c)
3. Unlawful discrimination, including harassment, against any student or other employee
4. Violation of or refusal to obey state or federal law or regulation, Board policy, or district or school procedure
5. Falsification of any information supplied to the district, including, but not limited to, information supplied on application forms, employment records, or any other school district records
6. Unsatisfactory performance
7. Unprofessional conduct
8. Dishonesty
9. Neglect of duty or absence without leave
10. Insubordination
11. Use of alcohol or a controlled substance while on duty or in such close time proximity thereto as to affect the employee's performance
12. Destruction or misuse of district property
13. Failure to fulfill any ongoing condition of employment including, but not limited to, maintenance of 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
14. A physical or mental condition which precludes the employee from the proper performance of duties and responsibilities as determined by competent medical authority, except as otherwise provided by a contract or by law
15. Retaliation against any person 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 or directly related to the job
16. Violation of Education Code 45303 or Government Code 1028 prohibiting the advocacy or teaching of communism

17. Any other misconduct which is of such nature that it causes discredit or injury to the district or the employee's position

No disciplinary action shall be taken for any cause ~~which~~**that** arose before the employee became permanent, nor for any cause ~~which~~**that** 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 district. (Education Code 45113)

### **Initiation and Notification of Charges**

The Superintendent or designee shall provide notice to the employee of a recommendation for discipline, which includes the charges and materials upon which the recommendation is based. The notification shall identify an impartial district official ("Skelly officer") with whom the employee may meet at a specified time and place or to whom the employee may provide a written response to the recommendation of discipline. After meeting with the employee or considering any response from the employee, the Skelly officer shall recommend to the Superintendent or designee whether to proceed with the recommendation for discipline.

The Superintendent or designee shall file any final recommendation for a disciplinary action in writing with the Governing 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 notice shall, in ordinary and concise language, inform the employee of the specific charge(s) or cause(s) for the disciplinary action, the specific acts and omissions upon which the action is based, and, if applicable, the district rule or regulation that the employee has allegedly violated. In addition, the notice shall include the employee's right to a hearing on those charges, the time within which the hearing may be requested, which shall be not less than five days after service of the notice to the employee, and a card or paper which the employee may sign and file to deny the charges and request a hearing. (Education Code 45113, 45116)

### **Request for Board Hearing**

Within the time specified in the notice of the recommendation of disciplinary action, the employee may request a hearing on the charges by signing and filing the card or paper included with the notice. (Education Code 45113)

Any other written document signed and appropriately filed within the specified time limit by the employee shall constitute a sufficient notice of the request for a hearing. The request shall be delivered to the office of the Superintendent or designee during normal work hours of that office. If mailed to the office of the Superintendent or designee, it must be received or postmarked no later than the time limit specified by the district. In cases where an order of suspension without pay has been issued in conjunction with a recommendation of dismissal, any request for a hearing on the dismissal shall also constitute a request to hear the suspension order, and the necessity of the suspension order shall be an issue in the hearing.

### **Employment Status Pending a Disciplinary Hearing**

A classified employee against whom a recommendation ~~of~~**for** disciplinary action has been issued ~~shall~~**may** remain on active duty status ~~or may be placed on paid leave~~ pending ~~any~~ a hearing on the charges, ~~unless~~. **The employee shall not be suspended without pay, suspended or demoted with a reduction in pay, or dismissed pending the Superintendent or designee determines outcome of a timely requested hearing, except as specified below.** (Education Code 45113)

**However, the disciplinary action may be imposed prior to the decision if the Board, or an impartial third-party hearing officer provided pursuant to a collective bargaining agreement, finds by a preponderance of the evidence that the employee's continuance in active duty would present an unreasonable ~~at the time discipline was imposed,~~ the employee (1) engaged in criminal misconduct, (2) engaged in misconduct that presents a risk of harm to students, staff, or property. The Superintendent or designee may, in writing, order the employee immediately suspended from duty without pay and ~~,~~ or (3) committed habitual violations of the district's policies or regulations. Such finding(s) must be made at the conclusion of the Skelly review process. (Education Code 45113)**

**In such cases where the disciplinary action is imposed prior to the decision, the employee shall state the reasons that the suspension is deemed necessary. The suspension order ~~be given~~ written notice of the disciplinary action and the findings made at the conclusion of the Skelly review process. Such written notice shall be served upon the**

employee either personally or by registered or certified mail, return receipt requested, immediately after issuance.

