
Chapter 19

Procedures for Disciplinary Action and Appeal

Bargaining unit refer to contract

19.1 GENERAL PROVISIONS ON DISCIPLINARY ACTIONS

19.1.1 DISCIPLINARY ACTION ONLY PURSUANT TO THIS RULE:

A permanent classified employee shall be subject to disciplinary action only for cause as prescribed by these Rules and Regulations, and only pursuant to the procedures outlined herein.

REFERENCE: Education Code Sections 45260, 45261, and 45302

19.1.2 DEFINITION OF DISCIPLINE: Discipline includes, but is not limited to: dismissal, demotion, suspension, letters of reprimand, or any reassignment, without the employee's voluntary consent, except for a layoff for lack of work or lack of funds (Ed. Code 45308).

19.1.3 REASONS FOR DISCIPLINE: A person employed in the Classified service may be disciplined for any of the following causes:

19.1.3.1 Incompetency, inefficiency, insubordination, inattention to or dereliction of duty, discourteous treatment of the public or of fellow employees, or any other willful failure of good conduct tending to injure the public service, or any willful and persistent violation of the provisions of the Education Code or of rules, regulations, or procedures adopted by the Board of Education or the Personnel Commission pursuant to it; provided that specific instances must be set forth as to any of the causes enumerated under this heading.

19.1.3.2 Dishonesty, addiction to the use of narcotics or alcohol, or a sex offense, as defined by section 44010 of the Education Code.

19.1.3.3 Political activities engaged in by an employee during assigned hours of employment.

19.1.3.4 Conviction of a crime by a court of law; a record of one or more convictions which indicate that the person is a poor employment risk; failure to disclose material facts regarding criminal records; and other false or misleading information on application forms or

examinations and employment records concerning material matters.

19.1.3.5 Excessive absences.

19.1.3.6 Frequent unexcused absence or tardiness.

19.1.3.7 Failure to accept an assignment after medical release to return to the classification from which the employee was separated due to exhaustion of leave provisions as specified under section 45192 of the Education Code.

19.1.3.8 Failure to report for review of criminal records or for health examination after due notice.

19.1.3.9 Advocacy of the overthrow of the Government of the United States or the State of California, by force, violence, and other unlawful means.

19.1.3.10 Knowingly becoming or knowingly remaining a member of the Communist Party.

19.1.3.11 The discovery or development during an initial probationary period of any physical, emotional, and/or mental condition which would have precluded acceptance as an eligible for assignment.

19.1.3.12 Failure to return from an authorized leave of absence after being notified of the return date.

19.1.3.13 Sexual harassment as defined by guidelines established by the Equal Opportunity Commission and/or Fair Employment and Housing Commission, whether or not the loss of tangible job benefits is determined. (See Government Code 12940.)

19.1.3.14 Unauthorized use of District supplies, materials, facilities or other property.

19.1.3.15 Conviction of crime involving moral turpitude.

19.1.3.16 Abandonment of position, absence of five (5) consecutive working days without permission and failure to notify the District of a valid or acceptable reason for absence.

19.1.3.17 Failure to maintain a license that is required for the job.

19.1.3.18 Sleeping during assigned work hours.

19.1.3.19 Offensive or abusive conduct or language toward other employees, students, or the public.

19.1.3.20 Working overtime without authorization.

REFERENCE:

1. Education Code Sections 212.5, 230, 44010, 44011, 45123, 45260, 45261, 45302, 45303, and 45304
2. Government Code Section 1028, 12940 et seq.

19.1.4 PROCEDURE FOR DISCIPLINARY ACTION: Procedures of progressive discipline are essential and shall be applied to the employee to assist the employee and thus give him/her the opportunity to improve and correct any negative behavior, unacceptable work habits or any violation of rules and regulations prior to disciplinary action. Except in those situations where an immediate suspension is justified under provision of this agreement, a permanent employee whose work or conduct is of such character as to incur discipline, the following steps will be followed:

19.1.4.1 Verbal warning: A verbal warning will not be given to the employee unless he/she had previously been made aware of the performance standards. Verbal warning shall not be documented in the employee's personnel file.

19.1.4.2 Written warning: A written warning will not be given to an employee unless he/she has first been given a verbal warning about his/her alleged misconduct within the last twelve (12) months. A written warning shall not be placed in the employee's personnel file; however, the immediate supervisor will meet with the employee and mutually develop a written Performance Improvement Plan which shall set specific goals of performance and specific time periods for the improvement, including a statement by the supervisor on how the supervisor will assist the employee in attaining the performance.

19.1.4.3 A written reprimand notice of unsatisfactory service that is placed in the employee's personnel file will have a statement that the next violation may result in suspension, demotion or dismissal.

