

ARTICLE 33 – DISCIPLINE AND APPEAL PROCEEDINGS

33.1 DISCIPLINARY ACTION ONLY PURSUANT TO THIS RULE: A permanent classified employee shall be subject to disciplinary action for cause as prescribed by these rules, and pursuant to the procedures outlined herein.

33.1.1 **DISMISSAL OF CLASSIFIED SERVICE EXEMPT EMPLOYEES:** A substitute, limited-term, provisional, or other temporary employee may be released at any time, without cause during his/her assignment without regard to procedures set forth in this Article.

33.1.2 **DISMISSAL OF EMPLOYEES ON PROBATION**
A classified employee who is serving a probationary period in class, but who has not attained permanent status in any other classification within classified service, may be released from service or disciplined without cause and shall have no right to the disciplinary appeal procedures outlined in these Rules and Regulations. The employee may request an administrative review of the proposed dismissal action by the Director, Classified Personnel.

33.2 DEFINITION OF DISCIPLINE: Discipline is defined as a suspension, involuntary demotion for cause as a disciplinary measure, and dismissal for cause, except in the case of layoff for lack of work or lack of funds, or failing to pass a probationary period in a job class where the employee has not previously attained permanency.

33.3 TIME LIMITS ON DISCIPLINARY ACTION: In the disciplinary process the following general guidelines regarding timelines shall be applicable:

33.3.1 Disciplinary action shall not be taken against an employee for any charges which occurred prior to the employee becoming permanent, nor for any acts or omissions which occurred more than two (2) years prior to the date of the filing of the Notice of Proposed Disciplinary Action, unless the District did not know, or could not have reasonably known, of the act or omission. Evidence of events or circumstances beyond two years may be presented for the purpose of supporting the degree of disciplinary action, to show that the District engaged the employee in progressive discipline, and to impeach a witness.

33.3.2 In the case of disciplinary action based on a criminal prosecution, the two year limitation on acts for which disciplinary action can be imposed commences on the date of final judgment, regardless of when the acts resulting in final judgment occurred.

33.3.3 In the case of acts that are subject to criminal investigation, regardless of whether or not there is a prosecution, the two year limit on the imposition of disciplinary action is tolled if the District halts its investigation into disciplinary action during the time that a criminal investigation is pending.

33.3.4 The District has the burden of establishing the tolling of the time limit.

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

33.4.1 Incompetency and/or inefficiency. The continuing inability or unwillingness to perform the regularly assigned duties and responsibilities of the position as reflected by three (3) or more performance evaluations with an overall rating of below meets standards.

33.4.2 Inattention to or dereliction of duty. Dereliction in the performance of assigned duties and responsibilities, including acts of negligence.

33.4.3 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 school district official having authority to issue directions and instructions to the employee by the nature of his or her position.

33.4.4 Abuse of leave privilege. Excessive absenteeism, unexcused absence(s), or tardiness; illness leaves when frequently taken for trivial indispositions, or patterns of illness use that indicate abuse.

33.4.5 Inappropriate treatment of others. Willful or persistent discourteous, offensive, abusive, or verbally or physically threatening conduct toward other employees, students, or the public.

33.4.6 Violation of rules. Willful or persistent violation of California law, including the Education Code, Personnel Commission Rules and Regulations, Board Policy or the procedures adopted by the District, department or school site, and/or provisions of the relevant collective bargaining agreement, when such procedures are made known to the employee in writing.

33.4.7 Health and safety violations. Willful or persistent violation of, or failure to adhere to and enforce regulations or procedures pertaining to health and safety, or any other action or behavior on the part of the employee which presents a danger to the health or safety of the employee, students, fellow employees, the public, or District property.

