

TERMINATION OF PROBATIONARY CERTIFICATED EMPLOYEES

Education Code section 44948.3 authorizes the Board to establish procedures for the appointment of an administrative law judge to conduct hearings into charges of dismissal of probationary certificated employees and to submit a recommended decision to the Board.

Administrative Regulation No. 4117.5 sets forth the procedures to be followed where the Superintendent or authorized designee has determined to initiate dismissal procedures against a probationary certificated employee.

Legal Reference:

EDUCATION CODE

44948.3 Dismissal of probationary employees for unsatisfactory performance

TERMINATION OF PROBATIONARY CERTIFICATED EMPLOYEES

Following a determination by the Superintendent or authorized designee to initiate dismissal procedures against a probationary certificated employee under Education Code section 44948.3, the following procedures will apply:

Service of Statement of Charges and Right to a Skelly Pre-termination Meeting

The Superintendent or his/her authorized designee will prepare and serve an unsigned copy of a Notice of Dismissal and a Statement of Charges with written documentation in support thereof on the probationary certificated employee. The notice shall include a statement of the reasons for the dismissal and a notice of the opportunity to appeal. In the event of a dismissal for unsatisfactory performance, a copy of the evaluation conducted pursuant to Education Code section 44664 shall accompany the written notice. The employee will then have the right to a pre-termination meeting to rebut the proposed Statement of Charges.

After the employee has had an opportunity to attend the pre-termination meeting to rebut the proposed Statement of Charges, the Superintendent or authorized designee may sign and serve the Notice of Dismissal and the Statement of Charges on the employee. The Superintendent or authorized designee shall give the employee thirty (30) days' prior written notice of dismissal, not later than March 15 in the case of second year probationary certificated employees.

The employee shall have fifteen (15) days from receipt of the Notice of Dismissal to submit to the Board a written request for hearing. The failure of an employee to request a hearing within fifteen (15) days from receipt of the dismissal notice shall constitute a waiver of the right to a hearing.

Following service of the executed Notice of Dismissal and Statement of Charges, the Superintendent or authorized designee shall appoint an administrative hearing officer to act as an administrative law judge ("hearing officer") to hear any appeal of the dismissal action and submit a recommended decision to the Board.

The hearing officer shall not be employed by the Visalia Unified School District. The hearing officer may, but shall not be required to, have experience in public education and may, but shall not be required to, have legal training. All expenses of the hearing (which shall not include legal fees and costs incurred by the employee), including the cost of the hearing officer and rental, if charged, of the facility for the hearing shall be paid from district funds. If requested by the hearing officer, a legal advisor may be retained to advise the hearing officer at the expense of the district.

Hearing Procedure

The following procedures shall apply to a hearing conducted pursuant to Education Code section 44948.3:

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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 district shall notify the employee of the time and place of the hearing at least ten (10) calendar days in advance of the hearing.

A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

The employee shall be entitled to appear personally, produce evidence and be represented by counsel, association, representative, or other person. The district and the Board may also be represented by counsel or other person.

Technical rules of evidence shall not apply. Rather, Government Code section 11513 and the body of case law interpreting that section will control at the hearing.

The district shall have the burden of proof. The parties will give opening statements. The district will put on its evidence first, followed by the employee. The district will then be provided an opportunity to rebut the employee's evidence. The hearing officer at any time may also inquire of the witnesses.

Following the submission of all oral and documentary evidence, the parties will then proceed to closing arguments.

If the probationary certificated employee, or a representative of the probationary certificated employee, fails to object at the hearing that the above procedures are not being properly followed, the objections shall be deemed waived.

Following the hearing, the hearing officer shall issue a proposed written decision together with proposed findings. If the hearing officer recommends termination of the probationary certificated employee, the findings in support of the hearing officer's recommendation shall be based on the evidence adduced at the hearing.

The Board shall review the hearing officer's recommendation and make one of the following determinations:

1. Accept the recommendation of the hearing officer;
2. Reject the recommendation of the hearing officer;
3. Modify and accept the recommendation of the hearing officer based on the administrative record;

TERMINATION OF PROBATIONARY CERTIFICATED EMPLOYEES (continued)

4. Order a rehearing before the same hearing officer; or
5. Order another hearing before a new hearing officer.

The procedures set forth under the Administrative Procedure Act (Government Code section 11500, et seq.), except as to Government Code section 11513, shall not apply to dismissal hearing brought under Education Code section 44948.3. There shall be no discovery rights by either party under the Administrative Procedure Act or any other discovery procedure. Notwithstanding the foregoing, any non-privileged documents in support of the district's Statement of Charges shall be served with the Notice of Dismissal. Any other non-privileged documents in support of the Charges not served at the time of the Notice of Dismissal and which the district intends to introduce at the hearing, as well as any documents that the employee intends to introduce to refute the Charges at the hearing shall be disclosed and served on the other party at least five (5) calendar days before the hearing. Documents that are not disclosed to and served on the other party at least five (5) calendar days before the hearing cannot be introduced at the hearing, except upon a showing of good cause why the documents were not disclosed in a timely manner.

The process for dismissal of a probationary certificated employee under Education Code section 44948.3 does not preclude the district from serving on the employee a notice of nonreemployment under Education Code section 44929.21 et seq. Thus, in addition to serving a probationary certificated employee with Statement of Charges under Education Code section 44948.3 and the holding of the dismissal hearing, the Board may also elect to nonreemploy a probationary certificated employee under Education Code section 44929.21.

The Superintendent or authorized designee is further authorized to take any other action necessary to carry out the provisions of this Resolution.

Legal Reference:

EDUCATION CODE

44948.3 Dismissal of probationary employees for unsatisfactory performance

GOVERNMENT CODE

11513 Administrative adjudication

Regulation

approved: June 22, 1999

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VISALIA UNIFIED SCHOOL DISTRICT

Visalia, California