19.1.4.3.1 A written reprimand will not be given to an employee unless he/she has first been given a written warning about his/her alleged misconduct within the last twelve (12) months

and had not adhered to the Performance Improvement Plan.

19.1.4.3.2 The employee shall be advised by the administrator/supervisor calling the meeting of the right to be represented by the association (CSEA) in any meeting relating to potential written reprimand.

19.1.4.3.3 An employee who has been given a written reprimand shall acknowledge receipt of the original by signing a copy; however this does not acknowledge any admission of guilt.

19.1.4.3.4 A copy of the written reprimand will be placed in the employee's personnel file and he/she shall be given his/her right to attach a statement in accordance with Education Code 44031.

19.1.4.4 Suspension without pay or demotion: Suspension without pay will not be assessed against an employee unless he/she has first been given a written reprimand for his/her alleged misconduct, and a copy of that written reprimand was placed in his/her personnel file.

19.1.4.4.1 The employee shall be advised by the administrator/supervisor calling the meeting of the right to be represented by the association (CSEA) of any meeting relating to potential suspension without pay.

19.1.4.4.2 No suspension without pay, demotion or dismissal, will be assessed against an employee without a written notice from the District of his/her alleged offense, and disclosure by the District of all of its evidence to support its charges. Such written notice of the disciplinary action shall contain a statement in ordinary and concise language of the specific acts and omissions upon which the disciplinary action is based, a statement of the cause of the action taken and, if it is claimed that an employee has violated a rule or regulation of the public school employer, such rule or regulation shall be set forth in said notice.

19.1.4.4.3 A notice of disciplinary action stating one or more causes or grounds for disciplinary action established by any rule, regulation, or statute in the language of the rule, regulation, or statute is insufficient for any purpose.

19.1.4.4.4 A proceeding may be brought by, or on behalf of, the employee to restrain any further proceedings under any notice

of disciplinary action in violation of this provision.

19.1.4.4.5 No disciplinary suspension without pay shall exceed ten (10) working days.

19.1.4.4.6 An employee subject to disciplinary action shall be given, in person or by U.S. Certified mail, a notice of disciplinary action. Such notice shall state the employee's right to respond to the charges.

19.1.4.5 Dismissal: Violations of gross misconduct may result in immediate dismissal. Gross misconduct includes dishonesty or theft affecting the District, use or possession on duty of alcohol or illegal drugs, or conviction of a crime involving moral turpitude.

19.1.4.6 In the event the District does not comply with the requirements of the Progressive Discipline provisions, the District may not implement or take any disciplinary action against the employee. If, however, the District proposes discipline against an employee involving gross misconduct, the District shall not be required to follow the provisions of these regulations.

19.1.4.7 Because verbal warnings or written warnings are not documented in the employee's personnel file, they shall not be subject to the appeal procedure. Written reprimands and disciplinary suspension without pay or dismissals are subject to the appeal process in accordance with these rules and regulations. In the event of a conflict between the provisions of the bargaining unit contract and these rules and regulations, the provisions of the bargaining unit contract shall govern.

19.1.4.8 An employee shall be notified in writing of his/her right to appeal a decision.

REFERENCE: Education Code Sections 45260 and 45261

19.1.5 **A COMPULSORY LEAVE OF ABSENCE:** An employee may be immediately placed on a compulsory leave of absence without pay if charged with the commission of any sex offense or narcotics offense referred to in Education Code Sections 44010, 44011, and 45304, and the mandatory leave of absence shall continue for not more than ten (10) working days after the date of the entry of the court judgment. The compulsory leave of absence may be extended beyond such ten (10) working day period if the governing board gives notice within such ten (10) working day period that it will dismiss the employee thirty (30) working days after the service of the notice, unless the

employee demands a hearing. Any employee on a compulsory leave of absence shall continue to be paid his/her regular salary during the period of absence if the employee furnishes the District a suitable bond, or other security acceptable to the Board of Education, as a guarantee that the employee will repay the District the amount of salary so paid to him/her during the period of mandatory leave of absence in case the employee is convicted of such charges, or the employee does not return to service after such period of absence. If the judgment determines that the employee is not guilty of such charges, or if the complaint, information, or indictment is dismissed, the District shall reimburse the employee for the cost of the bond; or, if the employee has not elected to furnish such bond, the District shall pay to the employee his/her full compensation during the period of the compulsory leave of absence, provided the employee returns to service after such period of absence.

REFERENCE:

Education Code Sections 44010, 44011, 45302, 45303, and 45304

19.1.6 IMMEDIATE SUSPENSION - WITH PAY: An employee, other than stated in Rule 19.1.5 above, may be immediately suspended without loss of compensation pending the initiation and completion of disciplinary action procedures to the Board of Education. The District may end the suspension without loss of compensation or take action to suspend without pay in accordance with these Rules as warranted.

