

## ARTICLE XI -- DISCIPLINARY ACTION

### Section 1. Due Process

A. Unit members are accountable for their individual levels of productivity, implementing the duties of their positions, and rendering efficient, effective delivery of services and support. Whenever an employee renders deficient performance, violates any rule, regulation, or policy, that employee shall be notified by his/her supervisor, as soon as possible, with the employee being informed of the deficiency or rule, regulation, or policy violated. An informal discussion with the employee shall occur prior to the issuance of any written disciplinary action. Progressive discipline steps should be followed, however in administering discipline, the degree of discipline shall be reasonably related to the seriousness of the offense and the employees record. Therefore, disciplinary steps may include:

1. verbal warning;
2. written warning (acknowledged);
3. Letter of reprimand;
4. Suspension/demotion; and
5. Dismissal.

A Conference-for-the Record shall be held when there is a violation of federal statutes, State Statutes, defiance of the administrator's authority, or a substantiated investigation to determine if formal disciplinary action should be taken (i.e., letter of reprimand, suspension, demotion or dismissal). A Conference-for-the-Record in and of itself shall not be considered disciplinary.

B. The parties agree that discharge is the extreme disciplinary penalty, since the employee's job, seniority, other contractual benefits, and reputation are at stake. In recognition of this principle, it is agreed that disciplinary action(s) taken against AFSCME, Local 1184 bargaining unit members shall be consistent with the concept and practice of progressive or corrective discipline and that in all instances the degree of discipline shall be reasonably related to the seriousness of the offense and the employee's record.

C. The employee shall have the right to Union representation in Conferences-for-the-Record held pursuant to this Article. Such a conference shall include any meeting where disciplinary action will be initiated.

D. The employee shall be given two days' notice and a statement for the reason for any Conference-for-the Record, as defined above, except in cases deemed to be an emergency. A maximum of two Union representatives may be present at a Conference-for-the-Record.

E. The Board agrees to promptly furnish the Union with a copy of any disciplinary action notification (i.e., notice of suspension, dismissal, or other actions appealable under this Section) against an employee in this bargaining unit.

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### **Section 2. Dismissal, Suspension, Reduction-in-Grade**

Permanent employees dismissed, suspended, or reduced in grade shall be entitled to appeal such action to an impartial Hearing Officer or through the grievance/arbitration process as set forth in Article VII of the Contract. The employee shall be notified of such action and of his/her right to appeal by certified mail. The employee shall have 20 calendar days in which to notify the School Board Clerk of the employee's intent to appeal such action and to select the method of appeal. If the employee when appealing Board action, does not select the grievance/arbitration process as set forth in Article VII of the Contract the Board shall appoint an impartial Hearing Officer, who shall set the date and place mutually agreeable to the employee and the Board for the hearing of the appeal. The Board shall set a time limit, at which time the Hearing Officer shall present the findings. The findings of the Hearing Officer shall not be binding on the Board, and the Board shall retain final authority on all dismissals, suspensions, and reductions-in-grade. The employee shall not be employed during the time of such dismissal or suspension, even if appealed. If reinstated by Board action, the employee shall receive payment for the days not worked and shall not lose any longevity or be charged with a break in service due to said dismissal, suspension, or reduction-in-grade. Non-reappointments are not subject to the grievance/arbitration procedures.

### **Section 3. Cause for Suspension**

In those cases where any employee has not complied with Board policies and/or department regulations, but the infraction is not deemed serious enough to recommend dismissal, the department head may recommend suspension up to 30 calendar days without pay. All suspensions must be approved by the Superintendent.

### **Section 4. Types of Separation**

Dissolution of the employment relationship between a permanent unit member and the Board may occur by any of four distinct types of separation.

- A. Voluntary -- The employee initiates the separation by resigning, retiring, abandoning the position, or other unilateral action by the employee.
- B. Excessive Absenteeism/Abandonment of Position -- An unauthorized absence for three consecutive workdays shall be evidence of abandonment of position. Unauthorized absences totaling 10 or more workdays during the previous 12-month period shall be evidence of excessive absenteeism. Either of the foregoing shall constitute grounds for termination. An employee recommended for termination under these provisions shall have the right to request of the chief personnel officer for Human Resources a review of the facts concerning the unauthorized leave. Such right shall exist for a period of 10 working days after the first day of notification of the unauthorized absence.
- C. Disciplinary -- The employee is separated by the employer for disciplinary cause arising from the employee's performance or non-performance of job responsibilities. Such action occurs at any necessary point in time.

