

Lompoc Unified School District
Merit System Rules and Regulations for the Classified Employees

CHAPTER 19 - DISCIPLINE

19.1 Disciplinary Action Only Pursuant to this Rule

A permanent classified employee may be disciplined by the District only for reasonable cause as prescribed by these rules and regulations, and only pursuant to the procedures outlined herein.

Education Codes: 45260, 45261 and 45302

19.1.2 The term “discipline” for the purpose of this Rule specifically does not include adverse or negative evaluations, reprimands, warnings, and directives.

The term “discipline” for the purpose of this Rule shall be consistent with applicable law and is limited to any action whereby a permanent classified employee is dismissed, suspended without pay, or demoted from a class for which the classified employee has acquired permanence, except a layoff for lack of work or lack of funds. Any suspension without pay shall not exceed thirty (30) work days.

Education Codes: 45260, 45261 and 45302

19.1.3 Time Limits on Disciplinary Action

In the disciplinary process the following general guidelines regarding timelines shall be applicable:

1. No disciplinary action shall be taken against an employee based on documentation in the employee’s permanent personnel file which is in excess of two (2) years of age.
2. Failure to meet deadlines outlined in this section shall not result in the discontinuance of the disciplinary action except for the deadlines identified in the following sections:
 - a. Notification by the Administrator of Human Resources of the right of the employee to request a Skelly hearing. If this timeline is not met the disciplinary action against the employee shall be terminated.
 - b. The employee’s filing of an appeal before the Personnel Commission. If the employee does not meet this timeline, he/she will be deemed to have waived his/her right to appeal the decision of the Board of Education to the Personnel Commission, or to any court, with the decision of the Board of Education in the disciplinary action being deemed final.

Education Codes 45260 and 45261

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19.1.4 Non-Discrimination

No employee shall be subject to discipline under this Personnel Rule on account of race, religious creed, color, national origin, ancestry, physical or mental disability as defined by federal and state law, medical condition, marital status, pregnancy, sex, actual or perceived sexual orientation, age, political affiliation, domicile, or membership and/or participation in an employee organization as defined by the Educational Employment Relations Act.

Education Codes: 45260 and 45261
Government Code: 12926

19.1.5 Causes for Disciplinary Action Including: Suspension, Demotion or Dismissal

The term “cause” or reasons for suspension, demotion, or dismissal shall include, but not be limited to, the following:

- a. Incompetency.
- b. Inefficiency: the continuing inability or unwillingness to perform the regularly assigned duties and responsibilities for the position.
- c. Insubordination; knowingly refusing to perform lawful and reasonably assigned duties or refusing to perform those duties in accordance with established or prescribed procedures; challenging, resisting, defying or demonstrating contempt toward a designated supervisor or other school district official having authority to issue directions and instructions to the employee by the nature of his or her position.
- d. Inattention or dereliction to duty: dereliction in the performance of assigned duties and responsibilities.
- e. Any willful or persistent violation of the Education Code, or Personnel Commission Rules and Regulations, or the procedures adopted by the District or a department when such procedures are made known to the employees in writing.
- f. Discourteous, offensive, threatening or abusive treatment of other employees, pupils, or the public, including discriminatory harassment; or malicious engagement in reprisals by managers or supervisors against employees, applicants, candidates, or eligibles who file a written complaint pursuant to Government Code Section 53297 regarding gross mismanagement or a significant waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- g. Dishonesty, theft, willful misuse for personal gain, willful destruction or mishandling of District property.
- h. Use or possession of alcoholic beverages on District property, or appearing for work while intoxicated. “On District property” shall also include District vehicles, use or possession of illegal controlled substances or restricted dangerous drugs, other than that prescribed by a

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state licensed physician or appearing for work under the effects of illegal or restricted dangerous drugs. The use of drugs under and consistent with the directions of a physician which does not impair the performance of a classified employee is not prohibited.

