

Draft proposed District Counter to AFT for July 24, 2019 Negotiations.

[District proposed language is underlined below.]

ARTICLE XX: COMPLAINTS AGAINST A UNIT MEMBER

If a student or other person files a complaint about a unit member, the District shall notify the unit member in writing within ~~ten (5) (10)~~ working days of interviewing the unit member for an informal resolution or formal investigation.

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This notification shall include the ~~specific~~ general nature of the complaint in accordance with Education Code section 87623(a) and the District's intention to investigate.

The unit member shall have the option to provide a written response to the allegations, in addition to meeting for the investigatory interview. If the member prepares a written response, it shall be attached to the document(s) in any folder such documents are held. Further, the affected unit member may meet, with his or her Dean/Immediate Supervisor and other affected parties to attempt to settle the allegations informally if the other party agrees to an informal resolution. If the complaint leads to a misconduct investigation, the procedures and protections of Article (Investigations of Unit Members) shall apply.

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The unit member and AFT shall be notified of the District's intention to take disciplinary action and shall promptly receive copies of all materials/documents (including the investigative report or summary) utilized by management and the Governing Board as a basis for the proposed disciplinary action. This Article is subject to the limitations on producing copies of complaints as set forth in the PERB Settlement dated March 18, 2019 Case Number SF-CE-3225-E attached and incorporated herein.

Any complaint not called to the attention of the employee may not be used as the basis for any reprimand, discipline or discharge.

Article XX: INVESTIGATIONS OF UNIT MEMBERS

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 a fair~~ investigation process and are entitled to certain protections during the investigation process.

Misconduct Investigation Defined

A misconduct investigation is a District-~~led~~ investigation of a unit member into allegations that the unit member has violated District policy and/or law, based on information received from a formal or informal complaint made by an identifiable author; a report of misconduct; manager observations; or other credible sources of information.

An investigation is initiated at the point that the District determines to go beyond meeting with the accuser and the accused to interview other potential witnesses. ~~An anonymous accusation shall not form the basis for initiating an investigation.~~

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 the AFT Grievance Officer or his/her designee to the meeting. ~~In addition, a unit member may act independently to bring the appropriate AFT Grievance Officer or his/her designee to the meeting if the unit member reasonably believes that it could lead to discipline.~~

Notice of Investigation

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

- a. An introductory statement that:
 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

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investigation will not be closed until after the scheduled date of the employee's interview unless the complaint has been withdrawn;

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));
 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 in accordance with Title 5 California Code of Regulations. Where this is not possible two things will occur: 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 the AFT will have a check-in meeting in person or by telephone;
 7. The employee will receive notice of the findings of the investigation, and whether the allegations investigated were or were not sustained;
 8. In the event the investigation leads to disciplinary action, the employee will be afforded all of the pre-discipline due process rights to which he/she is entitled. This includes providing the employee, and AFT with the employee's consent, with a copy of the relevant information relied upon to issue the charges; and
 9. District policy and law prohibit retaliation of any kind against anyone 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.
- b. A summary of the subject matter of the interview including:
1. If appropriate, and at the discretion of the Vice Chancellor of Human Resources or his/her designee, the name of the complainant(s), or individual(s) whose concerns caused the District to initiate an investigation. To the extent the Collective Bargaining Agreement (CBA) provides for greater notice, the CBA prevails. This Article is subject to the limitations on producing copies of complaints as set forth in the PERB Settlement dated March 18, 2019 Case Number SF-CE-3225-E attached and incorporated herein;
 2. What allegedly occurred. The employee shall be entitled to a description of the subject matter or allegations of the investigation;
 3. When the incident(s) allegedly occurred. The notice will be as specific as possible, based on the information available at the time the Notice is given; (See Education Code section 87623(a)) and
 4. Where the incident(s) allegedly occurred. The notice will be as specific as possible, based on the information available at the time the Notice is given. (See Education Code section 87623(a))

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 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 him/herself or others;
 2. The allegations, if true, involve 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.~~ (See Education Code section 87623(b))
- c. The notice placing an employee on Paid Administrative Leave of Absence will provide information about the Leave, including but not limited to:
 1. The basis or bases on which he/she 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 his/her 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; and
 4. ~~That placement on Paid Administrative Leave of Absence does not constitute a directive to stay away from public events or public areas of campus.~~

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.