

TENTATIVE AGREEMENT

**William S. Hart Union High School District
And
Hart District Teachers Association
Article XVI – Discipline**

Article 16, Discipline

Revise Article 16, Discipline, as follows:

ARTICLE XVI – DISCIPLINE

16.1.0 General

16.1.1 It is agreed by the parties that the intent of disciplinary action is to be progressive and corrective rather than punitive. Section 16.1.1 is expressly excluded from the provisions of Article XV, Grievance Procedures.

Typically, progressive discipline is implemented for ongoing failure to or refusal to perform the normal and reasonable duties of the position, which includes, but is not limited to unsatisfactory performance, excessive absenteeism, tardiness, work rule violations, insubordination, or unprofessional conduct that may include verbal abuse toward another employee.

Immediate formal disciplinary action may be implemented in instances of gross or serious misconduct without regard to the progressive discipline steps identified herein. Such misconduct may include, but not be limited to, dishonesty, including fraud in securing employment, theft, misappropriation of District property or funds, acts endangering the health and safety of others, immoral conduct, and conviction of a felony or misdemeanor involving moral turpitude.

16.1.2 The District and the Association shall endeavor to maintain confidentiality regarding all information and proceedings related to disciplinary matters. All documents shall be kept confidential and handled on a need-to-know basis.

16.1.3 Discipline shall be applied equitably and consistently.

16.1.4 Discipline procedures shall apply equally to all unit members whether performing regular assignments during the regular workday or extracurricular assignments beyond the regular workday, paid or unpaid.

16.2.0 Exclusions

16.2.1 Suspensions and salary deductions pursuant to Education Code Sections 44940 through 44942 and 45055 are not considered disciplinary action and are therefore excluded from this Article.

16.2.2 Written notices of Unprofessional Conduct and Unsatisfactory Performance pursuant to Education Code section 44938 are not considered disciplinary action and are therefore excluded from this Article.

16.2.3 This discipline process is not intended to supplant the evaluation process.

16.3.0 Grounds for Discipline

16.3.1 Unit members shall not be disciplined without just cause. The causes for suspension or termination are identified in Education Code section 44932 and include:

Immoral conduct, including, but not limited to, egregious misconduct. For purposes of this article, "egregious misconduct" is defined exclusively as immoral conduct that is the basis for an offense described in Section 44010 or 44011 of the Education Code, or in Sections 11165.2 to 11165.6, inclusive, of the Penal Code.

Unprofessional conduct.

Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188 of the Statutes of 1919, or in any amendment thereof.

Dishonesty.

Unsatisfactory performance.

Evident unfitness for service.

Physical or mental condition unfitting him or her to instruct or associate with children.

Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools

by the State Board of Education or by the governing board of the school district employing him or her.

Conviction of a felony or of any crime involving moral turpitude.

Violation of Section 51530 or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.

Alcoholism or other drug abuse that makes the employee unfit to instruct or associate with children.

16.4.0 Disciplinary Actions

16.4.1 Disciplinary actions are expressly limited to, and must be specifically identified in writing as, the following:

16.4.1.1 Oral warning defined as a documented verbal statement of reproof including notice that failure to modify behavior shall be cause for further disciplinary action. A warning shall not be placed in the District personnel file.

16.4.1.2 Admonition, defined as a written statement of disapproval with direction for correction. An admonition shall not be placed in the District personnel file.

16.4.1.3 Written reprimand, defined as a written statement of rebuke including notice that failure to change behavior shall be cause for further disciplinary action. A reprimand shall be placed in the District personnel file.

16.4.1.4 Suspension without pay.

16.4.1.5 No unit member shall receive more than one (1) type of disciplinary action for any single action or infraction, or set of actions or infractions, except as stated in Section 16.6.3.

16.4.1.6 Removal from an extra-curricular assignment during the period of such assignment for action(s) or inaction(s) related to that extra-curricular assignment. All required and already completed services connected to the extra-curricular assignment shall be compensated on a pro-rata basis. "Remove" or "Removal" refer to Section 16.4.1.5.

