

- 8.4 While a grievance may be filed or considered regarding a violation of the procedural steps of this Article, the substance of materials contained in any personnel file shall not be subject to the grievance procedure.
- 8.5 Upon written request, a unit member shall be furnished with a copy of material in the personnel file, excluding those items encompassed by section 8.1.1. The charge for copies shall be \$.10 per page.

## **ARTICLE 9 DISCIPLINARY ACTION**

- 9.1 Disciplinary action shall be imposed upon unit members only for just cause and pursuant to the terms of this Article. The provisions and procedures of this Article shall not apply to a suspension or dismissal action instituted pursuant to Education Code section 87660, et seq., or to a dismissal pursuant to Education Code section 87730, et seq.
- 9.1.1 Any disciplinary action should be reasonably related to the nature of the offense committed by the faculty member and should take into account prior discipline imposed on the faculty member (if any).
- 9.1.2 The terms "disciplinary action" and "discipline" as used in this Article shall mean, a letter of warning, a letter of reprimand, or a loss of an extra pay assignment or "R" and/or "T" salary factor when any of these actions is taken as a result of an offense committed by the faculty member.
- 9.1.2.1 The following are not considered disciplinary actions and are specifically excluded from the provisions and procedures of this Article: oral warning, incident report, or deduction of pay for being absent without leave (AWOL) in the absence of any other discipline.
- 9.1.2.2 Also specifically excluded from the provisions and procedures of this Article are actions taken by the District as part of the process of performance observation, review, or evaluation pursuant to the provisions of ARTICLE 7, EVALUATION PROCEDURES AND TENURE REVIEW PROCESS, or the placement of materials in the District's personnel file pursuant to the provisions of ARTICLE 8, PERSONNEL FILES.
- 9.1.3 No disciplinary action shall be taken for any cause that arose more than two years preceding the date of the notice of disciplinary action unless the cause was concealed or not disclosed by the faculty member when it reasonably could be assumed that the faculty member should have disclosed the facts to the District. Further, with regard to a tenured regular faculty member, no disciplinary action shall be taken for any cause that arose prior to the regular faculty member becoming a tenured employee, unless the cause was concealed or not disclosed by the faculty member when it reasonably could be assumed that the faculty member should have disclosed the facts to the District.

### Pre-Discipline Investigation

- 9.2 Any matter that could result in the imposition of discipline or any recommendation for disciplinary action shall be brought to the attention of the Superintendent/President. The Superintendent/President or designee shall investigate the matter and shall hold an informal meeting with the faculty member or, if requested by the faculty member, with the faculty member and a representative.

- 9.2.1 Except in unusual circumstances, the meeting shall be held within 10 days after the matter has been brought to the Superintendent/President's attention. The reason for a delay beyond the 10-day limit shall be communicated in writing by the party who requests the delay. The faculty member shall be informed of the right to be accompanied to the meeting by a representative. If the faculty member elects not to be represented by a representative, the faculty member shall sign a statement to that effect.
- 9.2.2 As a part of the investigation, the faculty member shall be notified in writing of the allegations and shall be given an opportunity to respond to the allegations (including a copy of any relevant document on which the allegations are based) and to comment as to the appropriate disposition of the matter. Reasonable efforts will be made to conclude the investigation in a timely manner.

#### Notice of Discipline

- 9.3 Within 10 days of the conclusion of the investigation, the Superintendent/ President shall give the faculty member a written notice of intended disciplinary action.
  - 9.3.1 The notice shall be personally served upon the faculty member and shall be signed for and dated upon receipt, or it shall be sent by United States certified mail, return receipt requested, addressed to the faculty member at his or her last known address.
  - 9.3.2 Where the faculty member has utilized the services of a representative during the investigation, the representative shall also be sent a copy of the notice.
  - 9.3.3 The notice shall inform the faculty member of the charges as well as the effective date of discipline, which shall be not less than six days after service of the notice. The notice shall contain a statement of the specific acts and/or omissions upon which the intended disciplinary action is based, and if it is claimed that the faculty member has violated a District rule or regulation, the rule or regulation shall be set forth in the notice.
  - 9.3.4 The notice shall inform the faculty member of the faculty member's right to demand an appeal hearing before the Board of Trustees (or an arbitrator pursuant to section 9.4.2) and the time in which the hearing must be demanded, which shall be not less than five days after service of the notice.
  - 9.3.5 The notice shall also contain a form, the signing and filing of which shall constitute a demand for hearing and denial of all charges. If the demand for a hearing is filed before the deadline, the intended disciplinary action shall be stayed pending resolution of the appeal. Failure to file the demand for a hearing as set forth in the notice shall constitute a waiver of the right to an appeal and the discipline shall be final.

#### Appeal of Disciplinary Action

- 9.4 If the faculty member files the demand and denial, the following shall apply:
  - 9.4.1 If the faculty member elected not to be represented as set forth in section 9.2.1, or if the Exclusive Representative did not elect to proceed before an arbitrator, the appeal hearing shall be conducted by the Board of Trustees pursuant to the following:
    - 9.4.1.1 The burden of proof to support the discipline rests with the District.
    - 9.4.1.2 The faculty member, and a representative if the faculty member desires, may present evidence or argument to the Board, or to a Hearing Officer designated by the Board, prior to the Board making a decision.

- 9.4.1.3 Following the appeal hearing, the Board shall adopt, modify, or reject the discipline.
- 9.4.1.4 The Board's decision shall be in writing and shall set forth the findings of fact, conclusions, and reasons for the Board's determination.
- 9.4.1.5 If the Board either modifies or rejects the discipline, the faculty member's personnel records shall be adjusted to reflect the Board's decision.
- 9.4.1.6 The decision of the Board shall be final.
- 9.4.2 If the faculty member is represented by the Exclusive Representative, the appeal hearing shall be before an arbitrator selected by mutual agreement as provided by Education Code section 87674.
  - 9.4.2.1 The Exclusive Representative shall have 10 days from receipt of the notice to inform the District of its election to proceed before an arbitrator.
  - 9.4.2.2 The arbitrator shall hold a hearing and shall issue written findings of fact, conclusions, and an advisory recommendation to the Board of Trustees. A copy of the arbitrator's findings, conclusions, and recommendation shall be provided to the faculty member and to the Exclusive Representative.
  - 9.4.2.3 Thereafter, the Board shall consider the arbitrator's findings, conclusions, and recommendation and shall make a final determination on the disciplinary action.
  - 9.4.2.4 The District and the Exclusive Representative shall share the per diem and expense costs of the arbitrator. Each party shall bear all other costs of its own case.

#### General Provisions

- 9.5 When the Superintendent/President determines that cause exists, a faculty member may be placed on administrative leave or may be suspended immediately on an emergency basis prior to the completion of the procedures set forth in sections 9.3 and/or 9.4.
  - 9.5.1 In the case of an administrative leave or immediate suspension, the leave or suspension and any denial of compensation shall be an issue in the appeal hearing, if one is requested by the faculty member.
  - 9.5.2 An administrative leave or immediate suspension shall be limited to 90 days.
- 9.6 All information and proceedings regarding any of the above actions or proposed actions, shall be kept as confidential as possible by all parties to the proceeding. The notification to the faculty member and to the faculty member's representative as set forth in sections 9.3.1 and 9.3.2 shall not be deemed a violation of the terms of this section.
- 9.7 Nothing contained within this procedure shall be interpreted to deny a faculty member the right to seek judicial review of a disciplinary action following completion of the procedures contained in this Article.