

ARTICLE 17: PROGRESSIVE DISCIPLINE

- 17.1 ~~Progressive discipline is a series of disciplinary actions,~~ Discipline is corrective in nature and is not intended to be punitive. Discipline is intended to provide unit members the opportunity to improve job performance and comply with policies and procedures.
- 17.2 ~~Prior to imposing formal disciplinary action upon a bargaining unit member,~~ The DISTRICT shall follow the principles of progressive discipline, when applicable. Exceptions to progressive discipline include, but are not limited to, serious cases of misconduct or cause as defined in Article 17.11. Discipline includes, but is not limited to, oral warning, written warning, written reprimand, suspension without pay, demotion, and may lead to termination. Discipline for misconduct may commence at any step depending on the seriousness of misconduct.

~~A "day" is any day in which the Human Resources Department of San Bernardino Community College District is normally open for business to the public.~~

- 17.2.1 **Step 1 – Informal Performance Deficiencies Conference.** ~~Discipline~~ disciplinary action, for performance related deficiencies, the unit member's immediate supervisor shall may notify the unit member of the deficiencies in their job performance that has been observed. The supervisor shall identify improvements needed and how the unit member may improve their performance. The supervisor shall provide a written improvement plan including coaching and training, as needed, to address the identified deficiencies. The unit member's performance must be reviewed within sixty (60) days to document the unit member's progress, including any recommendations for continued success. All documentation related to the performance deficiencies Documentation of the coaching shall not be placed in the unit member's personnel file but and shall may be used as supporting documentation in later steps. This Step 1 – Performance Deficiencies Conference shall also serve as the Performance Evaluation – Conference for unit members placed on a Performance Improvement Plan referenced in section 13.4 of this Agreement.
- ~~17.2.2 Step 2 – Written Warning.~~ If deficiencies identified in Step 1 have not improved, the unit member may receive a written warning. The supervisor shall prepare and send a written warning letter to the bargaining unit member. The letter shall consist of the unit member's specific deficient performance and further direction for improvements. The written warning shall not include

~~incidents or deficiencies that were not discussed in the Step 1 level. Documentation of the written warning shall be placed in the unit member's personnel file.~~

17.2.3 **Step 3 2 – Letter of Reprimand.** If **performance** deficiencies identified in Step ~~2 1~~ have not improved, ~~the unit member's immediate~~ a supervisor may **issue** ~~a~~ prepare a written Letter of Reprimand and send the letter to the unit member. The Letter of Reprimand shall outline those specific areas or incidents of the unit member's **misconduct and/or** deficient performance, and a written improvement plan **directives for improvement**, where appropriate for deficiencies of job performances. The Letter of Reprimand shall not include any incidents or **performance** deficiencies or **misconduct** that were not included in the Step ~~2 1~~ level.

17.2.3.1 Supervisor Meeting. ~~If the member disagrees with the Letter of Reprimand, they may meet informally with the immediate supervisor issuing the Letter of Reprimand. The supervisor shall have five (5) days to respond and/or issue the Letter of Reprimand.~~ **Written Response.** Unit members shall have thirty (30) calendar days from receipt of the Letter of Reprimand to file a written response. Such written response shall be attached to, and shall accompany, the Letter of Reprimand in the unit member's personnel file.

17.2.3.2 **Administrative Appeal - Letter of Reprimand. Chief's Meeting.** If a unit member elects to appeal the Letter of Reprimand, the unit member shall request in writing to the Chief of Police or their designee such appeal within five (5) days of receipt of the Letter of Reprimand. The appeal shall be heard by the Chief of Police or their designee within fifteen (15) days of receipt of the written request for the appeal. This appeal shall serve as the administrative appeal pursuant to Government Code section 3304(b). ~~after the Supervisor discussion the issue is not resolved, the matter shall be referred to the Chief or their designee for review. The supervisor shall prepare and forward a written memorandum setting forth the reason(s) for the issuance of the Letter of Reprimand with the Letter of Reprimand. The Chief or their designee shall meet with the unit member and render a decision within fifteen ten (150) working days.~~

The Chief's **or their designee's** decision shall be final, **binding**, and not subject to any further appeal or grievance process. ~~The Letter~~

