

**MERIT SYSTEM**  
**RULES AND REGULATIONS**  
**FOR**  
**CLASSIFIED EMPLOYEES**

**ADOPTED BY THE**  
**PERSONNEL COMMISSION**  
**OF THE**  
**BERKELEY UNIFIED SCHOOL DISTRICT**

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## CHAPTER 10: DEFINITIONS AND PRELIMINARY STATEMENT

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## DEFINITIONS AND PRELIMINARY STATEMENTS

### 10.100 DEFINITIONS, GENERAL

Unless otherwise required by context and/or prevailing law, words used in these rules are understood to have the following meanings:

**ACT or THE ACT:** The Act shall mean those sections of the Educational Code of the State of California applying the merit system to classified employees in certain school districts. It shall include all of the provisions of Article 5, Chapter 3, Division 10, and applicable Provisions of Chapter 1 and Articles 1 to 4, Chapter 3, Division 10.

**ALLOCATION:** The official placing of a position in a given class. (Note: Some districts use this term to describe placement of a class on the salary schedule.)

**ANNIVERSARY DATE:** Anniversary date shall be the first day of the pay period following an employee's appointment to a full time or part time regular continuous position in the classified service that has been authorized by the Personnel Commission.

**APPLICANT:** A person who has filed an application to take a merit system examination.

**APPOINTMENT AUTHORITY or POWER:** The Board of education of the Berkeley Unified School District.

**APPOINTMENT:** The official act of the appointment authority in approving the employment of a person.

**CANDIDATE:** A person who has competed in one or more portions of the merit system examination.

**CERTIFIED SERVICE:** All positions and employees required by law to possess credentials issued by the State Department of Education.

**CERTIFICATION:** The submission by the Commission of the names of eligibles from an appropriate eligibility list or from some other source of eligibility to the appointment power or to the department which selects employees prior to approval of the appointing power.

**CLASS:** A group of positions sufficiently similar in duties and responsibilities that the same descriptive title may be used to designate each position allocated to the class; substantially the same requirements of education, experience, knowledge, and ability are demanded of incumbents; substantially the same tests of fitness may be used to choosing qualified appointees; and the same salary range may be applied with equity.

**CLASS SPECIFICATION:** A formal statement of the duties and responsibilities of the positions in the

**COMMISSION:** The Personnel Commission established pursuant to the Act for the Berkeley Unified School District.

**DEMOTION:** A change in assignment of an employee from a position in one class to a position in another class that is allocated to a salary range with a lower maximum rate.

**LIMITED TERM:** A term used in the Education Code to designate employment for periods not to exceed six months or employment of a temporary employee during the authorized absence of a permanent employee. (Synonymous with “temporary.”)

**LIMITED-TERM EMPLOYEE:** An employee who is serving as a substitute for an absent employee or in a position established for a period of six months or less. The employee may have been selected from an eligibility list or may be serving under a provisional appointment.

**PART-TIME POSITION:** A position for which the assigned time, when computed on an hourly, daily, weekly or monthly basis, is less than 87½ percent of the normally assigned time of the majority of employees in the classified service. (EC 45256)

**PERMANENT EMPLOYEE:** In reference to District employment status, an employee who has completed a probationary period in a class in the classified service. In reference to employment status in a specific class, an employee who has completed a probationary period for that class, or who entered the class by transfer, demotion, or reinstatement/reemployment without serving a probationary period.

**PERMANENT POSITION:** A position established for a continuing and indefinite or unlimited period of time or for a fixed period in excess of six months.

**POSITION:** A group of duties and responsibilities assigned by competent authority requiring the full- or part-time employment of one person on a permanent or limited-term basis. A position can only be established by action of the Board of Education.

**PROBATIONARY PERIOD:** The trial period, as established by the Personnel Commission pursuant to Education Code Section 45301, immediately following an original or promotional appointment to a permanent position from an eligibility list.

**PROMOTION:** A change in the assignment of an employee from a position in one class to a position in another class with a higher maximum salary rate.

**PROMOTION LIST:** An eligibility list resulting from a promotional examination limited to qualified employees of the District.

**PROVISIONAL APPOINTMENT:** A temporary appointment made in the absence of an appropriate eligibility list, not to exceed 90 working days except in specified circumstances. (See Education Code Sections 45287 and 45289.)

**PROVISIONAL EMPLOYEE:** A person employed under a provisional appointment.

**REEMPLOYMENT:** Re appointment to duty of an employee who has been laid off.

**REEMPLOYMENT LIST:** A list of names of persons who have been laid off from permanent positions by reason of lack of work, lack of funds, or abolishment or reclassification of position, or other reason specified in these rules, and who are eligible to reemployment without examination in their former class, arranged in order of their right to reemployment.

**REGULAR EMPLOYEE:** An employee who has probationary or permanent status.

**REINSTATEMENT:** A reappointment, after resignation, in regular or limited-term status, without examination, to a position in the employee's former class, or in a lower related class.

**RESTORATION:** Includes "reemployment" (see above). Also, the reassignment to duty of an employee to the same class and status that he held when he resigned. Also, the reassignment of an employee who had demoted to his former class or to a related class or, after reduction to a limited-term status, to permanent status.

**SALARY SCHEDULE:** The complete list of ranges, steps, and rates established for the classified service.

**SALARY STEP:** A specific location in a salary range, not the dollar amount. (Note: The salary range applicable to a class may change without affecting the step placement rights of employees.)

**SALARY RANGE:** A series of consecutive salary steps that comprise the rates of pay for a classification. A salary range normally consists of five salary steps.

**SALARY RATE:** A specific amount of money paid for a specified period of service; i.e., dollars per hour or month.

**SEPARATION:** Leaving a position; includes resignation, dismissal, layoff, retirement, etc.

**SERIES:** A number of classes closely related in occupational hierarchy and arranged in a list in order to indicate occupational levels in a group.

**STATUS:** Tenure which is acquired in a classification by reason of examination, certification from eligibility lists, election or appointment by the appointing power, and the successful completion of the probationary period.

**SUBSTITUTE EMPLOYEE:** An employee occupying a permanent position during the absence of the incumbent.

**SUSPENSION:** An enforced absence of an employee without pay for disciplinary purposes or pending investigation of charges made against an employee.

**TEMPORARY:** Employment on a basis other than permanent or probationary; i.e., in limited-term or provisional status.

**TRANSFER:** The reassignment of an employee without examination from one position to another position in the same class or to a position in a similar or related class with the same salary range.

**UNCLASSIFIED SERVICE:** All positions and employees not in the classified or certificated service; i.e., those exempted by law. See Rule 30.100.

**WAIVER:** The voluntary relinquishment by an eligible of any right to consideration for appointment from an eligibility list.

**10.200**      **PRELIMINARY STATEMENT**

10.200.1      Statutory Authority for These Rules

The rules contained herein are established pursuant to the authority of Personnel Commission under Education Code Sections 45260, 45261, and other provisions governing the Merit System Act in the Education Code. (Note: It is recognized that certain of these rules venture into substantive matters within the prerogative of the Governing Board. For that reason, the initially adopted set of rules and regulations were submitted to the Governing Board for its approval.)

It shall be the policy of the Commission to submit all new rules or amendments or deletion of existing rules to the Governing Board when:

- A. The rule obviously requires Board approval, and
- B. It is difficult to define the division of Commission and Board authority re the rule in question. In such cases, the rule in question shall not become effective until it has been approved by the Governing Board.
- C. The rules shall be binding upon the Governing Board, Administrators and Supervisors.

10.200.2      Interpretation and Application of Rules

The Commission recognizes that no set of rules can contemplate all possible combinations of circumstances affecting particular cases. These rules are to be allied with consideration of their intent; however, specific, applicable provisions of the rules shall not be waived, ignored, or superseded because of the special circumstances of particular cases. The Commission is open to responsible suggestions to amend the rules with prospective application; however, no rule amendment or new rule shall have retroactive applicability.

10.200.3      Judicial Review

If judicial review or change in law invalidates any portion of these rules, such finding or amendment shall not affect the validity of other rules or provisions.



