

## ARTICLE 14: DISCIPLINARY PROCESS

### 14.1 **Exclusive Procedure**

Probationary employees and other non-permanent employees are at-will employees and may be disciplined within the sole discretion of the District. The probationary period shall be six (6) months for Classified Administrators. Probationary employees are not covered by any other provision of this Article. Administrators may be disciplined for cause pursuant to District Policy and Procedure No. 7365.

### 14.2 **Definition of Discipline**

Discipline shall only be imposed on permanent employees for just cause. Discipline includes suspension, reduction in pay, involuntary demotion, or termination.

The District shall not initiate any disciplinary action for any cause alleged to have arisen prior to the employee becoming permanent nor for any cause alleged to have arisen more than two (2) years preceding the date that the District serves the notice of proposed disciplinary action.

#### 14.2.1 **Basis of Discipline**

Discipline may only be based on an employee's violation of a Board Policy or Administrative Procedure, state regulation, state law, federal regulation, or federal law. The District hereby states its commitment to the principle of progressive discipline.

### 14.3 **Pre-Disciplinary Action**

The following steps are designed to assist the supervisor and employee to reach understanding of what is expected in the workplace. They are not disciplinary actions in and of themselves, but may be taken into account in subsequent "progressive discipline" if continued action is required.

#### 14.3.1 **Counseling**

Informal discussion designed to assist the employee to develop or improve skills, abilities or to correct conduct. Counseling may also be used to clarify District policies, solve a problem, or discuss job performance. Counseling may be verbal or in writing. Employees shall have a reasonable period of time to correct deficiencies noted in counseling prior to subsequent formal notice or discipline. In no event shall counseling be placed in an employee's personnel file.

#### 14.3.2 **Notice to Employee**

In the event the performance or behavior does not improve, a written reprimand will be issued to the employee and placed in the employee's personnel file. The employee has the opportunity to file a rebuttal with the assistance of a SCCDAA representative, if so desired, which will also be placed in the employee's personnel file. In the event a meeting is held after the issuance of a reprimand, the employee shall be allowed reasonable notice to allow the attendance of a SCCDAA representative.

#### **14.4 Emergency Discipline**

The SCCDAA and the District recognize that emergency situations can occur involving the health and welfare of students or employees. If the employee's presence would lead to a clear and present danger to the lives, safety, or health of students or fellow employees, or conduct which rises to the level of serious concern, the District shall immediately suspend the employee for up to three (3) days with pay. Examples of conduct which rise to the level of serious concern include gross negligence, violation of any State or Federal law, and/or the threat of or actual violence. During the three (3) days, the District shall serve notice and the statement of facts upon the employee, who shall be entitled to respond to the contentions supporting the emergency. A copy of any notice of an emergency discipline shall be delivered to the SCCDAA President or designee during the same three days.

#### **14.5 Administrative Leave**

From time to time it may be necessary for the District to place a Unit Member on paid administrative leave. This may be to investigate a matter, to facilitate organizational actions, or to address other issues of a temporary or transitory nature. Administrative leave is NOT discipline and employees so placed are not to be stigmatized or otherwise negatively affected based solely on being on this form of leave. The District shall notice the employee and the SCCDAA President or designee.

#### **14.6 Disciplinary Procedures**

##### **14.6.1 Notice of Recommended Discipline and Statement of Charges:**

The employee shall be given a written notice of proposed discipline (Skelly Notice) which sets forth the following:

- The disciplinary action intended;
- The specific charges upon which the action is based;
- A factual summary of the grounds upon which the charges are based;
- A copy of all written materials, reports, or documents upon which the discipline is based;
- The name of the mutually agreed upon impartial third party who will act as Skelly hearing officer;
- Notice of the employee's right to respond to the charges either orally or in writing to the designated Skelly hearing officer; and
- Notice that failure to respond within ten (10) working days shall constitute a waiver of the right to respond prior to final discipline being imposed.

##### **14.6.2 Employee Skelly Rights**

- 14.6.2.1 If no response to the Notice of Recommended Discipline and Statement of Charges is received within ten (10) working days after the date the Skelly Notice is delivered to the employee, the proposed discipline will be implemented with no right of appeal, and the employee so advised in writing.
- 14.6.2.2 The employee shall have the right to respond to the Skelly Notice of Proposed Discipline and Statement of Charges by filing a statement in writing, or by requesting a Skelly hearing.
- 14.6.2.3 A form will be included with the Skelly Notice for the employee to use, sign and return within the ten (10) working days, which will constitute a request for a Skelly hearing or the intent to file a written response.
- 14.6.2.4 A copy of the Skelly notice and supporting materials will be sent to the SCCDAA President or designee.
- 14.6.2.5 All employees shall have the right to have a SCCDAA representative present throughout the Skelly process.

### **14.6.3 Skelly Hearing**

- 14.6.3.1 If, within ten (10) days of the delivery of the Skelly Notice the employee indicates he/she wishes to respond to the charges contained therein, the Skelly Officer shall set a date and time for a hearing not more than fifteen (15) days after the delivery of the Skelly Notice. The employee shall be advised that he/she may respond in writing to the charges in lieu of the hearing, provided that such written response is received by the hearing date and time.
- 14.6.3.2 The purpose of a Skelly hearing, or written statement in-lieu, is to offer the employee an opportunity to respond to the Statement of Charges and offer any relevant explanations. The Skelly Officer may ask questions of the employee and District to clarify issues and facts to assist in determining whether the recommended discipline should be imposed. No witnesses will be called at the Skelly meeting. The employee's response will be considered before the Skelly Officer's decision is issued.

