

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 he/she has permanence, including dismissal, suspension, demotion, or any assignment, without his voluntary consent, except a layoff for lack of work or lack of funds.

16.1.1 Progressive Discipline Procedures for Permanent Employees – Except in those situations where immediate discipline is justified due to the serious nature of the conduct, due to personnel safety concerns, or when mandated by law, the following steps will be followed:

1. Verbal warning
2. Written reprimand
3. Suspension without pay or demotion
4. Dismissal

16.2 The probationary period of a bargaining unit member shall be a period of twelve (12) calendar months. Time spent on leave of absence shall not apply toward completion of the probationary period. A probationary employee may be terminated at the discretion of the governing board.

16.2.1 Each employee shall be deemed permanent on the first day following the completion of the established probationary period.

16.3 No permanent bargaining unit member shall be suspended for more than 5 days without pay, demoted, or dismissed except for reasonable cause designated by these rules as detrimental to the efficiency of the service or welfare of the District. The governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

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, nor for any cause which arose more than two years preceding the date of the filing of the notice of cause unless such cause was concealed or not disclosed by such employee when it could be reasonably assumed that the employee should have disclosed the facts to the District.

16.5 A notice of disciplinary action shall contain a statement in ordinary and concise language of the specific acts and omissions upon which the disciplinary action is based, a statement

of the cause for the action taken and, if it is claimed that an employee has violated a rule or regulation of the District, such rule or regulation shall be set forth in said notice.

- 16.6 A notice of disciplinary action stating one or more causes or grounds for disciplinary action established by a rule, regulation, or statute in the language of the rule, regulations, or statute, is insufficient for any purpose.
- 16.7 A proceeding may be brought by, or on behalf of, the employee to restrain any further proceedings under any notice of disciplinary action violative of this provision.
- 16.8 The definitions of suspension, demotion, and dismissal are as follows:
 - 16.8.1 Suspension means either temporary removal of an employee from his/her position with loss of pay as disciplinary measure, or his/her removal without loss of pay preliminary to investigation of charge pending demotion or dismissal.
 - 16.8.2 Demotion means assignment to an inferior position or salary status, without the employee's written consent.
 - 16.8.3 Dismissal means separation, discharge, or permanent removal of an employee from his/her position for cause in accordance with the provisions of the Education Code and the rules in Section 16.9 of this Agreement.
- 16.9 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:
 - 16.9.1 Incompetency or inefficiency in the performance of the duties of his/her position.
 - 16.9.2 Insubordination (including, but not limited to, refusal to do assigned work).
 - 16.9.3 Carelessness or negligence in the performance of duty or in the care or use of District property.
 - 16.9.4 Discourteous, offensive, or abusive conduct or language toward other employees, pupils, or the public.
 - 16.9.5 Dishonesty.
 - 16.9.6 Drinking alcoholic beverage on the job, or reporting to work while intoxicated.
 - 16.9.7 Arrest or conviction of the possession or use of controlled substances, as defined in Education Code, Section 44011.
 - 16.9.8 Personal conduct unbecoming an officer or employee of the District.
 - 16.9.9 Engaging in political activity during assigned hours of employment.
 - 16.9.10 Conviction of any crime involving moral turpitude.
 - 16.9.11 Arrest for a sex offense as defined in Education Code, Section 44010.
 - 16.9.12 Repeated and unexcused absence or tardiness.
 - 16.9.13 Abuse of illness leave privileges.
 - 16.9.14 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.
 - 16.9.15 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.

- 16.9.16 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.
- 16.9.17 Willful or persistent violation of the Education Code or rules of the governing board.
- 16.9.18 Any willful failure of good conduct tending to injure the public service.
- 16.9.19 Abandonment of position,.
- 16.9.20 Advocacy of overthrow of federal, state, or local government by force, violence or other unlawful means.
- 16.9.21 Unlawful sexual intercourse with a minor.

16.10 When an administrative decision is made to recommend that a permanent member of the bargaining unit be suspended, demoted, or dismissed, and prior to the presentation of the matter for action to the governing board, the employee shall be given a written notice of the proposed action including the proposed date it will be effective and the reasons for the proposed action. This written notice of proposed disciplinary action shall be served by mail or personal delivery to the employee and the Association at least ten (10) work days prior to the date of an administrative review. As part of due process, the employee shall also be afforded an administrative review prior to the imposition of discipline. The purpose of the administrative review is to provide the employee with an opportunity to present information relative to the charge for consideration by the administrative review officer. Service by certified mail to the last known address on file in Human Resources shall be deemed completed on the date of mailing.

Upon completion of the administrative review, the administrative review officer's decision will be forwarded to the Head of Human Resources, the employee, and the Association.

16.10.1 The employee shall be provided access to any material upon which the proposed action is based. The notice shall also advise the employee of the right to request a hearing before the governing board and/or the right to respond orally or in writing within five working days from receipt of the notice. The response (oral or in writing) and/or the request for a hearing, in writing, shall be directed to the Superintendent, who shall document the employee's choice.

16.11 If a request for a hearing is filed, the employee shall be given notification of the hearing date at least ten (10) working days prior to the hearing. This written notice shall be served by mail or personal delivery to the employee. Service by certified mail to the last known address on file in Human Resources shall be deemed completed on the date of mailing. If the Board of Education chooses to use the services of legal counsel to advise it in the hearing process, that legal counsel shall not be the same legal counsel that within the previous two years has assisted or is currently assisting the District with matters involving the discipline of bargaining unit members or Association negotiations.

At the conclusion of the hearing the decision to sustain, reject, or modify the proposed discipline shall be made by the Board of Education in accordance with applicable laws. The decision of the Board of Education shall not be subject to the grievance process outlined in Article 17 of this agreement.

Unless not permitted under law or permitted by Article 16.12, the employee shall remain in paid status pending the final decision of the Board of Education.

16.12 The Hearing will be conducted in the following manner:

- a. Representatives of the employee and the Board of Education shall select a hearing officer. The District and CSEA 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 CSEA.
- b. 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.
- c. The District and CSEA 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.
- d. 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 parties shall be notified of the date, time and place of the hearing.
- e. The District, as the moving party of the Disciplinary process, shall be responsible for the Hearing Office costs.
- f. Each party is responsible for their own respective costs and expenses associated with their side.
- g. The hearing will be conducted at a District-provided location, free of charge. This location shall afford confidentiality for all participants.

16.13 The provisions outlined in 16.10 and 16.11 above do not preclude the immediate suspension of an employee if, in the judgment of the District, the employee is in clear and present danger to himself, herself, or others.