

904 APPEALS OF DISCIPLINARY OR RESIGNATION ACTION

Statement of Intent: The purpose of this Rule is to provide an orderly and efficient procedure to enable the Commission to arrive at just and equitable decisions. It is the Commission's philosophy that the appeal process has only one intent, the exposition of truth and the granting of equity. To this end, participants are encouraged to exchange information regarding facts, witnesses, and evidence well in advance of the hearing in order to expedite the process and, if possible arrive at an equitable settlement. Mutual cooperation in achieving this purpose is of utmost importance.

This entire Rule applies to appeals of disciplinary actions, while only Paragraphs D through L apply to appeals of resignation actions initiated pursuant to Rule 768.

A. APPEAL AND ANSWER

When disciplinary action has been taken against a permanent employee, the employee must file an answer to the statement with the Commission not later than 14 calendar days after receipt of the statement of charges or lose all rights to appeal. The appeal must be received (time stamped) at the Personnel Commission's Administrative Office or postmarked during the 14 day appeal period. The answer shall be deemed to be an appeal from the action taken. The Commission promptly shall forward a copy of the answer to the Human Resources Division. The answer may be submitted on a form which shall be enclosed for that purpose with the statement of charges. The signing and filing of such form shall constitute a request for or waiver of hearing, as designated, and a denial of all charges or such charges as the appellant may specify.

B. GROUNDS FOR APPEAL

An appeal can be made only on the basis of any or all of the following grounds:

1. That the procedures for taking disciplinary actions as set forth in Rule 903 have not been followed.
2. That the disciplinary action was taken because of prohibited bases of discrimination (see Rule 500, Definitions).
3. That there has been an abuse of discretion.
4. That the action taken was not in accord with the facts.

CHANGE:

To clarify this question and make the rule consistent with time limits states in other appeal rules.

Remove: July 17, 2001, page 1 of 5. Add: (Reissue) July 17, 2001, page 1 of 6.

C. AMENDMENT OF STATEMENT OF CHARGES OR ANSWER

At any time the appeal is submitted to the Commission or its authorized representative for consideration, the person filing the statement of charges, with the consent of the Board of Education, may serve and file with the Commission and the opposing party, an amended or supplemental statement of charges. The party filing an answer to the statement of charges may, in the same manner, amend or supplement the answer, except that, in such cases, the discretion of the hearing officer, or of the Commission when the Commission acts as the hearing body, shall be substituted for consent of the Board. If new causes or allegations are presented, they shall be deemed denied by the opposing party in the absence of a rebuttal. The party shall be allowed a reasonable opportunity to prepare a rebuttal, and only those causes or allegations that are contested by the rebuttal shall be at issue in the hearing.

D. HEARING OFFICER

The Commission may authorize a hearing officer to conduct any investigation or hearing that the Commission itself is authorized to conduct. Hearing Officers shall be selected based on the quality of their training and experience while recognizing the desirability of reflecting the cultural diversity of the Los Angeles community and the staff of the District. Hearing Officers will be recruited by the Commission staff and appointed after a review of relevant training and experience and an interview by the Personnel Director or designee and at least one Commissioner. The purpose of the interview will be to determine the qualifications of the individual and impart information regarding the Commission's expectations regarding service as a Hearing Officer. In addition to the initial review of qualifications, the Commission will review the work product of individual Hearing Officers on an annual basis to determine suitability for future hearing assignments.

E. SELECTION OF HEARING OFFICER

In any case received by the Commission for hearing, the following procedure shall be followed:

1. Within seven calendar days of advisement of representation by both the administration and the appellant, a list of three available hearing officers will be mailed to each party, either by electronic mail, facsimile, or postal mail.
2. Each party shall have seven days from the date of mailing to file with the Commission and all other parties a rejection, in writing, on no more than one name on the list.
3. If more than one name remains after the rejection period, the Commission staff shall assign a Hearing Officer from the remaining names.
4. All interested parties shall be informed regarding the appointment.

CHANGE:

To establish new procedures for the selection of Hearing Officers and to expedite the overall hearing process.

Remove: January 22, 2003, page 2 of 5 Add: (Reissue) January 22, 2003, page 2 of 6.

