

ARTICLE XV
DISCIPLINE POLICY

Personnel

Discipline

15.1 Definition

Discipline, as used in this Article, means dismissal, demotion, suspension without pay, or reduction in pay without the consent of the permanent classified employee.

15.1.1 A layoff or reduction of hours, based on lack of work or lack of funds, shall not be considered discipline.

15.1.2 This Article shall not limit the District's right to evaluate or to reprimand or to counsel whether orally or in writing. Nor shall anything in the District's evaluation procedures limit the District's right to discipline employees pursuant to this Article.

15.1.3 Progressive Discipline. In accordance with the concept of "progressive discipline," counseling and an opportunity for improvement shall typically precede discipline, as used in this Article. However, this concept shall not apply in cases involving gross misconduct or other circumstances deemed appropriate by the District.

a. Levels of Progressive Discipline

1. **Informal Level:** The parties agree that disciplinary questions and/or issues are best resolved by means of objective discussion between supervisors and bargaining unit members.
2. **Written Warning:** A written warning issued to the bargaining unit member constitutes the first level of formal discipline.
3. **Written Reprimand:** A written reprimand for placement into the bargaining unit member's personnel file constitutes the second level

of formal discipline. The District must attach to the reprimand any prior written warning(s) and/or reprimand(s) which are to be relied Upon.

4. **Suspension without Pay**, including immediate suspension without pay: A suspension without pay shall constitute the third level of formal discipline. The District must attach to the reprimand any prior written warning(s) and/or reprimand(s) which are to be relied upon.
5. **Dismissal**: the District decision to recommend dismissal may be made as part of the progressive discipline process and/or in cases involving gross misconduct or other circumstances deemed appropriate by the District.

15.2 Employee Status

15.2.1 This Article shall only be applicable to a classified employee with permanent status.

15.2.2 This Article shall not apply to a probationary classified employee. The probationary period is an extension of the selection process. As such, a probationary employee may be terminated, at any time, at the sole discretion of the District, and without a right to hearing or any other provision of this Article.

15.3 Causes for Discipline of Permanent Employees

15.3.1 The continued employment of a permanent employee is contingent upon satisfactory performance. In addition, a permanent employee may be disciplined for just cause.

Just cause includes, by illustration and not limitation, the following:

- a. Falsifying any information supplied to the District, including, but not limited to, information supplied on application forms, employment

records, or any other District records.

- b. Incompetency or inefficiency in performance of the duties of his or her position.
- c. Abuse of sick leave.
- d. Neglect of duty.
- e. Insubordination. This shall include, but is not limited to, refusal or other failure to either comply with a direct order and/or to perform regular or other assigned work and/or refusal to cooperate fully.
- f. Dishonesty or theft, including deliberate destruction, damage or removal of District or another person's property.
- g. Consumption or possession of an alcoholic beverage (or an intoxicant of any kind) while on duty or in such close time proximity thereto as to cause any detrimental effect upon the employee or upon employees associated with him or her.
- h. While on or off duty, unlawfully selling, unlawfully furnishing, unlawfully being under the influence of, or unlawfully possessing any controlled substance (as defined in Health and Safety Code Section 11007 et seq.).
- i. The conviction of a felony, the conviction of a misdemeanor involving moral turpitude, or the conviction of any sex offense or substance abuse offense made relevant by provisions of the Education Code. A plea of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction within the meaning of this section.
- j. Absence without approved leave (see Section 9 below for special provisions).

- k. Discourteous, offensive or abusive conduct or language toward the public, a pupil, or another officer or employee of the District.
- l. Commission of an act involving moral turpitude.
- m. Knowingly providing, in a verbal or written manner, confidential employee and/or student records to an unauthorized person or persons.
- n. Misuse of District property.
- o. Violation of District, Board or departmental rule, policy or procedure. This shall include refusal to obey the District's safety rules or regulations and those made applicable to public schools by the State Board of Education or by any other appropriate state or governmental agency.
- p. Failure to possess or keep in effect any license, certificate, or other similar requirement specified in the employee's classification specification or otherwise necessary for the employee to perform the duties of the position.
- q. Refusal to take and subscribe any oath or affirmation which is required by law in connection with his or her employment.
- r. Physical or mental disability which renders the employee incapable of performing his or her essential job functions even with reasonable accommodations.
- s. Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, disability, marital status, sex or age against the public or other employees when acting in the capacity as a District employee.
- t. Unlawful retaliation against any District representative or employee, or

member of the public who, in good faith, reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any information relative to actual or suspended violation of any state or federal law occurring on the job or directly related thereto.