REFERENCE: Education Code Sections 45260 and 45261

19.1.7 DISMISSAL OF SUBSTITUTE/LIMITED-TERM/PROVISIONAL EMPLOYEES: A substitute, limited-term, provisional, probationary or other temporary employee may be terminated at any time during his/her assignment without cause and without regard to procedures set forth in this chapter.

REFERENCE: Education Code Sections 45260, 45261 and 45305

19.1.8 DEMOTION OF PERMANENT EMPLOYEE DURING PROBATIONARY PERIOD: A permanent employee who is demoted during the probationary period in a new class may, within fourteen (14) days after the receipt of the copy of written charges, request an investigation. The request for the investigation must be based only on one or more of the five (5) grounds provided in section 19.1.13.

19.1.8.1 The Commission or designee shall conduct an investigation confined to the grounds set forth in the charges and in the request for

the investigation, but shall not be required to follow the procedures for appeals and hearing set forth in these rules.

19.1.8.2 The Commission shall notify the Board of Education and the employee, in writing, of its findings. If the Commission's investigation and findings, however, indicate any discriminatory action, the Commission may order a formal hearing. The decision of the Commission shall be binding on the Board of Education.

19.1.9 **BURDEN OF PROOF:** The burden of proof in disciplinary hearings is the District's. The standard is preponderance of the evidence.

REFERENCE: Education Code Sections 45260 and 45261

19.1.10 **PROHIBITED ACTS RELATIVE TO DISCIPLINE:** No employee shall be suspended, demoted, dismissed, subjected to any other form of disciplinary action, harassment, or in any way discriminated against because of the employee's race, color, gender, national origin, marital status, disabling or handicapping condition, ancestry, sexual orientation, employee organization membership or non-membership and legal activities related thereto, medical condition, or religious or political beliefs or acts.

REFERENCE:

1. Education Code Sections 45260 and 45261
2. Government Code 12926

19.1.11 **HEALTH BENEFITS MAINTAINED UNTIL APPEAL CONCLUDED:** A classified employee who is subjected to a disciplinary action (as provided in these Rules and Regulations), who is receiving health insurance coverage and would otherwise lose those benefits, shall continue to receive such coverage until the timeliness for filing an appeal has passed or, in the event that the employee files a timely appeal, until all appeal processes contained in these Rules and Regulations have been exhausted.

REFERENCE: Education Code Sections 45260 and 45261

19.1.12 **ACTION IF APPEAL IS NOT FILED:** If the employee does not respond to the charges within the fourteen (14) working day period outlined in the Notice of Proposed Disciplinary Action, the Superintendent or designee shall recommend to the Board that the proposed disciplinary action be approved

19.1.13 **APPEAL OF DISCIPLINARY ACTION:** A permanent employee who has been suspended, demoted, or dismissed may appeal to the Personnel Commission within fourteen (14) days after having been furnished with a

copy of the written charges by filing a written answer to such charges. An appeal can be made only on the following grounds:

19.1.13.1 That the procedures set forth in these rules have not been followed.

19.1.13.2 That the discipline was based upon discrimination because of the employee's race, color, gender, national origin, marital status, disabling or handicapping condition, ancestry, sexual orientation, employee organization membership or non-membership and legal activities related thereto, medical condition, or religious or political beliefs or acts.

19.1.13.3 That there has been abuse of discretion.

19.1.13.4 That the action taken was not in accord with the facts.

19.1.13.5 That the discipline imposed has no reasonable relationship to an act or omission on the job or on school property.

REFERENCE: Education Code Sections 45260, 45261 and 45305

19.2 SKELLY HEARING BEFORE SUPERINTENDENT OR DESIGNEE: If the employee submits a request to respond to the charges within fourteen (14) working days after receipt of the Notice the employee shall have a right to meet with the Superintendent or designee, and the effective date of the proposed disciplinary action shall be stayed pending the outcome of the appeal process. The employee shall be allowed to respond to the charges prior to the Superintendent's recommendation of disciplinary action to the Board.

REFERENCE: Education Code Sections 45260 and 45261

19.2.1 NOTIFICATION OF SKELLY HEARING TO EMPLOYEE: The District Personnel Office shall notify the Superintendent, or designee upon receipt or lack of receipt of a request for a Skelly hearing, and shall coordinate the scheduling of the Skelly Hearing. The District Personnel Office shall notify the employee in writing of the time, date, and place of the Skelly Hearing before the Superintendent or designee. Notification shall be either in person or sent by Certified Mail (Return Receipt Requested). This requirement will be deemed to have been met if the notification of the Preliminary Appeal Hearing is sent Certified Mail to the last known home address on file in the District Personnel Office. Failure of the employee to retrieve delivered mail, or respond to notifications by the U.S. Postal Service of attempted delivery shall not be grounds for voiding notification, or the

staying of the timelines outlined in these Rules. For purposes of this Rule, if a notice is mailed, the second working day following the postmark date of the notice shall be considered to be the official date of receipt.