~~of Reprimand shall not be placed in the unit member's personnel file until they have been given thirty (30) working days to respond.~~

17.2.4 Step 4 3 – Suspension. If performance deficiencies identified in Step 3 2 have not improved or if the unit member's conduct warrants starting the disciplinary action at Step 3, the Chief of Police ~~immediate supervisor~~ may make a recommendation to the Vice Chancellor of Human Resources or designee that the unit member's deficient performance or misconduct may warrant a suspension without pay for a period not to exceed five (5) days, as deemed appropriate. Copies of the recommendation shall be sent to the unit member and placed in the unit member's personnel file. A ~~Notice of Intent to the suspension~~ Discipline shall be prepared in accordance with and subject to the disciplinary procedures within Article 17.3, sent to the unit member, and placed in the unit member's personnel file.

17.2.5 Step 5 4 – Further Action Significant Disciplinary Options. If performance deficiencies and/or misconduct identified in Step 4 3 have not improved after the above procedures have been followed or if the misconduct warrants disciplinary action beginning at Step 4, the Vice Chancellor of Human Resources or designee may propose recommend the following further disciplinary action be taken against the unit member: ~~Additional discipline may include: demotion, suspension, reduction in hours, transfer or reassignment without the unit member's voluntary consent, written reprimand, or termination. Copies of the recommendation shall be sent to the unit member. A notice of~~ Notice of Intent to Discipline the recommendation for further action shall be prepared and subject to the disciplinary procedures within in accordance with Article 17.3, sent to the unit member, and placed in the unit member's personnel file.

17.3 CAUSES FOR DISCIPLINARY ACTION. Cause is defined as those acts, omissions, or behaviors which are detrimental to the operations of the DISTRICT and/or its major instructional, student and administrative divisions, or which impair the DISTRICT'S mission, purpose or objectives. (moved from 17.11)

The term "cause" for disciplinary actions that occur outside the progressive discipline steps in the forgoing portions of Article 17 includes, but is not limited to:

- Insubordination including the refusal to perform assigned duties or the refusal to obey a lawful directive from a supervisor.
- Carelessness or negligence in the care and/or use of District property.
- Discourteous offensive, or abusive conduct or language toward other employees, students, or the public.

- Dishonesty.
- Drinking alcoholic beverages on the job or reporting to work while intoxicated.
- Use of narcotics on the job or reporting to work under the influence. The use of drugs under and consistent with the directions of a physician which does not impair the performance of a classified employee is not prohibited.
- Personal conduct of an unlawful nature or other conduct which a reasonable person would know may have adverse impact on the District.
- Engaging during required work time in political activity not authorized by law.
- Conviction of any felony or any crime involving moral turpitude.
- Repeated unexcused absence or tardiness.
- Abuse of any leaves.
- Intentionally falsifying any information supplied to the District, including, but not limited to, information supplied on application forms, employment records, or any other District records.
- Persistent violation or refusal to obey all rules and regulations made applicable to public schools by the Governing Board or by any appropriate federal, state or local governmental agency.
- Offering of anything of value or offering any service in exchange for special treatment in connection with the classified employee's assigned duties, or the accepting of value or any service in exchange for granting any special treatment to another employee or to any member of the public.
- Negligent or intentional violation of any law concerning the District.
- Advocacy of overthrow of federal, state or local government by force, violence or other unlawful means.
- **Violating any DISTRICT, Governing Board, and/or Department policy and/or procedure.**

17.4 **DUE PROCESS.** When disciplinary action **amounting to a one-day suspension or more** is being proposed against a unit member, the DISTRICT must comply with the procedural due process requirements before it may deprive a unit member their property right and/or interest. Due process mandates that at a minimum a unit member must be provided with the following pre-disciplinary safeguards:

- a. notice of the ~~proposed~~ **intended disciplinary** action;
- b. cause(s) for the action;
- c. a statement of the charges signed by the Vice Chancellor of Human Resources or designee setting forth in clear and understandable language the specific act(s), error(s), or omission(s) giving rise to the charges;
- d. a copy of all materials including statements on which the DISTRICT relied upon preparing the **N**otice of **I**ntent to **D**iscipline;

