

## **1. Mutual Respect For A Fair Investigative Process**

The parties understand and agree that the District has the authority and obligation to investigate complaints, reports and/or other credible information that a unit member has engaged in misconduct. The parties further understand and agree that unit members are entitled to be presumed innocent of wrongdoing during the investigation process and are entitled to certain protections during the investigation process.

## **2. Investigatory Meetings Defined**

An "investigatory meeting" is any formal written communication, face-to-face meeting or oral conversation between the District and a unit member in which the unit member is being asked questions regarding a complaint against them or other potential misconduct which the unit member reasonably believes could lead to corrective and/or disciplinary action.

**A. Corrective action** is counseling, a written warning, or written reprimand. Written warnings and written reprimands are considered discipline under Article 10.A of the collective bargaining agreement (CBA) and are subject to the grievance procedure.

**B. Discipline or disciplinary action** is defined as a suspension or dismissal based on a violation of law or District Policy, or pursuant to Section 87732 of the Education Code.

There are three (3) types of investigatory meetings that could lead to corrective and/or disciplinary action:

1. An investigatory meeting relating to any general complaint against a unit member; and
2. An investigatory meeting relating to a Student Grievance; and
3. An investigatory meeting relating to Discrimination or Unlawful Harassment as defined by Title 5 or relating to EEOC/DFEH/OCR complaints or lawsuits against the Faculty Member.

## **3. Non-Investigatory Interviews**

The parties understand and agree that in the day-to-day operation of the District, managers and unit members meet regularly to share information. These are not investigatory interviews. However, the parties further understand and agree that, if a manager reasonably expects that such a meeting may elicit information that warrants discipline, the manager shall notify the unit member in advance. The unit member so notified shall have the right to bring their AFT Representative to the meeting. In addition, a unit member may act independently to bring their AFT Representative to the meeting if the unit member reasonably believes that it could lead to discipline. The parties further acknowledge the need to conduct investigations in a timely manner and shall ensure interviews are not unreasonably delayed.

## **4 Information to Exclusive Representative**

A. In order for AFT to discharge its legal duty to represent members of its bargaining unit against whom complaints/allegations have been made, the District shall provide AFT information related to such complaints/allegations more completely detailed below, in the Notice of Investigation.

B. If AFT requests copies of such documents, the District shall promptly respond to AFT's request. No interview of the accused faculty member shall occur until there has been adequate time for preparation after these documents have been provided.

## **5. Notice Of Investigation**

An employee who is under investigation shall be sent an Employee Notice of Investigation, no less than five (5) business days before his/her appointment for an investigatory interview. The Employee Notice of Investigation is intended to provide employees subject to misconduct investigations with a description of the subject matter of the investigatory interview, and shall include the following:

1. The District takes a neutral stance when investigating possible misconduct and no findings of wrong doing have been made.
2. The District maintains the confidentiality of the investigation to the fullest extent possible.
3. No findings will be made prior to completion of the investigation, and the investigation will not be closed until after the scheduled date of the employee's interview.
4. The information received could lead to discipline and the employee is entitled to have representation at the meeting.
5. The investigation is confidential and the employee should refrain from discussing it with other members of the campus community while the investigation is pending except for the purpose of receiving representation during the investigation or exercising other rights as recognized under the Educational Employment Relations Act (EERA). The employee may specifically be required to refrain from discussing the nature of the investigation with witnesses where the nature of the complaint or circumstances of the investigation justify such a restriction.
6. Every effort will be made to complete the investigation within ninety (90) days of when the District first received the complaint or information triggering the investigation. Where this is not possible: the employee will receive a status update on where the District is in its investigation and when it expects to be completed; and the District and AFT will have a check-in meeting in person or by telephone;
7. The employee will receive notice of the findings of the investigation, including whether the allegations investigated were or were not sustained, and the District's determination of such findings.
8. In the event the investigation leads to disciplinary action, the employee will be afforded all the pre-discipline due process rights to which he/she is entitled. This includes providing the employee and AFT with a copy of the information relied upon to issue the charges.
9. District policy and law prohibit retaliation of any kind against anyone who has the employee believes to have provided information or otherwise cooperated in the investigation, and that such conduct constitutes an independent basis for serious discipline up to and including termination.

10. A copy of the written complaint; or, where the complaint is verbal, the following information:
- a. The name of the complainant(s), or individual(s) whose concerns caused the District to initiate an investigation.
  - b. What allegedly occurred. The employee shall be entitled to a detailed description of the subject matter or allegations of the investigation, including the incident(s) that allegedly occurred. The description shall be as detailed as possible, based on the information available at the time the Notice is given. The Notice shall be supplemented if the District learns new allegations before the respondent's interview;
  - c. Where the incident(s) allegedly occurred. The description shall be as detailed as possible, based on the information available at the time the Notice is given. The Notice shall be supplemented if the District learns new allegations before the respondent's interview; and
  - d. When the incident(s) allegedly occurred. The description shall be as detailed as possible, based on the information available at the time the Notice is given, and shall be supplemented if the District learns new allegations before the respondent's interview.

#### **6. Placement On Paid Administrative Leave Of Absence While An Investigation Is Pending**

Placement of a member on Paid Administrative Leave of Absence while an investigation into alleged misconduct is pending shall conform to Education Code 87623 and the following standards and procedures:

- A. Placement on Paid Administrative Leave of Absence while an investigation is pending constitutes a non-disciplinary action;
- B. Placement on Paid Administrative Leave of Absence shall not be automatic and it is not an action that the District takes lightly. The District will not take this step unless:
  1. The allegations, if true, indicate that the employee poses a safety threat to the employee or others; and/or
  2. The allegations, if true, involve unlawful harassment, retaliation and/or dishonesty; and/or
  3. Other extenuating circumstances with the written approval of the Chancellor, which approval will state the nature of the extenuating circumstance.
- C. The notice placing an employee on Paid Administrative Leave of Absence shall provide information about the Leave, including but not limited to:
  1. The basis or bases on which the employee is being placed on Paid Administrative Leave of Absence;
  2. That, as this investigation could lead to discipline, the employee is entitled to representation during the employee's investigatory interview;
  3. That placement on Paid Administrative Leave of Absence constitutes a directive not to attend work or perform work duties and that the employee is not to be present at work or in the work area without prior written consent.

**7. Completion Of Investigation And Notice Of Completion**

Every effort will be made to complete the investigation within ninety (90) days, and where this is not possible, the member under investigation will receive a status update on where the District is in its investigation and when it expects to be completed.

**8. Security Of Investigation Files**

In the event that an investigation does not lead to discipline, the District confirms that it is its practice, and will continue to be its practice to maintain the investigation file in a secure location, separate and apart from the employee's Personnel File. Further, access to these files shall be on a —needs to know— basis only, as determined by the Chief Human Resources Officer.

For the College:

For the Union:

*Dianna R. Gonzales*

05/10/2021

Dianna R. Gonzales  
Deputy Chancellor

Date

*Alayna Fredricks*

Alayna Fredricks (May 10, 2021 13:27 PDT)

05/10/2021

Alayna Fredricks  
Executive Director

Date