

**SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT  
PERSONNEL COMMISSION  
MEETING MINUTES**

**May 25, 2011**

A meeting of the Personnel Commission was held in the Community Room at the Board of Education Building. Present were Mr. Gino Barabani, Chairperson; Ms. Rhonda Early, Vice Chairperson; Michael Salazar, Member.

**I. CALL TO ORDER**

Mr. Barabani called the meeting to order at 5:30 p.m. Mr. Barabani led the pledge of allegiance.

**II. APPROVAL OF AGENDA**

Mr. Barabani: Second item on the agenda, Approval of the Agenda.

Ms. Early: Mr. Chair I move to approve the tonight's agenda.

Mr. Barabani: Call for a vote. Pardon?

Ms. Early: You need to second it.

Mr. Barabani: Oh I need to second it, I second it sorry. Call for the vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: Aye.

**III. PUBLIC COMMENTS**

Mr. Barabani: Section III the public comments section it's opening up now, I like to take notice of the comment there, if you are here to discuss Action Item IV, the Public Comment part is not the time to do it, we are going to wait for everybody's comments for Action Item IV which is the rules here during that portion.

Patrick Maher: My name is Patrick Maher I just gave Nersi the copy of my prepared statement along with some supporting documentation just to make it easier for you to follow along. I have been accused by the district of being biased because, in the exercise of my rights under the U.S. Constitution, The California Constitution, and the California Brown Act, I stated a fact that the district doesn't like. The fact is "The district has been violating the Education Code for years." A factual statement cannot be evidence of bias. Recently, CSEA has filed action against the district for allegations of numerous violations of the Education Code, they support my intent. While reviewing SBUSD governing board policies, I came across the following policies in Board Policy 4200.

“The Board shall classify all employees and positions not requiring certification qualification as the classified service, except for those employees and positions specifically exempt from classified service. It cites Education Code 45103 as the authority to impose that specific policy of the district that the Board has the authority not the commission. “Before employing a short-term classified employee, the Board, at a regularly scheduled meeting, shall specify the service required to be performed by the employee and shall certify the ending date of the service. The Board may shorten or extend the ending date, but the date shall not be extended beyond 75 percent of the school year, as defined” again they quote Education Code 45103 as their authority to act in this manner under the Education Code. If you read California Education Code section 45103 it applies only to non-merit systems. Indeed section 45103(f) states: “This section shall apply only to districts not incorporating the merit system as outlined in Article 6 (commencing with Section 45240)” and I am citing this section for your reference. Thus, in direct violation of the law, the district is relying on a legal authority that does not apply to this district because it is a merit system.

Section 45256(a) states “The commission shall classify all employees in positions within the jurisdiction of the governing board or of the commission, except those that are exempt from the classified service, as specified in subdivision (b). The employees in positions shall be known as the classified service. “To classify” shall include, but not be limited to, allocating positions to appropriate classes, arranging classes in occupational hierarchies, determining reasonable relationships within occupational hierarchies, and preparing written class specifications.” There is no specific reference to section 45256(a) in the board policy. Section 45276 states: “The governing board shall fix the duties of all positions a part of the classified service as required by Section 45109. The board may recommend the minimum educational and work experience requirements for classified positions to the personnel commission. Minimum qualification requirements shall be subject to approval of the commission.” There is no specific reference to section 45276 in the board policy. The merit system does not have short term employees. Instead, it has limited term employees established in section 45286: “Whenever the appointing authority and power shall require the appointment of a person to a position, the duration of which is not to exceed six months, or, in the case of an appointment in lieu of an absent employee, is not to exceed the authorized absence of said employee, the appointing power shall submit a request in which the probable duration of the appointment is stated.” This is not just a slightly change the different sections, state the same thing, they state two different sections because 45103 exempts substitutes and temporary employees in the classified services. 45286 requires that they be on a hiring list or an eligibility list and appointed in the order on the eligibility list so it is a big difference between those two sections. Thus, the governing board has a board policy that references a specific section of the Education Code section 45103 that is specifically inapplicable to any merit system to assume the authority of the commission given expressly to it in Education Code sections 45256(a) and 45276. In addition, the board policy uses the same non-applicable section to improperly hire “temporary” workers in lieu of limited term workers as specified in Education Code section 45286. The board policy, which violates the Education Code and gives the district authority that is not legally theirs in a merit system. This means that the district has in fact been violating the law for years. That violation is

in writing. That violation is an approved policy of the governing board. The truth is not evidence of bias, but rather simply the truth. Thank you.

#### **IV. ACTION ITEMS**

Mr. Barabani: Is there any other public comments at this time? We will now move to Action Item IV and we will take these items one at a time. Take Action Item IV (A), *first reading and public comments on proposed revisions to Chapter 2. Comment from or on behalf of the governing board, the California Schools Employee's Association Chapter 183, San Bernardino School Police Officers Association and the public will heard at this time.*

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Good evening, I am Sherry Gordon, I am here on behalf of the district and I also have taken the liberty of providing in written narrative so that you can follow along of the district's comments and objections.

Mr. Barabani: Thank you.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I do apologize right of the bat, with the fact that you have just received this but as of 4:30 this afternoon it was still in process of being collated and copied and I wish it had been possible to be provided to you earlier, that having being said, please accept this letter and attached matrices as the district's objections and comments on the proposed changes to chapter 2, 6, and 13 of the existing Personnel Commission Rules, which are on your agenda this evening for first reading. The proposed Rule changes must be processed pursuant to commission rule 1.1.1.2 and the terms of the Court's order of April 22, 2011 in the Writ of Mandate in Superior Court case no. CIVDS 916708. For the Commission's convenience and reference, copies of Rule 1.1.1.2 and the Court's order are attached to this letter. We have taken the time in reviewing the proposed Rules to review the proposals for: number one, the compliance with the Court's Order; number two, against the original commission Rules; number three, the initial proposals and changes to the Rules that were subject of the Writ, the Education Code, other legal requirements, District practice, and the current classified bargaining agreements between the District and CSEA, and the District and the Police Officers Association. To the fullest extent possible, given the magnitude and importance of the task at hand this evening, our matrices, except for matters of attorney/client privilege, provide a summary of our concerns and comments.

The District would like to first remind the Commission that the Court's order requires at paragraph (B) on page 1 of that order, that any proposed amendment, deletion or addition to the rule shall be accompanied by a matrix outlining the differences between the proposed rule and any existing rule affecting a similar subject. To the extent that there are any matrices accompanying the proposed Rules that were received on May 10th in our office and at the district, we note that they are so deficient as to in violation of the Court's order. The Commission's matrices don't provide enough detail to advise what had been left out of the original rules, what had been changed from the initial proposals that were reviewed by the Court, or what issues had been moved from other chapters into

Chapters 6 and 13. We will assume, until it is proven otherwise, that the members of the Commission will be mindful of the Commission's obligations under the law, and that once alerted that the proposals which fail to comply with the requirements of the law or with the principles of merit, they will make decisions in compliance with those standards. We can rest assured that I am sure that the individual commission members will not countenance any person putting them in jeopardy of contempt of court for failing to provide them with sufficient information upon which to make informed decisions.

An over-riding concern that the district would bring to your attention would be to you to focus you on paragraph (D) at page 2 of the Court's Order. That portion of the Court's Order requires that no more than three (3) chapters of any proposed amendment, deletion or addition of Rules may be presented for a first reading at any regularly scheduled commission meeting. At first blush, it appears that the current proposals under consideration for first reading at this regular meeting conform to that Order. Should I stop? You have a commission member –

Mr. Barabani: There is still two so go on.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I would like to note for the record the absence of the third commission member at this time and I will note when she returns.

Mr. Barabani: That would be Ms. Early?

