

**DISTRICT COUNTER
5/13/20 and 5/19/20**

(Green font indicates proposed additions and deletions)

ARTICLE XX: DISCIPLINE

20.1 Introduction

This Article is grounded in the parties' mutual respect for the professionalism and dedication of the SMCCD faculty to the tenets of their profession and role as educators. The parties recognize the primary function of discipline is to provide employees with the opportunity to improve and be effective in their positions.

To that end, District administrators and representatives who have a role in this process will use the principles of progressive discipline as described in this Article and demonstrate fairness, objectivity, and reasonableness in the administration of discipline, with the goal of supporting and preserving the healthy academic culture of the District. All parties to a disciplinary process will adhere to the highest standards of integrity, preserve confidentiality as required, and respect defined processes.

20.2 Authority to Give Feedback, Guidance and Direction

Nothing in this Article shall impede the existing authority of the District to provide direction, feedback or guidance to the member in the performance of the member's duties.

20.3 Dismissal and Suspension of Contract or Regular Faculty: Statutory Authority

A contract or regular employee may be dismissed or penalized in accordance with Education Code Section 87660-87683 and other applicable provisions of the California Education and Government Codes, and the procedures and protections provided for in those sections. Such discipline shall not be subject to the procedures set forth in this Article, or Article 17, grievance procedure. This Article Section does not apply to part time or to temporary faculty.

20.4 Dismissal of Part-time faculty not covered by Article 19.2.4

Part-time faculty who have not met the criteria for load assignment under Article 19.2.4 shall be subject to at-will termination pursuant to Education Code section 87665, which provides that the governing board may terminate the employment of a part-time academic employee at its discretion, at the end of a day or week, whichever is appropriate. The decision to terminate the employment is not subject to judicial review except as to the time of termination. It is understood that this right to terminate a member without cause does not permit termination based on an unlawful reason, including but not limited to unlawful discrimination or retaliation.

20.5 Nonrenewal of Probationary Faculty

This Article does not apply to a District decision to deny tenure or non-renew a probationary faculty member's contract. The procedures and rights governing these decisions are set forth in the Education Code and Article 30.

20.6 90-Day Notice and Opportunity to Improve

It is understood that issuance of a 90-Day Notice pursuant to Education Code section 87734 does not constitute discipline. As such, a 90-Day Notice is not subject to the procedures set forth in this Article and is not subject to grievance under Article 17 of this Agreement. Rather, a 90-Day Notice constitutes a right to receive notice and opportunity to improve to which a member is entitled before the member may be charged with unprofessional conduct or unsatisfactory performance.

Notwithstanding the above, the parties recognize that:

- A 90-Day Notice must be designed to provide the member with a meaningful opportunity to improve, and thus must specify the nature of the unprofessional conduct and/or unsatisfactory performance with specific instances of the behavior and with particularity to furnish the employee an opportunity to correct the conduct giving rise to the 90-Day Notice.
- The District may not file any charges of unprofessional conduct or unsatisfactory performance against a member any sooner than 91 days after the issuance of a 90-Day Notice, or any later than the term or half college year following the term or half college year during which the member received the 90-Day Notice.
- The member's statutory rights, referenced above in Article 20.3, include the right to an evidentiary hearing on the charges, including matters alleged in the 90-Day Notice. The District bears the burden of proof in any such hearing.

20.27 Employment Actions Covered Under Article XX

Article XX regulates the administration of all discipline other than dismissal and suspension of probationary or regular faculty under the Education Code. For the purposes of this Article "discipline" means, and is limited to, the following:

20.3 7.1 Informal discipline, which may 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.

20.37.2 Formal discipline may include:

A. A written reprimand, ~~suspension with or without pay, or dismissal~~, the documentation of which shall be placed in the faculty member's official personnel file. A faculty member has the right to respond in writing, within 10 ~~30 working business~~ days of receipt of a letter of reprimand or notification of derogatory information being placed in his/her ~~the~~ employee's personnel file, and to have the response attached to the reprimand or notification. The written reprimand or notification shall also inform the member that it will be placed in the member's personnel file in ten (10) business days, and that the member may submit a written response, which shall be attached to the disciplinary notice.

B. Disciplinary training. Disciplinary training is training that a member is mandated to attend on the basis that the member has engaged in conduct subject to discipline. Disciplinary training may be imposed as the sole disciplinary action, or in conjunction with other disciplinary action.

C. Involuntary modification of duties: For the purposes of this Article, an involuntary modification of duties is a modification to the duties, assignment or location of an employee's work for the purpose of addressing a disciplinary matter and/or taking steps to remediate a hostile or abusive work environment.

20.7.4 If a faculty member receives a **formal** notice of discipline, the District shall include in that notice the faculty member's right to request AFT representation regarding the issue.

20.8 Just Cause

Just cause is required for discipline. Cause for the discipline means any of the causes for discipline set forth in California Education Code Section 87732. A faculty member shall not be reprimanded, suspended, or dismissed without just cause.

