

Carpinteria Unified School District * CLASSIFIED Unit

STATEMENT OF ALLEGED GRIEVANCE: LEVEL II

Name of Grievant:	Submitted by CAUSE, on behalf of impacted CLASSIFIED Unit Members entitled to the provisions in the CLASSIFIED CBA		
Date:	July 25, 2020	District:	CUSD

Cite contract section alleged to have been violated:

Including, but not limited to...

*** ARTICLE 10. EVALUATION OF EMPLOYEE PERFORMANCE ***

10.1 The District shall provide for at least an annual evaluation of all permanent employees in the District in achieving the standard of work performance required. Employees who receive not effective ratings on their Classified Employee Performance Appraisal (CEPA) must be provided prior written notice of the performance problem. The notice must specify the improvement (areas), linked to the CEPA. If subsequently, the CEPA shows a “not effective” rating for the improvement area(s) specified in the prior written notice, the CEPA will include the following: (1) specific improvement needed; (2) the specific assistance/training that has been and/or will be provided to help the employee become effective,” and; (3) a reasonable time frame for the employee to become “effective.” The time frame will also specify a series of “feedback” meetings; so that the employee can understand his/her progress toward the specified improvement deadline. Written notice previously provided will be attached to the CEPA. If the identified problem is corrected, the Supervisor shall note the improvement and attach it to the CEPA. The CEPA shall be forwarded to Human Resources by the supervisor.

10.2 Each employee shall be given a copy of the evaluation form prepared by his/her supervisor. Copies of these reports shall be available only to the supervisor, the Assistant Superintendent-Business Services, the Personnel Department, the Superintendent, and the Board of Education and other members of the District management team.

10.3 On or before a probationary employee completes his or her probationary period (130 working days), the

employee shall receive at least one written evaluation.

10.4 Permanent employees shall be evaluated at least once a year by the end of the school year for 10-month employees and by the end of the last work day in June for 11-month and 12-month employees, and at other times as the supervisor, the Assistant Superintendent Business Services or the Superintendent may require evaluation of an individual, a class or all employees.

10.5 A permanent employee in the classified service who vacates a position to accept a probationary promotion to a class in a higher level and who is rejected during the probationary period shall be eligible for reinstatement to a vacant position in the class or position unless the reasons for which he/she was terminated from the promotional position were such as to constitute cause for dismissal.

10.6 The District may fill behind a promoted employee with a substitute. The District may at its option shorten the promotional probationary period from the standard 60 calendar days. Should the District determine the employee has been unsuccessful the employee may elect to return to the prior classification.

...and...

*** ARTICLE 3. GRIEVANCE PROCEDURES ***

3.1 The following definitions shall apply to the processing of grievances:

3.1.1 A “grievance” is defined as a statement by an employee covered hereby, or CAUSE, that the District has violated an express term of this Agreement and that by reason of such violation his or her rights have been adversely affected. Actions to challenge or change the policies of the District as set forth in the rules and regulations or administrative regulations and procedures must be undertaken under separate legal processes. Other matters for which a specific method of review is provided by law, by the rules and regulations of the District’s board of trustees or by the administrative regulations and procedures of this District are not within the scope of this procedure.

3.1.2 A “day” is a day in which the central administrative office of the District is open for business.

3.1.3 The “immediate supervisor” is the lowest level supervisor having immediate jurisdiction over the grievant who has been designated by the District to adjust grievances.

3.2 By this grievance procedure, the parties intend to provide, at the lowest administrative level, a means by which a grievance may be resolved in an equitable, efficient manner in an atmosphere of courtesy and cooperation.

3.3 The parties hereto shall make an earnest effort to settle grievances promptly through the steps listed below:

3.3.1 Step One: The grievant shall orally present the alleged grievance to his/her immediate supervisor, with or without the CAUSE representative being present.

3.3.2 Step Two: If the grievance is not settled in Step One, the grievance shall be submitted in writing within twenty (20) days after the employee knew, or reasonably should have known, of the occurrence of the facts on which the grievance is based. Failure to file within this time waives the grievance for all purposes. The grievance may be filed by either the grievant and/or CAUSE representative to the grievant's immediate supervisor. The immediate supervisor shall meet with the grievant and/or a CAUSE representative within five (5) working days after presentation at Step Two. A resolution of the grievance should be summarized and signed by the grievant and the immediate supervisor. If the grievance is not settled, the immediate supervisor's response shall be provided in writing within five (5) days of the meeting.