33.4.8 Retaliation, harassment, and/or discrimination in violation of State or federal law.

33.4.9 Dishonesty.

- 33.4.10 Theft or willful misuse, destruction, mishandling, or misappropriation of District or student body property, or acting as accomplice in any of the practices listed herein.
- 33.4.11 Offering anything of value, such as monetary compensation, reward, gift, service of some other form of compensation 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, or for performing regular and official duties.
- 33.4.12 Any willful act of conduct undertaken in bad faith, either during or outside of duty hours which is of such a nature that it causes discredit to the District, the employee's department or division.
- 33.4.13 Conduct tending to injure the public service.
- 33.4.14 Abandonment of Position.
 - A. Absence of five (5) consecutive working days without notification or permission without a valid reason for the absence.
 - B. 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 without a valid reason for the absence.
- 33.4.15 Failure to report for a health examination required and/or ordered by the District.
- 33.4.16 Failure to report upon reasonable notice for review of criminal records.
- 33.4.17 Knowingly falsifying or withholding by omission any material information supplied to the District, including but not limited to, information pertaining to ones' ability to perform essential job functions with or without reasonable accommodation, information relative to employment records specified on employment application, criminal record disclosure, or other official documents of the District.
- 33.4.18 Possession or use of alcoholic beverage(s) while on duty or intoxication or use/impairment by controlled substances while on duty or in such close time proximity thereto as to potentially have a detrimental effect upon the employee or others while on duty.
- 33.4.19 The use of or unlawful possession, sale or furnishing to others any controlled substance listed in Article 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code while on duty or on school property.

- 33.4.20 Carrying out a physical attack or any form of assault upon a student, a member of the public, another District employee, or a District official.
- 33.4.21 Violation of local, state, or federal law which results in cancellation or suspension of a license, permit or certification required for the performance of assigned duties.
- 33.4.22 Unwillingness or inability to comply with minimum qualification requirements as set forth on the official job specification for the job class occupied by the employee.
- Conviction for a felony and/or misdemeanor with a nexus to the employment in the District, including:
- A. A conviction of a sex offense as defined by Education Code section 44010.
 - B. A conviction of an offense defined by Education Code section 44011.
 - C. A conviction of an offense arising directly out of the employee's work-related activities.
 - D. A conviction of an offense involving moral turpitude.
 - E. A record of one (1) or more criminal convictions that indicate that the person is an employment risk for the particular job which the employee holds in the District.
- 33.4.23 The un-insurability of an employee to drive a District vehicle when such is a requirement of the employee's position.
- 33.4.24 Defrauding the District, including collecting sick leave or industrial accident/illness leave pay while working elsewhere for pay during his/her normal scheduled work assignment with the District.
- 33.4.25 Disclosure of confidential information.
- 33.4.26 Refusal to subscribe to any oath or affirmation which is required by law in connection with District employment.
- 33.4.27 Refusal to testify under oath before any court, grand jury, or administrative officer having jurisdiction over any then pending matter in which the District is involved.
- 33.4.28 Failure to obey a subpoena issued by the Personnel Commission and duly served, or any refusal to furnish relevant testimony or documents at a hearing or investigation before the Commission or Board of Education.
- 33.4.29 Engaging in political campaigning or other activities related to one's political agenda during assigned work shift

- 33.4.30 Advocacy of the overthrow of the federal, state, or local government by force, violence, or other unlawful means.

33.5 PROCEDURES FOR DISCIPLINARY ACTION

- 33.5.1 Each employee shall receive fair, impartial, and consistent treatment during any disciplinary action, regardless of the employee's position, assignment, or protected status.
- 33.5.2 **BURDEN OF PROOF:** The Conejo Valley Unified School District shall bear the burden of proof to prove disciplinary charges raised against an employee.
- 33.5.3 **PROGRESSIVE DISCIPLINE DEFINED AND RELATED STEPS:** Progressive discipline is defined as the application of corrective measures by increasing and progressive degrees, with actions that fit the nature of the problem, designed to motivate an employee to change performance or conduct. In most circumstances, the District shall engage employees in progressive discipline when determining the appropriate level of discipline to impose on an employee. The progressive discipline steps set forth herein may be followed at the sole discretion of the District depending on the nature and severity of the misconduct. Progressive steps may be repeated as deemed appropriate by the District. The common steps in progressive discipline shall be as follows:
- A. **Counseling** – A supervisor shall initiate an informal discussion with an employee designed to assist them in gaining a full understanding of performance standards, while fostering two-way communication to identify solutions that best meet established expectations. A supervisor may follow up with a memorandum or letter to summarize what transpired during a counseling meeting, noting areas of performance deficiency that must be improved, including notice of improvement objectives, if appropriate. Counseling may be skipped if conditions warrant a more severe action.
 - B. **Verbal Reprimand** – A verbal reprimand is intended to provide notice to the employee that his or her performance or behavior must be improved. The warning defines the areas in which improvement is required, establishes goals leading to the improvement objective, and informs the employee that failure to improve may result in further, more serious disciplinary action. A supervisor will either note the date, time and content of the warning in a personal log or documentation notebook for later reference, as necessary, or issue a memorandum to summarize the incident that led to the verbal warning and improvement expectations. Verbal Reprimand may be skipped if conditions warrant a more severe action.
 - C. **Written Reprimand** – The written reprimand is intended to provide notice to the employee of his or her misconduct and/or performance deficiencies. A written reprimand shall summarize the employee's misconduct or