**CHAPTER 20: THE PERSONNEL COMMISSION**

**20.100 ORGANIZATION OF COMMISSION (EC 45243)**

20.100.1 Terms

By law, the term of each Commissioner is for three years and expires at noon, December 1. The term of one Commissioner expires each year. On or about September 1 of each year, the Personnel Director shall notify the Government Board of the name and home address of the Commissioner whose term will expire and whether or not he/she will accept reappointment. The notification shall also list the appointing authority and indicate that the Board must follow the provisions of Education Code Section 45248.

20.100.2 Officers

At its first meeting following December 1 of each year, the Commission shall elect one of its members as Chairperson and another member as Vice Chairperson, to serve a term of one year or until their successors are duly elected.

20.100.3 Procedure

Roberts' Rules of Order shall be the guiding authority for business at all Commission meetings, with such exceptions as are specifically stated in these rules.

A. Two (2) members shall constitute a quorum for any regular or special meeting of the Commission, and the affirmative vote of two (2) members shall be required to make any motion of the Commission effective. The Chairperson may present motions and vote the same as any other member.

B. A motion made by a member at any Commission meeting shall not require a second in order to be placed in consideration before the Commission and enrolled in the minutes.

20.100.4 Qualification for Membership (EC 45244)

Qualifications for membership on the Commission shall be the same as for members of the Board of Education. No member of the Board of Education shall be a member of the Commission nor shall any Commissioner during his/her service on the Commission be employed by the Board of Education in any other capacity. Appointees shall be known adherents to the principle of the Merit System.



recorded. The minutes shall be written and presented for correction and approval at the next regular meeting. The minutes or a true copy thereof shall be open to public inspection. Copies of the official minutes shall be distributed to recognized employee organizations.

20.200.7 Payment for Meeting Attendance (EC 45250)

Each Commissioner shall receive the sum of \$15 for each meeting attended in any one month, including regular, adjourned or special meetings, but not to exceed a total of \$75 per month.

**20.300**      **COMMISSION EMPLOYEES**

20.300.1      Status of Commission Employees (EC 45264)

The Personnel Director and other persons required to carry

## **20.400 MISCELLANEOUS PROVISIONS**

### 20.400.1 Communications

- A. Communications and requests shall, insofar as practicable, be in writing. Communications and requests shall be acknowledged and replied to, noting official Commission action when appropriate.
- B. Individuals or groups who wish to present proposals for action by the Commission shall be encouraged to present them to the Personnel Director for placement on the Commission agenda. It is against the policy of the Commission to take up proposals except at opening meetings, although the Commission may designate one of its members to investigate a specific subject.

### 20.400.2 Budget (EC 45253)

- A. The Personnel Director shall prepare and submit to the Commission a proposed operating budget for the Commission for the next ensuing fiscal year. The budget shall be submitted not later than the first Commission meeting in April.
- B. The Commission shall hold a public hearing on its proposed budget not later than May 30. At the time the Commission schedules the public hearing, as required in Education Code Section 45253, it shall direct the Personnel Director to forward a copy of the proposed budget to the Board of Education and notify the Board of the time, date and place of the public hearing. Board and administration representatives shall be invited to attend the public hearing and present their views on the proposed budget.

Prior to adoption of its budget the Commission will hear and fully consider all comments and suggestions that may be offered by district administration, the Board, or other concerned persons or organizations. Efforts shall be made to reso

**20.400.3**      **Annual Report (EC 45266)**

- A.      The Personnel Director shall prepare, as required by Education Code Section 45266, an

## **CHAPTER 30: POSITION CLASSIFICATION PLAN**

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**30.100 THE CLASSIFIED SERVICE**

**30.100.1 Positions Included (EC 45100)**

- A. All positions established by the Governi

**30.100.3**      **Effect of Exemption**

Any position or employee lawfully exempted from the classified service shall be excluded from the benefits and burdens imposed by these rules, except as provided by law or the Board of Education.

**30.100.4**      **Professional Expert Assignments**

A.      A professional expert is a a District employee hired on a temporary basis pursuant to

**30.100.5 Restricted Positions and Employees (EC 45108)**

- A. If positions properly a part of the classified service are specially funded and, as a result of the special funding provisions, employment is restricted to persons in low income groups, from designated impoverished areas, or other criteria which precludes employment through the normal competitive process, the positions shall, in addition to the assigned title, be designated as "Restricted."
- B. Persons employed in "Restricted" positions shall be classified for all purposes except: (1)

**30.200**

**General Classification Rules**

30.200.1 Assignment of Duties (EC 45109)

The Board of Education shall prescribe the duties and responsibilities of all positions in the classified service except those on the Personnel Commission staff. When the duties being performed by an employee are found to be inconsistent with the duties officially assigned to his/her position, the Personnel Director

30.200.4 Allocation of Positions to Classes

All positions substantially similar as to the duties performed and the responsibilities exercised by the incumbents of such positions and as to their qualification requirements shall be allocated to the same class.

30.200.5 Changes in Duties of Positions

Any substantial changes in the duties of existing positions shall be promptly reported in writing by the appointing authority to the Personnel Director, who shall cause them to be reviewed toward determining whether the positions should be allocated to different classes.

30.200.6 Working Out of Classification (EC 45276)

A. An employee is not expected to be required to

**30.200.8**      **Positions Requiring Multiple Languages**

- A.      The Board of Education may, with the approval of the Commission, designate positions within a class which require the holder of the position to speak, read and write a language in addition to English.
  
- B.      The Board must clearly set forth valid reasons for placing language requirements on a position.
  
- C.      An announcement calling for an examination for a class with position(s) containing language requirements will contain appropriate information and will indicate that successful candidates possessing the language requirements will be given preference over the other successful candidates, as authorized in Rule 50.200.10, but only as to those specific positions.
  
- D.      When a vacancy occurs in a position which has approved language requirements, the Board will notify the Commission that the need for language requirements continues to be a part of the position.

**30.200.9**      **Mandatory Titles (EC 45340)**

As required by Article 1.6, Chapter 3, Division 10 (commencing with Section 45340) all teacher aide classes of positions shall be assigned a basic title of "Instructional Aide." The Commission, in classifying all such positions, shall determine sub-classes thereof, if any, and additions to the basic title as well as completing other classification requirements.

### **30.300   Reclassification**

#### 30.300.1   Review of Positions

The Personnel Director shall review the duties and responsibilities of positions as necessary to determine their proper classification and shall cause all positions to be reviewed once every 3 years.

#### 30.300.2   Requests for Study

Requests for classification study of existing positions may be presented to the Personnel Director together with a statement of the reasons for requesting study. Requests for study may be initiated by the administration, with the approval of the Superintendent, or by employees or employee organizations. Requests initiated by the administration shall be accompanied by a statement of the current authorized duties of the position(s).

#### 30.300.3   Effective Date of Reclassification (EC 45285)

Reclassification of a position shall become effective on the same date that the reclassification of the position is approved by the Commission.

#### 30.300.4   Effects on Incumbents (EC 45285)

- A.   For an employee to be reclassified upward with his/her position, the reclassification must have been occasioned by a gradual accretion of duties and not by a sudden change resulting from reorganization or duty changes by the Board. The Commission shall decide at the time the reclassification occurs as to whether the reclassification meets this rule.
  
- B.1.   When all of the positions in a class are reclassified upward, those incumbents with 3 or more years' service in the class shall be automatically reclassified with the positions.
  
- B.2.   When a portion of the positions in a class are reclassified upward, those incumbents with 3 or more years' service in one or more of the positions being reclassified shall be reclassified with their position(s).
  
- C.   An employee who has been reclassified upward shall be ineligible to again be reclassified upward until at least 3 years has elapsed from the last upward reclassification.

30.300.5

Reclassification Appeal Procedure

- A. A permanent classified employee who disagrees with the Personnel Commission's action re the reclassification of his/her position must do so in writing within ten (10) working days from the date he/she receives notice of such action. His/her written appeal shall be directed to the Director of Classified Personnel and must contain his/her reasons for disagreement and supporting data.
- B. The Director of Classified Personnel will, within five (5) working days, give a written reply to the employee or have arranged a personal appeal meeting with the employee and other appropriate individuals and confirm such arrangements in writing within five (5) working days.
- C. If the Director of Classified Personnel sustains the original reclassification, the employee shall have the right, within five (5) working days, to appeal to the Personnel Commission through the Director of Classified Personnel.
- D. The Director of Classified Personnel must arrange appeal meeting with the Commission for employee, give him/her the date, time and place of such meeting. After listening to the appeal of employee or his/her official organizational representative, the Personnel Commission will then take such action as it considers appropriate.

