**San Bernardino County Superintendent of Schools**
**Policy 4118,4218**

# DISCIPLINE

Section 1 - Right to Discipline. The San Bernardino County Superintendent of Schools may impose discipline on a permanent employee in accordance with the terms of this policy consistent with and subject to provisions of the Education Code. [For purposes of the procedures set forth herein, discipline is deemed to be suspension without pay for more than three (3) days, involuntary demotion (except layoff), or termination.]

Section 2 - Exclusion of Employees in Bargaining Units. Discipline of an employee represented by a bargaining unit shall follow the discipline procedures specified in that employee's unit Agreement where applicable.

Section 3 - Remediation Effort. It is recognized that an effort at remediation should have been made by the County Superintendent of Schools Office prior to terminating a permanent employee. Such efforts include, but are not limited to, verbal and/or written warnings, suspension with or without pay, or any other appropriate effort to correct or remediate an employee's unsatisfactory fulfillment of his/her job responsibilities, unsatisfactory attendance or unsatisfactory personal conduct.

It is also recognized and agreed that certain acts and/or omissions by an employee may, by their nature and/or degree, be serious enough to warrant immediate discipline. In such situations the County Superintendent of Schools may move to immediately discipline the employee without making any effort at remediation.

Section 4 - Informal Hearing. A permanent employee may request an informal hearing with his/her immediate supervisor prior to the imposition of discipline by the County Superintendent of Schools. If requested, such a hearing will be held.

Section 5 - Right to Suspend. The County Superintendent of Schools retains the right to suspend an employee, with or without pay, without warning when the health and/or welfare of the employee, students, the public, or other employees is endangered by the continued presence of the employee, and/or where the employee's presence is a danger to the property of the County Superintendent of Schools or others, and/or in cases of aggravated insubordination. Suspension without pay for causes other than those listed above shall be made only in accordance with the procedure set forth in this Policy. Suspensions shall be made by the County Superintendent of Schools or his/her designee(s).

Any employee charged with the commission of any sex offense as defined in Education Code Section 44010 or any narcotics offense as defined in Section 44011 of the Education Code by complaint, information or indictment filed in a court of competent jurisdiction may be suspended as provided for in Section 45304 of the Education Code.

This policy shall not be construed to diminish the County Superintendent of Schools' authority to take disciplinary action in accordance with the law, including such actions as authorized by Education Code Sections 44010, 44011, and 45304.

Section 6 - Causes. Any employee designated as a permanent non-management employee shall be subject to disciplinary action for cause as prescribed by policy, regulation or procedure of the County Superintendent of Schools. The County Superintendent of Schools' determination of the sufficiency of the cause for disciplinary action shall be conclusive. Current causes prescribed by the County Superintendent of Schools include, but are not limited to, the following:

1. Unsatisfactory attendance, such as:

a. Repeated absence, without notification.
b. Excessive absence.
c. Repeated unexcused absence or tardiness.
d. Abuse of sick leave privilege.
e. Incarceration that adversely affects job performance.

2. Unsatisfactory personal conduct, such as:

a. Conviction of a crime carrying felony punishment even though such punishment may not be imposed.
b. Conviction of any crime involving moral turpitude.
c. Discourteous, offensive, or abusive conduct or language toward another employee, a pupil or a member of the public.
d. Dishonesty.
e. Reporting to work while intoxicated, possession of an open container or an alcoholic beverage on county school property, or in a county school owned vehicle, or working while under the influence of alcohol.
f. Addiction to the use of narcotics or habit forming drugs or reporting to work or working while under the influence of a drug that interferes with job performance.
g. Conviction (or proof of commission) of any sex offense as defined in Education Code 44010, or a conviction (or proof of commission) under Penal Code 261.5.
h. Conviction (or proof of commission) of any narcotics offense as defined in Education Code 44011 or a conviction (or proof of commission) under Health and Safety Code 11361.
i. Falsifying any information supplied to the County Superintendent of Schools including but not limited to, information supplied on application forms, employment records, or any county office records.
j. Altering or falsifying records of the County Superintendent of Schools.
k. Repeated malingering during the course of a normal working day.
l. Engaging in political activities while on a work duty status.
m. Release of personal information concerning any employee or any pupil who is not his own child or ward to any person other than a teacher or administrator in the school which the pupil attends or is enrolling.
n. Excessive fraternizing with students.
o. Possession of a deadly or dangerous weapon on school grounds.
p. Offering anything of value or offering any service in exchange for special treatment in connection with the employee's job or employment, or accepting anything of value or any special service in exchange for granting any special treatment to another employee or to any member of the public.

The term ‘'conviction” as used above shall mean conviction in trial court based upon a plea of guilty or nolo contendere or a finding of guilty after a court or jury trial.