performance deficiencies and provide directives to the employee to assist him/her in improving his/her conduct and/or performance. A copy of the written reprimand shall be forwarded to the Classified Personnel Department for inclusion in the employees' personnel file, with a copy retained for site records. The employee shall have the right to provide a written response to the written reprimand and any response will be placed in the employee's personnel file with the written reprimand. The written reprimand may occur simultaneous to a suspension, demotion, or termination if conditions warrant a more severe action.

- D. Suspension – the temporary removal of an employee from his/her position for cause without pay. The length of the suspension shall not exceed 30 calendar days. The proposed length of suspension shall be reasonably related to the seriousness of the offense. Suspension may be skipped if conditions warrant a more severe action.
- E. Demotion – An involuntary reassignment of an employee to a position in a lower job classification or a position with a lesser assignment term (hours per day or months per year). Failure to meet the requirements of promotional probation does not constitute a demotion. Demotion may be skipped if conditions warrant a more severe action.
- F. Termination - the for cause release or discharge of an employee from employment with the District.

33.5.4 IMMEDIATE SUSPENSION WITHOUT PAY: If an employees alleged conduct involves matters related to the health, safety and well-being of the employee, students, fellow employees, or District property, the Superintendent or his designee may suspend the employee immediately without' pay pending the completion of disciplinary action procedures.

33.5.5 MANDATORY LEAVE OF ABSENCE – WITHOUT PAY: The Governing Board shall immediately suspend, without pay, a regular classified employee when the employee has been charged, by complaint, information, or indictment, with a criminal act defined by Education Code section 44940(a). The suspension may exceed thirty (30) days, but shall not continue for more than ten (10) days after the date of the entry of the court judgment, unless the District pursues further disciplinary action against the employee under these Rules and Regulations. The employee may receive compensation as provided for in the Education Code. An employee suspended pursuant to this section has no right to appeal the suspension to the Personnel Commission and has no right to a *Skelly* meeting.

- A. If the employee is determined to be not guilty of the criminal charges, or if the complaint, information, or indictment is dismissed, the District shall determine whether disciplinary charges are warranted. If the District pursue disciplinary action against the employee for the

underlying criminal charges, the District shall undertake such action in accordance with these Rules and Regulations.

- B. If criminal charges are sustained against the employee, the District shall have the option of pursuing disciplinary charges against the employee on the basis of the criminal conviction and/or the underlying allegations in accordance with these Rules and Regulations.

33.5.6

OPTIONAL LEAVE OF ABSENCE – WITHOUT PAY: The Governing Board may immediately suspend, without pay, a regular classified employee when the employee has been charged, by complaint, information, or indictment, with a criminal act defined by Education Code section 44940(b). The suspension may exceed thirty (30) days, but shall not continue for more than ten (10) days after the date of entry of the court judgment, unless the District pursues further disciplinary action against the employee under these Rules and Regulations. The employee may receive compensation as provided for in the Education Code. An employee suspended pursuant to this section has no right to appeal the suspension to the Personnel Commission and has no right to a *Skelly* meeting.

A. If the employee is determined to be not guilty of the criminal charges, or if the complaint, information, or indictment is dismissed, the District shall determine whether disciplinary charges are warranted. If the District pursues disciplinary action against the employee for the underlying criminal charges, the District shall undertake such action in accordance with these Rules and Regulations.

B. If criminal charges are sustained against the employee, the District shall have the option of pursuing disciplinary charges against the employee on the basis of the criminal conviction and/or the underlying allegations in accordance with these Rules and Regulations.