REFERENCE: Education Code Sections 45260 and 45261

19.2.2 DESIGNEE FOR SUPERINTENDENT: If the Superintendent is unable or unwilling to serve as the preliminary appeal hearing officer, the Superintendent may assign a designee. That designee shall be an administrator who has the authority and authorization to accept, modify, or rescind the proposed disciplinary action. The administrator may not be a party to the proposed action, either as the supervisor initiating proposed disciplinary action, or as a witness.

REFERENCE: Education Code Sections 45260 and 45261

19.2.3 EMPLOYEE SHALL HAVE OPPORTUNITY TO RESPOND TO CHARGES: The employee shall have the opportunity to respond to all charges. The Skelly Hearing is not an evidentiary hearing. The employee will not be allowed to call or examine witnesses.

REFERENCE: Education Code Sections 45260 and 45261

19.2.4 RIGHT TO REPRESENTATION: The employee may be represented by legal counsel, union representative, or any other person designated by the employee. If the employee fails to appear, the Superintendent may recommend action to the Board of Education.

REFERENCE: Education Code Sections 45260 and 45261

19.3 SKELLY HEARING DECISION AND NOTICE

19.3.1 SUPERINTENDENT OR DESIGNEE'S DECISION: The Superintendent or designee shall issue a written decision within five (5) working days after the conclusion of the Skelly Hearing, to either implement the proposed disciplinary action, to modify the proposed disciplinary action, or to rescind and halt the proposed disciplinary action. The Superintendent or designee shall not act to provide for a penalty or disciplinary action more severe than that recommended in the Notice of Proposed Disciplinary Action. The written decision of the Superintendent or designee shall be filed with the Personnel Commission Office. The District Personnel Office shall be responsible for notification of the employee as to the findings of the Superintendent, pursuant to Rule 19.6.2.

19.3.1.1 The Superintendent's or designee's decision shall be

communicated to the Board of Education.

REFERENCE: Education Code Sections 45260 and 45261

19.3.2 CONTENTS OF NOTICE OF DISCIPLINARY ACTION: The Notice of Disciplinary Action, which is the notification that disciplinary action has been approved by the Board of Education, shall contain statements in ordinary and concise language of:

19.3.2.1 The nature of the disciplinary action taken (suspension, demotion, dismissal, etc.).

19.3.2.2 The specific causes and sections of these Rules that the employee is accused of violating and upon which the disciplinary action is based.

19.3.2.3 The specific charges, a description of the chargeable action(s) or omissions, including times, dates, locations in ordinary and concise language.

19.3.2.4 The effective date(s) of the disciplinary action.

19.3.2.5 A copy of charges and documentation to support the District's case against the employee.

19.3.2.6 The employee's right to representation.

19.3.2.7 A copy of the action taken by the Board of Education.

19.3.2.8 The employee's right to appeal the disciplinary action to the Personnel Commission within fourteen (14) working days of service of the Notice of Disciplinary Action, and the right to have such a hearing within the timelines specified in these Rules.

19.3.2.9 A notice that the Commission may sustain, reject, or modify the disciplinary action taken against the employee; and that the Commission may not provide for discipline more stringent than that invoked by the Board of Education.

19.3.2.10 The employee's right to request the Personnel Commission to issue subpoenas for witnesses or other material evidence.

REFERENCE: Education Code Sections 45260 and 45261

19.3.3 APPEAL FORM SHALL ACCOMPANY DISCIPLINARY

NOTICE: An appeal form shall accompany the Notice of Disciplinary Action. The signing and filing of this appeal form shall constitute a demand for hearing and a denial of any or all charges. The appeal form shall be submitted to the Personnel Commission Office by the deadline noted in the Notice of Disciplinary Action. The employee shall include in the appeal his/her current mailing and residency address at which the employee may be contacted, in the event that additional correspondence or notices need to be sent to the employee. The appeal notice filed by the employee shall also contain the name of his/her legal counsel or representative and the address and telephone number of such counsel or representative. The employee shall attach to the appeal form the reasons for the appeal.

