ARTICLE 17: DISCIPLINE

17.1 **DISCIPLINE ACTION.** 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. Discipline shall be administered in an objective, consistent, reasonable, and confidential manner.

17.1.1 **Time Period for Bringing Disciplinary Action.** No disciplinary action shall be taken for any cause that arose prior to the unit member's becoming permanent, or for any cause that arose more than two (2) years preceding the date of the filing of the notice of cause, unless the cause was concealed or not disclosed by the unit member when it could be reasonably assumed that the unit member should have disclosed the facts to the employing district.

17.2 **RIGHT OF REPRESENTATION.** A unit member has the right to representation in any meeting in which the unit member reasonably believes that the meeting may result in discipline against the unit member.

17.3 **DISCIPLINE PROCESS.** Prior to imposing formal disciplinary action (as in Section 17.3.1, Step 1) upon a unit member, the immediate supervisor will ~~have~~ schedule an in-person informal discussion to address the identified deficiencies~~.~~. Except in instances where the deficient performance or misconduct dictates otherwise~~. Exceptions to progressive discipline include, but are not limited to, cases of cause as defined in **Section 17.4**~~.

Exceptions to progressive discipline include, but are not limited to, cases of cause as defined in **Section 17.4**. Discipline includes, but is not limited to;

a) Performance deficiencies conference,

b) Written warning,

c) Written reprimand,

d) Suspension without pay, and

e) Termination.

Discipline for misconduct may commence at any step, depending on the pervasiveness and seriousness of the misconduct. The DISTRICT shall follow the principles of progressive discipline, when applicable.

17.3.1 **Step 1 - Performance Deficiencies Conference.** A unit member's immediate supervisor shall schedule an in-person meeting ~~notify~~ with the unit member to discuss the deficiencies in their job performance that have been observed. The meeting notification will be sent to the unit member no later than five (5) days prior to the scheduled meeting occurrence and will include the subject of the meeting (i.e., Performance Deficiencies Conference) in the body of the email.

~~The~~ During the meeting the immediate supervisor shall identify improvements needed and how the unit member may improve their performance. The immediate supervisor shall develop a written *Performance Improvement Plan (PIP)*~~,~~.

Performance Improvement Plans ~~which~~ shall include;

*a) P*revious discussions regarding performance,

b) ~~Counseling and,~~ Coaching, and

c) Training opportunities,

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 conference shall be placed in the unit member's personnel file, and shall 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 *PIP* referenced **Article 13: Performance Evaluation Procedures, Section 13.4** of this AGREEMENT.

17.3.2 **Step 2 - Written ~~Warning~~ Conference Summary.** If deficiencies identified in **Step 1** have not improved, the immediate supervisor shall issue a written warning to the unit member, and it shall be delivered in person to the unit member. A meeting notification will be sent to the unit member no later than five (5) days prior to the scheduled meeting occurrence and will include the subject of the meeting (i.e., Written Warning Meeting) in the body of the email. The written warning shall consist of the unit member's specific deficiencies and/or incidents of the unit member's deficient performance or misconduct, and specific direction for improvement. The written warning shall not include incidents or deficiencies that were not discussed in the **Step 1**. Documentation of the written warning shall be placed in the unit member's personnel file, and the member will have thirty (30) days to respond in writing and have their response included to their personnel file.

17.3.3 **Step 3 - Written Reprimand.** If deficiencies identified in **Step 2** have not improved, the immediate supervisor shall issue a written reprimand to the unit member, and it shall be delivered in person ~~to the unit member~~ during a schedule meeting with the unit member. The meeting notification will be sent to the unit member no later than five (5) days prior to the scheduled meeting occurrence and will include the subject of the meeting (i.e., Written Reprimand) in the body of email.

The written reprimand shall outline and include:

a) specific deficiencies,

b) incidents of the unit member's performance issues ~~or~~

c) misconduct and,

d) written directives for improvement.

The written reprimand shall not include any incidents or deficiencies that were not included in the **Step 2**. ~~Unit member's will be provided thirty (30) days to respond to the written reprimand prior to its placement the written reprimand in the employees personnel file.~~ Documentation of the written reprimand shall be placed in the unit member's personnel file, and the member will have thirty (30) days to respond in writing and have their response included to their personnel file.

17.3.4 **Step 4 - Suspension.** If deficiencies identified in **Step 3** have not improved or if the unit member's conduct warrants starting the disciplinary action at **Step 4**, the 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.

Notice of Intent to Discipline. A Notice of Intent to Discipline shall be prepared in accordance with **Section 17.5** and placed in the unit member's personnel file.

17.3.5 **Step 5 - Further Action.** If deficiencies identified in **Step 4** have not improved after the above procedures have been followed or if the misconduct warrants disciplinary action beginning at **Step 5**, the Vice Chancellor of Human Resources or designee may propose the following disciplinary action be taken against the unit member: demotion, suspension, reduction in hours, transfer or reassignment without the unit member's voluntary consent, written reprimand, or termination. The *Notice of Intent to Discipline* shall be prepared in accordance with **Section 17.5** and placed in the unit member's personnel file.

17.4 **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.

