

ARTICLE 11 - DISCIPLINE PROCEDURE

- 11.1 This Article is entered into pursuant to Section 3543.2(b) of the California Government Code.
- 11.2 The District retains the sole right to discipline non-management certificated employees for just cause, provided that in the exercise of this right the District will not act wrongfully or unjustly or in violation of the terms of this Agreement. It is agreed by the Parties that this Article is specifically written to allow for unpaid suspensions of up to fifteen (15) non-management certificated employee work days. The term "discipline" specifically does not include negative or adverse evaluations, and the implementation of other Articles in this Agreement such as the denial of any leave.
- 11.3 The grievance process set forth in Article 15 (Grievances) of this Agreement shall be limited to only the procedures and not the content of the imposed discipline.
- 11.4 In imposing discipline on a non-management certificated employee, the District will not take into account any prior discipline that occurred more than three years prior to the current act causing discipline to be imposed.
- 11.5 A non-management certificated employee shall not have a written reprimand placed in the non-management certificated employee's personnel file without ten (10) working days prior written notice, an opportunity to review the proposed written reprimand, and an opportunity for a conference with the non-management certificated employee's immediate supervisor upon request of the non-management certificated employee or the Association, and any other rights afforded by Education Code Section 44031. In addition, in accordance with the concept of progressive discipline, a non-management certificated employee will first be given a verbal warning. Subsequent occurrence(s) to the verbal warning, a letter of warning will be given outlining the incident and suggestion for improvement. Subsequent occurrence(s) to a letter of warning will result in a letter of written reprimand, except in cases where the non-management certificated employee's misconduct is grave or serious. The non-management certificated employee will sign the reprimand to acknowledge receipt, and a copy may be placed in the non-management certificated employee's personnel file. The non-management certificated employee shall have the right to have the non-management certificated employee's written response attached to the written reprimand and placed in the personnel file.

Written reprimands cannot be grieved under Article 11 of this Agreement; the rights set forth herein are the exclusive methods for a non-management certificated employee to respond to a written reprimand.

11.6 In cases of grave or serious misconduct, an unpaid suspension may be imposed without a prior verbal warning or written reprimand. The grievance procedures set forth in Article 15 are not applicable to any suspension without pay. The procedures set forth in the Article for the appeal of a suspension without pay shall be the sole procedures for a non-management certificated employee or the Association to appeal any suspension without pay.

11.6.1 For the purposes of this Article, “serious misconduct” is defined as conduct which is so serious that progressive discipline would be inappropriate under the circumstances.

11.6.2 For the purposes of this Article, “grave misconduct” is defined as misconduct by a non-management certificated employee that relates to or affects the safety of a student, staff member, or other person, or which exposes the District to potential litigation.

11.7 A non-management certificated employee shall not be suspended without pay without prior written notice and an opportunity for a conference with the Chief Human Resources Official or designee upon request of the non-management certificated employee or the Association. Prior to imposing any unpaid suspension, the Chief Human Resources Official or designee shall give written notice to the non-management certificated employee. This written notice of proposed disciplinary action shall be served by personal delivery or certified mail on the non-management certificated employee. The District shall make a reasonable effort to personally serve a non-management certificated employee with a notice of unpaid suspension, and will also provide a copy of the notice to the Association. Service by certified mail shall be deemed complete three days after the date of mailing, regardless of whether the non-management certificated employee accepts the certified mail. The contents of the written notice shall include at least the following:

- a. A statement in ordinary and concise language of the specific act(s) and omission(s) upon which the proposed suspension without pay is based, the

causes and/or reasons for the proposed suspension, the proposed length of the suspension, and its effective date(s).

