

CHAPTER 190

PROCEDURES FOR DISCIPLINARY ACTION AND APPEAL

190.1 GENERAL PROVISIONS ON DISCIPLINARY ACTIONS

190.1.1 DISCIPLINARY ACTION ONLY PURSUANT TO THIS RULE: A regular classified employee shall be subject to disciplinary action only for cause as prescribed by these rules and regulations, negotiated contract, applicable statutes and only pursuant to the procedures outlined herein.

REFERENCE: Education Code Sections 45260, 45261 and 45302 - 45307

190.1.2 TIME LIMITS ON DISCIPLINARY ACTION: No disciplinary action shall be taken against any employee for any cause which arose prior to the employee's becoming permanent, nor for any cause which arose more than two (2) years prior to the date of the Notice of Proposed Disciplinary Action unless such cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the District.

REFERENCE: Education Code Sections 45260 and 45261

190.1.3 PROHIBITED ACTS RELATED TO DISCIPLINE: No employee shall be suspended, demoted, dismissed, subjected to any form of disciplinary action, harassed, or in any way discriminated against because of the employee's political affiliations, race, color, national origin, age, marital status, sex, disability, ancestry, sexual orientation, membership or non-membership in the employee organization recognized as the exclusive representative of the employee's bargaining unit and legal activities related thereto, medical condition (as defined in Government Code Section 12926), or religious or political beliefs or acts, except as provided in Rule 190.1.5.

REFERENCE:

1. Education Code Sections 45260 and 45261
2. Government Code Section 12926
3. Labor Code 1101

190.1.4 **DEFINITION OF DISCIPLINE:** Discipline shall be imposed on permanent regular employees only for just cause as prescribed herein. For purposes of the appeal procedures prescribed in these Rules, disciplinary action is deemed to be any action which deprives any employee of any classification or incident of employment or classification in which the employee has permanence and includes dismissal, demotion, and suspension without pay.

REFERENCE: Education Code Sections 45260 and 45261

190.1.5 **CAUSES FOR DISCIPLINARY ACTION:** The following causes shall be grounds for disciplinary action:

190.1.5.1 Incompetency - A pattern of below standard work performance.

190.1.5.2 Inefficiency - The continued inability to perform the assigned duties of the position.

190.1.5.3 Insubordination - Knowingly refusing to perform lawful and reasonably assigned duties.

190.1.5.4 Carelessness or negligence in the performance of assigned duties, or in the care of use of District property.

190.1.5.5 Willful and persistent violation of the Education Code, or, Rules and Regulations of the District or a department.

190.1.5.6 Knowingly falsifying or withholding any material information supplied to the District, including but not limited to, information supplied on application forms and employment records.

190.1.5.7 Possession of an alcoholic beverage on District property, drinking alcoholic beverages on District property, being intoxicated on property. For employees covered by the Omnibus Transportation Employee Testing Act of 1991 and BP/AR 4212, 42/4312.42, a positive test result for alcohol concentration greater than .00 is deemed to be under the influence in accordance with the VVUHSD/CSEA Contract, section 14.11.1.

- 190.1.5.8** The use or possession of any controlled substance while on duty, other than that prescribed by a licensed physician. For employees covered by the Omnibus Transportation Employee Testing Act of 1991 and BP/AR 4212.42/4312.42, a positive test result for controlled substances is deemed to be under the influence in accordance with the VVUHSD/CSEA Contract, section 14.11.2.
- 190.1.5.9** Being formally charged with a sex offense as defined in Education Code Section 44010. Conviction of such offense shall result in dismissal.
- 190.1.5.10** Being formally charged with a controlled substance offense as defined in Education Code Section 44011. Conviction of such offense shall result in dismissal.
- 190.1.5.11** Engaging in political activities during assigned hours of duty.
- 190.1.5.12** Conviction of a crime involving moral turpitude.
- 190.1.5.13** Carrying out an unprovoked verbal assault on discourteous, offensive, or abusive conduct or language toward a pupil, a member of the public, another District employee, or a District official.
- 190.1.5.14** Carrying out an unprovoked physical attack on a pupil, a member of the public, another District employee, or a District official.
- 190.1.5.15** Repeated unexcused absence or tardiness, abuse of leave privileges or absence without notification.
- 190.1.5.16** Abandonment of Position - Absence of three (3) consecutive working days without notification or permission and the failure to notify the District of a valid or acceptable reason for the absence.
- 190.1.5.17** Failure to return to work or notify the District within three (3) working days following an authorized leave of absence except in the case of dire emergency.
- 190.1.5.18** The uninsurability of an employee to drive a District vehicle when such is a requirement of the employee's position. Upon notification or confirmation by the District's insurance carrier, discipline under this section shall be handled in the following manner:

