NEGOTIATED AGREEMENT

SANTA CLARITA COMMUNITY COLLEGE DISTRICT AND
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 725

July 1, 2011 – June 30, 2014

Available on the Intranet to District Employees at:
http://www.canyons.edu:8081/offices/csea/
ARTICLE 15: DISCIPLINE

A. Disciplinary Action
1. Probationary employees may be dismissed without cause at the recommendation of the Chancellor to the Board of Trustees.
2. The District may discipline a permanent classified employee for just cause. Progressive discipline shall be applied to assist the employee and give him/her the opportunity to improve and correct negative, unacceptable work habits or violation of rules.
3. Counseling sessions, verbal warnings, and negative performance evaluations and written reprimands may serve as pre-disciplinary action.
4. Forms of disciplinary action are subject to due process and may include, but are not limited to, the following: dismissal; suspension (without pay); demotion (which may include a reduction in pay); reassignment; and removal from the overtime rotation.
5. In the case of gross misconduct, steps in the progressive discipline process may be eliminated. Except in those situations where gross misconduct is found, a permanent employee whose work or conduct is of such character as to incur discipline, the following steps shall be followed in order:
   a. Removal from overtime rotation (only applies to departments where a scheduled overtime rotation exists).
   b. Suspension without pay – A unit member may be suspended for up to thirty (30) working days, without pay, for disciplinary purposes.
   c. Reassignment or demotion if applicable:
      i. Reassignment: A unit member may be reassigned for disciplinary purposes after being afforded due process. Reassignment may include a change in supervisor, duties, shift, work location, and/or similar job classification. Reassignment for the purposes of this Article is not a demotion or change in pay range (with the exception of supplementary pay associated with specific work shifts).
      ii. Demotion: In the event of a demotion, the unit member shall maintain his or her statutes as a permanent employee. The unit member’s evaluation date shall be changed to reflect the hire date of the new position. The salary step advancement date, for purposes of step increases, shall not change.
      iii. A unit member who is demoted will be placed at the step of the appropriate range that will give the unit member a salary that is as close to being within five (5) percent of their current salary as possible; this may result in a salary decrease but not an increase. When the unit member’s salary step advancement date and the effective date of the demotion coincide, the salary step advancement increment shall be applied before the demotion computation is made.
   d. Dismissal – A permanent member of the classified service may be discharged for just cause at any time. Formal written notice of discharge may be made after considered action during a period of suspension.
6. The unit member has the right to representation in any disciplinary meeting that could reasonably result in disciplinary action and any meeting to challenge the disciplinary action. Disciplinary action refers specifically to dismissal, suspension, demotion, reassignment or removal from overtime rotation.
B. Causes

1. After affording the employee due process, the District may suspend, demote, reassign, or dismiss a permanent unit member for just cause including, but not limited to, the following:
   a. Fraud in securing employment.
   b. Incompetence, i.e., inability to comply with the minimum standard of a unit member’s position for a significant period of time.
   c. Inefficiency or inexcusable neglect of duty, i.e., failure to perform duties required of a unit member within his or her position.
   d. Willful disobedience and insubordination, a willful failure to submit to duly appointed and acting supervision or to conform to duly established orders or directions of persons in a supervisory position or insulting or demeaning the authority of a supervisor or manager. Exceptions to this are orders and/or directions that are illegal or would endanger the safety of the employee.
   e. Dishonesty involving employment including, but not limited to, altering or falsifying information supplied on application forms, employment records, or other District records.
   f. Unauthorized release of personal information concerning any student or employee.
   g. Being under the influence of alcohol or illegal drugs or narcotics while on duty, being impaired by alcohol or illegal drugs in your biological system while on duty which could impact your ability to do your job.
   h. Conviction of any narcotics offense as defined in Education Code 87011 or Health and Safety Code 11361.
   i. Excessive absenteeism; e.g. repeated absence without notification, repeated unexcused absence or tardiness, abandonment of position, incarceration adversely affecting job performance, failure to keep the District informed of the date of expected return to duty.
   j. Abuse of sick leave, i.e., taking sick leave without a doctor's certificate when one is required, or misuse of sick leave.
   k. The conviction of either a misdemeanor or a felony involving moral turpitude shall constitute grounds for dismissal of any unit member. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The Office of Human Resources may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline, or the determination if such conviction is an offense involving moral turpitude. A plea or verdict of guilty, or a conviction showing a plea of nolo contendere made to a felony charge or any offense involving moral turpitude, is deemed to be a conviction within the meaning of this Section.
   l. Conviction of any sex offense as defined in the Education Code 87010 or Penal Code 261.5.
   m. Discourteous, offensive, or abusive conduct or language toward another employee, a student or a member of the public.
   n. Improper or unauthorized use of District property including, but not limited to, misuse or misappropriation of property or funds.
   o. Refusal to subscribe to any oath or affirmation which is required by law in connection with District employment unless the refusal is permitted under the law, State Constitution or Federal Constitution.
p. Any willful act of conduct undertaken in bad faith, either during or outside of duty hours which is of such a nature that it causes discredit to the District, the unit member's department or division.