3.3.3. Step Three: If the grievance is not settled in Step Two, the employee may appeal the grievance to the Superintendent or his/her designee within ten (10) working days after the termination of Step Two. The District Superintendent or his/her designee shall meet, within five (5) working days after the filing of such appeal,

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with the grievant, and/or a CAUSE representative. A decision shall be rendered by the District Superintendent or his/her designee within five (5) working days from the date of such meeting.

3.3.4 Step Four – Mediation. If the grievance is not settled in Step Three or a decision not received within five (5) working days from the Superintendent or designee, CAUSE or the District, (after advising the other party), may initiate mediation. If neither the District nor CAUSE initiates mediation, the grievance shall be continued at the arbitration stage of this process. Either the District or CAUSE may contact the State Mediation and Conciliation Service to schedule a date as soon as calendars can be coordinated. Both the District and CAUSE agree to participate in the mediation process in good faith and to utilize the Interest Based Conflict Resolution Process to seek options that meet the interests of both the District and the grievant.

3.3.5 Step Five – Arbitration: If within a period of ten (10) days after receipt of the decision of the appropriate

administrator, the grievant is not satisfied with the decision rendered at Step Three or Four, and wishes to appeal the grievance further, he/she may, with the approval of CAUSE, submit in writing, to the Superintendent, an appeal for Arbitration. It is expressly understood that the only matters, that are subject to Arbitration, are grievances as defined in Section 3.1.1, which were processed and handled in accordance with the limitations and procedures of this Article. Processing and discussing the merits of an alleged grievance by the District shall not constitute a waiver by the District of a defense that the dispute is not grievable.

Arbitrator – If CAUSE and the Superintendent or designee fail to agree on the choice of an Arbitrator within five (5) days, the California State Conciliation Service or the American Arbitration Association will be requested to supply a list of seven (7) names. Each party will alternately strike from the list until only one name remains. The order of striking will be determined by flip of a coin.

It shall be the function of the Arbitrator to decide whether there has been a violation of the Agreement, and provide remedy if there has been a violation. The Arbitrator shall be subject to the following limitations:

- (1) The Arbitrator shall have neither power nor authority to add to, subtract from, disregard, alter, or modify any of the terms of this Agreement or the written policies, rules, regulations or procedures of the District.
- (2) The Arbitrator shall have neither power nor authority to establish or change the structure of the salary schedule or Responsibility Levels, or hourly rates of pay.

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(3) The Arbitrator shall have neither power nor authority to make any decisions that require the commission of an act prohibited by law or which violates the terms of this Agreement.

(4) All costs for the services of the Arbitrator, including, but not limited to, per diem expenses, his/her travel and subsistence expenses, costs of any hearing room and recording and preparation and typing of any reports shall be borne equally by the District and CAUSE. All other expenses shall be borne by the parties incurring them and neither party shall be responsible for the expenses of the witnesses called by the other.

(5) Either party may arrange for a reporter to record the hearing. The cost of service and the expense of such report shall be shared equally.

- (6) If the parties cannot agree upon a submission agreement, the Arbitrator shall determine the issues by referring to the written grievance and the answers thereto at each step.
- (7) The decision of the Arbitrator will be submitted to the District and CAUSE and it will be binding upon the parties to this Agreement.

The Arbitrator shall have no power to render a decision on any grievance occurring before or after the term of this Agreement.

- 3.4 The written grievance shall state the following information at a minimum: the exact nature of the grievance, the act or acts complained of and when they occurred, the identity of the grievant or grievants, the specific section or provisions of this Agreement which the grievant or grievants claim the District has violated, and the remedy sought.
- 3.5 If a grievance is not processed by the employee in accordance with the time limits set forth in this Article, it shall be waived for all purposes and shall be considered settled. If the District fails to respond to the grievance in a timely manner at any step, the grievant may proceed to the next step.
- 3.6 The grievant shall be entitled upon request to representation by CAUSE at all grievance meetings beyond Step One. In situations where CAUSE has not been invited to represent the employee, the District shall not agree to a final resolution of the grievance until CAUSE has received a copy of the grievance and the proposed settlement and has been given the opportunity to file a response to the matter.
- 3.7 Waiver. The grievant or CAUSE and Superintendent/designee may mutually agree in writing to waive any step in this grievance procedure.
- 3.8 All documents dealing with this processing of a grievance shall be filed separately from the personnel files of the participants.

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Background Statement:

On July 2, 2020, the Union submitted the following inquiry, in an effort to resolve the concerns stated therein. The inquiry has been included directly below. It demonstrates the Union's effort to informally resolve the evaluation concerns brought to the Union by CLASSIFIED unit members. It represents the Union's good faith effort to better understand the District's actions, in hopes that the District could provide a legitimate contractual rationale for the concerns contained therein.