1. The District shall attempt to reassign the employee within the same class or to a vacant position in a related class, with the approval of the Commission, not requiring operation of a motor vehicle.
2. If reassignment is not possible, then the employee may be demoted, pursuant to these rules and regulations.
3. If a position does not exist for a demotion to be accomplished, then the employee may be dismissed, pursuant to these rules and regulations.

190.1.5.19 Violation of local, state, or federal law which results in cancellation or suspension of a license or certificate required for the performance of assigned duties, or the failure to maintain a valid license or certificate.

190.1.5.20 Dishonesty, theft, willful misuse for personal gain, willful destruction or mishandling of District property, or the property of employees or pupils.

190.1.5.21 Ethnic, racial, religious, or sexual harassment of another. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature, made by someone from or in the work setting.

190.1.5.22 Offering 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 any special treatment to another employee or to any member of the public.

190.1.5.23 Conviction of a felony or serious crime. A plea, verdict, or finding of guilty, or a conviction following a plea of nolo contendere is to be deemed a conviction within the meaning of these Rules.

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

- 190.1.5.25** Willful or persistent violation of, or failure to enforce, rules, regulations, policies, or procedures pertaining to health and safety.
- 190.1.5.26** Personal conduct unbecoming on employee of the district while on duty.
- 190.1.5.27** Abuse of illness leave provisions.
- 190.1.5.28** Membership in the Communist party.
- 190.1.5.29** Active participation by a management and/or confidential employee in the affairs of an employee organization(s) which is an exclusive representative.

"Active participation", shall include holding office in the employee organization(s) in the capacity of an employee or volunteer, participating in activities designed to increase the membership in the employee organization(s) and serving on committees established for the purpose of developing, reviewing, or approving the collective bargaining position of the employee organization (s) or reviewing or approving proposals presented by the Board of Trustees.

- 190.1.5.30** Any willful conduct tending to injure the public service.

- REFERENCE:**
1. Education Code Sections 212.5, 230, 44010, 44011, 45260, 45261, 45302, 45303, and 45304
 2. Government Code Section 1028
 3. Penal Code Section 261
 4. Business and Professions Code Section 25608

190.1.6 **PROGRESSIVE DISCIPLINE:** Except in those situations where an immediate suspension is justified under the provisions of State law, or except in cases where the safety of District employees, students, or the public might be in question, or in cases of theft or intentional damage to District property or willful violations of the law, the District shall impose disciplinary action on a employee, whose work or conduct is of such character as to incur discipline, using the following principles of progressive discipline. The intent of this section is to ensure that any employee subject to disciplinary action shall be afforded the proper amount of time and opportunities to improve in his/her work or conduct prior to any loss of benefit of his/her classification and/or employment status.

190.1.6.1 STEP ONE - PROGRESSIVE DISCIPLINE - ORAL

WARNING: Prior to any formal disciplinary action, the employee shall be orally notified by his/her immediate supervisor that a deficiency in his/her job performance has been observed. The supervisor shall discuss the deficiency with the effected employee at an informal meeting and suggest ways in which the employee may improve his/her job performance.

The supervisor shall then review the employee's performance after a period of not less than twenty (20) working days from the date of the informal meeting, at which time the supervisor it is noted that the employee has not improved.

190.1.7 STEP TWO - PROGRESSIVE DISCIPLINE - WRITTEN WARNING:

If it is noted after Step One (1) herein above has been applied, that the employee has not improved in his/her job performance, the employee's immediate supervisor, or designee, shall prepare a written warning letter and shall send such letter to the affected employee. The warning letter shall outline those specific areas and/or incidents of the employee's deficient performance and suggestions and direction for improvement. The warning letter shall not include any incidents or deficiencies which were not discussed at the Step One (1) level herein above.