15.3.2 No discipline shall be taken for any cause which arose before the employee became permanent, or for any cause which arose more than two (2) years before the date of the filing of the notice of cause unless such cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee would have disclosed the facts to the District. Such prior cause(s), however, may be utilized in determining the appropriate level of discipline for a current cause for discipline.

15.4 Procedure for Imposing Discipline on an Employee

15.4.1 Notice to Employee of Tentative Recommendation of Discipline

Prior to the imposition of discipline and prior to an informal conference (Skelly Hearing), the District shall give notice to the employee of the tentative recommendation of discipline. This written tentative recommendation of discipline shall be deemed sufficient if it is:

- personally delivered;
- actually received by the employee; or
- sent to the employee by certified mail, return receipt requested, at the employee's last known address.

A copy of the Tentative Recommendation of Discipline notice will be sent to the Labor Relations Representative and the CSEA President at the same time it is sent to the bargaining unit member.

15.4.2 Investigation

All employees covered by this Article have a duty to cooperate with the Superintendent or his designee who is conducting an investigation to discipline an employee under this Article.

15.4.3 Contents of Tentative Recommendation of Discipline

The contents of the written recommendation shall include, but need not be limited to, the following:

- A statement, in ordinary and concise language, of the specific acts and omissions upon which the discipline is based;
- A statement of the cause, or causes, for the potential discipline;
- If it is claimed that the employee has violated a rule or regulation of the District, a statement of the rule or regulation;
- A statement of the discipline proposed, including beginning and ending date(s), if appropriate;
- A statement advising the employee of the right to respond to the tentative recommendation orally or in writing to the appointing power during the informal conference;
- A statement that the employee may waive the informal conference and file a request for a formal hearing before the Governing Board directly with the Superintendent or his or her designee within five (5) days after receipt of the tentative recommendation of discipline by the employee or within ten (10) days of mailing tentative recommendation by certified mail, whichever is less;
- A card or paper, the signing and filing of which shall constitute a demand for hearing and a denial of all charges;
- A statement that after the informal conference the employee may file a

request for a formal hearing before the Governing Board directly with the Superintendent or his or her designee within five (5) days after receipt of a Notice of Disciplinary Action or within ten (10) days of mailing Notice by certified mail, whichever is less; and

- A statement that if the employee does not respond pursuant to above, the District will impose discipline on the employee, and the employee waives all rights to appeal or request any hearing.

15.4.4 Informal Conference (Skelly Hearing).

- a. All employees shall have the right to an informal conference with the Superintendent or his or her designee, who shall have the authority to confirm, rescind or modify the proposed discipline.
- b. All employees shall also have the right to a representative of his or her choice at the informal conference.
- c. If, after the informal conference, the Superintendent or his or her designee determines that the employee should be subject to discipline, the employee shall be served with a Notice of Disciplinary Action.

15.5 Employment Status Pending Formal Hearing

15.5.1 Except as set forth in paragraph 15.5.2 below, an employee who requests a formal hearing regarding a tentative recommendation of discipline or a Notice of Disciplinary Action shall remain on active duty status and shall remain responsible for fulfilling the duties of his or her position pending the hearing. Active duty may, at the District's discretion, include a special or changed assignment.

15.5.2 After compliance with the procedure outlined above (Sections 15.1-15.4), if the District recommends dismissal, the employee may be suspended (with or without

pay) pending a hearing.

15.6 Representation

The employee may request the presence of a representative at any meeting scheduled by an administrator where the subject of investigative questioning may lead to discipline.

15.7 Formal Hearing Before the Governing Board

15.7.1 If the employee served with a Notice of Disciplinary Action files a timely request for hearing, the Governing Board may conduct such hearing itself or may appoint a designee to conduct such a hearing.

- Such designee may include, but is not limited to, a hearing officer (e.g. an Administrative Law Judge obtained through the Office of Administrative Hearing).
- Any decisions rendered by such a designee shall be advisory to the Board.

