

## ARTICLE 18

### DISCIPLINARY ACTION PROCEDURE

This Article applies to the discipline of permanent unit members only. Probationary unit members are discussed in Article 6, Section A.

A. Discipline shall be imposed upon permanent members of the classified service unit only for cause and pursuant to this Article and pertinent law(s). No disciplinary action shall be taken for any cause which arose prior to the unit member's becoming permanent, nor for any cause which arose more than two (2) years preceding the date of filing of the notice of cause unless such cause was concealed from the County Office or not disclosed by such unit member when it could be reasonably assumed that the unit member should have disclosed the facts to the employing Agency.

B. Types of Disciplinary Action That May be Taken:

The following types of disciplinary action may be imposed only when a unit member has failed to request a hearing within ten (10) work days (Article 18-G:1) or upon a hearing decision (Article 18G):

1. The unit member may be suspended for up to thirty (30) work days without pay;
2. The unit member may be demoted to a lower salary classification;
3. The unit member may be dismissed.

C. Progressive Discipline:

Disciplinary action will be taken only after the unit member has been counseled by the supervisor regarding unsatisfactory actions or lack of action except in those instances where the Superintendent determines the circumstances warrant discipline, up to and including dismissal.

The supervisor's accurate and timely reinforcement measures and the unit member's changes in performance or behavior are integral parts of the process of progressive discipline. Normally, the actions listed below would follow one another although individual cases may vary.

1. Counseling Interview

This is a basic step which should precede any corrective action. Counseling includes any discussion to assist unit member in fully developing their skills and abilities. The discussion may clarify the standards of performance or behaviors expected and, if deficiencies are present, assist the unit member in bringing about improvement. The supervisor should record the date and content of the counseling discussion for his/her record.

2. Verbal Warning

When a situation requires a change in the unit member's performance and/or behavior, the supervisor will inform the unit member that he/she is administering a warning, that the unit member has the opportunity to correct the condition and, that if the condition is not corrected, the unit member will be subject to further disciplinary action. The supervisor should record the date and content of the warning for his/her record.

3. Written Warning

A written warning is a formal notice to a unit member that the verbal warning has been disregarded or the behavior or performance warrants a written record. The supervisor and the unit member shall meet to outline the change that must take place in the unit member's behavior and/or performance in order to avoid further disciplinary action. A written warning should not be used unless the unit member has been verbally warned about similar actions within the last twelve (12) months unless the severity of the circumstances warrants a written warning. A written warning is not typically placed in the unit member's personnel file.

4. Written Reprimand

A reprimand is official notification the unit member's behavior and/or performance is seriously below standard and that continuation or repetition of the unsatisfactory performance or behavior may result in suspension or dismissal. The written reprimand is placed in the unit member's personnel file. Although the written reprimand normally follows a written warning, there are situations when the seriousness of the unit member's behavior or performance warrants the reprimand without first giving a written warning.

D. Causes for Disciplinary Actions:

1. Incompetency or inefficiency in the performance of the duties of the position;
2. Insubordination, including, but not limited to, refusal to do assigned work;
3. Discourteous, offensive, or abusive conduct or language toward other unit members, employees, pupils, or the public;
4. Dishonesty (while in working status and/or while representing the County Office);
5. Drinking alcoholic beverages on the job, or in such close proximity thereto, as to cause any detrimental effect upon the unit member or unit member's associates with him or her, or reporting for work under the influence of alcohol;
6. Possession of or being under the influence of a controlled substance on the job, and/or while representing the County Office or furnishing a controlled substance to a minor;
7. Repeated unexcused absence or tardiness;
8. Abuse of leave or vacation privileges (unauthorized leave);
9. Absence without notification;
10. Falsifying any information supplied to the County Office including, but not limited to, information supplied on application forms, employment records, or any other Office record;
11. Willful or persistent violation of state law or policies and regulations of the County Office;
12. Conviction of a felony, conviction of any sex offense made relevant by provisions of law, or conviction of a misdemeanor which is of such a nature as to adversely affect the unit member's ability to perform the duties and responsibilities of his/her position. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction for this purpose.
13. Failure to adequately care for and safeguard, or misuse of office material, equipment, or facilities;
14. Improper political activity as set forth in Education Code Sections 7050 et. Seq.;
15. Failure to possess or keep in effect any license, certificate, or similar

requirement specified in the unit member's class specification or otherwise necessary for the unit member to perform the duties of the position;

16. Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age against the public or other employees while acting in the capacity of an County Office employee;
17. Unlawful retaliation against any other county official or employee or member of the public who, in good faith, reports, discloses, divulges, or otherwise brings attention of any appropriate authority any information relative to an actual or suspected violation of state or federal law occurring on the job or directly related thereto.