The warning letter shall not be placed into the affected employee's personnel file.

REFERENCE: Education Code Sections 45260 and 45261

190.1.8 STEP THREE - PROGRESSIVE DISCIPLINE - LETTER OF

REPRIMAND: If it is noted after Step Two (2) herein above has been applied, that the employee has not improved in his/her job performance, the employee's immediate supervisor, or designee, shall prepare a written letter of reprimand and shall send such letter to the affected employee. The letter of reprimand shall outline those specific areas and/or incidents of the employee's deficient performance and suggestions and direction for improvement. The letter of reprimand shall not include any incidents or deficiencies which were not discussed at the Step One (1) level herein above. The letter of reprimand shall not be placed into the affected employee's personnel file until he/she has been given ten (10) days to respond in accordance with the VVUHSD/CESA Contract, section 14.4.3.

190.1.9 **STEP FOUR - PROGRESSIVE DISCIPLINE - SUSPENSION:** If it is noted after Step Three (3) herein above has been applied, that the employee has not improved in his/her job performance, the employee's immediate supervisor, or designee, may make a recommendation to the Superintendent that the employee's deficient job performance warrants a suspension with or without pay for a period not to exceed twenty (20) days in accordance with the VVUHSD/CSEA Contract, section 14.4.4, as deemed appropriate. A copy of the recommendation shall be given to the employee.

190.1.10 **STEP FIVE - PROGRESSIVE DISCIPLINE - FURTHER ACTION:** No less than thirty (30) days after Step Four (4) herein above has been applied, and if it is noted that the employee has not improved in his/her job performance, and being that all the above procedures have been followed, the District Superintendent may make recommendation to the Governing Board that further disciplinary action be taken against the employee which may include any of the following; demotion, suspension, reduction in hours or class, transfer or reassignment without the employee's voluntary written consent, written reprimand, or termination, as deemed appropriate. A notice of disciplinary action, if any is to be taken, shall be prepared and shall be subject to the disciplinary notice procedures contained in this chapter.

REFERENCE: Education Code Sections 45260 and 45261

190.1.11 **IMMEDIATE SUSPENSION WITHOUT PAY:** An employee may be immediately suspended without pay if charged with the commission of any sex offense or controlled substance offense referred to in Education Code Sections 44010, 44011, and 45304, and the suspension shall continue for not more than ten (10) days after the date of the entry of the court judgment. Any employee so suspended shall continue to be paid his regular salary during the period of suspension if he furnishes to the District a suitable bond, or other security acceptable to the Board of Trustees, as a guarantee that the employee will repay to the District the amount of salary so paid to him during the period of suspension in case the employee is convicted of such charges, or he does not return to service after such period of suspension. 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.

REFERENCE: Education Code Sections 44010, 44011, 45260, 45261, 45302, 45303, and 45304

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

REFERENCE: Education Code Section 45260, 45261, and 45305

190.1.13 **BURDEN OF PROOF:** The burden of proof in all hearings and proceedings under these rules shall remain with the District, except as to claims of discrimination by the employee, and any rule, regulation, policy, precedent, or procedure to the contrary shall be void.

REFERENCE: Education Code Sections 45260 and 45261

190.2 NOTICE OF DISCIPLINARY ACTION

190.2.1 NO DISCIPLINE WITHOUT NOTICE: No permanent regular classified employee may be subjected to disciplinary action until the employee receives a "Notice of Disciplinary Action," and the employee has had an opportunity to respond to the charges.

REFERENCE: Education Code Sections 45260, 45261, and 45305

190.2.2 CONTENTS OF NOTICE OF DISCIPLINE: The Notice of Disciplinary Action, which is the notification that disciplinary action will be recommended to the Board of Trustees, shall contain statements in ordinary and concise language of:

190.2.2.1 The nature of the proposed action (suspension, demotion, dismissal, etc.).

190.2.2.2 The specific causes and sections of these rules that the employee is accused of violating.

190.2.2.3 The specific charges, including times, dates, location, and a description of the chargeable actions or omissions in ordinary and concise language.

