ARTICLE XV: DISCIPLINARY ACTION

15.1 **Definition** - "Disciplinary action", as used herein, shall mean demotion, suspension, or dismissal, and the provisions of this Article shall be limited to only these forms of discipline of a permanent employee.

15.2 **Reason for Disciplinary Action** - A member of the bargaining unit shall be subject to disciplinary action for cause including:

a. The member is convicted of any sex offense, as defined in Section 44010 of the Education Code.

b. Theft, dishonesty, or fraud, including but not limited to the unauthorized personal use or taking of district property.

c. One or more criminal conviction where the nature of the crime is such that it would indicate that the member is unsuited for the particular job which he or she holds with the District.

d. Conviction of any crime involving moral turpitude.

e. Incompetence.

f. Dereliction of duty including repeated tardiness, sleeping while on duty, or persistent engagement in private or personal business during duty hours.

g. Insubordination, insolence or disrespect toward authority.

h. Appearing for work under the effects of alcohol or drugs, possession or use of alcohol or drugs while on duty, or the illegal use or possession of drugs or conviction of a controlled substance offense as defined in Section 44011 of the Education Code.

i. Abusive, threatening, or discourteous treatment of the public, pupils, or fellow employees.
j. Absence without authority including unauthorized departure from service.

k. Failure to obey published and/or posted safety rules and regulations.

l. Failure to possess required licenses, failure to pass legally mandated tests, or failure to meet standard risk insurability requirements.

m. Negligence in the performance of duty, or in the care of and use of District property.

n. Falsifying any information supplied to the District, including, but not limited to, information supplied in application forms, employment records, or any other district records.

o. Willful and persistent violation of the Education Code, California State Codes, or policies, rules, or regulations of the District.

15.3 **Step 1: Notice of Intent to Recommend Corrective Action** - A member of the bargaining unit who has attained permanency shall receive a written notice of any intent to recommend corrective action within twenty (20) working days of the most recent incident related to the proposed action, provided, however, that immediate suspension may be imposed without such written notice whenever the welfare of the schools, or the pupils, or the employees thereof require immediate action. The twenty (20) working day notification requirement shall be extended if the incident is subject to an investigation, or other legal proceedings, initiated by law enforcement and shall commence when the matter is closed by the issuing agency.

The written notice shall contain a statement of the corrective action proposed and a specific statement of charges or grounds upon which the proposed corrective action is based.

Any known written materials, reports, evaluations, or documentation upon which the proposed corrective action is based shall be attached to the written notice.
The member of the bargaining unit shall have the right to respond either orally or in writing to the Assistant Superintendent within ten (10) working days of the receipt of the written notice of corrective action. Within ten (10) working days of the receipt of the written notice of corrective action, the Assistant Superintendent shall consider the member's response and make a recommendation to the Superintendent that the proposed corrective action either be taken or not taken.

15.4 **Step 2: Notice of Intention to Suspend, Demote or Dismiss** - Within five (5) working days after receipt of the Assistant Superintendent's recommendation, any member of the bargaining unit against whom disciplinary action is initiated by the District, shall be given written notice by the Superintendent or his/her authorized representative of the specific charges against the member. The notice shall contain a statement of the member's rights to a hearing on such charges. The time within which such hearing may be requested shall be within ten (10) working days after service of the notice on the member and said notice shall be accompanied by a paper, the signing and filing of which, with the Superintendent or his/her authorized representative, shall constitute a demand for a hearing and a denial of all charges. Failure of the member to file a request for hearing within the time specified shall constitute a waiver of the member's right to a hearing.

