

LOS ANGELES COMMUNITY COLLEGE DISTRICT  
PERSONNEL COMMISSION

LAW AND RULES

836  
July 22, 2020

**836 APPEALS OF MEDICAL DISQUALIFICATIONS OF CLASSIFIED EMPLOYEES AND ELIGIBLES**

**Education Code Sections**

**88080.** (a) The commission shall prescribe and, amend, and interpret subject to this article, such rules as may be necessary to insure the efficiency of the service and the selection and retention of employees upon a basis of merit and fitness. The rules shall not apply to bargaining unit members if the subject matter is within the scope of representation, as defined in Section 3543.2 of the Government Code, and is included in a negotiated agreement between the governing board and that unit. The rules shall be binding upon the governing board, but shall not restrict the authority of the governing board provided pursuant to other sections of this code.

(b) No rule or amendment which would affect classified employees who are represented by a certified or recognized exclusive bargaining representative shall be adopted by the commission until the exclusive bargaining representative and the community college employer of the classified employees who would be affected have been given reasonable notice of the proposal.

**88081. ~~Subjects of Rules.~~** (a) The rules shall provide for the procedures to be followed by the governing board as they pertain to the classified service regarding applications, examinations, eligibility, appointments, promotions, demotions, transfers, dismissals, resignations, layoffs, reemployment, vacations, leaves of absence, compensation within classification, job analyses and specifications, performance evaluations, public advertisement of examinations, rejection of unfit applicants without competition, and any other matters necessary to carry out the provisions and purposes of this article.

(b) With respect to those matters set forth in subdivision (a) which are a subject of negotiation under the provisions of Section 3543.2 of the Government Code, such rules as apply to each bargaining unit shall be in accordance with the negotiated agreement, if any, between the exclusive representative for that unit and the public school employer.

**88130.** The commission may conduct hearings, subpoena witnesses, require the production of records or information pertinent to investigation, and may administer oaths. It may, at will, inspect any records of the governing board that may be necessary to satisfy itself that the procedures prescribed by the commission have been complied with. Hearings may be held by the commission on any subject to which its authority may extend as described in this article.

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- A. In accordance with Rules 600, REJECTION OF APPLICANTS, CANDIDATES, AND ELIGIBLES; 735, CAUSES AND PROCEDURES FOR SUSPENSION, DEMOTION, DISMISSAL; AND 740, LAYOFF AND REEMPLOYMENT, the following actions of a medical nature may be appealed:
1. Disqualification of an eligible for health conditions which precludes an eligible from satisfactorily and safely performing the essential duties of the position classification offered.
  2. Refusal of reinstatement following resignation or return from leave of absence based upon failure of an employee to meet the District's health standards or rejection by the Human Resources Division of a request for additional unpaid illness leave.
  3. Refusal of health clearance by the District's medical consultant based upon failure of a laid-off employee to meet health standards when they are certified for reemployment by the Human Resources Division.
  4. Dismissal for health reasons, including discovery or development during an initial probationary period of any physical, emotional, and/or mental condition which precludes an employee from satisfactorily and safely performing the essential duties of the position classification to which assigned.
  5. Recommendation by the District's medical consultant that an employee be placed on involuntary illness leave.
- B. In the event of any health disqualification (or disciplinary action resulting from a decision) by the District's medical consultant, the following procedure should be followed:
1. The Human Resources Division shall deliver to the individual by certified mail, a written statement of the reasons for disqualification. The notification shall inform the individual that the action is subject to their appeal to and review by the Human Resources Division and that an appeal must be in writing. To be considered a timely appeal, the Human Resources Division must receive the appeal within fourteen calendar days of the date that the notification was sent by certified mail.
  2. The appeal shall specify the reason(s) that the individual believes that the disqualification is erroneous. If the individual has medical or other evidence of fitness for duty which they believe refutes the reason for disqualification set out in the notification of disqualification, they shall submit such evidence along with the appeal to the Human Resources Division.

The Human Resources Division shall review the appeal with the medical consultant involved and prepare a joint decision within 14 calendar days after receipt of the appeal

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unless there is an explanation of the need for additional time in writing to the individual, with a copy to the Personnel Commission.

3. If the administrative review decision is to reverse the original finding and is favorable to the appellant, the Human Resources Division shall inform all interested parties.
4. If the rejection is sustained, the Human Resources Division shall notify the appellant in writing of the reason for the rejection and inform them that the rejection is subject to written appeal to the Personnel Commission within 14 calendar days after receipt of the notice. Copies of the notification shall be provided to the Personnel Commission and to the employee's division head or college president. An appeal can be made on the grounds listed in Rule 735, CAUSES AND PROCEDURES FOR SUSPENSION, DEMOTION, DISMISSAL, or on the basis that the decision was not in accord with the approved health standards or policies established in Rule 10202 of the Board of Trustees.

If an appeal is made to the Personnel Commission, the appellant shall be advised by the Personnel Commission that the matter will be investigated. The Human Resources Division shall be requested to submit to the Personnel Commission all medical evidence, upon which the disqualification was based. The appellant shall be invited to submit, in support of their appeal and at their own expense, written medical or laboratory reports, X-rays, photographs, or other exhibits or written statements as appropriate. The staff shall make such additional materials available for review by the Human Resources Division.

5. The Personnel Director shall examine the evidence provided by both the Human Resources Division and the appellant and recommend disposition of the appeal to the Personnel Commission. The Personnel Director shall be authorized to consult with any appropriate resource personnel. The Personnel Commission shall determine whether the appeal will be the subject of an investigation or a hearing.
6. The Hearing Officer or Medical Review Expert shall establish their own procedure to consider the matters referred to them. The Medical Review Expert's findings and recommendations shall be based on the health policies and standards established in Board Rule 10202. The health requirements for new employees and employees in service shall be based upon the employee's physical, mental and emotional ability to perform the essential duties of the position classification satisfactorily without endangering their health or safety or the health and safety of others. The Hearing Officer or Medical Review Expert may require additional information from the appellant or the Human Resources Division. The Hearing Officer or Medical Review Expert may require that the appellant submit to further physical examination. Expenses of a special physical examination initiated by the Hearing Officer or Medical Review Expert shall be paid by the appellant; if their appeal is sustained, they shall be reimbursed by the Board of Trustees.

The Hearing Officer or Medical Review Expert shall report their findings and recommendations to the Personnel Commission no later than 15 working days from the

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date they last considered the case. The Personnel Commission shall provide copies of the findings and recommendation to the appellant and the Human Resources Division.

7. After a due notice period of 15 working days, the findings and recommendations of the Hearing Officer or Medical Review Expert will be placed before the Personnel Commission for consideration and both the District's medical consultant and the appellant will be given an opportunity to provide either written or oral reaction to the Hearing Officer or Medical Review Expert's findings and recommendations. The Personnel Commission may return the matter to the Hearing Officer or Medical Review Expert for further information or for reconsideration before rendering a decision. The decision of the Personnel Commission shall be rendered in writing within 14 calendar days after its consideration of the investigation or hearing is completed. Copies of the decision shall be sent to the appellant and the Human Resources Division.
8. The decision of the Personnel Commission shall include instructions to the administration regarding the action to be taken as a result of the appeals of the kind of actions listed in Paragraph A. If an appellant is given health approval for employment, their name shall be restored or added to the appropriate employment list and retained on the employment list for certification for the remainder of the life of the list. The adding of names to employment lists shall not invalidate appointments made from such lists from the time the lists were established until the names were restored or added.
9. Expenses for the services of Medical Review Expert shall be in addition to the Personnel Commission's regular budget.