

FTA Counter Proposal to the District, Article 21, January 31, 2017

Article 21 – Causes and Procedures for Discipline

1. Purpose

1.1. This article is to establish just cause, due process and progressive discipline for disciplinary action affecting bargaining unit members. These provisions govern discipline for all bargaining unit members and supersede California Education Code Sections 44930, et. seq. to the extent those sections would otherwise be deemed applicable.

1.2 No bargaining unit member will be disciplined, reduced in rank or compensation, nor otherwise subjected to adverse action as a result of alleged misconduct, without "just cause". Applicable standards of "just cause" are those promulgated by the American Arbitration Association Department of Education and Training herein included as an addendum to this article. While conformance with such standards is an expectancy during all disciplinary considerations, satisfaction of such standards shall not constitute a "threshold issue" to a full merits review.

~~The District may discipline unit members only for just cause.~~

1.3. The parties endorse the utilization of this Agreement and the contractual grievance and arbitration proceedings. Any alleged misconduct which can be remedied by progressive discipline must be remedied in accordance with this Agreement.

1.4 District action to terminate employment remunerated under "Extra Pay for Extra Services" contracts as specified in this Agreement shall not be reviewable under this article unless such termination is for a disciplinable offense.

2. General Provisions:

2.1 Representation:

Upon request, bargaining unit members have the right to secure and utilize Association representation for any disciplinary meetings. The Association and the District shall take reasonable all steps to inform employees of this right.

~~The District will offer an employee, prior to a disciplinary meeting, the opportunity to be accompanied by an Association representative, if one is reasonably available, provided, however no claim by an employee or by the union of an alleged breach of this section by the District shall be introduced into evidence in any grievance or arbitration and no such claim shall be considered by an arbitrator hearing a grievance under this Agreement.~~

2.2 Right of Rebuttal:

Bargaining unit members shall have the right to rebut any written warning or reprimand by submitting a written statement of their position. Such written rebuttal shall be attached to the warning or reprimand.

2.3 Acknowledgement of Receipt of Documents:

The bargaining unit member shall acknowledge receipt of all documents of a derogatory nature (as defined in Article 42, Section 4) intended for placement in his/her personnel file in the manner set forth in Article 42, "Personnel Files" of this Agreement. Notice may also be documented by utilizing registered mail to transmit true copies of documents to be filed, return receipt requested.

2.4 The ~~content of~~ ratings contained in employee evaluations ~~is~~ are not grievable. However, commentary alleging grounds for discipline as defined in this article, if included in such evaluations under ~~Standard 6 (Developing as a Professional Educator)~~, is grievable on the issues of whether just cause exists for such comments, and whether steps 4.1, 4.2, and 4.3 below have been followed.

### 3. Grounds

Grounds for "progressive discipline" under this article shall consist of the following categories derived from the California Education Code Section 44932:

3.1 Immoral or unprofessional conduct;

3.2 Dishonesty;

3.3 Evident unfitness for service;

3.4 Violation of or refusal to obey the school laws of the State or reasonable regulations prescribed by the governing board of the District. ~~This includes violation of or refusal to obey the provisions contained in this Agreement;~~

3.5 Use of alcoholic beverages or other drug abuse which makes the bargaining unit member unfit to instruct or associate with children;

3.6 Conviction of a felony or of any crime involving moral turpitude;

~~2.1.7 Unsatisfactory performance.~~

### 4. Levels of Progressive Discipline Procedures:

The parties agree that the purpose of progressive discipline is to offer the bargaining unit member an opportunity to improve his/her behavior and/or cease unacceptable behavior which may constitute grounds for discipline (Section 3 above). Subject to Section 4.5, administration of disciplinary action shall conform to the following progression:

#### 4.1 Informal Level

The parties believe that disciplinary questions and/or issues are best resolved by means of objective discussion between appropriate administrative personnel and bargaining unit members. This is the first step prior to formal discipline.

#### 4.2 Written Warnings

Written warnings issued to the bargaining unit member constitute the first level of formal discipline. Written warnings may be issued when efforts at the informal level (discussion(s) and/or memo(s) of concern) do not result in satisfactory correction of the unit member's behavior. The dates of discussion(s) and memo(s) of concern are to be attached to the written warning.

#### 4.3 Written Reprimand

Written reprimands for placement into the bargaining unit member's personnel file constitute the second level of formal discipline. The District must append to the reprimand any prior written warnings and/or reprimands which are to be relied upon for any purpose.