15.7.2 If an employee requests a formal hearing and subsequently fails to appear at the hearing, the employee shall be deemed to have waived any right to participate or be represented at the hearing. In which case, action may be taken without further notice to the employee, based upon tentative recommendation for discipline and Notice of Disciplinary Action prepared by the Superintendent or his or her designee, and previously served upon the employee.

15.7.3 The hearing shall be conducted in closed session unless the employee requests a public hearing. The Board or its designee may deliberate in the absence of the employee and the District administration.

15.7.4 At such hearing, the employee shall be entitled to appear personally, to be represented by a person of his or her choice, to introduce relevant evidence on his or her behalf, to cross-examine witnesses and to challenge evidence presented by the

District.

15.7.5 The Governing Board's determination as to the level of discipline shall be conclusive.

All decisions rendered by the Board are final.

15.8 Advisory Arbitration

Commencing the 2019-20 school year, the Association may opt to have disciplinary action determined by advisory arbitration in lieu of a hearing before the Governing Board, as stated in 15.7.

The following process will be used in advisory arbitration:

15.8.1 The District shall appoint a designee to conduct such a hearing.

- Such designee may include, but is not limited to, a hearing officer (e.g. an Administrative Law Judge obtained through the Office of Administrative Hearing). Such designee shall not be a District employee.
- Any decisions rendered by such a designee shall be advisory to the Board. The Board would determine in closed session any final decision.
- The District will solely bear the cost of the hearing officer.
- If an employee requests advisory arbitration and subsequently fails to appear at the hearing, the employee shall be deemed to have waived any right to participate or be represented at the hearing. In which case, action may be taken without further notice to the employee, based upon tentative recommendation for discipline and Notice of Disciplinary Action prepared by the Superintendent or his or her designee, and previously served upon the employee.

The procedure entitled "Administrative Adjudication" commencing with Government Code 1150 shall not apply to any such hearing before the Board or a hearing officer. Neither the Board nor a hearing officer shall be bound by rules of evidence used in California courts. Informality in any such hearing shall not invalidate any order or decision made or approved by the hearing officer or the Board.

15.9 General Provisions

15.9.1 Suspension pursuant to this Article shall not reduce or deprive the employee of either seniority or entitlement to the required District contribution for health benefits.

15.9.2 Nothing in this Article shall limit the District's right to institute dismissal and/or immediate suspension and mandatory leave of absence proceedings as set forth in the California Education Code. Further, discipline under this Article shall not be regarded as a precondition of any proceedings under the California Education Code.

15.9.3 An employee may settle with the District at any time. The terms of such a settlement shall be reduced to writing. An employee offered a disciplinary settlement by the District shall, if requested, be granted a reasonable amount of time to have the proposed settlement reviewed by his or her chosen representative prior to signing it.

15.9.4 All proceedings involving pending discipline shall be kept as confidential.

15.10 Absence Without Leave (Job Abandonment)

15.10.1 Automatic Resignation

Absence without approved leave (without notification to the District) for more than five (5) consecutive workdays is considered an automatic resignation as of the last day on which the employee actually rendered service. Any absences without approved leave, for five (5) days or less, may still subject the employee to discipline up to and including termination.

15.10.2 Notice

The District shall serve notice of the automatic resignation on the employee. Such notice shall be served, by certified mail or personal service, at the employee's last known address.

15.10.3 Reinstatement

An employee may apply for reinstatement to his or her position under the following conditions:

- The employee must seek reinstatement, in writing, within fifteen (15) calendar days of receipt of the notice of automatic resignation. The employee will only be considered for reinstatement if he or she makes a reasonable explanation of his or her absence which is acceptable to the District.
- If the employee does not receive the notice of automatic resignation, the employee must seek reinstatement within thirty (30) calendar days of the date on which he or she rendered service. The employee will only be considered for reinstatement if he or she makes an explanation of his or her absence which is acceptable to the District.
- If the employee makes an explanation of his or her absence which is acceptable to the District, the employee must be able to return to the full range of his or her duties on the date on which he or she seeks reinstatement, OR must have prior approval of a continued leave of absence from the Superintendent or his or her Designee.
- The employee who is reinstated shall not be compensated for the period of his or her absence or separation and shall not accrue seniority or entitlement to any other benefit for his or her period of absence or separation.