**In addition, the district may cease paying the employee if a decision has not been rendered by an impartial third-party hearing officer, pursuant to a collective bargaining agreement, or the Board within 30 days of the date the hearing was requested. (Education Code 45113)**

### **Compulsory Leave of Absence**

Upon being informed by law enforcement that a classified employee has been charged with a "mandatory leave of absence offense," the Superintendent or designee shall immediately place the employee on a leave of absence. A mandatory leave of absence offense includes: **(Education Code 44940, 45304)**

1. Any sex offense as defined in Education Code 44010
2. Violation or attempted violation of Penal Code 187, prohibiting murder or attempted murder
3. Any offense involving the unlawful sale, use, or exchange to minors of controlled substances as listed in Health and Safety Code 11054, 11055, and 11056

The Superintendent or designee may place on an immediate compulsory leave of absence a classified employee who is charged with an "optional leave of absence offense," defined as a controlled substance offense specified in Education Code 44011 and Health and Safety Code 11357-11361, 11363, 11364, and 11370.1 except as it relates to marijuana, mescaline, peyote, or tetrahydrocannabinols: **tetrahydrocannabinol. (Education Code 44940, 44940.5, 45304)**

An employee's compulsory leave for a mandatory or optional leave of absence offense may extend for not more than 10 days after the entry of judgment in the criminal proceedings. However, the compulsory leave may be extended if the Board gives notice, within 10 days after the entry of judgment in the proceedings, that the employee will be dismissed within 30 days from the date of service of the notice unless the employee demands a hearing on the dismissal. **(Education Code 44940, 44940.5)**

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**Policy Reference Disclaimer:** These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

### **State References**

### **Description**

CA Constitution Article 1, Section 1	<a href="#">Inalienable rights</a>
Ed. Code 35161	<a href="#">Board delegation of any powers or duties</a>
Ed. Code 44009	<a href="#">Conviction of specified crimes</a>
Ed. Code 44010	<a href="#">Sex offense; definitions</a>
Ed. Code 44011	<a href="#">Controlled substance offense</a>
Ed. Code 44940	<a href="#">Compulsory leave of absence for certificated persons</a>
Ed. Code 44940.5	<a href="#">Procedures when employees are placed on compulsory leave of absence</a>
Ed. Code 45101	<a href="#">Definitions; disciplinary action and cause</a>
Ed. Code 45109	<a href="#">Fixing of duties</a>
Ed. Code 45113	<a href="#">Notification of charges; classified employees</a>
Ed. Code 45116	<a href="#">Notice of disciplinary action</a>
Ed. Code 45123	<a href="#">Employment after conviction of controlled substance offense</a>
Ed. Code 45302	<a href="#">Demotion and removal from permanent classified service</a>
Ed. Code 45303	<a href="#">Additional cause for suspension or dismissal of employee charged with mandatory or optional leave of absence offense</a>
Ed. Code 45304	<a href="#">Compulsory leave of absence for classified persons</a>
Gov. Code 12954	<a href="#">Employment discrimination; cannabis use</a>

Veh. Code 1808.8

[School bus drivers; dismissal for safety-related cause](#)

**Federal References**

42 USC 12101-12213

**Description**

[Americans with Disabilities Act](#)

U.S. Constitution, First Amendment

[Free exercise, free speech, and establishment clauses](#)

**Management Resources References**

Court Decision

**Description**

[Visalia Unified School District v. Public Employment Relations Board \(2024\) 98 Cal.App.5th 844](#)