- i. 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. Personal conduct unbecoming an employee of the District which may have adverse impact on the District.
- j. Failure to submit to involuntary drug testing requirements for classifications requiring a commercial driver's license or designated as safety-sensitive by state or federal courts.
- k. Engaging in prohibited political or union activity during assigned hours of employment.
- l. Conviction of any felony or misdemeanor or a record of one (1) or more misdemeanors, which convictions indicates that the person is a poor employment risk for the particular job which the employee holds in the District. 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.
- m. Unlawful harassment of any pupil, employee or visitor pursuant to federal and state laws.
- n. Engaging in violence or threat of violence in the workplace.
- o. Abuse of any leave.
- p. Documented frequent unexcused absence or tardiness.
- q. Falsifying any information supplied to the District, including, but not limited to, information supplied on application forms, employment records, or any other District records.
- r. Persistent violation or refusal to obey safety rules and regulations made applicable to public schools by the Board or by any appropriate federal, state, or local governmental agency.
- s. Offering of anything of value or offering any service in exchange for special treatment in connection with the classified employee's assigned duties, 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.
- t. Willful, negligent or intentional violation of any law concerning the District.
- u. Abandonment of position which shall be defined as more than five (5) days of continuous unexcused absence, and failure to notify the District of a valid or acceptable reason for

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absence.

- v. Advocacy of overthrow of the Government of the United States or the State of California by force, violence, or other unlawful means.
- w. Convicted of a sex offense as defined in Education Code Section 44010. Conviction of such offense shall result in dismissal.
- x. Convicted of a narcotics offense as defined in Education Code Section 44011. Conviction of such offense shall result in dismissal.
- y. Uninsurability of an employee to drive a District vehicle when such is a requirement of the employee's position.
- z. Violation of a local, state, or federal law which results in cancellation or suspension of a license required for the performance of assigned duties.
- aa. Any action that might cause harm to the District's employees, students or the public.
- bb. Carrying out a physical attack or assault upon a student, a member of the public another District employee, or a District official, except in self-defense (as supported by facts and other information submitted.)
- cc. Any action/activity that interferes with the effective operation of the District.
- dd. Any action or lack of action which may cause harm to a student.
- ee. Defrauding the District by collecting sick leave or industrial accident/illness leave pay while working elsewhere during his/her normal scheduled work assignment with the District.
- ff. Any conduct creating "a discriminatory, intimidation, ridicule, and abusive work environment" whether or not the loss of tangible job benefits is determined.
- gg. Working overtime without authorization.

Education Codes: 212.5, 230, 44010, 44011, 45260, 45261, 45302, 45303 and 45304

Government Code: 1028

Penal Code: 261

Health and Safety Code Sections: 11054, 11056, 11357-11361, 11363-11364 and 11377 - 11382

19.1.6 Progressive Discipline – Oral Warning

Generally, except where the misconduct is of such a serious nature, that an oral warning is not reasonably justified; a permanent employee of the Classified service whose services and/or actions are deemed by his/her supervisor to be unsatisfactory shall be informally warned of this fact by his/her supervisor at the earliest opportunity. At this informal meeting, the employee shall be informed of the specific areas of his/her service which need improvement and where

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appropriate, the supervisor shall prepare a plan for the assistance which will help the employee correct any deficiencies and provide for a reasonable time period for improvement. This shall be an informal meeting and no record shall be included in the employee's permanent personnel file of this meeting at this time. Should there be a need for subsequent disciplinary action, records of this meeting may be included with other documentation of deficiencies.

Education Codes: 45260 and 45261

19.1.7 Progressive Discipline – Written Warning

Written warnings/reprimands may be administered as set forth below:

- a. Written warning shall state the Rule violated, the acts or omissions in violation, the basis for improvement developed in conjunction with the employee, and a reasonable time period during which the employee's performance will be reviewed for improvement or attainment of goals.
- b. If the basis for the discipline is performance, the supervisor shall give a reasonable period of time to permit the employee the opportunity to correct the deficiency through a corrective action plan without incurring further disciplinary action. If the basis for the discipline is misconduct, action may be taken immediately.
- c. There is no right of appeal from a written warning or reprimand. However, within ten working days of receipt of the reprimand, the employee may submit a written response which will be attached to the written warning or reprimand for placement in the personnel file.

Education Codes: 45260 and 45261

19.1.8 Progressive Discipline – Suspension

An employee may be suspended not to exceed thirty (30) assigned working days without pay. The proposed length of suspension shall reasonably relate to the seriousness of the alleged offense.

Education Codes 45260 and 45261

19.1.9 Progressive Discipline – Final Step

The employee may be subjected to more severe disciplinary action, including demotion or termination.

