

### Administrative Regulation

#### Classified Employees; Personnel Commission Appeal Hearing Procedures

##### A. Authority of Commission Hearing and Decision

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

##### B. Appointment of Hearing Officer

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

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

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

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.

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.

E. Hearings Conducted to Determine Truth

Hearings shall be conducted in the manner most conducive to determination of the truth, and neither the Personnel Commission nor its appointed hearing officer shall be bound by technical rules of evidence. Decisions made by the Personnel Commission shall not be invalidated by any informality in any of the proceedings.

F. Oral Evidence by Oath Only

Oral evidence shall be taken only on oath or affirmation.

G. Ability to Examine Evidence

Each party shall have the following rights related 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 examination(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.

H. 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.

I. 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.

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.

The rules of privilege shall be in effect, to the extent that they are otherwise required by statute to be recognized at the hearing. Irrelevant and unduly repetitious evidence shall be excluded.

J. Right to Be Represented

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

K. 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.

L. Ruling on Objections

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

M. 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.

N. Order of Presentation of Evidence

Each side will be permitted an opening statement and closing arguments (Board's representative first, appellant or his/her representative last). The Board shall be first in presenting its witnesses and evidence in an effort to support its charges, and then the appellant or his/her representative will present his/her witnesses and evidence in defense.

O. Examination of Witnesses

Each side will be allowed to examine and thoroughly cross-examine witnesses.

The Commission or its hearing officer may, at its discretion, exclude witnesses not under examination from the hearing room, except for the appellant, district representative, the personnel director, and their respective counsels or designated representatives.

The Commission or its hearing officer may examine witnesses and ask questions of the parties.

P. 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 personnel director shall issue the subpoenas on behalf of the Commission or its hearing officer. Subpoenas shall be delivered to the requesting party for service.

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

Q. List of Witnesses

A list of witnesses to be called by each party shall be submitted to the Personnel Commission office at least 48 hours prior to the date of the hearing. This will allow the Personnel Commission to secure the release time of employee witnesses prior to the hearing.

R. 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:

Such evidence must be submitted by sworn affidavit of the witness. The affidavit shall be confined to a statement of facts bearing on the case and within the knowledge of the witness, and shall not contain any conclusions of the witness, except that a witness who qualifies as an expert may express his/her opinion based upon the facts which he/she has recited.

Copies of all such affidavits must be filed with the Personnel Commission office or the hearing officer at least three (3) working days prior to the date of the hearing, and may be inspected by the other party to the hearing, who shall be notified of the filing of such affidavits.

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.

S. 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.

The hearing officer shall submit his/her written recommendations and findings of fact to the personnel director within twenty (20) working days following the conclusion of the hearing.

Upon receipt of the hearing officer's written recommendations and findings of fact, the personnel director 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.

T. 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 any Commission staff deemed necessary by the Personnel Commission, shall be permitted to participate in the deliberations. If the personnel director was the administrator initiating the disciplinary action, or if the director acted on behalf of the Board of Education in the representation of the case at any level of the appeal process, or if the director served as a witness in the proceedings, the personal director shall also be excluded from the Commission's deliberations.

U. Decision of Personnel Commission

The Personnel Commission shall render its judgment as soon after the conclusion of the hearing as possible, but no later than twenty (20) working days following the conclusion of the hearing. The decision(s) of the Commission shall be in writing and shall set forth which charges, if any, are sustained and the reasons therefore.

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 pleadings 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.
3. Copies of the Commission's decision(s) shall be delivered to the parties personally or transmitted to them by certified mail (Return Receipt Requested). The requirement for notification of the employee will be deemed to have been met if the decision is sent certified mail to the last known home address on file in the Personnel Commission office. Failure of the employee to retrieve delivered mail, or respond to notifications by the U.S. Postal Service of attempted delivery shall not be grounds for voiding notification. For purposes of this rule, if a notice is mailed, the third working day following the mailing date of the notice shall be considered to be the official date of receipt.

V. 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.

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

W. Commission Action

The Personnel Commission may sustain or reject any or all of the charges filed against the employee. The Commission may sustain, modify, or reject the disciplinary action invoked against the employee. However, the Commission may not invoke more stringent discipline against the employee than that invoked by the Board of Education (should it sustain any or all of the Board's charges).

X. Decision Must Include Consideration of Just Settlement

Following its determination of the facts and findings relative to the disciplinary action invoked against the employee, the Commission shall consider such other matters as it deems necessary and proper to effect a just settlement of the appeal, including, but not limited to:

1. Compensation of the employee for all or part of the legitimate expenses incurred in pursuit of the appeal. If such a finding is made, the expenses ordered paid by the Commission shall be a legitimate and legal draw upon the general funds of the district and the Board of Education.
2. The granting of seniority credit for any or all of the off-duty time pending restoration or reinstatement.
3. Transfer or other change of the employee's work location.
4. Expunction from the employee's personnel file and record of any and all causes, charges that are not sustained by the Commission, and/or disciplinary actions.

Y. Obtaining Copies of the Hearing Transcript

The employee or his/her designated representative and the Board of Education 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 personnel director 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 personnel director.
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.

Z. 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 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.

AA. Counsel for the Personnel Commission

The Personnel Commission may, if it so desires, seek and appoint legal counsel as part of its appeal and investigatory hearing duties. To avoid any conflict of interest, the legal counsel shall not be the same counsel representing the Board of Education, nor shall the Board and the Commission be represented by members of the same legal firm in a hearing held pursuant to these rules and regulations. All reasonable costs associated with the use of such legal counsel by the Personnel Commission in hearings shall constitute a legal charge against the Board of Education's general funds, whether or not the money or costs for legal services appear in the Commission's budget.