BEGIN original inquiry letter: Submitted July 2, 2020

Information Request * CAUSE * CFT # 2216
Carpinteria Association of Unified School Employees

7/1/2020

Superintendent Diane Rigby, Assistant Superintendent Maureen Fitzgerald, & Human Resource Director Diana Zapata
Carpinteria Unified School District
1400 Linden Ave
Carpinteria Ca 93013

Dear Ms. Rigby, Ms. Fitzgerald, & Ms. Zapata:

The Federation CAUSE #2216 requests the following information which is necessary and relevant to represent our members under EERA:

After conducting research into concerns associated with the frequency, process, and timelines associated with 2019-20 Classified evaluations (*as per Article 3 of the Classified CBA*) CAUSE leadership has been advised that several contractual violations appear to have occurred.

Whereas, 10.2 Each employee shall be given a copy of the evaluation form prepared by his/her supervisor. Copies of these reports shall be available only to the supervisor, the Assistant Superintendent-Business Services, the Personnel Department, the Superintendent, and the Board of Education and other members of the District management team.

Whereas, 10.4 Permanent employees shall be evaluated at least once a year by the end of the school year for 10-month employees and by the end of the last work day in June for 11-month and 12-month employees, and at other times as the supervisor, the Assistant Superintendent Business Services or the Superintendent may require evaluation of an individual, a class or all employees.

Whereas, 10.1 The District shall provide for at least an annual evaluation of all permanent employees in the District in achieving the standard of work performance required. Employees who receive not effective ratings on their Classified Employee Performance Appraisal (CEPA) must be provided prior written notice of the performance problem.

The notice must specify the improvement (areas), linked to the CEPA. If subsequently, the CEPA shows a “not effective” rating for the improvement area(s) specified in the prior written notice, the CEPA will include the following: (1) specific improvement needed; (2) the specific assistance/training that has been and/or will be provided to help the employee become effective,” and; (3) a reasonable time frame for the employee to become “effective.” The time frame will also specify a series of “feedback” meetings; so that the employee can understand his/her progress toward the specified improvement deadline. Written notice previously provided will be attached to the CEPA. If the identified problem is corrected, the Supervisor shall note the improvement and attach it to the CEPA. The CEPA shall be forwarded to Human Resources by the supervisor.

Whereas, the Union is compelled to remind the District of previous serious shortcomings in 2017-2018, while the responsibility for classified evaluations fell under Ms. Fitzgerald’s direct supervision. The Union needn’t remind the District of the harm and liabilities associated with errors in this area of administrative responsibility.

Whereas, CAUSE Leadership expects that the District, under the leadership of Superintendent Rigby, has learned from those significant errors of the past (*referenced above*).

Whereas, the Classified CBA contains the single collectively bargained summative evaluation document; APPENDIX D (page 54).

The Carpinteria Association of United School Employees has every hope that the data (requested below) will allow CAUSE to reconcile its concerns regarding contractual violations associated with employee evaluations.

The evaluation concerns, potentially violations as we understand them, currently fall into three categories:

1. the recording of evaluation marks/comments that failed to meet the criteria and provisions in Article 3.
2. evaluations processes that do not resemble the provisions and timelines in Article 3
3. evaluations that should have been conducted, but appear not to have been either completed and/or conducted at all.

In light of these concerns, the union now requests the following data and information.

I. Each "Summative Evaluation Form" for any Classified employee under the supervisory responsibility of either:

(A) Assistant Superintendent Fitzgerald (*Or any District administrators under her supervision; to include but not be limited to the Transportation Director, Maintenance & Custodial Director, Food-Service Director, Director of Pupil Services, Grounds, Etc.*)

...or...

(B) Human Resource Director Zapata (*Or any District administrators under her supervision; to include but not be limited to the Transportation Director, Maintenance & Custodial Director, Food-Service Director, Director of Pupil Services, Grounds, Etc.*)

II. To include:

a. ... the total number of Classified unit-**members entitled to the evaluation process in 2018-19 & 2019-20 school year** (*i.e. as defined by Article 3 of the Classified CBA*).

b. ... the total number of Classified unit-members **who participated in the formal evaluation process during the 2018-19 & 2019-20 school year** (*as defined by Article 3 of the Classified CBA*).

c. ... the total number of Classified unit-members **who completed the evaluation process, including the summative evaluation document (Appendix D of the Classified CBA) during the 2018-10 & 2019-2020 school year** (*i.e. as per Article 3 of the Classified CBA*).

d. ... the total number of employees **who participated in a portion of the evaluation process, but did not complete the evaluation process during the 2018-19 & 2019-2020 school year.** (*i.e. as per Article 3 of the Classified CBA*).

e. ... the total number of employees **who received "Not Effective" evaluation marks during the 2019-20 school year.** (*i.e. on Appendix D of the Classified CBA*).

