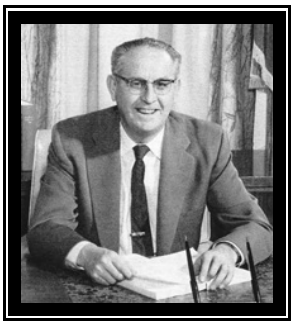
WHEN ARE EMPLOYEES ENTITLED TO ADVANCE WRITTEN NOTICE OF CLOSED SESSIONS TO HEAR COMPLAINTS OR CHARGES AGAINST THEM?

For your summer reading pleasure, this Brown Act Bulletin reviews developments concerning the issue of when employees are entitled to 24 hours' notice of board consideration of complaints or charges against them. Enjoy!



Ralph M. Brown

SUMMARY:

The California Court of Appeal's opinion in *Kolter v. Commission on Professional Competence of the Los Angeles Unified School District* ([2009] 170 Cal.App.4th 1346) helps clarify the standards for determining whether an employee is entitled to 24 hours' advanced written notice that the governing board will meet in closed session to consider a matter involving that employee. Specifically, the court explains the important difference between holding a hearing on a complaint or charge (advance notice needed) versus considering whether to proceed with formal charges (no advance written notice required).

BACKGROUND:

The Brown Act permits school and community college boards of trustees to meet in closed session to "***consider*** the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee ***or*** to ***hear*** complaints or charges brought against the employee by another person or employee unless the employee requests a public session." (Emphasis added.) As a condition to holding a closed session to hear complaints or charges, the employee must be given written notice of the right to have the complaints or charges heard in an open session rather than a closed session, and the notice must be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. The consequence of failing to give the notice is that any disciplinary or other action taken by a board against the employee based on the specific complaints or charges

in the closed session is considered null and void. (Brown Act – Government Code section 54957.)

California courts have long debated the meaning of the statute as it applies to the "hearing" of complaints or charges. The California Court of Appeal for the 2nd Appellate District recently weighed in on the subject when it upheld a ruling in favor of the Los Angeles Unified School District in the *Kolter* case. In that case, the school board met in closed session to review a statement of charges against a tenured teacher and decided to initiate the dismissal process, without prior notice to the teacher of the closed session or the charges against her. The District then notified the teacher of its intent to dismiss her and her right to a public hearing. In the subsequent dismissal proceedings before the Commission on Professional Competence, the teacher sought to dismiss the case on the grounds that she was not given the 24 hours prior written notice guaranteed under the Brown Act when the board met to consider initiating the dismissal process.

In reaching its conclusion that prior notice was not required, the Court reaffirms its 1999 decision in the case entitled *Bollinger v. San Diego Civil Service Commission*,[1] citing with approval the *Bollinger* court's observation that in section 54957, the Legislature used the verb "hear" in connection with "complaints or charges," but the verb "consider" in connection with "dismissal of a public employee."[2] The Court of Appeal concluded the word choice was significant because the dictionary defines "to consider" as "to 'deliberate upon,' [while] [t]o 'hear' is to 'listen to in an official . . . capacity[.]' [Citation.] A 'hearing' is '[a] proceeding of relative formality . . . , generally public, with definite issues of fact or of law to be tried, in which witnesses are heard and evidence presented.' [Citation.]"

The *Kolter* court characterized the closed session as one in which the Board did not conduct an evidentiary hearing on the statement of charges against Kolter; rather, it considered whether those charges justified the initiation of dismissal proceedings under the Education Code – proceedings which afford certificated employees a great deal of due process and opportunity to fully respond to all charges in a formal public hearing where evidence is taken. The Court concluded that the personnel exception to the Brown Act applied to the governing board's action, and 24-hour written notice was not required.