#### 4.4 Suspensions Without Pay

A second written reprimand for placement into the bargaining unit member's personnel file, which may include a written notice of suspensions without pay [not to exceed fifteen (15) working days], shall constitute the third level of formal discipline. The District must append to the reprimand/notice of suspension any prior written warnings and/or reprimands which are to be relied upon for any purpose.

~~3.1 The procedures for of Progressive discipline is designed to provide to offer unit members an opportunity to improve their behavior and/or cease unacceptable behavior which may constitute ground cause for discipline. The District shall follow the principles of progressive discipline in imposing suspension without pay. This normally includes the following preceding steps:~~

~~1)3.1.1 Verbal warning~~

~~2)3.1.2 Written warning~~

~~3)3.1.3 Written reprimand~~

~~3.1.4 Unpaid Suspension not to exceed fifteen (15) days~~

4.5 While progressive discipline levels may not be bypassed arbitrarily or capriciously, nothing in this Article shall preclude full or partial bypass of such levels for serious misconduct of such a critical nature that, in the evaluation of the arbitrator, it justifies bypassing earlier levels of progressive discipline: when determined warranted by the District based on the seriousness of the unit member's performance deficiencies and/or misconduct.

4.5.1 Neither shall the provisions of this Article limit in any manner the District's decision to immediately implement dismissal or suspension (for more than fifteen (15) days) proceedings in accordance with the California Education Code;

4.5.2 If the District attempts to suspend an employee under the Code, and fails, the District is prohibited from attempting to impose any discipline under this article for the same offense;

~~3.3 Unit members shall have the right to appeal the letter of reprimand to arbitration beginning at Level III of the Grievance Procedure in Article 19. In the event a unit member timely appeals the letter of reprimand to arbitration, the issuance of the reprimand shall be suspended pending the parties' receipt of the arbitrator's award.~~

#### 5. Procedures and Sequence Governing Implementation of Formal Discipline:

5.1 If informal discussions do not resolve the matter, prior to implementation of formal discipline, bargaining unit members will be provided with written statements of concerns, charges and/or allegations along with pertinent circumstances/facts giving rise to such concerns, charges and/or allegations. Such written statements

will be transmitted to the bargaining unit member within fifteen (15) working days after the circumstances/facts were known or should have been known.

5.2 After receipt of the written statement described immediately above, the bargaining unit member shall have ten (10) working days to obtain clarification and present a response if so desired.

5.3 After receipt of the written Statement of Charges, the District shall provide the unit member an opportunity to meet with the immediate supervisor or designee to review the Statement of Charges supporting the suspension without pay. The supervisor shall then have ten (10) working days to consider the matter and transmit a written decision to the bargaining unit member communicating his/her findings on the issues in the dispute, a disposition with reasons as to whether formal discipline should be levied, and a copy of the disciplinary document.

5.4 Bargaining unit members shall then have the right to generate full review of formal discipline documents by initiating a grievance at Level III of the Grievance Procedure Article 19. From that point on, review will occur in conformance with the timelines and procedures delineated in the Grievance Procedure. Review of written warnings terminates at the close of Level III of the Grievance Procedure. If such warnings are subsequently attached to reprimand, (with or without suspensions), they are subject to full grievance review (through Level IV) with the reprimand/suspension.

A unit member shall have the right to appeal the suspension without pay to arbitration beginning at Level III of the Grievance Procedure in Article 19.

4.4 In the event a unit member timely appeals the suspension without pay to arbitration beginning at Level III of the Grievance Procedure in Article 19, implementation of the suspension shall be suspended pending the parties' receipt of the arbitrator's award.

5.5 Formal discipline will be implemented as follows:

5.5.1 Reprimands (with or without suspensions) will not be placed in a bargaining unit members personnel file until exhaustion of Level III of the Grievance Procedure unless the bargaining unit member has not caused grievance review.

5.5.2 Suspensions without pay shall be limited to fifteen (15) working days and shall not be implemented prior to exhaustion of the grievance process on the matter unless the bargaining unit member has not caused grievance review.