Union Leadership appreciates the District's effort to support CAUSE as we work together to ensure that said violations did not occur and can be reconciled with the Districts data. Please provide this information as soon as possible, but prior to the first School Board meeting July 14, 2020. Electronic delivery of information can be submitted directly to myself; jhotchner@cusd.net.

Respectfully Submitted,

j. Hotchner * CAUSE President * CFT # 2216



email addresses: jhotchner@cusd.net / cause.cusd@gmail.com

END original inquiry letter: Submitted July 2, 2020

As contained in the inquiry, the Union had requested specific documentation that may have resolved the Union's concerns and permitted the bargaining partners to clarify matters informally. But the District did not respond.

On July 16, 2020, with the 20-day window for informally resolving these matters in mind (as per, CLASSIFIED AGREEMENT – Article 3.3.2 Step 2), the Union then sent a second inquiry to the CUSD Superintendent. In it, CAUSE continued its efforts to better understand the outstanding evaluation concerns. This second inquiry has been included directly below. For the District's convenience, the Union also included its original advisory & inquiry (*dated June 2, 2020 & included just below*) with the July 16, 2020 correspondence.

BEGIN 2nd- inquiry letter: Submitted July 16, 2020

Dear Superintendent Rigby:

Please review the FORWARDED email & attachment below.

CAUSE would prefer to examine the District's understanding of this issue, before being forced to initiate a more legalistic approach. That said, the District's intentional silence and dismissal of our inquiry will only compel CAUSE to follow the contractual guidelines and provisions governing these matters.

Our members rely on the Union to ensure that they are afforded the contractual relief entitled. As you know, CAUSE leadership takes these responsibilities very seriously. Absent a response from the District, the Union will be compelled to file a grievance to protect the rights of the CLASSIFIED staff members impacted by the District's actions.

We hope that District leadership seeks the most productive approach, as CAUSE has provided the CUSD every opportunity to resolve this matter at the most informal level possible. If the District is preparing a response, please let Union Leadership know immediately.

As of this date, the CUSD has not acknowledged our request.

Respectfully,

~ j. Hotchner

As per CLASSIFIED CBA:

1. 3.2 By this grievance procedure, the parties intend to provide, at the lowest administrative level, a means by which a grievance may be resolved in an equitable, efficient manner in an atmosphere of courtesy and cooperation.

On Thu, Jul 2, 2020 at 10:18 PM C.A.U.S.E. - CUSD <jhotchner@cusd.net> wrote:

CAUSE ADVISORY
CLASSIFIED Evaluation Concerns
2018-19 & 2019-20 Instructional Years

Attention, All CLASSIFIED Employees,

BACKGROUND:

CAUSE considers the yearly evaluation process a critical component of any employee's experience with the CUSD, because positive evaluations serve to formally record an employee's high quality performance. For this reason, Union Leadership welcomes the evaluation process. We consider it one of the, if not the single most important responsibility of District administration.

The evaluation process is designed to be a GROWTH ORIENTED process. It is not designed for evaluators to sit quietly on concerns throughout the year, and then play "**Gotcha'!**" at the end of the evaluation cycle by recording previously unaddressed concerns. The bargaining partners designed the evaluation process to:

- * provide administrative opportunities to clarify the performance concern
- * help the employee better understand expectations going forward
- * and allow the employee to demonstrate improvement over time

CONCERNS:

Unfortunately, Union leadership recently learned of several CLASSIFIED evaluation concerns. These concerns, potentially violations as we understand them, currently fall into three categories:

1. ***Inappropriate/Incorrect Marks:*** the recording of evaluation marks/comments that failed to meet the criteria and provisions in Article 3.
2. ***Process Violations:*** evaluations processes that do not resemble the provisions and timelines in Article 3
3. ***Skipped Evaluations:*** annual evaluations, which should have occurred each instructional year, but were either not completed or even begun

UNION EFFORTS to RESOLVE the CONCERNS:

The above in mind, the Union has submitted an information request to District Leadership. We genuinely hope that the CUSD can reconcile the concerns/violations shared by our members. This information request provides Superintendent D. Rigby, Assistant Superintendent M. Fitzgerald, and Human Resource Director D. Zapata an opportunity to clarify the District's actions by providing data that would resolve the Union's concerns. This request has been attached, for those who wish to review our inquiry.