Sherry Gordon, Attorney at Law, Atkinson, Andelson, Loya, Ruud and Romo: Yes. That portion requires as I was saying that no more than (3) chapters of any proposals amendments, deletions or additions be brought forward. There are proposals before you this evening; they are being called Chapter 2, 6 and 13. However, when carefully examined, it is undeniable that the provisions of Rules that were previously proposed to the Commission, and adopted by the Commission as part of other chapters, have now been moved from those chapters and inserted into Chapters 6 and 13. We must assume that there was initially good and sufficient reason for the organization of the proposals that were reviewed and adopted. We note, however, that there is no indication on the face of the current proposals that they are an amalgamation of several prior chapters. The inclusion of the additional materials violates the spirit, if not the specific terms, of the Court's Order. It is the District's position that the failure to disclose that information to you, and to you by the person who prepared the proposals, could have led you into a violation of the Court's Order. We have noted in our documentation each proposal or set of Rules where an impermissible addition has been made to the current proposals.

We have also provided for your consideration citations to the Education Code and other statues to assist you in understanding the District's objection when there is an assertion that a proposed rule is contrary to law. There are also citations to the current CSEA and/or SBSPOA collective bargaining agreements where the District asserts that a proposed rule impermissibly impacts on the terms on those agreements.

In regard to CSEA's involvement in the proposed rules, we note for the record that much of what now comes before the Commission as proposed changes to its rules is Chapter 13, deals with discipline. With minor changes, much of this Chapter which is formally presented to you as Chapter 19 was originally seen by the District when CSEA presented a proposal at the bargaining table for progressive discipline and other discipline related issues. When it became apparent that CSEA and the District were not going to be able to come into an agreement on that proposal, CSEA withdrew the proposal and as I understand it stated that they would just go and get it from the commission. Now that the District's Writ has been granted, the original CSEA proposal comes forward for first reading as part of the Commission's proposal for Chapter 13. It is the District's position that this proposal impermissibly intrudes on the exclusive bargaining relationship between the District and its bargaining units. Discipline is a matter within the scope of bargaining. It has been reserved to the District in both District Rights clauses in the existing collective bargaining table agreements. This proposed article grants rights that have never been granted at the bargaining table and in fact were specifically rejected by the District. The Legislature could never have intended by its enactment of Education Code sections 45220 and following that bargaining units could look to personnel commissions to provide rights and benefits within the scope of bargaining after proposing and then withdrawing them at the bargaining table. One can only imagine the reaction that would have occurred had the District brought to the Commission proposals to restrict employee benefits or rights in areas within the scope of bargaining.

We have also provided reference to either or both Montebello and Torrance Personnel Commission Rules where they are helpful in reviewing and analyzing the proposed rules. At times in the past both of these sets of rules have been referred to as "model" rules by certain members of the public. Although both of those rules were never commissioned by any authority as model rules and have no force or effect on the San Bernardino City Unified School District Personnel Commission, it is interesting to note that there has been a rather obvious picking and choosing when the writer found them helpful in preparing the current proposals. They have been used when the writer found them helpful they have been ignored when not helpful. They have been changed in several instances to the advantage of the classified employees and for some unstated reason have been supplemented on numerous other occasions to meet the requests or demands of the leadership of one classified employee exclusive representative.

Against this background, the District provides its comments and objections to the current proposed rule changes. We sincerely hope that we have not engaged in a monumental waste of time and resource in providing this information. It is our sincerest hope that the Commission will take as much time and as much effort as necessary to understand the legality of the proposals and to understand their impact on the District and all of its classified employees. The Commission has served in this District since July 1, 1967, after it was voted in at the end of a cliff-hanger classified election on a vote of 288 to 287. Thereafter, rules were drafted and adopted. On occasion and when necessary since that time, the rules have been amended. Never, to the recollection of current administrators and managers, have there ever been any legal challenges to the content or authority of these duly-adopted rules until the just concluded writ. The District urges the Commission

to avoid the temptation to lead to repeat of arbitrary and capricious actions. Limit your changes to those rules which have become out-dated or illegal. Avoid the temptation to change just for the sake of change. I would be enclosing my opening statement just assert that because the initial proposal here is 100 pages long and that it wasn't served on the district or counsel with an analysis as required by the court order, and that it included issues involving more than just three chapters, as we will make more evidence as we go through chapter by chapter. We have not at this time completed our review and, therefore, reserve the right to amend and/or add to the District's comments and objections as we continue to do our work. With that I promise I won't repeat anymore of that as we go through chapters 6 and 13 but, I will go proposal by proposal where necessary through to at this point.

In six of the specific rules under Chapter 2 those would be specifically 2.1.3.2.3, 2.1.4, 2.3.1, 2.3.2, 2.3.2.1 and 2.6.1 the proposal is to use the term "Personnel Director" in place of the prior designation of "Executive Director – Personnel Commission." The District would note that this chapter was recently reviewed and was adopted, we are coming back now with a further way of changes but as to this specific rule of our proposals and those specific 6 rules we have no objection.

In 2.2.1 regarding Regular Meetings; in 2.2.1 the district would object, the current rule sets a specific date, time and place for required Regular Meetings of the Commission. This procedure has worked for many years and is consistent with the existing Montebello and Torrance Rules which have often been referred to as "model" rules. In the event, however, that the Commission insists on having flexibility to set the schedule and time for its Regular Meetings on an annual basis, the District does not object to the first two sentences or to the fourth sentence of the current proposal. The balance of the current proposal sentence three appears to be an attempt to make a provision for calling Special Meetings. There is what might be referred to as "model" language on the issue in both the Montebello and Torrance rules it hasn't been used here. The current proposal is not based on model language and is not in compliance with the Brown Act. It impermissibly confuses Special and Regular Meetings. Regular Meetings are those meetings of the Commission that it sets at regular intervals as required by the Government Code 54954(a). Special Meetings are additional meetings, additional to Regular Meetings, as described in the Brown Act and Government Code sections 54956. As written the word Special and Regular seemed to be used interchangeably in sentence three in violation of the requirements of the Education Code.

I would turn next to 2.3.3 talking about the absence of Director. The district objects to this proposal. This proposal creates authority "in the absence of the Personnel Director, or at any time the Personnel Commission deems it is in the best interest of the principle of merit," for the Commission to appoint one of its members to perform some or all of the duties of the personnel director." We note that this proposed provision is not contained in either the Montebello or the Torrance "model" rules. The District has previously provided written authority for its position that such action creates an improper and illegal conflict of interest. There is a similar concern about the provision of 2.4.1.1. based on our

prior arguments and authorities which were provided directly to the commission, the District objects to these improper and illegal rules.

Moving next to 2.4.1.1 the district objects this proposal seeks to create authority “in the absence of the personnel director, or at any time the personnel director deems it is in the best interest of the principle of merit,” for the Commission to appoint one of its members to perform some or all of the duties of the personnel director...” I believe this one may focus and my apologies may focus on appointing a commissioner to do ongoing investigations and we have provided authorities on that issue also directly to the commission in the past I will not repeat those, but I will clarify this note for 2.4.1.1 tomorrow morning to the commission so that you will have the appropriate quotation. It appears that there may be language from the prior rule that was brought down, rather than the proposal for this one rule. That is all I have for chapter 2. Thank you for your time and your attention. Might ask if we anticipate Ms. Early returning this evening?

Nersidalia Garcia, Secretary III: No.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: No?

Nersidalia Garcia, Secretary III: She is not returning.

Mr. Barbani: Just for a statement we are still discussing Chapter 2.

Steven Holt, CSEA Vice President: Chapter 2?

Mr. Barabani: Yes.

Steven Holt, CSEA Vice President: It would be discipline?

Nersidalia Garcia, Secretary III: Chapter 13.