16.5.0 Process of Discipline

- 16.5.1 Disciplinary action shall be limited to and shall be carried out in accordance with the following steps:
- 16.5.1.1 Step I. After one (1) or more incidents of a similar or non-similar nature, an oral warning shall be given on an individual basis by the immediate supervisor. Such oral warning shall be specific as to the nature of the incident(s) and why there is cause for concern.
- 16.5.1.2 Step II. After one (1) or more incidents of a similar or non-similar nature occurring after Step I, an admonition shall be given on an individual basis by the immediate supervisor. Such admonition shall be specific as to the nature of the incident(s) and why there is cause for concern.
- 16.5.1.3 Step III. After one (1) or more further incident(s) of a similar or non-similar nature occurring after Step II, which alone would have warranted at least Step I action, a reprimand shall be given on an individual basis by the immediate supervisor. Such reprimand shall be specific as to the nature of the incident(s).
- 16.5.1.4 Step IV. After one (1) or more incident(s) of a similar or non-similar nature occurring after Step III, which would have warranted at least Step I action, the immediate supervisor shall give the unit member on an individual basis a Notice that a removal or suspension without pay shall be administered.
- 16.5.1.5 Except as specified in Section 16.5.1.6 and herein, the process of discipline above shall be followed. An immediate supervisor may delete either the first or second Step (Sections 16.5.1.1/16.5.1.2), but not both, if the incident(s) merits proceeding to the next sequential Step.
- 16.5.1.5.1 Except as provided in Section 16.5.1.6, no removal or suspension without pay shall be issued unless the process of discipline has been followed involving at least two (2) Steps within the preceding twenty-four (24) calendar months.
- 16.5.1.6. The District shall not be precluded from the application of removals or suspensions without pay on a first or early incident in cases of gross or serious misconduct. The Association shall receive concurrent notification in writing when such action is taken. The notification shall include the name of the unit member and the infraction.
- 16.5.1.7 In taking any Step, the District must act within ten (10) workdays after incident(s) occur(s) or reasonable diligence by the District should have caused knowledge of the incident(s) warranting the action. Should the District fail to act within the timelines, the District shall not act without an

explanation as to the reason for the delay. In cases of a set of incidents/infractions, the timeline begins after the most recent incident. If the action by the District is considered at Level II of the Grievance Procedure, the hearing officer shall consider the explanation in making his/her decision. If the action by the District is considered at Level III of the Grievance Procedure, then Section 15.6.2.1 shall also apply to this timeline.

- 16.5.1.8 Except as stated in Section 16.5.1.6, the District shall not proceed to the next or higher Step if more than one (1) calendar year has elapsed since action in accordance with a Step has occurred. When the nature of the current incident and the prior incident is the same or substantially similar, the District may proceed to the next or higher step extending from one (1) calendar year to the next, but not to exceed twenty-four (24) months.
- 16.5.1.9 The Association shall receive concurrent notice whenever action is taken under Steps III or IV. The notice to the Association shall include the name of the unit member and the infraction. If the District acts in accordance with Section 16.5.1.6, a copy of the Notice shall be supplied concurrently to the Association.
- 16.5.1.10 Once action is initiated, the action shall not be amended to increase the Step.
- 16.6.0 Notice of Suspension Without Pay or Removal
- 16.6.1 The immediate supervisor shall advise the unit member in writing of the proposed action. The Notice shall contain a description of the event(s) and date(s) of event(s) which necessitates the proposed action; a listing (including events, dates, and actions) of prior disciplinary actions by the District leading to the proposed action; a statement of the charges; a statement of the removal or number of days of suspension without pay; notification that the unit member may review and/or make copies of all materials available to the District directly relating to the action; the right of the unit member to meet with the immediate supervisor and/or to submit in writing a response to the proposed action within ten (10) days; and the right of the unit member to representation by the Association.
- 16.6.1.1 A Notice shall be given to the unit member in person whenever possible and the unit member's signature obtained to indicate receipt. In the absence of personal service, the Notice shall be sent by certified mail to the unit member's address of record.
- 16.6.2 Once the District has given Notice of proposed removal or suspension without pay, the District shall not amend its action to increase the proposed discipline covered by this Article.

