ARTICLE 11 EMPLOYEE PERSONNEL RECORDS

1. Except for pre-employment documents as may be maintained at the Department of Human Resources, an employee's official personnel file is that file maintained by the Department of Human Resources on behalf of an employee's agency or department and shall accompany the employee to his new agency in case of permanent transfer. The employing agency or department shall inform the employee where his/her official personnel file is being maintained.

2. With the exception of material that is confidential or privileged under law, an employee will be allowed access to his/her official personnel file during normal working hours. Subject to the exception stated above, copies of all documents and materials placed in an employee's official personnel file after July 1, 1986, are to be given, on a one-time basis, to the employee at no cost to the employee. Additional copies will be provided to the employee and/or his/her representative at the employee's request at the going rate for photocopy cost per page.

3. Any material, document, note or other tangible item which is to be entered or used by the employer in any grievance hearing held in accordance with the Grievance Procedure Article of this Agreement, or hearing before the Vermont Labor Relations Board, is to be provided to the employee on a one-time basis, at no cost to him/her.

4. The employee has the right to provide written authorization for his/her bargaining representative or attorney to act for him/her in requesting access to his/her personnel file and receiving the material (s)he is entitled to have in accordance with the preceding part of this Article. The State or its agents are to honor this authorization upon its receipt for the purpose of investigating a potential grievance or for processing an existing grievance, but not as a blanket authorization.

5. Letters of reprimand or warning, supervisors' notes, or written records of relief from duty (including investigation notes) which are more than two (2) years old and have not resulted in other discipline or adverse performance evaluation against the employee will be removed, on the employee's request, from the employee's official personnel file and destroyed. Suspensions of three (3) or fewer days shall be removed from personnel files at the employee's request after five (5) years if the employee has no other discipline in that time period. No grievance material or any other VSEA-related material will be placed in an employee's official personnel file. Grievance material or any other VSEA-related material placed in an employee's official personnel file prior to the effective date of this Agreement shall be removed upon the request of the employee.

6. If an employee has been investigated and no discipline results from the investigation, upon an employee's request, all records related to such investigation shall be removed from the employee's official personnel file at the end of the investigation.

7. An employee shall be allowed to place in his/her official personnel file a written rebuttal to a letter of reprimand, warning, counseling letter, disciplinary suspension, or performance evaluation. Such rebuttal must be submitted within thirty (30) work days after receipt of such adverse personnel action (except in case of a later grievance settlement).

8. An employee, with the concurrence of the appointing authority, shall have the option of placing in his/her official personnel file any work-related commendations.

ARTICLE 14 DISCIPLINARY ACTION

1. No permanent or limited status employee covered by this agreement shall be disciplined without just cause. The parties jointly recognize the deterrent value of disciplinary action. Accordingly, the State will:

1. (a) act promptly to impose discipline or corrective action within a reasonable time of the offense;
2. (b) apply discipline or corrective action with a view toward uniformity and consistency;
3. (c) impose a procedure of progressive discipline or progressive corrective action;
4. (d) In misconduct cases, the order of progressive discipline shall be:

   (1) oral reprimand;
   (2) written reprimand;
   (3) suspension without pay; (4) dismissal.

5. (e) In performance cases, the order of progressive corrective action shall be as follows:
   (1) feedback, oral or written; (Records of feedback are not to be placed in an employee's personnel file except in compliance with the Performance Evaluation Article);
   (2) written performance evaluation, special or annual, with a specified prescriptive period for remediation specified therein, normally three (3) to six (6) months;
   (3) warning period of thirty (30) days to three (3) months, extendable for a period of up to six (6) months. Placement on warning status may take place during the prescriptive period if performance has not improved since the evaluation;
   (4) dismissal.
6. (f) The parties agree that there are appropriate cases that may warrant the State:
   (1) bypassing progressive discipline or corrective action;
   (2) applying discipline or corrective action in different degrees;
   (3) applying progressive discipline for an aggregate of dissimilar offenses, except that dissimilar offenses shall not necessarily result in automatic progression; as long as it is imposing discipline or corrective action for just cause.
7. (g) The forms of discipline herein listed shall not preclude the parties from agreeing to utilize

alternative forms of discipline, including demotion, or combination of forms of discipline in lieu of suspension or dismissal, or as a settlement to any of those actions. Nothing in this Agreement shall be construed to limit the State's authority or ability to demote an employee under Section 1(d)

and/or 1(e) of this Article, for just cause resulting from misconduct or performance, but the State

shall not be required to do so in any case. The VLRB may not impose demotion under this Article. 2. The appointing authority or authorized representative, after complying with the provisions of paragraph 4 of this Article, may dismiss an employee for just cause with two (2) weeks' notice or two (2) weeks' pay in lieu of notice. Written notice of dismissal must be given to the employee within twenty-four (24) hours of verbal notification. In the written dismissal notice, the appointing authority shall state the reason(s) for dismissal and inform the employee of his or

her right to appeal the dismissal at Step IV before the State Labor Relations Board within the time limit prescribed by the rules and regulations of the Board.
3. Notwithstanding the provisions of paragraph 2 above, the appointing authority or authorized representative, after complying with the provisions of paragraph 4 of this Article, may dismiss an employee immediately without two (2) weeks' notice or two (2) weeks' pay in lieu of notice for any of the following reasons:

(a) gross neglect of duty;
(b) gross misconduct;
(c) refusal to obey lawful and reasonable orders given by supervisors;
(d) conviction of a felony;
(e) conduct which places in jeopardy the life or health of a co-worker or of a person under the employee's care.

