

APPENDIX E
Cabrillo College Administrative Regulation 5530

RULES AND REGULATIONS GOVERNING DISCIPLINARY PROCEDURES FOR CLASSIFIED EMPLOYEES

The following policy is adopted by the Cabrillo College Governing Board in accordance with the requirements of the California Education Code Sections 88013 and 88016 and is referenced in Appendix E to the collective bargaining agreement between Cabrillo College Classified Employees International Union, Local 415 and Cabrillo Community College District.

Probationary Employees in the classified service shall be subject to disciplinary action, including termination, and shall not have a right to a hearing with respect thereto.

Permanent Employees in the classified service shall be subject to disciplinary action only for cause as prescribed in this policy and shall have all of the rights and protections as provided for herein, by law and, if a bargaining unit representee, the current union contract.

No employee in the classified service shall be disciplined because of political or religious creed, race, color, sex, sexual orientation, national origin or ancestry, age, mental or physical disability, medical condition, or marital status.

- I. **Disciplinary Procedure.** A permanent classified employee may be disciplined by the district superintendent for cause as provided in Paragraph II of this policy; provided, however, that such action shall not be effective until written charges are filed and served upon the employee and the Board has taken action as herein provided.

"Disciplinary action" includes dismissal, suspension, or demotion. Nothing herein shall prevent a layoff for lack of work or lack of funds.

No disciplinary action shall be taken for any cause which arose prior to the employee's becoming permanent, nor for any cause which arose more than two years preceding the date of the filing of the notice of cause unless such cause was concealed or not disclosed by such employee when it could be reasonably assumed that the employee should have disclosed the fact to the district. (E.C. Section 88013).

- II. **Cause for Disciplinary Action.** One or more of the following causes shall be grounds for disciplinary action, as defined in these rules and regulations.
- a. Incompetence or inefficiency in the performance of the duties of an assigned position.
 - b. Inability to perform assigned duties due to failure to meet or retain job qualifications (including but not limited to failure to possess required licenses, failure to pass required tests or failure to maintain standard risk insurability).

- c. Absence and/or repeated tardiness without authority or acceptable reason, or abandonment of position.
- d. Insubordination (including, but not limited to, refusal to do assigned work).
- e. Discourteous, offensive, or abusive conduct or language toward other employees, students, or the public.
- f. Dishonesty.
- g. Drinking alcoholic beverages while on duty or in such close time proximity thereto as to cause any detrimental effect upon the employee or upon employees associated with him or her, or furnishing alcoholic beverages to a student or District employee which is consumed while on District property or while performing duties on behalf of the District (e.g., while on duty on field trips).
- h. Possession or use of narcotics or a controlled substance without appropriate prescription, while on the job, or reporting to work while under the influence of a narcotic or controlled substance, or furnishing a narcotic or controlled substance to a student or District employee. This cause shall not preclude discipline for use of a prescribed narcotic or controlled substance while on the job if such use harms the safety of the individual, employees, students or District property.
- i. Violation of the requirements of Article 4 Section 4.1 of the collective bargaining agreement relating to the payment of union dues or service fees.
- j. Conviction of any crime involving moral turpitude.
- k. Arrest for a sex offense as defined in Education Code Section 87010.
- l. Conviction of a controlled substance offense as defined in Education Code Section 87011.
- m. Knowingly falsifying any information supplied to the District, including, but not limited to, information supplied on application forms, employment records, or any other District records.
- n. Carelessness or negligence in the performance of duty or in the care or use of district property.
- o. Violation of or refusal to obey the school laws of the state rules and regulations of the district.
- p. A physical or mental disability which precludes the employee from the satisfactory performance of his or her duties and responsibilities as determined by competent medical authority with due regard for applicable state and federal disability laws.

- q. Engaging in political activity during assigned hours of employment.
- r. Offering anything of value or offering any service in exchange for special treatment or personal gain in connection with the employee's job or employment.
- s. Willful damage to public property or waste of public supplies or equipment.
- t. Neglect of duty.
- u. Unlawful discrimination, including harassment, on the basis of race, political or religious creed, color, national origin, ancestry, mental or physical disability, medical condition, marital status, sex, sexual orientation or age against the public, students, or other employees when acting in the capacity of a District employee.
- v. Retaliation against any District officer, employee, student or member of the public who, in good faith, reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any information relative to an actual or suspected violation of state or federal law occurring on the job or directly related thereto.

III. **Hearings**

a. **Preliminary Written Notice**

A permanent classified employee shall receive a preliminary written notice of any proposed suspension, demotion or dismissal. The written notice must contain a specific statement of charges or grounds upon which the proposed disciplinary action is based and the date the disciplinary action will be effective.

Any known written materials, reports or documentation upon which the disciplinary action is based must be attached to the preliminary written notice.

