

Administrative Regulation

Classified Employees; Filing for Appeal Hearing Before CommissionA. Appeal to Personnel Commission

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

B. Notification by Personnel Director

Upon notification by the Board of Education of its decision relative to the proposed disciplinary action, the personnel director shall notify the employee in writing of the results of the Board's decision. If the action of the Board was to reject all disciplinary action, the personnel director shall notify the employee in writing within five (5) working days after notification of the Board's decision. If the decision of the Board of Education was to continue or modify the proposed disciplinary action, the personnel director shall notify the employee in writing within five (5) working days after the notification of the Board's decision. Such notification shall be in the form of a Notice of Disciplinary Action.

C. Contents of Notice of Disciplinary Action

1. The nature of the disciplinary action taken (suspension, demotion, dismissal, etc.).
2. The specific causes and sections of these rules that the employee is accused of violating and upon which the disciplinary action is based.
3. The specific charges, including times, dates, location, and a description of the chargeable actions or omissions in ordinary and concise language.
4. The effective date(s) of the disciplinary action.
5. A copy of all evidence and documentation to support the district's case against the employee.
6. The employee's right to representation.
7. A true copy of the superintendent's notification to the Personnel Commission office of the decision made by the Board of Education.

8. The employee's right to appeal the disciplinary action to the Personnel Commission within fourteen (14) calendar days of service of the Notice of Disciplinary Action, and the right to have such a hearing within the timelines specified in these rules.
9. A statement that the Commission may sustain, reject, or modify the disciplinary action taken against the employee; and that the Commission may not provide for discipline more stringent than that invoked by the Board of Education.
10. The employee's right to a reasonable amount of time off with pay to respond to the charges, if the employee is still in a paid status after implementation of the disciplinary action.
11. The employee's right to respond to charges either orally or in writing.
12. The employee's right to request the Personnel Commission to subpoena witnesses or other material evidence.

D. Notice Must Use Readily Understood Language

The charges outlined in the Notice of Disciplinary Action must be written so clearly that the employee will know the exact complaint(s), charge(s), and actions taken against him/her, and may be expected to respond to them. A Notice of Disciplinary Action stating one or more causes or grounds for disciplinary action established by any rule, regulation, or statute solely in the language of the rule, regulation, or statute, is insufficient for any purpose.

E. Appeal Form Must Accompany Disciplinary Notice

A card or paper must accompany the Notice of Disciplinary Action on which shall explain the procedure for hearing and the signing and filing of which shall constitute a demand for hearing. The appeal form must be submitted to the Personnel Commission office by the deadline noted in the Notice of Disciplinary Action. The employee must 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 must also contain the name of his/her legal counsel or representative (if known at the time of the appeal) and the address and telephone number of such counsel or representative. The employee must 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 non-membership 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 Rule 4236.1(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.

F. Notice Must Be in Writing and Served on Employee

The Notice of Disciplinary Action shall be in writing and served in person or by certified mail (Return Receipt Requested) to the employee. This requirement will be deemed to have been met if the Notice of Disciplinary Action is sent certified mail to the last known home address on file in the 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, or the staying of the timelines outlined in these rules. 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.

G. 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 Education shall be final and conclusive, and no further appeal rights shall be allowed.

H. 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 thirty (30) calendar days of receipt of the employee's appeal notice by the Personnel Commission office.

I. Notification of Hearing to Employee

The personnel director shall notify the district and the Personnel Commission upon receipt or lack of receipt of an appeal notice, and shall coordinate the scheduling of the Commission Appeal Hearing if a timely appeal is filed.

1. The personnel director shall notify the employee in writing within ten (10) 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. The employee must be given at least ten (10) working days from the date of personal service, delivery, or attempted delivery by the U.S. Postal Service to prepare for the hearing.
3. Notification shall be either in person or sent by certified mail (Return Receipt Requested). This requirement will be deemed to have been met if the notification of the Commission Appeal Hearing 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, or the staying of the timelines outlined in these rules. 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.

J. General Conduct of Commission Appeal Hearing

The employee shall have the right to appeal the disciplinary action to the Personnel Commission and be heard in his/her own defense. At this full evidentiary hearing, the employee shall have the right to present all evidence and testimony on his/her behalf, to examine all evidence submitted by the district, hear testimony of the supervisor(s) who initiated the action, and examine and cross-examine all witnesses giving testimony. All hearings before the Personnel Commission shall be in closed session, unless the appealing employee requests an open hearing in his/her appeal notice. The Personnel Commission hearing shall be specifically conducted pursuant to Rule 4236.6.

K. Right to Representation

The employee may, at his/her option, be represented by legal counsel, union representation, or any other person designated by the employee. If the employee files an appeal, the employee shall be required to attend the Commission Appeal Hearing, even if the employee's designated representative appears on his/her behalf. If the employee fails to appear, the employee will be deemed to have forfeited his/her rights to further appeal and the Personnel Commission shall allow the Board of Education's disciplinary action to stand.