REFERENCE: Education Code Sections 45260 and 45261

19.3.4 NOTICE SHALL BE IN WRITING AND SERVED ON EMPLOYEE: The Notice of Disciplinary Action shall be in writing and served in person or by Certified Mail "Return Receipt Requested" to the employee. This requirement will be deemed to have been met if the Notice of Disciplinary Action is sent Certified Mail to the last known home address on file in the Personnel Office. Failure of the employee to retrieve delivered mail, or respond to notifications by the U.S. Postal Service of attempted delivery shall not be grounds for voiding notification, or the staying of the timelines outlined in these Rules. For purposes of this Rule, if a notice is mailed, the second working day following the postmark date of the notice shall be considered to be the official date of receipt.

REFERENCE: Education Code Sections 45260 and 45261

19.3.5 ACTION IF APPEAL IS NOT FILED: If the employee does not respond and request a Personnel Commission Appeal Hearing within the fourteen (14) calendar day period outlined in the Notice of Disciplinary Action, the action of the Board of Education shall be final and conclusive, and no further appeal rights shall be allowed.

19.3.6 NOTIFICATION TO PERSONNEL COMMISSION: The Superintendent or designee shall notify the Director of Classified Personnel of the Board of Education's decision relative to the disciplinary action. The Director of Classified Personnel shall notify the employee in writing of the results of the Board's action. If the action of the Board was to reject all disciplinary action, the Director of Classified Personnel shall notify the employee in writing within five (5) working days after notification of the Board's decision. If the decision of the Board of Education were to continue or modify the proposed disciplinary action, the Director of Classified Personnel shall notify the employee in writing within five (5) working days after the notification of the Board's decision. Such notification shall be in the

form of a Notice of Disciplinary Action.

REFERENCE: Education Code Sections 45260, 45261, and 45305

19.3.7 APPEAL HEARING BEFORE PERSONNEL COMMISSION: If the employee submits an appeal notice to the Personnel Commission Office within fourteen (14) calendar days after receipt of the Notice of Disciplinary Action, the employee shall have a right to have an Appeal Hearing before the Personnel Commission. The Commission Appeal Hearing shall be held within a reasonable number of days of receipt of the employee's appeal notice by the Personnel Commission Office. The Personnel Commission may agree to a thirty (30) working day extension for good cause.

REFERENCE: Education Code Sections 45260 and 45261

19.3.8 NOTIFICATION OF HEARING TO EMPLOYEE: The Director of Classified Personnel shall notify the District and the Personnel Commission upon receipt or lack of receipt of an appeal notice, and shall coordinate the scheduling of the Commission Appeal Hearing if a timely appeal is filed.

19.3.8.1 The Director of Classified Personnel shall notify the employee in writing within fifteen (15) working days of the timely filing of an appeal notice, of the time, date, and place of the Commission Appeal Hearing before the Personnel Commission.

19.3.8.2 A notice of the time and place of hearing shall be given or mailed to each of the parties not less than ten (10) working days prior to the hearing. The ten-day notice of hearing may be waived by agreement of the parties.

19.3.8.3 Notification shall be either in person or sent by Certified Mail Return Receipt Requested. This requirement will be deemed to have been met if the notification of the Commission Appeal Hearing is sent Certified Mail to the last known home address on file in the Personnel Office. Failure of the employee to retrieve delivered mail, or respond to notifications by the U.S. Postal Service of attempted delivery shall not be grounds for voiding notification, or the staying of the time lines outlined in these Rules. For purposes of this Rule, if a notice is mailed, the second working day following the postmark date of the notice shall be considered to be the official date of receipt.

REFERENCE: Education Code Sections 45260 and 45261

19.3.9 GENERAL CONDUCT OF COMMISSION APPEAL HEARING: At this full evidentiary hearing, the employee shall have the right to present

all evidence and testimony on his/her behalf, to examine all evidence submitted by the District, hear testimony of the supervisor(s) who initiated the action, and examine and cross-examine all witnesses giving testimony. All hearings before the Personnel Commission shall be in closed session, unless the appealing employee requests an open hearing in his/her appeal notice..

19.3.10 RIGHT TO REPRESENTATION: The employee may, at his/her option, be represented by legal counsel, union representation, or any other person designated by the employee. If the employee files an appeal, the employee shall be required to attend the Commission Appeal Hearing, even if the employee's designated representative appears on his/her behalf. If the employee fails to appear, the employee will be deemed to have forfeited his/her rights to further appeal and the Personnel Commission shall allow the Board of Education's disciplinary action to stand.

19.3.11 APPEAL TO PERSONNEL COMMISSION: Prior to the Personnel Commission's formal hearing, the Director of Classified Personnel may hold a prehearing conference with the Board's representative and the appellant's representative or the appellant if the appellant is representing himself or herself. Such prehearing conference shall include but not be limited to submission of witness lists, documents required for submission into evidence, and determination as to length of time necessary for the hearing.