19.1.10 Immediate Suspension Without Pay

An employee shall be immediately suspended if charged with the commission of any sex offense or narcotics 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 judgement. Any employee so suspended shall continue to be paid his/her regular salary during

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the period of suspension if the employee furnishes to the District a suitable bond, or other security acceptable to the District, as a guarantee that the employee will repay to the District the amount of salary so paid to him/her during the period of suspension in case the employee is convicted of such charges, or the employee does not return to service after such period of suspension. If the judgement 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 suspension, provided the employee returns to service after such period of suspension.

A permanent employee may be immediately suspended with loss of compensation if the superintendent or his/her designee has determined there is a danger to the health, safety, and well-being of the employee, students, fellow employees, or District property.

Education Codes: 44010, 44011, 44940.5, 45260, 45261, 45302, 45303 and 45304

Penal Code: 261

Health and Safety Code Sections: 11054, 11056, 11357-11361, 11363-11364 and 11377-11382.

19.1.11 Immediate Leave – With Pay

An employee, other than stated in the rule above, may be immediately placed on a leave of absence without the loss of compensation pending the initiation and completion of disciplinary action procedures to the Board of Education. The District may end the leave without loss of compensation or take action to suspend without pay in accordance with these Rules as warranted.

19.1.12 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.

Education Codes: 45260, 45261 and 45305

19.1.13 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 such demotion. 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 the employee had completed permanency in his/her present class.

Education Codes: 45260, 45261 and 45305

19.1.14 Burden of Proof

The burden of proof in disciplinary hearings is the District's. The standard is preponderance of evidence.

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Education Codes: 45260 and 45261

19.1.15 Application to Employees of the Personnel Commission

For the purposes of this section “the Personnel Commission” shall replace “the Board of Education” and “the District” and “the Personnel Administrator of Classified Human Resources” shall replace “the Superintendent” for individuals employed by the Personnel Commission. For Personnel Commission employees the appeal of disciplinary action imposed by the Personnel Commission shall be before a Hearing officer and the decision of the Hearing Officer shall be the final disposition of the appeal. The Personnel Commission shall adopt and abide by the decision of the Hearing Officer.

Education Codes; 45260 and 45261

19.1.6 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 timelines 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.

Education Codes: 45260 and 45261

19.2 Notice of Proposed Disciplinary Action

No disciplinary action may be taken against a permanent classified employee until the employee has received a “Notice of Proposed Disciplinary Action” and the employee has had an opportunity to respond to the charges. The Notice of Proposed Disciplinary action shall be presented in writing to the classified employee in person and/or by certified mail with an opportunity to respond in writing within at least ten (10) calendar days.

Education Codes: 45260 and 45261

A copy of the Notice of Proposed Disciplinary Action, including all attachments, if any, shall simultaneously be given to the Director of Human Resources-Classified (for the Personnel Commission).

19.2.1 Lawful Representation

An employee facing discipline as defined above may be represented by a lawful representative at any disciplinary conference or any hearing held pursuant to this Rule.

19.2.2 Contents of Notice of Proposed Disciplinary Action

The written Notice of Proposed Disciplinary Action shall include in ordinary and concise language the following:

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1. A statement in ordinary and concise language of the specific acts and/or omissions upon which the proposed disciplinary action is based.
2. The specific disciplinary action proposed.
3. The specific causes for the disciplinary action and the sections of these Rules citing specific rules or procedures that the employee is accused of violating.
4. The specific acts or omissions which establish the causes for disciplinary action, including times, dates, and locations, in ordinary and concise language.
5. The proposed effective date(s) of the disciplinary action.
6. The employee's rights to see and obtain copies of all evidence and documentation used to support the District's case against the employee.
7. The employee's right to representation.
8. The employee's right to respond to the charges (Skelly Hearing) before the Superintendent or designee to dispute the charges and/or proposed action.
9. The classified employee, upon request, is entitled to appear personally before the Superintendent, or designated Skelly Hearing Officer regarding the matters raised in the Notice of Proposed Disciplinary Action to be scheduled at the end of the ten (10) calendar days following the date the written notice was served.

If the employee chooses to bring representation other than the recognized bargaining unit representative, a twenty-four (24) hour notice is required and that at such meeting the classified employee shall be granted a reasonable opportunity to present relevant evidence to refute the charges.