In reaching its decision, the *Kolter* court distinguishes the opinions of other Courts of Appeal which reach different outcomes on the "complaints or charges issue" because in the *Kolter* court's view, these other decisions involved disciplinary actions taken in closed session where the employee had no other forum to defend against the complaint or charge

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[1] *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568

[2] In *Bollinger*, a police officer and his union challenged the officer's demotion on the grounds that the hearing officer's decision upheld by the Civil Service Commission was based on complaints or charges brought by other employees and the officer was not given the requisite 24 hours' written notice of the Board's closed session consideration of those charges. The Court of Appeal held that the Commission could consider the demotion of the officer in closed session. The officer in that case had already been afforded a public evidentiary hearing at the time the Commission met to consider the discipline based upon that hearing.

before discipline was imposed; while in *Kolter*, the closed session was a "prelude to a full evidentiary hearing" under the Education Code.

T he following prior cases illustrate situations where the courts have addressed the notice requirement:

NOTICE REQUIRED:

- *Bell v. Vista Unified School District:*[3] The CIF placed a school on probation as a result of allegations against a coach and admonished the school district to take appropriate action against the coach. The school board held a closed session to consider "public employee discipline/ dismissal/release," giving the coach written notice late on the morning of the board meeting that the board would be discussing the CIF action against the school based on the coach's conduct. In the closed session, the school board voted to permanently deprive him of the coaching assignment, although without loss of pay. The Court opined that the presentation of the CIF findings to the board as a basis for discipline against the coach became an accusation against him with potential disciplinary consequences, to which he was entitled to respond to clear his name and avoid the imposition of discipline.

- *Moreno v. City of King*:[4] The City Council held a closed session at which the City Council received a letter from the City Manager containing allegations of misconduct against the Finance Manager which were discussed by the Council. The Finance Manager was not given notice that his employment would be discussed at the meeting or a copy of the allegations. Five days later the City Manager notified the finance manager of his termination and gave him a copy of the letter containing the allegations of misconduct. The Court characterized the Council's consideration of the accusations against the finance manager as amounting to a hearing of "complaints or charges," and found that the document was not a performance evaluation but instead contained details of five specific accusations of misconduct. The Court noted that the purpose of section 54957 is to provide an employee with the opportunity to respond to specific accusations made by another person, and that the finance manager was not given the opportunity to respond to the accusations prior to his dismissal.

- *Morrison v. Housing Authority of the City of Los Angeles*:[5] A public employee appealed her termination and her employer appointed a hearing officer who determined there was not sufficient cause to support termination and ordered her suspended briefly. The Board held a series of closed sessions to consider the hearing officer's decision. General public notice of the first meeting was given, but the employee was not given 24 hours' advance written notice of her right to demand an open session. The Board reviewed the records and discussed the hearing officer's decision, but reached no

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[3] *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672

[4] *Moreno v. City of King* (2005) 127 Cal.App.4th 17

[5] *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860

decision. The employee was notified of subsequent meetings on the matter. At one such meeting, held in open session at the employee's request and attended by her attorney (but not by the employee on the grounds it was unclear from the notice whether she was entitled to speak), the Board heard extensive arguments and rejected the hearing officer's decision based upon its own review of the evidence and findings.

The court held that the fact the Board gave the employee (Morrison) notice of a subsequent meeting and held it in public at her request did not cure the previous violation, stating that any other conclusion "would eviscerate the Brown Act because it would allow the agency to make findings of fact in secret which ought to be made in public and then conduct a mere "ceremonial" hearing to satisfy the open meeting requirement."

NOTICE NOT REQUIRED:

- *Fischer v. Los Angeles Unified School District*:[6] The school board was given a package of documents concerning the performance of three second year probationary teachers along with a staff recommendation not to reelect them in a closed session. The teachers contended these amounted to complaints or charges against them for which they were entitled to the statutorily required notice. The Court disagreed, holding that the definition of "specific complaints or charges brought against an employee by another person or employee" does not correspond to the "notice of unsatisfactory act" or other notice of specific charges which the probationary teachers received and to which they had an opportunity to respond in conferences and meetings with district administrative personnel. The Court stated, "We do not find that mere consideration of reasons for nonreelection constitutes hearing specific complaints or charges brought against an employee by another person or employee. That finding would nullify Education Code section 44929.1 and the 'personnel exception' of the Brown Act."

