

## CHAPTER 12

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

12.1.B

5. Any willful or persistent violation of the Education Code, Personnel Commission Rules and Regulations

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

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.

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

REFERENCE: Education Code Sections 88080 and 88081

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

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.



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,LA7f.983 7.16tions havoa70 Tc 05mt.765 Tcac

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 a.

3. Notification shall be either in person or sent by Certified Mail Return Receipt Requested. This require

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 PER



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 6759 Tm6.58n or a criiTj12 0 0 12 4

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 Pe



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



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