

SP4317 Classified Employee Discipline (Applicable To Unrepresented Employees) **Status:** ADOPTED
Personnel February 2014

1. Discipline

A permanent employee may be subject to disciplinary action by the Superintendent for cause upon recommendation by the employee's supervisor or designee. Disciplinary action includes dismissal, demotion, or suspension without pay for six (6) or more working days. A suspension without pay for five (5) or fewer working days is not subject to the provisions of this policy. The Superintendent or designee may suspend an employee without pay for five (5) or fewer days without compliance with the provisions of this policy.

2. Cause

An employee may be subject to disciplinary action for cause. Causes for disciplinary action include, but are not limited to the following:

- (a) Incompetence or inefficiency in the performance of the duties of his/her position
- (b) Insubordination, including, but not limited to, refusal to do assigned work or refusal to follow directives of the Superintendent or the employee's supervisor
- (c) Negligence in the performance of duty or in the care or use of property
- (d) Falsifying any information supplied to the Modoc County Superintendent of Schools, including, but not limited to, information supplied on application forms, employment records, or any other Modoc County Superintendent of Schools records
- (e) Failure or inability to perform duties and responsibilities assigned to an employee's position
- (f) Discourteous, offensive, or abusive conduct or language toward other employees, pupils or the public
- (g) Dishonesty
- (h) Drinking alcoholic beverages on the job or reporting to work while under the influence of intoxicating liquor
- (i) Possession of or addiction to the use of any drugs or narcotics or any drug or narcotic offense as defined in Education Code Section 44011. Unauthorized use of narcotics; controlled substances, or habit forming drugs; use of any medication or other substance as to cause detrimental effect on the employee's ability to perform the duties and responsibilities of his/her position
- (j) Conviction of any crime involving moral turpitude
- (k) Conviction of any felony. Conviction or arrest for any sex offense as defined in the Education Code, 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 of guilty, or a conviction

following a plea of nolo contendere, is deemed to be a conviction within the meaning of this section

- (l) Repeated or unexcused absence or tardiness or absence or repeated tardiness without authority or sufficient reason
- (m) Abuse of illness leave privileges
- (n) Offering of anything of value or offering any service in exchange for special treatment in connection with the employee's job or employment or the accepting of anything of value or any service in exchange for granting special treatment to another employee or to any member of the public
- (o) Conduct which adversely affects the employee's ability to perform the duties and responsibilities of his/her position
- (p) Violation of the Education Code, Superintendent Policy or rules of the Modoc County Superintendent of Schools
- (q) Unauthorized entry, copying, possession, use or viewing of personnel or confidential files, documents or information. Unauthorized entry, copying, possession, use or viewing of any Modoc County Superintendent of Schools created information, lists, databases or the like. Unauthorized copying, possession, use or viewing of Modoc County Superintendent of Schools created information, lists, databases or the like for personal purposes. Unauthorized use or possession of Modoc County Superintendent of Schools equipment for personal purposes
- (r) Violation of the Modoc County Superintendent of Schools' sexual harassment policy or the commission of any act of sexual harassment
- (s) Conviction of any crime involving moral turpitude or the use, possession, sale or transporting of any illegal, restricted, regulated or controlled substance or drug, including, but not limited to, marijuana or any of its derivatives or extracts
- (t) 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 this position
- (u) Consistent with applicable law, physical or mental disability which disability precludes the employee from the proper performance of his/her duties and responsibilities, as determined by competent medical authority
- (v) For employees who drive a vehicle in the regular course of their employment: Failure to satisfy the insurability requirement of the Modoc County Superintendent of Schools' insurance carrier under the Modoc County Superintendent of Schools' regular insurance policies. The Modoc County Superintendent of Schools' ability to obtain insurance for the employee under a high risk or any policy other than the regular insurance policies does not mitigate this failure
- (w) Abandonment of position
- (x) Revealing confidential information, including, but not limited to, personnel and student records
- (y) 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 Modoc County Superintendent of Schools employee