- e. copies of any sections of this contract, rules, regulations, **policies, procedures,** or laws which are alleged to have been violated;
 - f. notice of the right to respond to the charges either verbally or in writing prior to imposed discipline;
 - g. the right to representation at all phases of the disciplinary process; and
 - h. a statement of the unit member's right to hearing(s).
- 17.5 **DISCOVERY.** ~~The unit member or designee shall have the right to inspect and receive copies of any documents or other materials in the possession or under the control of the DISTRICT which are relevant to the disciplinary action proposed, at times and places reasonable for the unit member and the DISTRICT.~~ **(repetitive, addressed in d above)**
- 17.6 **BURDEN OF PROOF.** ~~When disciplinary action is to be imposed on the unit member, the burden of proof shall rest with the DISTRICT.~~
- 17.7 PAID ADMINISTRATIVE LEAVE.** ~~The Vice Chancellor of Human Resources or designee may, upon written notice, place a unit member on Paid Administrative Leave when investigating allegation(s) of misconduct, wrongdoing, illegal act(s), or for the safety or for the protection of the public, district, or individual. The unit member shall remain on paid administrative leave while the investigation is being conducted, a decision is rendered, and subsequent action is taken. All of the aforementioned shall be conducted in a timely and expeditious manner. Paid Administrative Leave shall mean that the unit member shall not report to work but shall receive all pay and benefits and shall be accessible to the DISTRICT during all scheduled working hours.~~ **(moved 17.6, 17.7 to end of document)**
- 17.8 **(indent and renumber as 17.4.1) NOTICE OF INTENT TO DISCIPLINE.** When disciplinary action **amounting to a one-day suspension or more** is proposed, the DISTRICT shall provide the ASSOCIATION and unit member a Notice of **Intent to Proposed Discipline** setting forth the cause of the action, the specific acts, **and/or** omissions upon which the proposed discipline is based and copies of all statements or documents upon which the DISTRICT relied on assessing the degree of proposed discipline. The notice should be in compliance with the provisions of Education Code Sections 88013, 88016.
- 17.9 **(indent and renumber as 17.4.2) RIGHT TO A PRE-DISCIPLINARY MEETING (SKELLY CONFERENCE).** The Notice of **Proposed Intent to Discipline** shall inform the unit member of their right to request a "pre-disciplinary meeting" (Skelly Conference) prior to the imposition of the discipline. **Such request for a "pre-disciplinary meeting" (Skelly Conference) must be made in writing to the Office of Human Resources within five (5) days from receipt of the Notice of Intent to Discipline in the manner articulated in the**

Notice of Intent to Discipline. In the event of the unit member's timely request of a "pre-disciplinary meeting" (Skelly Conference), such a meeting shall be held no sooner than five (5) days but within a reasonable period of time of ~~upon~~ the unit member's request. At such a meeting the unit member shall be granted a reasonable opportunity, either in person or in writing, to make any representations the unit member believes are relevant to the case and put forth any information as to why the intended action should not proceed.

If a pre-disciplinary hearing is held, the DISTRICT shall provide the ASSOCIATION and unit member with a written notification of the Skelly Officer's recommendation to either continue, amend, reduce, or dismiss the proposed discipline within ten (10) days.

- 17.10 **(indent and renumber as 17.4.3) RIGHT TO AN EVIDENTIARY HEARING.** ~~If the unit member forgoes the "pre-disciplinary meeting" (Skelly Conference) or the DISTRICT chooses to impose disciplinary action amounting to a one-day suspension or more after the "pre-disciplinary meeting" the DISTRICT shall provide the unit member with a Final Notice of Discipline. The Final Notice of Proposed Discipline shall inform the unit member of their right to request an evidentiary hearing after a decision is provided resulting from the "pre-disciplinary meeting" (Skelly Conference). Unit members' have the right, upon request, to an evidentiary hearing before the disciplinary action is final. Such request for an evidentiary hearing must be made in writing to the Office of Human Resources in the manner articulated in the Final Notice of Discipline within five (5) days from receipt of the Final Notice of Proposed Discipline and must be actually received by the Vice Chancellor of Human Resources or designee no later than five (5) days after notice is delivered. If the unit member requests an evidentiary hearing within the five (5) day period, at such hearing the unit member will be provided an opportunity to present oral and/or documentary evidence, confront and cross examine witnesses and to be represented by a representative of their choice. No evidentiary hearing shall be held unless written notice is delivered to the Vice Chancellor Office of Human Resources or designee in the manner articulated in the Final Notice of Discipline within five (5) days of the date this notice is served on the unit member.~~

Failure to file a timely request for an evidentiary hearing waives the unit member's right to an evidentiary hearing and no hearing will be held.

