

TA: _____ (date)
_____ (initials)

ARTICLE 17: PROGRESSIVE DISCIPLINE

17.1 **PROGRESSIVE DISCIPLINE ACTION.** ~~Discipline is a series of disciplinary actions, 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. This process enables immediate supervisors to assist unit members in meeting performance standards and adhering to established policies and procedures.~~ Progressive 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 upon a bargaining unit member, the immediate supervisor ~~will~~ may have an informal discussion to address the identified deficiencies. ~~The DISTRICT shall follow the principles of progressive discipline, when applicable. Progressive discipline shall be followed commencing with step one (1).~~ Exceptions to progressive discipline include, ~~but are not limited to,~~ serious cases of cause as defined in **Article 17.14**. Discipline includes, but is not limited to, (1) performance improvement deficiencies conference, (2) written warning, (3) written reprimand, (4) suspension without pay, and (5) termination. ~~Discipline for misconduct may commence at any step, depending on the seriousness of the misconduct.~~

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

17.3.1 **Step 1 – Performance Deficiencies Improvement Conference.** A unit member's immediate supervisor shall notify the unit member of the deficiencies in their job performance that ~~has~~ have been observed. The immediate supervisor shall identify improvements needed and how the unit member may improve their performance. The immediate supervisor shall ~~develop~~ provide a written Performance Improvement Plan (PIP) ~~improvement plan, which shall include including~~ previous discussions or counseling, 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 conference shall~~ Documentation of the coaching ~~shall not~~ be placed in the unit member's personnel file, ~~and shall~~ but 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 PIP referenced Article 13: Performance Evaluation Procedures section 13.4 of this Agreement.~~

17.3.2 **Step 2 – Written Warning.** If deficiencies identified in Step 1 have not improved, ~~the unit member shall receive a written warning.~~ The immediate supervisor shall ~~issue a written warning to the unit member, and it shall be~~ shall prepare and delivered the written warning in person to the unit member ~~during a scheduled disciplinary meeting.~~ Copies of the written warning shall be sent to the unit member and the ASSOCIATION Chapter President or designee. 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.

17.3.3 **Step 3 –Written Reprimand.** If deficiencies identified in Step 2 have not improved, the ~~unit member's~~ immediate supervisor **shall issue a written reprimand to the unit member, and it shall be** ~~shall prepare and delivered in-person the written reprimand to the unit member during a scheduled in-person disciplinary meeting. Copies of the written reprimand shall be sent to the unit member and the ASSOCIATION Chapter President or designee.~~ The written reprimand shall outline specific deficiencies and/or incidents of the unit member's performance **or misconduct**, and **written directives** ~~specific direction~~ for improvement. ~~Attached to written reprimand shall be a copy of the written improvement plan including previous discussions, or counseling, and coaching and training, related to the identified deficiencies, and the letter of written warning.~~ The written reprimand shall not include any incidents or deficiencies that were not included in the Step 2. Copies of the written reprimand shall be sent to the unit member and the ASSOCIATION Chapter President or designee **(moved from above)**. Unit member's will be provided thirty (30) ~~working~~ days to respond prior to placing the written reprimand in the 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. ~~Copies of the recommendation shall be sent to the unit member and the ASSOCIATION Chapter President or designee and placed in the unit members' personnel file.~~ A **Notice of Intent to Discipline** notice of the suspension shall be prepared **in accordance with section 17.5** and ~~delivered to the unit member and placed in the unit member's personnel file during a scheduled disciplinary meeting and subject to the disciplinary procedures within Article 17.5.~~

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 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 notice of proposed discipline shall be sent to the unit member and the ASSOCIATION Chapter President or designee.~~ The **Notice of Intent to Discipline** notice of proposed discipline for further action shall be prepared **in accordance with section 17.5** and ~~delivered to the unit member during a scheduled disciplinary meeting and subject to the disciplinary procedures within Article 17.5~~ **and placed in the unit member's personnel file.** ~~The notice of proposed discipline for further action shall be placed in the unit members' 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 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. Excessive tardiness and/or excessive absenteeism, including absence from duty without leave. (Examples may include being absent from work on days not covered by contractual/legal authorized leaves of absence, including being absent more than what sick leave is earned or granted under section xx)
- e. Abuse or misuse of sick leave. (Examples may include being absent from duty without prior authorization or failure to report after a leave has expired or after notice has been provided that a leave has been disapproved, revoked or canceled)
- f. Documented pattern of excessive absenteeism. (Examples may include a unit member being absent from duty without prior authorization, patterns of absences immediately before or after a weekend or holiday, or use of sick leave on a day on which a vacation request was denied)
- g. Repeated unexcused absence or tardiness. (Examples may include consistent absences without prior authorization)
- h. 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 (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 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.
- 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. ; which is intentional and has an adverse impact on the DISTRICT. (Examples may include a unit member's untruthful statements, 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.**