(z) Unlawful retaliation against any Modoc County Superintendent of Schools 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

3. Abandonment

An employee shall be deemed to have abandoned his/her position if the employees fails to show up for work and perform his/her duties for three (3) consecutive work days after the Superintendent, the employee's supervisor or designee mails notice to the employee which informs the employee that he/she will be deemed to have resigned from his/her employment with the Modoc County Superintendent of Schools unless said employee returns to work and performs his/her duties within five (5) work days from the date the letter is mailed. Said letter shall be mailed certified mail, return receipt requested to the last known address of the employee. The employee is responsible for providing the Modoc County Superintendent of Schools with a correct address. If the employee fails to show up for work and perform his/her duties within five (5) days after the mailing of said notice, then the employee shall be conclusively presumed to have abandoned his/her position and shall be deemed to have resigned from his/her employment.

4. Limitation of Time

No disciplinary action shall be taken for any cause which arose prior to the employee's becoming permanent, nor for any cause which arose more than two (2) years preceding the date of the filing of the notice of cause unless such cause was concealed or disclosed by such employee when it could be reasonable assumed that the employee should have disclosed the facts to the Modoc County Superintendent of Schools, or unless such cause was one of two or more causes providing the basis for the disciplinary action or unless such cause was part of a course of conduct extending more than two (2) years back in time.

5. Notice of Potential Discipline

Prior to sending the notice of proposed discipline referenced in Section 6, a notice of potential discipline shall be written in ordinary and concise language and served in person or registered or certified mail to the employee. The notice shall include the items specified in Sections 6 (a) through (c) and a description of the proposed type of discipline to be imposed. The employee may respond orally or in writing within three (3) working days of the date the notice of potential discipline is served upon the employee or within six (6) working days of the date the notice of potential discipline is mailed to the employee. If after consideration of the oral or written response of the employee the person making the recommendation for discipline determines to further pursue discipline, then said person or designee shall comply with Section 6 and send the "notice of proposed discipline" as described therein.

6. Notice

Prior to the imposition of discipline, a notice of proposed discipline action shall be written in ordinary and concise language and served in person or by registered or certified mail to the employee. The notice shall indicate:

- (a) The specific acts, omissions or reasons upon which the disciplinary action is based
- (b) A statement of the cause or causes for the disciplinary action

- (c) The specific rule or regulation, if any, of the Modoc County Superintendent of Schools or Education Code the employee is alleged to have violated. Such rule or regulation shall be set forth in said notice
- (d) The employee's right to a hearing before the Superintendent of the Modoc County Superintendent of Schools
- (e) The deadline to request a hearing before the Superintendent
- (f) The date the discipline will be effective
- (g) A card or paper for the employee to sign in order to deny the charges and request an appeal. If the employee does not sign and return the card or paper and request an appeal then the discipline shall be effective on the date specified in the notice and the employee shall have waived his or her right to request an appeal
- (h) Copies of any and all evidence or documents proposed to be used against the employee

7. Response

The employee shall have the right to respond in written form to the notice of proposed discipline provided said written response is personally delivered to the employee's supervisor or designee at or prior to the hearing, if any is requested. The employee shall have the right to be represented at all stages of the disciplinary action.

8. Request for Hearing

If the employee requests a hearing, the hearing shall be scheduled before the Superintendent. At the hearing, the person making the recommendation for discipline shall present all the evidence on which the charges are based. The employee shall have the right to respond either orally or in writing and present any documentary or oral testimony. The Superintendent shall consider the oral and documentary evidence introduced by the employee and shall determine whether or not the proposed discipline shall be imposed as set forth in the notice of disciplinary action or modified or not imposed. The Superintendent may retain the services of a hearing officer or attorney to conduct the hearing on behalf of the Superintendent. The powers of the hearing officer or attorney conducting the hearing shall be limited to procedural aspects of the hearing and advising the Superintendent on items as determined by the Superintendent. If the Superintendent decides to impose the discipline, it shall, by personal service or by certified mail, return receipt requested, deliver to the employee a notification of disciplinary action and set forth the date when such disciplinary action shall be effective. The Superintendent reserves the right to reduce, sustain, or increase the discipline set forth in the notice referenced in paragraph six (6) "Notice" above. If as a result of the hearing the Superintendent does not sustain the charges against the employee, the employee shall receive full salary and benefits for the time the employee was suspended, if the employee was suspended pursuant to paragraph nine (9), If the employee does not request a hearing, the discipline shall be imposed as set forth in the notice of disciplinary action. In lieu of conducting the hearing itself, the Superintendent may retain the services of a hearing officer or attorney to conduct the hearing and prepare an advisory decision for review by the Superintendent.

