

CHAPTER 12

PROCEDURES FOR DISCIPLINARY ACTION AND APPEAL

12.1 GENERAL PROVISIONS ON DISCIPLINARY ACTIONS

12.1.A DISCIPLINARY ACTION ONLY PURSUANT TO THIS RULE: A regular classified emp

REFERENCE: Education Code Sections 88080, 88081, 88121, 88122, 88123, 88124, 88125 and 88126

12.1.B TIME LIMITS ON DISCIPLINARY ACTION: Disciplinary action shall not be taken against an employee prior to the date of the filing of the Notice of Proposed Disciplinary Action unless such acts or omissions were concealed or not known to the District within the two year period.

REFERENCE: Education Code Sections 88080 and 88081

12.1.C DEFINITION OF DISCIPLINE: Disciplinary action includes any action whereby a regular classified employee is deprived of any classification or any incident of any classification, including dismissal, suspension, demotion, or any reassignment that causes a reduction in pay without the employee's voluntary written consent, except a layoff for lack of work or lack of funds. A suspension may be for a period not to exceed thirty (30) assigned working days.

REFERENCE: Education Code Sections 88080 and 88081

12.1.D CAUSES FOR DISCIPLINARY ACTION: The following causes shall be grounds for disciplinary action:

1. Incompetency: lack of ability, below standard work performance or fitness to discharge required duties.
2. Inefficiency: the continuing inability or unwillingness to perform the regularly assigned duties and responsibilities of the position.
3. 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 college district official having authority to issue directions and instructions to the employee by the nature of his or her position.
4. Inattention to or dereliction of duty: dereliction in the performance of assigned duties and responsibilities.

5. Any willful or persistent violation of the Education Code, Personnel Commission Rules and Regulations, or the procedures adopted by the District, or a department procedure when such procedures are made known to the employees in writing.
 6. Knowingly falsifying or withholding any material information supplied to the District, including but not limited to, information required on application forms and employment records, or other official documents of the District.
 7. Use or possession of alcoholic beverages on District property, or appearing for work under the effects of alcohol. "On District property" shall also include District vehicles or facilities used to conduct District business.
 8. The use or possession of controlled substance or restricted dangerous drugs, other than that prescribed by a state licensed physician or appearing for work under the effects of illegal or restricted dangerous drugs.
 9. Convicted of a sex offense as defined in Education Code Section 87010 and to include sexual psychopath. Conviction of such offense shall result in dismissal.
 10. Convicted of a narcotics offense as defined in Education Code Section 87011. Conviction of such offense shall result in dismissal.
 11. Engaging in political activities during assigned hours of duty. "Engaging in political activities" shall be defined to include door-to-door campaigning; placing campaign literature in/on vehicles on District facilities, parking lots, or adjacent streets, telephone solicitation or contacts; use of District time or materials for reproduction of campaign literature or materials; and, engaging fellow employees, students, or others in a discussion or debate regarding any candidate for public office or ballot measure. "During assigned working hours" shall be defined to include any and all time an employee is scheduled to be at his/her work site and/or engaged in District business and for which the employee is compensated by the District.
1. Conviction by a court of competent jurisdiction of a felony or a crime of violence or involving moral turpitude or a crime where the nature of the crime is such that it will indicate that the employee is a poor employment risk for the particular job which he/she holds in the District. A plea, verdict, or finding of guilty or a conviction following a plea of nolo contendere, is deemed to be a conviction.
 13. Discourteous, abusive, or threatening treatment of the public, employees, or students, including sexual harassment; any violation of Government Code Section 12940, Paragraph (1); or malicious

engagement in reprisals by managers or supervisors against employees, applicants, candidates, or eligibles who file a written complaint of mismanagement or a significant waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety pursuant to Government Code Section 53297.

14. Repeated unexcused absence or tardiness, abuse of leave privileges or absence without notification.
15. Abandonment of Position - Absence of five (5) consecutive working days without notification or permission (and failure to notify the District of a valid or acceptable reason for absence).
1. Failure to return to work or notify the District within three (3) consecutive working days following an authorized leave of absence without notification or permission except in the case of emergency.
17. The uninsurability of an employee to drive a District vehicle when such is a requirement of the employee's position. Upon notification or confirmation by the District's insurance carrier, discipline under this section shall be handled in the following manner:
 - (a) The District shall attempt to reassign the employee within the same class or to a vacant position in a related class with the approval of the Personnel Commission not requiring operation of a motor vehicle.
 - (b) If reassignment is not possible, then the employee may be demoted, pursuant to the Personnel Commission Rules and Regulations.
 - (c) If a position does not exist for a demotion to be accomplished, then the employee may be dismissed.
18. Violation of local, state, or federal law which results in cancellation or suspension of a license required for the performance of assigned duties.