33.5.7

The conditions of suspensions under Section 13.5.5 and 13.5.6 shall be reviewed by the Personnel Commission at least once during each ninety (90) calendar day period.

33.6 NOTICE OF PROPOSED DISCIPLINARY ACTION

- 33.6.1 NO DISCIPLINE WITHOUT NOTICE: No permanent regular classified employee may be subjected to disciplinary action, except when charged with a mandatory or optional leave of absence offense as identified in 13.5.5 and 13.5.6, until the employee has received a "Notice of Proposed Disciplinary Action," and the employee has had an opportunity to respond to the charges.
- 33.6.2 CONTENT OF NOTICE OF DISCIPLINARY ACTION: A "Notice of Proposed Disciplinary Action" is the notification that disciplinary action will be recommended to the Board of Education. The notice shall contain statements in ordinary and concise language of:
- A. The nature of the disciplinary action taken (suspension, demotion, dismissal).
 - B. The specific causes and sections of these Rules and Procedures that the employee is accused of violating and upon which the disciplinary action is based.
 - C. A description of the chargeable action(s) or omissions.
 - D. Notice of the effective date(s) of the proposed disciplinary action.
 - E. Documentation to support the charges against the employee.
 - F. Notice of the employee's right to a pre-disciplinary meeting ("*Skelly* meeting") not sooner than five (5) working days after issuance of the Notice of Proposed Disciplinary Action and prior to the Governing Board's action on the proposed discipline.
 - G. Notice that the employee may forfeit his/her right to a *Skelly* meeting if he/she fails to respond within the time limits specified, and information on how to exercise his right to the *Skelly* meeting.
 - H. Notice of the date that the disciplinary action will be acted on by the District's Governing Board.
 - I. Notice of the employee's right to representation.
- 33.6.3 SERVICE OF NOTICE: Notice of Proposed Disciplinary Action shall be served in person or by Certified Mail "Return Receipt Requested" to the employee.
- A. This requirement will be deemed to have been met if the Notice of Disciplinary Action is sent Certified Mail to the last known home address on file in the Personnel Services 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.

- B. If the notice is personally served on the employee in lieu of service by mail, the employee shall sign a written acknowledgement that he/she received the notice in person. If the employee refuses to sign such an acknowledgement, two witnesses to the service may verify the service and the acknowledgement shall indicate the space provided for the employee's acknowledgement shall contain the notation "refused to sign."
- C. All other notifications to the employee pursuant to this Article shall conform to this Rule.

33.7 SKELLY MEETING PROCEDURES

33.7.1 **ACTION IF SKELLY MEETING NOT REQUESTED:** If the employee does not respond and request a *Skelly* meeting within the five (5) working day period outlined in the notice of proposed disciplinary action, the Superintendent shall recommend to the Board that the proposed disciplinary action be approved. The Board shall have the power to accept, lessen, enhance, or reject the recommendation of the Superintendent.

33.7.2 **SKELLY MEETING BEFORE THE SUPERINTENDENT OR DESIGNEE:** If the employee submits a request to respond to the charges within five (5) working days after receipt of the Notice of Proposed Disciplinary Action, the employee shall have a right to meet with the Superintendent or designee, and the effective date of the proposed disciplinary action shall be stayed pending the outcome of the *Skelly* meeting.

- A. The Superintendent may assign a designee to serve as the *Skelly* officer. That designee shall be an administrator who has the authority and authorization to accept, modify, or rescind the proposed disciplinary action.
- B. The employee shall have the opportunity to respond to all charges, provide reasons in mitigation of the penalty, or offer justification for his actions.
- C. The *Skelly* meeting is not an evidentiary hearing. The employee is not entitled to call or examine witnesses.
- D. The employee may be represented in a *Skelly* meeting by a union representative, or any other person designated by the employee.

33.7.3 NOTICE OF OUTCOME OF *SKELLY* MEETING

The Superintendent or designee shall provide written notification to the employee of the outcome of the *Skelly* meeting. If disciplinary action is recommended, the notice shall inform the employee of the date on which the Governing Board will consider the recommended disciplinary action.

33.7.4 ACTION BY THE GOVERNING BOARD: Discipline involving loss of pay cannot take effect until the Governing Board takes action.

