

Strictly Classified



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THE DISCIPLINARY APPEAL PROCESS

One of the most important protections the Merit System provides to employees is the right to an appeal hearing conducted by the Personnel Commission when disciplinary action is taken against them by the District. The following provides basic information regarding this important right.

What is a Formal Disciplinary Action?

- Dismissal** - Permanent separation from employment with the District
- Demotion** - An involuntary change in assignment from the employee's current job classification to another job classification on a lower salary schedule.
- Suspension** - The temporary removal of an employee from a position without pay.

Right of Appeal

Your permanency status as an employee affects the level of appeal rights you have:

- A **permanent employee** has the right to request a full evidentiary hearing of any formal disciplinary action before an independent hearing officer. A permanent employee is one who has successfully completed an initial probationary period in any job classification in the classified service.
- A **permanent employee who has been demoted** during a probationary period in a job classification to which they promoted is not entitled to a full evidentiary hearing but may request an investigation of the demotion action by the Personnel Commission.
- An **employee who is serving in their initial probationary period** in the District has no right of appeal to the Personnel Commission.

Grounds for Appeal

It is a rare occasion when there is not some level of disagreement between the supervisor and impacted employee over the merits of a disciplinary action. However, when appealing a disciplinary action, mere disagreement with the decision is not a sufficient reason for appeal. As an appellant, you or your representative will need to demonstrate that one or more of the following grounds for appeal exists:

- The procedures set forth in the rules of the District and or Personnel Commission have not been followed.
- The suspension, demotion or dismissal was made because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical information, genetic condition, marital status, sex, gender identity, gender expression, age, sexual orientation, military and veterans status (as listed in Government Code Section 12920), or political affiliation (except as provided by Personnel Commission Rule 735, Paragraph C.).
- There has been an abuse of discretion
- The action taken was not in accord with the facts.

Hearing Officer

It is the practice of the Personnel Commission to hire an independent hearing officer to conduct disciplinary hearings on its behalf. The role of the hearing officer is to set proceedings, administer oaths, cause the depositions of witnesses to be taken, and present findings and recommendations to the Personnel Commission.

Scheduling

It is the goal of the Personnel Commission to begin hearings no later than 60 calendar days from the date the appeal is received. Scheduling of the hearing is based on the availability of the Hearing Officer, District representatives, the appellant and their representative, and witnesses. All parties are contacted regarding their availability and are advised in writing when a hearing date has been set.

Subpoenas

If an appellant wishes to subpoena witnesses or documents that are in the possession of the District or other party, they must do so well in advance of the hearing by making a request to the Personnel Director. Subpoenas that are limited to a notice to appear must be served on a party or person's attorney at least 10 calendar days before the appearance is required. Subpoenas for documents, books, or other items must be served at least 20 calendar days in advance of the date they are needed. If service of the subpoena is by mail, another 5 calendar days must be added to the timelines noted above.

At the Hearing

In many respects, a disciplinary hearing is not unlike a court proceeding, although it is not bound by technical rules of evidence and is typically less formal. The hearing proceedings are confined to events and issues contained in the Statement of Charges that was issued by the Board of Trustees. The District's representative goes first and will present evidence and witnesses in support of the Statement of Charges. The appellant is then afforded the same opportunity to present evidence and witnesses. The length of the hearing can vary, however, the typical disciplinary hearing lasts a full working day. If a hearing requires additional days, the subsequent dates are typically scheduled at the end of the first day of hearing.

Failure to Appear

Failure of the District to appear on the scheduled hearing date shall be deemed a withdrawal of the District's disciplinary case. Failure of the appellant to appear at the hearing shall be deemed a withdrawal of the employee's appeal. Upon showing of good cause by either party, the Personnel Commission may reinstate the case/appeal and conduct a hearing.

Cost of the Hearing/Cancellation Costs

The typical cost per day of a hearing is approximately \$3,000. The cost of the hearing itself is borne by the Personnel Commission. Both the District and the appellant must bear the costs of representation and other costs related to presenting their cases. The cancellation period for hearing officers is typically three weeks in advance of the hearing date. Therefore, if either party believes that the hearing will not proceed for any reason, the Personnel Director should be notified at the earliest possible date, but at least three weeks prior to the hearing date. The Personnel Commission may assess the defaulting party for the cost of the cancelled hearing if the party has negligently violated cancellation policy timelines.

Representation

An employee has various options regarding representation during the hearing.

- Employees who belong to a union have the option of requesting that their union represent them in the disciplinary appeal hearing process.
- Management employees may receive support from the Classified Managers Association.
- An employee may also employ legal representation of their own choosing to represent them at their own expense.
- The employee may choose any other representative of their own choosing at their own expense.

It is the responsibility of the employee to formally request representation from whomever they choose and to keep in regular contact with their representative throughout the hearing process. In the event you decide to change representatives during the course of the hearing, you must notify the Personnel Commission Office immediately.

Keeping Connected

Before, during and after the actual hearing, the Personnel Commission will be in contact with you for a variety of reasons. We will always use your last address and phone number of record with the District. In the event you have a change in address or phone number, it is critical that you immediately notify both the Personnel Commission Staff Office, at PersComm@laccd.edu, and your representative, if any.

Following the Hearing

Following the hearing, the Hearing Officer will take the case under advisement and prepare findings of fact, conclusions, and recommendations to the Personnel Commission. Hearing Officers are asked to have their reports completed no later than 30 calendar days from the last day of hearing, however this timeline is not always possible. Parties will receive copies of the Hearing Officer's Report and Recommendations at least 14 calendar days prior to the day on which the Personnel Commissioners will issue their decision in the case. If either party believes that there has been abuse of discretion on the part of the hearing officer or that the findings of the hearing officer are not in accordance with facts, he/she may submit a written statement to the Personnel Director with a copy to the opposing party detailing the abuse or error and the remedy sought no later than 7 calendar days before the date set for consideration of the case by the Personnel Commission.

The Decision

The Personnel Commission may accept, reject, or amend any of the findings or recommendations presented to them by the Hearing Officer. The Personnel Commission may modify the disciplinary action taken against the employee but may not make the action more stringent than that approved by the Board of Trustees. The Personnel Commission will issue their final decision regarding a disciplinary matter at a regular Personnel Commission meeting. Their decision will then be communicated directly to the Board of Trustees who will be responsible for effecting the Personnel Commission's decision. The Personnel Commission's decision in the matter is final.

Questions

If you have questions at any time during the process, feel free to contact the Personnel Commission Office at PersComm@laccd.edu.