

## ARTICLE 17: PROGRESSIVE DISCIPLINE

17.1 **PROGRESSIVE DISCIPLINE.** Is a series of disciplinary actions, corrective in nature and is not intended to be punitive, 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 have an informal discussion to address the identified deficiencies. Progressive discipline shall be followed commencing with step one (1). Exceptions to progressive discipline include serious cases of cause as defined in Article 17.14. Discipline includes, but is not limited to, (1) performance improvement conference, (2) written warning, (3) written reprimand, (4) suspension without pay, and (5) termination.

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 Improvement Conference.** A unit member's immediate supervisor shall 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 immediate supervisor shall provide a written improvement plan 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. Documentation of the coaching shall not be placed in the unit member's personnel file, but may be used as supporting documentation in later steps.

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 prepare and deliver 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, 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 prepare and deliver 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 and 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. 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, the immediate supervisor may make a recommendation to the Vice Chancellor of Human Resources or designee that the unit member's deficient performance 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 the suspension shall be prepared and delivered to the unit member 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 5 have not improved after the above procedures have been followed, the Vice-Chancellor of Human Resources or designee may recommend 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 proposed discipline for further action shall be prepared and delivered to the unit member during a scheduled disciplinary meeting and subject to the disciplinary procedures within Article 17.5. The notice of proposed discipline for further action shall be placed in the unit members' personnel file.

17.4 **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.

The term "cause" for disciplinary actions that occur outside the progressive discipline steps in the forgoing portions of Article 17 include:

- 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, the DISTRICT shall provide the ASSOCIATION and unit member a "Notice of Proposed Discipline" 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 discipline in person. The Notice will set forth the cause of the action the specific acts 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.

- 17.5.1 **DUE PROCESS.** When disciplinary action 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 action;
  - b. cause 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 **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.
- 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 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.
- 17.9 **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 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 in person, or by certified mail and regular mail, to include electronic service (i.e. email) if we are unable to serve the discipline in person, and will sign acknowledging receipt of the Notice of Proposed

Discipline. Such request for a “pre-disciplinary meeting” (Skelly Conference) must be made in writing within five (5) days from receipt of the 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 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 of a pre-disciplinary meeting (Skelly Conference), such a meeting shall be held no sooner than (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.

- 17.11 **RIGHT TO AN EVIDENTIARY HEARING.** The “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 within five (5) days from receipt of the 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 members’ 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 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. Following the Evidentiary Hearing, the Hearing Officer shall render their findings, and decision, which shall be served on both parties. The Hearing Officer’s decision is a recommendation only

and is not binding.

- d. Unit members have the right to an evidentiary hearing before a neutral hearing officer; however, the Governing Board's determination of the sufficiency of the cause of disciplinary action shall be conclusive.
- e. **Costs:** The cost of the hearing and hearing officer will be borne by the DISTRICT.