19. Dishonesty, theft, willful misuse for personal gain, or willful destruction or mishandling of District property, student body property, or the property of employees or students, unauthorized use of District or student body property.
20. Ethnic, racial, religious, or sexual harassment of another person. (Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature, made by someone from or in the work setting).
21. Failure to obey a subpoena issued by the Personnel Commission and duly served, or any refusal to furnish testimony or documents, other than self-incriminating, at a hearing or investigation before the Personnel Commission or Board of Trustees.
22. Advocacy of the overthrow of the federal, state, or local government by force, violence, or other unlawful means.
23. Offering anything of value or offering any service in exchange for special treatment in connection with the employee's job or employment, or the accepting of anything of value or any service in exchange for granting any special treatment to another employee or to any member of the public.
24. Any other failure of good conduct tending to injure the public service.
25. Any action that might cause harm to the District's employees, students or the public. 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).
26. Failure to report a crime or activity which may cause harm to students or other District employees.
27. Defrauding the District by collecting sick leave or industrial accident/illness leave pay while working elsewhere for pay during his/her normal scheduled work assignment with the District.
28. Physical inability to perform the essential functions assigned to employee's classification.
29. Failure to submit to involuntary drug testing requirements for classifications requiring a commercial drivers license or designated as safety-sensitive in accordance with Federal Transportation Regulations.

30. Any conduct creating “a discriminatory, ridicule, and abusive work environment” whether or not the loss of tangible job benefits is determined.
31. Three consecutive overall performance ratings of “unsatisfactory” of which two must be annual, provided the ratings are supported by proof of factors on which they are based.
32. Absence from duty, excluding lunch or breaks, without prior and /or authorization.
33. Persistent violation or refusal to obey safety rules and regulations made applicable to community college by federal, state, or local government agency regulations.
34. Habitually use of sick leave for inappropriate reasons.
35. Willful failure to maintain licenses or certifications required for the position which makes the employee ineligible to continue in the position.
36. Dishonesty or willfully misleading statements during an official District investigation.

- REFERENCE:
1. Education Code Sections 212.5, 230, 87010, Government Code Section 1028 and 12940
 2. Penal Code Section 261
 3. Health and Safety Code Sections 11054, 11056, 11355 - 11361, 11363 - 11368, 11377 - 11382 and 11550
 4. Public Law 102-143

12.1.E PROGRESSIVE DISCIPLINE - WRITTEN WARNING/REPRIMAND:

Except in situations where an immediate suspension is justified under provisions of these Rules or otherwise justified by the circumstances of the infraction, or required by law, an employee whose work performance or conduct is of such a character as to incur discipline under the provisions of Rules 12.1.D, Section 1, 2, 4, 5, 11 or 14.

1. Such written warning shall state the Rule violated, the acts or omissions in violation, a recommended performance improvement plan 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.
2. The supervisor shall give a reasonable period of time, not to exceed ninety (90) calendar days to permit the employee the opportunity to correct the deficiency without incurring further disciplinary action.
3. For any of the causes for disciplinary action listed in Rule 12.1.D, Causes for Disciplinary Actions, any employee may be suspended

immediately for not more than thirty (30) working days or may be demoted or dismissed.

REFERENCE: Education Code Sections 88080 and 88081

12.1.F PROGRESSIVE DISCIPLINE - SUSPENSION: After written warning, if the employee continues to violate a cause treated in Rule 12.1.D above, then the employee may be terminated, or suspended not to exceed (30) working days without pay. The proposed length of suspension shall reasonably relate to the seriousness of the alleged offense.

REFERENCE: Education Code Sections 88080 and 88081

12.1.G PROGRESSIVE DISCIPLINE - FINAL STEP: If the behavior warranting action under Rule 12.1.F continues, for the same cause or substantially related cause, the employee may be subjected to more severe disciplinary action, including demotion or termination.