Steven Holt, CSEA Vice President: Oh 13. I just wanted to make a comment of what was said from the commission’s information about the discipline and the chapter rules. First I would like to say to the commissioners we CSEA chapter 183 have reviewed the rules we don’t find any fault or problem with them for your record. Just for response for negotiations, there has been a negotiations process it was never a negotiated process; we had made proposals in the past for progressive discipline and the district refused to even hear and push it back across the table, there was no agreement with them. That is incorrect and in fact I indeed sat on that negotiations table at the time, we refer to that in my world as bad faith bargaining, so I wanted to clear that up with the commission for the information that came forward to you. There was no argument between the district and proposals given that went through, the district refused to bargain with us. So that was an incorrect statement we did review the rules and we don’t find anything off hand that is wrong with them. So we do have our people looking over it and they have also indicated to me that there is no problem in our field office so I wanted to make the commission aware of that. Thank you.

Mr. Barabani: Any comments on section Action item IV section (A) which would be Chapter 2, ok. So I will move on to Action Item IV (B) I will read it, *first reading and public comments on proposed revisions to current Chapter 5, proposed as Chapter 6. Comment from or on behalf of the governing board, the California Schools Employee's Association Chapter 183, San Bernardino School Police Officers Association and the public will be heard at this time.*

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Just let me know when you are ready.

Mr. Barabani: I just need the page.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I will focus next on the district's comments and objections to the proposals related to what has been titled Chapter 6 as will be shown in detail that the current proposal expands the initial proposals for Chapter 6 by adding concepts that were initially proposed under Chapter 7, and Chapter 4. This expansion of the proposal for Chapter 6 is bald-face attempt to ignore the terms of the courts order in the recent Writ, terms which must be followed in proposing changes to the commission's rules. We will note these on a section by section basis so that you can have that information in making your decision. I will not go through where we don't have a comment, I will try to speed this along by skipping from objection to objection.

If you would look first at the next page 6.1.1.3. This is a new proposal from what you saw when you originally saw proposals and adopted them. It is not found in either Montebello or in the Torrance rules. Torrance, in fact, has specific language about the release of eligibility lists. There will be more comments about this later under 6.2.13. Furthermore, there is no provision in the Education Code making eligibility lists confidential as there is for examination materials or tests. See Education Code section 45274. If the legislature had intended eligibility lists to be confidential, it could easily have provided a similar provision applicable to them. The District, therefore, objects. I would note that in the initial proposal that came to you there was language posting eligibility lists they weren't considered to be confidential. So this is something that has been invented since the initial proposals came to you.

Next section 6.1.1.4, I would repeat the same objections that I have just made on 6.1.1.3. There is no reason and no legal justification for making these rules about the confidentiality of what will and will not be released.

6.1.1.5 again, this is a new proposal it was not contained in the initial proposal. There is no similar rule in the "model" Montebello or Torrance rules. Additionally, this proposed rule makes a reference to an undefined "cut-off score". In making that reference it doesn't even conform to the requirements of Education Code section 45256.5(c).

We can move on to 6.1.2.5 the first phrase of this proposal is the same as the prior proposal 6.1.2.5. Beginning with "and that it was conducted in accord with Rules and



Regulation” is confusing new language about violation of examination procedures. There is no similar procedure in either Montebello or Torrance. And due to the elimination of the prior 6.1.2.6 there is no requirement that the date the list is approved by the Commission be included and that does become important for processing such list at future time.

6.1.3.1 On the next page, we object, this is a new proposal which duplicates part of the content of 6.1.2.6 above. However, 6.1.2.6 refers to attesting and this talks about certification if there is a difference between the two there is no mention here as to what that might be. The problem in language appears to be because the lead-in sentence is omitted, it used to say, all eligibility lists shall be certified by the Commission at the first reasonable opportunity, and that is now gone.

6.1.3.2 which follows and we also object to. This is a new proposal. There is nothing similar in either Montebello or Torrance and I would have more comments under 6.1.3.4 below.

Moving to 6.1.3.3 this is another new proposal which the district objects. It is suggested that the Commission could withdraw certification at any time during the existence of the list. Such action could seriously disrupt prior employment actions. Arguably an employee could have been employed for a nearly a year only to have the Commission decide that something had been amiss and try and undo that hiring.

6.1.3.4. is a much change variation of language that’s found in both Montebello and Torrance. The model language provides and I quote “The personnel director may submit eligibility list for ratification and approval by the Commission subsequent to certification from the list. Appointments may be made from the available eligibles pending final decision on a protest and/or appeal and shall not be changed even though the outcome is in the appellant’s favor, unless the Commission has determined otherwise.” That language has been shifted down 6.1.3.7 yet another willy-nilly change of the proposed rules. I note that –

Mr. Barabani: Ms. Gordon, I don’t want to interrupt you but, would you like a bottle of water?

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I have some here thank you.

Mr. Barabani: Oh ok sorry.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I will either drink water periodically or talk slower, this is probably a better option.

Mr. Barabani: I didn’t know that she had some water.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I would note under 6.1.3.5 although it is not an objection that this proposal has been changed from may to shall in non of these cases were those kinds of shifts have been made is there any explanation for why that is being done. It just happens and it does make a difference.

6.1.3.6 we object to this new proposal, there is no such provision in the model rules, it contains further reference to the withdrawal of certification and on that issue you can see 6.1.3.3 above. Further, the Commission is without jurisdiction to block the Governing Board from review of Commission actions. You don't have that jurisdiction any more than the government board can block you from taking a look at things.

6.1.3.7 this was previous Chapter 6.1.3.1 with the addition of the last phrase "for recruits that are not promotional in nature." This new language is not found in the model rules. It would limit the ability to take action on promotional recruitments until final action on protests or appeals were concluded that as you know if you will take time to look at your prior agendas, could take months. It is not right that any one other than those taking promotional exams would have under these proposals. In the references, just house keeping issue, there is a typo it says 545 the initial 5 is an error, it should not be there, I won't repeat that every time it happens from now on.

6.1.4.1 Is slightly reworded it places more emphasis on the concept of order of preference.

6.1.4.2 has no time lines in it, there are timelines under the law, I will comment on those timelines when it comes up again later in the rules.

I will move forward two or three pages to 6.1.5.3. The previous proposal stated that the list "may be terminated by the Executive Director-Personnel Commission." New language simply states "shall" be terminated. It is not clear whether this is automatic or require some action by the Personnel Director and there is no indication of why there has been a shift from "may" to "shall".

6.1.6.1 at the bottom of that same page the previous proposal stated "If a new examination for a class is given during the first year of the life of an existing list..." The last part of the sentence of original 5.05A has been lost all together.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: I am sorry can you repeat that one, what rule you are referring to.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Let me see if I can assist you. Let me give you that. I am on 6.1.6.1.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Ok thank you.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I moving to 6.1.6.4 I will leave the points out I think we gotten the hang of it by now I can save some time.

6.1.6.4 we object this is a new provision. It penalizes someone who tries to better their position on an eligibility list after having shown that they have the required knowledge to pass the test. And I would also note that the previous 6.1.6.2 has been deleted.

6.1.7.4 at the bottom of the next page, the district objects with all due respect to the writers of Montebello and Torrance rules, these are confusing at best, they jump around. The first sentence of 6.1.7.3 should really go at the end of 6.1.7.1. The second sentence of 6.1.7.3 should go at the end of 6.1.7.2. And then 6.1.7.4 should come directly after 6.1.7.1. That puts topics that belong together, so that you are not going to confuse our reader by jumping back and forth.

6.1.8.1 the previous proposal for 6.1.8 said “approval” not “certification” and this change conflicts with 6.1.5.1 above.

Skipping about two pages I am moving on to 6.1.10.2. This change says that “eligibles that have made themselves unavailable shall not be referred for hiring consideration” it used to say “shall not be certified” I don’t know what the reason for that change is. There isn’t anything here to help us understand.

6.1.11.4 and two words “for cause” for the proposal. It does not appear in the model rules. Release of a probationary employee for performance problems is not considered a “for cause” termination, and I know this is limited only to promotional list, but another example might be termination for failure to report to duty or to announce ready to report to duty during a 39-month extended endless leave. That is not a termination for cause. That or cause which doesn’t exist in model rules, significantly ups the ante. It is, it limits this applicability to a very, very narrow class of persons over the years there have been very, very few termination for cause that came before this commission.

