

Public Session: 10:00 AM

I. Organizational Functions

A. Call to Order: 10:05 A.M.

B. Roll Call

Committee Members	Present	Absent
Lawrence Leone, Personnel Commission	X	
Barbara Greenstein, Personnel Commission	X	
Carol Long, Personnel Commission	X	
Dr. Tre'Shawn Hall-Baker, Human Resources	X	
Lee Peterson, CSEA	X	
Joshua Casillas, CSEA	X	
Kennisha Green, CSEA	X	
Brent Heximer, CSEA	X	
Alberto Echeverria, SMCP OA		X

II. Approval of Minutes: Meeting Date: May 3, 2023

Disposition by the Committee	
Motion Made By	Lee Peterson
Seconded By	Barbara Greenstein
Ayes	8
Nays	0
Abstentions	0
Amendments/Comments	

III. Public Comments (Non Actionable Items from those in Attendance)

No Comments.

IV. Major Items of Business

Item	Subject Matter
1	Meeting Calendar for Fiscal Year 2023-2024
2	Merit Rules Chapter 14

Proposed Meeting Calendar for Fiscal Year 2023 – 2024:

Weekday	Month	Day	Year	Time
Wednesday	July	5	2023	10:00 a.m.
Wednesday	August	2	2023	10:00 a.m.
Wednesday	September	6	2023	10:00 a.m.
Wednesday	October	4	2023	10:00 a.m.
Wednesday	November	1	2023	10:00 a.m.
Wednesday	December	6	2023	10:00 a.m.
Wednesday	January	3	2024	10:00 a.m.
Wednesday	February	7	2024	10:00 a.m.
Wednesday	March	6	2024	10:00 a.m.
Wednesday	April	3	2024	10:00 a.m.
Wednesday	May	1	2024	10:00 a.m.
Wednesday	June	5	2024	10:00 a.m.

A motion was made to accept the updated version of the Merit Rules Advisory Committee Meeting Calendar for Fiscal Year 2023-2024:

Weekday	Month	Day	Year	Time
Wednesday	July	5	2023	10:00 a.m.
Wednesday	August	2	2023	10:00 a.m.
Wednesday	September	6	2023	10:00 a.m.
Wednesday	October	4	2023	10:00 a.m.
Wednesday	November	1	2023	10:00 a.m.
Wednesday	December	6	2023	10:00 a.m.
Wednesday	January	3 10	2024	10:00 a.m.
Wednesday	February	7	2024	10:00 a.m.
Wednesday	March	6	2024	10:00 a.m.
Wednesday	April	3	2024	10:00 a.m.
Wednesday	May	1	2024	10:00 a.m.
Wednesday	June	5	2024	10:00 a.m.

- July 2023 Meeting Cancelled
- January 2024 Meeting Rescheduled

Disposition by the Committee	
Motion Made By	Tre Shawn Hall-Baker
Seconded By	Lee Peterson
Ayes	8
Nays	0
Abstentions	0
Amendments/Comments	

A Motion was made to send Merit Rules Chapter 14 to the Personnel Commission for a First Reading:

<p>14.1.2</p> <p>CHAPTER XIV DISCIPLINARY ACTION AND APPEALS</p> <p>Rule 14.1</p> <p>DISCIPLINARY ACTION - SUSPENSION, DEMOTION, AND DISMISSAL (EDUCATION CODE SECTION 88123)</p> <p>14.1.1</p> <p>GENERAL PROVISIONS</p> <p>A. A permanent classified employee shall be subject to disciplinary action only for cause as prescribed by law or Section 4.14.1.4 of this Rule. No disciplinary action shall be taken against any permanent employee for any cause which arose <u>more than ten years prior to the date on which the employee became permanent, nor for any cause which arose more than two years preceding the date of issuance of the Notice of Disciplinary Action, unless such cause was concealed or not disclosed by the employee, when it could reasonably be assumed that the employee should have disclosed the facts to the appropriate authority.</u></p> <p>B. No classified employee shall be suspended, demoted, or dismissed, or in any way discriminated against because of their <u>ancestry, ethnic group identification, race, color, national origin, religion, age, marital status, sex, sexual orientation, gender, gender identity, gender expression, disabilities, ancestry, medical condition (as defined in Government Code Section 12960), language, accent, citizenship status, marital status, economic status, veteran status, or religious or political beliefs or acts, except as provided in Section 4.14.1.4.A.6 of this Rule. No classified employee shall be suspended, demoted, or dismissed, or in any way discriminated against because of their basis of associations or perceived affiliations with whenever <u>protected groups listed in this section.</u></u></p> <p>C. No permanent or probationary classified employee shall be suspended, demoted or dismissed until final approval is given by the Board, except for suspensions processed under Section 14.1.5.C of this Rule.</p>	<p>NOTICE OF DISCIPLINARY ACTION</p> <p>A. A Notice of Disciplinary Action under this Rule shall contain specific charges in ordinary and concise language of the individual acts or omissions of the employee which have resulted in the recommendation for disciplinary action. The charges shall also include a listing of the cause specified in Section 4 of this Rule which has been violated by the employee and the date(s), time(s) and place(s) when the violation occurred.</p> <p><u>An employee recommended for disciplinary action shall be served with a notice of recommended disciplinary action which shall in ordinary and concise language set forth the following information:</u></p> <ol style="list-style-type: none"> 1. A statement of the nature of the disciplinary action being recommended (e.g. suspension without pay, dismissal). 2. The specific causes and charges for disciplinary action. 3. A statement of the specific acts or omissions on which the charges are based. If a violation of a rule, policy or regulation of the District is alleged, the rule, policy or regulation shall be stated. 4. Information about the employee's right to present information relative to the causes and charges for disciplinary action at a Pre-Disciplinary Conference (commonly called a "check review meeting"), which shall take place not less than five (5) working days after receipt of the notice. 5. The date, time and place of the check review meeting. 6. The employee's right to contact their Union representative if applicable and to be accompanied by a representative of the employee's choice. 7. The employee shall be advised of their right to review and receive a copy of any documents in their personnel file. <p>B. The employee shall be advised of their right to respond either orally or in writing within 5 working days after receipt of the notice to the person so designated on the notice. The employee shall also be advised of their right to review and receive a copy of all any documents in their personnel file on which the disciplinary action is based.</p>	<p>C. All communications, notice of recommended disciplinary action from the District to the employee shall either be:</p> <ol style="list-style-type: none"> 1. Delivered personally and signed for by the employee; 2. Emailed along with Sent by certified mail, return receipt requested, to the last known address of the employee on file with the District, or the Personnel Commission Office. <p>14.1.3</p> <p>DEFINITIONS</p> <p>A. Suspension shall mean the temporary removal of an employee from a position for cause with loss of pay as a disciplinary measure, or indefinite removal primarily to investigation of charges pursuant to Section 88123 of the Education Code.</p> <p>B. Demotion shall mean the involuntary <u>reduction/ change of assignment</u> of an employee from a class with a higher pay <u>grade/range</u> to a class with a lower pay <u>grade/range</u> or from a higher salary increment step to a lower salary increment step.</p> <p>C. Dismissal shall mean the involuntary separation of an employee from service for cause.</p> <p>14.1.4</p> <p>CAUSES FOR SUSPENSION, DEMOTION OR DISMISSAL</p> <p>A. A permanent classified employee may be subject to <u>immediate</u> disciplinary action <u>by the Board only</u> for the following causes:</p> <ol style="list-style-type: none"> 1. Insubordination, including but not limited to refusal to do reasonably assigned work or any other serious breach of discipline. <u>(The refusal to follow an unlawful order or directive does not constitute insubordination.)</u> 2. <u>Discourteous, offensive or abusive conduct</u> toward other employees, students or the public. 3. <u>Misuse, theft, destruction or mishandling of District property, or property of employees or students</u> of the District. 4. 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
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- special treatment to another employee or to any member of the public.
- 5. Unauthorized possession of opened alcoholic beverage containers or drinking alcoholic beverages or being intoxicated while on the job or unauthorized use of nicotine or habit forming unlawful drugs or being under the influence of drugs not prescribed by a licensed physician while on the job.
- 6. Engaging in political activities during assigned hours of employment.
- 7. Immoral conduct.
- 8. Conviction of a crime of violence or moral turpitude or a serious crime where the nature of the crime is such that it will indicate that the employee is a poor employment risk for the particular job they hold in the District.
- 9. Conviction of a sex offense or a narcotics offense as defined in Education Code Sections 87010 or 87011. ~~Not an employee convicted of a sex offense as defined in the Education Code shall be dismissed.~~
- 10. ~~Abandonment of position which shall be interpreted to mean an absence without approved leave or abuse of leave privileges continued notification in excess of five (5) working days except in case of dire emergency.~~
- 11. Knowingly falsifying any information supplied to the District including but not limited to information supplied on application forms, employment records and other records.
- 12. Persistent violation or refusal to obey District safety rules or other procedures made applicable to the District by the Board, or by any appropriate state or governmental agency.
- 13. Any willful failure of good conduct tending to injure the public service or its reputation with particular regards to students.
- 44. ~~Abandonment of position, which shall be interpreted to mean an absence without continued notification in excess of five working days except in case of dire emergency.~~