At steps A and D above, the employee may have his/her organizational representative present if the employee desires.



## **CHAPTER 40: APPLICATION AND EXAMINATION**

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## **40.100      APPLICATION FOR EMPLOYMENT**

### **40.100.1      Filing of Application**

All applications for employment shall be made upon official forms furnished by the Commission, filled out as therein directed, and filed on or before the date specified and in the office specified in the examination announcement.

Applicants taking more than one examination must file a separate and complete application for each such examination.

### **40.100.2      General Qualifications of Applicants**

- A.      Applicants must possess all requirements that may be specified in the minimum qualifications established for the class. Every applicant must be in all respects mentally and physically competent to perform the duties of the position for which he/she applies.
- B.      There shall be no discrimination in the acceptance of applications with regard to race, religion, national origin, ancestry or sex.

### **40.100.3      Elimination of Unfit Applicants, Candidates, and Eligibles**

An applicant or candidate may be refused examination, and an eligible may be refused certification or appointment, for any of the following reasons:

- A.      Failure to meet the general qualifications of Rule 40.100.2.
- B.      Membership in the Communist Party and/or failure to execute the oath of allegiance required by the State of California. (EC 7003)
- C.      Advocacy of overthrow of the Government of the United States or the State of California by force, violence, or other unlawful means.
- D.      Conviction of or pleading guilty in court to a narcotics offense, or a charge of moral turpitude, or any sex offense, or mistreatment of children. (EC 44010-44011)
- E.      Criminal, infamous, dishonest, immoral, or disgraceful conduct according to standards approved by the Personnel Commission.
- F.

- J. Previous dismissal from this District unless the District waives this subsection.
- K. A record of unsatisfactory service with this District even though separation has not occurred.
- L. Unsatisfactory health conditions.
- M. Discharge other than honorable from the armed forces of the United States.
- N. Failure to report for duty after an assignment has been offered and accepted.
- O. Failure, after due notice, to report promptly for review of any of the above bases for rejection.
- P. Refusal to furnish testimony at a hearing or investigation before the Personnel Commission or Board of Education.

40.100.4 Rejection and Appeal from Rejection

- A. Applicants, candidates, and eligibles who are rejected for any of the reasons enumerated in Rule 40.100.3 shall be notified in writing by the Personnel Director. The notification shall state:
  - 1. The reason(s) for rejection.
  - 2. That, within 5 working days, the individual may appeal to the Personnel Director for administrative review, and that failure to appeal for administrative review makes the rejection final and conclusive.
- B. If there has been an administrative review, as provided above, and the rejection is sustained, the individual shall be:
  - 1. Given a written notice outlining the reason(s) for sustaining the rejection, and
  - 2. Informed of his/her right to make a written appeal of the rejection within 5 working days, to the Personnel Commission. The appeal may be based on any of the following reasons:
    - a. Discrimination because of political or religious acts or affiliations or opinions, race, color, sex, marital status, national origin or ancestry

- b. Abuse of discretion
- c. Inconsistency of the reasons given for the rejection with the facts.

C. The Commission shall set a date for hearing, hear all of the evidence, and render a decision. Its decision shall be transmitted in writing to all concerned and shall be final.

40.100.5 Action When Rejection is Not Sustained

If a rejection is not sustained by the Personnel Director or the Personnel Commission, the Personnel Director shall institute immediate action to insure the rights of the applicant, candidate, or eligible as if the rejection had not been made. However, appointments made in the interim shall not be disturbed unless they were fraudulently made.

40.100.6 Applications Not to be Returned

All applications and examination papers are confid

**40.200      EXAMINATIONS (EC 45261)**

40.200.1      Examination Barred

No examination announcement may be made and no part of any examination may be held until the Board of Education has properly approved, if a reclassification, or designated, if a new class, the position duties, and the Commission has completed the position classification including the establishment of minimum education and work experience requirements.

40.200.2      Promotional Examinations (EC 45272)

Examinations shall, where practicable, as determined by the Commission, be limited to promotional applicants. When no promotional field of competition exists or when there is doubt of its adequacy, the Personnel Director of the Commission may order an open examination or

- B. Minimum qualifications required;
- C. The salary and other forms of compensation;
- D. The last date for filing an application;
- E. Such other information as will assist the employees and the public in fully understanding the nature of the employment and procedures necessary to participate in the examination.

- F. Oral examinations shall be electronically recorded.
- G. Copies of the questions in a test shall not be made by competitors or other unauthorized persons.
- H. Where written tests are required, they shall be so managed that none of the test papers will disclose the name of any competitor until all papers of all competitors in a given examination shall have been marked and rated.
- I. Any competitor in any examination who places any identifying mark upon his/her test papers (other than the identifying mark prescribed at the time of examination) or makes any attempt to disclose to others the identity of his/her papers prior to the completion of the examination shall be disqualified.

F.



## **CHAPTER 50: EMPLOYMENT LISTS**

### **50.100**      **Eligibility Lists**

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- 50.100.3      Termination of Eligibility Lists
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- 50.300.2      Termination Provisional Appointments
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50.100.4 Consolidation of Eligibility Lists (EC 45291)

- A. If a new examination for a class is given during the first year of the life of an existing list, the examination shall be sufficiently similar to the previous examination to ensure the comparability of the scores of eligibles. The new list shall then be merged with the existing list with eligibles ranked in the order of examination score, plus additional points where applicable. Promotional lists shall be merged only with promotional lists.
- B. When lists are consolidated under this rule, the earlier list shall be terminated one year after its establishment, and those eligibles' names shall be removed from the consolidated list.

50.100.5 Eligibility After Appointment

## **50.200      CERTIFICATION FROM EMPLOYMENT LISTS**

### 50.200.1      Order of Precedence

Names shall be certified for appointment from employment lists in the following sequence:

- A.      Reemployment list (one name) (EC 45308-45309)
- B.      Promotional eligibility list (three names) (EC 45272)
- C.      Open eligibility list (three names)

### 50.200.2      Other Sources of Eligibility

In the absence of a reemployment list for a class, a vacancy may be filled by transfer, demotion, reinstatement or reemployment (after resignation), restoration to former class after voluntary demotion, or other means provided in the rules, without regard for existence of eligibility lists.

### 50.200.3      Waivers of Certification

- A.      An available eligible may waive certification twice without penalty. At the time a third waiver is to be signed by an eligible he/she will be informed that, upon signing the third waiver, his/her name will be removed from the eligibility list per Rule 50.100.6.
- B.      At the time an eligibility list is established each eligible shall be sent a copy of Rule 50.100.6 and Rule 50.200.3.

### 50.200.4      Procedure of Certification and Appointment from Eligibility lists (EC 45272)

- A.      When a position is to be filled, the appointing power shall notify the Personnel Director of that fact and of the date of the anticipated need. The request for certification shall state the class title, hours and location of employment, and other pertinent information as required by the Director.
- B.      The Personnel Director shall ascertain the availability of eligibles and shall certify three names to the appointing power in accordance with these rules.
- C.      The appointing power shall make its selection from the persons certified and shall notify the Director, who shall see that the necessary employment procedures are carried out.

- D. If a candidate who has been certified as eligible for appointment to a position fails to keep his/her interview appointment or at the interview declines the position, the appointing authority may fill the vacancy from the remaining certified eligibles or may request additional certification in accordance with Rule 50.200.7.
- E. The appointing power (Board of Education) has adopted the following policy with regard to employment:

*"It is the policy of this Board of Education to implement integration of the District's staff so that the benefits of integration will be readily apparent to all students throughout all categories of employment.*

*"Further, we believe that implementation should move toward a more proportionate staff representation of the racial composition of the student body and community.*

*"Therefore, appropriate and immediate efforts shall be made by the administration to accomplish this goal by the employment of qualified staff for position vacancies."*

#### 50.200.5 Certification from List for Another Class

If there is no eligibility list for the class in which the vacancy occurs, certification may be made from a list for another class at the same or a higher salary level if the duties and qualifications of the class for which the examination was given include substantially all of the duties of the position to be filled, provided that the Personnel Commission finds that the use of the list is in the best interest of the District and that the necessary skills and knowledges were adequately tested in the examination.