On the next one I do not have an objection necessarily, but I do have a grammatical change that needs to be made, the newly-added language, “no more than three (3) times,” should go directly after “offer” in order make that grammatically correct.

On the next page, 6.11.10 the district objects the final phrase could bar someone who was renting a room in the home of the supervisor or administrator from employment in the district this is an anti-nepotism kind of a clause. The reason I bring it up this became an issue in the past here in the district I am trying to avoid a repeat of problem that was never intended I am sure to be included in the anti-nepotism rules.

On the next page 6.1.12.1 we object to this new proposal. There are no such requirements in the model rules. The duty to remove people under this proposal, to remove people from the list, is with the commission. I am not sure why the District is being asked to intervene.

On the next page 6.1.12.3 the district objects to this new proposal. It is the District’s position that the Commission is as stated previously without authority to prevent the Governing Board from reviewing action taken by the Commission.

On the next page, 6.2.2 order of precedence in filling vacancies, this rule conflicts with proposed rule 6.1.7, which talks about filling vacancies in a very different order.

On the following page 6.2.2.2 we object based on the following: the language beginning with the phrase “in lieu” has been added to the original proposal for 6.2.2.2. This proposal impermissibly intrudes on the traditional bargaining relationship between the District and its bargaining units. This matter is within the scope of bargaining. It grants a right that has never been granted during prior bargaining and does not involve the principles of merit. If it doesn’t involve the principles of merit this commission is without jurisdiction to initiate this rule I would refer you to Article XVIII of the CSEA collective bargaining agreement for the language that does exist.

On the next page 6.2.3 this is where Chapter 6 begins to combine previous Chapters 6 and 7. The Rule of three as a concept was included in the initial Chapter 7 that was considered proposed and adopted by this commission.

On the next page 6.2.4.1, this proposal both adds to and subtracts language from the original proposal that was considered and adopted. The model rules do not say “to the appointing authority,” and that is what is being drafted on to this formal proposal.

6.2.4.2 The current proposal omits what previously said within 5 working days into proposal.

6.2.4.5, this is a new proposal for Chapter 6. The proposal was previously in the original 7.1.1. Inclusion of this issue is in violation of the Court’s order.

I will go next passed three or four pages to 6.2.8.1. The district objects to this proposal as written, it would appear that the Personnel Commission would never, and I underline “never”, provide further eligibles should the Board fail to select someone from top three ranks. This proposal does not track the model rules the model rules say “no further eligibles shall be referred for that position until such time as the eligibility list expires.”

6.2.8.2, the district objects that unless the problem that was just identified above is rectified, this rule is impermissibly vindictive and intrusive on the District’s right to hire and manage employees.

In 6.2.11.2 there is an italicized word three or four lines up from the end that word should be *send* not *end*.

6.2.11.3, this proposal was previously made for 7.1.2.1. It differs from previous chapter 6.2.11.2 inclusion of this topic violates the Court’s order. Before I go ahead because there is (inaudible) coming up that are from Chapter 7. Lets just suppose that the drafter of these proposals had decided you know we make quick work of these proposals, we can make proposal on Chapter 2 and Chapter 3 and Chapter 4 and bring in every single proposal that we looked at before and put them in 2, 3, and 4 and we would be done.

Clearly, this commission wouldn't have allowed that to happen, but it is happening, it is happening by putting big chunks of 7 into 6. and we object therefore.

6.2.11.5, we are glad to see that email has been added to this provision and that is appropriate in this day and age and probably during the time I have been standing up here talking there is something else that should have been added to recognize technological change, but we can't keep up. I might add, maybe no reason to maintain telegram in there, in my family the last time any body got a telegram was when one little baby, Sherry Gordon was born, that was a while ago folks.

6.2.12.3, the district objects that these proposals were previously in Chapter 7, specifically in 7.2.3 and 7.2.4.

6.2.12.4, comes from the prior chapter 7.2.4.3 and therefore it's in violation of Court's order.

7.2.13, which talks about confidentiality of test scores, the district objects, tests are in chapter 4. This rule pertains to something that is blended together confidentiality of test materials with eligibility list, which I have already mentioned as not being confidential.

On the next page 6.2.13.1, see the comments under 6.2.13 above. Inclusion and addition of this issue violates the Court's order. The previous language employed a fact stating "Posting eligibility lists showing the relative ranking of each candidate without showing the specific percentage scores." And now all of a sudden they are proposed to be confidential.

6.2.13.2, there is nothing in the law that makes eligibility list confidential. In point of fact, as I just mentioned they were subject to be posted under the previously adopted changes. If the Education Code wanted to make this list confidential they did so for test materials, they could use very easily have use the same language for eligibility list.

6.2.13.3, I refer you back to our objection under 6.2.13.2 above and the same of 6.2.13.4.

Next is additional hours within a classification in 6.2.14 this proposal is newly added. There is no a similar rule in either of the model rules. This proposal also attempts to infringe on the reserved rights of the District under Article III, section 1, of the CSEA and SBSPOA collective bargain agreements. The district has never applied seniority as a determining factor for employment decisions for additional hours, filling vacancies, or granting promotions. Such has never been required by past practice by collective bargaining agreement, by the Education Code or by Commission rule. This requirement is outside the scope of the Commission's authority as it is entirely unrelated and (inaudible) to the concept of merit. The concept of seniority being a determiner completely avoids the question of merit.

6.2.15, this proposal was previously a part of the proposed 7.1.3 in a slightly different version. The addition or inclusion of this topic in the current proposal has violated the Court's order.

6.3.11, on the next page, we object to the new proposal in Chapter 6 as impermissibly attempting to insert issues that were previously proposed in chapter 7. It is contrary to the clear order of the Court to repackage prior proposals to present more than three chapters for initial consideration at any one time. Additionally, there is no comparable rule in either of the two model districts.

6.3.1.3, I will repeat the same objection.

6.3.2.1, this is another proposal it comes to you and it's been repackaged from Chapter 7 in violation of the Court's order.

6.3.2.2, I will repeat that same objection.

6.3.2.3, I will repeat that objection and then even assuming for the sake of argument that it was appropriate to add this to Chapter 6, which it isn't. There are many legitimate situations in which provisional, limited-term, emergency, substitute or other non-permanent appointments will by necessity bridge from one fiscal year to the other. (Inaudible) on extended leaves for instance, don't miraculously, usually, recover on June 30 only to go out for the same illness or injury on the next day. There is no similar rule to this rule that is being proposed in the "model" rules.

6.3.3, on the next page, this entire rule and its subparts have been inappropriately added to Chapter 6 in violation of the Court's order.

6.3.3.1, I would repeat that objection.

6.3.3.2, I will repeat and add that this language differs from the previous language in 7.2.1.2, where it said "and the appointing authority requests three (3) ranks of eligibles to interview." The model language states, "the appointing authority requests the three (3) ranks of eligibles to interview."

6.3.3.3, I will repeat 6.3.3. Additionally, this proposal is in direct conflict with the transfer provisions of the CSEA collective bargaining agreement. It inappropriately expands the definition of transfer under the agreement there is no similar provision in either of the model rules. Further, this proposal has nothing to do with the concept of merit and is therefore outside of the jurisdiction of the commission.

6.3.3.4, I will repeat the 6.3.3. objection, this proposal continues to impermissibly add Chapter 7 issues to Chapter 6.

6.3.3.5, refers to a Commission Rule 1.200, which does not exist. Further, this issue has been impermissibly added from the prior Chapter 7 proposals.

6.3.3.6 This proposal continues to impermissibly add Chapter 7 issues to Chapter 6 as does 6.3.3.7, 6.3.3.7.1, 6.3.3.7.2, 6.3.3.7.3, 6.3.3.7.4, and 6.3.3.7.5.

6.3.4.1, also brings an impermissible Chapter 7 issues. The bolded language has been grafted onto the model language it does not exist in either of those districts.

