

TENTATIVE AGREEMENT
By and Between
SAN BERNARDINO COMMUNITY COLLEGE DISTRICT
And
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION and its
SAN BERNARDINO COMMUNITY COLLEGE DISTRICT CHAPTER #291

August 28, 2017

ARTICLE 17: PROGRESSIVE DISCIPLINE

- 17.1 (NEW LANGUAGE) ~~Progressive discipline shall be imposed upon bargaining unit members pursuant to this article. This policy is intended to clarify expectations and to encourage bargaining unit member success. This article is not intended to be punitive.~~ Progressive discipline is a series of disciplinary actions, corrective in nature and is not intended to be punitive, to provide unit members the opportunity to improve job performance and comply with policies and procedures.
- 17.2 (NEW LANGUAGE) Prior to imposing formal disciplinary action upon a bargaining unit member, the District shall follow the principles of progressive discipline. Exceptions to progressive discipline include serious cases, ~~of misconduct of~~ cause, as defined in Article 17.11, ~~in addition to the procedures.~~ All procedures of due process as defined in Article 17.3 shall apply in cases of serious misconduct. Discipline includes but is not limited to, oral warning, written warning, written reprimand, suspension without pay, involuntary demotion and may lead to termination from employment.

A "day" is any day in which the Human Resources Department of San Bernardino Community College District is normally open for business to the public.

- 17.2.1 (NEW LANGUAGE) **Step 1 – Informal Conference:** Prior to any formal discipline action, the member's immediate supervisor shall notify the bargaining unit member of the deficiencies in his or her job performance that has been observed. The supervisor shall specify identify improvements ~~to be achieved~~ needed and how the unit member may improve his or her performance. The supervisor shall provide a written improvement plan including coaching and training, as needed, to address the identified deficiencies. The unit member's performance must be reviewed within ~~twenty (20)~~ sixty (60) ~~working~~ days to document the unit member's progress, including any recommendations for continued success. Documentation of the coaching shall not be placed in the unit member's personnel file: but may be used as supporting documentation in later steps.
- 17.2.2 **Step 2 – Verbal Warning:** If the deficiencies identified in Step 1 have not been improved, the unit member may receive a verbal warning. The verbal warning

consist of the unit member's specific deficient performance and further direction for improvement(s). The verbal warning shall not include incidents or deficiencies that were not discussed and identified in the Step 1 level. Documentation of the verbal warning shall be acknowledged by the member and supervisor with copies to both and shall not be placed in the unit member's personnel file, but may be used as supporting documentation in later steps.

- 17.2.3 **Step 3 – Written Warning:** If deficiencies identified in Step 2 have not improved, the unit member may receive a written warning. The supervisor shall prepare and send a written warning letter to the bargaining unit member and the CSEA Chapter President or designee. The letter shall consist of the unit member's specific deficient performance and further direction for improvements. The written warning shall not include incidents or deficiencies that were not discussed in the Step 2 level. Documentation of the written warning shall be placed in the unit member's personnel file.
- 17.2.4 **Step 4 – Letter of Reprimand:** If deficiencies identified in Step 3 have not improved, the bargaining unit member's immediate supervisor may prepare a written letter of reprimand and send the letter to the bargaining unit member and the CSEA Chapter President or designee. The letter of reprimand shall outline those specific areas or incidents of the bargaining unit member's deficient performance and a written improvement plan where appropriate for deficiencies of job performances. The letter of reprimand shall not include any incidents or deficiencies that were not included in the Step 3 level. The Letter of Reprimand shall not be placed in the unit member's personnel file until he or she has been given thirty (30) working days to respond.
- 17.2.5 (NEW LANGUAGE) **Step 5 – Suspension (5-day):** If deficiencies identified in Step 4 have not improved, the immediate supervisor may make a recommendation to the Vice Chancellor of Human Resources or designee that the unit member's deficient performance may warrant a suspension without pay for a period not to exceed five (5) days, as deemed appropriate. Copies of the recommendation shall be sent to the bargaining unit member and the CSEA Chapter President and placed in the unit members' personnel file. A notice of the suspension shall be prepared and subject to the disciplinary procedures within this Article 17.3.
- 17.2.6 (NEW LANGUAGE) **Step 6 – Further Action:** If deficiencies identified in Step 5 have not improved after the above procedures have been followed, the Vice Chancellor of Human Resources or designee may recommend further disciplinary action be taken against the bargaining unit member. Additional discipline may include: demotion, suspension, reduction in hours, transfer or reassignment without the unit member's voluntary consent, written reprimand, or termination. Copies of the recommendation shall be sent to the bargaining unit member and the CSEA Chapter President. A notice of the recommendation for further action shall be prepared and subject to the disciplinary procedures within this Article 17.3 and placed in the unit member's personnel file.