Notwithstanding the above, unsatisfactory performance shall only constitute cause for discipline where the employee has been informed of the performance issues through the contractual evaluative process and failed to improve. Members shall not receive first notice of a performance concern through discipline.

- b. ~~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 review should reveal the necessity for any disciplinary action.
- c. Penalties should be applied fairly, equitably and in a timely fashion.
- 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.~~

20.39 Definitions of Progressive Discipline

“Progressive Discipline” means that the District will impose the lowest level of discipline reasonably calculated to bring about the desired result. Implementation of progressive discipline does not require a specific order, or lock-step adherence to the disciplinary steps identified in Article 20.xx. It is understood that the appropriate level of discipline depends upon numerous factors such as the seriousness of the conduct at issue, the history of prior discipline, and possible extenuating or mitigating factors, all of which the District may consider in determining the appropriate level of 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. Discipline can be informal or formal.

20.4 10 Informal Rights Regarding Discipline

Members or their AFT representative on their behalf shall have the following rights regarding discipline.

- ~~a. — A decision to issue informal discipline shall be for just and sufficient cause.~~
- ~~b. — Informal discipline which consists of verbal counseling, written warnings and other lower-level admonitions, may be grieved, but are not subject to arbitration in and of themselves.~~
- ~~c. Informal discipline which consists of performance directives such as modified duties, additional duties or responsibilities, affirmative obligations to perform services or participate in training or education, and similar activities, shall be subject to arbitration, but only when the request for arbitration is made by the Union.~~
- ~~d. For informal discipline subject to arbitration, the arbitrator shall be selected in accordance with the grievance procedure of this Agreement, and the decision of the Arbitrator shall be final and binding on the District, Union and employee.~~

Commented [1]: I deleted this because I think the actions here are not “informal” and do come with some grievance rights. I have separated these employment actions out, as I think they shouldn’t be lumped together.

- a. **Written Reprimand:** In addition to the right to attach a response to a written reprimand, a member also has the right to grieve the written reprimand through Level I of the grievance process set forth in Article 17. If the member files a grievance within 10 business days of receiving the written reprimand, the District shall not place the reprimand in the personnel file until the conclusion of the Level I grievance process.
- b. **Disciplinary Training:** Disciplinary training of three hours or less that is scheduled during the member's regular work hours, and located at the District Office, the member's college, or on line, is not subject to challenge. All other disciplinary training may be grieved through Level I of the grievance process.
- c. **Disciplinary Modification of Duties:** A member who receives a disciplinary modification of duties shall receive a written, pre-disciplinary notice informing the member of the basis for the modification with sufficient specificity that the member is able to respond to the charges and basis for modification; the right to a pre-disciplinary opportunity to be heard orally or in writing; and a post-disciplinary right to grieve the transfer through Level II of the grievance process.
- d. **Dismissal of Part-Time Faculty Covered by Article 19.2.4:** Part-time faculty members who have met the load assignment criteria set forth in Article 19.2.4 (i.e. have received two (2) consecutive satisfactory evaluations, or been given an assignment for six (6) semesters with no negative evaluations) shall only be dismissed for cause and pursuant to the following process:
- The member shall receive a pre-discipline Skelly Notice and opportunity to respond orally or in writing to the charges to the member's immediate supervisor.
 - If the District proceeds with the dismissal, the member and AFT on the member's behalf may utilize the grievance process, post-discipline, through step II.

20.5 Grounds for Formal Discipline

A contract or regular employee may be disciplined and/or dismissed 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.
- Conduct specified in Section 1028 of the Government Code

Commented [2]: I deleted this section this because ALL discipline is limited to these bases—not just formal discipline. And, I added a statement to that effect above.

20.8 Disciplinary Process

Steps in the formal disciplinary 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 written reprimand may be issued. If a written reprimand is for unprofessional conduct or unsatisfactory performance, a ninety (90) day notice to correct deficiencies will be included with the reprimand. The notice shall contain such particularity as to furnish the employee an opportunity to correct their faults and overcome the grounds for such a charge. The faculty member's most recent evaluation shall be attached. The ninety-day notice shall contain a notice of the faculty member's right to prepare a written response within ten (10) thirty (30) working days following receipt of the 90-day notice. If received within thirty (30) 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)

Step 2: If unprofessional conduct and unsatisfactory performance is not corrected within 90 days of this notice, the District has the right to seek termination of faculty member's employment.

There is no requirement to wait 90 days to seek termination for dishonesty, immoral conduct, evident unfitness for service, or for the violation of the law and rules of the District.

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. Such notice shall be given within five (5) working days of the decision to administer the discipline.

Step 4 3: If suspension without pay is recommended as a disciplinary action, the offense, as determined by the District, 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.

Commented [3]: This section is deleted for 2 reasons: First, the sections that summarize or regulate suspensions/dismissals are outside the purview of this article. Second, the sections that relate to warnings and reprimands repeats what is said above regarding progressive discipline.