F. NOTICE OF HEARING

The Commission staff shall arrange for a mutually agreeable date for the hearing considering the needs of the appellant, the District and the appellant's representatives, and the schedule of the assigned Hearing Officer. If the hearing date cannot be mutually agreed upon or if it appears to Commission staff that the period of delay will be unreasonable, the staff will set the hearing date in consultation with the Hearing Officer or recommend to the Personnel Commission that the hearing be cancelled. Changes in this assigned date must be approved by the Hearing Officer. A notice of the time and place of hearing shall be given or mailed to each of the parties not less than thirty days prior to the hearing. The thirty-day notice of hearing may be waived by agreement of the parties.

G. DURATION OF HEARING

Hearings will be scheduled normally for an entire work day. Participants are expected to be present at the appointed time. Appellants and advocates must be prepared to be available for the entire day.

H. CONTINUANCES

Continuances are to be discouraged. Requests for continuances will be considered by the Hearing Officer but will be granted only with sufficient showing that a significantly serious reason exists for the request. Requests for more than one continuance by each party must be approved by the Personnel Director or designee. If either party disagrees with the decision of the Personnel Director or designee, they may appeal to the Personnel Commission within seven days of the decision. The unavailability of a witness will not automatically result in the granting of a continuance. Rather, the Hearing Officer will determine if the hearing can proceed and the testimony of the witness be heard at a later date.

If the appellant has requested a continuance in an appeal of a termination action, back pay will not be paid beyond the initially set hearing date in the event that the appellant's appeal prevails.

I. SUBPOENAS AND SUBPOENAS DUCES TECUM

Request for subpoenas shall be made to the representative of Personnel Director in time to allow for personal service at least five days before the hearing or, in the case of subpoena duces tecum, at least five days prior to the date they are due to the requestor or Personnel Commission. Documents or other evidence required under a subpoena duces tecum should be made deliverable to either the requestor or the Personnel Commission staff at least one week prior to the hearing. If a document or other evidence related to that party's case-in-chief is not shared prior to the hearing and the opposing representative raises an objection at the hearing, the Hearing Officer may disallow the testimony or evidence unless the presenting party can demonstrate convincingly that its existence was previously unknown or unavailable and that no unnecessary delay was made in presenting the information to the opposing representative. An exchange of witness lists is not required. Service of the subpoenas shall be the responsibility of the parties requesting them. Subpoenas may be served by anyone over the age of 18. The administration shall require the attendance of employees who are requested as witnesses by either party.

CHANGE:

To establish new procedures for the selection of Hearing Officers and to expedite the overall hearing process.

Remove: January 22, 2003, page 3 of 4. Add: (Reissue) January 22, 2003, page 3 of 6.

J. INVESTIGATION AND HEARING

The Commission shall investigate the matter under appeal and may require additional evidence from either party. Unless the appellant waives his or her right to a hearing, the Commission shall conduct a hearing in accordance with the provisions of Section 45312 of the Education Code. In the event the appellant has waived his or her right to a hearing, the Commission may refer the matter to its staff for further investigation of the facts upon which the appeal was based. Unless the appellant request a closed hearing, all hearing shall be public. Any hearing conducted by the Commission shall be commenced within a reasonable time following the filing of the appeal. In the case of a disciplinary action, any investigation or hearing shall be confined to the allegations and relevant defenses contained in the statement of charges and answer, except as provided in Paragraph C, above.

K. PRE-HEARING CONFERENCE

The District's representative and the appellant's representative may confer in a pre-hearing conference to discuss items related to their respective case-in-chief. This conference shall occur if requested by either party. The conference may take place in person or by telephone or other electronic means. The Hearing Officer may be present to facilitate the exchange of information or settlement if so requested by either party. The appellant may be present at the option of his or her representative.

L. RULES AND EVIDENCE

The hearing need not be conducted according to the technical rules of evidence and witnesses. No informality in the proceedings shall invalidated any order, decision, rule, or regulation made, approved, or confirmed by the Commission. Oral evidence shall be taken only on oath or affirmation.

Parties are encouraged to make opening statements which delineate their positions and provide an explanation of the salient points of their case. This exposition should include a description of expected testimony and/or evidence.