~~presented to the employee prior to their return to work at a conference with the employee's supervisor and the Personnel Administrator. All procedures for notification required in these rules shall then be complied with.~~

~~D. Temporary Board suspensions are subject to ratification by the Board at the next meeting following the suspension.~~

~~An employee recommended for disciplinary action shall be served with a notice of recommended disciplinary action which shall in ordinary and concise language set forth the following information:~~

~~A statement of the nature of the disciplinary action being recommended and suspension without pay, demotion, dismissal.~~

~~The specific cause and charges for disciplinary action.~~

~~A statement of the specific acts or omissions on which the causes are based, if a violation of a rule, policy or regulation of the District is alleged, the rule, policy or regulation shall also be stated.~~

~~If the employee is represented, the following information should be included as well:~~

~~Notification of their right to present information relative to the cause and charges for discipline action at a Pre-Disciplinary Conference (commonly called a "hearing" meeting) which shall take place not less than five (5) working days after receipt of the notice.~~

~~The date, time, and place of the "hearing" meeting, if applicable.~~

~~The employee's right to contact their union concerning representation and to be accompanied by a representative of the employee's choice.~~

~~F. After the employee has had an opportunity to respond to the notice of recommended disciplinary action or has not requested such an opportunity to respond, the Superintendent/President or designee shall determine whether to proceed with the recommendation for disciplinary action in the event that the~~

~~461d. Advocacy of the overthrow of federal, state, or local government by force, violence or other unlawful means.~~

~~461e. Willful or persistent violation of these rules or adopted and implemented procedures of a department where such procedures are made known to the employees in writing.~~

~~47-156 Failure to report for review of criminal records or for a health examination after due notice.~~

~~48-127 Sexual harassment of any student, employee, member of the Board of Trustees, or any member of the public, while on any of the District campuses or facilities as prohibited by the Board Policy 4112.2.~~

B. A permanent classified employee shall be subject to disciplinary action for the following performance related causes, only after the employee has received notice of unsatisfactory performance and an opportunity to correct the same, completion of a need for work improvement and Unsatisfactory—Work Performance—Notice—as provided in Section 68 of this Rule.

- 1. Incompetence, below standard work performance, a pattern of inefficiency, or continued negligence in the performance of the duties of their position.
- 2. Repeated or unexcused tardiness or absence after warning.

~~3. Persistent discourteous conduct towards other employees, students of the public.~~

~~4. Persistent violation or refusal to obey District safety rules or other procedures made applicable to the District by the Board or any appropriate state or federal agency.~~

~~5. Willful or persistent violation of these rules or adopted and implemented procedures of a department when such procedures are made known to the employee in writing.~~

C. A permanent classified employee may be subject to removal from service or change in status under this rule due to physical or mental infirmity for service as determined by the District physician. The employee

~~shall retain their right to appeal. The administration shall base its decision to recommend removal or change in status on the following factors:~~

~~1. The degree of physical or mental infirmity and the doctor's prognosis as they relate to the disease to be performed.~~

~~2. The number of positions in the employee's classification and subsequent uniqueness or degree of specialty in the position and the availability of a person qualified to substitute during the absence of the employee.~~

~~3. The degree and frequency of previous sick leave usage. Particular attention shall be paid to employees who have extraordinary use or lack of use of sick leave together with consideration for the circumstances surrounding previous use of sick leave.~~

Superintendent/President determines to recommend disciplinary action, such recommendation shall be submitted to the Board of Trustees.

F. The Board of Trustees may ~~also~~ accept, modify or reject the recommendation for disciplinary action. In the event that the Board of Trustees takes action to impose discipline, such disciplinary action shall be implemented on the day following the Board of Trustees' action or such other day as determined by the Board of Trustees.

G. No disciplinary action shall be implemented prior to action by the Board of Trustees, except as authorized by the Education Code. However, the District may initiate an immediate suspension without pay pending final discipline within the Board of Trustees when reasonable cause exists to believe the suspension is to protect the best interest of the District. In the event the District immediately suspends an employee without pay, the District shall provide the employee with a notice of disciplinary action within one (1) day after the unpaid suspension. An employee shall have the right to respond to the immediate unpaid suspension and to the notice of disciplinary action set forth in this Section.