### **14.6.4 Written Decision of Skelly Officer**

- 14.6.4.1 Within ten (10) working days after the Skelly hearing or the

submission of a written Skelly response, the Skelly Officer shall issue a written decision of recommended disciplinary action to the Assistant Superintendent/Vice President, Human Resources. The Skelly Officer may recommend that the District:

- Dismiss the Statement of Charges and take no disciplinary action against the employee;
- Modify the intended disciplinary action; or
- Uphold the recommended disciplinary action.

14.6.4.2 If discipline is modified or upheld, the written recommended decision shall include the following:

- The date of the meeting and the attendees;
- The action to be taken;
- The written materials, reports, and documents upon which the disciplinary action is based; and
- A brief statement indicating why alternative explanations or exculpatory information supplied by the employee were not persuasive.

#### **14.6.5 Final Notice of Disciplinary Action**

Upon receipt of the Skelly Officer's written recommendation, the Assistant Superintendent/Vice President, Human Resources will review the recommendation and may, with reasonable basis, modify such recommendation provided such modification conforms to the original Skelly Notice. The Director of Human Resources will issue the "Final Notice of Disciplinary Action," including the following information:

- The effective date of the disciplinary action to be taken;
- Specific charges upon which the action is based; and
- The employee's right to appeal, and the manner specified therein.

#### **14.6.6 Delivery of Notice to Employee**

For the delivery of all notices to the employee (Skelly Notice of Proposed Discipline, Notice of Skelly Hearing Date/Place/Time, and Final Notice of Disciplinary Action), the first method will be delivering the notice in-person to the employee. In the event the employee is unavailable, delivery may be effected by certified mail, in which the U.S. Post Office certifies that the item was in fact delivered to the address on the date so certified by the Post Office. For the purpose of determination of whether the time requirements for notification were met, the date of hand-delivery or the date of postal certification, as appropriate, shall be used.

## **14.7 Imposition of Discipline**

14.7.1 The Assistant Superintendent/Vice President for Human Resources will inform the Governing Board at its next regularly scheduled meeting of any discipline imposed.

14.7.2 Discipline may be settled by written mutual agreement of the parties at any time following the service of notice of discipline. The terms of the settlement shall be reduced to writing. An employee offered such a settlement shall be granted a reasonable opportunity to have the SCCDAA Representative review the proposed settlement before approving the settlement in writing. A classified administrative employee who timely appeals a Final Notice of Disciplinary Action shall have the discipline stayed until a decision is rendered by the Governing Board after a hearing by a neutral third party Hearing Officer, unless the Hearing Officer finds that at the time discipline was imposed pursuant to Section 14.6.5, the District had demonstrated by a preponderance of the evidence that the employee engaged in criminal misconduct, misconduct that presents a risk of harm to students, staff or property, or committed habitual violations of the District's policies or regulations.

## **14.8 Appeal**

To appeal the Final Notice of Disciplinary Action, the employee must file, in writing, a request with the Assistant Superintendent/Vice President, Human Resources within ten (10) working days after service of the Final Notice.

## **14.9 Appeal Procedures**

### **14.9.1 Hearing Officer**

A neutral third party shall serve as the Hearing Officer, and will provide its finding and recommendation to the Governing Board within a reasonable time period. The decision of the Board itself shall be final.

### **14.9.2 Time for Hearing**

The hearing will be held no sooner than ten (10) working days after the request for appeal has been filed. The appealing employee will be notified in writing of the date, time and place of the hearing. The hearing will be held in closed session, unless the employee requests a public hearing.

### **14.9.3 Failure to Appear**

If an employee who has filed an appeal and been notified of the time and place of the hearing fails to appear and has not provided advance notification of an extenuating circumstance, the appeal shall be deemed to have been abandoned and will be dismissed with prejudice.

### **14.9.4 Right to Control Proceedings**

While the parties are generally free to present their case in the order that they prefer, the Board reserves the right to control the proceedings, including, but not limited to:

- excluding or terminating redundant or irrelevant testimony;
- altering the order of witnesses;
- questioning witnesses directly;
- terminating argument and/or testimony disparaging the ethics, morals, or integrity of the parties or members of the Governing Board.

#### **14.9.5 Presentation of the Case**

The District representative and the employee representative will address their remarks, including objections, to the Board. The hearing shall proceed in the following order unless the Board directs otherwise:

- The District shall produce its evidence, including witness testimony
- The employee may then offer evidence, including witness testimony
- Rebuttal evidence, if any, provided by District, then employee

#### **14.9.6 Evidence**

14.9.6.1 The District is the party with the burden of proof. It shall provide evidence establishing the facts upon which it relied on in the Final Notice of Disciplinary Action.

14.9.6.2 Any relevant evidence may be admitted regardless of whether such evidence is typically admitted in a court of law.

14.9.6.3 Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence that is not sufficient in itself to support a finding.

#### **14.9.7 Witness Testimony**

14.9.7.1 The Hearing Officer shall swear in all witnesses for the record prior to them offering testimony at the hearing.

14.9.7.2 All witnesses shall be excluded from the hearing room unless testifying, regardless of whether the hearing is held in closed or open session.

#### **14.9.8 Written Findings and Decision**

The Board shall consider the evidence in closed session and render its findings and decision in writing within thirty (30) days after the appeal hearing. The Board will decide:

- Whether the evidence supports the finding that the employee committed the misconduct alleged; and
- Whether the level of discipline is appropriate under the circumstances.

The Board may affirm or reject any or all of the charges filed against the employee. The Board may affirm, modify or reject the disciplinary action.

#### **14.9.9 Record of Proceedings and Cost**

The appeal hearing shall be recorded by audio tape or by a certified court reporter. If a court reporter is requested by either party, that party shall pay the cost of the court reporter.

#### **14.9.10 Record Filed**

The documentary evidence, written records of the hearing (if any) and the Board's written decision shall be placed in the employee's personnel file.