33.7.5 NOTICE OF ACTION BY GOVERNING BOARD: The Superintendent or designee shall notify the Director of Classified Personnel in writing of the final action by the Governing Board within ten (10) days after the final decision by the Governing Board. This notice is required whether or not the employee exercised his *Skelly* rights and whether or not the employee was present when the Governing Board took final action. The written notice shall state the final action taken by the Governing Board.

Upon receipt of this notice, the Director of Classified Personnel shall serve upon the employee a written "Notice of Disciplinary Action and Statement of Charges." The Notice of Disciplinary Action and Statement of Charges shall inform the employee of their right to appeal the disciplinary action taken against him/her to the Personnel Commission in accordance with Section 13.8. The Notice of Disciplinary Action and Statement of Charges shall be personally served or served by certified mail to the employee as outlined in Section 13.6.3.

33.8 DISCIPLINARY APPEAL RIGHTS AND PROCEDURES

33.8.1 NOTICE OF RIGHT TO APPEAL TO THE PERSONNEL COMMISSION: A permanent classified employee who has been suspended, demoted, or dismissed, may appeal such action to the Conejo Valley Unified School District Personnel Commission within fourteen (14) calendar days of receipt of a Notice of Disciplinary Action and Statement of Charges. The appeal must be received and time stamped by the Director of Classified Personnel or postmarked within the fourteen (14) day appeal period to be considered a valid appeal.

33.8.2 PERMANENT EMPLOYEE SERVING PROBATION: A classified employee, who is deemed to be a permanent employee of the District by previously having attained permanency in one or more job classes within classified service, but who is serving a probationary period in a new job classification, may request an investigation by the Commission within 14 days after the receipt of the copy of written disciplinary charges. The request for investigation shall be based only on one or more of the four grounds specified in Rule 33.8.3.

The commission shall thereupon conduct an investigation confined to the grounds set forth in the charges and in the request for the investigation but shall not be required to follow the procedures for appeals and hearing set forth elsewhere in

these rules. The commission shall notify the administration and the employee in writing of its' findings. If the commission's investigation and findings, however, indicate any arbitrary or discriminatory action for any of these grounds, the commission will hold a formal hearing. The decision of the commission shall not be subject to review by the board. (EC45305, 45306)

33.8.3 **GROUND FOR DISCIPLINARY APPEAL:** In filing an appeal to the Personnel Commission, the employee must state the grounds for appeal. The following are grounds for appeal:

A. That the procedures set forth in these Rule and Regulations have not been followed.

B. That the disciplinary action was taken because of unlawful discrimination against the employee based on but not limited to the employee's affiliations, religion, race, color, national origin, age, marital status, sex, sexual orientation, handicapping condition, ancestry, employee organization membership or non-membership and legal activities related thereto, or medical condition as defined in Government Code section 12926.

C. That there has been an abuse of discretion on the part of the District.

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

33.8.4 **EMPLOYEE FORFEITURE OF APPEAL RIGHTS:** If the employee does not request a Personnel Commission appeal within the fourteen (14) calendar day period outlined in Section 13.8.1, the action of the Governing Board shall be final, and no further appeal rights shall be allowed.

33.8.5 **TIMELY REQUEST FOR APPEAL:** If the employee's request for a disciplinary appeal is timely received by the Director of Classified Personnel, the employee shall have a right to have an appeal before the Personnel Commission. The Personnel Commission shall, at its next regularly scheduled meeting, determine whether to hear the appeal itself or to assign the appeal to a hearing officer. If hearing the appeal itself, the Personnel Commission shall determine the date and time of the appeal hearing which shall, whenever practicable, be held within thirty (30) calendar days of the Personnel Commission meeting. If the appeal is to be assigned to a hearing officer, the Personnel Commission shall delegate the establishment of the time and date of the hearing to the Director of Classified Personnel, working with the schedule of the hearing officer selected. A different timeline may be agreed to by the parties involved.

33.8.6 NOTIFICATION OF HEARING TO EMPLOYEE: The Director of Classified Personnel shall provide formal, written notice of the appeal hearing to the District and employee at least ten (10) working days in advance of the appeal hearing. Notice shall be made pursuant to section 13.6.3.

