

Dismissal/Suspension/Disciplinary Action

The Solano County Office of Education (SCOE) desires that all employees exhibit professional and appropriate conduct and serve as positive role models at school, work, and in the community. Unacceptable conduct shall be subject to disciplinary action in accordance with law, the collective bargaining agreement, policy, and administrative regulations.

The County Superintendent or designee has developed the following administrative regulations that identify types of misconduct and possible consequences. Disciplinary actions may include, but not be limited to, verbal warnings, written warnings, reassignment, suspension, freezing or reduction of wages, compulsory leave, and dismissal.

The Superintendent or designee may take disciplinary action as s/he deems appropriate in light of the particular facts and circumstances involved. S/he shall ensure that disciplinary actions are taken in a consistent, nondiscriminatory manner and are appropriately documented.

Certificated

1. Suspension Without Pay

When a permanent certificated employee's unprofessional conduct is not considered serious enough to warrant dismissal, s/he may be suspended without pay on grounds of unprofessional conduct, following procedures designated in Education Code 44932(b).

A probationary certificated employee may be suspended without pay for a specified period during the school year as an alternative to dismissal following procedures designated in Education Code 44948.3.

Prior to any action on charges leading to suspension without pay on the grounds of unprofessional conduct, the Superintendent or designee shall give the employee written notice. This written notice shall:

- a. Indicate the nature of the employee's unprofessional conduct
- b. Cite specific instances of unprofessional behavior
- c. Give the employee a 45-day opportunity to correct the misconduct and overcome the grounds for the charge
- d. Include the evaluation made pursuant to Education Code 44660-44665, if applicable.

2. Compulsory Leave

The Superintendent or designee shall immediately place on compulsory leave of absence any certificated employee who is charged with committing:

- a. Any sex offense as defined in Education Code 44010
- b. 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, with the exception of marijuana, mescaline, peyote, or tetrahydrocannabinols

Upon receipt of notification from the Department of Justice by telephone that a current temporary employee, substitute employee, or probationary employee serving before March 15 of the employee's second probationary year has been convicted of a violent or serious felony, that employee shall be immediately placed on leave without pay.

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Upon receipt of written electronic notification of the conviction from the Department of Justice the employee, as specified above, shall be terminated automatically, and without regard to any other termination procedure.

The Superintendent also may require an immediate compulsory leave of absence when a certificated employee is charged with "an optional leave of absence offense" as specified in law.

The compulsory leave may extend for not more than 10 days after the entry of judgment in the proceedings. However, the Superintendent may extend a certificated employee's compulsory leave by giving notice, within 10 days after the entry of judgment in the proceedings, that the employee will be dismissed in 30 days unless s/he demands a hearing.

The Superintendent shall report to the Commission on Teacher Credentialing (formerly the Commission for Teacher Preparation and Licensing) any action it takes in connection with extending a compulsory leave beyond 10 days.

Employee compensation during the period of compulsory leave shall be made in accordance with Education Code 44940.5.

Classified

1. 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 SCOE employment. A probationary employee shall not be entitled to a hearing.

2. 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 Superintendent's or designee's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

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

- (1) Falsifying any information supplied to SCOE, including, but not limited to, information supplied on application forms, employment records, or any other SCOE records.
- (2) Incompetency.
- (3) Inefficiency.
- (4) Neglect of duty.
- (5) Insubordination.
- (6) Dishonesty.
- (7) 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.
- (8) Possessing or being under the influence of a controlled substance at work or away from work, or furnishing a controlled substance to a minor.
- (9) Conviction of a felony, conviction of any sex offense made relevant by provisions of 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

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plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction for this purpose.

- (10) Absence without leave.
- (11) Immoral conduct.
- (12) Discourteous treatment of the public, students, or other employees.
- (13) Improper political activity.
- (14) Willful disobedience.
- (15) Misuse of SCOE property.
- (16) Violation of SCOE or departmental rule, policy, or procedure.
- (17) 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.
- (18) Refusal to take and subscribe any oath or affirmation which is required by law in connection with his/her employment.
- (19) 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.
- (20) Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age against the public or other employees while acting in the capacity of a SCOE employee.
- (21) Unlawful retaliation against any other SCOE 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.
- (22) Any other failure of good behavior either during or outside of duty hours which is of such nature that it causes discredit to SCOE or his/her employment.