#### 50.200.6 Withholding Names from Certification

The name of an eligible may be withheld from certification when:

- A. He/she expresses unwillingness or inability to accept appointment.
- B. He/she fails to respond within three work days next following the mailing of written inquiry regarding availability for permanent employment or request to appear from interview regarding such employment.
- C. He/she fails to present himself/herself for duty at the time agreed upon after having accepted an appointment.
- D. He/she fails to present the license, registration, certificate, or any other credential required. (The name of any such eligible shall be restored by the Personnel Director for certification when the particular requirement has been met.)

- E. For any reason listed in Rule 40.100.3.
- F. A person on a reemployment or an eligibility list may decline two offers of permanent appointment without injuring his/her status, provided he/she submits an acceptable explanation for not wishing to accept appointment. A third refusal will result in dropping the candidate from the eligibility list.

When an eligible candidate fails to respond within three days to a communication involving a possible permanent appointment, he/she shall be passed over until an explanation acceptable to the Commission has been submitted.

50.200.7 Restoration to Certification

When the name of a person has been withheld from a eligibility list or from certification or has been removed from the list, it may be placed on such list or restored thereto by the Personnel Director, subject to ratification by the Personnel Commission at its next meeting under the following circumstances:

1. When the withholding or removal was because of the waiver or inability of the eligible to accept employment, or failure to respond to inquiry as to his/her availability, to appear for interview, or to present himself/herself for duty, and the applicant presents a good and valid reason and certifies to the Personnel Commission that he/she is now willing and able to accept appointment.  
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2. When the withholding or removal was for a reason stated in Rule 40.100.3 and )



**50.300**      **PROVISIONAL APPOINTMENTS (EC 45287) 50.300.1**

50.300.1      Restrictions

- A.      The appointing authority may make a provisional appointment when the Personnel Director certifies that:
  - 1.      No eligibility list exists for the class or
  - 2.      An eligibility list exists, but there is an insufficient number of available eligibles (i.e., less than 3) and the appointing authority refused to appoint an available eligible.
  
- B.      An employee may receive a provisional appointment or appointments which may accumulate to a total of 90 working days, after which a 90-calendar-day interval shall elapse during which he/she shall be ineligible to serve in any full-time provisional capacity.
  
- C.      No person shall be employed in provisional capacities under a given Governing Board for a total of more than 126 working days in any one fiscal year, except that when no one is available on an appropriate eligibility list for a part-time position as defined in Section 45256, successive 90-working-day provisional appointments may be made to the part-time position for a total of more than 126 working days in a fiscal year.
  
- D.      Insofar as possible, provisional appointees shall be required to meet the minimum qualifications for the class of the appointment as stated in the class specifications.
  
- E.      Notwithstanding Rules A and B above, the Commission may extend the 90-working-day provisional appointment for a period not to exceed 36 additional working days provided: (EC 45288)
  - A.      An examination for the class was completed during the initial 90 work days of the employee's provisional assignment.
  
  - B.      Satisfactory evidence is presented indicating:
    - a.      Adequate recruitment effort has been and is being made.
  
    - b.      Extension of this provisional assignment is necessary to carry on vital functions of the District.
  
    - c.      The position cannot be satisfactorily filled by use of the eligibility list or other employment lists or procedures such as reinstatement, transfer, or other appropriate eligibility lists.





## **CHAPTER 60:      INSERVICE STATUS AND TRANSACTIONS**

### **60.100            Probationary Period**

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**60.800****Layoff**

- 60.800.1 Procedure Regarding Layoff
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**60.900****Resignation****60.1000****Disciplinary Action and Appeal**

- 60.1000.1 Cause for Suspension
- 60.1000.2 Procedure for Disciplinary Action
- 60.1000.3 Appeal
- 60.1000.4 Hearing Procedure
- 60.1000.5 Reinstatement



- E. Should the work for which a probationary employee has been appointed prove temporary instead of permanent as certified, and should he/she be laid off without fault or delinquency on his/her part before his/her probationary period is completed, his/her name shall be restored to the eligibility list and the time he/she has served shall be credited to him on his probationary period.
  
- F. At least two weeks before the date upon which the probationary period ends the appointing power shall inform the employee of his/her retention or dismissal and such notice shall not act in any way to limit the right of the appointing power to dismiss a probationer at any time during the six months period.

**60.200**      **CHANGES IN POSITION AND CLASS**

60.200.1      Transfer

- A.      An employee may be transferred at his/her request or for the good of the service from one position to another in the same class at the discretion of the department head(s) involved, provided that such action shall not be taken for punitive or preferential reasons.
  
  - B.      A permanent employee may be transferred to a position in a related class on the same salary schedule only with same B. the sT
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60.200.2 Demotions

- A. A permanent employee may request voluntary demotion to a class with a lower maximum salary rate. Such requests require the approval of the Personnel Commission and that of the Governing Board.
- B. Voluntary demotion is a privilege available to a probationary employee only in cases when he/she would otherwise be laid off for lack of work or lack of funds.
- C. Involuntary demotion is a disciplinary action for cause and is subject to the pertinent rules and procedures.

60.200.3 Restorations (45309)

- A. A former permanent employee who resigned in good standing may be reinstated in a vacant position in his/her former class and status within 39 months of the last date of paid service. Also, he/she may be reinstated in a vacant position in a lower related class, if qualified or in limited-term status in the same or lower class. Such actions are discretionary with the appointing authority.
- B. Reinstatement or reemployment of a former employee shall have the following effects:

- 1. ~~Article 116(h) - TD 081408, 3084~~ (last step the )TcuJ17.5031 Twe PersosA3 .0031 Ta1p7eth

2. If the employee with the most seniority in the school where the adjustment is being made wishes to remain at the same hours per day worked and wishes no increase in time, the adjustment will then be offered to the next employee in line with seniority within that particular school.

B. Decreases in Assigned Time

1. When the regular hours of employment of a position or positions are to be reduced the administration shall:
  - a. Determine the class(es) and location(s) affected by the reduction:
  - b. Notify the Personnel Director at least one month in advance of the effective date of the reduction:
  - c. Work with the Personnel Director to alleviate the effect of reduction on employees.
2. When a permanent position is to be reduced in assigned time per day, week, month, or year, the incumbent shall have the right to transfer into any vacant position in the class where is not greater in assigned time than his/her former position. If a vacant permanent position of equal time is not available, the incumbent may bump the incumbent of a position with equal time who has the least seniority in the class, provided that he/she has greater seniority. If no such option is available, he/she may bump the employee with the least seniority among those occupying positions of less time than the original position and greater time than the reduced position, provided that he/she has greater seniority. An employee so bumped shall have similar bumping rights.
3. Reduction in assigned time shall not be applied for punitive or preferential reasons. Nothing in this rule shall preclude an employee from volunteering for a reduction in assigned time or from waiving preferential rights to increases in assigned time.



**60.300 LIMITED-TERM EMPLOYMENT**

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**60.400      ASSIGNMENTS OF HANDICAPPED EMPLOYEES (EC 45279)**

60.400.1      General Policy

When a permanent employee becomes unable to perform the duties of his/her classification because of illness or injury as determined by medical authority designated by the Commission, effort shall be made to place him/her in a position the duties of which are within his/her capabilities. Reassignment, if any, shall be at the discretion of the appointing authority, with the approval of the Commission in the cases noted above.

60.400.2      Reassignments

- A.      A handicapped employee's duties in his/her regular position may be altered in accordance with his/her handicap. Such changes in duties shall be informally reported to the Personnel Director, who shall determine whether the position requires classification study.
- B.      A handicapped employee may accept demotion or transfer to a less demanding class, with the approval of the Commission.
- C.      A handicapped employee may be assigned to a position in a higher class, with the approval of the Commission, but shall receive no salary benefit from such assignment until he/she can be appointed to the higher class in accordance with the rules and procedures on eligibility and appointments.