Court Decision

[Kennedy v. Bremerton \(2022\) 142 S.Ct. 2407](#)

Court Decision

[California School Employees v. Livingston Union School District \(2007\) 149 Cal. App. 4th 391](#)

Court Decision

[CSEA v. Foothill Community College District \(1975\) 52 Cal. App. 3rd 150](#)

Court Decision

[Skelly v. California Personnel Board \(1975\) 15 Cal.3d 194](#)

U.S. Department of Education Publication

[Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools, May 2023](#)

Website

[Office of the Attorney General](#)

Website

[Office of Administrative Hearings](#)

Website

[Department of General Services, About Teacher Dismissal Case Type](#)

Website

[CSBA District and County Office of Education Legal Services](#)

Website

[U.S. Department of Education](#)

Website

[CSBA](#)

**Cross References**

**Description**

1114

[District-Sponsored Social Media](#)

1114

[District-Sponsored Social Media](#)

1312.1

[Complaints Concerning District Employees](#)

1312.1

[Complaints Concerning District Employees](#)

1312.1-E PDF(1)

[Complaints Concerning District Employees](#)

1312.3

[Uniform Complaint Procedures](#)

1312.3

[Uniform Complaint Procedures](#)

1312.3-E PDF(1)

[Uniform Complaint Procedures](#)

1312.3-E PDF(2)

[Uniform Complaint Procedures](#)

3230

[Federal Grant Funds](#)

3230

[Federal Grant Funds](#)

3512

[Equipment](#)

3512-E PDF(1)

[Equipment](#)

3513.3

[Tobacco-Free Schools](#)

3513.3

[Tobacco-Free Schools](#)

3513.4

[Drug And Alcohol Free Schools](#)

3515.2

[Disruptions](#)

3515.2

[Disruptions](#)

3516.2

[Bomb Threats](#)

3542

[School Bus Drivers](#)

4000	<a href="#">Concepts And Roles</a>
4020	<a href="#">Drug And Alcohol-Free Workplace</a>
4030	<a href="#">Nondiscrimination In Employment</a>
4030	<a href="#">Nondiscrimination In Employment</a>
4040	<a href="#">Employee Use Of Technology</a>
4040-E PDF(1)	<a href="#">Employee Use Of Technology</a>
4112.42	<a href="#">Drug And Alcohol Testing For School Bus Drivers</a>
4112.42	<a href="#">Drug And Alcohol Testing For School Bus Drivers</a>
4112.5	<a href="#">Criminal Record Check</a>
4112.5-E(1)	<a href="#">Criminal Record Check</a>
4112.6	<a href="#">Personnel Files</a>
4119.1	<a href="#">Civil And Legal Rights</a>
4119.12	<a href="#">Title IX Sexual Harassment Complaint Procedures</a>
4119.12-E(1)	<a href="#">Title IX Sexual Harassment Complaint Procedures</a>
4119.21	<a href="#">Professional Standards</a>
4119.21-E(1)	<a href="#">Professional Standards</a>
4119.22	<a href="#">Dress And Grooming</a>
4119.23	<a href="#">Unauthorized Release Of Confidential/Privileged Information</a>
4119.24	<a href="#">Maintaining Appropriate Adult-Student Interactions</a>
4119.25	<a href="#">Political Activities Of Employees</a>
4119.25	<a href="#">Political Activities Of Employees</a>
4127	<a href="#">Temporary Athletic Team Coaches</a>
4127	<a href="#">Temporary Athletic Team Coaches</a>
4136	<a href="#">Nonschool Employment</a>
4141.6	<a href="#">Concerted Action/Work Stoppage</a>
4141.6	<a href="#">Concerted Action/Work Stoppage</a>
4154	<a href="#">Health And Welfare Benefits</a>
4154	<a href="#">Health And Welfare Benefits</a>
4158	<a href="#">Employee Security</a>
4158	<a href="#">Employee Security</a>
4161	<a href="#">Leaves</a>
4161.11	<a href="#">Industrial Accident/Illness Leave</a>
4200	<a href="#">Classified Personnel</a>
4200	<a href="#">Classified Personnel</a>
4212	<a href="#">Appointment And Conditions Of Employment</a>
4212.42	<a href="#">Drug And Alcohol Testing For School Bus Drivers</a>
4212.42	<a href="#">Drug And Alcohol Testing For School Bus Drivers</a>
4212.5	<a href="#">Criminal Record Check</a>
4212.5-E(1)	<a href="#">Criminal Record Check</a>
4212.6	<a href="#">Personnel Files</a>
4216	<a href="#">Probationary/Permanent Status</a>