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- D. Non-reappointment -- The employee is separated by management's decision not to offer another annual contract. However, such non-reappointment shall not be in lieu of discipline or lay-off. Employees whose performance has been deemed marginal by the supervising administrator, who have been counseled during the school year concerning performance, and have failed to perform acceptably shall not be reappointed.

Such employees and the Union shall be put on written notice of possible non-reappointment. Counseling and written notice of non-reappointment shall be provided in a timely manner. This action shall not be arbitrary or capricious, but based upon reason for the best interest of the employer.

AFSCME, Local 1184 bargaining unit members employed by the school district in excess of five years shall not be subject to non-reappointment. Such employees may only be discharged for just cause.

- E. Layoff -- This is the separation of an employee(s) by the employer for lack of work or lack of funds, without fault or delinquency on the employee's part. A lay-off may occur at any time of the work year with 21 days' notice. Nothing in this Contract shall bar the right of management to determine whether or not to reappoint annual employees simultaneous with the lay-off of other employees.

The factors most important in determining what type of separation occurred for a given employee are: which party initiated the action; what time of the work year the action occurred; and the employer's expressed intent.

### **Section 5. No-Strike Provision**

Nothing contained in this Article shall prevent the School Board from disciplining the officers and official representatives of AFSCME, Local 1184, greater than other employees who participate in a strike, if evidence can be provided. In addition, nothing shall preclude the School Board from disciplining employees for engaging in a strike prior to an administrative or court determination. Employees disciplined for allegedly engaging in a strike shall have a hearing before an Administrative Law Judge, pursuant to Article XI, Section 2.

### **Section 6. Personnel Files**

- A. Pursuant to Florida Statutes, Chapter 1012.31 Personnel Files -- Public school system employee personnel files shall be maintained according to the following provisions:
1. Except for materials pertaining to work performance or such other matters that may be cause for discipline, suspension, or dismissal, under laws of this state, no derogatory materials relating to an employee's conduct, service, character, or personality shall be placed in the personnel file of such employee.
  2. Materials relating to work performance, discipline, suspension, or dismissal must be reduced to writing and signed by a person competent to know the facts or make the judgment.

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- a. No such materials may be placed in a personnel file, unless they have been reduced to writing within 45 calendar days, exclusive of the summer vacation period, of the school system's administration becoming aware of the facts reflected in the materials.
  - b. The employee shall have the right to answer any material filed hereafter in his/her personnel file and the answer, if submitted, shall be attached to the file copy. No anonymous letter or material shall be placed in an employee's personnel file. The validity of items of a derogatory nature placed in an employee's personnel file shall be subject to the grievance procedure.
  - c. There shall be no statements placed in an employee's personnel file unless the employee has been given a copy.
3. Upon request, the employee, or any person designated in writing by the employee, shall be permitted to examine the personnel file. The employee shall be permitted, conveniently, to reproduce any materials in the file, at a cost no greater than five cents per page. Such request should be made to the custodian of a personnel file, who shall permit examination of the records at reasonable times, under reasonable conditions, and under supervision of the custodian of the record.
  4. The custodian of the record shall maintain a record in the file of those persons reviewing the file each time it is reviewed.

### **Section 7. Personnel Investigations**

- A. The Board shall take steps to ascertain the identity of the complainant, prior to authorization of an investigation. No investigation of an allegation against an employee shall be made on the basis of an anonymous complaint.
- B. In the event of allegations and/or complaints being made against any employee, an investigation which may result in information being placed in the employee's personnel file shall not be concluded prior to the time that the employee receives identification of the complainant and the nature of the complaint.

The Personnel Investigative Model (PIM) approved and adopted by the School Board on November 17, 2004, and the PIM User's Guide agreed to by the parties, shall govern the investigative process and are hereby incorporated as part of the Agreement.

- C. In all Board investigations which may lead to suspension or dismissal of an employee, only the Superintendent or his/her designee may authorize such an investigation. When a formal investigation has been authorized, all personnel involved will be advised of their legal rights and the procedures available to them for representation in accordance with PIM. Information that is not substantiated will not be used for disciplinary action against the employee.

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- D. In all Board investigations resulting in discipline, the employee shall be provided with a copy of the report. With the permission of the employee, the Union shall also receive a copy in accordance with PIM. When investigatory reports are to be provided, said reports shall be transmitted within a timeframe consistent and harmonious with basic due process.
  
- E. In all cases in which the investigation is concluded, with the finding that there is no probable cause to proceed further and with no disciplinary action taken or charges filed, a statement to that effect signed by the responsible investigating official shall be attached to the complaint and the complaint and all such materials shall be open, thereafter, to inspection. Where allegations have not been proven against an employee, no reprisal or punitive action shall be taken against an employee.