60.400.3      Effect of Refusal by Employee

A handicapped employee may refuse assignments to other classes without effect on his/her rights under sick-leave provisions of the laws and these rules. However, there is no obligation for the appointing authority to renew offers of reassignment which have been refused or to make alternative offers.

**60.500**      **EMPLOYMENT OF PERS RETIREES**

60.500.1      General Policy

- A.      Any person receiving a retirement allowance from the Public Employee's Retirement System may be employed for up to 60 working days in a calendar year whenever other eligibles are not available and the retiree's skills or knowledge is needed, or during an actual emergency to prevent the stoppage of public business.
  
- B.      The retired person must certify that he/she understands he/she is restricted to 60 working days in any calendar year with the District and other employers subject to PERS and that his/her employment and continuance in employment is discretionary with the Governing Board.
  
- C.      For the purposes of this rule, "working day" shall mean any day for which pay is received regardless of the number of hours worked.



- B. Prescribed forms shall be made available to administrators and supervisors. A copy of the evaluation shall be issued to employee.

60.600.4 Appeals

If the employee is not satisfied with his/her performance evaluation, he/she may appeal through grievance procedure (Rule 80.100).

**60.700 LEAVES OF ABSENCE**

60.700. Vacation (EC 45197)

- A. Regular full-time employee (permanent, probationary, restricted) shall accrue vacation leave with full pay as provided herein. No employee shall accrue any paid vacation leave for any period of leave without pay, absence without leave, or suspension.
1. Each employee shall accrue vacation leave at the rate of ten (10) working days per year until he/she has completed four (4) years of service.
  2. Each employee who has completed five (5) years of service shall accrue vacation leave at the rate of fifteen (15) working days per year until he/she has completed ten (10) years of service.
  3. Each employee who has completed eleven (11) or more years of service shall accrue vacation leave at the rate of twenty (20) working days per year.
  4. Each employee who has completed fifteen (15) or more years of service shall accrue vacation leave at the rate of twenty-five (25) working days-per year.
  5. The following classified positions shall be considered administrative (Rule 70.200.4):

Director of Business Services  
Director of Classified Personnel

Employees in these positions shall receive the regular rate of pay in accordance with the classification and salary allocation chart as approved by the Board of Education and Personnel Commission and which shall be considered full compensation for all time that is required of the employee to perform the required duties of his/her position without reference to overtime.

In recognition of the requirements and limitations thus imposed on these specific employees, their annual vacation leave shall accumulate at the rate of twenty-five (25) working days per year without regard to total number of years of continuous service with the Berkeley Unified School District.

- B. Vacation may, with the approval of the employer, be taken at any time during the school year. If the employee is not permitted to take his/her full annual vacation, the amount not taken shall accumulate for use in the next year or be paid for in cash at the option of the Governing Board.
- C. Earned vacation shall not become a vested right until completion of the initial six months

- E. In order to receive compensation while absent on sick leave, the employee must notify his/her supervisor of his/her absence within the first working hour of the first day absent, unless conditions make notification impossible. The burden of proof of impossible conditions shall be upon the employee.
- F. At least one day prior to his/her expected return to work, the employee shall notify his/her supervisor in order that any substitute employee may be terminated. If the employee fails to notify his/her supervisor and both the employee and the substitute report, the substitute is entitled to the assignment, and the employee shall not receive pay for that day.
- G. An employee absent for five working days or more shall be required to present a doctor's statement stating the nature of the illness or injury and the date the employee is able to return to work.

60.700.3 Additional Sick Leave (EC 45196)

- A. A regular classified employee shall once a year be credited with a total of 100 working days of paid sick leave including days to which he/she is entitled under the accumulated sick leave provision. Such days of paid sick leave, in addition to those required by the accumulated sick leave provision (EC 45191) shall be compensated at 66-2/3% of the employee's regular salary. The paid sick leave authorized under this rule shall be exclusive of any other paid leave, holidays, vacation, or compensating time to which the employee is entitled and shall be used only after exhaustion of all other paid leave.
- B. The allowable total paid additional sick leave days in a fiscal year shall be computed by subtracting the total number of sick leave days accumulated by the employee under EC 45191 from 100.
- C. Additional paid sick leave shall not be accumulated from year to year.

60.700.4 Termination of Sick Leave

- A. An employee who has been placed on paid or unpaid sick leave may return to duty at any time during the leave, provided that he/she is able to resume the assigned duties and, if the leave has been for more than 20 working days, provided that he/she has notified the District of his/her return at least three working days in advance.
- B. If, at the conclusion of all sick leave and additional leave, paid or unpaid, granted under these rules, the employee is still unable to assume the duties of his/her position, he/she will be placed on a reemployment list for a period of 39 months in the same manner as if he/she were laid off for lack of work or lack of funds.



60.700.5 Industrial Accident and Industrial Illness Leave

- G. Upon return to service from any paid or unpaid leave resulting from an industrial accident or industrial illness, an employee shall be assigned to a position in his/her former class ahead of any employee with a lesser amount of seniority. If no vacancy exists in his/her former class, he/she may displace the most recently appointed employee in the class with less seniority. If an employee's former class has ceased to exist, the employee may be reassigned or placed on a suitable reemployment list.
- H. An employee returning from such paid or unpaid leave of absence shall not have any loss or gain in status or benefits other than that which is specifically provided in applicable provisions of the Education Code and Personnel Commission rules. An employee shall continue to receive seniority credit for all purposes while on such a paid or unpaid leave of absence.
- I. When all paid or unpaid leaves of absence have been exhausted following an industrial accident or industrial illness, the employee's name shall be placed on the reemployment list for the class from which he/she was on leave for a period not to exceed 39 months.
- J. While an employee is on any paid leave resulting from an industrial accident or industrial illness, the employee's salary paid by the District shall not, when added to a normal temporary disability allowance award without penalties granted the employee under the State Workers' Compensation Insurance laws, exceed the employee's regular salary. A permanent employee's salary is computed on the basis of the number of hours and days in his/her basic daily assignment. An employee who is not permanent shall have his/her regular salary computed on the basis of the average number of hours worked each month in which the employee was in paid status during the preceding year.

During all paid leaves resulting from an industrial accident or industrial illness, the employee shall endorse to the District all wage-loss benefit checks received under State Workers' Compensation Insurance laws. The District shall issue to the employee appropriate warrants for payment of wages, loss of benefits, salary, and/or leave benefits and shall deduct normal retirement and other authorized contributions.

Final allowance for permanent industrial disability settlements shall not be subject to remittance to the District under this rule.

#### 60.700.6

#### Bereavement Leave

- A. Regular employees in the classified service shall be allowed regular pay for not more than three working days when absent on account of the death of any member of his/her immediate family. Bereavement leave with pay shall be extended to a maximum of five days when out-of-state travel is necessary in connection with the bereavement.

- B. Member of the immediate family means: mother, father, stepfather, stepmother, foster parent, guardian, father-in-law, mother-in-law, or a grandparent or grandchild of the employee or the spouse of the employee, and the spouse, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law, half brother, half sister of the employee, or any relative living in the immediate household of the employee.
- C. Regular classified employees may specify in the Classified Personnel Office one person other than that provided in Education Code and rules of the Personnel Commission with whom they have a unique relationship and, upon the death of that person, be granted bereavement leave. No extension of that list will be permitted.

60.700.7 Personal Necessity and Personal Leave (EC 45207)

- A. A classified employee may elect to use, not to exceed six days in any one fiscal year, sick leave which has been earned pursuant to Education Code Section 45191 for personal necessities which fall in the following categories:
  - 1. Bereavement leave which may be necessary beyond that authorized in these rules and law.
  - 2. Accident, involving his/her person or property, or the person or property of a member of his/her immediate family.
  - 3. Appearance in any court or before any administrative tribunal as a litigant party, or witness under subpoena or any order made with jurisdiction, and for which no other leave is provided for in these rules.
- B. Immediate family as used in this section shall have the same meaning as provided in Section 45194 of the Education Code.
- C. A classified employee may use two days of sick leave during the fiscal year for personal reasons.