- 17.11 **(previously 17.10) (indent and renumber as 17.4.4) UNIT MEMBER'S RIGHT DURING AN EVIDENTIARY HEARING.**

- a. **Evidentiary Hearing:** All evidentiary hearings shall be conducted by a neutral Hearing Officer who shall be mutually agreed upon within twenty (20) days **of the written request for an evidentiary hearing** by the DISTRICT and ASSOCIATION. In the event the parties are unable to reach an agreement on the Hearing Officer within

twenty (20) days from the date of the request for the hearing, a request for a list of five (5) qualified Hearing Officers will be submitted to the California Mediation and Conciliation Service by the DISTRICT. The Hearing Officer will be selected from the aforementioned list by alternate strike off. The first strike off will be determined by chance then each party will strike one name from the list until only one name remains. The remaining Hearing Officer will conduct the hearing. The hearing shall be conducted under rules of procedure established by the hearing officer which are consistent with the law. Both the DISTRICT and ASSOCIATION shall have the right to call witnesses, introduce evidence, cross examine any witness, and make motions or objections to the proceedings. All hearings shall be closed to the public unless the affected unit member specifically requests that the hearing be open to the public.

- b. **Witnesses and Evidence:** The Hearing Officer shall have the authority to compel the production of such witnesses and evidence as may be necessary to ensure that the bargaining unit member's due process rights are protected. The technical rules of evidence shall not apply. Hearsay evidence may be submitted to support direct evidence but may not be sufficient standing alone to support a finding.
- c. **Hearing Officer's Non-Binding Decision:** Following the Evidentiary Hearing, the Hearing Officer shall render their findings, and **non-binding** decision, which shall be served on both parties. The Hearing Officer's decision is a recommendation only **to the Governing Board** and is not binding.
- d. ~~Unit members have the right to an evidentiary hearing before a neutral Hearing Officer; however, the~~ **The** Governing Board's **decision** ~~determination of the sufficiency of the cause of disciplinary action shall be conclusive,~~ **final, binding on all parties, and not subject to further appeal.**
- e. **Costs:** The cost of the hearing and Hearing Officer will be borne by the DISTRICT.

17.12 **BURDEN OF PROOF.** When disciplinary action is to be imposed on the unit member, the burden of proof shall rest with the DISTRICT.

17.13 PAID ADMINISTRATIVE LEAVE. The Vice Chancellor of Human Resources or designee may, upon written notice, place a unit member on Paid Administrative Leave when investigating allegation(s) of misconduct, wrongdoing, illegal act(s), or for the safety or for the protection of the public, DISTRICT, or individual. The unit member shall remain on paid administrative leave while the investigation is being conducted, a decision is rendered, and subsequent action is taken. All of the aforementioned shall be conducted in a timely and expeditious manner. Paid Administrative Leave shall mean that the unit member shall not report to work but shall receive all pay and benefits and

shall be accessible to the DISTRICT during all scheduled working hours. (moved down from 17.6, 17.7)

17.14 (previously 17.12) **CAUSE FOR DISCIPLINARY ACTION.** Cause is defined as those acts, omissions, or behaviors which are detrimental to the operations of the DISTRICT and/or its major instructional, student and administrative divisions, or which impair the DISTRICT'S mission, purpose or objectives.

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- Dishonesty.
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- Personal conduct of an unlawful nature or other conduct which a reasonable person would know may have adverse impact on the District.
- Engaging during required work time in political activity not authorized by law.
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- Negligent or intentional violation of any law concerning the District.
- Advocacy of overthrow of federal, state or local government by force, violence or other unlawful means.