Education Codes 45260, 45261 and 45305

19.2.3 Notice Shall Be in Writing and Served on Employee

The Notice of Proposed 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 Proposed Disciplinary Action 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. The responsibility for keeping the District informed of a home address is the requirement of the employee. For purposes of this Rule, if a notice is mailed, the second working day following the

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postmark date of the notice shall be considered to be the official date of receipt.

Education Codes: 45260 and 45261

19.3 Skelly Hearing

19.3.1 Action if Appeal is Not Filed

If the employee does not respond to the charges within the ten (10) working day period outlined in the Notice of Proposed Disciplinary Action, the Superintendent or designee shall recommend to the Board of Education 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.

Education Codes: 45260 and 45261

19.3.2 Action if Appeal is Filed

If the employee submits a request to respond to the charges within ten (10) working days after receipt of the Notice of Proposed Discipline, the employee shall have a right to meet with the Superintendent, designee, or Skelly Hearing Officer, and the effective date of the proposed disciplinary action shall be stayed pending the outcome of the Skelly Hearing process, recommendation, and Board Action. The employee shall be allowed to respond to the charges prior to the Skelly recommendation of disciplinary action to the Board.

The Skelly Hearing Officer will issue a written decision to the affected employee within ten (10) calendar days following the Skelly hearing, affirming the proposed discipline, dismissing the proposed discipline, or modifying the proposed discipline to a lesser discipline. A copy of the written decision will be promptly given to the Director of Classified Human Resources and of the Personnel Commission. (Time lines may be extended by written mutual agreement.)

Education Codes: 45260 and 45261

19.3.3 Notification of Skelly Hearing to Employee

The District Human Resources Office shall notify the Superintendent, designee, or Skelly Hearing Officer and the Director of Classified Human Resources (for the Personnel Commission) upon receipt or lack of receipt of a request for a Skelly hearing, and shall coordinate the scheduling of the Skelly Hearing. The District Human Resources Office shall notify the employee in writing of the time, date, and place of the Skelly Hearing before the Superintendent, designee or Skelly Hearing Officer. 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 Human Resources 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

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the postmark date of the notice shall be considered to be the official date of receipt.

Education Codes; 45260 and 45261

19.3.4 Employee Shall have Opportunity to Refute Charges

The employee shall have the opportunity to refute all charges and shall be allowed to present Any evidence or information he/she may have which would cause the disciplinary recommendation to be modified or rejected at the Skelly Hearing.

Education Codes: 45260 and 45261

19.3.6 Employee Right to Representation

The employee may at his/her option and at his/her own expense, be represented by legal counsel, union representative, or any other person designated by the employee. If the employee files an appeal, the employee shall be required to attend the Skelly Hearing, even if the employee's designated representative appears on his/her behalf. If the employee fails to appear, the Superintendent may recommend action to the Board of Education.

Education Codes: 45260 and 45261

19.3.7 Skelly Hearing Decision

The District official who holds the Skelly Hearing shall issue a written decision within ten (10) working days after the conclusion of the Skelly Hearing, to either uphold the proposed disciplinary action, to modify the proposed disciplinary action, or to rescind and halt the proposed disciplinary action. The written decision shall be filed with the Personnel Commission Office. Unless the parties have mutually agreed to an extension of the timelines noted herein, failure to meet the deadlines of this section shall result in the termination of the disciplinary action against the employee.

If the employee requests a Skelly Hearing and at that hearing the employee and the Skelly Hearing Officer agree on an alternative course of action, this agreement shall be in writing. If the agreed alternative action requires board action, the recommendation to the Board shall be the alternative action. The Board's decision to accept or reject the alternative action shall be final.

If the decision of the Skelly Hearing Officer is to proceed with disciplinary action against the employee, the Superintendent shall be provided with a recommendation for disciplinary action. The Superintendent shall review the case and all supporting evidence, make any inquiry deemed necessary, and either return the recommendation to the Skelly Hearing Officer with his/her direction to abort the disciplinary action or prepare a recommendation to the Board of Education to suspend, demote or dismiss the employee.

If the Board takes action to implement some form of disciplinary action, the effective date shall be determined by the Board in its decision, which shall not be earlier than the working day following the conclusion of the Board action. The Board shall not act to provide for a penalty

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or disciplinary action more severe than that recommended in the notification of the recommended disciplinary action. The action of the Board shall be announced in open session of the Board Meeting. The written decision of the Board shall be filed within two (2) working days with the Personnel Commission Office.