33.9 APPEAL HEARING PROCEDURES

33.9.1 APPOINTMENT OF HEARING OFFICER: The Personnel Commission may appoint a hearing officer to conduct any hearing or investigation which the Personnel Commission itself is authorized by the Education Code and/or these rules to conduct, including disciplinary action. The Personnel Commission may seek input from the Superintendent and appellant relative to available hearing officer prior to making their selection.

33.9.2 DISQUALIFICATION OF HEARING OFFICER OR COMMISSIONER: A Personnel Commission member or a hearing officer shall voluntarily disqualify himself and withdraw from any appeal proceedings in which he/she cannot provide a fair and impartial hearing or consideration, or for which a conflict of interest may exist.

- A. Any party may request the disqualification of any hearing officer, or Personnel Commission member, by filing an affidavit with the Director of Classified Personnel, 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 provided.
- B. If the Personnel Commission determines that there is sufficient grounds for disqualification, it may elect to disqualify the hearing officer or Personnel Commission member.
- C. Where the disqualification request concerns a Personnel Commission member, the issue shall be determined by the other members of the Personnel Commission. However, no Personnel 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.

- 33.9.3 HEARING LOCATION: The appeal hearing shall be held within the boundaries of the Conejo Valley Unified School District, and in a place designated by the Personnel Commission which is conducive to the proper conduct of the hearing.
- 33.9.4 GRANTING OF CONTINUANCE: The Personnel Commission or its hearing officer may, prior to or during the hearing, grant a continuance for good cause.
- 33.9.5 RIGHT TO REPRESENTATION: The employee may be represented by legal counsel or union representation, or any other person designated by the employee. If the employee files an appeal, the employee shall be required to attend the Personnel Commission appeal hearing, even if the employee's designated representative appears on his/her behalf. If the employee fails to appear at the appeal hearing, the employee will be deemed to have forfeited his/her rights to further appeal and the Personnel Commission shall allow the Board of Education's disciplinary action to stand.
- 33.9.6 CLOSED HEARING. Disciplinary appeal hearing shall be closed to the public unless the appellant submits a request that the hearing be conducted in open session at least five (5) working days prior to the date of the hearing.
- 33.9.7 ALL HEARINGS SHALL BE RECORDED: All hearings under the authority of this Article shall be electronically recorded in such a manner that a verbatim written transcript can be produced if necessary.
- A. 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.
 - B. If a court reporter is used to record the hearing, the requesting party shall provide a copy of the transcript of the hearing to the Personnel Commission at no cost to the Personnel Commission.
 - C. Upon request of any party, or as otherwise provided by law, a copy of the electronic recording will be provided upon payment of a reasonable fee to cover the costs.
 - D. The Personnel Commission is not obligated to provide a transcribed copy of the electronic recording, but may order that the tape be transcribed.
- 33.9.8 SUBPOENA OF WITNESSES: The Personnel Commission or its hearing officer may, and shall if requested by either party, issue subpoenas for

witnesses and/or the production of records, documents, or other material evidence subject to a motion to quash by a party opponent or recipient. The Director of Classified Personnel shall issue the subpoenas on behalf of the Personnel Commission or its hearing officer. Subpoenas shall be delivered to the requesting party for service. Requests for subpoenas shall be filed with the Personnel Commission Office at least fifteen (15) calendar days prior to the date of the hearing.

- 33.9.9 During a disciplinary appeal hearing, each party shall have the right to:
- A. Call and examine witnesses.
 - B. Introduce exhibits.
 - C. Cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination(s).
 - D. Attempt to impeach any witness regardless of which party first called the witness to testify.
 - E. Rebut all evidence presented by the opposing party.
- 33.9.10 **ORAL EVIDENCE BY OATH ONLY:** Oral evidence shall be taken only on oath or affirmation.
- 33.9.11 **APPELLANT MAY BE CALLED TO TESTIFY:** If the appellant does not elect to testify on his/her own behalf, the appellant may still be called to testify and be cross-examined just as if he/she had testified on his/her own behalf.
- 33.9.12 **ADMISSION OF EVIDENCE:** The hearing need not be conducted according to the technical rules relating to the admission of evidence and the examination of witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious business, regardless of the existence of any common law or statutory rule which might cause the evidence to be objected to or ruled out if presented in a criminal or civil procedure before a court of law.
- A. 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 or is supported by direct evidence.