5.6 Sealing Adverse Documentation:

Upon request of a bargaining unit member formal discipline documents in a bargaining unit member's personnel file shall be sealed if, during the two-year period following the date of the document, the bargaining unit member was not formally reprimanded or suspended and no warning letters for similar misconduct have been issued. After a period of three years following the date of the aforementioned document without additional misconduct such documents

5.7 Protocol:

The parties agree that in processing disciplinary matters under this Article, all parties

involved shall endeavor to collectively establish procedures that are fair, thorough, and that allow for objective assessment of the facts and circumstances giving rise to the proposed-disciplinary action. Accordingly, all parties involved will:

5.7.1 Fully and in good faith disclose all known facts, circumstances and evidence pertinent to the relevant issues; and

5.7.2 At all times maintain appropriate confidentiality, demonstrate proper interpersonal behavior, and communicate in an objective manner

5.8 Understanding of Interpretation and Administration:

The Association and the District agree that the "Bargaining Unit Members' Just Cause, Due Process and Progressive Discipline" Article 21 should be interpreted and administered consistent with the following understanding:

5.8.1 That procedures and/or evidentiary documentation relevant to statutory dismissal proceedings are separate from the ". . . Progressive Discipline" Article, This does not imply license for the District to arbitrarily or capriciously ignore contractual provisions.

5.8.2 That the clause "reasonable regulations prescribed by the governing board of the District" (in the . . . Progressive Discipline" Article, Section 3.4) includes such regulations contained in the provisions of the Collective Bargaining Agreement.

5.8.3 That documents sealed in personnel files in accordance with this Agreement will be sealed in envelopes and stored in a strictly confidential manner and placed in the personnel file. Access shall be limited to the Superintendent's designee only for possible use in dismissal proceedings or in response to an official order. Arbitrators findings concerning allegations in such documents shall be attached to the documents.

5. General Provisions

A. Representation:

~~5.1~~ Upon request, ~~bargaining~~ unit members have the right to secure and utilize Association representation for any disciplinary meetings. The Association and the District shall take reasonable steps to inform employees of this right. ~~The District will~~ offer ~~an employee~~ ~~the unit member~~, prior to a disciplinary meeting, the opportunity to be accompanied by an Association representative if one is reasonably available, provided, however no claim by a ~~unit member n employee~~ or by the union of an alleged breach of this section by the District shall be introduced into evidence in any grievance or arbitration and no such claim shall be considered by an arbitrator hearing a grievance under this Agreement.

~~B5.2~~ ~~Right of Rebuttal~~ ~~Bargaining uAs set forth in Section 6 of Article 42 on "Personnel Files,"~~ unit members shall ~~acknowledge receipt~~ ~~have the right to rebut any of any~~ written warning or reprimand ~~and shall have right to by~~ submitting a written ~~statement of their position~~ ~~response which shall be attached to the written warning or reprimand and placed in the unit member's personnel file.~~ ~~Such written rebuttal~~ ~~response shall be attached to the warning or reprimand.~~

~~C. Acknowledgment of Receipt of Documents: The bargaining unit member shall acknowledge receipt of all documents of a derogatory nature (as defined in Article 42, Section 4) intended for placement in his/her personnel file in the manner set forth in Article 42, "Personnel Files" of this Agreement. Notice may also be documented by utilizing registered mail to transmit true copies of documents to be filed, return receipt requested.~~

~~D5.3. The content of employee evaluations is not grievable. However, commentary alleging grounds for discipline as defined in this article suspension without pay, if included in such evaluations under Standard 6 (Developing as a Professional Educator), is grievable on the issues of whether just cause exists for such comments, and whether steps 4(A)(B) and (C) below have been followed progressive discipline has been properly applied.~~

~~5.4. Except as specifically set forth herein with regard to unpaid suspensions of 15 days or less that are based on the grounds enumerated in Education Code section 44932, nothing contained in this article shall supersede or otherwise limit the District's statutory rights as set forth in the Education Code with respect to employee discipline, suspension and/or dismissal.~~

~~5.5. The provisions of this Article shall not limit or otherwise prevent the District from immediately implementing dismissal or unpaid suspension proceedings in accordance with the Education Code when warranted due to the seriousness of a unit member's performance deficiencies and/or misconduct.~~

~~5.6. The parties agree to:~~

~~5.6.1 Fully and in good faith disclose all known facts, circumstances and evidence pertinent to the relevant issues; and~~

~~5.6.2 At all times maintain appropriate confidentiality, demonstrate proper interpersonal behavior, and communicate in an objective manner.~~

AMERICAN ARBITRATION ASSOCIATION'S  
TESTS APPLICABLE FOR LEARNING WHETHER EMPLOYER HAD  
JUST AND PROPER CAUSE FOR DISCIPLINING AN EMPLOYEE

**Balance of Article 21 to Remain Status Quo**