- 16.6.3 Removals may, in cases of gross misconduct related to the extra-curricular assignment, be combined with suspension without pay. Such a combination shall be subject to the review and determination provided for in Section 16.6.6.
- 16.6.4 Suspensions without pay shall not exceed five (5) days in duration. Such days shall be consecutive.
- 16.6.4.1 Suspension without pay shall not be carried over to the succeeding school year unless such suspension would occur during the last three (3) weeks of the school year or is delayed by the appeals process.
- 16.6.5 When an immediate supervisor is considering issuing a Notice of removal or suspension without pay on a first or early incident or when more than twenty-four (24) months have elapsed with no more than two (2) incidents, which have been addressed by disciplinary action, a designee of the Superintendent shall review the matter with the immediate supervisor and shall determine if the proposed action is appropriate. The designee shall be a District-level certificated administrator.
- 16.7.0 Responses and Appeal Procedures, Warnings, and Reprimands
- 16.7.1 The unit member may respond to reprimand(s) orally or in writing, and may submit pertinent written statements from staff members and others. All such written material shall be permanently attached to all copies placed in the unit member's personnel file.
- 16.7.2 Reprimands may be grieved through Level I of the grievance procedure (Article XV) only, unless the District fails to meet the prescribed timelines.
- 16.7.3 The conference called for in Section 15.2.2 is not intended to be an adversary hearing. The unit member shall be afforded the right to present a case and have representation as provided for in Section 15.3.2. When necessary, release time for the grievant, the Association representative(s), and witness(es) shall be granted.
- 16.7.3.1 If the unit member provides new or additional information which raises questions relating to the information which led to the reprimand, the immediate supervisor shall investigate further prior to responding to the grievance. When necessary for investigation, the immediate supervisor may extend the timeline in Section 15.2.3 by ten (10) days as defined in Section 15.1.3 upon written notice to the unit member prior to expiration of the original timeline.

- 16.7.4 Any reprimand shall be held in abeyance, and any copies in the unit member's personnel file shall be removed, until the appeals procedure is completed.
- 16.8.0 Responses and Appeal Procedures, Removals and Suspensions Without Pay
- 16.8.1 The unit member may respond to a Notice of proposed removal or suspension without pay at a meeting with the immediate supervisor, to be held at the unit member's request within ten (10) days of receiving the Notice. The unit member may have representation. When necessary, the unit member and the Association representative shall be granted release time.
- 16.8.1.1 The unit member may respond to a Notice of proposed removal or suspension without pay in writing within ten (10) days of receiving the Notice. The unit member may also submit pertinent written statements from staff members and others. All such material shall be permanently attached to all copies placed in the unit member's personnel file.
- 16.8.2 Removal and suspension without pay may be grieved starting at Level I of the grievance procedure (Article XV).
- 16.8.3 The grievance procedure shall be supplemented as follows:
- 16.8.3.1 The conference called for in Section 15.2.2 is not intended to be an adversary hearing. The unit member shall be afforded the right to present a case and have representation as provided for in Section 15.3.2. When necessary, release time for the grievant, the association representative(s), and witness(es) shall be granted.
- 16.8.3.2 If the unit member's version of the facts raises questions relating to the information which led to the Notice of proposed removal or suspension without pay, the supervisor shall investigate further prior to responding to the grievance. When necessary for investigation, the supervisor may extend the timeline in Section 15.2.3 by ten (10) days as defined in Section 15.1.3 upon written notice to the unit member prior to the expiration of the original timeline.
- 16.8.3.3 The decision called for in Section 15.2.3 shall be delayed until after any further investigation called for above and a review of the proposed disciplinary action. It shall be served on the affected unit member, by certified mail or personal delivery, and contain a statement signed by the immediate supervisor indicating the supervisor's decision and, if the action is to proceed, the specific charges against the unit member and the

effective date of the action. The statement shall clearly inform the unit member of the right to appeal the decision.

- 16.8.3.4 Should the affected unit member appeal the Level I decision, the appeal shall be addressed to the Superintendent of the District. The Superintendent shall serve as the hearing officer at Level II. A time for the conference (referred to below as the hearing) called for in Level II shall be established by mutual agreement, the date for which shall be not less than ten (10) workdays, nor more than thirty (30) workdays from the date of filing the appeal. Should there be no mutually agreeable date, the hearing office shall set the date within these timelines. All interested parties, including the Association, shall be notified in writing of the date, time, and place of the hearing as early as possible, but at least ten (10) days prior to the hearing.
- 16.8.3.4.1 The District and the grievant shall furnish the other with a list of witness(es) and representatives (by name and/or title) five (5) workdays prior to the date of the hearing, and shall submit amendments as soon as possible prior to the hearing. The Superintendent may have legal or other counsel present to advise him/her on the conduct of the hearing, but in no case shall such counsel act as counsel for the District or the grievant.
- 16.8.3.5 All such hearings shall be private.
- 16.8.3.6 All such hearings shall be conducted according to the following procedures:
- 16.8.3.6.1 The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner most conducive to determinations of the truth. Any relevant evidence shall be admitted if it is the sort of evidence on which persons are accustomed to rely in the conduct of business affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in and of itself to support a finding unless it would be admissible over objections in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. No witness, including the grievant, shall be required to give self-incriminating testimony.
- 16.8.3.6.2 Each party shall have these rights: to be represented by counsel and/or a person(s) of his/her choice; to call witness(es); to cross-examine opposing witness(es) on any matter relevant to the issue(s); to impeach any witness(es) regardless of which party called him/her to testify; to tape