q. Carelessness or negligence in the care and handling of District property.

r. Violation of the rules and regulations published in any department, unless those rules and/or regulations contradict provisions of this Agreement.

s. Loss or non-renewal of licenses, permits, or other documents required by the nature of the position and listed in the employee’s job description due to the negligence and/or failure of the unit member to maintain the license, permit or other required documentation.

t. Receipt by the District from the District’s insurance carrier of a request for an endorsement excluding the unit member from coverage under the District’s insurance policy while driving a motor vehicle because of increased risk due to the unit member’s poor driving record if driving is a requirement of the employee’s position as noted in their job description.

u. Mental or physical impairment which renders the unit member unable to perform the essential functions of the job without reasonable accommodation or without presenting a direct threat to the health and safety of self or others.

v. Refusal to take a physical examination when requested to do so in writing by the District. Physical examinations must be paid for by the District and done during the employee’s normal work hours. Drug testing shall only be permitted when there is a reasonable suspicion of intoxication.

w. Acceptance from any outside source of a reward, gift, or other form of remuneration in addition to regular compensation to a unit member for the performance of his or her official duties.

x. The refusal of any unit member to testify under oath before any court, grand jury, or administrative officer having jurisdiction over any then pending cause of inquiry in which the District is involved unless the refusal is permitted under the law, State Constitution or Federal Constitution. Violation of this provision may constitute of itself sufficient ground for the immediate discharge of such officer or unit member.

y. Willful violation of the Education Code, Title 5 of the California Administrative Code or any of the provisions of the ordinances, resolutions or any rules, regulations or policies which may be prescribed by the District.

z. Disruptive campaigning or political activity on District property. Exceptions to this are non-disruptive political activities while on an employee’s rest or lunch break. Employees are allowed to wear campaign buttons during work hours as long as they are in a non-instructional classroom setting and bumper stickers on employee vehicles while parked on campus.

aa. Repeated working of overtime without authorization.

bb. Possession of dangerous weapons or firearms on District property or, in the case of campus police officers, violations of firearms guidelines.

cc. Knowingly being a member of an organization which, during the time of his/her membership, advocates the overthrow of the government of the United States or of any state by force or violence.
C. Procedure for Disciplinary Action

1. The District may, for disciplinary purposes, suspend, demote, reassign, or dismiss any unit member holding a position in the classified service. Demotion may include reduction in pay from a step within the class to one or more lower steps.

2. For unit members suspended, demoted, reassigned, or dismissed, the District shall follow a pre-disciplinary action procedure as follows:
   a. Notice of Proposed Disciplinary Action: Whenever the District intends to suspend a unit member, demote the unit member, reassign a unit member, or dismiss the unit member, the unit member shall be given a written notice of the proposed discipline, signed by the Chancellor or his/her designee, which sets forth the following:
      1) The disciplinary action intended;
      2) The specific charges upon which the proposed action is based;
      3) A factual summary of the grounds upon which the charges are based;
      4) A copy of all written materials, reports, and documents upon which the proposed discipline is based;
      5) Notice of the unit member’s right to respond to the charges either orally or in writing to the appropriate manager (Skelly Rights);
      6) The date, time and person before whom the unit member may respond, in no more than seven (7) working days from the time the Notice is postmarked;
      7) Notice that failure to respond at the time specified shall constitute a waiver of the right to respond prior to final discipline being imposed.
   b. Response by Unit Member (Skelly Meeting): The unit member shall have the right to respond to a neutral and impartial District appointed manager orally or in writing within seven (7) working days from the time the Notice is postmarked. At the Skelly meeting set to hear the unit member’s response, the unit member shall have a right to be represented. In cases of suspensions, demotions, reassignment, or dismissal, the unit member’s response will be considered before final action is taken.