~~Section 14.1.6~~

~~14.1.6 PROCEDURE FOR DEMOTION AND DISMISSAL~~

- ~~A. When a regular classified employee is recommended for demotion or dismissal for cause as listed in Section 4.A of this Rule, a Notice of Disciplinary Action shall be prepared by the immediate supervisor, approved by the departmental administrator, and transmitted to the District Personnel Administrator for final approval. A copy of the Notice shall be presented to the employee at least 5 working days prior to Board action as provided in section 2 of this Rule. A copy of this Notice shall also be filed with the Director of the Personnel Commission. The District Personnel Administrator shall then present the recommendation for demotion or dismissal of the employee to the Board for action at their next meeting.~~
- ~~B. In cases of disciplinary action arising from causes listed in Section 4.B of this Rule, the immediate supervisor and departmental administrator shall provide the employee with the following three notices before demotion or dismissal can be recommended:

 - ~~1. First Notice: Need of Work Improvement~~
 - ~~2. Second Notice: Unsatisfactory Work Performance~~
 - ~~3. Final Notice: Recommendation of Disciplinary Action~~~~

~~The Notices shall be prepared according to procedures provided in Section 2 of this Rule and each notice shall provide a minimum 30 calendar day period for the employee to improve. Should the employee improve their performance to a satisfactory level, the immediate supervisor and departmental administrator shall document the employee's performance on the following form:~~

~~4. Job Performance Progress Report~~

~~Should the employee's performance not improve, the disciplinary action may proceed as specified in part A of this section.~~

~~Section 14.1.6.C~~

~~C.H. An employee who has permanent status in the classified service and who has been promoted to a higher class may be demoted, reinstated, reemployed during the probationary period to their former class without right of appeal unless the void a demotion shall result in separation of the employee from the classified service and the employee appeal shall under the provisions of Section 14.1.6.C of this Rule. (Education Code Section 88124)~~

~~D.H. Dismissal of a permanent classified employee shall cause removal of the employee's name from all employment and eligibility lists.~~

~~In connection with discipline for the performance-related causes set forth in Section 14.1.4.B, progressive steps shall be used to assist the employee and give the employee an opportunity to improve and correct any conduct or performance that negatively affects their job performance. Progressive steps may be taken or suspended as deemed appropriate by the District. Prior to discussing an employee for a performance-related cause set forth in Section 14.1.4.B, the District shall, at a minimum, have provided the employee with a Conference Memorandum first, and then a Written Reprimand.~~

~~Section 14.1.7~~

~~14.1.7 PROCEDURE FOR NOTIFICATION OF CHARGES TO THE PERSONNEL COMMISSION~~

- ~~A. When the Board has taken final action to demote or dismiss the employee, the District Personnel Administrator, Vice President of Human Resources or designee shall, within 3 working days, notify the Director of the Personnel Commission in writing of the Board's action.~~
- ~~B. The Director of the Personnel Commission shall, within 10 working days of the Board's action to approve suspension, demotion, or dismissal, notify the employee. The Director of the Personnel Commission shall, at the next regular meeting, file written charges with the Commission.~~
- ~~C. The notification of charges to the employee shall contain:

 - ~~1. A copy of the written charges.~~
 - ~~2. The time allowed to file an appeal.~~
 - ~~3. The right of the employee to a hearing on the appeal.~~
 - ~~4. The requirements for the employee's response as set forth in these Rules.~~~~

~~Section 14.2.2.F~~

- ~~F. Each party will be permitted an opening statement, with the Board or its designated representatives opening first. Each party shall be permitted closing arguments with the employee closing first. The Board shall next present its witnesses and evidence to sustain its charges, and the employee will then present his witnesses and evidence in defense.~~
- ~~G. Each party will be allowed to examine and cross examine witnesses.~~
- ~~H. The Board, the Commission and the employee will be allowed to be represented by separate legal counsel or other designated representatives.~~
- ~~I. The Commission or the Director of the Personnel Commission may and shall, if requested by the Board or the employee, subpoena witnesses and/or require the production of records or other material evidence.~~
- ~~J. The Commission may, prior to or during a hearing, grant a continuance for any reason it believes to be important to its reaching a fair and proper decision.~~
- ~~K. A hearing shall be held in closed session unless an open hearing is requested by the employee. The Commission may, at its discretion, exclude witnesses not under examination except the employee and the party attempting to substantiate the charges against the employee and their respective counsel. When hearing testimony on alleged scandalous or indecent conduct, all persons not having a direct interest in the hearing may be excluded.~~
- ~~L. The Commission may deliberate its decision in closed session and exclude all persons other than members of the Commission and its staff or counsel. If its counsel also served as counsel for the Board, they shall be barred from the Commission's final deliberations.~~