record or make written record of the hearing; and to rebut the evidence against him/her.

- 16.8.3.6.3 Oral evidence shall be taken only on oath or affirmation.
- 16.8.3.6.4 The hearing shall proceed in the following order, unless both parties agree otherwise to an alteration of the order upon suggestion of the hearing officer.
 - 16.8.3.6.4.1 The party proposing the discipline shall be permitted to make an opening statement.
 - 16.8.3.6.4.2 The appealing party shall be permitted to make an opening statement.
 - 16.8.3.6.4.3 The party proposing discipline shall produce the evidence on his/her part.
 - 16.8.3.6.4.4 The appealing party shall then be permitted to open his/her defense and offer his/her evidence in support thereof.
 - 16.8.3.6.4.5 The parties shall then be permitted, in order, to offer rebutting evidence only, unless the hearing officer, for stated good reason, permits them to offer evidence upon their original case, in which case the other party may rebut.
 - 16.8.3.6.4.6 The parties shall then be permitted, in order, to present summation arguments.
- 16.8.3.6.5 During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon motion of either party.
- 16.8.3.6.6 The grievant, the Association representative(s) and witness(es) shall be given release time to attend the hearing when necessary.
- 16.8.3.6.7 The hearing officer, prior to or during a hearing, may grant a continuance for any reason he/she believes to be important to reaching a fair and proper decision. All interested parties, including Association, shall be promptly notified.
- 16.8.3.6.8 The hearing officer shall consider the relevance, weight, and credibility of testimony and evidence. Any decision shall be based on the preponderance of evidence.
- 16.8.3.6.9 The hearing officer shall determine whether to sustain, reject, or modify the action proposed against the unit member, within the limits specified in Sections 16.6.2, 16.6.3, and 16.6.4.

- 16.8.4 Any decision reached at Level II may be appealed to Level III of the Grievance Procedure (Article XV).
- 16.9.0 Abeyance of Loss of Pay
- 16.9.1 In all cases involving suspension without pay, action to impose the suspension without pay shall be held in abeyance until the appeal procedure has been completed. In cases involving removal, the removal may be done prior to the completion of the appeal procedure, but any loss of compensation shall be held in abeyance until the appeals procedure is completed.
- 16.10.0 Documentation and Action
- 16.10.1 If, at the completion of the appeals procedure, the action to reprimand or to remove or suspend without pay has been sustained, in whole or in part, a copy of the reprimand or Notice, along with a statement that the action has been sustained (and the amounts sustained), shall be placed in the unit member's personnel file. The unit member may attach a written response and pertinent written comments from staff members and others to the reprimand or Notice. All such responses and comments shall be permanently attached to all copies in the file.
- 16.10.2 Actions of the District and the status of any documents shall conform to the results of the appeals procedure and this Article.
- 16.10.3 If, after having been disciplined by any action which resulted in placement of a reprimand or Notice in the unit member's personnel file, the unit member has served the District for twelve (12) calendar months, without the need for any further disciplinary action, and upon specific written request by the unit member, he/she and the Association shall be given a follow-up notice to that effect, which shall also be attached to any reprimand or Notice that has been placed in the personnel file.
- 16.10.4 If kept by the District, all documents, communications, and records dealing with discipline or the processing of a grievance shall be filed in a separate confidential grievance file located in the District Personnel Office and shall not be kept in the personnel file of any participants, unless it would otherwise be deemed an appropriate personnel file document or record. Access to the grievance file shall be limited to certificated administrative personnel who have a legitimate need to have such access.