

CHAPTER 19

PROCEDURES FOR DISCIPLINARY ACTION AND APPEAL

19.1 **GENERAL PROVISIONS ON DISCIPLINARY ACTIONS**

19.1.1 **DISCIPLINARY ACTION:**

A permanent classified employee shall be subject to disciplinary action only for cause as prescribed by these rules and regulations, and only pursuant to the procedures outlined herein.

Reference: EC§ 45260, 45261 and 45302

19.1.2 **TIME LIMITS ON DISCIPLINARY ACTION:**

In the disciplinary process the following general guidelines regarding timelines shall be applicable:

19.1.2.1 No disciplinary action shall be taken against an employee based on documentation in the employee's permanent personnel file which is in excess of two (2) years of age.

19.1.2.2 Failure to meet deadlines outlined in this section shall not result in the discontinuance of the disciplinary action except for the deadlines identified in the following:

A. Section 19.1.8.3 (Notification of the right of the employee to request a Skelly hearing.) If this timeline is not met, the disciplinary action against the employee shall be terminated.

B. Section 19.2.4 (The employee's filing of an appeal before the Commission.) If the employee does not meet this timeline, he/she will be deemed to have waived his/her right to appeal the decision of the Governing Board to the Commission, or to any court, with the decision of the Governing Board in the disciplinary action being deemed final.

Reference: EC§ 45260 and 45261

19.1.3 **PROHIBITED ACTS RELATED TO DISCIPLINE:**

No employee shall be suspended, demoted, dismissed, subjected to any form of disciplinary action, harassed, or in any way discriminated against because of the employee's affiliations, race, color, national origin, age, marital status, sex, sexual orientation, physical or mental disability, 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 belief or acts, except as legally provided in Rule 19.1.5.

Reference: EC§ 45260 and 45261
Government Code §12926

19.1.4 **DEFINITION OF DISCIPLINE:**

Disciplinary action includes any action or incident whereby an employee is deprived of any classification or any incident of classification in which he/she has permanence, including dismissal, suspension without pay, involuntary demotion, or any involuntary reassignment to a lower classification except a layoff for lack of work or lack of funds.

Reference: EC§ 45260 and 45261

19.1.5 **CAUSES FOR DISCIPLINARY ACTION:**

19.1.5.1 The following causes shall be grounds for disciplinary action and shall be subject to the progressive discipline procedures outlined herein:

19.1.5.1.1 Unsatisfactory Performance – Engaging in below standard work performance.

19.1.5.1.2 Inefficiency – The inability to perform the assigned duties of the position.

19.1.5.1.3 Insubordination – Knowingly refusing to comply with directives, including but not limited to refusal to perform reasonably assigned duties.

19.1.5.1.4 Inattention to or Dereliction of Duty - Neglect or dereliction in the performance of assigned duties.

19.1.5.1.5 Dishonesty.

19.1.5.1.6 Violation of state and/or federal law, Personnel Commission Rules and Regulations, or written policies or procedures adopted by the District.

19.1.5.1.7 Engaging in political activities during assigned hours of duty or using district funds, services, supplies, or equipment for purposes of urging support or defeat of any ballot measure or candidate, in violation of law or board policy and regulations.

19.1.5.1.8 Active participation by a management or confidential employee in the affairs of any employee organization that is an exclusive representative. Actual participation shall include holding office in the organization, working for the organization in the capacity of an employee or volunteer, and participating in activities designed to increase membership in the organization.

19.1.5.1.9 Repeated unexcused absence or tardiness.

19.1.5.1.10 Abuse of leave.

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- 19.1.5.1.11 Abandonment of Position – Absence of three (3) consecutive working days without notification or permission (and failure to notify the District of a valid or acceptable reason for absence).
- 19.1.5.1.12 Failure to return to work or notify the District within three (3) working days following an authorized leave of absence except in the case of dire emergency.
- 19.1.5.1.13 Theft, unauthorized use, willful misuse for personal gain, willful destruction or mishandling of District, student body, student and/or parent/guardian property.
- 19.1.5.1.14 Possession of opened alcoholic beverage containers on District property, consuming alcoholic beverages on District property or while on duty, or being under the influence of alcohol while on duty.
- 19.1.5.1.15 Unlawfully possessing, using, selling or otherwise furnishing or being under the influence of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code while on duty or on school property.
- 19.1.5.1.16 Unlawfully offering, arranging or negotiating to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code while on duty or on school property.
- 19.1.5.1.17 Verbal abuse of a pupil, a member of the public, another District employee, or a District official.
- 19.1.5.1.18 Use of language likely to result in violence or verbally threatening violence on a pupil, a member of the public, another District employee, or a District official.
- 19.1.5.1.19 Physically attacking a pupil, a member of the public, another District employee, or a District official.
- 19.1.5.1.20 The misuse of district technology.
- 19.1.5.1.21 Knowingly falsifying or withholding any material information supplied to the District, including but not limited to, information supplied on application forms, time sheets, and employment records.
- 19.1.5.1.22 The uninsurability of an employee to drive a District vehicle when such is a requirement of the employee's position.
- 19.1.5.1.23 Failure to possess or keep in effect any license, certificate, or other similar requirement specified in the employee's class specification or otherwise necessary for the employee to perform the duties of the position.