- ~~Unexcused absence without leave.~~
- ~~Abuse or misuse of sick leave.~~
- ~~Misuse of sick leave; such as calling off sick for any reason other than personal or family illness.~~
- ~~Documented pattern of excessive absenteeism.~~
- ~~Repeated unexcused absence or tardiness.~~
- ~~Carelessness or negligence in the care and/or use of DISTRICT property.~~
- ~~Discourteous, offensive, or abusive conduct or language toward other unit members, students, or the public.~~
- ~~Dishonesty; which is intentional and has an adverse impact on the DISTRICT.~~
- ~~Personal conduct of an unlawful nature or other conduct which a reasonable person would know may have adverse impact on the DISTRICT.~~
- ~~Conviction of any felony or any crime involving moral turpitude.~~
- ~~Conviction of a sex offense as define in Education Code.~~
- ~~Conviction of a narcotics offense as defined in Education Code.~~
- ~~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 unit member is not prohibited.~~
- ~~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.~~
- ~~Negligent or intentional violation of any law concerning the DISTRICT.~~
- ~~Engaging during required work time in political activity not authorized by law.~~
- ~~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 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.~~

- ~~• Advocacy of overthrow of federal, state or local government by force, violence or other unlawful means.~~
- ~~• Working overtime without authorization.~~
- ~~• 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 unit member.~~
- ~~• Improper or unauthorized use of DISTRICT property.~~
- ~~• Refusal to subscribe to any oath or affirmation, which is required by law in connection with DISTRICT employment.~~
- ~~• 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.~~
- ~~• Fraud in securing employment or making a false statement on an application for employment.~~
- ~~• Willful disobedience and insubordination.~~
- ~~• Abandonment of position (unexcused absence of three (3) consecutive days or more).~~
- ~~• 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.~~
- ~~• Willful violation of policies, procedures, and other rules which may be prescribed by the DISTRICT, college(s), or departments.~~
- ~~• Incompetence, i.e., inability to comply with the minimum standard of a unit member's position for a significant period of time.~~
- ~~• Inefficiency or inexcusable neglect of duty, i.e., failure to perform duties required of a unit member in the position.~~
- ~~• Advocacy of overthrow of federal, state or local government by force, violence or other unlawful means.~~

17.5 **NOTICE OF INTENT TO DISCIPLINE.** When disciplinary action is proposed **amounting to a one-day suspension or more is proposed**, the DISTRICT shall provide the ASSOCIATION and unit member with **a copy of the Notice of Intent to Proposed Discipline via in person, or certified mail and regular mail if the DISTRICT is in writing and be served in person or by certified mail and regular mail, to include electronic service (i.e. email) if we are unable to serve the Notice of Intent to Discipline** 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, 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 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, 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 ~~**DISCOVERY.** The unit member and the ASSOCIATION Chapter President 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)**

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

17.8 **PAID ADMINISTRATIVE LEAVE.** The Vice Chancellor of Human Resources or designee may upon written notice place a unit member on ~~p~~**Paid** ~~a~~**Administrative** ~~L~~**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~~ ~~a~~**Administrative** ~~L~~**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.

17.9 **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. ~~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.~~

17.10 **RIGHT TO A PRE-DISCIPLINARY MEETING (SKELLY CONFERENCE).** The **Notice of Intent to Discipline** ~~notice of proposed 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 via** in person, or by certified mail and regular mail, ~~to include electronic service (i.e., email) if the DISTRICT is~~ ~~we are~~ unable to serve the discipline in person ~~request for a "pre-disciplinary, and will sign acknowledging receipt of the Notice of Proposed Discipline.~~ Such **request for a** pre-disciplinary meeting (Skelly Conference) must be made **in the manner articulated in the Notice of Intent to Discipline and** ~~in writing~~ within five (5) days from receipt of the ~~Notice of Proposed Discipline~~ **Notice of Intent to Discipline** and **it is on the unit member to ensure that the request was** ~~be~~ actually received by the Vice Chancellor of Human

Resources or designee ~~within no later than five (5) days. after the notice is delivered. If a unit member requests a "pre-disciplinary meeting" (Skelly Conference).~~ In the event of the unit member's timely request ~~for~~ 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 ~~meeting~~ 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.

- 17.11 **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 "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 the manner articulated in the Final Notice to Discipline and be made in writing within five (5) days from receipt of the Final Notice of Discipline and it is on the unit member to ensure that the request was received by the Vice Chancellor of Human Resources or designee within the five (5) days. Notice to Request an Evidentiary Hearing. If the unit member desires a hearing, Notice to Request an Evidentiary Hearing must be 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 of Human Resources or designee 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 unity member's' right to an evidentiary hearing and no hearing will be held.

17.12 **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.