Education Codes: 45260 and 45261

19.4 The Filing for Appeal Hearing Before Commission

If the decision of the Board of Education is to impose or modify the proposed disciplinary action, the permanent employee may appeal the action to the Personnel Commission, pursuant to these rules.

Education Codes: 45260, 45261 and 45305

19.4.1 Contents of Notice of Disciplinary Action

The Notice of Disciplinary Action, is the notification that disciplinary action has been approved by the Board of Education. The Director of Classified Human Resources for the Personnel Commission shall notify the employee in writing of the Board action and shall contain in ordinary and concise language the following:

- a. The nature of the disciplinary action taken (suspension, demotion, dismissal, etc.).
- b. The specific causes and sections of these Rules that the employee is accused of violating and upon which the disciplinary action is based.
- c. The specific charges, a description of the chargeable action(s) or omissions, including times, dates, location in ordinary and concise language.
- d. The effective date(s) of the disciplinary action.
- e. A copy of the charges and documentation to support the District's case against the employee.
- f. The employee's right to representation.
- g. A copy of the action taken by the Board of Education.
- h. 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 (Answer and Request for Hearing form).
- i. 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.

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- j. The employee's right to request the Personnel Commission to issue subpoenas for witnesses or other material evidence.
- k. An advisement that failure to timely file the Appeal form shall constitute a waiver of the employee's right to appeal the discipline to the Commission.

Education Codes: 45260 and 45261

19.4.2 Appeal Form Shall Accompany the Notice of Disciplinary Action

An appeal form shall accompany the Notice of Disciplinary Action which shall explain the procedure for hearing and the signing and filing of which shall constitute a demand for the hearing and a denial of all charges. The appeal form shall be submitted to the Classified Human Resources Office (Personnel Commission Office) by the deadline noted on the Appeal form. 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 indicate on the appeal form, the reasons for the appeal. Appeals can be made only for the following grounds:

1. That the procedures set forth in these Rules and Regulations have not been followed.
2. That the action taken was not in accord with the facts.
3. That the penalty invoked by the District was excessive.

Education Codes 45260 and 45261

19.4.3 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 Human Resources 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 the purposes of this Rule, if a notice is mailed, the second working day following the postmark date of the notice shall be considered the official date of receipt.

Education Codes: 45260 and 45261

19.4.4 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 Appeal form, the action of the Board of Education shall be final and conclusive, and no further appeal rights shall be allowed.

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19.4.5 Action if Appeal is Filed

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 reasonable 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.

Education Codes: 45260 and 45261

19.5 Notification of Hearing to Employee

The Human Resources Director (for the Personnel Commission) 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 Hearing Appeal if a timely appeal is filed.

1. The Human Resources Director (for the Personnel Commission) 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.
2. A notice of the time and place of the 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 the hearing may be waived by agreement of the parties.
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 Personnel Commission Appeal Hearing is sent Certified Mail to the last known home address on file in the Human Resources 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 the 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 or receipt.

Education Codes: 45260 and 45261

19.5.1 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. The Personnel Commission will provide written notice of the employee's right to open session no later than 24 hours before the hearing. The Personnel Commission Hearing shall be specifically conducted pursuant to these Rules and Regulations.

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19.5.2 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.

19.5.3 Extension of Timelines

The timelines as detailed in this section may be extended upon agreement by the parties involved.

19.6 Personnel Commission Appeal Hearing Procedures

The Personnel Commission of the District 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 or 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.

Education Codes: 45260, 45261, 45305, 45306 and 45307

19.6.1 Pre-Hearing Conference

Prior to the Personnel Commission's formal hearing, the Director of Classified Human Resources (for the Personnel Commission) may hold a pre-hearing conference with the Board's representative and the appellant's representative or the appellant if the appellant is representing himself or herself. Such pre-hearing 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.

19.6.2 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 Human Resources (for the Personnel Commission) shall issue the subpoenas on behalf of the Commission or its hearing officer. Subpoenas shall be delivered to the requesting party for service. Requests for subpoenas shall be filed with the Personnel Commission Office at least five (5) working days prior to the date of the hearing.

19.6.3 List of Witnesses

A list of witnesses to be called by each party and a list of persons authorized to attend the

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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.

Education Codes: 45260, 45261, 45305, 45306 and 45307

19.6.4 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, subpoenas, 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.

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.