- *Furtado v. Sierra Community College*:[7] A faculty evaluation committee recommended nonrenewal of a contract library employee's contract. The governing board scheduled a closed session to review the evaluation, which the employee elected not to attend. The employee contended the negative comments in her evaluation amounted to "complaints or charges" such that board was required to provide her the 24-hour notification of the right to hold the discussion in closed session. The Court of Appeal disagreed, noting that the statutory reference to "evaluation of performance" as a basis for closed session is distinct from the "complaints or charges" process and that to merge evaluations into complaints or charges "is effectively to rewrite the statute."

To summarize, *Kolter* makes clear that in the context of a closed session board meeting to determine whether to initiate the termination of a tenured certificated employee, the employee is not entitled to 24 hours' prior written notice under the Brown Act. However, many situations remain in which action taken by a school board will still be deemed to involve

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[6] *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87

[7] *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876

the hearing of complaints or charges. One classic example will be a board's consideration of complaints relating to employees under the district's uniform complaint policy or its policy on complaints against employees.

The law is still not settled in this area. Although the issue has been heavily litigated over the past decade, the California Supreme Court has "depublished" a series of lower court decisions, stripping them of their value as legal precedent, without setting forth its own views on the matter. There will continue to be situations where the law appears unclear and districts will want to consider giving the 24-hour notice in an abundance of caution, since the potential consequence of failing to do so is significant (invalidating the discipline). We urge districts to consult legal counsel when considering a closed session at which complaints or charges against an employee will arguably be discussed or reviewed.

COLLEEN KOLTER, Plaintiff and Appellant, v. COMMISSION ON PROFESSIONAL COMPETENCE OF THE LOS ANGELES UNIFIED SCHOOL DISTRICT, Defendant and Respondent; LOS ANGELES UNIFIED SCHOOL DISTRICT, Real Party in Interest and Respondent.

No. B206134

COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION ONE

170 Cal. App. 4th 1346; 88 Cal. Rptr. 3d 620; 2009 Cal. App. LEXIS 150

January 8, 2009, Filed

SUBSEQUENT HISTORY: [***1]

The Publication Status of this Document has been Changed by the Court from Unpublished to Published February 5, 2009.
Review denied by Kolter (Colleen) v. Commission on Professional Competence of the L.A.U.S.D., 2009 Cal. LEXIS 4246 (Cal., Apr. 29, 2009)

PRIOR HISTORY: APPEAL from a judgment of the Superior Court of Los Angeles, No. BS107557, Dzintra I. Janavs and James C. Chalfant, Judges.

DISPOSITION: Affirmed.

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court denied a permanent certificated teacher's petition for relief in her action for administrative mandamus, which challenged her dismissal from employment after a school district's professional competence commission agreed with the governing board of the school district that she should be dismissed. The governing board convened in a closed session to initiate the process to dismiss the teacher without complying with the Ralph M. Brown Act (Gov. Code, § 54950 et seq.), which requires 24-hour written notice to the employee of the right to have the matter heard in an open session. (Superior Court of Los Angeles County, No. BS107557, Dzintra I. Janavs and James C. Chalfant, Judges.)

The Court of Appeal affirmed the judgment, holding that a public agency may deliberate in closed session on complaints or charges brought against an employee without providing the statutory notice. In the instant case, the governing board did not conduct an evidentiary hearing on the verified statement of charges against the teacher; rather, it considered whether those charges justified the initiation of dismissal proceedings under Ed. Code, § 44944. The teacher exercised her statutory right under the Education Code and was accorded a noticed public evidentiary hearing. The personnel exception (Gov. Code, § 54957) to the Brown Act applied to the governing board's action, and 24-hour written notice was not required. The court concluded that although the commission hearing evidence in a dismissal proceeding does not have the statutory authority to impose discipline other than dismissal, it does have the discretion to refuse to dismiss, even if it finds that cause for discipline exists. (Opinion by Dunning, J.,* with Mallano, P. J., and Rothschild, J., concurring.) [*1347]

* Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

COUNSEL: Trygstad, Schwab & Trygstad, Lawrence B. Trygstad and Shanon D. Trygstad for Plaintiff and Appellant.