Except as defined in item #(19) 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 SCOE.

b. 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 Superintendent. 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:

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

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

c. 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 thereof.

If the Superintendent or designee determines that a permanent classified employee should be dismissed and that his/her 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 suspended from duty without pay in conjunction with the recommendation of personnel action. This suspension order shall be in writing and shall state the reasons that the suspension is deemed necessary. The suspension order shall be served upon the employee either personally or by registered or certified mail, return receipt requested, immediately after issuance. Except in cases of emergency when the employee must be removed from the premises immediately, the Superintendent or designee shall give the employee written notice of the proposed recommendation of dismissal at least five calendar days before the effective date of any order of suspension issued in conjunction with a recommendation involving dismissal. This notice shall state that immediate suspension without pay is being considered, the reasons for the proposed dismissal and proposed immediate suspension without pay, materials upon which the proposed action is based, and the employee's right to respond to the Superintendent or designee orally or in writing before the final recommendation and order are issued.

d. Time Limit of Suspension

Except for a suspension imposed under #c above, any suspension invoked under these rules against any one person for one or more periods shall not aggregate more than 90 calendar days in any 12-month period; however, this time limitation shall not apply to cases in which a personnel action of dismissal is modified by the Superintendent or designee to a suspension.

e. 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. Any other written document signed and appropriately filed within the specified time limit by the employee shall constitute a sufficient notice of appeal. 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 to the office of the Superintendent or designee but must be received or postmarked no later than the time limit stated herein. In cases where an order of suspension without pay has been issued in conjunction with a recommendation of dismissal, any appeal of the recommendation of dismissal shall also constitute an appeal of the suspension order, and the necessity of the order shall be an issue in the appeal hearing.

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

f. Amended/Supplemental Charges

At any time before an employee's appeal is finally submitted to the Superintendent or designee or to a hearing officer for decision, the complainant may, with the consent of the Superintendent/designee or hearing officer, serve on the employee and file with the Superintendent/designee 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.

g. Hearing Procedures

- (1) The hearing shall be held at the earliest convenient date, taking into consideration the established schedule of the Superintendent/designee or 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. The employee shall be entitled to a public hearing if s/he demands it when appeal is being heard. 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 Superintendent/designee or a hearing officer. Neither the Superintendent/designee 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 Superintendent/designee.
- (2) All hearings shall be heard by a hearing officer (who shall be an attorney licensed in the State of California) except in those cases where the Superintendent/designee determines to hear the appeal. In any case in which the Superintendent/designee hears the appeal, the Superintendent/designee 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 Superintendent/designee, s/he shall affirm, modify, or revoke the recommended personnel action.
- (3) If the appeal is heard by a hearing officer, s/he shall prepare a proposed decision in a form that may be adopted by the Superintendent/designee as the decision in the case. A copy of the proposed decision shall be received and filed by the Superintendent/designee and furnished to each party within ten days after the proposed decision is filed by the Superintendent/designee. The Superintendent/designee may:
 - (a) Adopt the proposed decision in its entirety.
 - (b) Reduce the personnel action set forth in the proposed decision and adopt the balance of the proposed decision.

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- (c) 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.
- (d) Reject the proposed decision in its entirety.
- (4) If the Superintendent/designee rejects the proposed decision in its entirety, each party shall be notified of such action and the Superintendent/designee 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. If the case is so assigned to a hearing officer, s/he shall prepare a proposed decision, as provided in item #(3) 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 Superintendent/designee.
- (5) In arriving at a decision or a proposed decision on the propriety of the proposed personnel action, the Superintendent/designee 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.

h. Hearing Decision

The decision of the Superintendent/designee shall be in writing and shall contain findings of fact and the personnel action approved, if any. The findings may reiterate the language of the pleadings or simply refer to them.