60.700.8 Jury Duty and Witness Leave

- A. Leave of absence for jury service shall be granted to any classified employees who have been officially summoned to jury duty in local, State, or Federal Court. Leave shall be granted for the period of the jury service. The employee shall receive full pay while on leave provided that the jury service fee for such leave is assigned to and the subpoena or court certification is filed with the District. Request for jury service leave should be made by presenting the official court summons to jury service to the Personnel Director.

B.

2. The granting of a leave of absence without pay gives to the employee the right to return to his/her position at the expiration of his/her leave of absence, provided that he/she is physically and legally capable of performing the duties. The position may be filled only for the duration of the leave.
- B. The Governing Board may, for good cause, cancel any leave of absence by giving the absent employee due notification. The employee may appeal the cancellation to the Personnel Commission which shall investigate and hear the appeal. The appeal by the employee will stay the cancellation directive of the Governing Board until action by the Personnel Commission, which shall be final and binding.
  - C. An employee may make a written request to the Governing Board to return to work prior to the expiration date of the leave. The Governing Board may approve or reject the request.
  - D. Failure to report for duty within five working days after a leave has been cancelled or expires shall be considered abandonment of the position and the employee may be terminated by the Board of Education. The termination may be appealed to the Personnel Commission in the same manner as any other dismissal for cause. This provision is not applicable to military leave.
  - E. If an employee cannot be placed in a vacant position in his/her class upon return from leave of absence, he/she shall have bumping and reemployment rights, in accordance with his/her seniority, in the same manner as if he/she had been laid off for lack of work or lack of funds on the date his/her leave expires.

60.700.12

Maternity Leave

- A. Maternity leave is the absence from the District by a parent in connection with the arrival of a new child by natural birth or adoption.
- B. For the first 89 days of maternity leave, the employee shall receive 66-2/3% of the employee's regular salary and shall continue to receive benefits. Thereafter, the employee shall be on extended leave of absence until his/her return. The employee shall have the right to pay any or all fringe benefit premiums during this period.
- C. If a woman desires to return to work during the time she is nursing, reasonable efforts will be made to arrange for her schedule in such manner as to give her time to nurse her child.

- D. After consulting with the Director of Classified Personnel, a woman or man may begin his or her maternity leave at such time as she and/or her doctor deem proper.
- E. Maternity leave may be up to 5 years in duration with the provision that if it extends beyond the first year in which it is taken it must be in annual increments.
- F. In the event of personal or medical necessity, a prospective or new father may take personal or maternity leave.

60.700.13

Leave to Serve in an Exempt, Temporary, or Limited-Term Position

- A. Any permanent classified employee who accepts an assignment within the District to an exempt, temporary, or limited-term position shall, during such assignment, be considered for status purposes as serving in his/her regular position, and such assignment shall not be considered separation from service.
- B. ~~Any permanent classified employee who accepts an assignment within the District to an exempt, temporary, or limited-term position shall, during such assignment, be considered for status purposes as serving in his/her regular position, and such assignment shall not be considered separation from service.~~

1. His/her work history with the District (e.g., positions held and length of service in each).
2. Length of leave requested and time period in which the leave will be completed if granted.
3. The purpose for which the leave is requested. The application must include the complete course of study to be pursued, institution giving the course, costs involved, degree or credits to be granted, and other pertinent data.
4. Amount of compensation requested while on leave, if desired.
5. Service, if any, to be performed by the employee for the District during the leave.
6. The benefits to be derived by the District by the granting of the leave.

60.700.15 Leave of Absence for Retraining

In the event that the Governing Board contemplates the abolition of positions in the classified service and creation of new positions because of automation, technological improvements, or for any other reason, it may provide for retraining of displaced employees in accordance with this rule.

- A. To be eligible for retraining leave, an employee must:
1. Have served at least three years in the District.
  2. Be serving in a position which the District contemplates abolishing, or show that the retraining will clearly benefit the District.
  3. Indicate a willingness to undergo the prescribed training program.

60.700.16 Transfer of Sick Leave from Another District (EC 45202)

Any classified employee of any school district who has been an employee of that district for a period of one calendar year or more and who terminates employment with that district for the sole purpose of accepting a classified position with this District and who subsequently, within 30 days of termination of his/her former employment, accepts a classified position shall be credited with all of the earned but unused sick leave which was credited to him/her in his/her former school district.

60.700.17 Election Leave

Under Electronics Code Section 5699, all employees on the day of every general, direct primary, or presidential primary election at which they may vote, are entitled to take two hours off during their working day between the time of opening and the time of closing the polls without indicating any need or necessity for the two-hour period. No penalty shall be imposed on such employees, and no deduction shall be made from their usual salary or wages on account of such absence.



**60.800      LAYOFF**

60.800.1      Procedure Regarding Layoff

- A.      When classified employees are laid off for lack of work or lack of funds, layoff shall be made in inverse order of seniority in the class in which the layoff occurs. The employee who has been employed the shortest time in the class, plus higher classes, shall be considered to have the least seniority and, therefore, shall be laid off first.
  
- B.      In determining seniority for purposes of order of layoff and reemployment of classified employees, “length of service” means hire date. Hours in paid status does not mean any service performed prior to entering into a probationary or permanent status in the classified service of the District except service in restricted positions.
  
- C.

District shall maintain the vacancy until the Board of Administration of the Public Employees' Retirement System has properly processed his request for reinstatement from retirement.

60.800.3 Limited-Term Positions

- A. No regular employee shall be laid off from any position while employees serving under limited-term appointment are retained in positions of the same class in the same organizational unit unless the regular employee declines the limited-term position.
- B. A limited-term employee may be laid off at the completion of his/her assignment without regard to the procedure set forth in this rule.

**60.900**      **RESIGNATION**

When an employee desires to resign from his/her position, he/she shall present his/her resignation, in writing, to the appointing power, and a copy of such resignation shall immediately be filed by the appointing power with the Personnel Director.

A resignation relates only to the specific position from which the employee resigns and does not impair his/her rights to other positions which he/she may hold on eligibility lists except that an employee who resigns shall have his/her name removed from promotional eligibility lists.

An employee resigning from the service of the District shall give the governing power at least 15 calendar days' notice in advance. Failure to do so may result in forfeiture of all accumulated rights or the right to any future employment with the District.

**60.1000      DISCIPLINARY ACTION AND APPEAL**

60.1000.1      Causes for Suspension. Demotion. Dismissal (EC 45303)

- A.      Permanent employees in the classified service may be reprimanded, demoted, or dismissed for any of the following causes provided that specific instances must be set forth as to any causes enumerated in the headings below. This section shall not be construed to prevent layoffs for lack of work or lack of funds.
1.      Incompetency and inefficiency in the performance of assigned duties (Cumulative).
  2.      Insubordination (including but not limited to assigned work) or any willful and persistent violation of the provisions of the Education Code or of the rules, regulations or procedures adopted by the Board of Education, Superintendent, or the Personnel Commission pursuant to it.
  3.      Dereliction of or inattention to duty (Cumulative).
  4.      Failure to maintain the requirements of the classification, e.g. license or certification.
  5.      Failure of good conduct tending to injure the public service.
  6.      Dishonesty on matters pertaining to employment and duties.
  7.      Discourteous, offensive or abusive conduct or language toward other employees, pupils, or the public (Cumulative).
  8.      Use of alcoholic beverages, non-prescribed narcotics or restricted substances while on duty or reporting to work while under the influence of alcohol, non-prescribed narcotics or restricted substances (Cumulative).
  9.      Conviction of any criminal act by a court of law involving moral turpitude or other serious crime which indicates the person is a poor employment risk.
  10.     Political activities engaged in by an employee during his/her assigned hours of employment (Cumulative).
  11.     Unexcused absence or abuse of sick leave privileges or repeated and unexcused tardiness.
  12.     The discovery or development during an initial probationary period of any physical, emotional, and/or mental condition which would have precluded acceptance as eligible for assignment.