MOVING FORWARD:

As we provide the District a few weeks to collect and present the requested information, Union leadership will continue to maintain and collect outstanding concerns. If your experience resembles any of the 3 areas of concern (*above*), please feel free to contact us and share your experience. Although several individuals have already come forward, we fear there may be others who have been subjected to these conditions.

In Service,

~ CAUSE Leadership

END 2nd inquiry letter: Submitted July 2, 2020

Once again, the neither the Superintendent nor any District agents provided either a response to or any recognition of the Union's concerns and inquiries. It is the Union's belief that the District's lack of response serves as another contractual violation, which complicates the bargaining partners' ability to resolve the potential evaluation discrepancies CAUSE originally inquired upon.

The CUSD's inaction undermines the terms and provisions of the **Article 3: Grievance Procedures**. The provisions in said article were designed to minimize conflict and seek resolution at the most informal levels possible. Underlying the efficacy of **Article 3**, is a commitment to engaging in the grievance process with diligence and fidelity, which serves to promote a more positive relationship between employees and their supervisors, as well as reduce the bargaining partners' expenditures of both public and private monies associated with the grievance process.

The Union believes that the District, through its inaction, undermines the grievance process. The District's unwillingness to resolve disagreements in their infancy is not missed by the Union or district employees. The effect, on our members who simply wish to resolve their contractual concerns amicably, is one of confusion, intimidation, and inefficiency. Through its approach to the grievance process, the District requires the Union to expend significantly more of its treasury and resources on unnecessary steps and legal conflict. The District's approach seems a bad faith technique for discouraging if not even preventing employees from exercising their contractual rights and Union leadership from meeting its responsibilities to its unit members. Similarly, it does nothing to improve the bargaining partners relationship.

While the District seeks sympathy from the community by publicizing legal costs and blaming the Union for unnecessary legal conflict, the District simultaneously fails to engage at less formal levels in an effort to resolve disputes in their infancy. This pattern of response ensures that the smallest of disagreements and confusion have the potential to become significant legal actions and expenditures for both bargaining partners.

In absence of any response to the Union's two inquiries, and after further demonstration of the District's lack of diligence and fidelity to the grievance process, the Union is compelled to formally submit this grievance in writing at Step 2. We do so to preserve the contractual rights of our CLASSIFIED unit members; in regard to both, **Article 10: Evaluation of Employee Performance**, and, **Article 3: Grievance Procedures**.

Redress sought:

- Where the District cannot demonstrate it met its evaluation criteria, contained in **Article 10**, the District will expunge any derogatory, negative, or inaccurate language and/or marks contained in the impacted employee evaluations.
- Where the District is required to expunge derogatory, negative, or inaccurate language and/or marks contained in the impacted employee evaluations, it will reproduce updated clean copies of these employee evaluations. Impacted employees will be provided an opportunity to re-sign the amended / cleaned evaluations, and a new clean copy will be placed in their personnel file.
- Where violating evaluations exist, the violating evaluation will be permanently removed from the personnel files of impacted employees'. Evaluations that contained or reflect the District's violations will not be maintained by the CUSD. Once the process of removing any derogatory, negative, or inaccurate language and/or marks has been completed, the violating evaluations will then be destroyed.
- Where evaluations were not completed, the CUSD will complete and place a positive evaluation in the each impacted employee's personnel file; for each year an evaluation is missing.
- Where evaluations were never initiated, the CUSD will complete and place a positive evaluation in each impacted employee's personnel file.
- The CUSD will announce, to all CLASSIFIED staff, the resolutions above, and clarify how employees will participate in the process of resolving the evaluation violations in an amicable and efficient manner.
- The District will not obstruct, retaliate, or engage in any arbitrary or capricious behavior against employees who wish to resolve the violating evaluation conditions.
- The CUSD will include the Union in all communications associated with said resolution and resolution process.
- The District will seek out and act to correct any other record/s or documentation created or influenced by the violating language contained in the violating evaluations.

- The District will seek out and act to correct any other record/s or documentation created or influenced by the lack of any employee's evaluation being accurately maintained in an employee's personnel file; including but not limited to disciplinary actions taken in absence of valid and current evaluative performance records.
- By written statement, the District will clarify the evaluation process (for the current and following school year) to all CLASSIFIED employees.
- Moving forward, the District will engage in the grievance process with diligence and fidelity.
- Moving forward, the District will evaluate employees according to the timelines established in the CLASSIFIED CBA.

Signature:

A handwritten signature in blue ink, appearing to read "J. Hotchner", is written above a horizontal line.

j. Hotchner – CAUSE President – CFT # 2216
cause.cusd@gmail.com