- B. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.
- C. Unduly repetitious evidence may be excluded by the Personnel Commission or the hearing officer.

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

33.9.14 **EXAMINATION OF WITNESSES:** The Personnel Commission or its hearing officer may, at its discretion, exclude witnesses not under examination except for the appellant, a District representative, the Director of Classified Personnel, and their respective counsel or designated representatives.

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

- A. Such evidence shall be submitted by sworn affidavit (signed declaration under penalty of perjury) of the witness. The affidavit shall be confined to a statement of facts bearing on the case and within the personal 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.
- B. Copies of all such affidavits shall be filed with the Classified Personnel office , and served on the opposing party, at least five (5) working days prior to the date of the hearing.
- C. 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 granted to secure the attendance of the witness.
- D. The Personnel Commission, or hearing officer, may reject any such affidavit submitted which fails to comply with any of the foregoing conditions.

33.9.16 **SUBMISSION OF BRIEFS AT THE CLOSE OF THE HEARING:** At the close of the hearing, the Personnel Commission, or the appointed hearing officer, has the sole discretion to allow or require briefs to be submitted by each side for consideration.

33.10 PREPARATION AND REVIEW OF PROPOSED DECISION BY HEARING OFFICER

33.10.1 **FINDINGS BASED ON PREPONDERANCE OF EVIDENCE:** The findings of the Commission or hearing officer acting on its behalf shall be based upon the preponderance of evidence. The Commission or its hearing officer shall

determine the relevancy, weight, and credibility of the evidence and testimony presented.

33.10.2 **FINDINGS OF HEARING OFFICER:** The hearing officer shall submit his/her written proposed decision, containing findings of fact, conclusions of law, and recommended disciplinary action or remedy, to the Director of Classified Personnel within thirty (30) calendar days following the conclusion of the hearing unless an extension is agreed to by the Personnel Commission, or its designee.

- A. The proposed decision shall be prepared in a form that can be adopted by the Personnel Commission as its decision in the case.
- B. Personnel Commission staff will notify the appellant, his/her representative, and the District's representative of the date of the meeting when the Personnel Commission will consider its decision on the appeal. Personnel Commission staff shall provide the appellant, his/her representative, and the District's representative with a copy of the proposed decision.
- C. If either the employee or the District believes that the Personnel Commission should give further consideration to the decision, he/she shall submit a written request to the Personnel Commission, with a copy to the opposing representative, detailing reasons for further consideration and the remedy sought.
- D. The Personnel Commission may request that the hearing officer be present to review the proposed decision.
- E. In all cases in which the Personnel Commission is deliberating on the proposed decision of the hearing officer, the Personnel Commission shall meet in closed session.

33.11 DECISION OF PERSONNEL COMMISSION: The Personnel Commission shall render its decision on the matter of appeal as soon after the conclusion of the hearing as possible. The decision of the Personnel Commission shall be in writing and shall set forth which charges, if any, are sustained and the reasons therefor.

- A. The Personnel 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 Personnel Commission may order. If a further investigation or hearing is ordered, the Personnel 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, she/he shall prepare and file another proposed decision.

- B. The Personnel Commission may not invoke more stringent discipline against the employee than that invoked by the Governing Board should it sustain any or all of the charges.
- C. The Personnel Commission's written decision shall contain findings of fact, a determination of the issues presented, and identify the penalty imposed, if any.
- D. 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.
- E. Following its determination of the facts and findings relative to the disciplinary action invoked against the employee, the Personnel 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:
 - i. Compensation to the employee for all or part of the legitimate expenses incurred in pursuit of the appeal.
 - ii. The granting of seniority credit for off-duty time pending reinstatement.
 - iii. Transfer or other change of the employee's work location.
 - iv. Expungement from the employee's personnel file of those causes, charges, and/or disciplinary actions that are not sustained by the Personnel Commission.
- F. Copies of the Personnel Commission's decision shall be delivered to the parties personally or by mail as outlined in section 13.6.3

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

33.13 COUNSEL FOR THE PERSONNEL COMMISSION: The Personnel Commission may seek appointment of legal counsel as part of its appeal and investigatory hearing responsibilities pursuant to Education Code section 45313.