- 19.1.5.1.24 Willful or persistent violation of, or failure to enforce, regulations or procedures pertaining to health and safety.
- 19.1.5.1.25 All forms of conduct or discrimination prohibited under federal, state or local laws, including but not limited to: ethnic, racial, religious, or harassment of another based on protected classification.
- 19.1.5.1.26 Advocacy of the overthrow of the federal, state, or local government by force, violence, or other unlawful means.
- 19.1.5.1.27 Possession of a weapon on District property or while on duty except as expressly authorized by the Superintendent or designee.
- 19.1.5.1.28 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.
- 19.1.5.1.29 Conviction of a felony or serious crime or a record of one (1) or more convictions which indicate that the person is a poor employment risk for the particular job which the employee holds in the District.
- 19.1.5.1.30 Intentionally and knowingly disclosing to any person any information expressly designated to be "confidential" by California law, federal law, or duly adopted, written Board policy of the District.
- 19.1.5.1.31 Any other failure of good conduct tending to injure the public service.

Reference: EC§ 212.5, 230, 44010, 44011, 45260, 45261, 45302, 45303 and 45304
GC§ 1028
Penal Code§ 261
Health and Safety Code§ 11054, 11056, 11357-11361, 11363-11364 and 11377-11382

19.1.6 **PROGRESSIVE DISCIPLINE**

These steps may be repeated or skipped based on the severity or nature of the misconduct.

19.1.6.1 **VERBAL WARNING:**

At this informal meeting, the employee shall be informed of the specific areas of his/her service which need improvement and, where appropriate, the supervisor shall prepare a plan for assistance which will help the employee correct any deficiencies and provide for a time period for improvement. This

shall be an informal meeting and no record shall be included in the employee's permanent personnel file of this meeting at this time. Should there be a need for subsequent disciplinary action, records of this meeting may be included with other documentation of deficiencies.

19.1.6.2 **WRITTEN WARNING:**

A written warning shall state the rule violated, the acts or omissions in violation, recommendations for performance improvement, a time period for improvement, and consequences for continued infractions. This written warning shall be included in the employee's official personnel file. The employee shall have the right to review and respond pursuant to Merit System Rule 12.1.6.

19.1.6.3 **LETTER OF REPRIMAND:**

A letter of reprimand shall include the specific cause for the action; the policies, rules, and regulations alleged to have been violated; a plan for improvement; a timeline for improvement and review; and consequences for continued infractions. The employee shall sign the reprimand to acknowledge receipt only. The employee shall have the right to review and respond to the letter of reprimand.

19.1.6.4 **SUSPENSION:**

An employee may be suspended for up to thirty (30) days without pay. The proposed length of suspension shall relate to the seriousness of the alleged offense.

19.1.6.5 **FINAL STEP:**

An employee may be subjected to other forms of disciplinary action, including demotion or termination.

19.1.7 **IMMEDIATE SUSPENSION**

19.1.7.1 **Charged with Specified Criminal Offenses** - An employee shall be immediately suspended if charged with the commission of any sex offense or controlled substance offense referred to in Education Code Sections 44010, 44011, and 45304, and the suspension shall continue for not more than ten (10) days after the date of the entry of the court judgment. Any employee so suspended shall continue to be paid his/her regular salary during the period of suspension if the employee furnishes to the District a suitable bond, or other security acceptable to the District, as a guarantee that the employee will repay to the District the amount of salary so paid to him/her during the period of suspension in case the employee is convicted of such charges, or the employee does not return to service after such period of suspension. 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 suspension, provided the employee returns to service after such period of suspension.