19.3.11.1 SUBPOENA OF WITNESSES/EVIDENCE: The Personnel Commission or its hearing officer may, and shall if requested by either party, subpoena witnesses and/or require the production of records, documents, or other material evidence. The Director of Classified Personnel shall issue the subpoenas on behalf of the Commission or its hearing officer. Subpoenas shall be delivered to the requesting party for service.

19.3.11.1.1 Requests for subpoenas shall be filed with the Personnel Commission Office at least five (5) working days prior to the date of the hearing.

19.3.11.1.2 LIST OF WITNESSES: A list of witnesses to be called by each party and a list of persons authorized to attend the hearing shall be submitted to the Personnel Commission Office at least five (5) working days prior to the date of the hearing. This will allow the Personnel Commission to secure the release time of employee witnesses prior to the hearing.

REFERENCE: Education Code Sections 45260, 45261, 45305, 45306, 45307

19.3.12 APPOINTMENT OF HEARING OFFICER: The Personnel

Commission may authorize a hearing officer to conduct any hearing or investigation for which the Commission itself is authorized by the Education Code and/or these Rules to conduct, including disciplinary action. Any such hearing officer conducting such hearing or investigation may administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the deposition of witnesses to be taken in the manner prescribed by law for like depositions in civil cases in the Superior Court of this State. The Commission may instruct such hearing officer to present findings or recommendations. The Commission may accept, reject, or amend any of the findings or recommendations of the hearing officer. Any rejection or amendment of findings or recommendations shall be based either on a review of the transcript of the hearing or investigation, or upon the results of such supplementary hearings or investigations as the Commission may order.

19.3.12.1 The Commission may employ by contract or as professional experts or otherwise any such hearing officer, and may adopt and amend such Rules and procedures as may be necessary to effectuate this section of the Rules.

REFERENCE: Education Code Sections 45260, 45261 and 45312

19.3.13 COMMISSION SHALL DETERMINE TIME AND PLACE OF HEARING: Upon receipt of the appeal notice, the Personnel Commission shall determine the date, time, and place of the hearing on appeal. The appeal hearing shall be held within the boundaries of the District.

REFERENCE: Education Code Sections 45260 and 45261

19.3.14 ALL HEARINGS SHALL BE RECORDED: All hearings under the authority of this Chapter shall be electronically recorded in such a manner that a verbatim written transcript can be produced if necessary.

REFERENCE: Education Code Sections 45260 and 45261 19.5.8 ORAL.

19.3.15 ABILITY TO EXAMINE EVIDENCE: Each party shall have the following rights as it relates to examination of witnesses and evidence:

19.3.15.1 To call and examine witnesses.

19.3.15.2 To introduce exhibits.

19.3.15.3 To cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct

examinations.

19.3.15.4 To attempt to impeach any witness regardless of which party first called the witness to testify.

19.3.15.5 To rebut all evidence presented by the opposing party.

REFERENCE: Education Code Sections 45260 and 45261

19.3.16 **APPELLANT MAY BE CALLED TO TESTIFY:** The appellant may be called to testify and be cross-examined just as if he/she had testified on his/her own behalf.

19.3.17 **ADMISSION OF EVIDENCE:** The hearing need not be conducted according to the technical rules relating to evidence and the examination of 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 business; regardless of the existence of any common law or statutory rule which might cause the evidence to be objected to or ruled out if presented in a criminal or civil procedure before a court of law.

19.3.17.1 Hearsay evidence may be used for the purpose of explaining or providing supplemental evidence, but shall not be sufficient in and of itself to support a finding by the Personnel Commission or its hearing officer unless it would be admissible over objection in a civil action in a court of law. Employee evaluations which are not based on facts and are based on undocumented charges may not be introduced as evidence.

19.3.17.2 The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing. Irrelevant and unduly repetitious evidence may be excluded.

REFERENCE: Education Code Sections 45260 and 45261

19.3.18 **RIGHT TO BE REPRESENTED:** The Board of Education and the appellant shall be allowed to be represented by legal counsel or other designated representatives.

19.3.19 **GRANTING OF CONTINUANCE:** The Personnel Commission or its hearing officer may, prior to or during the hearing, grant a continuance for reason(s) believed to be sufficient or important to reaching a fair and proper conclusion.

19.3.20 **RULING ON OBJECTIONS:** The Personnel Commission or its

hearing officer shall rule on all objections raised by either party.

19.3.21 FINDINGS BASED ON PREPONDERANCE OF EVIDENCE:

The Personnel Commission or its hearing officer shall determine the relevancy, weight, and credibility of the evidence and testimony presented. The findings of the Commission or hearing officer shall be based upon the preponderance of evidence.

19.3.22 ORDER OF PRESENTATION OF EVIDENCE:

Each side will be permitted an opening statement, District's representative first, and closing arguments, appellant or his/her representative last. The District shall be first in presenting its witnesses and evidence in an effort to support its charges, and then the appellant or his/her representative will present his/her witnesses and evidence in defense.