6.3.4.2, I objection on inclusion of this Chapter 7 issue as do I to 6.3.4.3.

6.3.4.4, also impermissibly includes Chapter 7 issues it also conflicts with the current 1.2 definition of emergency.

6.3.5.1, again we would object on adding Chapter 7 issues in violation of the Court's order. Additionally, the use of limited term employees is not restricted to substituting for an absent employee I refer you to your own definition 1.2.

6.3.5.2, again we would object this newly added topic this provision in addition severely restricts the permissible appointment of a person as limited term, namely that it only allows them in the absence of another person. Current PC Rules 5.23 and Ed Code Section 45286 do not make such limitation. Additionally, this section is poorly worded and will lead to controversy about interpretation. There is no model rule similar to this proposal.

6.3.5.3 and 6.3.5.4 and 6.3.5.5, all impermissibly bring Chapter 7 issues into Chapter 6. I would note that in this proposal there is no 6.3.5.5, it skips from 4 to 6. And as to 6 I would also note that there are no model rules on this topic. As we move to the 6.3.6's as to .1 and .2 I will note that they are impermissible additions from Chapter 7.

6.3.7, again is impermissibly added, there are no model rules on this topic and although it is not specified the intent appears in this series applies to those limited-term employees substituting for others.

6.3.7.1, I would make the same objection as to 6.3.7 and I would repeat it for 6.3.7.2, 6.3.7.3, 6.3.7.4, 6.3.7.5, 6.3.7.6.

6.3.8, which deals with removal of names from limited term lists. I would object that this impermissibly blends in issues from Chapter 7. I will repeat that objection as to 6.3.8.1, 6.3.8.2, 6.3.8.3 and that having been said I have no more comments or objections to that chapter. Thank you for your careful consideration.

Steven Holt, CSEA Vice President: Steven Holt first Vice President CSEA. Again I would like to say for the record CSEA Chapter 183 has no problems with the rules as presented. And I would like cite that example 6.2.2.2, 6.2.1.4 and 6.3.3 we believe there is no conflict between the collective bargain agreement infringement on our rights as at any time the district could demand to negotiate with CSEA or vice versa. We know federal and state statute take precedent followed by CSEA contract and that's followed by commission Rules. So at any time the district could demand to negotiate or CSEA

could demand to negotiate for that reason we do not find a conflict and we have no problems as Rules are presented. Thank you.

Mr. Barabani: Is there any other comments from public on Action Item IV section (B)? We will now move to action Item IV, item C, *first reading and public comments on proposed revisions to current Chapter 6, current Rules 6.25-6.28 proposed as Chapter 13. Comment from or on behalf of the governing board, the California Schools Employee's Association Chapter 183, San Bernardino School Police Officers Association and public will heard at this time.*

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Thank you, I will be in comments with 13.1.1.1 this is the beginning of a disciplinary policy. We object to this rule is not included in either the Montebello or Torrance Rule. The rule is also not in the previously proposed Chapter 19 which is we will call it as the previous proposal it was number 19 before it didn't come before you it was proposed, but it didn't come before you for adoption it has been reworded now as 13. The use of the word "personal status" in this section is vague and could be misconstrued or be applied in an over inclusive manner. This section is vague and ambiguous in that it refers to "each employee" and "consistent." Clearly the level of discipline will vary based on the offense committed. Finally, this section is inconsistent with Article II (Non-Discrimination) of both CSEA and SBSPOA Collective Bargaining Agreements the portion is related to Non-Discrimination. This would therefore violate Education Code sections 45260 and 45261.

Moving to 13.1.1.2 we object to this rule and its subparts are not included in either the Montebello or Torrance Rules. It was not in the previous rule. The term "just cause" is vague, ambiguous, and undefined. The term, "an investigation for fair and honest reasons regulated by good faith is vague and ambiguous in that it does not define "investigation". Due to this ambiguity, the rule potentially imposes a "cost" on the District and that it requires an investigation when one would not otherwise be necessary. Additionally, the rule intends to attempt to regulate the subject "good faith" of the investigator. The term "unrelated to business needs or goals" is vague and ambiguous. Additionally, it appears to abrogate the District's right to discipline employees to the extent allowed by law as found in Article III (District Rights) of both Collective Bargaining Agreements. This would therefore violate Education Code sections 45260 and 45261. This rule impermissibly intrudes on traditional bargaining relationship between the District and the bargaining units. This is a matter within the scope of bargaining. It grants a right that has never been granted during prior bargaining and does not involve the principles of merit.

13.1.1.3, this rule and its subparts are not included in either the Montebello or Torrance "model" rules. This rule is also not from the previous proposal. The statement that discipline must adhere to the "Rules and Regulations of the Personnel Commission" is potentially in violation of 45260, 45261.

13.1.1.4, this rule and its sub-points are not included in the Montebello or Torrance Rules. It is not in the previous proposal. The limitation of "cause" as defined by Rules



and Regulations of Personnel Commission is potentially in violation of 45260, 45261, as well as Articles III of both Collective Bargaining Agreements.

13.1.2.1, on the next page, does not come from Montebello or Torrance. It was not in prior proposal. Additionally, the term “reassignment” is vague and ambiguous. This was arguably make a move from night shift to the day shift subject to discipline procedures. Additionally, the inclusion of the term “reassignment” is inconsistent with Article III of both CBA’s, which reserves the right of reassignment to the District, as well as CSEA Collective Bargaining Agreement Articles IX and XIII, that’s hours and transfers. As a result, this rule is in violation of Education Code sections 45260 and 45261.

Moving to 13.1.2.2, this rule is not included in either the Montebello or the Torrance Rules. It’s not from the previous proposal. It is vague and ambiguous as to the term “regular employee.” Further, to the extent that this rule implies that any other reassignment is disciplinary action, this rule would be inconsistent with Article III of the both Collective Bargaining Agreements, as well as CSEA’s Collective Bargaining Agreement and Article IX (hours) and Article XIII (transfer). Therefore, this rule is in violation of 45260 and 45261.

13.1.2.3, a similar concept is included in both the Montebello and Torrance Rules, and similar language was included in the previous proposal. The new proposal gets rid of the concept of up to 30-day cap on discipline provided, which limits the District’s ability to enact discipline.

13.1.3, again, it is not from Montebello or Torrance Rules. It is not from the prior proposal, it is vague and ambiguous as to the term “whistle blowing,” and “false claim.” The term “medical condition” is undefined, vague and ambiguous. Exclusion of “false claims” is potentially in violation of the Government Code, and this proposal is inconsistent with Article III of both collective bargaining agreements, as a result this rule violates Education Code 45260 and 45261. Moreover, the entire provision is unintelligible, particularly in its references to “sexual harassment.” Finally, at the end of the rule, it states “except as legally provided in these Rules and Regulations or as provided by law.” The query would be how can discrimination would ever be “legally-provided for?”

13.1.5, the district objects this rule impermissibly intrudes on the traditional bargaining relationship between the District and its bargaining units. This is a matter within the scope of bargaining. It grants a right that has never been granted during prior bargaining and does not involve the principles of merit.

13.1.5.1, this rule is included in the Montebello and Torrance at the rules cited as well as the previous proposal. This rule eliminates as a cause for discipline contained in 6.25A4, carelessness or negligence in the performance of duty or in the use of District property. This violates both Chapter III in both CBA as well as violating 45260 and 45261.

13.1.5.2, is not included in either of the model rules, neither in this rule is also more restrictive than what was included in the previous rule. The rule includes only half of the definition of insubordination found in the Montebello and Torrance. Specifically, it excludes the following: “challenging, resisting, defying, demonstrating contempt towards a designated supervisor or other school official. This rule also adds “willful” to “refusal,” thus limiting the District’s ability to discipline in violation of Article III of both CBA’s in that pursuant to Article III the District is permitted to discipline to the full extent allowed under the Education Code and by law.