19.1.7.2 Other Immediate Suspension - A permanent employee may be immediately suspended with loss of compensation if the Superintendent or his/her designee has determined there is a danger to the health, safety, and well-being of the employee, students, fellow employees, or District property. This suspension order shall be in writing and shall state the reasons that the suspension is deemed necessary. The suspension order shall be served upon the employee either personally or by registered or certified mail, return receipt requested, immediately after issuance. Except in cases of emergency when the employee must be removed from the premises immediately, the Superintendent or designee shall give the unit member written notice of the proposed recommendation of dismissal at least ten (10) working days before the effective date of any order of suspension issued in conjunction with a recommendation involving dismissal. This notice shall state that immediate suspension without pay is being considered, the reasons for the proposed dismissal and proposed immediate suspension without pay, materials upon which the proposed action is based, and the employee's right to respond to the Superintendent or designee orally or in writing before the final recommendation and order are issued.

19.1.7.3 **APPLICATION TO EMPLOYEES OF THE PERSONNEL COMMISSION:**

For the purposes of this section "the Personnel Commission" shall replace "the Governing Board" and "the District" and "the Director of Human Resources-Classified" shall replace "the Superintendent" for individuals employed by the Personnel Commission. For Personnel Commission employees the appeal of disciplinary action imposed by the Personnel Commission shall be before a Hearing Officer and the decision of the Hearing Officer shall be the final disposition of the appeal. The Personnel Commission shall adopt and abide by the decision of the Hearing Officer.

19.1.8 **NOTICE OF PROPOSED DISCIPLINARY ACTION**

19.1.8.1 **NOTICE:**

No permanent classified employee may be subjected to disciplinary action until the employee has received a notice of the proposed disciplinary action, and the employee has had an opportunity to respond to the charges.

For purposes of this section, "working days" shall be defined as days that the District Office is open for business.

19.1.8.2 **CONTENTS OF NOTICE OF DISCIPLINARY ACTION**

A notice of proposed disciplinary action is the notification that disciplinary action will be recommended to the Governing Board and shall contain statements in ordinary and concise language of:

- A. The nature of the proposed disciplinary action (suspension, demotion, dismissal, etc.)
- B. The specific causes and section of these rules that the employee is accused of violating.
- C. The specific charges, including times, dates, location, and a description of the chargeable actions or omissions in ordinary and concise language.
- D. The proposed effective date(s) of the disciplinary action.
- E. The employee's rights to see and obtain copies of all documentation to support the District's case against the employee.
- F. The employee's right to representation.
- G. The employee's right to request a meeting to dispute the charges and/or proposed action within ten (10) working days of notice, and the right to have such a Skelly/pre-disciplinary meeting within the timelines specified in these rules.
- H. The employee's right to respond to charges either orally or in writing at this pre-disciplinary meeting.

19.1.8.3 **NOTICE MUST BE SERVED TO EMPLOYEE:**

The notice of the proposed disciplinary action shall be in writing and served in person or by certified mail to the employee. This requirement will be deemed to have been met if the notice of proposed disciplinary action is sent certified mail to the last known home address on file in the Classified 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. It is the employee's responsibility to keep the District informed of a current home address.

19.1.9 **SKELLY/PRE-DISCIPLINARY MEETING**

19.1.9.1 **FAILURE TO REQUEST SKELLY/PRE-DISCIPLINARY MEETING:**

If the employee does not respond and request a Skelly/pre-disciplinary meeting within the ten (10) working day period outlined in the notice of proposed disciplinary action, the employee shall be deemed to have waived his/her right to a Skelly/pre-disciplinary meeting. The Superintendent or designee shall recommend to the Board that the proposed disciplinary action be approved and written notice given to the employee. The Governing Board will have the authority to either accept, reduce, or reject the recommendation of the Superintendent.

19.1.9.2 **REQUEST FOR SKELLY/PRE-DISCIPLINARY MEETING:**

If the employee requests a Skelly/pre-disciplinary meeting within ten (10) working days after receipt of the notice, the employee shall have a right to a

Skelly/pre-disciplinary meeting before the supervisor or other official who can effectively recommend that the proposed action be taken, modified or aborted, and the effective date of the proposed disciplinary action shall be stayed pending the outcome of the meeting. The Skelly/pre-disciplinary meeting shall be held prior to a recommendation of disciplinary action to the Superintendent, and shall be within ten (10) working days of the receipt of the request for meeting, unless the parties agree to an extension of this timeline.

19.1.9.3 **NOTIFICATION OF MEETING TO EMPLOYEE:**

The H. R. Director-Classified shall notify the appropriate District administrator upon receipt or lack of a meeting notice, and shall coordinate the scheduling of the Skelly/pre-disciplinary meeting if a timely request is filed.