3. Unsatisfactory fulfillment of job responsibilities, such as:

a. Incompetency or inefficiency in the performance of the duties of the position.
b. Insubordination (including, but not limited to, refusal to do assigned work).
c. Carelessness or negligence in the performance of duty, or in the care and use of district property.
d. Misuse or misappropriation of district property.
e. Willful violation of the Education Code, Title V of the California Administrative Code, any other code or administrative code of California, or any rules of the County Superintendent of Schools.
f. Denial, suspension, revocation or non-renewal of a license, pennit or any other document(s) required by the nature of the position.

g. Receipt by the County' Superintendent of Schools' insurance carrier of a request in writing for an endorsement excluding the employee from coverage under the office insurance policy while driving a motor vehicle because of increased risk due to the employee's poor driving record.
h. Physical inability to perform duties of the assignment, after reasonable accommodation has been attempted.
i. Refusal to take a physical examination (at office expense) when requested to do so in writing by direction of the County Superintendent of Schools or designee.

4. Other reasons, such as:

a. Advocacy of overthrow of federal, state or local government by force, violence or other unlawful means.
b. Membership in the Communist Party.

Section 7 - Notification. Employees shall receive written notification of the County Superintendent of Schools intent to discipline prior to such action becoming effective in all cases other than those situations set forth above involving the County Superintendent of Schools' right to suspend. Employees charged solely with incompetence or inefficiency, and who request a formal hearing, will continue in paid status until a final decision is rendered. Notwithstanding the foregoing, if an employee requests and is given an extension beyond the hearing date set by the hearing officer, the employee may be placed in unpaid status effective the day after such hearing date.

With the notice of intent to discipline, the employees shall receive notice of the effective date of the intended action, a statement of the specific acts and/or omissions upon which the proposed disciplinary action is based, the date by which the employee may respond either orally or in writing, and copies of documents and other materials which support the proposed action.

1. Following the employee's response, if any. a determination will be made by the County Superintendent of Schools as to the appropriate disciplinary action, if any.

2. If the County Superintendent of Schools determines action should be taken, the employee shall receive in person, or via certified mail, notice of this determination accompanied by notice of the effective date of the action, a statement of the specific acts and/or omissions upon which the disciplinary action is based, copies of documents and other materials which support the action, and a statement advising the employee of the employee's right to a formal hearing wherein the employee shall have the right either to self-representation or to representation by an association representative or legal counsel.

3. The employee shall have five (5) workdays following the receipt of this notice to request a formal hearing. If the employee desires a hearing, the employee must sign and return a written request for such within the five (5) workdays following receipt of the notice. Failure to comply with these time limits shall result in the employee's waiver of his/her right to a formal hearing.

Section 8 - Formal Hearing. All formal disciplinary hearings shall be held before an independent hearing officer selected by the County Superintendent of Schools. The hearing shall be closed unless at the time the hearing is requested by the employee a written request for an open hearing is submitted to the County Superintendent of Schools. The hearing officer shall set the time and place of the hearing. The following guidelines shall be used in conducting hearing:

1. Oral evidence shall be taken only on oath or affirmation.

2. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses; to recall any witness regardless of which party first called him/her to testify; and to rebut the evidence against him/her. If the accused employee does not testify in his/her own behalf, s/he may be called and examined as if under cross-examination.

3. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort 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 rule that might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing and examining other evidence but shall not be sufficient standing by itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherw ise required by statute to be recognized at the hearing. Irrelevant and unduly repetitious evidence shall be excluded.

4. The hearing shall be conducted in the English language. The proponent of any testimony to be offered by a witness who does not speak English proficiently shall provide an interpreter and bear the cost of the interpreter. Upon completion of the hearing, the hearing officer shall prepare Findings of Fact and Conclusions of Law that constitute the results of the hearing, and form a basis for the decision of the County Superintendent of Schools. The decision of the County Superintendent of Schools shall be final.

Section 9 - Summary Discipline.

1. Summary discipline shall be defined as a suspension without pay for not more than three (3) days. When practical, such action shall be initiated by written notice from the Director of Personnel.

2. Within five (5) work days of receipt of a summary discipline notice, the employee shall have the right to appeal said discipline in writing to the County Superintendent of Schools or his/her designee. The County Superintendent of Schools or designee may hear the appeal, or designate a hearing officer to hear the appeal on his/her behalf. The hearing officer shall not be an employee of the County Superintendent of Schools. The County Superintendent of Schools' determination shall be conclusive and final.

3. It is expressly understood that the application of this section shall be exclusively for corrective or remediative purposes.

4. Failure of an employee to appeal summary discipline shall not prejudice the employee's right to defend allegations in subsequent hearings.

Section 10 - Non-Grievability. The procedures provided for herein regarding discipline are intended to provide due process and to be exclusive and therefore shall take the place of access to the grievance procedure(s) as set forth in this Policy Manual.

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