Rule 14.2

Section 14.2.2

Rule 14.2 PROCEDURE FOR APPEAL AND HEARING (EDUCATION CODE SECTIONS 88124, 88125-72, 88126)

14.2.2 PROCEDURE FOR HEARING

14.2.1 PROCEDURE FOR APPEAL

- A. A permanent employee who has been suspended, demoted, or dismissed may appeal to the Personnel Commission within 14 calendar days after receipt of the Notice of Charges from the Director of the Personnel Commission by filing a written answer to the charges and they may request a hearing.
- B. The employee's written answer to the charges must include facts based on the following grounds:
 1. That the charges made do not constitute sufficient cause for the action taken.
 2. That the action taken was not in accord with the facts.
 3. That there was an abuse of discretion.
 4. That the procedures set forth in these rules have not been followed.
 5. That the disciplinary action was taken because of political affiliations, or religious beliefs or opinions, race, color, national origin, ancestry, sex, employee organization members or non-membership, marital status, disability, or medical condition (as defined in Government Code Section 12926).
- C. For purposes of this Rule, if a notice is mailed, the working day following the postmark date and time of the notice shall be considered to be the official date and time of receipt.
- D. Failure to appeal as provided in this Rule shall make the action of the Board final and conclusive.

- A. After an employee has made and filed their appeal in answer to the charges against them, the Personnel Commission shall investigate or cause to be investigated the matter on appeal and may require further evidence from either party. The Commission may, and upon request of an accused employee, shall order a hearing. If a hearing is to be conducted, the Personnel Commission shall then fix the time and place of the hearing which shall be within a reasonable length of time from the receipt of the appeal and shall provide written notification to all parties.

The Personnel Commission may appoint a hearing officer to conduct any hearing and report the findings and recommendations to the Commission. Such recommendations shall not be binding on the Commission.

- B. Hearings shall be conducted in the manner most conducive to determination of the truth, and neither the Commission nor its hearing officers shall be bound by technical rules of evidence. Decisions made by the Commission shall not be invalidated by any informality in the proceedings.
- C. The hearing shall be electronically tape recorded. However, 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 as determined by the Director of the Personnel Commission.
- D. The Personnel Commission or its hearing officer shall determine the relevancy, weight, and credibility of testimony and evidence. It shall base its findings on a preponderance of evidence.
- E. The burden of proof shall be on the Board.

- Section 14.2.3
- 14.2.3 FINDINGS AND ORDER
- A. The Commission shall render its judgment as soon after the conclusion of the investigation or hearing as possible, and unless an agreement for an extension is accepted by all parties, the decision shall be made within 14 calendar days after conclusion of the hearing. Its decision shall set forth which charges, if any, are sustained or rejected and the reasons therefore.
1. The Commission's decision shall be set forth in writing by the Director of the Personnel Commission and signed by the chairman of the Commission and be sent to all parties of interest.
- B. The Commission may sustain or reject any or all of the charges filed against the employee. If the Commission finds in favor of the employee, it may:
1. Order the employee's reinstatement upon such terms and conditions as it may determine appropriate.
 2. Modify the disciplinary action, but not to make more stringent the action taken by the Board.
 3. Order paid all or part of the employee's full compensation from the time of suspension, demotion, or dismissal.
 4. Order paid by the Board compensation for all or part of the legitimate expenses incurred by all parties in pursuit of the appeal.
 5. Order the employee transferred or changed in work location.
 6. Order seniority credit for off-time pending reinstatement.
 7. Order expunction from the employee's personnel file all records pertaining to the disciplinary action on charges which were or were not sustained by the Commission.
- C. The decision of the Commission shall be final.

- Section 14.2.4
- 14.2.4 TRANSCRIPT OF HEARING
- A. A copy of the transcript of the hearing shall be furnished to either party upon written request made within 90 calendar days of the decision of the Commission. The Director of the Personnel Commission shall cause the transcript to be typed and the cost of copies shall be borne by the party requesting such copies in an amount as determined by the Director of the Personnel Commission to be representative of the actual costs of preparation.

Disposition by the Committee	
Motion Made By	Lee Peterson
Seconded By	Kennisha Green
Ayes	8
Nays	0
Abstentions	0
Amendments/Comments	

V. Meeting Adjourned: 11:01 A.M.

Disposition by the Committee	
Motion Made By	Lee Peterson
Seconded By	Barbara Greenstein
Ayes	8
Nays	0
Abstentions	0
Amendments/Comments	

In accordance with the law, this regular meeting agenda was posted 72 hours in advance of the meeting.