19.1.9.4 **EMPLOYEE'S OPPORTUNITY TO REFUTE CHARGES:**

The employee shall have the opportunity to refute all charges and shall be allowed to present any evidence or information he/she may have which would cause the disciplinary recommendation to be modified or rejected at the Skelly/pre-disciplinary meeting. The employee shall not be entitled to call witnesses to testify or speak at the meeting, but may present the information those witnesses would speak or testify to, or the employee may present written statements from the witnesses or other documents summarizing the witnesses' statements.

19.1.9.5 **RIGHT TO REPRESENTATION:**

The employee may, at his/her option and at his/her own expense, be represented by legal counsel and/or union representation. It is the employee's responsibility to obtain union representation or legal counsel. If the employee files a request for a hearing, the employee shall be required to attend the Skelly/pre-disciplinary meeting, 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 right to further appeal and the Superintendent may recommend action to the Governing Board.

19.1.9.6 **SKELLY/PRE-DISCIPLINARY MEETING RECOMMENDATION:**

The District official who holds the Skelly meeting shall issue a written decision within ten (10) working days after the conclusion of the Skelly/pre-disciplinary meeting, to (1) uphold the proposed disciplinary action, (2) modify the proposed disciplinary action, (3) reject and halt the proposed disciplinary action. Within ten (10) working days of the Skelly/pre-disciplinary meeting, the Human Resources Director-Classified shall notify the employee and the Superintendent or designee in writing of this recommendation. Unless the parties have mutually agreed to an extension of the timelines noted herein, failure to meet the deadlines of this section shall result in the termination of the disciplinary action against the employee.

19.1.9.7 **SUPERINTENDENT’S OR DESIGNEE’S RECOMMENDATION:**

Following receipt of the recommendation of the Skelly/pre-disciplinary meeting official, the Superintendent or designee shall determine whether to proceed with the proposed disciplinary action. If the Superintendent or designee recommends proceeding with the proposed disciplinary action, specific written charges as described in 19.1.8.2 above shall be prepared and presented for action of the Governing Board. The Superintendent or designee shall notify the Director, Human Resources Classified, within ten (10) working days of the Board’s decision.

19.2 **APPEAL TO PERSONNEL COMMISSION**

If the decision of the Governing Board is to impose or modify the proposed disciplinary action, the permanent employee may appeal the action to the Commission, pursuant to these rules.

19.2.1 **NOTIFICATION OF BOARD ACTION AND RIGHT TO APPEAL:**

The Director-Human Resources-Classified shall notify the employee in writing of the Governing Board’s decision within ten (10) working days after notification of the Governing Board’s decision.

19.2.2 **CONTENTS OF NOTICE:**

The Notice of Disciplinary action, which is the notification that disciplinary action has been approved by the Board, shall contain statements in ordinary and concise language of:

- A. The nature of the disciplinary action taken (suspension, demotion, dismissal, etc.)
- B. The effective date of the disciplinary action.
- C. The employee’s right to appeal the disciplinary action to the Personnel Commission within fourteen (14) working days of service of the notice of disciplinary action, and the right to have such a hearing within the timelines specified in these rules.
- D. The employee’s right to representation.
- E. A statement that the Commission may sustain, reject, or modify the disciplinary action taken against the employee.
- F. The employee’s right to request the Personnel Commission to subpoena witnesses.

19.2.3 **APPEAL FORM MUST ACCOMPANY DISCIPLINARY NOTICE:**

A form must accompany the notice of disciplinary action which shall explain the procedure for Commission hearing. The appeal form must be received in the Classified H.R. 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 needs 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 and the address and telephone number of such counsel or representative. The employee must attach to the appeal form the reasons for the appeal. If the request for the appeal is not received in the Classified H.R. Office by the deadline stated in the notice to the employee, the employee shall be deemed to have waived all rights to the hearing.

Appeals can be made only on the following grounds:

- A. That the procedures set forth in these rules 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, race, color, national origin, age, marital status, sex, sexual orientation, physical or mental disability, 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 19.1.5.
- 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.
- E. That the penalty invoked by the District was excessive.

19.2.4 **ACTION IF APPEAL IS NOT FILED**

If the employee does not request a Personnel Commission Appeal Hearing within the fourteen (14) working day period outlined in the notice of disciplinary action, the action of the Governing Board shall be final and conclusive, and no further appeal rights shall be allowed.

