

District.

- 12.1.2 The Human Resources Office shall maintain a log that indicates the name of any person who has examined a personnel file, as well as the date of any examination.
- 12.2 Information of a derogatory nature, except information contained in an employee's evaluation and information excluded from review by the employee pursuant to paragraph 11.1, shall not be entered or filed in the employee's personnel file, unless and until the employee is given notice and the opportunity to review and comments thereon. With regard to the placement of an adverse comment or comments in the personnel file of an employee who is employed as a Campus Police Officer, the process is set forth in the Public Safety Officers Procedural Bill of Rights Act (Government Code § 3300 through 3311).
- 12.2.1 The review shall take place during normal business hours and the employee shall be released from duty for this purpose without salary reduction.
- 12.2.2 An employee shall have the right to enter and have attached to any derogatory statement, the employee's own comments thereon within 10 days of notification.
- 12.3 The contents of an employee's personnel file shall be kept in the strictest confidence pursuant to the appropriate provisions of the Education Code and the Government Code.
- 12.4 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.
- 12.5 The personnel files of each employee shall be maintained at the District Human Resources Office.

ARTICLE 13 DISCIPLINARY ACTION

13.1 Definition of Discipline

Discipline may be imposed on permanent unit members for just cause. Disciplinary action primarily relies on actions that are progressive which includes employee conferencing/oral warnings, written warnings, written reprimands, demotions, suspensions, involuntary dismissals. The level of severity of discipline should be reasonably related to the nature of the offense committed by the employee and should take into account any prior disciplinary action imposed on the employee. When the incident giving rise to discipline is significant in nature, the resulting disciplinary action may warrant combining or skipping steps in the process. The provisions of this Article apply to permanent, non-probationary workers only.

13.2 Progressive Discipline

Progressive discipline shall generally include these steps. In most circumstances the following sequence of steps shall be followed to provide progression of corrective and disciplinary actions for permanent employees.

13.2.1 Oral Warning/Conference – the first and lowest level of discipline. An informal meeting with the unit member and supervisor to discuss performance/conduct concerns and identify the appropriate actions for improvement. A supervisor shall follow up with a memo that clearly states the cause(s) for discipline, the specific acts of inadequate performance/misconduct giving rise to the discipline, and the expectations for improvement. This memo is not placed in the personnel file.

13.2.2 Written Warning – the second level of discipline. A document issued to the unit member that identifies the cause for discipline, the specific acts of inadequate performance/misconduct giving rise to the discipline, the expected remedies and a reasonable and specific time frame by which improvement is expected. The written warning is a form of communication between the supervisor and the unit member. This warning is not placed in the personnel file.

13.2.3 Written Reprimand – the third level of discipline. A written document is prepared that identifies the reasons for the reprimand that shall include the causes for discipline, the specific acts of inadequate performance/misconduct giving rise to the discipline, and the previous disciplinary notifications to the unit member. The written reprimand shall be presented to the unit member and a CCCUE officer, if requested, in a meeting with the supervisor. A copy of the reprimand shall be placed in the unit member's personnel file. The supervisor shall give the unit member, in writing, the expectations for improvement, and a reasonable and specific period of time to permit the unit member time to correct the deficiency without incurring further disciplinary action. The unit member shall receive notification from Human Resources that he/she has ten days to attach a statement/response to the reprimand.

13.3 Demotion, suspension or dismissal

Persons represented by CCCUE who are recommended for demotion, suspension, or dismissal shall be subject to the following procedures:

13.3.1 Persons represented by CCCUE who are recommended for demotion, suspension, or dismissal shall be subject to the following procedures in this Article 13. Discipline shall be imposed upon a permanent classified employee pursuant to the terms of this Article. With regard to disciplinary action against an employee who is employed as a Campus Police Officer, the discipline process is set forth in the Public Safety Officers Procedural Bill of Rights Act (Government Code § 3300 through 3311) except that an administrative appeal of the discipline shall be processed pursuant to paragraph 13.4.1 or 13.4.2.

13.3.2 Specifically excluded from the provisions and procedures of this Article are actions taken by the District as part of the process of evaluation of an employee's work performance pursuant to the provisions of ARTICLE 11, EVALUATION PROCEDURES, except when the District imposes disciplinary action following a written evaluation that denotes a performance deficiency or deficiencies, or that are related to the placement of materials in the District's personnel file pursuant to the provisions of ARTICLE 12, PERSONNEL FILES.

13.3.3 No disciplinary action shall be taken for any cause that arose prior to the employee becoming permanent or 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 employee when it reasonably could be assumed that the employee should have disclosed the facts to the District.

13.4 Pre-Discipline Investigation

Any recommendation or request for disciplinary action shall be brought to the attention of the Superintendent/President or designee. The Superintendent/President or designee shall investigate the matter. As a part of the investigation process, the Superintendent/President or designee shall hold an informal meeting with the employee or, if requested by the employee, with

the employee and a representative within seven days of notification to the employee that the matter has been brought to the Superintendent/President's attention. For the purposes of this Article, the designee of the Superintendent/President shall be a Vice President or the Director of Human Resources.

13.4.1 Prior to the meeting, the employee shall be notified in writing of the nature of the allegations. Except in an emergency situation, the written notification shall be made one day in advance of the meeting. The employee shall be informed of the right to be accompanied to the meeting by a CCCUE representative. If the employee elects not to be represented by CCCUE, the employee shall sign a statement to that effect. A copy of the statement shall be sent to CCCUE within five days of being signed. During the meeting, the employee shall be given an opportunity to respond and to comment on the proposed disposition.

13.4.2 At the request of the employee, a preliminary investigative determination shall be issued.

13.4.3 The employee may authorize CCCUE to request that the issue be referred to a special session of the Joint Labor Management Committee for discussion. The request must be made within two days of the issuance of the preliminary determination.

13.5 Notice of Discipline

Within 10 days of the conclusion of the investigation or within five days of the meeting of the JLMC whichever is sooner, the Superintendent/President or designee shall give the employee a written Notice of Proposed Disciplinary Action ("Notice").

13.5.1 The Notice shall contain a statement in ordinary and concise language of the specific acts and omissions upon which the disciplinary action is based, a statement of the cause for the action taken, and if it is claimed that employee has violated a rule or regulation of the District, the rule or regulation shall be set forth in the Notice. Any other documents relied upon by the District to support the proposed discipline shall either be attached or otherwise made available to the employee.

13.5.2 The Notice shall be personally served upon the employee and shall be signed for and dated upon receipt, or it shall be sent by prepaid United States first class mail, with proof of mailing (certificate of mailing on U.S. Postal Service Form 3817 or equivalent) addressed to the employee at his or her last known address. Where the employee has utilized the services of a CCCUE representative or an attorney during the investigation, the representative shall also be sent a copy of the Notice.

13.5.3 The Notice shall inform the employee of the right to demand a meeting with the Superintendent/President (designee) or to respond in writing to the Superintendent/President (designee), or both, which response shall be not less than seven days after receipt of the Notice, unless the employee and the District agree to meet at a different time because of exceptional circumstances.

13.5.4 Following the meeting or receipt of the response, and if the Superintendent/President (designee) determines that it is appropriate to proceed with the discipline recommendation, the employee shall be given Notice at the same time that Notice of the recommendation is given to the Board. The Notice shall also contain a form, the signing and filing of which shall constitute a demand for hearing and denial of all charges. The Hearing Request Form shall be filed no later than seven days after the employee receives the

Notice of recommendation to the Board. Failure to file the demand for a hearing as set forth in the Notice shall constitute a waiver of the right to a hearing and the discipline shall be final.

13.6 Appeal of Disciplinary Action

If the employee files the demand and denial, the following shall apply:

13.6.1 If the employee is represented by CCCUE, the hearing shall be before an arbitrator selected pursuant to the provisions of ARTICLE 17, GRIEVANCE PROCEDURE, paragraph 17.9 at the election of CCCUE.

13.6.1.1 CCCUE shall have five days from receipt of the notice to inform the District of its election to proceed before an arbitrator.

13.6.1.2 The arbitrator shall hold a hearing and shall issue written findings of fact, conclusions, and an advisory recommendation to the Board of Trustees.

13.6.1.3 Thereafter, the Board shall consider the arbitrator's findings, conclusions, and recommendation and shall make a final determination on the disciplinary action. The employee will be provided an opportunity to address the Board prior to the Board's determination.

13.6.1.4 The District and CCCUE shall share the per diem and expense costs of the arbitrator. Each party shall bear all other costs of its own case.

13.6.2 If the employee elected not to be represented as set forth in paragraph 13.2.1, or if CCCUE does not elect to proceed before an arbitrator, the hearing shall be conducted by the Board of Trustees or, at the sole discretion of the Board, it may delegate the evidentiary hearing function to a hearing officer pursuant to the following:

13.6.2.1 Five days prior to the hearing, each party shall serve upon the other party and submit to the Board (hearing officer) a list of all witnesses and all exhibits. Failure to submit the name of a witness or to list an exhibit may result in the witness or exhibit being excluded, unless good cause can be shown. This provision does not apply to rebuttal witnesses or evidence.

13.6.2.2 The employee shall appear personally, unless physically unable to do so, before the Board (hearing officer) at the time and place of the hearing. The employee may be represented by any person the employee selects, except any supervisor of the employee. At the hearing, the employee may produce relevant or documentary evidence on the employee's behalf.

13.6.2.3 Oral evidence will be taken only on oath or affirmation.

13.4.2.4 Each party will have the following rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination; to impeach any witnesses regardless of which party first called the witness to testify; and to rebut the evidence against the employee. If the employee does not testify in the employee's own behalf, the employee may nevertheless, be called and examined as if under cross-examination.

- 13.6.2.5 The hearing need not be conducted according to the technical rules of evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but will not be sufficient in itself to support a finding, unless it would be admissible over objection to the same extent that it is now or hereafter may be recognized in civil actions. The Board member who chairs the hearing, or the hearing officer if one is utilized, shall rule on all objections raised by either party.
- 13.6.2.6 The hearing will be recorded by use of a certified shorthand reporter ("CSR"). The District shall pay for the cost of the CSR. The employee shall pay for any copy or copies ordered from the CSR for the employee's use. The District and the employee may tape record the proceeding.
- 13.6.2.7 The hearing will be closed to the general public, unless the employee requests that the hearing be open.
- 13.6.2.8 The District will not pay employee-witnesses who are called other than on working hours. So that arrangements can be made for an employee-witness to be released from duty without causing interference to the normal operations of the District, the employee must submit an estimate of the time that the testimony will take and specify the department and the name of the affected supervisor at the time that the witness list is submitted.
- 13.6.2.9 In reaching a decision, the Board (hearing officer) may take official notice of any matter that may be judicially noticed by the courts of this State. Parties present at the hearing will be informed of the matters to be noticed and those matters will be noted in or appended to the record. Any party will be given reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, with the specific matter to be determined by the Board member who chairs the hearing or the hearing officer.
- 13.6.2.10 The Board member who chairs the hearing or the hearing officer will require the maintenance of order in the hearing room, may order the exclusion of witnesses, and may expel anyone who disturbs the hearing.
- 13.6.2.11 The order of proof in the hearing shall be as follows:
- 13.6.2.11.1 The District shall first present evidence in support of its case:
- 13.6.2.11.2 The employee or the employee's representative will produce such evidence as the employee may wish to offer in the employee's defense or in rebuttal of the District's case;
- 13.6.2.11.3 The District may present evidence in rebuttal.
- 13.6.2.12 The District carries the ultimate burden of proof which is a preponderance of the evidence.
- 13.6.2.13 In the event that the case is heard by a hearing officer, the hearing officer shall make a proposed decision with findings of fact and conclusions about the appropriate level of discipline. The proposed decision will be submitted to

the Board. The Board will determine whether to affirm, reject, or modify the disciplinary action proposed by the hearing officer. If the Board determines to reject or modify the proposed decision, it must conduct its own fair and independent review of the administrative record. The Board's determination shall be final.

- 13.6.2.14 In the event that the case is heard by the Board, the Board's decision shall be in writing and shall set forth the findings of fact, conclusions, and reasons for the Board's determination. The Board's decision shall be final.
- 13.6.2.15 If the Board either modifies or rejects the discipline, the employee's personnel records shall be adjusted to reflect the Board's decision.

Miscellaneous Provisions

- 13.7 When the Superintendent/President or designee determines that the needs of the District so require, an employee may be suspended immediately on an emergency basis prior to the completion of the procedures set forth in paragraphs 13.3 through 13.4. Any proposed suspension of an employee, except an immediate suspension made pursuant to this paragraph or the laws of the State of California or the United States of America, shall be stayed until completion of the hearing process if the proposed suspension is challenged. In that case, the suspension and any denial of compensation shall be an issue in the hearing before the Board or arbitrator, if one is requested by the employee.
- 13.8 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 employee and to the employee's representative as set forth in paragraphs 13.3.1 and 13.3.2 shall not be considered a violation of the terms of this paragraph. CCCUE shall receive a written summary of the disposition of any disciplinary action where CCCUE did not represent the employee, if the employee authorizes the release of information.
- 13.9 Nothing contained within this procedure shall be interpreted to deny an employee the right to seek judicial review of a disciplinary action following the completion of the procedures contained in this Article.

ARTICLE 14 RIGHTS OF THE EXCLUSIVE REPRESENTATIVE

Use of District Facilities

- 14.1 CCCUE shall have reasonable use of facilities, including bulletin boards.
 - 14.1.1 Pursuant to Civic Center Act requirements, submission of a written request and approval of the Employer or designated representative shall be required for the use of all buildings or rooms. The CCCUE President or designee shall make written requests for use of facilities.
 - 14.1.2 Reasonable use of District equipment may be provided. A reasonable charge may be assessed CCCUE for the duplicating of public documents and/or CCCUE materials.
 - 14.1.3 CCCUE may utilize District e-mail for communications with bargaining unit members. All communications shall be in compliance with District Board Policy 3720 Computer and Network Use, and paragraph 14.3, inclusive, of this Article.