REFERENCE: Education Code Sections 88080 and 88081

12.1.H A COMPULSORY LEAVE OF ABSENCE: An employee may be immediately placed on a compulsory leave of absence without pay if charged with the commission of any sex offense or narcotics offense referred to in Education Code Sections 87010, 87011, and 88123, and the mandatory leave of absence shall continue for not more than ten (10) working days after the date of the entry of the court judgment. The compulsory leave of absence may be extended beyond such ten (10) working day period if the governing board gives notice within such ten (10) working day period that it will dismiss the employee thirty (30) working days after the service of the notice, unless the employee demands a hearing. Any employee on a compulsory leave of absence shall continue to be paid his/her regular salary during the period of absence if the employee furnishes the District a suitable bond, or other security acceptable to the Board of Trustees, as a guarantee that the employee will repay the District the amount of salary so paid to him/her during the period of mandatory leave of absence in case the employee is convicted of such charges, or the employee does not return to service after such period of absence. If the judgment determines that the employee is not guilty of such charges, or if the complaint, information, or indictment is dismissed, the District shall reimburse the employee for the cost of the bond; or, if the employee has not elected to furnish such bond, the District shall pay to the employee his/her full compensation during the period of the compulsory leave of absence, provided the employee returns to service after such period of absence.

REFERENCE: 1. Education Code Sections 87010, 87011, 88080, 88081, 88121, 88122 and 88123
2. Penal Code Section 261
3. Health and Safety Code Sections 11054, 11056, 11357 - 11361, 11363, 11364 and 11377

12.1.I IMMEDIATE ADMINISTRATIVE LEAVE - WITH PAY: An employee, other than stated in Rule 12.1.H above, may be immediately placed on administrative leave without loss of compensation pending the initiation and completion of disciplinary action procedures to the Board of Trustees. The District may end the administrative leave without loss of compensation or take action to suspend without pay in accordance with these Rules as warranted.

REFERENCE: Education Code Sections 88080 and 88081

12.1.J 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 regard to procedures set forth in this chapter. The employee does not have the right to appeal to the Personnel Commission.

REFERENCE: Education Code Section 88080, 88081 and 88124

12.1.K CHARGES BY CITIZENS: A citizen, for proper cause, may prefer charges against an employee in the classified service by filing written charges with the Board of Trustees or its proper agent. The Board of Trustees or its proper agent may make such investigation and shall take such action as it deems proper. If its decision results in suspension, demotion, or dismissal, the procedures set forth for suspension, demotion, or dismissal shall be followed in order to assume due process.

REFERENCE: Education Code Sections 88080 and 88081

12.1.L BURDEN OF PROOF: The burden of proof in disciplinary hearings and proceedings remain with the District, and any rule, regulation, policy, practice, or procedure to the contrary shall be void.

REFERENCE: Education Code Sections 88080 and 88081

12.1.M PROHIBITED ACTS RELATIVE TO DISCIPLINE: No employee shall be suspended, demoted, dismissed, subjected to any other form of disciplinary action, harassment, or in any way discriminated against because of the employee's affiliations, race, color, gender, national origin, marital status, handicapping condition, ancestry, employee organization membership or nonmembership and legal activities related thereto, medical condition, or religious or political beliefs or acts, except as legally provided in Personnel Commission Rule 12.1.D.

REFERENCE: 1. Education Code Sections 88080 and 88081
2. Government Code 12926

12.1.N HEALTH BENEFITS MAINTAINED UNTIL APPEAL CONCLUDED: A classified employee who is subjected to a disciplinary action (as provided in these Rules and Regulations), who is receiving health insurance

coverage and would otherwise lose those benefits, shall continue to receive such coverage until the timeliness for filing an appeal has passed or, in the event that the employee files a timely appeal, until all appeal processes contained in these Rules and Regulations have been exhausted.

REFERENCE: Education Code Sections 88080 and 88081

12.2 NOTICE OF PROPOSED DISCIPLINARY ACTION

12.2.A NO DISCIPLINE WITHOUT NOTICE: 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 exception to this Rule is in the case of action taken in accordance with Rules 12.1.H or 12.1.I above.

REFERENCE: Education Code Sections 88080 and 88081

12.3 APPEAL OF DEMOTION

12.3.A PERMANENT EMPLOYEE IN PROBATIONARY PROMOTIONAL POSITION: A permanent classified employee who has not served the time 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.