Each party may call and examine witnesses, cross-examine any witness on any relevant matter even though that matter was not covered in the direct examination, impeach any witness, regardless of who first called him or her to testify, and rebut evidence. An appellant who does not testify in his/her own behalf may be called and examined as if under cross examination. Each party may request the Commission or its authorized representative to exclude witnesses from the hearing when such witnesses are not being examined.

Any evidence shall be admitted if it is the kind of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be admitted, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

CHANGE:

Relettering of paragraphs to reflect new additions.

Remove: January 22, 2003, page 4 of 5. Add: (Reissue) January 22, 2003, page 4 of 6.

LOS ANGELES UNIFIED SCHOOL DISTRICT
PERSONNEL COMMISSION

904

LAWS AND RULES

January 9, 2019

M. FAILURE TO APPEAR AT HEARING

Failure of the appellant to appear at the hearing shall be deemed a withdrawal of the answer in the case of a disciplinary action, or a withdrawal of the appeal in the case of a resignation action, and the disciplinary or resignation action taken shall be upheld. Nothing herein shall prohibit the Commission, upon a showing of good cause, from granting a request by the appellant to reinstate the appeal and conduct a hearing.

N. SUBMISSION OF EVIDENCE WITHOUT A HEARING

There may be simple cases which do not demand confrontation of witnesses and the evidence may be submitted in the form of declarations. If the parties agree, they may submit testimonial evidence by written declarations or by electronic means, and by documents. In addition, they may submit written briefs of their respective positions and rebuttal arguments at the discretion and direction of the Hearing Officer. The decision shall be based solely upon the declarations and documents submitted.

O. PROPOSED DECISION

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, his or her representative and the District's representative of the date of the meeting when the Commission will consider its decision on the appeal.

Upon receipt of the Hearing Officer's proposed decision, copies of the proposed decision shall be distributed to the appellant and representatives. If either representative believes that the Commission should give further consideration to the decision, he or she must submit a written request to the Personnel Commission with a copy to the opposing representative, detailing reasons for further consideration of the case by the Commission, and, at its request, may advise the Commission. Within 7 days of receipt of the request the opposing party may submit a response to the request. No further written responses will be permitted unless specifically requested by the Personnel Commission. The parties may present any further information to the Commission orally, on the day the matter is heard by the Personnel Commission. 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 re-referred to a hearing officer, he or she shall file another proposed decision.

CHANGE:

Rule amended to establish guidelines for the submission of documents to the Personnel Commission after a Hearing Officer's recommendation has been received by both parties.

Remove: May 12, 2004, page 4 of 5. Add: January 9, 2019, page 5 of 6.

LOS ANGELES UNIFIED SCHOOL DISTRICT
PERSONNEL COMMISSION

904

LAWS AND RULES

(Reissue) January 22, 2003

P. DECISION

The Commission shall render a decision within a reasonable time after the hearing or investigation. The decision shall be filed by the Commission as a public record and given or mailed simultaneously to each party within ten days of the filing thereof. The decision shall be in writing and shall contain findings of fact and order of the Commission affirming disciplinary or resignation action or sustaining the appeal. If the appeal is sustained, the Commission shall order the reinstatement of the appellant and may order payment of all or part of appellant's full compensation from the date of suspension, demotion, dismissal, or resignation. In addition, the Commission may direct such other actions as it may find necessary to effect a just settlement of the appeal. The decision of the Commission shall be effective at the time specified and shall be binding upon the governing board.

Q. DEMOTION OR TRANSFER OF PERMANENT EMPLOYEE DURING PROBATION

A permanent employee who has been demoted or involuntarily transferred during a probationary period in a class to which he or she was promoted or transferred may request an investigation by the commission within 14 days after the receipt of a copy of the written charges. The request shall be based only on one or more of the grounds for appeal of disciplinary actions. The Commission shall conduct an investigation confined to the allegations set forth in the charges and the request for investigation, but shall not be required to follow the procedures for hearings on appeals. If the Commission finds indications of arbitrary or discriminatory action, it may order a formal hearing. The commission shall notify the administration and the appellant of its findings in writing.

CHANGE: Relettering of paragraphs to reflect new additions.

Remove: June 23, 2003, page 5 of 5. Add: (Reissue) January 22, 2003, page 6 of 6.

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