13.1.5.3, we object this rule is included in Montebello and Torrance as well as the prior proposal. But the entirety of this is already contained in Rule 13.1.5.2. This rule provides that if disciplining for failure to perform duties in accordance with Rules or policy, discipline can only be imposed if such rule or policy was made known to the employee in writing. This “in writing” requirement never existed before.

13.1.5.4, this rule is in Montebello and Torrance as well as the prior proposal. But this proposal adds the term “knowingly,” thus limiting the District’s ability to discipline employees in violation of Article III and again of 45260 and 45261.

13.1.5.6, the district objects this was included in Montebello and Torrance as well as the prior proposal, but now it requires only use or possession. This rule requires that use or possession must be of a “dangerous” drug. The term “dangerous” is vague and ambiguous. The addition of the phrase “other than that prescribed by a state licensed physician” would allow the use of medical marijuana on campus, it would allow employees to enter on campus loaded, to use the term, on a cocktail of prescribed medications. Surely that can’t be the intent or the limits that the commission is suggesting would be opposed on the district.

13.1.5.9, we object, the definition of “engaging in political activities” included in the new rule even though it comes from Montebello and Torrance is way too overbroad. It appears to suggest that we can ban activities that may in fact probably are protected under EERA.

13.1.5.11, this rule is included in the Montebello and Torrance as well as the previous proposal, it however, deletes the current the former proposal 6.25A6 (threatening bodily harm or causing bodily harm...). It also deletes “offensive” comment, which was previously included. This is a limitation on the District’s right to discipline, which would violate Article III of both CBAs and 45260 and 45621.

13.1.5.13, this rule is in Montebello and Torrance rules (except that those rules provide for 5 days) it was also in the previous proposal. This proposal permits an employee to escape discipline by notifying the district that he appear, that intents not to appear for work. This is an improper limitation on the District’s right to discipline employees in violation of Article III of both CBAs, and of 45260 and 45261.

The same comment would apply to 13.1.5.14.

13.1.5.15 although, in Montebello and Torrance and in the previous proposal. This requirement to find a position for an employee who loses his/her license for instance, a bus driver's license, is an improper limitation on the District's right to discipline employees. Additionally, requiring the District to continue to employ an employee who has lost his/her license could expose the District to liability for negligent retention. Moreover, requiring the District to search for available positions presents an additional unanticipated cost to the District.

13.1.5.16, is more restrictive than the prior proposal or Montebello or Torrance. In that it eliminates the cause of "dishonesty." It is an improper violation of Article III of both CBAs and of 45260 and of 45261. Additionally, this rule excludes property of co-workers which could subject the District to liability an employee under this rule could be disciplined for stealing student property or for stealing district property, but if the employee stole a teacher's cell phone it would come within this provision.

13.1.5.17, we object this is not a part of Montebello and Torrance Rules, it was part of the previous proposal. This rule does not include all protected classes who are subject to harassment. It is inconsistent with Article II of both CBA's. Also, this is an improper limitation on the District's right to discipline employees in violation of Article III and in violation of Education Code Sections 45260 and 45621. Additionally, the failure to include all classes could subject the District to liability if it is unable to properly redress complaints of harassment. This rule also impermissibly intrudes on the traditional bargaining relationship between the district and these bargaining units. This is a matter within the scope of bargaining grants rights that is never been granted during prior bargain and does not involve principles of merit.

13.1.5.18 the district objects to this rule is in Montebello and Torrance rules as well as the Previous Proposal. However, this rule does not allow an employee to disregard an illegal subpoena, doesn't say a legally issue subpoena, it just says a subpoena and as we all know some are done according to the rules and requirements and some aren't. I will note for the record that although the education code that Montebello and Torrance continue to include the ambiguity to fire and employee for membership and the communist hardy I would suggest that any one go there because which ever district chooses to be the first to try that, will likely face a constitutional challenge, although its in code I see no reason to embedded in the reasons for discipline.

13.1.5.21 this rule is included in the Montebello and Torrance it as in the previous proposal. We don't object other than the fact that's included in this whole, inappropriate assumption of duties.

13.1.5.22 Is duplicative of 13.1.5.10 and therefore we object.

13.1.5.23 is not included in the Montebello or Torrance and is not in the previous proposal. It eliminates the cause of "threats." This is an improper limitation on the District rights to discipline employees in violation of Article III and the Education Code

by taking out threats the bullies can in threaten but the noise they make good on their threats they can be disciplined.

13.1.5.24 Is fatally vague and potentially an unenforceable, even though it was in the Montebello and Torrance and the previous proposal.

13.1.5.25 Eliminates as a cause of “abuse of sick leave” and only allows the district to discipline employees when they are actually working elsewhere but finding to be sick this is improper limitation on the Districts right to discipline employees in violation of article III of both Collective Bargaining Agreements, and the Education Code Section 45256 and 45621. Additionally, this rule would force the District to engage in a gift of public funds, which is prohibited under the California Constitution.

13.1.5.26 The Wording of this rule inspires the fact that is found in both Torrance and Montebello appears to allow discipline employees in violation of Americans with Disabilities Act.

13.1.6 Impermissibly intrudes on the traditional bargaining relationship between the District and its bargaining units as I have previously objected this rule and subparts are not included in either the Montebello or Torrance rules, either was a part of the previous proposal.

Rule 13.1.6.1.1 is unintelligible, and otherwise vague and ambiguous. The 13.1.6.1.2 is contrary to allow and beyond the authority of the Commission (to make constitutional determinations). Rule 13.1.1.5 is an improper limitation on the District’s right to discipline employees in violation of Article III of both Collective Bargaining Agreements, and Education Code Sections 45260 and 45621.

13.1.6.1 This is duplication of other provisions contained in this chapter. It states that it is acceptable to violate due process if otherwise provided by law, I would suggest that we need some guidance and citation of how that would be possible.

13.1.6.1.4 Does not allow disciplinary action against a probationary employee.

13.1.6.1.5 Puts a one year limitation on misconduct in district other than merit districts, the limitation is 2 years, there is not any limitations set for in the merit districts query why the dilemma will be placed at one year here and two years all other districts.

13.1.7 Progressive Discipline: This entire probation is not included in the Montebello or Torrance rules. Additionally, substantially similar language was proposed by CSEA and rejected by the district during negotiations. This is an improper limitation on the District’s right to discipline employees in violation of the reserve rights of Article III on both CBAs, and Education Code sections 45260 and 45621. Additionally, the overt capitulation to CSEA abrogates the collective bargaining process and smacks of the “cat and mouse game” that was condemned by Judge Fawke in his statement of decision dated April 22, 2011 regarding the District’s writ of mandate. This rule again, impermissibly

intrudes on the traditional bargaining relationship between the District and its bargaining units. This is a matter within the scope of bargaining. It grants a right that has never been granted during prior bargaining and does not involve the principle of merit.

13.1.7.1 I will repeat the objection as noted on 13.1.7 above. Additionally, this provision is vague and ambiguous as to the term “formal disciplinary action.”

13.1.7.2 I would repeat the same objection as noted in 13.1.7 above. Additionally, this provision is unintelligible, incomprehensible, and vague as to “deficiency in job performance.” Additionally, if this section applies to financial crimes against the District, it would force the District into an unconstitutional gift of public funds.

13.1.7.3, I will repeat the 13.1.7 objection, additionally; this provision is vague as to time.  
7.4 I will repeat 13.17.

13.1.7.5 I will repeat 13.1.7. Additionally, this section limits suspensions to (10) days in contravention to previously proposed Chapter 19’s own language and Education Code section 45304.

13.1.7.6 I will repeat 13.1.7 objection. Additionally, this rule is vague and ambiguous as to “transfer”, and “reassignment.” The District rights delineated in both CBAs. Moreover, this rule is inconsistent with the CSEA, CBA to the extent that it provides language regarding transfer. This rule is vague and ambiguous in that it required consent to reassign. This section is vague and ambiguous in that it includes the term “written reprimand” when that very provision is included at 13.1.7.4. Finally, this section appears to limit the right to take severe action to within 30 days of a dismissal. This renders the District virtually incapable of terminating employees, violates its rights under both CBA’s, and the Education Code Sections 45260 and 45621. Additionally, this rule could expose the District to liability for negligent retention. Additionally, this is contrary to the purpose for which Personnel Commission were created.