19.3.23 EXAMINATION OF WITNESSES:

Each side will be allowed to examine and cross-examine witnesses.

19.3.23.1 The Commission or its hearing officer may, at its discretion, exclude witnesses not under examination except for the appellant, District representative, the Director of Classified Personnel, and their respective counsels or designated representatives.

19.3.23.2 **SWORN AFFIDAVITS:** The policy of the Personnel Commission shall be that where possible, all witnesses shall give testimony orally at the hearing. However, if in the opinion of the Commission or its hearing officer, a witness has good and sufficient reason for being unable to be present, written testimony will be accepted under the following conditions:

19.3.23.2.1 Such evidence shall be submitted by sworn affidavit of the witness. The affidavit shall be confined to a statement of facts bearing on the case and within the knowledge of the witness, and shall not contain any conclusions of the witness, except that a witness who qualifies as an expert may express his/her opinion based upon the facts which he/she has recited.

19.3.23.2.2 Copies of all such affidavits shall be filed with the Personnel Commission Office or the hearing officer at least five (5) working days prior to the date of the hearing, and may be inspected by the other party to the hearing, who shall be notified of the filing of such affidavits.

19.3.23.2.3 Neither party has objections to the submission of

the affidavit(s) into evidence. Either party, upon request, may require the attendance of the witness who has given the sworn affidavit for purposes of cross-examination. A continuance may be necessary in order to secure the attendance of the witness.

19.3.23.2.4 The Personnel Commission or hearing officer may reject any such affidavit submitted which fails to comply with any of the foregoing conditions.

REFERENCE: Education Code Sections 45260 and 45261

19.3.24 DELIBERATION AND FINDINGS OF HEARING OFFICER: Whether the hearing is held in open or closed session, the hearing officer if one is appointed by the Personnel Commission shall deliberate on the evidence presented and a determination of his/her recommendations to the Personnel Commission in closed session.

19.3.24.1 The hearing officer shall submit his/her written recommendations and findings of fact to the Director of Classified Personnel within a reasonable period of time.

19.3.24.2 Upon receipt of the hearing officer's written recommendations and findings of fact, the Director of Classified Personnel shall contact the Chairperson of the Personnel Commission to schedule a meeting of the Commission to consider the findings and recommendations of the hearing officer.

19.3.24.3 In all cases assigned to a hearing officer, a proposed decision shall be prepared in a form to be adopted by the Commission as its decision in the case. Commission staff will notify the appellant, his/her representative and the District's representative of the date of the meeting when the Commission will consider its decision on the appeal. Copies of the proposed decision shall be made available upon request to the appellant and representatives after the Commission has received it at a regular Commission meeting. If either representative believes that the Commission should give further consideration to the decision, he/she shall submit a written request to the Personnel Commission with a copy to the opposing representative detailing reasons for further consideration and the remedy sought. The hearing officer may be present during the consideration of the case by the Commission and, at its request, may advise the Commission. The Commission may accept, reject, or amend any of the findings or recommendations in the proposed decision. Any rejections or amendment shall be based either on a review of the transcript of the

hearing or investigation, or upon the results of such supplemental hearing or investigation as the Commission may order. If a further investigation or hearing is ordered, the Commission may decide the case itself or may refer the case to the same or another hearing officer for the purpose of taking additional evidence. If the case is referred to a hearing officer, he/she shall file another proposed decision.

REFERENCE: Education Code Sections 45260 and 45261

19.3.25 DELIBERATION OF PERSONNEL COMMISSION: Whether the hearing before the Personnel Commission is held in open or closed session, the Commission, after it concludes the hearing, may deliberate its decision(s) in closed session. No persons other than members of the Personnel Commission, its legal counsel, and the Director of Classified Personnel, shall be permitted to participate in the deliberations. If the Director of Classified Personnel was the administrator initiating the disciplinary action, or if the Director acted on behalf of the Board of Education in the presentation of the case at any level of the appeal process, or if the Director served as a witness in the proceedings, the Director of Classified Personnel shall also be excluded from the Commission's deliberations.

REFERENCE: Education Code Sections 45260, 45261, 45266, and 45305

19.3.26 DECISION OF PERSONNEL COMMISSION: The Personnel Commission shall render its judgment as soon after the conclusion of the hearing as possible. The decision(s) of the Commission shall be in writing and shall set forth which charges, if any, are sustained and the reasons therefore.

19.3.26.1 The Commission's written decision(s) shall contain findings of fact, a determination of the issues presented, and the penalty imposed (if any). The findings may be stated in the language of the pleading or included by reference thereto.

