

Board of Trustees Agenda Item

Board Meeting Date: August 30, 2010

Title of Item:

Language Changes to the CSEA *Agreement*

Background and Analysis:

Tentative agreements to modify two CSEA articles were signed in May 2010, and recently ratified by CSEA representatives. Modifications were made to clarify language in Articles 11 and 14 of the current *Agreement* (January 1, 2010 – December 31, 2012) between Foothill-De Anza Community College District and California School Employees Association, Chapter 96, Unit A.

- Clarification of Language Changes made to the following CSEA contract articles:
 - Article 11: Hours and Overtime
 - Article 14: Disciplinary Action

Recommendation: Dorene Novotny, Vice-Chancellor of Human Resources & Equal Employment Opportunity recommends Board approval of the CSEA Clarification of Action Changes.

Submitted by:	Dorene Novotny, Vice Chancellor, Human Resources & Equal Opportunity, ext. 6211
Additional contact names:	Myisha Washington, Classification Specialist/Management Team Support, ext. 6228
Is backup provided?	Yes

Article 11
Hours and Overtime

11.1 Workweek

The workweek shall normally consist of five (5) consecutive days within any week, eight (8) hours per day or four (4) consecutive days within any week, ten (10) hours per day. Other schedules may be approved if consistent with law and approved by the employee's administrator. These include but are not limited to five (5) consecutive days within any week, nine (9) hours per four (4) days and four (4) hours on the fifth day; or eighty (80) hours worked in nine (9) consecutive days over two (2) weeks. An employee may submit to management a proposed special working schedule at any time. Such special schedules will be reviewed and may be approved by the appropriate administrator if consistent with the needs of the District.

A week shall be defined as a seven (7) day period from 12:01 a.m. Sunday through Saturday midnight. This Article shall not restrict the extension of the regular workday or workweek on an overtime basis when such is necessary to carry on the business of the District.

11.2 Workday

The workday shall be designated by the District for each position at the time of employment. Each employee shall be assigned a fixed, regular, and ascertainable minimum number of hours. The District may change the time of an employee's assignment including shift changes with appropriate notice. Shift changes will not be used as a form of discipline unless a change is imposed as a sanction via the Disciplinary Action Procedures outlined in Article 14. Changes in shift will be made in accordance with seniority as defined in Article 9. That is, when more than one employee works a shift that is to be changed, the most senior employee will have the option to retain the shift. An employee will not have a shift changed more than once a year and whenever possible shift changes will occur through mutual consent of the employee and the appropriate administrator.

By mutual agreement between the appropriate administrator and the employees assigned to swing and night shifts, these shift assignments may work the swing or day shift during all school recess periods. These temporary reassignments will have no impact on any pay differential received.

Assignments are worked within three (3) shift periods:

- Day Shift: A workday that begins at or after 4:00 a.m. and ends before 9:00 p.m.
- Swing Shift: A workday that extends beyond 9:00 p.m. but ends no later than 12:00 a.m.
- Grave Shift: A workday that extends beyond 12:00 a.m.

11.3 **Rest Periods**

In accordance with State law, the District allows a rest period of not more than fifteen (15) minutes within each four-hour period of work. Rest periods shall be taken by employees after agreement with the appropriate administrator or supervisor. Rest periods are a part of the regular workday and shall be compensated at the regular rate of pay for the employee. Rest periods may not be used to shorten the work day or to extend the lunch period.

11.4 **Lunch Periods**

When an employee has been scheduled to work six (6) hours, the employee shall be entitled to an uninterrupted lunch period. The lunch period shall be scheduled at or about mid-point of each work shift. In no instance will the lunch period be shorter than thirty (30) minutes, nor will it be a part of the eight-hour working day, except during the swing and graveyard shifts. Lunch periods may not be used to shorten the work day.

11.5 **Time Report**

Each employee must complete and sign a monthly time report, showing total hours worked, overtime hours worked each day, and the hours and reason for any absence. Failure to complete the time report correctly or to submit it on time may result in pay adjustments on the subsequent payroll.

The appropriate administrator or supervisor is responsible for certifying records on the attendance of the employees under his or her supervision.

11.6 **Overtime**

The District is subject to Education Code Section 88027 which provides for overtime payments to all eligible employees who work over eight (8) hours in one day in a five-day work week, or over ten (10) hours in one (1) day in a four-day work week, or over 40 hours in any work week, or on the sixth and seventh consecutive days of employment.

Any employee who is authorized to work more than twelve (12) hours in any work day will receive compensation or compensatory time at a rate equivalent to two (2) times the normal hourly rate of pay for hours in excess of twelve (12) hours.