13.1.8 Progressive Discipline – This is duplicative here and emblematic of the arbitrary and capricious matter of which these rules were assembled.

13.1.9 Progressive Discipline Final Step: I would repeat the same objection as above.

13.1.10.1 Although this is in both Torrance and Montebello what was as well as the previous proposal. It is duplicative of Section 13.1.4 There is a typo in the sixth line the where it says “with pay” when it should say “with out pay.”

13.1.11 It is again duplicative of 13.1.4.

13.1.14 this section is included in the Torrance and Montebello rules, the rule is the same as 13.1.3 but leaves out some protected classes ( e.i. whistleblowers, age). This could subject the District to liability. Additionally, I would note although it is not written here

that there is language in both Collective Bargaining Agreements on non discrimination and so that is reserved to the District to the extent that this is different.

13.1.15 We object although this language is included in the Torrance and Montebello. A bond is generally required by the employee before health benefits are maintained until an appeal is concluded. This rule seemingly abolishes that educational code section requirement, which could present a cost item to the District.

13.2.1 Rule 6.26C requires notice only for suspension, demotion or dismissal, while this new rule requires notice for any disciplinary action.

13.2.2 This proposal is vague and ambiguous and mistakes the requirements of the skelly case.

13.2.2.8 –Allowing time off to “respond to charges” is vague and ambiguous, and could constitute an unconstitutional gift of public funds in excess of the requirements of Education code section 44031.

13.2.3 This language is excessive. 6.26B states that “a statement of charges which cites as cause or grounds for disciplinary action, a violation of rule, regulation, or statute of the language of the rule is insufficient for any purpose.” This new rule states that “A notice of proposed disciplinary action stating one or more causes shall be insufficient for such purpose.” As worded, seems like any disciplinary notice referencing a cause of action is insufficient.

13.2.5.2 We object that this rule omits that fact the responsibility for updating address is on employee.

13.2.5.3. We object: Paper should be deemed delivered 5 days after mailing, not when employee receives the notice by certified mail and I will cite (Code of Civil Procedure section 1013 for that proposition.

13.2.5.5: This is not included in the Montebello or Torrance rules, and it eliminates the presumption of services upon mailing as contained in the California Code of Civil Procedure.

13.2.5.7 That is not included in the Montebello or Torrance Rules. It is unnecessary requires two witnesses when someone refuses to sign for acceptance of a document.

13.3 Throughout this Chapter, I would note that the terms “Board” and Superintendent” it needs to be altered in light of how formal discipline has been handled in the district. The Superintendent acts on all recommendations from the Assistant Superintendent, not the Board that takes those acts it has been delegated to the superintendent that is being in placed under the authority of the education for many years. So, all references need to be fixed accordingly.

13.3.2 We object this statement “respond to charges prior to the Superintendent’s recommendations of disciplinary action to the board” needs to be changed to reflect the practices and where the skelly hearing appeared, and where is held.

13.3.4 We object this notification goes directly into the Statement of Charges. There is no need to provide a separate document.

13.3.8 A couple pages later this is not in Montebello, its not in Torrance rules is unnecessary, this is just a rehash of Post-Skelly Procedure. Additionally, the Personnel Commission has no authority to govern “Skelly” if an appeal is not filed.

13.4.1 This is not in Montebello or Torrance Rules and is duplicative of what is found in 13.2.5.

13.4.1.9 Restricts the District’s ability to increase the level of discipline based upon additional investigation. This is an improper limitation on the District’s right to discipline employees in violation of Article III of both CBAs, and of 45260 and 45621. Two pages later 13.4.2 We will object to this provision it hasn’t been found necessary either in Montebello or Torrance and its duplicative of 13.2.5. I will notice manner of housekeeping.

13.4.1 Its mislabeled the one above that is 13.4.3. and that mislabeling continues for several sections.

13.4.4 We object the “notice of Disciplinary Action” should read “Post-Skelly Notice.” To conform with the procedures in the district.

13.4.4.2 Notice of disciplinary action should read post Kelly notice for the same reason.

13.4.4.5 Is not included in the Montebello or Torrance rules the reference to the substantive due process which is a legal term, it’s a determination of which is beyond the scope of personnel commission. Additionally, rule 13.4.4.5.5 references retaliation, which is a term of legal import that is outside of the purview of the Personnel Commission. It is the district position that 13.4.4.6 is an unnecessary provision the following provision on that page 13.4.5 is duplicative of rule of 13.38.

13.5.2.2 Is not in the Montebello or Torrance rules. This creates an improper bias.

13.5.2.3 is vague and ambiguous. Additionally, it enables the Personnel Commission to interfere with the due process rights of employees and the District.

13.5.3.2 It is inappropriate in the districts thinking for employee appealing the imposition of discipline to have the contact information for the hearing officer. This could lead the untrained employee someone who does not the prior arts of working through this process to improper ex parte contact with the hearing officer.

13.5.3.3 Hearing officer contact information and again, should be omitted.

13.5.4.1 When read it appears to limit the District's ability to present evidence.

13.5.7 This section that begins 13.5.7 in regards subpoenas is not part of the Montebello or Torrance rules.

13.5.7.1 is vague and ambiguous as to "party."

13.5.7.4 Impermissibly compels the District to serve subpoenas on other employees.

13.5.7.5 Impermissibly compels the District Police to issue subpoenas on behalf of the employee to all non-District employees within the boundaries of the district. Additionally, this duty has not been negotiated with the association. We will not there is a typo in rule: should say "personal service of subpoenas" rather than "personal of subpoenas".

13.5.7.6 is vague and ambiguous as to the term "good-faith." Additionally, it impermissibly holds the District accountable for the failure of the Police. This is a violation of the District's substantive and procedural due process rights. Additionally, this rule limits the District's right to discipline in violation of Article III of both CBAs and therefore is a violation of Education Code section 45260 and 45621.

13.5.7.7 Refers to provisions of the administrative procedures act, which does not apply to Personnel Commission hearings.

13.5.7.9 This rule impermissibly compels the District's counsel to request employees to show up and testify at an appeal hearing. This violates the District's due process rights (as only the District has the right to designate service). Additionally, this could potentially force a violation of the attorney/Client privilege.

13.5.6 And 13.5.7 again there is numbering problem that needs to be corrected. As to 5.6 there is no legal requirement under the law that either party produces a witness list prior to a discipline hearing.

13.5.7 This rule is duplicitous, already provided in notice required by Rule 13.5.3.2 there is no reason to have here twice.

13.5.8.3 Does not specify who should be responsible for payment of court reporter. This becomes a potential cost item to the district where the employee request the reporter should the district prevail they shouldn't have to pay that cost.

13.5.11.1 Omission of evidence we object, this rule contains confusing verbiage, specifically, "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."



13.5.11.2 This rule restricts the introduction of employee evaluations as evidence, stating “employee evaluations, which are not based on facts and are based on undocumented charges, may not be introduced as evidence.” I will note that with the proper foundation employee evaluations are business records and are missed bullet and evidence.

13.5.11.5 is a duplicative provision that you will find in 13.5.5.

13.5.16.2 Would allow the PC or hearing officer to exclude witnesses at its own discretion. The District would seek clarification as to the word “exclude.”

13.5.17 allows the commission or the hearing officer at its discretion to allow written testimony. Such a rule would deprive one or the other party of its right to confront witnesses and it’s inconsistent with proposed rules of 13.5.4 and 13.5.9.

13.5.17.4 There is a typo with “neither party has objections to the submission of the affidavit(s) into evidence.”

13.5.18 is inconsistent with the Montebello, inconsistent with Torrance, and is vague and unintelligible. It requires the commission to prepare itself a report, which is inconsistent with the PC’s own rules.