19.2.5 **NOTIFICATION OF HEARING TO EMPLOYEE**

The Classified H.R. Director shall notify the District and the Commission upon receipt or lack of receipt of an appeal notice, and shall coordinate the scheduling of the Personnel Commission Appeal Hearing if a timely appeal is filed.

The Classified H.R. Director shall notify the employee in writing, of the time, date, and place of the Personnel Commission Appeal Hearing before the Commission. 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.

Notification shall be either in person or sent by certified mail. This requirement will be deemed to have been met if the notification of the Personnel Commission Appeal Hearing is sent certified mail to the last known home address on file in the Classified H.R. 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.

19.2.6 **MANAGEMENT OF PERSONNEL COMMISSION APPEAL HEARING**

The employee shall have the right to appeal the disciplinary action to the 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 Commission shall be in closed session, unless the appealing employee requests an open hearing in his/her appeal notice.

19.2.7 **RIGHT TO REPRESENTATION:**

The employee may, at his/her option and his/her own expense, be represented by legal counsel and/or union representation, or any other person designated by the employee. It is the employee's responsibility to obtain union representation or legal counsel. 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, the employee will be deemed to have forfeited his/her rights to further appeal and the Commission shall allow the Governing Board's disciplinary action to stand.

19.3 **PERSONNEL COMMISSION APPEAL HEARING PROCEDURES**

19.3.1 **AUTHORITY OF PERSONNEL COMMISSION HEARING:**

The Personnel Commission 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.

19.3.2 **APPOINTMENT OF HEARING OFFICER:**

The Commission may appoint a hearing officer to conduct any hearing. A hearing officer conducting such hearing may administer oaths, subpoena and require the attendance of witnesses and production of papers, and rule on motions and objections filed by the parties. 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.

19.3.3 **DISQUALIFICATION OF HEARING OFFICER OR PERSONNEL COMMISSIONER:**

A hearing officer or 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 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.

- A. If the Commission determines that there is a sufficient ground for disqualification, it may elect to disqualify the hearing officer or Commission member.
- B. Where the disqualification request concerns a Commission member, the issue shall be determined by the other members of the Commission.

19.3.4 **PERSONNEL COMMISSION SHALL DETERMINE TIME AND PLACE OF HEARING**

Upon receipt of the appeal notice, the Commission shall determine the date, time and place of the appeal hearing. 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.

19.3.5 **ALL HEARINGS SHALL BE RECORDED**

All hearings under the authority of the Commission shall be electronically recorded in such a manner that a verbatim written transcript can be produced if necessary. The Commission or 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.

19.3.6 **HEARINGS CONDUCTED TO DETERMINE TRUTH:**

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

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 or ruled out if presented in a criminal or civil procedure before a court of law. The procedure titled “Administrative Adjudication” commencing with Government Code section 11500 shall not apply to any disciplinary hearing before the Commission or a hearing officer.

19.4 **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 Commission) shall deliberate on the evidence presented and determine his/her recommendations to the Commission in closed session.

19.4.1 **DECISION OF PERSONNEL COMMISSION:**

The Commission shall render its judgment as soon after the conclusion of the hearing as possible, but not later than ten (10) working days following the conclusion of the hearing, unless both parties agree to an extension of this timeline. The decision(s) of the Commission shall be in writing and shall set forth which charges, if any, are sustained and the reason. 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.

19.4.2 **PERSONNEL COMMISSION ACTION**

The 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.

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 implemented.

Copies of the Commission’s decision(s) shall be delivered to the parties personally or transmitted to them by certified mail.

19.4.3 **GOVERNING BOARD SHALL COMPLY WITH COMMISSION DECISION:**

Upon receipt of the Commission’s written decision the Governing Board shall forthwith comply with the provisions thereof. When the Governing Board has fully complied with the Commission’s decision, it shall so notify the Commission in writing.

If the Governing Board failed 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 insure compliance.

19.4.4 **DECISION MUST INCLUDE CONSIDERATION OF JUST SETTLEMENT:**

Following its determination of the facts and findings relative to the disciplinary action invoked against the employee, if the Commission sustains the appeal and rejects the Governing Board's recommended disciplinary action, 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:

- A. 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 Governing Board.
- B. The granting of seniority credits for any or all of the off-duty time pending restoration or reinstatement.
- C. Removal from the employee's personnel file and record of any and all charges and/or disciplinary actions that are not sustained by the Commission.

19.4.5 **COUNSEL FOR THE PERSONNEL COMMISSION**

The 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 Governing Board, 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 Commission in hearings shall constitute a legal charge against the Governing Board's general funds, whether or not the money or costs for legal services appear in the Commission's budget.