19.3.26.2 If the disciplinary action is not sustained, the Commission's order shall set forth the effective date that the employee is to be restored or reinstated to his/her former position and/or status; such date to be set forth at any time on or after the date that the disciplinary action was invoked.

19.3.26.3 Copies of the Commission's decision(s) shall be delivered to the parties personally or transmitted to them by Certified Mail Return Receipt Requested. The requirement for notification of the employee will be deemed to have been met if the decision is sent, Certified Mail, to the last known home address on file in the Personnel Office. Failure of the employee to retrieve delivered mail, or respond to notifications

by the U.S. Postal Service of attempted delivery shall not be grounds for voiding notification. For purposes of this Rule, if a notice is mailed, the second working day following the postmark date of the notice shall be considered to be the official date of receipt.

19.3.26.4 If the Commission either sustains a suspension or modifies a dismissal, or other disciplinary action, to a suspension, such days of suspension shall be served on working days in which the employee is normally assigned.

REFERENCE: Education Code Sections 45260 and 45261

19.3.27 BOARD SHALL COMPLY WITH COMMISSION DECISION: Upon receipt of the Commission's written decision the Board of Education shall forthwith comply with the provisions thereof. When the Board of Education has fully complied with the Commission's decision, it shall so notify the Commission in writing.

19.3.27.1 If the Board of Education fails and/or refuses to fully comply with the Commission's written decision(s) and order(s) as required by these Rules and Regulations and legal statutes, the Commission shall seek judicial action to ensure compliance.

REFERENCE: Education Code Sections 45260, 45261, and 45307

19.3.28 COMMISSION ACTION: The Personnel Commission may sustain or reject any or all of the charges filed against the employee. The Commission may sustain, modify, or reject the disciplinary action invoked against the employee. However, the Commission may not invoke more stringent discipline against the employee than that invoked by the Board of Education should it sustain any or all of the Board's charges.

REFERENCE: Education Code Sections 45260, 45261, and 45307

19.3.29 DECISION SHALL INCLUDE CONSIDERATION OF JUST SETTLEMENT: Following its determination of the facts and findings relative to the disciplinary action invoked against the employee, the Commission shall consider such other matters as it deems necessary and proper to effect a just settlement of the appeal, including, but not limited to:

19.3.29.1 The granting of seniority credit for any or all of the off-duty time pending restoration or reinstatement.

19.3.29.2 Expunge from the employee's personnel file and record any

causes or charges that are not sustained by the Commission.

REFERENCE: Education Code Sections 45260, 45261, and 45307

19.3.30 OBTAINING COPIES OF THE HEARING TRANSCRIPT: The employee or his/her designated representative and the Board of Education or its designated representative may obtain a copy of the transcript under the following conditions:

19.3.30.1 The cost of the transcript and copies if requested, shall be borne by the party making the request.

19.3.30.2 The request shall be in writing and a cash deposit made in an amount determined by the Director of Classified Personnel prior to preparation, which shall not be less than the estimated cost of transcribing the hearing record.

19.3.30.3 The final cost of the transcript shall be the actual cost of preparation plus the cost of making copies as determined by the Director of Classified Personnel.

19.3.30.4 The transcript shall only be released upon payment in full. When the deposit is greater than the actual costs of the document (including the making of copies), the remainder shall be refunded to the party.

REFERENCE: Education Code Sections 45260 and 45261

19.3.31 THE DISQUALIFICATION OF HEARING OFFICER OR COMMISSIONER: A hearing officer or Personnel Commission member shall voluntarily disqualify himself/herself and withdraw from any appeal in which he/she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of any hearing officer or Personnel Commission member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded.

19.3.31.1 If the Personnel Commission determines that there is sufficient grounds for disqualification, it may elect to disqualify the hearing officer or Personnel Commission member.

19.3.31.2 Where the disqualification request concerns a Personnel Commission member, the issue shall be determined by the other members of the Commission. However, no Commission member shall withdraw voluntarily or be subject to disqualification if his/her

disqualification would prevent the existence of a quorum qualified to act in that particular appeal.

REFERENCE: Education Code Sections 45260 and 45261

19.3.32 **COUNSEL FOR THE PERSONNEL COMMISSION:** The Personnel Commission may seek and appoint legal counsel as part of its appeal and investigatory hearing duties. To avoid any conflict of interest, the legal counsel shall not be the same counsel representing the Board of Education, nor shall the Board and the Commission be represented by members of the same legal firm in a hearing held pursuant to these Rules and Regulations. All reasonable costs associated with the use of such legal counsel by the Personnel Commission in hearings shall constitute a legal charge against the Board of Education's general funds, whether or not the money or costs for legal services appear in the Commission's budget.

REFERENCE: Education Code Sections 45260, 45261, and 45313 □