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

1. **Job Performance**

   a. Incompetence, (i.e., inability to comply with the minimum standard of a unit member's position for a significant period of time.)

   b. Inefficiency or inexcusable neglect of duty, (i.e., failure to perform duties required of a unit member in the position.)

   c. Denial, suspension, revocation or non-renewal of a license, permit or any other document(s) required by the nature of the position.

   d. Abuse or misuse of sick leave.

   e. Documented pattern of excessive absenteeism.

   f. Repeated unexcused absence or tardiness.

   g. Unexcused absence without leave.

2. **Personal Conduct**

   a. Any willful act of conduct undertaken in bad faith, either during or outside of duty hours which is of such a nature that it causes discredit to the DISTRICT, the unit member's department, or division.

   b. Fraud in securing employment or making a false statement on an application for employment.

   c. Willful disobedience and insubordination.

   d. Abandonment of position (i.e., unexcused absence of three (3) consecutive workdays or more).

   e. Working overtime without authorization.

   f. The refusal of any ~~officer or~~ unit member of the DISTRICT to testify under oath before any court, grand jury, or administrative officer having jurisdiction over any then pending cause of inquiry in which the DISTRICT is involved. Violation of this provision may constitute of itself sufficient ground for the immediate discharge of ~~such officer or~~ the unit member.

   g. Improper or unauthorized use of DISTRICT property.

h. Personal conduct of an unlawful nature or other conduct which a reasonable person would know may have adverse impact on the DISTRICT.

    1. coercion
    2. intimidation
    3. bribery
    4. extortion
    5. quid pro quo
    6. corruption or,
    7. other forms of intentional criminal misconduct

i. Drinking alcoholic beverages on the job, or reporting to work while intoxicated.

j. 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 unit member is not prohibited.

k. 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.

l. Carelessness or negligence in the care and/or use of DISTRICT property.

m. Discourteous, offensive, or abusive conduct or language toward other unit members students, or the public.

n. Dishonesty. (Examples may include a unit member's fabricated excuses, falsification of reports or other documents, stealing, cheating, defrauding, embezzling, or obtaining property or money under false pretenses; or the use of fraud, deception, or misrepresentation of material facts in the employment relationship.)

3. **Violation of Laws, Policies, Procedures, and other Agreements**

a. Willful violation of policies, procedures**,** and other rules which may be prescribed by the DISTRICT, college(s)**,** or departments.

b. Negligent or intentional violation of any law concerning the DISTRICT.

c. Engaging during required work time in political activity not authorized by law.

d. 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.

e. Offering of anything of value or offering any service in exchange for special treatment in connection with the classified unit member's assigned duties, or the accepting of value or any service in exchange for granting any special treatment to another unit member or to any member of the public.

f. Advocacy of overthrow of federal, state or local government by force, violence or other unlawful means.

g. Conviction of any felony or any crime involving moral turpitude.

h. Conviction of a sex offense as define in Education Code.

i. Conviction of a narcotics offense as defined in Education Code.

j. Refusal to subscribe to any oath or affirmation, which is required by law in connection with DISTRICT employment.

k. Acceptance, from any source, of a reward, gift, or other form of remuneration in addition to regular compensation to a unit member for the performance of their official duties.

l. Failure to adhere to safety policies and practices.

17.5 **NOTICE OF INTENT TO DISCIPLINE.** When disciplinary action amounting to a one (1) day suspension or more is proposed, the DISTRICT shall provide the ASSOCIATION and unit member with a copy of the *Notice of Intent to Discipline* in person, or certified mail and regular mail if the DISTRICT is unable to serve the *Notice of Intent to Discipline* in person. The *Notice of Intent to Discipline* will set 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 of Intent to Discipline* should be in compliance with the provisions of *Education Code Sections 88013*, and *88016*.

17.5.1 **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, as defined below, 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 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 *Notice of Intent to Discipline*;

e. Copies of any Sections of this contract, Education Code, board policy, rules, regulations, 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. Statement of the unit member's right to hearing(s).

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 allegations of misconduct, wrongdoing, illegal acts, 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.

17.8 **COMPULSORY LEAVE.** A unit member charged with the commission of any sex offense as defined in, but not limited to, *Education Code Section 87010*, or with the commission of any narcotics offense as defined in, but not limited to, *Education Code Section 87011*, may be placed on compulsory leave of absence pending a final disposition of such charges.

17.9 **RIGHT TO A PRE-DISCIPLINARY MEETING (SKELLY CONFERENCE).** The *Notice of 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. The unit member will be provided a copy of the *Notice of Intent to Discipline* in person, or by certified mail and regular mail, if the DISTRICT is unable to serve the discipline in person. Such request for a pre-disciplinary meeting (Skelly Conference) must be made in the manner articulated in the *Notice of Intent to Discipline* within five (5) days from receipt of the Notice of Intent to Discipline and returned to the Vice Chancellor of Human Resources or designee. In the event of the unit member's timely request for 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 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 meeting" 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 **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 Discipline* shall inform the unit member of their right to request an evidentiary hearing. Such request for an evidentiary hearing must be made in the manner articulated in the *Final Notice to Discipline* and within five (5) days from receipt of the *Final Notice of Discipline* and returned to the Vice Chancellor of Human Resources or designee.

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.

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 **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.

b. 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.

c. **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 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.

d. **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.

e. The Governing Board's decision shall be conclusive, final, and binding on all PARTIES, and not subject to further appeal.

f. **Costs:** The cost of the hearing and Hearing Officer will be borne by the DISTRICT.