E. Notification to Unit Members:

1. When there is evidence of unsatisfactory performance of the duties and responsibilities assigned which involves any of the causes for disciplinary action as specified in Section D, of this Article, the supervisor shall prepare a written notice to be delivered to the unit member, specifying the act(s) and/or omission(s) which would be cause for disciplinary action. Such notice shall serve as a warning to the unit member and shall include specific recommendations for improvement. Either party may request a meeting to discuss such notice and the reasons for it. The unit member shall be entitled to CSEA representation for the meeting if desired.
2. When there is evidence of further unsatisfactory performance of the duties and responsibilities assigned which involves any of the causes for disciplinary action as specified in Section D, of this Article, the supervisor will prepare and serve written notice of disciplinary action upon the unit member, as follows:
  - a. The notice shall be personally delivered or sent by registered mail to the last known address;
  - b. The notice will be based on the recommendation of the supervisor and shall contain the following information:
    1. The specific act(s) and/or omission(s) by the unit member including the time, place, and persons involved, upon which the recommended

disciplinary action is based. If a violation of rule, policy, or regulation of the County Office is alleged, the rule, policy, or regulation shall be stated in the recommendation;

2. The cause(s) for disciplinary action; and
3. The disciplinary action which is recommended to be taken and the proposed effective date of such action.

F. Skelly Meeting: The Superintendent or designee may initiate a disciplinary action as defined herein against a permanent classified bargaining unit member. The Notice of Intent of Disciplinary Action shall include the following:

1. A statement of the nature of the disciplinary action (e.g., suspension without pay, demotion to a lower classification, or dismissal).
  - a. A statement of cause or causes for the disciplinary action, as set forth above.
  - b. A statement of the specific act(s) and/or omission(s) upon which the causes are based. If a violation of a rule, policy, or regulation of the County is alleged, the rule, policy, or regulation violated shall be stated in the recommendation.
  - c. A statement that the bargaining unit member, upon request, is entitled to appear personally (Skelly Meeting) before the Director of Human Resources or designee (Skelly Officer – administrator not involved with investigation).
  - d. A copy of the Notice of Intent of Disciplinary Action shall be provided at the same time to the CSEA Labor Relations Representative and the Chapter President or designee.
2. At the Skelly meeting the bargaining unit member shall be granted an opportunity to respond to the charges either verbally or in writing.
3. During the Skelly meeting, the parties may attempt to resolve the disciplinary matter including a negotiated resignation.
4. After the Skelly meeting, the Skelly Officer will serve on the unit member,

CSEA Labor Relations Representative and the Chapter President or designee a copy of the Finalized Recommendation for Discipline. The written decision shall include notification that the unit member may request a formal hearing on such charge(s). The unit member may request a hearing within ten (10) work days after service of the notice of skelly officer decision. If the bargaining unit member fails to request the hearing within ten (10) work days, they have waived the right to a hearing.

G. Notification of Rights: In addition to the notice of disciplinary action, the unit member shall be sent in the same mailing a notification of unit member rights:

1. The right to request a hearing, in open or closed session, before the County Superintendent within ten (10) work days of receipt of the Skelly Officer Decision;
2. The right to be represented at the hearing by representatives of his/her choice;
3. The right to examine and have copies of all County Office reports relating to the recommended disciplinary action, prior to the hearing;
4. A notice that failure to request a hearing in writing on the form provided within ten (10) work days constitutes the acceptance of the disciplinary action;
5. A copy of a "request for hearing" form that serves notice which must be delivered within ten (10) work days, by person or Certified U.S. Mail, to the supervisor;
6. A copy of this Article relative to disciplinary action and hearing procedures.

H. Request for Hearing

Within twenty (20) work days of the receipt of a request for hearing, or as soon as the County Superintendent or a hearing officer and CSEA are available, a hearing shall be held on the recommended disciplinary action which shall be conducted in accordance with Section J of this Article.