Priscilla S. Winslow and Alice O'Brien for California Teachers Association as Amicus Curiae on behalf of Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Miller Brown & Dannis and Enrique M. Vassallo for Real Party in Interest and Respondent.

JUDGES: Opinion by Dunning, J., with Mallano, P. J., and Rothschild, J., concurring.

OPINION BY: Dunning [*1349]

OPINION

[**621] **DUNNING, J.** *--May the governing board of a school district convene in a closed session to initiate the process to dismiss a permanent certificated teacher without complying with the Ralph M. Brown Act (Gov. Code, § 54950 et seq.; the Brown Act), which requires 24-hour written notice to the employee of the right to have the matter heard in an open session? Yes.

* Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the

California Constitution.

FACTUAL [*2] AND PROCEDURAL BACKGROUND**

The governing board of the Los Angeles Unified School District (District) met in a closed session on May 2, 2006, and initiated the process to dismiss permanent certificated elementary school teacher Colleen Kolter. (Ed. Code, § 44934.) Kolter did not receive any premeeting notice of the session or of the charges against her. After the closed session, the District notified Kolter by mail of the intent to dismiss and her right to a public hearing. (Ed. Code, § 44941.)

Kolter, represented by counsel, exercised her statutory right to a hearing before the Commission on Professional Competence of the Los Angeles Unified School District (Commission). (Ed. Code, § 44944.) Before any evidence was presented to that body, Kolter moved to dismiss the proceedings, arguing the governing board's closed session violated her rights under the Brown Act. She also sought dismissal based on the District's earlier failure, once her attorney advised she was under treatment for bipolar disorder, to provide a reasonable accommodation for the disability. Specifically, she faulted the District for not invoking Education Code section 44942, subdivision (f) and placing her on involuntary medical leave. [1] Both motions to dismiss [***3] were denied, [**622] and the Commission proceeded to take evidence over a nine-day period. The three-member Commission unanimously agreed Kolter should be dismissed. (Ed. Code, § 44944, subd. (c)(1).)

1 Kolter raised this issue in the trial court and on appeal as well. Citing only *Green v. State of California* (Cal.App.), she argues the District was required to initiate the interactive process to identify a reasonable accommodation, even though she did not request one. But the Supreme Court granted review in *Green* on November 16, 2005 (S137770), and did not order that the Court of Appeal decision remain published. It could not be cited or relied upon at any time during any of the proceedings in this matter. (Cal. Rules of Court, rule 8.1115; see now *Green v. State of California* (2007) 42 Cal.4th 254 [64 Cal. Rptr. 3d 390, 165 P.3d 118].) Without authority for the argument, we deem it waived.

[*1350]

Kolter then filed this action for administrative mandamus, disability discrimination, failure to place her on mandatory sick leave, and failure to offer a reasonable accommodation for her disabilities. (Code Civ. Proc., § 1094.5; Gov. Code, § 12900.) The cause of action for administrative mandamus was tried to the court on the administrative [***4] record and arguments of counsel. Kolter's petition for writ relief was denied. The court adopted and filed the tentative decision as its statement of decision. Thereafter, Kolter voluntarily dismissed the causes of action based on the California Fair Employment and Housing Act (Gov. Code, § 12900 et seq.), and judgment denying the peremptory writ of mandamus was entered.

DISCUSSION

(1) The Brown Act generally requires that "[a]ll meetings of the legislative body of a local agency shall be open and public ... ." (Gov. Code, § 54953.) It applies to school districts. (Gov. Code, §§ 54951, 54952; *Fischer v. Los Angeles Unified School Dist.* (1999) 70 Cal.App.4th 87, 95 [82 Cal. Rptr. 2d 452] (*Fischer*).) Per the Brown Act itself, the only exceptions are found in its own provisions or in "any provision of the Education Code pertaining to school districts ... ." (Gov. Code, § 54962.) Government Code section 54957 describes the "personnel exception" to the open meeting requirement. (*Fischer, supra*, at pp. 95-96.) That exception provides in part: "Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions ... [¶] ... [¶] during a regular or special meeting [***5] to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session. [¶] ... As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void." (Gov. Code, § 54957.)