1. If the position from which the employee was promoted no longer exists, he/she would be placed in a vacant position in the class from which promoted or would displace the least senior employee in the class.
2. The appeal procedure is not applicable to an employee who is not in permanent status.

REFERENCE: Education Code Sections 88080, 88081 and 88124

12.4 FILING FOR APPEAL HEARING BEFORE PERSONNEL COMMISSION

12.4.A APPEAL TO PERSONNEL COMMISSION: If the decision of the Board of Trustees is to implement or modify the proposed disciplinary action, the employee may appeal the action to the Personnel Commission, pursuant to these Rules.

REFERENCE: Education Code Sections 88080, 88081 and 88124

12.4.B NOTIFICATION TO PERSONNEL COMMISSION: The Superintendent-President or designee shall notify the Personnel Commission of the Board of Trustees' decision relative to the disciplinary action, the Personnel Commission shall notify the employee in writing of the results of the Board's action. If the action of the Board was to reject all disciplinary action, the Personnel Commission shall notify the employee in writing within three (3) working days after notification of the Board's decision. If the decision of the Board of Trustees were to continue or modify the proposed disciplinary action, the Personnel Commission shall notify the employee in writing within three (3) working days after the notification of the Board's decision. Such notification shall be in the form of a Notice of Disciplinary Action.

REFERENCE: Education Code Sections 88080, 88081 and 88124

12.4.C APPEAL FORM SHALL ACCOMPANY DISCIPLINARY NOTICE: 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 hearing and a denial of all charges. The appeal form shall be submitted to the Personnel Commission Office by the deadline noted in the Notice of Disciplinary Action. The employee shall include in the appeal his/her current mailing and residency address at which the employee may be contacted, in the event that additional correspondence or notices need to be sent to the employee. The appeal notice filed by the employee shall also contain the name of his/her legal counsel or representative and the address and telephone number of such counsel or representative. The employee shall attach to the appeal form the reasons for the appeal. Appeals can be made only on the following grounds:

1. That the procedures set forth in these Rules and Regulations have not been followed.
2. That the disciplinary action was taken because of the employee's affiliations, race, color, national origin, age, marital status, sex, handicapping condition, ancestry, employee organization membership or nonmembership and legal activities related thereto, medical condition (as defined in Government Code Section 12926), or religious or political beliefs or acts, except as legally provided in Chapter 12.1.E.
3. That there has been an abuse of discretion on the part of the District.
4. That the action taken was not in accord with the facts.
5. That the penalty invoked by the District was excessive.

REFERENCE: Education Code Sections 88080 and 88081

12.4.D NOTICE SHALL BE IN WRITING AND SERVED ON EMPLOYEE: The Notice of Disciplinary Action shall be in writing and served in person or by Certified Mail "Return Receipt Requested" to the employee. This requirement will be deemed to have been met if the Notice of Disciplinary Action is sent Certified Mail to the last known home address on file in the 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 the postmark date of the notice shall be considered to be the official date of receipt.

REFERENCE: Education Code Sections 88080 and 88081

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

REFERENCE: Education Code Sections 88080, 88081 and 88124

12.4.F APPEAL HEARING BEFORE PERSONNEL COMMISSION: If the employee submits an appeal notice to the Personnel Commission Office within fourteen (14) calendar days after receipt of the Notice of Disciplinary Action, the employee shall have a right to have an Appeal Hearing before the Personnel Commission. The Commission Appeal Hearing shall be held within 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

REFERENCE: Education Code Sections 88080 and 88081

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

1. The Director of Human Resources 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 hearing shall be given or mailed to each of the parties not less than ten (10) working days prior to the hearing. The ten (10) day notice of hearing may be waived by agreement of the parties.

2. The hearing shall be confined to the reasons for action as charged by the Board of Trustees and relevant defenses set forth in the appeal and answer.

REFERENCE: Education Code Sections 88080 and 88081

12.4.J 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 Trustees's disciplinary action to stand.

REFERENCE: Education Code Sections 88080 and 88081

12.5 APPEAL OF DISCIPLINARY ACTION

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

REFERENCE: Education Code Sections 88080, 88081, 88124, 88125 and 88126

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

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

REFERENCE: Education Code Sections 88080, 88081 and 88131

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

REFERENCE: Education Code Sections 88080 and 88081

12.5.D 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.