I. Immediate Suspension:

When the supervisor determines that personnel, students, or property are endangered, the Superintendent may immediately suspend a unit member, with pay, and serve disciplinary action notice until a hearing by the County Superintendent or hearing officer may be held.

J. Hearing Procedures:

When a permanent unit member has requested a hearing in accordance with provisions of this Article, the following procedures will be followed:

1. Either party to a hearing may be represented by counsel or an individual of their own choice and shall be given ten (10) calendar days advance notice of the time, date, and place of the hearing.
2. A party to a hearing shall have the right to examine and have copies of all County Office records concerning the hearing matter prior to the hearing.
3. A party to a hearing process may present witnesses on his/her behalf and shall have the right to examine and cross-examine witnesses.
4. A party to a hearing shall have the right to a translator provided by the County Office upon request.
5. Witnesses will be called individually and excused after making their statement and submitting to questions and any cross-examination.
6. The hearing will be held in closed or open session, according to the wishes of the unit member.
7. A reliable record of the proceedings shall be made by the County Office.
8. The County Superintendent may elect to conduct the hearing himself/herself, use a hearing officer to assist conducting the hearing, or use a hearing officer to conduct the hearing and issue a proposed decision. The County Superintendent and Chapter shall mutually agree upon the hearing officer. If the appeal is heard by a hearing officer, the hearing officer shall be an attorney licensed in the State of California. The County Superintendent will provide the hearing officer and will pay the full cost, if any for the service.
9. The County Superintendent or hearing officer will:
  - a. Limit or exclude evidence or testimony which is not relevant or material to the issue. Technical rules of evidence shall not apply to such hearing, but evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be presented by a witness but may not be the sole basis for a finding on a material point.

- b. Elicit such evidence and testimony as he or she believes may be useful or necessary to establish facts and to provide an accurate record of actions or lack of actions by time, place, and persons involved in the disciplinary action; ask questions and permit questioning of witnesses.
  - c. Issue subpoenas and rule upon petitions to revoke subpoenas.
  - d. Regulate the course and conduct of the hearing, including the power to exclude a witness from the hearing room.
  - e. Authorize submission of briefs and the time thereof.
  - f. Administer oaths or affirmations.
  - g. Rule on objections, motions, and questions of procedure.
  - h. Adjourn the hearing when deemed necessary and set a time, date, and place for a continued hearing, if necessary.
  - i. Render and serve the proposed decision on each party.
10. The County shall bear the burden of proof based on a preponderance of the evidence.
11. A decision shall be rendered by the County Superintendent within ten (10) work days of the close of the hearing or within twenty (20) days of the receipt of a recommendation. In cases where a hearing officer issues a proposed decision, the County Superintendent shall accept, modify, or reject the proposed decision. It shall be the final decision of the SCSOS in regard to the matter. In arriving at a decision or a proposed decision, the County Superintendent or hearing officer may consider the records of any prior personnel action against the unit member in which a personnel action was ultimately sustained and any records that were contained in the unit member's personnel files and introduced into evidence at the hearing.
12. The decision of the County Superintendent shall be made in writing and shall set forth the following:
- a. Finding of fact on which the County Superintendent's decision was based.
  - b. Final order of the County Superintendent.
  - c. Notification that a copy of the hearing transcript may be provided the unit member at his/her expense on a cost-to-the-office basis.
  - d. Notification of any appeal process that is available to the unit member.



K. Amended/Supplemental Charges

At any time prior to the hearing for suspension without pay and/or dismissal, the County Office of Education may add additional charges and amend the pleadings for hearing.

L. Compulsory Dismissal:

The County Office shall not employ or retain in employment any person who has been convicted of any sex offense as defined in Education Code section 44010 or any controlled substance offense as defined in Education Code section 44011. However, the County Office may employ a person convicted of a controlled substance offense if the County Superintendent determines from the evidence it requires that the person has been rehabilitated for at least five years. If any such conviction is reversed and the person acquitted or charges dismissed except otherwise provided below, the employee may be reemployed by the County Office, although reemployment is not a guarantee. (Education Code section 45123).

The County Office reserves the right to dismiss a unit member for any acts upon which the original criminal charges were based, despite the disposition by the courts. If dismissal is recommended and upheld, a unit member will not be reemployed or compensated for the time he/she was suspended unless otherwise required by law. A unit member shall be given notice of the possibility of not being reimbursed during mandatory suspension if he/she is ultimately dismissed for the acts upon which the original charges were based.