3. Non-exercising of Skelly Rights: If the unit member elects to waive their right to a Skelly meeting or fails to respond within the timeframe listed in the Notice of Proposed Disciplinary Action, the District will impose discipline as listed in the Proposed Notice.

4. Skelly Recommendation: After the Skelly meeting, the appointed manager (Skelly Officer) shall: (1) accept the Notice of Proposed Disciplinary Action, or (2) modify the intended disciplinary action or (3) recommend that no disciplinary action be taken against the unit member. The appropriate authority (Skelly Officer) shall report his/her decision to the Office of Human Resources in writing with a copy of that recommendation being provided to both the employee and the Association.

5. After considering the recommendation of the Skelly Officer and reviewing associated materials, the Chancellor shall send a written notice of the disciplinary decision to the unit member and their representative. This written notice will constitute the District’s Final Notice of Disciplinary Action.

6. Final Notice of Disciplinary Action:
   a. The Final Notice of Disciplinary Action shall include the following:
      1) The disciplinary action taken by the Board’s designee;
      2) The effective date of the disciplinary action;
      3) Specific charges upon which the action is based;
      4) A factual summary of the facts upon which the charges are based;
      5) The unit member’s right to appeal. (Notice of Defense - See Appendix F)
D. Appeal of Disciplinary Action and Request for Hearing

1. If a unit member, having been issued the Final Notice of Disciplinary Action, wants to appeal the action, he or she shall, within seven (7) working days from the date it was postmarked, appeal to the Board of Trustees by filing a written answer to the charges and a request for hearing with Human Resources, on the form provided for that purpose. (Notice of Defense – Appendix F)

2. Hearing

   a. Time for Hearing: The Board of Trustees shall, within forty-five (45) calendar days from the filing of the appeal, commence the hearing process. The Board shall secure the services of an experienced Hearing Officer or Administrative Law Judge (ALJ), selected from a list of at least five (5) names provided by the California State Mediation and Conciliation Service with the Hearing Officer or ALJ being selected by both the District and Association by each party alternately striking one name from the list. The order of striking shall be determined by lot. If the unit member elects not to be represented by CSEA, the District will work directly with the unit member in securing the services of the Hearing Officer. If no agreement can be reached, they shall request the California State Mediation and Conciliation Service to provide a roster of five (5) names of persons experienced in hearing disciplinary matters in public agencies. Each party shall alternately strike a name until only one name remains. The order of striking shall be determined by lot. The remaining name shall be that of the Hearing Officer or administrative law judge. If this individual will not be available for the hearing within a reasonable time not to exceed forty-five (45) calendar days, the parties shall secure another list and repeat the selection unless they mutually agree to waive this time provision. The Board of Trustees may accept, modify or reject the discipline. The decision of the Board shall be final.

   b. Any unit member, having filed an appeal with the Board and having been notified of the time and place of the hearing, who fails to make an appearance at the hearing, may be deemed to have abandoned his or her appeal. In this event, the Board may dismiss the appeal.

3. Conduct of the Hearing:

   a. Record of Proceedings and Costs: All disciplinary appeal hearings may, at the discretion of either party or the Board of Trustees, be recorded by a court reporter. Any hearing which does not utilize a court reporter shall be recorded by audio tapes. If a court reporter is requested by either party, that party shall pay the cost of the court reporter. Copies of any transcription or recording shall be provided to the employee or their representative free of charge at their request.

   b. The Hearing:

      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 determination of the truth.

      2) Any relevant evidence may be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious 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.

      3) Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence that shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
4) The rules dealing with privileges shall be effective to the same extent that they are now or hereafter may be recognized in civil actions.

5) Irrelevant and unduly repetitious evidence may be excluded.

6) The Hearing Officer or ALJ shall determine relevancy, weight and credibility of testimony and evidence. Decisions made by the Hearing Officer or ALJ shall not be invalidated by any informality in the proceedings.

7) During examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon the motion of either party. Witnesses shall not be able to speak about their testimony or the hearing with any other witnesses after their testimony.

8) The hearing shall be conducted in the English language. The proponent of any testimony to be offered by a witness who does not speak English proficiently shall provide an interpreter. The cost of the interpreter shall be paid by the side calling the witness who uses the interpreter.

9) Burden of Proof: In a disciplinary appeal the District has the burden of proof by preponderance of the evidence.

10) Proceed with Hearing or Request for Continuance: Each side should be asked if it is ready to proceed. If either side is not ready and wishes a continuance, good cause must be stated.