11.6.1 Prior approval to work overtime must be provided by the appropriate administrator or supervisor.

Approval will be based upon legitimate scheduling or workload problems which cannot be solved through reassignment or adjustment of work load and will be governed by the availability of budgeted funds.

11.6.2 An employee authorized to work more than forty (40) hours per week will receive compensation or compensatory time at a rate equivalent to one and one-half times the normal hourly rate as determined by current contract pay, except when an employee works on a holiday, in which case the employee will be paid both regular pay and pay at the overtime rate for the hours worked.

11.6.3 When the District has overtime funds and compensatory time available for overtime, an employee who has worked overtime shall have the option of time or cash compensation provided the employee requests the time option within five (5) days of earning the compensation and provided further that the employee does not have more than ninety six (96) hours (twelve (12) days) of accumulated compensatory time.

Employees with ninety six (96) or more hours of accumulated compensatory time, shall receive overtime pay unless the employee and the supervising manager mutually agree to authorize compensatory time instead.

When the District has only overtime funds or compensatory time available, the supervising manager shall determine the method of compensation for overtime worked.

Whenever compensatory time is authorized, it must be used within twelve (12) calendar months following the month in which it was reported on the monthly time report, and, if not, the employee shall receive overtime pay at the rate that was effective for the employee when the overtime was worked. Use of compensatory time must be scheduled in advance and approved by the employee's supervising manager.

11.6.4 For the purposes of determining the number of hours worked, time during which the employee is excused from work because of holidays, sick leave, vacation, compensatory time off, or other paid leave of absence shall be considered as time worked by the employee.

11.6.5 Occasionally an employee may be called back for work to accommodate a special need. In such case, travel time to and from home will be counted as time worked. In order to make the disturbance of normal time off worthwhile, the pay for combined work and travel time shall be for a minimum of four (4) hours.

11.6.6 Overtime shall be distributed among qualified employees in order that opportunities to earn extra pay will be equitably shared and in order that overtime work will not become the burden of a small percentage of qualified employees. Overtime shall be assigned to the shop that normally performs the work.

- 11.6.7 An overtime roster shall be established and posted for each shop in order of seniority and overtime shall be distributed on a rotating basis beginning with the most senior worker.

The distribution of overtime per the roster does not apply to overtime which is the continuation of an employee's normal workday or a special project initiated during an employee's normal workday but which extends beyond the normal work schedule over a period of time.

An employee can voluntarily opt out of the general overtime distribution by indicating his/her desire to be removed from the roster. A district form will be provided for the employee to sign. The employee may request to be added back to the roster at any time by completing a new form. The request will be processed and the employee added back to the roster within ten (10) working days.

- 11.6.8 Employees who are assigned additional work beyond their normal duties and who are unable to complete their assignments due to increased workload (as a result of layoff or reorganization) shall not be subject to discipline for refusal to work beyond a forty (40) hour work week except that overtime may be required as described in this article.

11.7 **Standby Time**

Standby time shall be considered as regular hours worked and shall be compensated on a straight time or overtime basis as are other hours worked under this *Agreement*. Employees may be compensated for standby time only if the appropriate administrator or supervisor has in advance, required the employee to be "on call."

11.8 **Consideration of Rest Periods**

An employee who has not had a reasonable period of rest because he or she responded to emergency situations during hours which he or she would not normally be working shall be deemed excused from reporting to work at his or her normal start time. He or she may use accrued compensatory time or unpaid leave for all or part of the following day.

11.9 **Adjustment of Assigned Time**

An employee in the bargaining unit who is required to work an average of thirty (30) minutes or more per day in excess of his or her regular part-time assignment for a period of twenty (20) consecutive working days or more shall have his or her regular assignment adjusted upward to reflect the longer hours, effective with the next pay period.

11.10 **Reporting of Absence**

11.10.1 **Employee Responsibility**

An employee is expected to report on time for the work assignment each day. If for any reason it is not possible to report to work, the employee shall inform his or her administrator or supervisor of this fact as soon as possible prior to the start of the scheduled work time but not later than one hour after the start of the shift unless an emergency situation requires more time.

In all other cases, the employee must obtain the approval in advance of any absence unless the necessity for the absence cannot reasonably be anticipated in advance.

An employee who is absent because of illness must keep the appropriate administrator informed as to when he/she expects to return to work. Per Article 8.1 of the *Agreement*, a medical report outlining the nature of the problem and probable date of full recovery may be required.