190.2.2.4 The proposed effective date(s) of the disciplinary action.

190.2.2.5 A copy of all evidence and documentation to support the District's case against the employee.

190.2.2.6 The employee's right to representation.

190.2.2.7 The employee's right to request a Pre-disciplinary Conference before the Superintendent, or designee, to dispute the charges and/or proposed action within five (5) working days of service of notice, and the right to have such a conference within the time lines specified in these rules.

190.2.2.8 The employee's right to respond to charges either orally or in writing.

190.2.2.9 A statement of his/her right to an appeal hearing before the Personnel Commission and a card or paper, the

signing and filing of which shall constitute a demand for a hearing and denial of all charges.

190.2.2.10 The time within which a hearing may be requested which shall not be less than ten (10) days after board action and/or service of notice to the employee.

REFERENCE: Education Code Sections 45116, 45260, 45261, and 45305

190.2.3 **NOTICE MUST USE READILY UNDERSTOOD LANGUAGE:** The charges outlined in the Notice of Disciplinary Action must be written clearly so that the employee will know the exact complaint(s) and charge(s) against him or her, and may be expected to respond to them. A Notice of Disciplinary Action stating one or more causes or grounds for disciplinary action established by any rule, regulation, or statute solely in the language of the rule, regulation, or statute, is insufficient.

REFERENCE: Education Code Sections 45116, 45260, and 45261

190.2.4 **DISCIPLINARY NOTICE SENT TO DIRECTOR OF CLASSIFIED PERSONNEL SERVICES:** When disciplinary action has been taken by the Governing Board, a notice of the action shall be reported to the Director of Classified Personnel Services within five (5) days. Within ten (10) days of the effective date of the demotion, suspension, reduction in hours or class, transfer or reassignment without the employee's voluntary written consent, or termination of the employee, the Personnel Director shall send a copy of the notice of action taken by the Governing Board to the employee. The notice shall contain a copy of Personnel Commission rules and regulations pertaining to a hearing and a statement of the employee's right to appeal and the date and time of the appeal hearing and a copy of the VVUHSD/CSEA Contract, Article 14 if the employee is a member of the bargaining unit subject to that agreement.

A copy of the notice sent to the employee shall be kept on file in the Personnel Commission office and presented to the Commission at its next regular meeting. A copy shall also be sent to the association president unless the employee requests otherwise.

REFERENCE: Education Code Sections 45260, 45261, and 45304(a)

190.2.5

NOTICE MUST 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 Commission 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. The responsibility for keeping the District informed of a home address is the responsibility of the employee. For purposes of this rule, if a notice is mailed, the second working day following the mailing date of the notice shall be considered to be the official date of receipt.

REFERENCE: Education Code Sections 45116, 45260 and 45261

190.3 PRELIMINARY CONFERENCE

190.3.1 ACTION IF REQUEST FOR CONFERENCE IS NOT FILED: If the employee does not respond and request a Preliminary Appeal Conference within the five (5) working day period outlined in the Notice of Disciplinary Action, the Superintendent shall recommend to the Board that the proposed disciplinary action be approved. The Board shall have the power to either accept, lessen, or reject the recommendation of the Superintendent. The Board shall not act to provide for a penalty or disciplinary action more severe than that recommended by the Superintendent.

REFERENCE: Education Code Sections 45260 and 45261

190.3.2 PRELIMINARY CONFERENCE BEFORE SUPERINTENDENT: If the employee submits a conference request to the Superintendent or designee within five (5) working days after receipt of the Notice, the employee shall have a right to have a Preliminary Conference before the Superintendent or designee. The Preliminary Conference shall be held prior to the Superintendent's recommendation of disciplinary action to the Board.

REFERENCE: Education Code Sections 45260 and 45261

190.3.3 NOTIFICATION OF CONFERENCE TO EMPLOYEE: The Superintendent, upon receipt, of a conference request, shall coordinate the scheduling of the Preliminary Conference if a timely request is filed. The Superintendent or designee shall notify the employee in writing of the time, date, and place of the Preliminary Conference. Notification shall be either by personal delivery or sent by certified mail, return receipt requested. This requirement will be deemed to have been met if the notification of the Preliminary Conference is sent certified mail to the last known home address on file in the Personnel Commission 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 mailing date of the notice shall be considered to be the official date of receipt.