11) Testimony under Oath: All witnesses shall be sworn in for the record prior to offering testimony at the hearing. The chairperson will request the witnesses to raise their right hand and respond to the following:

   “Do you swear that the testimony you are about to give at this hearing is the truth, the whole truth and nothing but the truth?”

12) Presentation of the Case: The hearing shall proceed in the following order unless the Hearing Officer or ALJ, for special reason, directs otherwise:

   (1) The party imposing discipline (District) shall be permitted to make an opening statement.

   (2) The appealing party (the unit member or his/her representative) shall be permitted to make an opening statement.

   (3) The District shall produce its evidence.

   (4) The party appealing from such disciplinary action (the unit member or his/her representative) may then offer their evidence.

   (5) The District, followed by the appealing party (the unit member or his/her representative) may offer rebutting evidence.

   (6) Closing arguments shall be permitted at the discretion of the Hearing Officer or ALJ. The party with the burden of proof shall have the right to go first and to close the hearing by making the last argument. The Hearing Officer or ALJ may place a time limit on closing arguments. The Hearing Officer or ALJ, or the parties may request the submission of written briefs. After the request for submittal of written briefs, the Hearing Officer or ALJ will determine whether to allow the parties to submit written briefs and determine the number of pages of briefs.

c. Procedure for the Parties: The District’s representative and the unit member’s representative will address their remarks, including objections, to the Hearing Officer or ALJ. Objections may be ruled upon summarily or argument may be permitted. The Hearing Officer or ALJ reserves the right to terminate argument at any time and issue a
ruling regarding an objection or any other matter, and thereafter the representative shall continue with the presentation of his/her case.

d. Right to Control Proceedings: While the parties are generally free to present their case in the order that they prefer, the Hearing Officer or ALJ reserves the right to control the proceedings including, but not limited to, altering the order of witnesses, limiting redundant or irrelevant testimony, or by the direct questioning of witnesses.

e. Hearing Demeanor and Behavior: All parties and their attorneys or representatives shall not, by written submission or oral presentation, disparage the intelligence, ethics, morals, integrity or personal behavior of their adversaries or members of the Hearing Officer or ALJ.

f. Deliberation Upon the Case: The Hearing Officer or ALJ should consider all oral and documentary evidence, the credibility of witnesses, and other appropriate factors in reaching their proposed decision. The Hearing Officer or ALJ may deliberate at the close of the hearing or at a later fixed date and time. When the Board has received a proposed decision from a Hearing Officer or ALJ, the proposed decision, the record of the hearing, and all documentary evidence shall be available for review by the Board when it deliberates in its next closed session.

g. Written Findings, Conclusion and Decision: The Board of Trustees may chose to either deliberate the case in public or adjourn to closed session to deliberate. The Board shall render its findings, conclusions and decision as soon after the receipt of the proposed decision as possible. The Board, upon receiving the proposed decision from a Hearing Officer or Administrative Law Judge, may adopt the proposed decision, modify the proposed decision or render a new decision. If the Board recommends reinstatement of the terminated unit member, the unit member is only entitled to back pay minus the sum the unit member has earned during the period of absence. A copy of the decision by the Board of Trustees shall be delivered to the employee and his/her designated representative personally or by registered mail, postage prepaid and delivered to the employee’s last known address.

h. Decision of the Board to be Final: The decision of the Board of Trustees in all cases shall be final.

E. Emergency Suspension

1. Pending investigation by the District of accusations against a unit member involving insubordination, misappropriation of public funds or property, furnishing drugs to students of the District, committing any sex offense as defined in Education Code 87010 or Penal Code 261.5 on District grounds or adjacent thereto, or during a District field trip or outing, assault or battery upon another person while on the job or while on District premises or adjacent thereto or while on a District field trip or outing, committing any act of immorality, or any act which would constitute a felony or a misdemeanor involving moral turpitude, or any act which presents a risk to person or property, the District Chancellor or his/her designee may, without complying with the Procedure for Disciplinary Action and Appeal, suspend the unit member. During this suspension, the unit member will remain in paid status. The suspension may be terminated by the District by giving a 24-hour written notice to the unit member.

2. An emergency suspension does not preclude the imposition of due process as established by this Article.
F. Record Filed
When final action is taken, the documents shall be placed in the unit member’s personnel file in a sealed envelope only to be opened by authorized staff from the Office of Human Resources.

G. Judicial Review
Judicial review may be had by filing a petition for writ of mandate in accordance with the provisions of the Code of Civil Procedure. Any such petition shall be filed within 30 days after the effective date of the decision.