11.10.2 **Abandonment of Position**

If an employee is absent for three (3) working days without leave or without having notified his or her appropriate administrator or supervisor, the absence will be an automatic resignation from the District. An employee may request reinstatement from such a resignation. If the District has given the employee written notice of the automatic resignation, any request for reinstatement must be filed with the Director of Human Resources within fifteen (15) days of the notice. Reinstatement may be granted only if the employee makes a satisfactory explanation of the cause for his or her absence and for the failure to notify his or her immediate supervisor. Reinstatement will be determined by the appropriate administrator in consultation with the Director of Human Resources.

11.11 **Cellular Phone use after Normal Working Hours**

Carrying a cellular phone after normal working hours shall be entirely voluntary. Employees will not be disciplined for failure to respond to a cellular phone call after they have left for the workday unless as noted in Section 11.7 of this Article they have been notified in advance to be “on call”.

Article 14

Disciplinary Action

Progressive discipline is intended to provide graduated methods and procedures that communicate to an employee work performance and conduct concerns. The primary focus of progressive discipline is to provide an opportunity for the employee to improve or correct a deficiency.

14.1 The Disciplinary Action Procedures for Classified Employees set forth in this article shall be the exclusive means by which permanent classified employees in the bargaining unit may be involuntarily suspended without pay, demoted or dismissed for cause.

14.2 Prior to any conference meeting where employee performance is to be discussed or when disciplinary action, is to be imposed or proposed the employee will be advised that he or she may contact CSEA Chapter 96.

14.3 **Progressive Discipline**

The District intends to use progressive discipline, unless the circumstances are so severe that an escalation of discipline is necessary.

14.3.1 Warnings: Except in those situations where discipline is justified under the provisions of the *Agreement*, an employee shall first be counseled by the appropriate administrator. The appropriate administrator will explain the problem orally, and where appropriate, shall give suggestions for improvement.

14.3.2 Written Reprimand: The appropriate administrator will present a copy of any written reprimand to the employee in person. The employee may request a union steward or officer to be present and assist in any response. Written reprimands are not grievable, but the employee may include a written response that will be attached to the reprimand.

14.3.3 Suspension: the temporary removal from the paid employment of the District for a specified period of time. During the unpaid time, health benefits shall continue.

14.3.4 Involuntary Demotion: the placement of an employee in a lower classification. Demotion may be an alternative to suspension.

14.3.5 Dismissal: the termination of employment of the worker.

14.4 **Definitions**

Unless the context requires otherwise, the following definitions shall govern the construction of these procedures:

- 14.4.1 "Chancellor" means the Chancellor of the Foothill-De Anza Community College District or such persons as the Chancellor may designate to act for the Chancellor.
- 14.4.2 "Disciplinary Action" means any action to suspend, demote or dismiss an employee for cause. Disciplinary action does not include termination during probation.
- 14.4.3 "District" means the Foothill-De Anza Community College District, its Board of Trustees, or any management employee of the Board who has authority to act on behalf of the District.
- 14.4.4 "Employee" means any classified employee in the bargaining unit.
- 14.4.5 "To file" means to deliver either personally or by certified mail, return receipt requested. A document is "filed" on the day it is received.
- 14.4.6 "Hearing record" or "record" means all of the documents and materials that are a part of the disciplinary action proceeding, including, but not limited to: the Notice of Discipline; the employee's response to the Notice, if any; all of the evidence introduced at the hearing; the tape recording of the hearing; and the transcript of the hearing, if any.
- 14.4.7 "Notice" means Notice of Discipline.
- 14.4.8 "Skelly Officer" means a management employee, not a party to the disciplinary action, designated by the Chancellor to receive and evaluate an employee's response to the Notice, if any, prior to the effective date of the discipline.
- 14.4.9 "Shall" is mandatory; "may" is permissive.
- 14.4.10 "Working day" means any day during which the central administrative offices of the District are open for business.

14.5 **Cause**

Any employee in the bargaining unit may be suspended, demoted or dismissed for any of the following causes:

- 14.5.1 Incompetence;
- 14.5.2 Failure or refusal to perform the normal and reasonable duties of the position;
- 14.5.3 Insubordination;
- 14.5.4 Willful damage of District property or waste of District property;