Education Codes: 45260, 45261 and 45312

19.6.5 Personnel 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.

Education Codes: 45260 and 45261

19.6.6 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. In most instances the hearing will be recorded by a court reporter. All reasonable costs associated with contracting a certified court reporter shall constitute a charge against the Board of Education's general funds, whether or not the money or costs for services appear in the Commission's budget.

Education Codes: 45260 and 45261

19.6.7 Oral Evidence by Oath Only

Oral evidence shall be taken only on oath or affirmation.

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19.6.8 Ability to Examine Evidence

Each party shall have the following rights as it relates to examination of witnesses and evidence:

- a. To call and examine witnesses.
- b. To introduce exhibits.
- c. To cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination(s).
- d. To attempt to impeach any witness regardless of which party first called the witness to testify.
- e. To rebut all evidence presented by the opposing party.

19.6.9 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.

19.6.10 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.

- a. Here say 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.
- b. 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.

Education Codes: 45260 and 45261

19.6.11 Right to be Represented

The Board of Education and the appellant shall be allowed to be represented by legal counsel or other designated representatives.

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19.6.12 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.

19.6.13 Ruling on Objections

The Personnel Commission or its hearing officer shall rule on all objections raised by either party.

19.6.14 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.

19.6.15 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 witness 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.

19.6.16 Examination of Witnesses

Each side will be allowed to examine and cross-examine witnesses. 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 Human Resources (for the Personnel Commission), and their respective counsels or designated representatives.

19.6.17 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.

Education Codes; 45260 and 45261

19.6.18 Sworn Affidavits

The policy of the Personnel Commission shall be that where possible, all witnesses shall give testimony orally at the hearing. However, if 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:

- a. Such evidence shall be submitted by sworn affidavit of the witness. The affidavit shall be

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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 qualified as an expert may express his/her opinion based upon the facts, which he/she has recited.

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

Education Codes: 45260 and 45261

19.6.19 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 administer a determination of his/her recommendations to the Personnel Commission in closed session.

- a. The hearing officer shall submit his/her written recommendations of findings of fact to the Director of Classified Human Resources (for the Personnel Commission) within a reasonable period of time.
- b. Upon receipt of the hearing officer's written recommendations and findings of fact, the Director of Classified Human Resources (for the Personnel Commission) 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.
- c. In all cases assigned to a hearing officer, a proposed decision shall be presented 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.

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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.

Education Codes: 45260 and 45261

19.6.20 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 Human Resources (for the Personnel Commission) shall be permitted to participate in the deliberations. If the Director of Classified Human Resources (for the Personnel Commission) was the administrator initiating the disciplinary action, or if the Director of Classified Human Resources (for the Personnel Commission) 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 of Classified Human Resources (for the Personnel Commission) served as a witness in the proceedings, the Director of Classified Human Resources (for the Personnel Commission) shall also be excluded from the Commission's deliberations.

Education Codes: 45260, 45261, 45266 and 45305

19.6.21 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.

- a. 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.
- b. 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.
- c. 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 Human Resources 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.

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- d. 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.

Education Codes: 45260 and 45261

19.6.22 Board Shall Comply with Personnel 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.

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.

Education Codes; 45260, 45261 and 45307

19.6.23 Personnel 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 to sustain any or all of the Board's charges.

Education Codes: 45260, 45261 and 45307

19.6.24 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:

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 Education.
2. The granting of seniority credit for any or all of the off-duty time pending restoration or reinstatement.
3. Expunction from the employee's personnel file and record any causes or charges that are not sustained by the Commission.
4. Transfer or other changes of the employee's work location.

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Education Codes: 45260, 45261 and 45307

19.6.25 Obtaining Copies of the Hearing Transcript

The employee or his/her designated representative and the School Board or its designated representative may obtain a copy of the transcript under the following conditions:

- a. The cost of the transcript and copies if requested, shall be born by the party making the request.
- b. The request shall be in writing and a cash deposit made in an amount determined by the Director of Classified Human Resources (for the Personnel Commission) prior to preparation, which shall not be less than the estimated cost of transcribing the hearing record.
- c. 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 Human Resources (for the Personnel Commission).
- d. 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.

Education Codes: 45260 and 45261

19.6.26 Disqualification of Hearing Officer or Personnel 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 a 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.

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

Education Codes: 45260 and 45261

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19.6.27 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.

Education Codes: 45260, 45261, and 45313

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