The classified employee shall have the right to respond either orally or in writing within a specified reasonable time to the Superintendent or Superintendent's designee. This response may include a request for a meeting among agreed upon interested parties. The purpose of such a meeting shall be mediatory in an effort to reach a mutually agreed to resolution prior to and without the need for formal written charges and/or hearings. This request shall not extend the specified reasonable time for the employee's response as set forth in this section. The Superintendent or designee shall consider the employee's response and recommend within five (5) days after receipt of the response or the meeting (if one is held), whichever is later, that the proposed disciplinary action either be taken or not taken.

b. **Notice of Suspension, Demotion or Dismissal**

Any permanent classified employee against whom suspension, demotion or dismissal action is initiated by the district shall be given written notice by the Superintendent or authorized representative with concurrent notice to the Union.

Notice of disciplinary action must be served on the employee in person or, in the event that is not possible, sent by certified mail to the last known address of the employee prior to the disciplinary action becoming effective. The notice shall be included in the employee's personnel file, with a copy sent to the Union, and shall include:

- (1) A statement of the nature of the disciplinary action;
- (2) The effective date of the action;
- (3) A statement of the cause thereof;
- (4) A statement, in ordinary and concise language, of the acts or omissions upon which the causes are based, including the specific rule or requisition violated, if any;
- (5) A statement advising the employee of the right to appeal the action and the right to Union representation;
- (6) A paper, the signing and filing of which with the Superintendent or authorized representative shall constitute a demand for a hearing and a denial of all charges. Failure of the employee to file a request for hearing within the time specified shall constitute a waiver of the employee's right to a hearing.

Such employee shall be given either ten (10) days notice of dismissal, suspension or demotion, or in the alternative ten (10) days compensation. Administrative leave, paid or unpaid, may be imposed (implemented), immediately, upon receipt of notice if circumstances so warrant according to the best judgment of the administrator.

c. **Conduct of the Hearing**

- (1) **Hearing Board.** The Governing Board shall determine whether any hearing will be conducted before the entire Governing Board or be submitted to advisory arbitration. If advisory arbitration is selected, an arbitrator shall be selected according to the procedure described in Article 17.2.4.1 of the Collective Bargaining Agreement between Cabrillo College Classified Employees S.E.I.U. Local 415 and Cabrillo Community College District.
- (2) **Notice of Hearing.** The Governing Board or the Hearing Board shall set the matter for hearing and give the employee at least five (5) business days notice in writing of the date and place of such hearing.
- (3) **Rights of Employee.** The employee shall attend any hearing, unless excused by the Governing Board or the Hearing Board, and shall be entitled to:
 - (i) be represented by counsel or any other person at such hearing;

- (ii) testify under oath;
- (iii) compel the attendance of any other employees of the district to testify in his/her behalf;
- (iv) 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;
- (v) impeach any witness;
- (vi) present such affidavits, exhibits and other evidence as the Hearing Board deems pertinent to the inquiry;
- (vii) argue his/her case.

The party attempting to substantiate the charges against the employee shall be entitled to the same privileges.

- IV. **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 rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence 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 action. Irrelevant and repetitious evidence shall be excluded. Oral evidence shall be taken only under oath or affirmation.
- V. **Exclusion of Witness.** The Hearing Board may in its discretion exclude witnesses not under examination, except the employee and the party attempting to substantiate the charges against the employee, 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.
- VI. **Burden of Proof.** The burden of proof shall be upon the party attempting to substantiate the charges.
- VII. **Findings and Decision.** 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, 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 read the record of the hearing; if it declines to accept such findings and conclusions, it must read 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 promptly to the employee and his/her counsel or representative. Except for the correction of clerical error, such decision shall be final and conclusive.

- VIII. **Report of Hearings.** Hearings may be conducted without a stenographic reporter or phonographic recording machine unless the employee requests in writing, at least one 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 authorized representative, or provide his/her own recorder or recording machine.
- IX. **Transcripts of Hearings.** Transcripts of hearings 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 employee in charge of business affairs of the district, such cost not to exceed the actual cost of preparing such transcript. When transcripts are provided by an independent contractor, the cost will be established by the independent contractor.
- X. **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 employee shall be deemed to have waived salary for the period of the continuance. Any request for continuance made less than 48 hours prior to the time set for the hearing will be denied unless good cause is shown for the continuance.
- XI. **Alternative Hearing.** As an alternative to the type of hearing provided for in subdivision c. above, the employee may request that the hearing to be conducted be an informal one by so stating in his/her demand for hearing. In the event the employee requests an informal hearing, the Superintendent or authorized designee shall arrange with the employee for the type of informal hearing to be conducted and the parties may agree in writing upon what person or persons shall hear the matter and how the hearing shall be conducted. In the event the parties fail to agree in writing within five (5) days after filing of the notice of demand for hearing upon who shall hear the matter and how it shall be conducted, the hearing shall be conducted as provided for in subdivision c. above. In the event the matter is informally heard as agreed upon in writing, the decision of the persons hearing the matter shall be final and conclusive, and there shall be no right of appeal by the employee to the Governing Board or to the courts unless otherwise stipulated in the written agreement to handle as an informal hearing.

Adopted: February 4, 1984

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