- 14.5.5 Use of District time, facilities, equipment or supplies for private gain or advantage;
- 14.5.6 Dishonesty;
- 14.5.7 Duplication of any key to a District facility without proper authorization;
- 14.5.8 Participation in any activity or enterprise, or acceptance of any employment that is clearly inconsistent, incompatible, in conflict with the duties of the position;
- 14.5.9 Conviction of a misdemeanor involving moral turpitude or conviction of a felony;
- 14.5.10 Discourteous treatment of, or abusive conduct towards, students, the public or other employees;
- 14.5.11 Possession of alcoholic beverages while on duty and/or intoxication while on duty;
- 14.5.12 Possession on District premises of any narcotic, restricted dangerous drug or other substance regulated by the California Uniform Controlled Substances Act unless such possession is under a valid written prescription;
- 14.5.13 Excessive absenteeism or tardiness;
- 14.5.14 Carelessness or negligence in performance of duties, including sleeping while on duty;
- 14.5.15 Failure to observe safe practices, including:
 - 14.5.15.1 Failure to attend mandatory training regarding safety practices and procedures;
 - 14.5.15.2 Failure to comply with safe practices and procedures proscribed by safety training or other mandatory requirements;
 - 14.5.15.3 Failure to wear or use personal protection equipment provided by the District;
 - 14.5.15.4 Failure to promptly report accidents which result in the damage to persons or vehicles or equipment.
- 14.5.16 Failure to possess or keep in effect any license, certificate or other similar requirement specified in the law or the employee's class specification or otherwise necessary for the employee to perform the duties of the position.

14.5.17 For employees who drive a vehicle in the regular course of their employment:

- 14.5.17.1 Failure to possess or maintain a current valid driver's license;
- 14.5.17.2 Failure to report the suspension of a driver's license resulting in an inability to drive a District vehicle;
- 14.5.17.3 Failure to maintain a good driving record while operating District vehicles;
- 14.5.17.4 Failure to adhere to good driving practices which result in the damage to persons or property

14.5.18 Sexual harassment of other employees or students;

14.6 **Time Limit**

The District shall not initiate any disciplinary action for any cause alleged to have arisen prior to the employee becoming permanent nor for any cause alleged to have arisen more than two (2) years preceding the date that the District files the notice of disciplinary action. If the cause for discipline was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the District, the period of time preceding the date of the filing of the notice of disciplinary action shall be extended to the date the cause occurred.

14.7 **Notice of Intended Discipline**

14.7.1 A permanent classified employee shall receive a preliminary written notice of any proposed discipline. The written notice must contain a specific statement of charges or grounds upon which the proposed disciplinary action is based. The Notice shall be in writing and it shall set forth a statement of the cause for discipline, the events or transactions upon which the cause is based, the nature of the discipline to be imposed and its effective date, and a statement of the employee's right to appeal the action.

14.7.2 The Notice shall name a Skelly Officer for the purposes of Section 14.7.2. The notice shall also specify a date for the Skelly conference or written response referred to in Section 14.7.2.

14.7.3 A copy of these procedures shall be attached to the Notice.

14.7.4 **Service of Notice--Response and Review Period--Effective Date of Discipline**

14.7.4.1 The Notice of Intended Discipline shall be served upon the employee either in person or by certified mail at least seven (7) working days

prior to the effective date of the sanction. A copy of the Notice shall be sent to CSEA Chapter 96. However, inadvertent failure to comply with this requirement shall not constitute reason to affect ultimate disciplinary action, if any.

- 14.7.4.2 At any time prior to the effective date of the discipline, the employee or his or her representative may examine the material upon which the discipline is based.
- 14.7.4.3 The employee may request a Skelly-conference before the Skelly Officer prior to any disciplinary action being taken. In the alternative, the employee may respond in writing. Any writing must be submitted to the Skelly Officer named in the Notice of Intended Discipline by the date specified in the Notice.
- 14.7.4.4 If, after receiving and evaluating the employee's response the Skelly Officer believes modifications to the Notice are necessary; he or she shall make any recommendations to the Chancellor that is appropriate.
- 14.7.4.5 After receiving the recommendations of the Skelly Officer, the Chancellor shall serve the employee with the Notice of Discipline. The Notice will include any modifications to the Notice of Intended Discipline.

14.8 **Request for Hearing**

The employee may request a hearing on the charges. The worker's request must be in writing, and must be mailed or delivered to the Chancellor within seven (7) working days after service of the Notice of Intended Discipline and Statement of Charges. A card shall be provided to the employee with the statement of charges, the signing of which shall constitute a demand for a hearing and denial of all charges. Failure to request a hearing within seven (7) working days of service of the Notice of Discipline shall be a waiver of a right to the hearing.

14.9 **Formal Hearing Suspension, Demotions or Dismissal**

- 14.9.1 If the employee elects a formal hearing, the Board shall designate a Hearing Officer as its authorized representative to hear the case.

The hearing shall be held within a reasonable period of time.