Kolter contends the governing board's consideration of the charges against her triggered the "As a condition" clause to the exception, thus requiring [*1351] 24-hour notice by the District's governing board and an opportunity to request an open session. Because the governing board acted in a closed session, she asserts the dismissal is

[***6] void. [2] (Gov. Code, § 54957, subd. (b)(2).) The District disagrees, citing *Bollinger v. San Diego Civil Service Com*. (1999) 71 Cal.App.4th 568 [84 Cal. Rptr. 2d 27] (*Bollinger*) [**623] and *Fischer, supra*, 70 Cal.App.4th 87.)

2 Kolter does not challenge the dismissal on the merits.

Although the closed civil service commission session in *Bollinger* occurred after the employee was afforded a public evidentiary hearing, much of the Court of Appeal's analysis of Government Code section 54957 is applicable here. There, a public employee was demoted for misconduct. He appealed and exercised his right to a noticed public evidentiary hearing. The hearing officer issued a written report after the evidentiary hearing, recommending that the demotion be affirmed. The report, however, was not provided to the employee. Nor was the employee given written notice that the civil service commission would meet in a closed session to consider whether to ratify the demotion. After the commission acted in the closed session, the employee received a copy of the hearing officer's report. The employee contended the Brown Act prohibited the commission from considering his demotion in a closed session. The Court of Appeal disagreed.

(2) The *Bollinger* [***7] court first noted that in section 54957 [3] the Legislature used the verb "hear" in connection with "complaints or charges," but the verb "consider" in connection with "dismissal of a public employee." (*Bollinger, supra*, 71 Cal.App.4th at p. 574.) The Court of Appeal concluded the word choice was significant because the dictionary defines "to consider" as "to 'deliberate upon,' [while] [t]o 'hear' is to 'listen to in an official ... capacity[.]' [Citation.] A 'hearing' is '[a] proceeding of relative formality ... , generally public, with definite issues of fact or of law to be tried, in which witnesses are heard and evidence presented.' [Citation.]" (*Ibid*.; see also *Fischer, supra*, 70 Cal.App.4th at pp. 96-97.)

3 In response to the events of September 11, 2001, Government Code section 54957 was amended in 2002 to authorize greater confidentiality for meetings concerning threats to essential public services. (See Historical and Statutory Notes, 36B West's Ann. Gov. Code (2008 supp.) p. 34.) Subdivisions were added, but the substantive language we address in this opinion was not changed.

The legislative history of Government Code section 54957 provided further support for *Bollinger*'s conclusion that a [***8] closed session was permissible under these circumstances. The original drafts of the Assembly and Senate bills (Stats. 1993, ch. 1136, § 12, p. 6363 (Assem. Bill No. 1426 (1993-1994 [*1352] Reg. Sess.)); Stats. 1993, ch. 1137, § 12, p. 6379 (Sen. Bill No. 36 (1993-1994 Reg. Sess.)) included the following language: "As a condition to holding a closed session *on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session*." (Italics added; see Sen. Bill No. 36 (1993-1994 Reg. Sess.) § 17; Assem. Bill No. 1426 (1993-1994 Reg. Sess.) § 17; *Bollinger, supra*, 71 Cal.App.4th at p. 574.)

The language italicized above was removed from both bills before Government Code section 54957 was enacted. (Assem. Amend. to Sen. Bill No. 36, § 12 (1993-1994 Reg. Sess.) Aug. 19, 1993; Sen. Amend. to Assem. Bill No. 1426, § 12 (1993-1994 Reg. Sess.) Sept. 8, 1993.) As enacted, therefore, section 54957 does not entitle an employee "to 24-hour written notice when the closed [***9] session is for the sole purpose of considering, or deliberating, whether complaints or charges brought against the employee justify dismissal or disciplinary action. [**624] 'The rejection of a specific provision contained in an act as originally introduced is "most persuasive" that the act should not be interpreted to include what was left out. [Citations.]' [Citation.] Accordingly, we conclude a public agency may deliberate in closed session on complaints or charges brought against an employee without providing the statutory notice." (*Bollinger, supra*, 71 Cal.App.4th at pp. 574-575; see also *Fischer, supra*, 70 Cal.App.4th at pp. 95-102 [involving "election" proceedings for probationary teachers].) We agree.