- C. Supervisors shall have orally or in writing recommended corrective action whenever an employee fails to meet the required standards or conduct or performance for a cumulative offense.
- D. If disciplinary action is a written reprimand, the employee shall be given a copy and it shall include notice of the employee's right to respond within ten working days before the reprimand is included in the employee's personnel file.
- E. When a regular employee is to be suspended, demoted, or dismissed, specific written charges shall be prepared and presented for action of the Governing Board. The charges must be so clear that the employee will know the exact complaints and may be expected to respond to them.
- F. When formal disciplinary action has been taken by the Governing Board, the action and the charges shall be reported to the Personnel Director, who shall within 10 working days notify the employee and shall report the action to the Commission.
- G. Notice to the employee shall include a copy of the charges and a statement of his/her right to appeal, if any, together with a copy of Rule 60.1000.3. Such notice shall be transmitted by registered or certified mail to the last known address of the employee within 10 working days of the effective date of the disciplinary action.
- H. Notwithstanding the procedures prescribed above, an employee may be suspended prior to Board approval when in the opinion of the Superintendent or in his/her absence, the Superintendent's designee, such suspension is necessary to protect the interest of the District. Such suspension is subject to later ratification by the Board and approval of charges which must be transmitted to the employee within 10 working days after the date of suspension. Requirements in regard to charges and notifications must be met when the Board ratified the administrative action.
- I. A regular employee charged with the commission of any sex offense as defined in Section 44010 or any narcotics offense as defined in Section 44011 of the Education Code by complaint, information, or indictment filed in a court of competent jurisdiction may be suspended as provided for in Section 45304 of the Education Code. Such a suspension will be processed as an involuntary personal leave in accordance with the provisions of this rule relative to suspensions. The employee may receive compensation as provided for in the Code section. Such suspension shall be reviewed by the Personnel Commission every 90 calendar days.
- J. Dismissal shall cause removal of the employee's name from all employment lists.

- K. Failure to appeal, as provided below, shall make the action of the Governing Board final and conclusive.
- L. Suspension, without pay, shall not exceed the time limitations prescribed in Education Code Section 13742.

60.1000.3 Appeal (EC 45305)

- A. A permanent employee who has been suspended, demoted, or dismissed may appeal to the Personnel Commission with 14 working days after having been furnished with a copy of the written charges by filing a written answer to such charges. Appeal can be made only on the following grounds:
  - 1. That the procedures set forth in these rules have not been followed.
  - 2. That the action was taken because of political or religious acts or opinions or affiliations, or race, color, national origin or ancestry, sex, or marital status or pregnancy.
  - 3. That there has been abuse of discretion.
  - 4. That the action taken was not in accord with the facts.
  - 5. Penalty invoked is excessive.
- B. A permanent employee who has not served the full probationary period for the class and who is demoted to the class from which promoted may request an investigation by the Commission within 14 days after the receipt of the copy of written charges. The request for the investigation shall be based only on one or more of the five grounds provided above for appeals. The Commission shall conduct an investigation confined to the grounds set forth in the charges and in the request for the investigation but shall not be required to follow the procedures for appeals and hearings set forth in these rules. The Commission shall notify the Governing Board and the employee in writing of its findings. If the Commission's investigation and findings, however, indicate any discriminatory action, the Commission may order a formal hearing. The decision of the Commission shall be binding on the Governing Board.

60.100.4 Hearing Procedure (EC 45312)

- A. When the Commission has determined that it has jurisdiction over an appeal, a hearing shall be held. The Commission shall appoint a hearing officer, who may be the Commission, a Committee of the Commission, a Commissioner or hearing officer employed by contract or as a professional expert to hear and determine the charges.

1. The Commission, Committee of the Commission or hearing officer shall determine the time and place when the charges will be heard and notify the Director of Classified Personnel who shall inform the employee concerned and the employee's representative.
2. Notification shall be by letter normally three weeks preceding date of hearing. Letter shall request names of witnesses to be subpoenaed and date by which witnesses' names must be given to the Director.

B. Duties of the Commission, Committee of the



7.

60.1000.5 Reinstatement (EC 45307)

If the Commission sustains the employee, it may order paid all or in part of his/her full compensation from the time of suspension, demotion, or dismissal, and it shall order his/her reinstatement. Upon notification of the Commission's decision, the Board of Education shall reinstate the employee and authorize such compensation as the Commission directs.

60.1000.6 Cost of Hearing

All costs for the services of a Hearing Officer employed by contract or as a professional expert and the court reporter including but not limited to, per diem expenses, the Hearing Officer and court reporter's travel and assistance expenses and cost of any hearing room will be borne equally by the District and the employee's participating representative. All other costs will be borne by the party incurring them. Costs of transcripts shall be equally borne by the District and participating parties, if the transcript is requested by the hearing officer or both parties. If a copy

## **CHAPTER 70: WAGE AND SALARY PROVISIONS**

### **70.100**            **Application of Salary Schedules**

- 70.100.1            Initial Placement
- 70.100.2            Salary Surveys
- 70.100.3            Promotions
- 70.100.4            Step Advancement
- 70.100.5            Placement After Leave of Absence
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### **70.200**            **Work Periods and Overtime**

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### **70.500**            **Benefits for Part-Time Employees**

### **70.600**            **Longevity Merit Program**

70.100 APPLICATION OF SALARY SCHEDULES

70.100.1 Initial Placement

All new employees shall be appointed at the hiring rate for the class as approved by the Commission. The hiring rate shall be the first step of the schedule except for classes where recruitment efforts have indicated difficulty in recruiting at that step. An accelerated hiring rate may be set, with the approval of the Board and the Commission, at any step of the schedule of the class.

70.100.2 Salary Surveys

- A. A salary survey shall be made:
1. Whenever a new class is created.
  2. Annually, of all benchmark classes in the classified service.
  3. When directed by the Commission.
- B. Employees, employee organizations or the administration may request a salary survey of a class or classes by directing a written communication to the Commission and setting forth the reasons for study.

70.100.4 Increments to Probationary Employees

The manner in which starting salaries of new employees are to be increased to Step B on salary schedules at the end of the probationary period shall be accomplished as herein stated:

- A. The first salary increment shall be granted newly employed members of the classified staff upon completion of six (6) months' employment in probationary status.
- B. This advance in salary shall become effective January 1 when the period of Probationary Employment is completed between July 2 of the prior year and January 1 of the current year, inclusive; it shall become effective on July 1 when the period of Probationary Employment is completed between January 2 and July 1, inclusive of the current year.
- C. Each succeeding annual increment shall become effective on the increment date, July 1 or January 1.

70.100.5 Placement After Leave of Absence

Upon return from leave of absence, an employee shall be placed on the same step of the range for the class which he/she had achieved prior to the leave, regardless of changes in rate or range applicable to the class.

70.100.6 Placement When Demoted

- A. An employee who accepts voluntary demotion shall be placed on the step of the range of the lower class which is closest to the rate he/she earned in the higher class, provided that he/she shall not receive a salary increases thereby.
- B. The order in an involuntary demotion shall specify the step of the schedule at which the employee shall be placed. Step advancement shall be in accordance with Rule 70.100.3.

70.100.7 Differential Pay

- A. Shift Differential

All positions, the regularly assigned time of which requires the incumbents to work half time or more between the hours of 7 p.m. and 7 a.m., shall be paid at a rate that is 5% higher than the

B. Language Differentials

Regular, full-time employees using bilingual skills shall be paid a differential of \$15 per pay period if required to exercise the ability to translate to and from English by speaking, reading, and writing a foreign language or \$10 per pay period if required to converse in the foreign language.

In order to qualify for one of the above differentials, the employee must be an incumbent of a position approved by the Board of Education and Commission as requiring multiple languages in accordance with Section 30.200.8.

C. Management and Confidential Differentials

All employees in positions designated by the Governing Board as Management or Confidential shall receive a 5 % differential per pay period. The differential shall be applied to the base salary.

The differentials authorized under paragraphs B and C are available to regular part-time employees but will be prorated in the same ratio as the number of hours in their basic regular assignment bears to full-time employment of 7-1/2 hours per day, 37-1/2 hours per week, or 163 hours per pay period.

**70.200**      **WORK PERIODS AND OVERTIME**

70.200.1      Workday and Workweek

- A.      The maximum number of hours of regular employment of an employee is 7-1/2 hours a day and 37-1/2 hours a week. However, the Governing Board may employ persons for lesser periods of time and may, through authorized administrators, order and authorize employees to work in excess of 7-1/2 hours in one day or 37-1/2 hours in one week.
  
