

## **Article 21    DISCIPLINARY ACTION**

### **§ 21.1      Disciplinary Action**

This article does not supersede Section 21.4, Probationary.

Progressive discipline is intended to give unit members advance notice, whenever practical, of problems with their conduct or performance in order to provide them with an opportunity to correct any problems. The parties recognize that there are circumstances that could provide cause for more serious corrective action, up to and including termination of employment, as a result of unit member's action(s).

Problems with work performance or conduct shall be brought to unit members' attention on a timely basis. Notice of unsatisfactory performance or conduct shall be delivered within sixty (60) calendar days of the incident of conduct or performance in question.

**§ 21.1.1**      No permanent unit member shall be disciplined except for reasonable cause as prescribed herein or in the Education Code of the State of California. The Governing Board's determination of the sufficiency of the cause for disciplinary action shall be conclusive. Permanent unit members who became probationary in a different classification may be removed from such classification, without cause, and returned to the former classification, during the probationary period. (See Article 14.5, "Failure to Complete the Probationary Period in a New Position.")

**§ 21.1.2**      Notice of unsatisfactory conduct or performance shall be timely. The District shall continue to utilize a progressive discipline process to ensure that a fair and appropriate corrective action is utilized. Progressive discipline is/may be defined by the following steps:

- Step 1.      Verbal notice to the unit member of unsatisfactory performance. The supervisor shall document the verbal warning in writing including the date, time, and circumstances and present a copy of such documentation to the unit member. In the event that verbal notice does not result in the expected level of improved performance, Step 2 of progressive discipline will be employed.
- Step 2.      Formal written notice, acknowledged in writing by the unit member's signature and date, that notice has been given. The expected content of any notification should include at least the following:
  - A.
    - Statement of unsatisfactory performance or conduct
    - Expected performance or conduct
    - Corrective performance or conduct required
    - Time period by which correction is to be made
    - Training or support by supervisor to achieve the desired correction

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- B.      •    At the date identified for correction to be achieved, review by the supervisor, in consultation with the unit member, of the unit member's progress will occur.
- Such review and its result will be acknowledged in writing by both supervisor and unit member.

Step 3.    If unsatisfactory performance or conduct persists or recurs within sixty (60) calendar days, procedures for discipline under Section 21.6 shall be followed.

### **§ 21.2      Definitions**

#### **§ 21.2.1      Definitions as used herein:**

"Disciplinary Action" Any action whereby a unit member is demoted, suspended, involuntarily transferred in lieu of other disciplinary action, or dismissed, excluding a layoff for lack of work or lack of funds.

"Reasonable Cause" Relating to disciplinary actions against unit members means those grounds for discipline, or offences, enumerated in the law or in this article.

### **§ 21.3      Two (2) Year Limit**

**§ 21.3.1**      No disciplinary action shall be taken for any cause which arose prior to the unit member becoming permanent, nor for any cause which arose more than two (2) years preceding the filing of the notice of cause, unless such cause was concealed or not disclosed by such unit member when it could be reasonably assumed that the unit member should have disclosed the facts to the District.

### **§ 21.4      Probationary**

**§ 21.4.1**      Probationary unit members shall be subject to dismissal without cause, upon recommendation of the immediate supervisor, providing that the unit member shall be entitled, at the unit member's request, to a conference with the Vice President of Human Resources or designee.

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**§ 21.5      Causes**

**§ 21.5.1**      Unit members are subject to disciplinary action for any of the following causes:

**§ 21.5.1.1**    Unauthorized absence or repeated tardiness from work.

**§ 21.5.1.2**    Abuse of sick leave.

**§ 21.5.1.3**    Possession and use of controlled substances on the job, or reporting for work while under the influence of controlled substances. Possession and proper use of drugs prescribed by a licensed physician are not prohibited.

**§ 21.5.1.4**    Discourteous, offensive, or abusive conduct or language toward other unit members, students or the public when on duty.

**§ 21.5.1.5**    Dishonesty.

**§ 21.5.1.6**    Drinking alcoholic beverages on the job, or reporting for work while under the influence of alcohol.

**§ 21.5.1.7**    Willfully falsifying any information supplied to the District on application forms, employment records, or any other District records.

**§ 21.5.1.8**    Incompetence or inefficiency in the performance of duties.

**§ 21.5.1.9**    Insubordination (including, but not limited to, refusal to do assigned work and/or follow lawful directives).

**§ 21.5.1.10**   Conviction of felony or of any crime involving moral turpitude.

**§ 21.5.1.11**   Disorderly or immoral conduct.

**§ 21.5.1.12**   Willful or persistent violation of the Education Code or per Title V regulations of the State of California, District Policies & Procedures, or of any provision of this Agreement.

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### **§ 21.6      Procedures for Discipline**

**§ 21.6.1**      The charges shall be served upon the unit member in writing by email with a read receipt as acknowledgement or by certified or personal delivery, together with a statement of the proposed discipline.

**§ 21.6.2**      The charges shall contain a clear and concise statement of the acts and omissions upon which the proposed discipline is based, and a statement of the cause for the action. If it is claimed that the unit member has violated a rule or regulation of the Board, such rule or regulation shall be set forth in the notice.

**§ 21.6.3**      A permanent unit member who has been recommended for suspension, demotion, or dismissal shall be given written notice of the specific charges against them, a statement of the right to a hearing on such charges, and the time within which such hearing may be requested in writing, not less than fifteen (15) days after service of the notice to the unit member. Failure to request a hearing within the time limit stated in the notice constitutes a waiver of the right to a hearing.

### **§ 21.6.4**

1.    The hearing shall be conducted by an arbitrator. An arbitrator shall be selected by any means mutually agreeable to the parties, or absent mutual agreement, from a list of five (5) arbitrators obtained via a joint request to the American Arbitration Association. The arbitrator shall be selected from the list by the parties alternately striking names with the first strike determined by chance.
2.    The decision and award of the arbitrator shall be made solely upon the evidence and arguments presented to the arbitrator by the respective parties. Neither offers nor concessions for settlement made prior to the hearing shall be admissible in arbitration.
3.    The decision of the arbitrator shall be advisory. The Board of Trustees shall act to accept or reject the arbitrator's decision within thirty (30) calendar days of receipt of the decision. The decision of the Board shall be in writing, and include a finding of facts and justification for the decision. The decision of the Board shall be final. A unit member not satisfied with the final decision of the Board may resort to a court of competent jurisdiction to pursue whatever other legal remedies are available.

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**§ 21.6 Procedures for Discipline (Continued)**

4. The hearing shall be scheduled within thirty (30) calendar days following selection of an arbitrator, or as soon as possible thereafter.
5. The cost of employing the arbitrator and court reporter shall be borne by the unsuccessful party to the arbitration. If the decision is split then the parties shall legally share the costs. All other costs such as, but not limited to attorney's fees and witness fees shall be borne only by the party incurring that cost. Employees of the District called to testify at a hearing by either party shall do so on work time if said testimony coincides with the unit member's regular work schedule.

**§ 21.6.5** Notice of disciplinary action to be imposed after a hearing or after a waiver of the right to a hearing shall be given to the unit member in writing by certified mail or personal delivery.

**§ 21.6.6** The parties may mutually agree to alternative methods of resolving disciplinary matters, including but not limited to mediation and informal hearings prior to submitting a disciplinary matter to arbitration.

**§ 21.7 Non Grievable**

**§ 21.7.1** Disciplinary actions shall be governed solely by the provisions of this article and shall not be subject to the Grievance Procedure.

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