- b. A copy of any applicable statutory authority, Board policies, regulation(s), or other criteria which are claimed to be violated.
- c. A statement that the non-management certificated employee may appear personally before the Chief Human Resources Official or designee to respond, either orally or in writing, to the matters raised in the written notice. including the submission of affidavits or declarations; and a statement that the non-management certificated employee must provide a written request to appear before the Chief Human Resources Official or designee, within ten (10) calendar days of the date the written notice of unpaid suspension is served if the non-management certificated employee chooses to respond to the causes and reasons for the proposed action. If the notice of unpaid suspension is served on the non-management certificated employee only by mail, the ten (10) calendar days period to request a response referred to above will be extended to thirteen (13) calendar days.
- d. A statement that the non-management certificated employee, upon written request, is entitled to an appeal hearing before a hearing officer to appeal the decision of the Chief Human Resources Official or designee, if the non-management certificated employee requests such an appeal hearing within ten (10) calendar days after the date the Chief Human Resources Official or designee renders a written decision.
- e. If the notice of unpaid suspension is for grave misconduct, the notice will include a statement that advises the non-management certificated employee that the suspension shall commence ten (10) calendar days following the date the written notice of unpaid suspension is served. The unpaid suspension for grave misconduct will commence thirteen (13) days after service of the notice if service is only by mail.

11.8 In cases of serious or grave misconduct, a suspension without pay and loss of compensation shall commence ten (10) calendar days after the date of the service of the notice, unless the District in its discretion orders the unpaid suspension to

commence at a date later than ten (10) days after service of the notice if notice was served personally or thirteen (13) days after service of the notice if service is only by mail. If the non-management certificated employee requests a hearing to appeal the unpaid suspension for grave misconduct, and the appeal is successful, the non-management certificated employee will receive back pay.

11.9 The Parties agree that any written request by the non-management certificated employee or Association to appear personally before the Chief Human Resources Official or designee on an unpaid suspension will be heard within thirty (30) calendar days of the date of service of the written request to respond to the notice of unpaid suspension, unless both Parties agree to extend the period.

11.9.1 In the case of unpaid suspensions for serious or grave misconduct, the unpaid suspension will commence prior to the hearing, as set forth in Paragraph 11.8 above.

11.9.2 In the case of notice of unpaid suspensions for serious or grave misconduct or unpaid suspensions which the District seeks to impose after a verbal warning and written reprimand, the unpaid suspension will not commence until the response to the notice of suspension is heard by the Chief Human Resources Official or designee and after the Chief Human Resources Official or designee renders a written decision; unless the non-management certificated employee or the Association causes a delay in the non-management certificated employee's response to the notice of unpaid suspension. If the non-management certificated employee or Association causes a delay so that the conference before the Chief Human Resources Official or designee cannot be completed within thirty (30) days after the date of service of the written request to respond to the notice of the unpaid suspension, the unpaid suspension will commence thirty-one (31) days after the date on which the written request to respond to the notice of unpaid suspension is served. The Chief Human Resources Official or designee's written decision shall include a statement that the non-management certificated employee is entitled to request to appear before a hearing officer for an appeal hearing to appeal the decision of the Chief Human Resources Official or designee.

11.10 The non-management certificated employee shall receive an appeal hearing on a proposed unpaid suspension only if a written demand for such an appeal hearing is delivered and received in person or email (not by regular mail) to the Chief Human Resources Official (or designee) within ten (10) calendar days of the service of the Chief Human Resources Official or designee's decision to move forward on the unpaid suspension if notice of the decision is personally served on the non-management certificated employee, or thirteen (13) calendar days if served on the non-management certificated employee only by mail. The written demand for an appeal hearing may be delivered by a representative of the Association. In the absence of a timely demand by the non-management certificated employee or the Association for an appeal hearing, the notice of unpaid suspension shall become final immediately upon expiration of the time for filing a request for such an appeal hearing.

11.11 At the appeal hearing on the unpaid suspension, the non-management certificated employee shall have the right to appear in person on their own behalf, or at the non-management certificated employee's option, to appear and be represented by the Association. The non-management certificated employee and the District shall have the right to present evidence at the appeal hearing regarding the unpaid suspension. Appeal hearings will be recorded at the request of either party. The cost of the appeal hearing officer and of recording the appeal hearing shall be borne equally by the parties.