REFERENCE: Education Code Sections 45260 and 45261

190.3.4 **DESIGNEE FOR SUPERINTENDENT:** If the Superintendent is unable or unwilling to serve as the preliminary conference officer, the Superintendent may assign a designee. That designee must 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

190.3.5 **EMPLOYEE SHALL HAVE OPPORTUNITY TO REFUTE CHARGES:** The employee shall have the opportunity to refute all charges at the preliminary conference.

REFERENCE: Education Code Sections 45260 and 45261

190.3.6 **RIGHT TO REPRESENTATION:** The employee may, at his/her option, be represented by legal counsel, association representation, or any other person designated by the employee who is not a potential party or witness in the matter. If the employee files a request for conference, the employee shall be required to attend the preliminary conference before the Superintendent, 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 the conference and the Superintendent may recommend action to the Board of Trustees.

REFERENCE: Education Code Sections 45260 and 45261

190.3.7 **PRELIMINARY CONFERENCE DECISION:** The Superintendent shall issue a written decision within five (5) working days after the conclusion of the Preliminary Conference, to either continue the proposed disciplinary action, to modify the proposed disciplinary action, or to rescind and halt the proposed disciplinary action. The Superintendent shall not act to provide for a penalty or disciplinary action more severe than that recommended in the Notice of Disciplinary Action. The written decision of the Superintendent shall be filed with the Personnel Commission Office. The Superintendent or designee shall be responsible for notification of the employee as to the findings of the Conference.

REFERENCE: Education Code Sections 45260 and 45261

190.3.8 **FINAL STEP FOR PROBATIONARY EMPLOYEES:** If a probationary employee is subjected to a Notice of Disciplinary Action, and does not hold permanency in any other classification in the District, the Preliminary Conference before the Superintendent or designee shall be the final process, except as noted in this rule, for such probationary classified employee. Probationary employees holding permanency in another classification shall be disciplined pursuant to the provisions of Rule 190.3.9. The decision of the Superintendent and his or her recommendation to the Board of Trustees is not subject to appeal except as noted below.

REFERENCE: Education Code Sections 45260, 45261, and 45305

190.3.9 **PERMANENT EMPLOYEE IN PROBATIONARY PROMOTIONAL POSITION:** A permanent classified employee who has not served the full probationary period for the class to which promoted, and who is demoted to his/her former class, does not have the right to appeal the decision. A permanent classified employee who has not served the full probationary period for the class to which promoted, and who is subjected to disciplinary action that would result in the separation of the employee from the permanent classified service shall have full appeal rights as if he/she had completed permanency in his/her present class.

190.3.10 **NOTIFICATION OF RIGHT TO APPEAL:** When the Board of Trustees has taken final action to discipline an employee, the Director of Classified Personnel shall, within ten (10) working days of the Board's action to discipline, notify the employee and file such notice with the Personnel Commission.

190.3.10.1 The notice of the right to appeal shall contain a copy of the charges, the time allowed to file an appeal, the right of an employee to a hearing, and a copy of the Personnel Commission Hearing Procedures.

REFERENCE: Education Code Sections 45260, 45261, and 45305

190.3.11 **ASSOCIATION RIGHTS:** The Association shall be notified of any disciplinary action to be taken against a Bargaining Unit Member, unless the Bargaining Unit Member requests otherwise. Further, the Association shall be provided with copies of any and all relevant materials related to a disciplinary action against a Bargaining Unit Member, unless the Bargaining Unit Member requests otherwise.

190.4 PERSONNEL COMMISSION APPEAL HEARING PROCEDURES

190.4.1 AUTHORITY OF COMMISSION HEARING AND DECISION: The Personnel Commission shall conduct hearings of appeals to disciplinary actions. The Commission shall have the right to sustain or reject any or all of the charges filed against the employee, take action to sustain, modify or reject the disciplinary action invoked against the employee, or it may direct such other action as it may find necessary to effect a just settlement of the appeal, pursuant to these rules and regulations.

190.4.2 NOTICE OF RIGHT TO APPEAL: A permanent employee who has been suspended, demoted, or dismissed may appeal to the Commission within fourteen (14) days after receipt of the notification of charges from the Director of Classified Personnel by filing a written response to the charges, and he/she may request a hearing.