- B.      Under the Fair Labor Standards Act, single workweek is the standard and does not permit averaging of hours over two or more weeks. For example, if an employee works 27-1/2 hours one week and 47-1/2 hours the next, he/she must receive overtime pay for the hours

- C. Overtime is defined to include any time required to be worked in excess of 7-1/2 hours in any one day and in excess of 37-1/2 hours in any calendar week. If a Governing Board establishes a workday of less than 8 hours but more than 35 hours for all of its classified positions or for certain classes of classified positions, all time worked in excess of the established workday and workweek shall be deemed to be overtime. The foregoing provisions are not intended to apply to properly designated



70.200.5

Rest Periods

Employees shall be authorized rest periods of fifteen (15) minutes which insofar as practicable shall be in the middle of each work period. The authorized rest periods shall be based on the total hours worked daily at the rate of fifteen (15) minutes per four (4) hours. Rest periods are not authorized for part-time employees holding positions of less than four (4) hours duration. Authorized rest period time shall be counted as hours of work for which there shall be no deduction in pay.

**70.300**      **HOLIDAY PAY (EC 45203)**

70.300.1      Eligibility (Holidays)

- A.      Regular employees will be entitled to payment for authorized holidays, provided they

**70.400      PAYROLLS**

**70.500**            **BENEFITS FOR PART-TIME REGULAR EMPLOYEES**

- A.     Benefits for persons employed less than full time are to be provided as authorized in Education Code Sections 45136, 45137 and 45197.
  
- B.     Sick leave and all other benefits accorded part-time members of the classified service are to be prorated on the basis of assigned hours worked per day as it bears to 8 hours, 40 hours per week, weeks per month, or months to a calendar year.
  
- C.     If an employee works 30 minutes or more for 20 consecutive workdays in excess of the assigned time, the assigned time will be adjusted to reflect actual work time and become "assigned time." (See Rule 60.200.4)
  
- D.     If Rule C does not apply but an employee works, on an average, 50 minutes or more above the assigned time in any one quarter, he/she shall receive fringe benefits in the following quarter based on the average actual time worked in the preceding quarter.
  
- E.     Vacation – unless vacation pay is provided on the basis of actual hours of paid regular service, rather than on an assigned time basis, vacation pay shall be granted on the basis of the average number of hours worked in a school year by the part-time employee.

**70.600**      **LONGEVITY MERIT PROGRAM**

Regular full-time and part-time classified employees shall be entitled to participate in the longevity merit program as outlined herein. Positions not included in the regular classified services are playground positions, noon directors, student workers, restricted positions for specific projects, limited-term assignments, and professional experts.

Employees who have performed at a satisfactory or better level as evaluated by their department head or

8. The Personnel Department will initiate payroll notifications for entitled longevity and merit salary increases.
  9. The one year service shall be credited on established anniversary date to incumbents who have worked in continuous positions not less than 75% of the total working days in the preceding year with satisfactory work ratings.
  10. Notifications of pertinent action regarding service which has been interrupted by Leave of Absence will be provided by the Personnel Department.
- B. The Classified Personnel Department shall be responsible for keeping salaried time reports and for issuing notices of Personnel Action for salary payments to eligible employees according to the following salary schedule.

<u>CLASSIFIED SALARY SCHEDULE</u>	<u>LONGEVITY MERIT PAY STEP</u>
10 years of service = \$30 per month	1
15 years of service = \$35 per month	2
20 years of service = \$40 per month	3
25 years of service = \$50 per month	4
30 years of service = \$75 per month	5

- C. Amounts of awards shall be the same for all regular employees regardless of length of current working assignments.
- D. Verification by the Accounting Department shall be accomplished by checking data on payroll notices and by the internal auditor through occasional review of employee records.

## CHAPTER 80: MISC

**80.100**      **PROCEDURE FOR ADJUSTMENT OF GRIEVANCES OF CLASSIFIED PERSONNEL**

80.100.1      Purpose of the Adjustment Procedure

The adjustment procedure is the medium through which permanent classified employees may seek adjustment of complaints arising out of alleged violations of established Board rules or policies or administrative procedures, working conditions, or job relations, including the complaint of one employee against another employee. There is an obligation on the part of an aggrieved employee to make known the existence of his/her complaint and the facts pertaining to his/her complaint within 30 working days of any specific or documented incident.

Matters excluded from the adjustment procedure shall be:

1.      Accusatory charges relating to the moral or professional fitness of an employee. Such charges shall be processed by the Board of Education.
  
2.      Matters specifically reserved for action or review by the Personnel Commission under Personnel Commission rules in effect at the time the events leading to the grievance occurred. Such matters shall be processed through normal channels by the Personnel Commission.

In cases where the Personnel Commission rule regulates less than the total procedure, the Commission may waive that rule and thereby provide that the dispute be settled through the adjustment procedure.

3.      Complaints about the subject matter of a Board rule or policy or administrative procedure, rather than the administration of the Board rule or policy or procedure. An employee with such a complaint should direct his/her suggestions for change through administrative channels to the Board or



B. Informal Review

1. If the problem has not been resolved by the immediate supervisor, the employee may request, either orally or in writing, that an informal review be made by the next higher-level supervisor in whom authority exists to take corrective action. In the

from the District's employee relations department, or such other office as may be designated, throughout the course of the adjustment procedure.

3. The appellant shall submit the co

4. The District shall provide the hearing officer with all necessary technical and clerical staff assistance in preparing for and conducting the hearing and in preparing the findings.
5. The hearing officer shall convene a hearing at the earliest practicable date after his/her selection. He/she shall establish his/her own procedures. He/she shall review the written statements submitted by the parties to the grievance. The appellant and the respondent may request the presence of witnesses. The hearing officer shall be empowered to direct the attendance of any District's employee at the hearing without loss of salary to the employee.
6. The hearing shall be conducted in an informal manner with only those having legitimate interest in the problems at issue, as determined by the hearing officer, admitted. The appellant and the respondent shall each be limited to two days to present their respective positions. The hearing officer may admit evidence and testimony regarding incidents and occurrences that antedate the event giving rise to the grievance if he/she concludes that they have sufficient relevance as background information. He/she may also take such additional time as necessary to take such further testimony as he/she deems necessary. The hearing shall be conducted in accordance with fundamental rules of fairness and due process.
7. The hearing officer shall render written findings, conclusions, and the recommendations within 10 working days of the termination of the hearing. The findings, conclusions, and recommendations shall be sent to the parties concerned and to the Superintendent for implementation.

E. Board of Education Review

- 1.

4. When the Board of Education has reached a decision, the Clerk of the Board of Education shall notify the Superintendent and the individuals involved as soon as possible after the completion of the review





- C. Any classified employee who absents himself/herself from duty, for any reason, during the period of an unlawful strike, sitdown, slowdown, or other concerted activities shall be required to provide proper evidence that his/her absence was lawful and in no way an effort on the employee's part to further the strike or concerted activity.
- D. Any rule prescribed in this Act which permits personal or illness absences without evidence of necessity is suspended and void during any attempted strike or other concerted labor activity against the District.

**80.300**

**POLITICAL ACTIVITY**



80.300.4 Leave of Absence

- A. An employee who files for a political office may request, and shall be granted, an unpaid leave of absence which shall commence not earlier than one month prior to the concerned election and continue until the election processes have been completed insofar as his/her candidacy is concerned.
- B. Such leave is required if the employee is a candidate for election to the Governing Board.

80.300.5 Intent

privilege of political freedom and activity, but to insure that politic

**80.400**

**NEW EMPLOYEE CLEARANCES**

B.

appointing authority shall decide whether or not the person should be employed or retained in employment.

If the record discloses no information beyond that supplied by the person on his/her application form, and he/she was accepted for examination and/or appointment, he/she shall be considered employable.

80.400.3

Availability of Personnel File

A. Any member of the classified service may, by his/her request, inspect his/her personnel  
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**80.500**      **VIOLATIONS (EC 45317)**

Any person who willfully or through culpable negligence violates any of the provisions of this article (commencing at Section 45240) is guilty of a misdemeanor. It is also unlawful for any person:

- A. Willfully, by himself/herself or in cooperation with another person, to defeat, deceive, or obstruct any person with respect to his/her right of examination, application, or employment under this article... or Commission rule.