4. Whenever an appointing authority contemplates suspending or dismissing an employee the employee will be notified in writing of the reason(s) for such action, and will be given an opportunity to respond either orally or in writing. The employee will normally be given twenty-four (24) hours to notify the employer whether he or she wishes to respond in writing or to meet in person to discuss the contemplated discipline. The employee's response, whether in writing or in a meeting, must be provided to the employer within ten (10) work days of receipt of written notification of the contemplated discipline. Deadlines may be extended at the request of either party, however if the extension is requested by the employee or the employee's representative, the employee will not be carried on the payroll and shall be placed in an authorized off-payroll status unless the employee's extension request was necessitated by the employer's inability or refusal to meet within the ten (10) day response period, in which event the employee will remain on the payroll until the meeting takes place. At such meeting the employee will be given an opportunity to present points of disagreement with the facts, to identify supporting witnesses or mitigating circumstances, or to offer any other appropriate argument in his or her defense.

5. An employee who is charged with misconduct in collusion with his or her superior shall not be exonerated solely because the superior was found guilty.
6. No written warning or other derogatory material shall be used in any subsequent disciplinary proceeding or merged in any evaluation unless it has been placed in an employee's official personnel file. This does not apply to letters of supervisory feedback under the Performance Evaluation Article.

7. Whenever an employee is required, by his or her supervisor or management, to give oral or written statements on an issue involving the employee, which may lead to discipline against the employee, or whenever an employee is called to a meeting with management where discipline is to be imposed on the employee, he or she shall be notified of his or her right to request the presence of a VSEA representative and, upon such request, the VSEA representative shall have the right to accompany the employee to any such meeting. The notification requirement shall not apply to the informal initial inquiry of the employee by his or her supervisor without knowledge or reason to believe that discipline of the employee was a likely possibility. The notification requirement shall not apply if management is delivering a sealed letter containing a written reprimand or other written discipline, and management does not discuss the discipline at the time of delivery. Subject in all cases to the consent of the employee involved, in those cases where VSEA is not representing the employee, the VSEA reserves the right to attend such meetings as a non-participating observer if in its judgment the ramifications of such meetings are likely to impact on the interest of VSEA members.

8. The appointing authority or authorized designee may suspend an employee without pay for reasons for a period not to exceed thirty (30) workdays. Notice of suspension, with specific reasons for the action, shall be in writing or shall be given personally by the appointing authority or designee and

confirmed in writing within twenty-four (24) hours. The provisions of this paragraph shall not preclude the settlement of dismissal cases with respect to suspensions in excess of thirty (30) workdays.
9. An appointing authority may relieve employees from duty temporarily with pay for a period of up to thirty (30) workdays:

(a) to permit the appointing authority to investigate or make inquiries into charges and allegations made by or concerning the employee; or,
(b) if in the judgment of the appointing authority the employee's continued presence at work during the period of investigation is detrimental to the best interests of the State, the public, the ability of the office to perform its work in the most efficient manner possible, or wellbeing or morale of persons under the State's care. The period of temporary relief from duty may be extended by the appointing authority, with the concurrence of the Commissioner of Human Resources. At the request of the employee or the VSEA, DOC will provide a written explanation of the request for the extension or the progress of the investigation and anticipated date of completion. Employees temporarily relieved from duty shall be notified in writing within twenty-four (24) hours with specific reasons given as to the nature of the investigation, charges and allegations. Notices of temporary relief from duty with pay shall contain a reference to the right of the employee to request representation by VSEA, or private counsel in any interrogation connected with the investigation or resulting hearing.

(c) DOC shall inform the employee of the results of an investigation within thirty (30) days, where no disciplinary action will occur, with a copy provided simultaneously to the VSEA representative if appropriate. Failure of the State to do so shall not be grievable beyond Step 1.

10. In any misconduct case involving a suspension or dismissal, should the Vermont Labor Relations Board find just cause for discipline, but determine that the penalty was unreasonable, the Vermont Labor Relations Board shall have the authority to impose a lesser form of discipline.
11. In any case involving dismissal based on performance deficiencies, the Vermont Labor Relations Board shall sustain the State's action as being for just cause unless the grievant can meet the burden of proving that the State's action was arbitrary and capricious. It is understood that this paragraph does not bar a grievance alleging that progressive corrective action was bypassed.