

Summary of Certificated Employee Suspension/Termination Process

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April, 2014

Regarding the suspension without pay or termination of a certificated employee, it may be helpful to know the following:

1. The process is the same for suspension without pay and termination.
2. The misconduct must be categorized into one of the California Education Code section 44932 causes.
3. As a precondition to suspension or dismissal on the basis of unprofessional conduct, the employee must have been given a "Notice of Unprofessional Conduct" which states specific conduct that is unprofessional, how the conduct must be changed, and an opportunity to remediate. No action may be filed for 45 days after the Notice is served, and, in any event, no action may be filed for suspension or termination of a certificated employee between May 15 and September 15 of any year. This is referred to as the moratorium period. The 45-day period following the service of the Notice of Unprofessional Conduct is the remediation period. If the conduct does not recur, there would, in most cases, not be a basis to file for suspension or termination.
4. A case that sustained termination for "evident unfitness" involved over one hundred acts of misconduct with repeated warnings to cease and correct. Under *Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444, the District would have had to prove that the certificated employee was "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies."
5. If a district initiates a dismissal action and either withdraws it before the hearing or loses at the hearing, the district is liable for all costs incurred by the employee including attorney's fees.
6. The panel that hears certificated employee suspension and termination actions is an ad hoc Commission on Professional Competence (CPC) which consists of one member appointed by the District, one member appointed by the employee and one administrative law judge (ALJ). The members appointed by the employee and the District must have taught in the same subject area or grade level of the employee for at least 5 years in the past 10 years. They may not be related to the employee subject to the discipline or employed by the District. If the District was unsuccessful in either a suspension or termination action, it would also pay for the cost of the ALJ as well as the salaries of the two lay members of the CPC.
7. Below is a summary of facts and outcomes of four certificated discipline cases. Two are published California Court of Appeal cases and two are recent Commission on Professional Competence decisions. These cases provide brief examples of how challenging it can be to suspend or dismiss a teacher.
 - a. A high school PE teacher was charged with unprofessional conduct for the following misconduct:
 - Putting his arm against a student's throat, causing the student to nearly lose consciousness.
 - Slamming a male student into the wall in a restroom and putting one hand around the student's throat.
 - Giving a fourteen year-old female student a "birthday spanking" with a paddle. He hit her so hard she was bruised and unable to sit the next day.

The CPC panel issues a suspension, which was overturned by the Court of Appeal. The Court stated that the employee needed to be given notice and opportunity to correct his behavior. (*Crowl v. Commission on Professional Competence* (1990) 225 Cal.App.3d 334.)

b. After three trials, a teacher was convicted of eight counts of lewd acts with four female children and was sentenced to seven concurrent 15-years-to-life prison terms. The conviction was overturned four years later based on juror bias and the District Attorney chose not to retry the case. The school district tried to dismiss him based on the same facts in 2008. The hearing did not occur until January 2010. The CPC found he was not unfit for service and reinstated him.

Specifically, the CPC found that the student (who was six or seven years old at the time of the acts and was fourteen when she testified) was not credible in part because she “laced significant emotion” and her mother, another witness, appeared to overdramatize the events during her testimony. The CPC’s findings and credibility determinations were upheld by the appellate court. (*San Diego Unif. School Dist. v. Commission on Professional Competence* (2013) 214 Cal.App.4th 1120.)

c. In 2013, a school district attempted to suspend or dismiss a high school P.E. teacher based on the following:

- The teacher approached two students who were “squaring off” to fight, but were not engaged in fighting. The teacher punched one student in the mouth so hard it loosened teeth. That student was a special education student with a hearing impairment. The student reacted violently in response.
- The altercation was witnessed by a host of students, who wrote incident reports articulating their observations of the fight. At the hearing, a majority of the students admitted to omitting facts in the witness statements that could get the teacher “in trouble.”

The CPC refused to suspend or dismiss the teacher.

d. Also in 2013, a school district attempted to dismiss a second grade teacher for the following:

- He was caught on video shaking and yelling at a 2nd grade student.
- He dragged the student to the office by his neck and shoulders.
- Teacher admitted to overreacting, but sought anger counseling and therapy.

The CPC found violations of policy but stated that his actions were not adequate grounds for termination.