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

REFERENCE: Education Code Sections 88080 and 88081

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

REFERENCE: Education Code Sections 88080 and 88081

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

1. To call and examine witnesses.
2. To introduce exhibits.
3. To cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examinations(s).
4. To attempt to impeach any witness regardless of which party first called the witness to testify.
5. To rebut all evidence presented by the opposing party.

REFERENCE: Education Code Sections 88080 and 88081

12.5.G APPELLANT MAY BE CALLED TO TESTIFY: If the appellant does not testify in his/her own behalf, the appellant may be called and examined as if under cross-examination.

REFERENCE: 1. Education Code Sections 88080 and 88081
a. Government Code Section 11513(b)
3. California Evidence Code Section 772

12.5.H 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.

1. Hearsay evidence may be used for the purpose of explaining or providing supplemental evidence, but shall not be sufficient in and of itself to support a finding by the Personnel Commission or its hearing officer unless it would be admissible over objection in a civil action in a court of law.
2. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing. Irrelevant and unduly repetitious evidence may be excluded.

REFERENCE: Education Code Sections 88080 and 88081

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

REFERENCE: Education Code Sections 88080, 88081 and 88125

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

REFERENCE: Education Code Sections 88080 and 88081

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

REFERENCE: Education Code Sections
88080 and 88081

12.5.L FINDINGS BASED ON PREPONDERANCE OF EVIDENCE: The Personnel Commission or its hearing officer shall determine the relevancy, weight, and credibility of the evidence and testimony presented. The findings of the Commission or hearing officer shall be based upon the preponderance of evidence.

REFERENCE: Education Code Sections
88080 and 88081

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

REFERENCE: Education Code Sections
88080 and 88081

12.5.N EXAMINATION OF WITNESSES: Each side will be allowed to examine and cross-examine witnesses.

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

REFERENCE: Education Code Sections
88080 and 88081

12.5.O 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 Human Resources shall issue the subpoenas on behalf of the Commission or its hearing officer. Subpoenas shall be delivered to the requesting party for service.

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

REFERENCE: Education Code Sections
88080 and 88081

12.5.P LIST OF WITNESSES: A list of witnesses to be called by each party and a list of persons authorized to attend the

hearing shall be submitted to the Personnel Commission Office at least three (3) working days prior to the date of the hearing. This will allow the Personnel Commission to secure the release time of employee witnesses prior to the hearing.

REFERENCE: Education Code Sections
88080 and 88081

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

1. Such evidence shall be submitted by sworn affidavit of the witness. The affidavit shall be confined to a statement of facts bearing on the case and within the knowledge of the witness, and shall not contain any conclusions of the witness, except that a witness who qualifies as an expert may express his/her opinion based upon the facts which he/she has recited.
2. Copies of all such affidavits shall be filed with the Personnel Commission Office or the hearing officer at least three (3) working days prior to the date of the hearing, and may be inspected by the other party to the hearing, who shall be notified of the filing of such affidavits.
3. Neither party has objections to the submission of the affidavit(s) into evidence. Either party, upon request, may require the attendance of the witness who has given the sworn affidavit for purposes of cross-examination. A continuance may be necessary in order to secure the attendance of the witness.
4. The Personnel Commission or hearing officer may reject any such affidavit submitted which fails to comply with any of the foregoing conditions.

REFERENCE: Education Code Sections
88080 and 88081

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

1. The hearing officer shall submit his/her written recommendations and findings of fact to the Director of Human Resources within a

reasonable period of time, normally, thirty (30) working day after the hearing officer take the case under submission.

2. Upon receipt of the hearing officer's written recommendations and findings of fact, the Director of Human Resources 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.
 3. In all cases assigned to a hearing officer, a proposed decision shall be prepared in a form to be adopted by the Commission as its decision in the case. Commission staff will notify the appellant or, 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 to the appellant and representatives after the Commission has received it at a regular Commission meeting.
- b. The Commission may accept, reject, or amend any of the findings or recommendations in the proposed decision. Any rejections or amendment shall be based either on a review of the transcript of the hearing or investigation, or upon the results of such supplemental hearing or investigation as the Commission may order. If a further investigation or hearing is ordered, the Commission may decide the case itself or may refer the case to the same or another hearing officer for the purpose of taking additional evidence. If the case is referred to a hearing officer, he shall file another proposed decision.