REFERENCE: Education Code Section 45305

190.4.3 EMPLOYEE RESPONSE TO CHARGES: The employee's written response to the charges must include information on the following grounds:

190.4.3.1 The charges made do not constitute sufficient cause for the action taken.

190.4.3.2 The action taken was not in accord with the facts.

190.4.3.3 There has been an abuse of discretion.

190.4.3.4 The procedures set forth in these rules have not been followed.

190.4.3.5 The action was taken because of sexual harassment, or because of the employee's political affiliations, race, color, national origin, age, marital status, sex, disability, ancestry, sexual orientation, employee organization membership or non-membership in the employee organization recognized as the exclusive representative of the employee's bargaining unit and legal activities related thereto, medical condition (as defined in Government Code Section 12926), or religious or political beliefs or acts.

REFERENCE: Education Code Sections 45260, 45261, 45305, 45306, 45307, and 45311

190.4.4

APPOINTMENT OF HEARING OFFICER: The Personnel Commission may appoint a hearing officer to conduct any hearing or investigation 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 records, 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.

190.4.4.1 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: 1. Education Code Sections 45260, 45261, and 45312
2. Code of Civil Procedure Section 2016.010 et seq.

190.4.5

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, and in a place which is conducive to the proper conduct of the hearing.

190.4.5.1 Disciplinary hearings shall be held in closed session unless an open hearing is requested by the appellant at the time the hearing is set.

REFERENCE: 1. Education Code Sections 45260 and 45261
2. Government Code Section 54957

190.4.6 **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.

190.4.6.1 Either party may request that the hearing be recorded by a court reporter, in which case the party making the request shall bear the cost. If both parties make such a request, the cost shall be equally shared by the parties.

REFERENCE: Education Code Sections 45260 and 45261

190.4.7 **HEARINGS CONDUCTED TO DETERMINE TRUTH:** Hearings shall be conducted in the manner most conducive to determination of the truth, and neither the Personnel Commission nor its appointed hearing officer shall be bound by technical rules of evidence and the decision of the Commission shall not be invalidated by any informality in any of the proceedings.

REFERENCE: Education Code Sections 45260 and 45261

190.4.8 **ORAL EVIDENCE BY OATH ONLY:** Oral evidence shall be taken only on oath or affirmation.

REFERENCE: Education Code Sections 45260, 45261, and 45312

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

190.4.9.1 To call and examine witnesses.

190.4.9.2 To introduce exhibits.

190.4.9.3 To cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination(s).

190.4.9.4 To attempt to impeach any witness regardless of which party first called him or her to testify.

190.4.9.5 To rebut all evidence presented by the opposing party.

REFERENCE: Education Code Sections 45260 and 45261

190.4.10 **APPELLANT MAY BE CALLED TO TESTIFY:** If the appellant does not elect to testify on his own behalf, he may still be called to testify and be cross-examined as an adverse witness.

REFERENCE: Education Code Sections 45260 and 45261

190.4.11 **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 type 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.

190.4.11.1 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.

190.4.11.2 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 shall be excluded.

REFERENCE: Education Code Sections 45260 and 45261

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

REFERENCE: Education Code Sections 45260, 45261, and 45306

190.4.13 **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.

REFERENCE: Education Code Section 45260 and 45261

190.4.14 **RULING ON OBJECTIONS:** The Personnel Commission or its hearing officer shall rule on all objections raised by either party.

REFERENCE: Education Code Sections 45260 and 45261

190.4.15 **BURDEN OF PROOF:** The burden of proof shall be on the District except in cases of alleged discrimination.

190.4.16 **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.

REFERENCE: Education Code Sections 45260 and 45261

190.4.17 **ORDER OF PRESENTATION OF EVIDENCE:** Each side will be permitted an opening statement, Board's representative first, and closing arguments, appellant or his/her representative last. Because the Board has the burden of proof, the Personnel Commission or its hearing officer may permit the Board to make a brief rebuttal closing argument upon request. The Board 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 witnesses and evidence in defense. Either party may present rebuttal witness(es) or evidence following the other party's presentation of evidence.

REFERENCE: Education Code Sections 45260 and 45261

190.4.18 **EXAMINATION OF WITNESSES:** Each side will be allowed to examine and thoroughly cross-examine witnesses.

190.4.18.1 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 counsel or designated representative.