- 17.3 (NEW LANGUAGE) **Due Process:** When disciplinary action is being proposed against a bargaining unit member the district must comply with the procedural due process requirements before it may deprive a bargaining unit member his or her property right and/or interest. Due process mandates that at a minimum a bargaining unit member must be provided with the following pre-disciplinary safeguards:
- a) notice of the proposed action,
 - b) cause for the action,
 - c) a statement of the charges signed by the Vice Chancellor of Human Resources **or** designee setting forth in clear and understandable language the specific act(s), error(s), or omission(s) giving rise to the charges,
 - d) a copy of all materials including statements on which the district relied upon preparing the notice of intent to discipline,
 - e) copies of any sections of this contract, rules, regulations, or laws which are alleged to have been violated,
 - f) notice of the right to respond to the charges either verbally or in writing prior to imposed discipline, and
 - g) the right to representation at all phases of the disciplinary process.
 - h) Statement of the employee's right to hearings(s)
- 17.4 **Discovery:** The bargaining unit member and the CSEA Chapter President ~~and~~ **or** designee shall have the right to inspect and receive copies of any documents or other materials in the possession or under the control of the district which are relevant to the disciplinary action proposed, at times and places reasonable for the bargaining unit member and the district.
- 17.5 **Burden of Proof:** When disciplinary action is to be imposed on the bargaining unit member, the burden of proof shall rest with the District.
- 17.6 **Paid Administrative Leave:** The Vice Chancellor of Human Resources **or designee** may upon written notice place a bargaining unit member on paid administrative leave when investigating allegations of misconduct, wrongdoing, illegal acts, or for the safety or for the protection of the public, district, or individual. The bargaining unit member shall remain on paid administrative leave while the investigation is being conducted, a decision is rendered and subsequent action is taken. All of the aforementioned shall be conducted in a timely and expeditious manner. Paid Administrative Leave shall mean that the employee shall not report to work, but shall receive all pay and benefits and shall be accessible to the district during all scheduled working hours.
- 17.7 (NEW LANGUAGE) **Notice of Intent to Discipline:** When disciplinary action is proposed, the District shall provide the Association and bargaining unit member a “notice of proposed discipline” setting forth the cause of the action the specific acts or omissions upon which the proposed discipline is based and copies of all statements or documents upon which the district relied on assessing the degree of proposed discipline. The notice should be in compliance with the provisions of Education Code Sections 88013, 88016.

(Language Moved To 17.8) ~~In the event that the employee timely requests a pre-disciplinary meeting (Skelly), such a meeting shall be held upon at least (5) business days' notification to the employee. At such a meeting the classified employee shall be granted a reasonable opportunity, either in person or in writing, to make any representations the classified employee believes are relevant to the case and put forth any information as to why the intended action should not proceed.~~

- 17.8 (NEW LANGUAGE) ~~Notice Following the Right to a Pre-Disciplinary Meeting (Skelly Conference) Hearing: If after the Pre Disciplinary hearing, the Hearing Officer recommends to uphold or dismiss the discipline, and the District agrees to the discipline, and agrees to the discipline,~~ The "notice of proposed discipline" shall inform the unit member of his/her right to request a pre-disciplinary meeting (Skelly Conference) prior to the imposition of the discipline. In the event ~~that of the employee unit member's~~ timely request ~~of~~ a pre-disciplinary meeting (Skelly Conference), such a meeting shall be held ~~no sooner than five (5) days but within a reasonable period of time of upon at least (5) business days notification to the unit member's employee's request.~~ At such ~~a~~ meeting the ~~unit member classified employee~~ shall be granted a reasonable opportunity, either in person or in writing, to make any representations the ~~unit member classified employee~~ believes are relevant to the case and put forth any information as to why the intended action should not proceed.

~~Notice the Pre Discipline (Skelly) Hearing: If after the~~ If a pre-disciplinary conference hearing is held, ~~the Hearing Officer recommends to uphold or dismiss the discipline, and the District agrees to the discipline,~~ T the District shall provide the Association and unit member with a written notification of the Skelly Officer's recommendation response to either continue, amend, reduce, or dismiss the proposed discipline within ten (10) working days.

- 17.9 (NEW LANGUAGE) Right to an Evidentiary Hearing:
The "Notice of Proposed Discipline" shall inform the unit member of his/her right to request an evidentiary hearing after a decision is provided resulting from the pre-disciplinary meeting (Skelly Conference). Unit members' have the right, upon request, to an evidentiary hearing before the disciplinary action is final. Such request for an evidentiary hearing must be made in writing within five (5) calendar days from of receipt of this ~~the "Notice of Proposed Discipline" decision of the hearing officer (Skelly Officer)~~ and must be actually received by ~~the Office of~~ the Vice Chancellor of Human Resources or designee by no later than five (5) calendar days after notice is delivered. If ~~you the unit member~~ requests an evidentiary hearing within the five (5) day period, at such hearing ~~you the unit member~~ will be provided an opportunity to present oral and/or documentary evidence, confront and cross examine witnesses and to be represented by a representative of ~~your his/her choice. and at your own expense.~~ No evidentiary hearing shall be held unless written notice is delivered to ~~the Office of~~ the Vice Chancellor of Human Resources or designee within five (5) calendar days of the date this notice is served on ~~you. the unit member.~~

Failure to file a timely request for an evidentiary hearing waives the unit members' right to an evidentiary hearing, and no hearing will be held.

17.10 (NEW LANGUAGE) Member's Rights During an Evidentiary Hearing: ~~If after the bargaining unit member responds to the proposed discipline, and the District proceeds with the discipline, the bargaining unit member shall have the right to appeal the decision. The right to appeal must be exercised within the prescribed number of days as set for the in the Notice of Proposed Discipline.~~

- a. Evidentiary Hearing: All evidentiary hearings shall be conducted by a neutral hearing officer who shall be mutually agreed upon within twenty (20) working days by the DISTRICT and CSEA ASSOCIATION. In the event the parties are unable to reach an agreement on the hearing officer within twenty (20) working days from the date of the request ~~of for~~ the hearing, a request for a list of five (5) qualified hearing officers will be submitted to the California Mediation and Conciliation Service by the District. The Hearing Officer will be selected from the aforementioned list by alternate strike off. The first strike off will be determined by chance then each party will strike one name from the list until only one name remains. The remaining hearing officer will conduct the hearing. The hearing shall be conducted under rules of procedure established by the hearing officer which are consistent with the law. Both the DISTRICT and CSEA ASSOCIATION shall have the right to call witnesses, introduce evidence, cross examine any witness, and make motions or objections to the proceedings. All hearings shall be closed to the public unless the affected bargaining unit member specifically requests that the hearing be open to the public.
- b. Witnesses and Evidence: The hearing officer shall have the authority to compel the production of such witnesses and evidence as may be necessary to ensure that the bargaining unit member's due process rights are protected. The technical rules of evidence shall not apply. Hearsay evidence may be submitted to support direct evidence, but may not be sufficient standing alone to support a finding
- c. Following the Evidentiary Hearing, the Hearing Officer shall render his or her findings, and decision, which shall be served on both parties. The Hearing Officer's decision is a recommendation only and is not binding.
- d. Unit members have the right to an evidentiary hearing before a neutral hearing officer; however, the Governing Board's determination of the sufficiency of the cause of disciplinary action shall be conclusive.
- e. Costs: The cost of the hearing and hearing officer will be borne by the District.

17.11 (NEW LANGUAGE) **Causes for Disciplinary Action**

Cause is defined as those acts, omissions, or behaviors which are detrimental to the operations of the District and/or its major instructional, student and administrative divisions, or which impair the District's mission, purpose or objectives.

The term “cause” for disciplinary actions that occur outside the progressive discipline steps in the forgoing portions of Article 17 include:

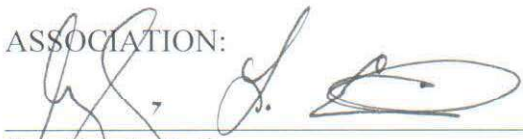
- Insubordination including the refusal to perform assigned duties or the refusal to obey a lawful directive from a supervisor
- Carelessness or negligence in the care and/or use of District property
- Discourteous offensive, or abusive conduct or language toward other employees, students, or the public
- Dishonesty
- Drinking alcoholic beverages on the job, or reporting to work while intoxicated
- Use of narcotics on the job or reporting to work under the influence. The use of drugs under and consistent with the directions of a physician which does not impair the performance of a classified employee is not prohibited
- Personal conduct of an unlawful nature or other conduct which a reasonable person would know may have adverse impact on the District
- Engaging during required work time in political activity not authorized by law
- Conviction of any felony or any crime involving moral turpitude
- Repeated unexcused absence or tardiness
- Abuse of any leaves or vacation
- Intentionally falsifying any information supplied to the District, including, but not limited to, information supplied or application forms, employment records, or any other District records
- Persistent violation or refusal to obey safety all rules and regulations made applicable to public schools by the Governing Board or by any appropriate federal, state or local governmental agency
- Offering of anything of value or offering any service in exchange for special treatment in connection with the classified employee’s assigned duties, or the accepting of value or any service in exchange for granting any special treatment to another employee or to any member of the public
- Negligent or intentional violation of any law concerning the District
- Advocacy of overthrow of federal, state or local government by force, violence or other unlawful means

This agreement is subject to all approvals required by the Association and District.

DISTRICT:



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ASSOCIATION:


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