13.5.20 is not contained in the Montebello or Torrance Rules, nor is it included in the CSEA proposal. This language is vague and ambiguous, particularly as to the term “further consideration.” In that it implies that an appeal is to be heard before the Personnel Commission actually issues a decision.

13.6.11 On the next page there are 5 typos, there are errors in the numbers those need to be corrected, there in the bottom of 13.6.11 that is a duplicitous of the provisions of 13.5.18.1

13.6.2.2 at the bottom of that page this rule and rules 13.6.2.1 do not give an outside limit during which the personnel commission must act, whereas Rule 6.28J compels the action within 14 days there should be some time in there.

13.6.2.3 Would give the Personnel Commission power to amend the finding of fact, whereas before it only had the ability to sustain or reject any or all of the charges filed against the employee.

13.6.2.4 Gives the Personnel Commission unfettered power to hold a decision for an unlimited amount of time, thus depriving the District of its ability to discipline. As a result, this rule violates Article III of both Collective Bargaining Agreements which is therefore violates of Education code Section 45260 and 45621.

13.6.3 is not included in the Montebello or Torrance rules, and is not included in CSEA's proposal. This rule could constitute an unconstitutional gift of public funds due to the broad discretion vested in the Commission. Additionally, the rule is poorly written, vague and ambiguous, and virtually impossible to implement.

13.6.4 Objection: this rule is objectionable to the extent that it includes a "just settlement" as set forth above.

13.7.1.4 Several pages forward, this rule creates the potential for an impermissible bias in violation of the cases listed under that objection.

13.7.2 This entire rule gives the personnel commission the right to declare a conflict in and of itself and seek outside counsel in contravention to the clear unpolitical terms of in circumvention of Education Code 45313. The commission is without authority to sidestep the requirements of the law just because the commission finds them to be on the list.

13.7.2.2 The district objects this rule declares there is always a conflict of interest in appeal cases. This is a violation of Education Code section 45313, which vests the District's attorney with the sole authority to declare a conflict.

13.7.3, this arguably results in the possibility of one of the commissioners holding incompatible offices in violation of state law. Additionally, this rule could create an impermissible bias in violation of the cited cases.

13.7.4 Gives the Personnel Commission unfettered power to alter an otherwise objective to process, thus depriving the District of its ability to discipline. As a result, these proposed rules violate Article III of both CBA's and therefore Section 45260 and 45621 of the Ed Code. I have been short-circuiting those, they are 45260 and 45621, but I assume that everybody would catch that several pages.

13.7.3.3 The three provisions found on the next page, the following are all miss numbered. We object to 13.7.3 as is unrelated to discipline and it does violate the judgment and the writ of mandate issued on April 22<sup>nd</sup>, which limits the PC's ability to propose new rules with chapters 3 and 5.

13.7.3.3 On the next page the miss numbering continues to what is currently numbered 13.7.3.3 we object because this rule creates an impermissible bias and violation of the same cited cases.

13.7.3.6 This rule allows mailing and only 5 days notice, this would give the employee less than 5 days to prepare. Such a rule in all likelihood violates the employee's constitutional right to due process and abridges his/her constitutional property interest in his/her employment. I will assume that CSEA will probably join on the objection.

13.7.3.11 On the next page again, all of the sections are miss numbered, as to what is currently 13.7.3.11 this rule prevents the Governing Board from reversing a commission

finding that someone was unlawfully appointed and no pay warrant should be issued. Impermissibly binds the board to the decision of the PC. This is in violation of the Education Code Section 35160.

13.7.3.12 and 13.7.3.4 are both miss numbered as 13.7.4 this rule is duplicates, 13.7.3 it also arguably results in one of the PC commissioners holding incompatible offices in violations of state law additionally this rule has proposed would create an impermissible bias in violation of cited cases.

13.8.1 is unrelated to discipline. It does violate the judgment of writ of mandated issued on April 22<sup>nd</sup> which limits the PC's ability to propose new rules to 3 chapters at a time.

13.8.12 is in duplication of what you find in 13.7.3 also this arguably results in one of personnel commission withholding and incompatible office in addition with the office it holds us commission additionally this rule would create an impermissible bias in violation of cited cases. I will repeat that objection to 13.18.3.

13.8.2 this section is unrelated to discipline and does violate the judgment and writ of mandate issued on April 22, 2011.

13.8.3 I will repeat the same objection; additionally this rule references the administrative procedures act which does not apply to personnel commission hearings.

13.8.3.1 Duplicative of 13.5.7 and therefore is unnecessary.

13.8.4 Is in violation of Ed Code section 45313.

13.8.4.2 Violates 45313 which only required the district to pay for reasonable fees.

13.8.4.4 Violates the education code section 45313 which again only requires the district to pay the reasonable fees.

Sherry Gordon, Attorney at Law for Atkinson, Andelson, Loya, Ruud and Romo: I do apologize we on behalf of the district are responding to what was presented to us we were not in control, how many rules we had to analyze. We hope that you will give this proposed rules and our objections and our comments the consideration that they are entitled to, I don't know what your proposal would be but the fact that one of your members was not present for first reading, and did not hear the districts comments, and objections. I will leave that to the wisdom of the two members seating here, thank you.

William Diedrich, Attorney at Law for Atkinson, Andelson, Loya, Ruud & Romo: Excuse me my name is William Diedrich, I am also here on behalf of the governing board, there is a typographical error as we are going to our proposals, there is some references to education code section 45621 it supposed to be 261 and those are right next to each other.

Mr. Barabani: What page is that on?

William Diedrich, Attorney at Law for Atkinson, Andelson, Loya, Ruud & Romo: It's on several pages regarding chapter 13. So where you see 621 it should be 261. Thank you very much.

Tambra Trujillo, District Employee: Good evening, I am Tambra Trujillo, secretary to CSEA, we have no objection to this rules, thank you.

Liz Madera, District Employee, I am just wondering in the Torrance and Montebello School District that we heard so much of tonight are having the same problems that we had for years and years, and years, and I still think there is mix volumes that there is no official representative from H.R. classified who has not been for quite some time now, nor the person that the district has placed from day to day operations with Personnel Commission, Brian Astrachan. H.R. Classified is the very body that supposed to represent the classified interest, but it does not seem to do that, thank you.

Mr. Barabani: Is there any more public comments on Action Item IV, Section C?

Patrick Maher: Some of the points to think the rules are kind of quite confusing because it covered so many areas, but for example I understood the objection from the district. There is a complaint that one of the rules did not allow for insult on the employees, but in fact it does in different rules, under the employee, because this rules are so substantial in change, you can't retract what was there before but some stuff that was in one rule is now split on other rules, appears that requires something. Also, I was kind of confused because I though earlier in the objection the term "whistle blower", was vague and ambiguous, and now there was a complaint that the word whistle blower was not contained in the rule 3.1.12. I am sorry that is not contained in 3.1.14. I am kind of perplexed on what is going on here, it needs to be more looked up and also the reading on what is going. These parts are rules containing may be what causes this confusion just to take that into consideration. Thank you.

Mr. Barabani: Any more public comments?

## **V. COMMISSIONER REMARKS**

Mr. Barabani: All right, we will move to Section V, Commissioner remarks. Mr. Salazar?

Mr. Salazar: I just wanted to say a few remarks on commissioner's remarks. One is obviously this is a very complex issue that we are dealing with. And I want I encourage the one colleague that's left up here the PC commission side here that we carefully review all that is being said, and to delivered, this is substantial amount of information to digest, so my suggestions is that we make sure that we take whatever time is necessary to digest this information and do the right thing here, so that is the end of my remarks. Thank you.

Mr. Barabani: Thank you for providing this information, it is going to help the other commissioner who is not here.

**VI. ADJOURNMENT**

Mr. Barabani: Item VI. this time we will adjourn the meeting. Thank you, for coming to this meeting. We will adjourn the meeting. The commission adjourned the meeting at 7:47 p.m.