

ARTICLE 16 - DISCIPLINARY ACTION

- 16.1 “Disciplinary action” includes any action whereby a bargaining unit member is deprived of any classification or any incident of any classification in which they have permanence, including dismissal, suspension, or demotion without their voluntary consent, except a layoff for lack of work or lack of funds.
- 16.2 The probationary period of a bargaining unit member shall be a period of six (6) calendar months, and shall commence from the hire date of a particular position excluding time served under temporary or substitute employment. The probationary period shall include all work months of the unit member’s assignment (i.e., if an employee is not assigned for summer months, those months shall not count as part of the probationary period). A probationary employee may be terminated at the discretion of the governing board. Each employee shall be deemed permanent on the first day following the completion of the established probationary period.
- 16.3 Just Cause/Due Process: No permanent bargaining unit member shall be suspended, demoted, or dismissed without just cause.
- 16.3.1 Nothing in these rules shall be construed to prevent layoffs for lack of work or lack of funds. (See Article 15: Layoff and Reemployment)
- 16.3.2 In no case shall an employee be disciplined without having been afforded all due process rights to which the employee may be entitled pursuant to this agreement or law.
- 16.4 No disciplinary action shall be taken for any cause which arose prior to the bargaining unit member becoming permanent, or for any cause which arose more than two years preceding the date of the notice unless such cause was concealed or purposefully not disclosed.
- 16.5 Verbal Counseling: Supervisors shall make sincere efforts to counsel bargaining unit members prior to progressive discipline or disciplinary action. Instances of verbal counseling shall not be placed in a unit member’s personnel file. Instances of counseling may be followed up in writing only for record-keeping purposes.
- 16.6 **PROGRESSIVE DISCIPLINE PROCEDURES FOR PERMANENT EMPLOYEES**

The following progressive discipline steps shall normally be utilized, except where the serious nature of the offence, including but not limited to, a safety threat or when mandated by law, requires bypassing steps in progressive discipline.

- 16.6.1 *“Conference Memorandum”*
After verbal counseling, supervisors shall meet with a unit member and counsel them in writing. The supervisor shall provide the unit member with a Conference Memorandum. The Conference Memorandum shall not be placed in the unit member’s personnel file.
- 16.6.2 *“Written Reprimand”*
Written reprimands will not be used unless the unit member has received

a Conference Memorandum about similar actions within the last twelve (12) months. The unit member will sign the reprimand to acknowledge receipt and a copy may be placed in the unit member's personnel file.

Upon entry of a Written Reprimand into the personnel file, all documentation of prior verbal counseling and Conference Memoranda about similar actions may also be placed in the personnel file.

- 16.6.3 *“Suspension Without Pay, Demotion, Dismissal”*
Suspension, demotion, dismissal will not be used unless the unit member has received a written reprimand about similar actions within the last twelve (12) months.
- 16.6.3.1 Suspension means the temporary removal of an employee from his/her position with loss of pay as a disciplinary measure.
- 16.6.3.2 Demotion means assignment to a lower classification or salary status, without the employee's written consent.
- 16.6.3.3 Dismissal means separation, discharge, or permanent removal of an employee from his/her position, without the employee's written consent.

16.7 NOTICE OF PROPOSED DISCIPLINARY ACTION

Notice of Proposed Disciplinary Action will be made in writing and served in person or by certified mail upon the unit member by the superintendent or designee. The notice of disciplinary action will contain:

- 16.7.1 A statement of the specific acts or omissions upon which the action is based;
- 16.7.2 A statement of the cause(s) for which the action is recommended;
- 16.7.3 The Education Code section, policy, rule, regulation, or directive violated;
- 16.7.4 The penalty proposed and effective date;
- 16.7.5 Copies of the documentary evidence upon which the recommendation is based;
- 16.7.6 A statement of the unit member's right to challenge the proposed action by requesting a Skelly Conference and/or arbitration pursuant to Article 17, Grievance Procedures, subject to 16.11 below.
- 16.7.7 Information about the employee's right to present information relative to the causes and charges for disciplinary action at a Skelly Conference which shall take place as soon as possible after receipt of the notice.
- 16.7.8 The date, time, and place of the Skelly Conference and notice that failure to appear at a scheduled conference shall be deemed a waiver of the

employee's right to a Skelly Conference.

- 16.7.9 The employee's right to contact CSEA concerning representation and to be accompanied by a representative of the employee's choice.