A. If the discipline hearing is conducted by a hearing officer, or attorney he/she shall prepare a proposed decision in a form that may be adopted by the Superintendent as the decision in the case. A copy of the proposed decision shall be received and filed with the Superintendent and furnished to each party within 10 days after the proposed decision is filed by the Superintendent. The Superintendent may:

1. Adopt the proposed decision in its entirety.
2. Reduce or increase the discipline set forth in the proposed decision and adopt the balance of the proposed decision.
3. Reject the proposed decision in its entirety.

B. If the Superintendent rejects the proposed decision in its entirety, each party shall be notified of such action and the Superintendent 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 or attorney to take additional evidence. If the case is so assigned to a hearing office, he/she shall prepare a proposed decision 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. In the alternative, if the Superintendent rejects the proposed decision in its entirety the Superintendent may schedule a hearing, de novo, before the Superintendent as described in this paragraph 8, above. In such event the Superintendent shall conduct such disciplinary hearing de novo and render a final decision.

9. Suspension

Notwithstanding any of the above, the Superintendent or designee has the right to suspend an employee immediately, without pay, pending dismissal provided that all the above procedures are followed as soon as possible after the suspension commences and further provided that if the charges for which the basis of the disciplinary action are not sustained by the Superintendent, the employee shall receive salary and benefits as determined by the Superintendent for all or any portion of the time the employee was suspended.

10. Rights of the Employee

The employee shall be entitled to the following:

- (a) Be represented by counsel or any other person at such hearing
- (b) Testify under oath
- (c) Cross-examine all witnesses
- (d) Present evidence
- (e) Argue the case

11. Evidence

The hearing shall be informal and 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 existence of any common law or statutory rule which might make improper an admission of such evidence over objection in civil actions. Hearsay evidence may be admitted for any purpose, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privileges and of official or judicial notice shall be effective to the same extent as in civil actions. Irrelevant and repetitious evidence shall be excluded. Oral evidence shall be taken only under oath or affirmation.

12. Report of Hearings

Hearings may be conducted without stenographic reported or electronic recording machine unless the employee requests in writing, at least three (3) full business days before the day set for the hearing, that such hearing be reported or recorded and pay the cost or fee for such reporting or recording.

13. Transcripts of Hearings

The cost of any transcript shall be borne by the party requesting the transcript. If all parties wish to have transcripts, the cost shall be borne equally among the parties.

14. Termination of Probationary Classified Employees

A classified employee shall serve a probationary period of twelve calendar months, i.e., 365 days. The probationary period shall commence on the first day the employee actually renders service for the Modoc County Superintendent of Schools. At any time prior to the expiration of the twelve month probationary period, the Superintendent may in his/her sole discretion dismiss a probationary employee from the employ of the Modoc County Superintendent of Schools without cause or hearing. A probationary employee shall not be entitled to a hearing or any statement of reasons for such dismissal.

15. Judicial Review

Any action in court or any other dispute resolution process regarding any discipline shall be filed, if at all, within ninety (90) calendar days of the date the Superintendent renders a decision if a hearing is requested or within ninety (90) calendar days of the date the discipline is imposed. If such action is not filed within said ninety (90) days then no action shall thereafter be filed and any attempt to file such action is null, void, and of no force or effect.

Supersedes all previous classified employee discipline policies.