(3) In this matter, the governing board did not conduct an evidentiary hearing on the verified statement of charges against Kolter; rather, it considered whether those charges justified the initiation of dismissal proceedings under Education Code section 44944. Kolter exercised her statutory right under the Education Code and was accorded a noticed public evidentiary hearing. The personnel exception to the Brown Act applied to the governing board's action, and 24-hour written notice was not required. [4] [***10]

4 Kolter's reliance on *Bell v. Vista Unified School Dist*. (2000) 82 Cal.App.4th 672 [98 Cal. Rptr. 2d 263] is unavailing. There, the CIF (California Interscholastic Federation)

Appellate Panel placed a high school on athletic probation as a result of recruiting violations by the football coach; it further ordered the board of trustees of the school district to review the coach's conduct and "take whatever action it deemed appropriate." (*Id*. at p. 679.) The board did not give notice to the football coach before meeting in a closed session where it heard the CIF charges and then voted to permanently remove the teacher from the coaching assignment. The teacher suffered no loss of pay and his tenured teaching position was not affected. Nonetheless, the Court of Appeal concluded this action violated the Brown Act as the closed session was the only forum to *hear* the disciplinary action against the teacher in his role as the football coach.

Similarly, in *Moreno v. City of King* (2005) 127 Cal.App.4th 17 [25 Cal. Rptr. 3d 29], the city council terminated the finance director in a closed session after hearing specific misconduct charges presented by the city manager. The employee did not receive the Brown Act notice and had no opportunity to present any evidence before he was [***11] dismissed.

These cases are distinguishable from the one before us, where the governing board's closed session did not effectuate Kolter's termination. It was, instead, the prelude to a full evidentiary hearing under Education Code section 44934.

In an amicus curiae brief, the California Teachers Association (CTA) offers a different perspective on the closed session before the governing board. [*1353] While conceding the Education Code assures permanent certificated teachers a full evidentiary hearing before they are actually dismissed, CTA maintains that *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 [124 Cal. Rptr. 14, 539 P.2d 774] requires they also "have an absolute right to address the governing board *before* it makes a decision to terminate." This argument misstates the holding in *Skelly*, where the Supreme Court determined that "due process does not require the state to provide the employee with a full trial-type evidentiary hearing prior to the initial taking of punitive action. However ... due process does mandate that the employee be accorded certain procedural rights before the discipline becomes effective." (*Id*. at p. 215.) The Legislature enacted Education Code section 44934 the year after the *Skelly* decision and [***12] provided precisely that due process safeguard. [5]

5 Education Code section 44934 provides in part, "the governing board may, upon majority vote ... give notice to the permanent employee of its intention to dismiss or suspend him or her at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article."

[**625] **(4)** CTA also notes the Commission is not authorized to impose probation or a sanction other than dismissal. (Ed. Code, § 44944, subd. (c).) Quoting *Cleveland Board of Education v. Loudermill* (1985) 470 U.S. 532, 543 [84 L. Ed. 2d 494, 105 S. Ct. 1487], CTA characterizes this statutory restriction as the loss of a "'meaningful opportunity to invoke the discretion of the decisionmaker' ... to argue that termination is not the most appropriate or necessary sanction." Not so. Although the Commission hearing evidence in a dismissal proceeding does not have the statutory authority to impose discipline other than dismissal, it does have the discretion to refuse to dismiss, even if it finds that cause for discipline exists. (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 217, 222 [246 Cal. Rptr. 733, 753 P.2d 689].)

(5) Finally, CTA contends a permanent certificated teacher's "liberty interest [***13] in an opportunity to clear her name" demands that the governing board provide her with notice before it initiates dismissal proceedings. The argument is circular and, as the District notes, would add a second evidentiary hearing to the process. The result is neither desired nor required by law. [*1354]

DISPOSITION

Judgment affirmed. Parties to bear their own costs on appeal.

Mallano, P. J., and Rothschild, J., concurred.