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WJUSD**ARTICLE 26. DISCIPLINARY ACTION****26.1 General Provisions**

26.1.1 For purposes of this Article, the term “discipline” includes any action whereby a bargaining unit member is deprived of any classification or any incident of any classification in which they have permanence, including dismissal, suspension, and involuntary demotion. The term “discipline” specifically does not include: a layoff for lack of work or lack of funds; directives; and, the implementation of other articles in this Agreement.

26.1.2 The District is committed to principles of fair, reasonable and progressive discipline. Progressive steps to discipline can include but are not limited to: Verbal warnings, written warnings, unsatisfactory evaluations and letters of reprimands. The parties recognize that discipline should be administered based on the seriousness of the offense and more serious offenses (offenses that produce reliable evidence upon which the District believes that the unit member’s conduct may constitute a hazard or clear possibility of a hazard to student(s), other unit member(s), or property, or involve dishonest, insubordinate, or gross misconduct) warrant more serious disciplinary action that may not include progressive procedures that would normally precede the disciplinary action outlined in this article.

26.1.3 Discipline shall be imposed upon permanent bargaining unit members only for just cause, pursuant to this Article or pursuant to pertinent law, or as otherwise necessary as determined by the District. Permanent bargaining unit members shall not have their property rights deprived until the District has complied with established due process standards as set forth below. For purposes of this Article, property rights shall mean any discipline which is greater than five (5) days suspension without pay.

26.1.4 Except as otherwise provided for by law, no disciplinary action will be initiated for any cause alleged to have arisen prior to the bargaining unit member becoming permanent nor for any cause alleged to have arisen more than two (2) years preceding the date the District files the written notice of disciplinary action provided for in section 26.2.1 of this Article.

26.1.5 A bargaining unit member may be placed on Administrative Leave with pay for a reasonable period of time pending investigation. **The District shall provide written notice to the CSEA President, Labor Relations Representative, and the unit member at the time of placement on Administrative Leave with pay.**

26.1.6 One or more of the causes set forth below may be grounds for discipline:

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26.1.6.1 Incompetency or inefficiency in the performance of duties.

26.1.6.2 Insubordination or willful disobedience.

26.1.6.3 Carelessness or negligence in the performance of duties or in the care of District property, or the misuse of District property.

26.1.6.4 Discourteous treatment, abusive or threatening language, gestures or conduct toward other employees, students or the public.

26.1.6.5 Dishonesty.

26.1.6.6 Drinking alcoholic beverages while on duty or in such close time proximity thereto as to cause any detrimental effect upon the employee or upon the employees associated with them. Bringing intoxicants (alcoholic beverages or controlled substances such as street drugs) on to District property or premises; transporting intoxicants in District vehicles; consuming, buying or selling, offering to buy or offering to sell intoxicants while on the job, or while on District property, premises or in District vehicles; and/or reporting to work under the influence of intoxicants.

26.1.6.7 Persistent [three (3) or more] violations of applicable District rules or policies.

26.1.6.8 Conviction of a felony, conviction of any sex offense or controlled substance offense made relevant by provisions of law, which is of such a nature as to adversely affect the employee's ability to perform the duties and responsibilities of their position. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, deemed to be a conviction for this purpose.

26.1.6.9 Knowingly falsifying any information supplied to the District, including but not limited to information supplied on application forms, employment records, or any other District records.

26.1.6.10 "No call, no show" (failure to report to work and notify immediate supervisor of absence and reason for absence).

26.1.6.11 Abandonment of position (failure to report to work and notify immediate supervisor of absence and reason for absence for three (3) or more consecutive work days).

26.1.6.12 Advocacy of overthrow of Federal, State or local government by force, violence or other unlawful means.

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26.1.6.13 **Abuse, inappropriate use of leave,** ~~Absenteeism~~ or absence without leave.

26.1.6.14 Violation of District policies addressing discrimination, including prohibited harassment (sexual harassment, racial harassment, etc.) ~~as provided in Article 26 of this Agreement.~~

26.1.6.15 Failure to possess or keep in effect any license, certificate, or other similar requirement specified in the employee's position classification or otherwise necessary for the employee to perform the duties of the position.

26.1.6.16 Refusal to take or subscribe any oath or affirmation which is required by law or Board policy in connection with their employment.

26.1.6.17 Improper partisan political activity during duty hours.

26.1.6.18 Any other school-related reason that constitutes a danger to the safety, health, welfare or property of the District, a school, students, other employees, parents of students or school visitors.

26.2 Procedure

26.2.1 Notice of Proposed Disciplinary Action

26.2.1.1 Prior to the disciplinary action being taken, the administrator/supervisor shall serve the employee personally or by certified mail (return receipt requested) with a Notice of Proposed Disciplinary action. The Notice of Proposed Disciplinary ~~a~~**Action** shall contain, **in ordinary and concise language, the following:**

26.2.1.2 A statement of the nature of the proposed disciplinary action (suspension without pay, demotion, reduction of pay step in class, or dismissal) and any and all material upon which the action is based.

26.2.1.3 A statement of the cause or causes for the proposed disciplinary action, as set forth above.

26.2.1.4 A statement of the specific acts or omissions upon which the causes are based. If a violation of rule, policy, or regulation of the District is alleged, the rule, policy, or regulation violated shall be stated in the recommendation.