4219.1	<a href="#">Civil And Legal Rights</a>
4219.12	<a href="#">Title IX Sexual Harassment Complaint Procedures</a>
4219.12-E(1)	<a href="#">Title IX Sexual Harassment Complaint Procedures</a>
4219.21	<a href="#">Professional Standards</a>
4219.21-E PDF(1)	<a href="#">Professional Standards - Code Of Ethics Classified Employees</a>
4219.22	<a href="#">Dress And Grooming</a>
4219.23	<a href="#">Unauthorized Release Of Confidential/Privileged Information</a>
4219.24	<a href="#">Maintaining Appropriate Adult-Student Interactions</a>
4219.25	<a href="#">Political Activities Of Employees</a>
4236	<a href="#">Nonschool Employment</a>
4254	<a href="#">Health And Welfare Benefits</a>
4254	<a href="#">Health And Welfare Benefits</a>
4258	<a href="#">Employee Security</a>
4258	<a href="#">Employee Security</a>
4261	<a href="#">Leaves</a>
4261.11	<a href="#">Industrial Accident/Illness Leave</a>
4312.42	<a href="#">Drug And Alcohol Testing For School Bus Drivers</a>
4312.42	<a href="#">Drug And Alcohol Testing For School Bus Drivers</a>
4312.6	<a href="#">Personnel Files</a>
4319.1	<a href="#">Civil And Legal Rights</a>
4319.12	<a href="#">Title IX Sexual Harassment Complaint Procedures</a>
4319.12-E(1)	<a href="#">Title IX Sexual Harassment Complaint Procedures</a>
4319.21	<a href="#">Professional Standards</a>
4319.21-E PDF(1)	<a href="#">Professional Standards</a>
4319.22	<a href="#">Dress And Grooming</a>
4319.23	<a href="#">Unauthorized Release Of Confidential/Privileged Information</a>
4319.24	<a href="#">Maintaining Appropriate Adult-Student Interactions</a>
4319.25	<a href="#">Political Activities Of Employees</a>
4336	<a href="#">Nonschool Employment</a>
4354	<a href="#">Health And Welfare Benefits</a>
4354	<a href="#">Health And Welfare Benefits</a>
4358	<a href="#">Employee Security</a>
4358	<a href="#">Employee Security</a>
4361	<a href="#">Leaves</a>
4361.11	<a href="#">Industrial Accident/Illness Leave</a>
5145.3	<a href="#">Nondiscrimination/Harassment</a>
5145.3	<a href="#">Nondiscrimination/Harassment</a>
5145.7	<a href="#">Sexual Harassment</a>
5145.7	<a href="#">Sexual Harassment</a>
5145.71	<a href="#">Title IX Sexual Harassment Complaint Procedures</a>
5145.9	<a href="#">Hate-Motivated Behavior</a>

6145.2	<a href="#">Athletic Competition</a>
6145.2	<a href="#">Athletic Competition</a>
6162.54	<a href="#">Test Integrity/Test Preparation</a>
9000	<a href="#">Role Of The Board</a>
9321	<a href="#">Closed Session</a>
9321-E(1)	<a href="#">Closed Session</a>
9321-E(2)	<a href="#">Closed Session</a>