15.5 **Step 3: Conduct of the Hearing**

a. **Hearing Board** - The Governing Board shall determine whether any hearing will be conducted before the entire Governing Board or one or more named members of the Governing Board or a Hearing Board or officer appointed by the Governing Board, and shall make such appointments as may be necessary. The term "Hearing Board", as used herein, shall mean any Board, Board member or other person named or appointed under this rule to hear any hearing.
b. **Notice of Hearing** - The governing Board or the Hearing Board shall set the matter for hearing and shall give the member at least ten (10) business days notice, in writing, of the date and place of such hearing.

c. **Rights of Member** - The member shall attend any hearing, unless excused by the Governing Board or the Hearing Board, and shall be entitled to:

   (1) be represented by counsel or any other person at such hearing;

   (2) testify under oath;

   (3) compel the attendance of other employees of the District to testify in his/her behalf;

   (4) cross-examine all witnesses appearing against him/her and all employees of the District whose actions are in question or who have investigated any of the matters involved in the hearing and whose reports are offered in evidence before the Hearing Board;

   (5) impeach any witness;

   (6) present such affidavits, exhibits and other evidence as the Hearing Board deems pertinent to the inquiry; and

   (7) argue his/her case.

The party attempting to substantiate the charges against the member shall be entitled to the same privileges.
d. **Evidence** - The hearing shall be informal and need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to reply in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper admission of such evidence over objection in civil actions. Hearsay evidence may be admitted for any purpose, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege and of official or judicial notice shall be effective to the same extent as in civil actions. Irrelevant and repetitious evidence shall be excluded. Oral evidence shall be taken only under oath or affirmation.

e. **Exclusion of Witnesses** - The Hearing Board may, in its discretion, exclude witnesses not under examination, except the member and the party attempting to substantiate the charges against the member and their respective counsel. When hearing testimony on scandalous or indecent conduct, all persons not having a direct interest in the hearing may be excluded.

f. **Burden of Proof** - The burden of proof shall be upon the party attempting to substantiate the charges.
g. **Findings and Decision** – If the matter is heard before a quorum of the Governing Board, upon completion of the hearing, Findings of Fact and Conclusions of Law shall be signed and filed by the Governing Board, which shall constitute its decision. If the hearing is not before a quorum of the Governing Board, the written findings and conclusions shall be submitted by the hearing Board to the Governing Board for its approval. If the Governing Board accepts such findings and conclusions, it need not review the record of the hearing; if it declines to accept such finding and conclusions, it must review the record or hold a new hearing, after which it may adopt the findings and conclusions made by the Hearing Board, or make its own findings and conclusions.

Unless the decision provides otherwise, it shall be effective immediately. Notice of the decision shall be mailed within ten (10) days to the member and his/her counsel or representative. Except for the correction of clerical error, such decision shall be final and conclusive.

h. **Report of Hearing** - Hearings may be conducted without a stenographic reporter or phonographic recording machine, unless the member requests, in writing, at least one (1) full business day before the day set for the hearing, that such hearing be reported or recorded and pays the cost or fee for such reporting or recording as estimated by the Superintendent or his/her authorized representative.

i. **Transcripts of Hearing** - Transcripts of hearing shall be furnished to any person on payment of the cost of preparing such transcripts. When transcripts are provided by the employees of the District, the cost shall be determined by the Assistant Superintendent of Business Services. When transcripts are provided by an independent contractor, the cost will be established by the independent contractor.
j. **Continuances** - The Hearing Board may grant a continuance of any hearing upon such terms and conditions as it may deem proper, including in its discretion, the condition that the member shall be deemed to have waived salary for the period of the continuance. Any request for continuance made less than forty-eight (48) hours prior to the time set for the hearing will be denied unless good cause is shown for the continuance.

k. **Failure to Appear at Hearing** - Failure of the member of the bargaining unit to appear at the hearing shall be deemed a withdrawal of his/her request for hearing and the disciplinary action proposed shall be implemented, except when the member is unable to appear because of an unavoidable emergency situation.

**15.6 Application of Grievance Procedure** - The parties expressly agree that the process set forth in this Article shall be the sole process of contesting disciplinary actions set forth in this Article XV. Application of the Grievance Procedure, Article XII, shall be limited to the application of the procedures and timelines set forth in this Article XV.