The decision of the Superintendent/designee shall be certified to the individual who recommended the personnel action, and s/he 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 mail. The decision of the Superintendent/designee shall be final.

i. Compulsory Leave of Absence

Employees charged with a mandatory leave of absence offense as defined in Education Code 44940 shall be placed immediately on compulsory leave of absence for not more than ten days after entry of judgment in the criminal proceedings, unless the leave is extended as provided below.

Employees charged with an optional leave of absence offense as defined in Education Code 44940 may be placed immediately on compulsory leave of absence under the terms and conditions stated below.

Despite the disposition of criminal charges, the Superintendent/designee reserves the right to dismiss an employee for the facts upon which the criminal charges were based. An employee ultimately found guilty by the Personnel Commission to have committed the acts upon which the original charges were based may be dismissed. If so dismissed, the employee is not entitled to compensation during the time of his/her suspension, unless otherwise required by law.

An employee shall be given notice of the possibility of being dismissed without pay during the compulsory suspension if s/he is ultimately found guilty of the acts leading to the criminal charges, despite the disposition of the charges by the court.

j. Extension of Compulsory Leave

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

Legal Reference:

EDUCATION CODE

- 35161 Delegation of powers and duties (classified)
- 44009 Conviction of specified crimes
- 44010 Sex offense - definitions
- 44011 Controlled substance offense - definitions
- 44660-44665 Evaluation and assessment of performance of certificated employees (certificated)
- 44830.1 Criminal record summary certificated employees (certificated)
- 44932 Grounds for dismissal of permanent employee (certificated)
- 44933 Other grounds for dismissal (certificated)
- 44938 Unprofessional conduct or unsatisfactory performance; notice of charges (certificated)
- 44940 Sex offenses and narcotic offenses; compulsory leave of absence
- 44940.5 Compulsory leave of absence; procedures; extension; compensation; bond or security; reports
- 44942 Suspension or transfer of certificated employee on grounds of mental illness (certificated)
- 44944 Conduct of hearing (certificated)
- 44948.3 Dismissal of employees on probation (certificated)
- 45055 Drawing of warrants for teachers (certificated)
- 45101 Definitions (including "disciplinary action," "cause") (classified)
- 45109 Fixing of duties (classified)
- 45113 Rules and regulations for classified service in districts not incorporating the merit system (classified)
- 45123 Employment after conviction of sex or narcotics offense (classified)
- 45302 Demotion and removal from permanent classified service (classified)
- 45303 Additional cause for suspension or dismissal of employees in classified service (classified)
- 45304 Suspension for reasonable cause; filing of charges; employee charged with mandatory or optional leave of absence offense (classified)
- 51530 Advocacy or teaching of communism (certificated)

GOVERNMENT CODE

- 3543.2 Scope of representation (certificated)

VEHICLE CODE

- 1808.8 School bus drivers; dismissal for safety-related cause (classified)

UNITED STATES CODE, TITLE 42

- 12101 - 12213 Americans with Disabilities Act (classified)

HEALTH AND SAFETY CODE

- 11054 Schedule I; substances included (certificated)
- 11055 Schedule II, substances included (certificated)
- 11056 Schedule III, substances included (certificated)
- 11357-11361 Marijuana (certificated)
- 11363 Peyote (certificated)
- 11364 Opium (certificated)
- 11370.1 Possession of controlled substances with a firearm (certificated)

PENAL CODE

- 667.5 Prior prison terms, enhancement of prison terms (certificated)
- 1192.7 Plea bargaining limitation (certificated)

COURT DECISIONS

- Crowl v. Commission on Professional Competence (1990) 225 Cal. App. 3d 334 (275 Cal.Rptr. 86) (certificated)
- California School Employees v. Livingston Union School District, (2007) 149 Cal. App. 4th 391 (classified)
- CSEA v. Foothill Community College District, 52 Cal. App. 3rd 150, 155-156, 124 Cal. Rptr 830 (1975) ("Conduct unbecoming an employee" too vague) (classified)

Policy Cross-Reference:

- 1312.1 Complaints Concerning District Employees
- 4020 Drug and Alcohol-Free Workplace
- 4030 Nondiscrimination in Employment
- 4032 Complaints Concerning Discrimination in Employment
- 4112.5 Criminal Record Check
- 4119.11 Sexual Harassment
- 4141 Collective Bargaining Agreement