26.2.1.5 A statement giving the employee at least seven (7) ~~calendar~~ days in which to arrange a Skelly hearing and/or furnish written information concerning the charges to the

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Superintendent or designee (who shall not be the person who initiated the charges, ~~or~~ anyone subordinate to that person, **and who shall be impartial and uninvolved in the charges**) who shall be known as the Skelly officer.

26.2.2 Notice of Disciplinary Action

26.2.2.1 The Skelly officer shall provide a written decision as to whether the charges are to be upheld, the recommended discipline reduced, or the charges dropped. **To uphold the charges, the Skelly officer must determine that the employer demonstrated 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 (to address SB 2413 revision to Education Code section 45113(f)(1)).** A copy of the Skelly officer's written decision shall be sent to the employee and the employee's exclusive representative personally or by certified mail (return receipt requested) with a Notice of Disciplinary ~~a~~**Action**. The Notice **of Disciplinary Action** shall contain:

26.2.2.2 A statement of the nature of the disciplinary action (suspension without pay, demotion, reduction of pay step in class, or dismissal), including the effective date and any and all material upon which the action is based.

26.2.2.3 A statement of the cause or causes for the disciplinary action, as set forth above.

26.2.2.4 A statement of the specific acts or omissions upon which the causes are based. If a violation of rule, policy, or regulation of the District is alleged, the rule, policy, or regulation violated shall be stated in the recommendation.

26.2.2.5 A statement of the employee's right to appeal the recommendation and the manner and time within which the appeal must be filed.

26.2.2.6 A card or paper, the signing and filing of which shall constitute a demand for hearing and a denial of all charges.

26.2.3 Right to Appeal

26.2.3.1 Not more than seven (7) ~~calendar~~ days after receiving the Notice of Disciplinary Action described above, the employee may appeal by signing and filing the card or paper included with the recommendation. **The signing and filing of the card or paper included with the recommendation** ~~Any other written document signed and appropriately filed within the specified time limit by or on behalf of the employee shall constitute a sufficient Notice of Appeal.~~ A Notice of Appeal may be mailed to the Office of the Superintendent or designee,

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but must be ~~received or~~ postmarked not later than the time limit specified herein.

26.2.3.2 If the employee fails to file a Notice of Appeal within the time specified in these rules, they shall be deemed to have waived their right to appeal and the Board may act on the recommendation as submitted.

26.2.4 Amended/Supplemental Charges

26.2.4.1 At any time before an employee's appeal is finally submitted to the Board or to a hearing officer for a decision, the complainant may serve on the employee and file with the Board an amended or supplemental recommendation of disciplinary action.

26.2.4.2 If the amended or supplemental recommendation presents new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare their defense. Any new causes or allegations shall be deemed controverted and any objections to the amended or supplemental causes or allegation may be made orally at the hearing and shall be noted on the record.

26.2.5 Hearing Procedures

26.2.5.1 The hearing shall be held at the earliest convenient date, taking into consideration the established schedule of the hearing officer and the availability of counsel and witnesses. The parties shall be notified of the time and place of the hearing. The employee shall be entitled to appear personally, produce evidence, and have counsel. The employee shall be entitled to a public hearing if they demand it when the Board is hearing the appeal. The complainant may also be represented by counsel. The procedure entitled "Administrative Adjudication" commencing with Government Code 11500 shall not apply to any such hearing before the hearing officer. Neither the Board nor the hearing officer shall be bound by rules of evidence used in California courts. Informality in any such hearing shall not invalidate any order or decision made or approved by the hearing officer, law judge or the Board.

26.2.5.2 All hearings shall be heard by a hearing officer (who shall be an attorney licensed in the State of California) selected by the parties alternately striking names from a list of at least five (5) arbitrators provided by the State Mediation and Conciliation Service.

26.2.5.3 The hearing officer shall prepare a proposed decision in a form that may be adopted by the Board as the decision in the case. A copy of the proposed decision shall be received and filed by the Board and furnished to each party within ten (10) days after the proposed decision is filed by the Board. The Board may:

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- (a) Adopt the proposed decision in its entirety.
- (b) Reduce the disciplinary action set forth in the proposed decision and adopt the balance of the proposed decision.
- (c) Reject a proposed reduction in disciplinary action, approve the disciplinary action sought by the complainant or any lesser penalty, and adopt the balance of the proposed decision.
- (d) Reject the proposed decision in its entirety.

26.2.5.4 If the Board rejects the proposed decision in its entirety, each party shall be notified of such action and the Board may decide the case upon the record including the transcript, with or without the taking of additional evidence, or may refer the case to the same or another hearing officer to take additional evidence. If the case is so assigned to a hearing officer, they shall prepare a proposed decision, as provided in "c" above, upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of this proposed decision shall be furnished to each party within ten (10) days after the proposed decision is filed by the Board.

26.2.5.5 In arriving at a decision or a proposed decision on the propriety of the proposed personnel action, the Board or the hearing officer may consider the records of any prior personnel action proceedings against the employee in which a disciplinary action was ultimately sustained and any records that were contained in the employee's personnel files and introduced into evidence at the hearing.

26.2.6 The decision of the Board shall be in writing and shall contain findings of fact and the disciplinary action approved, if any. The findings may reiterate the language of the pleadings or simply refer to them. A copy of the decision of the Board shall be delivered to the appellant **and** ~~or~~ their designated representative personally or by certified mail (return receipt requested). The decision of the Board shall be final.