REFERENCE: Education Code Sections 88080, 88081 and 88131

12.5.S 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 Human Resources, shall be permitted to participate in the deliberations. If the Director of Human Resources was the administrator initiating the disciplinary action, or if the Director acted on behalf of the Board of Trustees in the presentation of the case at any level of the appeal process, or if the Director served as a witness in the proceedings, the Director of Human Resources shall also be excluded from the Commission's deliberations.

REFERENCE: Education Code Sections 88080, 88081, 88086 and 88124

12.5.T DECISION OF PERSONNEL COMMISSION: The Personnel Commission shall render its decision within thirty (30) calendar days after

the conclusion of the hearing and submission of any follow-up legal briefs. The decision(s) of the Commission shall be in writing and shall set forth which charges, if any, are sustained and the reasons therefor.

1. The Commission's written decision(s) shall contain findings of fact, a determination of the issues presented, and the penalty imposed (if any). The findings may be stated in the language of the pleading or included by reference thereto.
2. If the disciplinary action is not sustained, the Commission's order shall set forth the effective date that the employee is to be restored or reinstated to his/her former position and/or status; such date to be set forth at any time on or after the date that the disciplinary action was invoked.
 - (a) The Commission may order full or partial compensation from the time of suspension, demotion or dismissal.
 - (b) The Commission shall order his/her reinstatement upon such terms and conditions as it may determine appropriate.
3. Copies of the Commission's decision(s) shall be delivered to the parties personally or transmitted to them by Certified Mail Return Receipt Requested. The requirement for notification of the employee will be deemed to have been met if the decision is sent, Certified Mail, to the last known home address on file in the 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.
4. If the Commission either sustains a suspension or modifies a dismissal, or other disciplinary action, to a suspension, such days of suspension shall be served on working days in which the employee is normally assigned.

REFERENCE: Education Code Sections 88080 and 88081

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

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

REFERENCE: Education Code Sections 88080, 88081 and 88126

12.5.V.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 Trustees should it sustain any or all of the Board's charges.

REFERENCE: Education Code Sections 88080, 88081 and 88126

12.5.W. _____ 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. The granting of seniority credit for any or all of the off-duty time pending restoration or reinstatement.
2. Expunge from the employee's personnel file and record any causes or charges that are not sustained by the Commission.

REFERENCE: Education Code Sections 88080, 88081 and 88126

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

1. The cost of the transcript and copies if requested, shall be borne by the party making the request.
2. The request shall be in writing and a cash deposit made in an amount determined by the Director of Human Resources prior to preparation, which shall not be less than the estimated cost of transcribing the hearing record.
3. The final cost of the transcript shall be the actual cost of preparation plus the cost of making copies as determined by the Director of Human Resources.
4. The transcript shall only be released upon payment in full. When the deposit is greater than the actual costs of the document

(including the making of copies), the remainder shall be refunded to the party.

REFERENCE: Education Code Sections 88080 and 88081

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

1. If the Personnel Commission determines that there is sufficient grounds for disqualification, it may elect to disqualify the hearing officer or Personnel Commission member.
2. Where the disqualification request concerns a Personnel Commission member, the issue shall be determined by the other members of the Commission. However, no Commission member shall withdraw voluntarily or be subject to disqualification if his/her disqualification would prevent the existence of a quorum qualified to act in that particular appeal.

REFERENCE: Education Code Sections 88080 and 88081

12.5.Z 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 Trustees, nor shall the Board and the Commission be represented by members of the same legal firm in a hearing held pursuant to these Rules and Regulations. All reasonable costs associated with the use of such legal counsel by the Personnel Commission in hearings shall constitute a legal charge against the Board of Trustees' general funds, whether or not the money or costs for legal services appear in the Commission's budget.

REFERENCE: Education Code Sections 88080, 88081 and 88132

12.6.A EFFECT OF DISMISSAL ACTION: Dismissal of any employee from the classified service shall, unless otherwise ordered by the Commission:

1. Constitute a dismissal as of the same date from any and all positions which the employee may hold in the classified service.
2. Result in the automatic removal of the employee's name from any and all employment lists on which it may appear.

3. The former employee may not take examinations thereafter without consent of the Board of Trustees or its proper agent.

4. Terminate the salary of the employee as of the date of dismissal except that he/she shall be paid any unpaid salary, all accumulated vacation, and all accumulated overtime to his/her credit as of the date of the dismissal.

REFERENCE: Education Code Sections 88080 and 88081