

## DISTRICT DRAFT COUNTER-PROPOSAL ON DISCIPLINE

### ARTICLE XX: DISCIPLINE

#### 20.1 Statutory Authority

A contract or regular employee may be dismissed or disciplined in accordance with Education Code Section 87660-87683.

#### 20.2 Definitions of Progressive Discipline

When problems arise in the performance of assigned duties, responsibilities, and/or professional conduct expected of a faculty member covered by Article 20, the District will make reasonable attempts to assist the faculty member in correcting those problems through the application of progressive discipline.

**20.2.1** Informal discipline shall include verbal counseling, written warnings, and other lower-level admonitions that are kept in the immediate administrator's office and not placed in the faculty member's personnel file.

**20.2.2** Improvement Plan. Ninety (90) day notice to correct deficiencies related to unprofessional conduct and/or unsatisfactory performance. The faculty member's most recent evaluation shall be attached and the ninety-day notice and relevant attachments shall be placed in the faculty member's official personnel file. The ninety-day notice shall contain a notice of the faculty member's right to prepare a written response within ten (10) working days following receipt of the ninety-day notice. If received within ten (10) working days, the faculty member's written response shall be attached to the ninety-day notice and shall be placed in the faculty member's official personnel file. (*Education Code Sections 87031, 87734*)

**20.2.3** Formal discipline shall be issued for "just cause" as described in 20.3 and includes written reprimand, suspension without pay, or dismissal, the documentation of which shall be placed in the faculty member's official personnel file.

#### 20.2.4 Right of Response

A faculty member has the right to respond in writing, within 10 working days, of receipt of a letter of reprimand or notification of derogatory information being placed in his/her personnel file and shall have his/her response attached and placed in his/her personnel file.

#### 20.3 Grounds for Discipline

A contract or regular employee may be disciplined for one or more of the grounds set forth in Education Code Section 87732 including:

- Immoral or unprofessional conduct
- Dishonesty
- Unsatisfactory performance

- Evident unfitness for duty
- Physical or mental condition making the faculty member unfit to instruct or associate with students
- Persistent violation of or refusal to obey the school laws of the state or reasonable regulations of the Board of Governors or Trustees, or a
- Conviction of a felony or crime involving moral turpitude.

### **Just Cause**

A faculty member shall not be reprimanded, suspended, or dismissed without just cause.

- a. The purpose of this article is to provide additional guidance and oversight for a faculty member experiencing difficulties in his/her work and to substantiate efforts at improvement.
- b. If a faculty member receives a notice of discipline, the District shall include in that notice the faculty member's right to request AFT representation regarding the issue.
- c. If a faculty member receives a written recommendation for a suspension or dismissal, the District shall include in the written recommendation the faculty member's right to request AFT representation prior to any further meeting(s) regarding the issue. In addition, the District shall notify AFT at the same time as the faculty member of the written recommendation for a suspension or dismissal.

The following are general "just cause" guidelines to be considered:

- a. The faculty member shall be adequately informed of the potential consequences of his/her conduct.
- b. A fair and objective investigation should reveal the necessity for any disciplinary action.
- c. Rules and penalties should be applied fairly and equitably.
- d. Disciplinary action should be appropriate and reasonably related to the nature of the offense.
- e. Progressive discipline shall be utilized except for conduct which is of such a nature that progressive discipline normally would not result in corrective conduct. The elements of progressive discipline shall be administered in a timely manner.

Steps in the discipline process include the following (exceptions to these due process steps may occur when administration determines the nature of the conduct is severe or warrants an exception):

Step 1: The manager shall discuss with the faculty member his/her actions/omissions when issuing an oral reprimand.

Step 2: If an oral reprimand does not result in corrected conduct, a counseling letter or written reprimand may be issued.

Step 3: Prior to administering subsequent discipline, a faculty member shall be provided notice and an opportunity to be heard in accordance with Article 20.1. Notice shall include a statement of the incident(s) or misconduct which form the basis for the disciplinary action and a statement of the discipline to be imposed.

Step 4: If suspension without pay is recommended as a disciplinary action, the offense shall be severe or preceded by at least two (2) related written reprimands issued within the last two (2) years prior to the proposed suspension.

#### **20.4 Disciplinary Action**

The level of discipline will be proportionate and appropriate to the alleged cause for discipline in consideration of extenuating and mitigating factors, and the faculty member's past history of conduct and performance.

In issuing discipline, the District will take into consideration the totality of circumstances including but not limited to:

1. Whether there has been a fair investigation of the allegations of misconduct;
2. Response(s), verbal and written, from the faculty regarding the alleged incident.

#### **20.5 Grievability**

Informal discipline, ninety-day notices, written reprimands, suspensions and dismissals shall not be subject to the grievance procedures outlined in Article 25.

#### **20.6 Arbitration**

Pursuant to Ed Code 87737 the faculty member shall have 30 days from the date of service of a notice of suspension or intention to dismiss to request a hearing in the case.

The Arbitrator will be jointly selected by the District and AFT using a mutual strike process.