REFERENCE: Education Code Sections 45260 and 45261

190.4.19 **SUBPOENA OF WITNESSES/EVIDENCE:** The Personnel Commission or its hearing officer may, subpoena witnesses and/or require the production of records, documents, or other material evidence. The Director of Classified Personnel Services shall issue the subpoenas on

behalf of the Commission or its hearing officer. Subpoenas shall be delivered to the requesting party for service.

190.4.19.1 Requests for subpoenas must be filed with the Personnel Commission Office at least 72 hours prior to the date of the hearing.

REFERENCE: Education Code Sections 45260 and 45261

190.4.20 **LIST OF WITNESSES:** A list of witnesses to be called by each party shall be submitted to the Personnel Commission Office at least 24 hours 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 and 45261

190.4.21 **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:

190.4.21.1 Such evidence must 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, in the determination of the Personnel Commission or its hearing officer, may express his/her opinion based upon the facts which he has recited.

190.4.21.2 Copies of all such affidavits must be filed with the Personnel Commission Office or the hearing officer at least three (3) 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.

190.4.21.3 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

190.4.22 **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.

190.4.22.1 The hearing officer shall submit his or her written recommendations and findings of fact to the Director of Classified Personnel within twenty (20) working days following the conclusion of the hearing.

190.4.22.2 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.

REFERENCE: Education Code Sections 45260, 45261, and 45312

190.4.23 **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, shall 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 he or she acted on behalf of the Board of Trustees in the presentation of the case at any level of the appeal process, or if he or she served as a witness in the proceedings, the Director of Classified Personnel Services shall also be excluded from the Commission's deliberations.

REFERENCE: Education Code Sections 45260, 45261, 45266, 45305, 45312 and 45313

190.4.24 **DECISION OF PERSONNEL COMMISSION:** The Personnel Commission shall render its judgment as soon after the conclusion of the hearing as possible, but no later than twenty (20) working days or the next regularly scheduled meeting following the conclusion of the hearing, whichever is later.

The decision(s) of the Commission shall be in writing and shall set forth which charges, if any, are sustained and the reasons therefore.

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

190.4.24.2 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 or 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.

190.4.24.3 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 Commission 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 mailing date of the notice shall be considered to be the official date of receipt.

If the employee was represented by legal counsel at the hearing, the decision is deemed transmitted to the employee upon mailing to his/her legal counsel, unless the employee requests otherwise.

REFERENCE: Education Code Sections 45260, 45261, and 45312

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

190.4.25.1 If the Board of Trustees 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

190.4.26 **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 impose more stringent discipline against the employee than that imposed by the Board of Trustees.

REFERENCE: Education Code Sections 45260, 45261, 45307, and 45312

190.4.27 **DECISION MUST 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:

190.4.27.1 Compensation of the employee for all or part of the legitimate expenses incurred in pursuit of the appeal. If such a finding is made, the expenses ordered paid by the Commission shall be a legitimate and legal draw upon the general funds of the District and the Board of Trustees.

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

190.4.27.3 Transfer or other change of the employee's work location.

190.4.27.4 Expunction from the employee's personnel file and record of any and all causes, charges that are not sustained by the Commission, and/or disciplinary actions.

REFERENCE: Education Code Sections 45260, 45261, and 45307

190.4.28 **OBTAINING COPIES OF THE HEARING TRANSCRIPT:** The employee or his designated representative and the Board of Trustees or its designated representative may obtain a copy of the transcript under the following conditions:

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

190.4.28.2 The request shall be in writing and a cash deposit made in an amount determined by the Director of Classified Personnel prior to preparation.

190.4.28.3 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.

190.4.28.4 The transcript shall only be released upon payment in full. When the deposit is greater than the actual costs of the document, the remainder shall be refunded.

REFERENCE: Education Code Sections 45260 and 45261

190.4.29 **DISQUALIFICATION OF HEARING OFFICER OR COMMISSIONER:** A hearing officer or Personnel Commission member shall voluntarily disqualify himself or herself and withdraw from any appeal in which he or 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.

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

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

REFERENCE: Education Code Sections 45260 and 45261

190.4.30 **COUNSEL FOR THE PERSONNEL COMMISSION:** The Personnel Commission may, if it so desires, 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 Trustees, 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 District'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