11.11.1 Appeal Hearing Officers:

A finalized list of seven (7) potential appeal hearing officers shall be reviewed annually by July 1. The initial list of appeal hearing officers shall be created by the submission of seven (7) names from the Association and seven (7) names from the District. The list shall be derived through alternating strike by the other party; and the initial list shall be completed by July 1, 2012. A coin toss shall determine whether the Association or the District will strike first. In the alternative, the Parties may forego use of the list of seven (7) names and agree to have the appeal hearing heard by an assigned Administrative Law Judge from the Office of Administrative Hearings.

11.11.2 Selection of Appeal Hearing Date:

The proposed length of the appeal hearing shall be determined by the Parties upon the selection of the appeal hearing officer so that all schedules may be coordinated expeditiously. An appeal hearing date shall be established upon finalizing the selection of the appeal hearing officer.

11.11.3 Service of Documents:

The Parties may submit evidentiary matters confidentially to the appeal hearing officer unless otherwise agreed upon. Documents may be served via regular U.S. Postal Service mail, electronic mail, facsimile, or hand delivered and be deemed timely if postmarked or otherwise transmitted on or before the due date.

11.11.4 Appeal Hearing Rules:

The Parties must submit their list of witnesses (if any) and a statement of what each witness will testify to, to each other at least twenty (20) business days prior to the appeal hearing date. Any witness must appear in person at the appeal hearing and no affidavits or written declarations are permissible.

- a. If a party wishes to object to the testimony of any witness, the objecting party must do so in writing within five (5) business days of service of the list of witnesses.
- b. The objecting party must list the basis of its objection.
- c. The proposing party will have an opportunity to respond within five (5) business days from service of the objection.
- d. The parties will meet and confer on any objection to any witness testimony in an attempt to reach a resolution. If the Parties cannot agree to a resolution, then the appeal hearing officer shall determine whether the witness(es) at issue will be permitted to testify at the appeal hearing. The appeal hearing officer will make their determination at least three (3) business days before the appeal hearing.

All evidence to be presented at the appeal hearing shall be served on the appeal hearing officer at least three (3) business days prior to the date of the appeal hearing. Opening and/or closing statements may be presented in

writing or waived. Any written pre or post appeal hearing briefs/statements shall be permissible.

11.11.5 Costs:

Release Time: The District will pay for release time of the affected non-management certificated employee and up to three (3) witnesses per day limited to the length of testimony time required for each witness and only for those witnesses permitted to testify. Witnesses are permitted at the appeal hearing only for purposes of presenting testimony. Every witness must wait outside of the hearing room until his or her testimony is required. Costs associated with the appeal hearing officer and use of a stenographer shall be borne by the District and Association equally.

11.11.6 Miscellaneous:

The Parties may agree to extend timelines. The appeal hearing shall be held confidential and shall not be open to the general public.

11.11.7 Based on the notice of unpaid suspension and the evidence presented at the appeal hearing, the appeal hearing officer will make a written decision on the unpaid suspension, and will provide a copy of the decision to the District, the non-management certificated employee, and the Association. The appeal hearing officer may uphold, reverse, or modify (any modification of the decision of the Chief Human Resources Official may not be an increase in the number of days of unpaid suspension) the decision by the Chief Human Resources Official or designee on the proposed notice of unpaid suspension. The appeal hearing officer's decision will be rendered in writing within five (5) business days of the appeal hearing unless extenuating circumstances require a longer period of time to render the decision. The appeal hearing officer's decision will be binding on the non-management certificated employee, the Association, and the District. If the appeal hearing officer upholds all or part of the unpaid suspension, the unpaid suspension will commence immediately.

11.12 Except as disciplinary actions may be introduced as evidence in support of an action to dismiss a non-management certificated employee, this Article is not intended to modify

Education Code provisions regarding the dismissal of non-management certificated employees.