14.9.2 **Access to Material**

- 14.9.2.1 The employee, or the employee's representative, may inspect any documents in the possession of the District which may be used to

support the charges and/or are part of the employee's personnel file. The employee or the employee's representative may also interview other employees of the District who have knowledge of the acts or omissions upon which the disciplinary action was based.

14.9.2.2 Not later than the commencement of the presentation of evidence at the hearing, the employee and the Disciplinary Officer shall exchange the names of the witnesses they reasonably expect to call.

14.9.3 The employee may be represented at the hearing by a representative of his or her choice. If the representative or any witnesses required are employees of the District, they shall be released from duty to testify or represent with no loss of pay or benefits.

14.9.4 The District shall arrange for the making of an audiotape of the hearing. Following the completion of the hearing, the employee may purchase a copy of the tape at cost.

14.9.5 The employee, the Hearing Officer or both may have a court reporter present to record the hearing; provided, however that if the court reporter's notes are transcribed the other party may purchase a copy of the transcript at cost.

14.10 **Confidentiality**

The evidence, proceedings, and conduct of the hearing shall remain confidential and shall not be made public by the District, by any of the participants at the hearing or by any person attending the hearing, except as any of the foregoing may be filed in court or introduced as evidence in an administrative or court proceeding brought to review an action taken pursuant to these procedures. In the event such matters do become public, however, such public statements as are appropriate may be made.

This policy of confidentiality shall not preclude discussion of the case with others as necessary to prepare for the hearing, nor shall it preclude the District from taking any action following appropriate procedures against any person or entity on the basis of evidence developed at the hearing.

14.11 **Results of the Formal Hearing**

The Board will make a final decision at a board meeting following receipt of the Hearing officer recommendation. The employee and CSEA will be advised immediately of that decision in writing.

14.12 **Immediate Suspension**

An employee may be immediately suspended with pay under circumstances in which retention of the employee in the job would potentially cause harm to students, employees, public property or any other persons, and where the protection of lives becomes a factor.

14.12.1 Upon the imposition of the immediate suspension, the employee shall be given verbal notification to go home or to stay home. CSEA will be informed of the notification to the employee. The verbal notification shall be followed by an immediate written notice as stated in Section 14.8 of this Article.

14.12.2 Such suspension shall be with pay until the employee has been given the opportunity to meet with the Chancellor or his/her designee, who shall explain the reasons for the suspension. At such meeting, the employee may state, orally or in writing, his/her side of the matter. If the employee's statement is in writing, the District shall enter such statement in to the employee's personnel file, along with the District's notice of suspension and accompanying reasons therefore. Thereafter, whether or not the employee's emergency suspension continues, and whether or not, if it continues, it shall be with pay or without pay, shall be decided by the Chancellor or his/her designee.

14.12.3 In addition to any other remedy or sanction provided for herein, the Chancellor may, under circumstances that render it lawful, notify any employee who has willfully disrupted the orderly operation of the District or any of its facilities that the employee may not remain on any campus or other facility of the District. In such event the Chancellor shall adhere to the requirements of, and the employee shall be accorded the rights prescribed in, Penal Code Section 626.4.

14.13 **Administrative Leave**

14.13.1 Notwithstanding any other provision of this article, an employee may be immediately placed on paid administrative leave pending investigation of incidents and/or pending a hearing for any cause listed in this article.

14.13.2 If the incidents giving rise to the administrative leave are not documented in writing, in the employee's personnel file, including the fact that the employee was placed on such leave, neither the incidents nor the fact of such leave may be later used in any disciplinary action against the employee.

14.13.3 The employee shall be supplied with a copy of any such written documentation prior to its placement in his/her personnel file and has the right to respond to the contents of the documentation within ten (10) working days. Any such response shall be attached to and made a permanent part of the documentation.

**VOLUNTARY REQUEST TO BE REMOVED FROM THE
GENERAL OVERTIME ROSTER**

In accordance with Article 11 of the *Agreement* between the Foothill-De Anza Community College District and CSEA, Chapter 96, Unit A, I voluntarily request to be removed from the General Overtime Roster.

Employee:
(Print Name)

Effective Date:

Signature:

In accordance with Article 11 of the *Agreement* between the Foothill-De Anza Community College District and CSEA, Chapter 96, Unit A, I voluntarily request to be returned to the General Overtime Roster.

(Must be submitted 10 days in advance)

Employee:
(Print Name)

Effective Date:
(10 Days in advance)

Signature:

Appropriate Administrator

Administrator:
(Print Name)

Date:

Signature:
