

ARTICLE 16
DISCIPLINARY ACTION

16.1 **Purpose**

The Disciplinary Action Procedures for Classified workers set forth in this article shall be the exclusive means by which permanent classified workers in the bargaining unit may be dismissed for cause, involuntarily suspended without pay, or demoted. The provisions of this Article apply to permanent, non-probationary workers.

16.2 **Definitions**

Unless the context requires otherwise, the following definitions shall govern the construction of these procedures.

16.2.1 "Chancellor" means the Chancellor of the Foothill-De Anza Community College District or such persons as the Chancellor may designate to act for the Chancellor.

16.2.2 "Disciplinary Action" means any action to dismiss, suspend, or demote a worker for cause. Disciplinary action does not include termination during probation.

16.2.3 "District" means the Foothill-De Anza Community College District, its Board of Trustees, or any management worker of the District who has authority to act on behalf of the District.

16.2.4 "Worker" means any classified worker in the bargaining unit.

16.2.5 "To file" means to deliver either personally accompanied by a receipt for the worker to sign and date with a copy retained by the worker or by certified mail, return receipt requested. A document is "filed" on the day it is received in the case of hand delivery or on the postmark date in the case of certified mail.

16.2.6 "Hearing record" or "record" means all of the documents and materials that are a part of the disciplinary action proceeding, including, but not limited to: the Notice of Discipline; the worker's response to the Notice, if any; all of the evidence introduced at the hearing; the tape recording of the hearing; and the transcript of the hearing, if any.

16.2.7 "Notice" means Notice of Discipline.

16.2.8 "Skelly Officer" means a management worker designated by the Chancellor to receive and evaluate a worker's response to the Notice, if any, prior to the effective date of the sanction.

16.2.9 "Shall" is mandatory; "may" is permissive.

16.2.10 "Working day" means any day during which the central administrative offices of the District are open for business.

16.3 **Cause**

Any worker in the bargaining unit may receive a warning or written reprimand or may be dismissed, demoted, or suspended for any of the following causes:

- 16.3.1 Incompetence;
- 16.3.2 Failure or refusal to perform the normal and reasonable duties of the position;
- 16.3.3 Insubordination;
- 16.3.4 Willful damage of District property or waste of District property;
- 16.3.5 Use of District time, facilities, equipment or supplies for private gain or advantage;
- 16.3.6 Dishonesty;
- 16.3.7 Duplication of any key to a District facility without proper authorization;
- 16.3.8 Participation in any activity or enterprise, or acceptance of any employment that is clearly inconsistent, incompatible, or in conflict with the duties of the position;
- 16.3.9 Conviction of a misdemeanor involving moral turpitude or conviction of a felony;
- 16.3.10 Discourteous treatment of or abusive conduct towards others in the work setting;
- 16.3.11 Possession of open containers of alcoholic beverages, consumption of alcoholic beverages while on duty, or intoxication while on duty;
- 16.3.12 Possession on District premises of any narcotic, restricted dangerous drug or other substance regulated by the California Uniform Controlled Substances Act unless such possession is under a valid written prescription;
- 16.3.13 Gross negligence in performance of duties;
- 16.3.14 Sexual harassment of others in the work setting.

16.4 **Progressive Discipline**

The District intends to use progressive discipline, unless the circumstances call for a departure.

16.4.1 Warnings: Except in those situations where an immediate reprimand or suspension is justified under the provisions of the *Agreement*, the worker whose work or conduct is of such character as to incur discipline shall first be specifically warned by the supervising manager. The supervising manager will explain the problem orally, and where appropriate, shall give suggestions for improvement.

16.4.2 Written Reprimand: The supervising manager will present a copy of a written reprimand to the worker in person, and where appropriate, shall give suggestions for improvement. The worker may request a union steward or officer to be present and assist in any response. Written reprimands are not grievable, but the worker may include a response that will be attached to the reprimand.

16.4.3 Suspension: "Suspension" is the temporary removal from the paid employment of the District for a specified period of time. During the unpaid time, health benefits shall continue.

16.4.4 Involuntary Demotion: "Involuntary Demotion" is the placement of the worker in a lower classification. Demotion may be an alternative to suspension.

16.4.5 Dismissal: "Dismissal" is the termination of employment of the worker.

16.5 **Time Limit**

The District shall not initiate any disciplinary action for any cause alleged to have arisen prior to the worker becoming permanent nor for any cause alleged to have arisen more than one year preceding the date that the District files the notice of disciplinary action. This time period may be extended if the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the District.

16.6 **Notice of Proposed Disciplinary Action**

16.6.1 The Chancellor or designee may initiate disciplinary action against a worker by serving the worker with a Notice of Discipline. The Notice shall be in writing and signed by the Chancellor. It shall include a statement of the specific charges against the worker, shall be written in ordinary and concise language describing the specific acts and omissions on which the disciplinary action is based and shall include the cause and any rules and regulations which have been violated. It shall also include the nature of the discipline to be imposed and its effective date,

a statement of the worker's right to appeal the action, and a statement of the worker's right to union representation.

16.6.2 The Notice shall name a Skelly Officer for the purposes of Section 16.7 below.

16.6.3 A copy of these procedures shall be attached to the Notice along with the Disciplinary Action Appeal Form.

16.6.4 The Notice of Discipline shall be served upon the worker either in person or by certified mail at least seven (7) working days prior to the effective date of the sanction. A copy of the Notice shall be sent to ACE and to the chief steward.

16.7 **Skelly Hearing**

16.7.1 The worker may request a Skelly Hearing either orally or in writing prior to any disciplinary action being taken.

16.7.2 At any time prior to the effective date of the discipline, the worker or their representative may examine the material upon which the discipline is based. The worker's response may be written or oral and must be submitted to the Skelly Officer named in the Notice. The Skelly hearing does not include witnesses or the right to cross-examine.

16.7.3 The Skelly Officer shall consider the worker's response and recommend proposed action to the Chancellor. If the worker's response is in writing, the District shall enter such statement into the worker's personnel file along with the Skelly Officer's recommendation. The Skelly Officer shall inform the worker and their Union representative of the outcome in writing, prior to the proposed effective date of the discipline.

16.7.4 Immediate unpaid suspension may be initiated after a Skelly Hearing when the Skelly Officer determines by a preponderance of the evidence that the employee engaged in criminal misconduct; misconduct that presents a risk of harm to pupils, staff, or property; or committed habitual violations of the district's policies or regulations.

16.8 **Formal Hearing-Recommended Suspension, Demotion or Dismissal**

16.8.1 The worker has the right to a hearing on the charges. The worker's request for a hearing must be in writing, and must be mailed or delivered to the Chancellor no later than seven (7) working days after the date on which the District's notice of intent is served on the worker. Failure to request a hearing within the seven (7) days shall be deemed to be a waiver of the right to the hearing. The hearing shall be held within a reasonable period of time as soon as is practical.

- 16.8.2 If the worker elects a formal hearing, the Board shall designate a Hearing Officer as its authorized representative to hear the case. The Hearing Officer shall be an attorney who has professional experience presiding at judicial or quasi-judicial proceedings, or who has been a member of the California Bar for at least five years. The Hearing Officer shall not hold any employment or contract (other than as Hearing Officer) with the Foothill-De Anza Community College District during service as Hearing Officer.
- 16.8.3 The worker may be represented at the hearing by a representative of their choice. If the representative or any witnesses required are workers of the District, they shall be released from duty to testify or represent with no loss of pay or benefits.
- 16.8.4 The District shall arrange for the making of an audiotape of the hearing. Following the completion of the hearing, the worker may purchase a copy of the tape at cost.
- 16.8.5 The worker, the Hearing Officer or both may have a court reporter present to record the hearing; provided, however, that if the court reporter's notes are transcribed, the other party may purchase a copy of the transcript at cost.
- 16.8.6 The Hearing Officer may make any rules for the conduct of the hearing as they deem appropriate so long as they are consistent with these procedures.
- 16.8.7 The District shall carry the burden of proof.
- 16.8.8 The worker, or the worker's representative, may inspect all documents in the possession of the District that are admissible in evidence at the hearing. Any documents which the District does not provide at the request of the worker or the worker's representative ten (10) working days prior to the hearing shall not be admissible at the hearing. Any documents which the worker or the worker's representative does not provide at the request of the District ten (10) working days prior to the hearing shall not be admissible at the hearing.
- 16.8.9 The worker or the worker's representative may also interview other workers of the District who have knowledge of the acts or omissions upon which the disciplinary action was based. Inspection of documents and interviews with other workers shall occur at reasonable times and places during normal business hours.
- 16.8.10 Not later than the commencement of the presentation of evidence at the hearing, the worker and the Disciplinary Officer shall exchange the names of the witnesses they reasonably expect to call. The worker and the Disciplinary Officer may also agree upon exhibits that can be admitted without objection, and may enter into any stipulations that are appropriate.

16.8.11 The Hearing Officer shall prepare a written decision containing findings of fact and conclusions as to whether the disciplinary action should be sustained, modified, or revoked; the rationale supporting the findings and conclusions; and a recommended sanction, if any.

16.8.12 The Hearing Officer's proposed decision shall be provided to the worker, their representative and to the President of the Board of Trustees for consideration by the full Board in executive session.

16.9 **Board Decision**

The Board will make a final decision at a board meeting, as soon as practicable following receipt of the Hearing Officer's recommendation. In the event the Board disagrees with the Hearing Officer's proposed decision, the Board shall direct the Vice Chancellor of Human Resources or their designee to meet and confer with the Union before taking final action on its decision at the next board meeting. The worker and ACE will be advised immediately of that decision in writing.

16.10 **Confidentiality**

The evidence, proceedings, and conduct of the hearing shall remain confidential and shall not be made public by the District, by any of the participants at the hearing or by any person attending the hearing, except as any of the foregoing may be filed in court or introduced as evidence in an administrative or court proceeding brought to review an action taken pursuant to these procedures. In the event such matters do become public, however, such public statements as are appropriate may be made.

This policy of confidentiality shall not preclude discussion of the case with others as necessary to prepare for the hearing, nor shall it preclude the District from taking any action following appropriate procedures against any person or entity on the basis of evidence developed at the hearing.

16.11 **Administrative Leave**

16.11.1 Notwithstanding any other provision of this article, a worker may be immediately placed on paid administrative leave pending investigation of incidents and/or pending a hearing for any cause listed in this article.

16.11.2 If the incidents giving rise to the administrative leave are not documented in writing in the worker's personnel file, including the fact that the worker was placed on such leave, neither the incidents nor the fact of such leave may be later used in any disciplinary action against the worker.

16.11.3 The worker shall be supplied with a copy of any such written documentation prior to its placement in their personnel file and has the right to respond to the contents of the documentation within ten (10) working days. Any such response

shall be attached to and made a permanent part of the documentation.

16.12 **Removal from Campus Grounds**

In addition to any other remedy or discipline provided for herein, the Chancellor or designee may, under circumstances that render it lawful, notify any worker who has willfully disrupted the orderly operation of the District or any of its facilities that the worker may not remain on any campus or other facility of the District. In such event, the District shall adhere to the requirements of, and the worker shall be accorded the rights prescribed in, Penal Code Section 626.4. During the period of exclusion from campus grounds, the worker shall be placed on paid administrative leave. Subsequent investigatory or disciplinary action shall proceed in accordance with the processes and procedures defined in this Agreement.