16.8 CAUSES FOR DISCIPLINARY ACTION

One or more of the following causes may be grounds for suspension, demotion, or dismissal of any bargaining unit member who is a permanent employee of the District:

- 16.8.1 Incompetency or inefficiency in the performance of the duties of his/her position.
- 16.8.2 Insubordination (including, but not limited to, refusal to do assigned work).
- 16.8.3 Carelessness or negligence in the performance of duty or in the care or use of District property.
- 16.8.4 Discourteous, offensive, or abusive conduct or language toward other employees, pupils, or the public.
- 16.8.5 Dishonesty.
- 16.8.6 Drinking alcoholic beverage on the job, or reporting to work while intoxicated.
- 16.8.7 Arrest or conviction of the possession or use of controlled substances, as defined in Education Code Section 44011.
- 16.8.8 Personal conduct unbecoming an officer or employee of the District.
- 16.8.9 Engaging in political activity during assigned hours of employment.
- 16.8.10 Conviction of any crime involving moral turpitude.
- 16.8.11 Arrest for a sex offense as defined in Education Code Section 44010.
- 16.8.12 Repeated and unexcused absence or tardiness.
- 16.8.13 Abuse of illness leave privileges.
- 16.8.14 Falsifying any information supplied to the School District, including, but not limited to, information supplied on application forms, employment records, or any other School District records.
- 16.8.15 Persistent violation or refusal to obey safety rules and regulations made applicable to public schools by the governing board or by an appropriate federal, state, or local governmental agency.
- 16.8.16 Offering of anything of value or offering any service in exchange for special treatment in connection with the employee's job or employment,

or the accepting of anything of value or any service in exchange for granting any special treatment to another employee or to any member of the public.

- 16.8.17 Willful or persistent violation of the Education Code or rules of the governing board.
- 16.8.18 Any willful failure of good conduct tending to injure the public service.
- 16.8.19 Abandonment of position.
- 16.8.20 Advocacy of overthrow of federal, state, or local government by force, violence or other unlawful means.
- 16.8.21 Unlawful sexual intercourse with a minor.

16.9 SKELLY CONFERENCE

The employee shall be provided an opportunity to respond to the Notice of Proposed Disciplinary Action to the Skelly Officer in a meeting or in writing. An employee shall have the right to representation at any such meeting. The Skelly conference is informal and not a formal evidentiary hearing.

- 16.9.1 After the employee has had an opportunity to respond to the Notice of Proposed Disciplinary Action or has waived the opportunity to respond.
- 16.9.2 The Skelly Officer's recommendation and the administration's decision whether to proceed with the proposed decision shall be provided to the employee no later than five (5) business days following the Skelly Conference.

16.10 NOTICE OF RECOMMENDED DISCIPLINARY ACTION

A Notice of Recommended Disciplinary Action will contain:

- 16.10.1 a statement in ordinary and concise language of the specific acts and omissions upon which the disciplinary action is based;
- 16.10.2 a statement of the cause(s) for the action taken;
- 16.10.3 notice of the Education Code section, policy, rule, regulation, or directive violated;
- 16.10.4 The penalty recommended and effective date;
- 16.10.5 Copies of the documentary evidence upon which the recommendation is based;
- 16.10.6 A statement of the unit member's right to challenge the recommended action by submitting a request for hearing to the Superintendent or designee no later than five (5) business days after service of the Notice on the unit member;

- 16.10.7 A card or paper, the signing and filing of which shall constitute a request for hearing and a denial of all charges; and
- 16.10.8 The employee's right to representation through the discipline process.

16.11 HEARING PROCEDURES

If a request for hearing is timely filed, the Hearing will be conducted in the following manner:

- 16.11.1 Representatives of the employee and the Board of Education shall select a hearing officer. The District and the employee's representative shall each obtain/maintain a list of five hearing officers from the American Arbitration Association or the California Mediation and Conciliation Board. Selection shall be made by mutual agreement or by alternately striking one name from the list until only one name remains.
- The hearing officer shall be considered the designee of the Board of Education to conduct the hearing and report findings, conclusions and recommendations to the Board of Education and the employee's representative.
- 16.11.2 The employee shall appear in person on his/her own behalf and may be represented by a designee of CSEA, the exclusive representative, or an employee may elect to seek representation outside of CSEA. The District and the employee's representative shall have the right to call witnesses, to cross examine witnesses, to present such exhibits and/or other evidence as may be ruled relevant to the case.
- Technical rules of evidence shall not apply. Counsel/representative for the respective parties shall exchange witness lists at least five (5) working days prior to the hearing.
- 16.11.3 The hearing shall be held at the earliest convenient date, considering the established schedule of the hearing officer and availability of counsel and witnesses. The employee shall be given notification of the hearing date at least ten (10) working days prior to the hearing.
- 16.11.4 At the conclusion of a hearing, the hearing officer shall provide to the Board of Education a proposed decision to sustain, reject, or modify the proposed discipline based on the preponderance of the evidence.
- 16.11.5 The decision of the Board of Education as to the sufficiency of the cause for disciplinary action, as well as the level of discipline imposed, shall be conclusive and shall not be subject to the grievance process outlined in Article 17 of this agreement.
- 16.11.6 No disciplinary action shall be implemented prior to action by the Board of Education.

16.12 EMPLOYMENT STATUS PENDING HEARING

An employee who has requested a hearing regarding a recommendation of disciplinary action shall remain on paid administrative leave or in status and shall remain responsible for fulfilling the duties of the position pending the hearing. Active duty may, at the District's discretion, include a special or changed assignment.

Notwithstanding Section 16.9.1, a unit member may be immediately suspended without pay, pending dismissal, if, in the judgment of the District, they pose a clear and present threat of harm to self or others.