

1 COUNTER-PROPOSAL
2 FROM THE CERRITOS COMMUNITY COLLEGE DISTRICT TO THE
3 CERRITOS COLLEGE FACULTY FEDERATION, AFT Local 6215

4
5 MAY 10, 2024
6

7 This proposal from the Cerritos Community College District to the Cerritos College Faculty Federation, AFT
8 Local 6215 ("CCFF") is expressly made pursuant to the Educational Employment Relations Act and the
9 current Collective Bargaining Agreement between the parties. The following article shall be added to the
10 Collective Bargaining Agreement as set forth below:
11

12 NEW ARTICLE:

13 **DUE PROCESS Investigations and Discipline**

14
15 **42** **Application of Article: The terms of this Article are intended to ensure that the due**
16 **process rights of full-time faculty personnel are observed during pre-disciplinary**
17 **processes, including paid administrative leave and investigations. The terms of this**
18 **Article are also intended to ensure the due process rights of full-time faculty personnel**
19 **regarding the as well as the issuance of any corrective notice related to a demonstrated**
20 **failure to meet professional expectations as defined in Article 4: Assignment. that does**
21 **not involve any suspension/dismissal processes required by the California Education**
22 **Code. Suspension or dismissal of contract and regular faculty may be issued for any**
23 **cause enumerated in California Education Code section 87732, and will be conducted**
24 **in accordance with the procedures provided in the California Education Code section**
25 **87660 et seq. Nothing in this Agreement shall preclude the District from utilizing those**
26 **disciplinary procedures as provided in the Education Code.**
27

28 **42.1 Misconduct Investigations and Representation for All Unit Members**

29
30 42.4 **42.1.1 Misconduct Investigations: The parties acknowledge that the**
31 **District has the authority and/or legal duty to investigate complaints,**
32 **reports, observations and/or other credible information ~~from a source~~**
33 **identifiable by the District from an identifiable source that a unit member**
34 **has allegedly engaged in some form of misconduct, including allegations**
35 **that a full-time faculty unit member has violated applicable legal standards,**
36 **board policies, and/or administrative procedures. The District will conduct**
37 **the investigation in accordance with applicable Board Policy and**
38 **Administrative Procedures, as well as any mandatory external requirements**
39 **imposed by law, such as Title IX and/or Title 5 of the California Code of**
40 **Regulations.**

41 **[Note: Per our discussion, we seem to be in agreement that the identity of**
42 **the source is important, and which is also a factor in determining whether**
43 **the information is "credible" – the District simply wants to eliminate the**
44 **foreseeable potentiality of having to name the source(s) at the investigatory**
45 **stage in those circumstances where retaliation is contemplated (the team-**
46 **based example that was discussed).]**
47

48 **42.1.1 Notification of Misconduct Investigation: Prior to conducting**
49 **any investigatory interview or meeting with a unit member**
50 **subject to a misconduct investigation, the District must send**
51 **them an Employee Notification Packet no later than ten (10)**
52 **notice five (5) ~~business working~~ days before the member's**
53 **appointment for an investigatory interview. The District may**
54 **amend the Notice prior to the interview, which shall restart the**
55 **five (5) ~~business working~~ day period. The Notification Packet**
56 **shall include two documents: (1) the Employee Notification**

57 Form, which provides unit member the ability to opt out from
58 CCFF notification and representation (see Appendix X
59 attached to this Agreement), and (2) the Summary of Interview
60 Subject Matter, which specifically The Notice will include a
61 specific general statement of the matter to be investigated,
62 and will typically include the following information:

63 [Note: Reversion to “business” days as a more consistent
64 metric, to eliminate foreseeable confusion relating to when
65 faculty are actually scheduled; e.g. it would be M-F rather than
66 5x Mondays for a PT faculty with a Monday-only assignment.]
67

68 42.1.1.1 The name or description of the complainant(s) or
69 individual(s) whose concerns caused the District
70 to initiate an investigation

71 42.1.1.2 What allegedly occurred. The faculty member
72 shall be entitled to a description of the subject
73 matter and/or the specific alleged conduct or
74 actions at issue in the investigation

75 42.1.1.3 When the incident(s) allegedly occurred. This
76 notice shall be as specific as possible, based on
77 the information available at the time the notice is
78 given. If the District utilizes an outside independent
79 investigator, the notice shall include the identity
80 and/or means of contacting the investigator.

81 42.1.1.4 Where possible, the basic details A description
82 (where/when/how) that of the incident(s) that
83 allegedly occurred. The notice shall be as specific
84 as possible based on the information available,
85 including protective measures in place, at the time
86 the notice was given. Notice of Investigation:
87 The District may initiate an investigation at any
88 time, and must provide notice to the full-time
89 faculty member prior to any investigatory
90 interview. The District provided notice shall
91 include a statement concerning the general nature
92 of the allegations under investigation, and shall
93 allow the member an opportunity to confer with
94 their representative (if applicable) prior to the
95 interview. If the District utilizes an outside
96 independent investigator, the notice shall include
97 the identity and/or means of contacting the
98 investigator.

99
100 42.1.2 If, after interviewing the unit member, the District learns of
101 other allegations during the investigation and seeks to re-
102 interview the unit member, the unit member shall be provided
103 with a new Noticesummary of Interview Subject Matter
104 document at least five (5) business working days prior to the
105 subsequent interview.

106
107 42.1.3 If, prior to interviewing the unit member, the District learns of
108 other allegations it wishes to cover during the interview, the
109 unit member shall receive an updated Summary of Interview
110 Subject Matter document at least five (5) business days prior
111 to the interview.
112

113 42.1.4 ~~Notice of Findings Conclusion of Investigation~~: The District
114 shall make best efforts to complete the investigation within
115 the timeframe required by the type of complaint, subject to
116 any extensions/continuances required to ensure the
117 investigation is fully and fairly completed. Following
118 completion of the investigation the District shall provide a
119 unit member/respondent with a conclusion of investigation
120 notice which shall include a summary of findings from the
121 investigator/alleged policy that was violated, the name of the
122 individual(s) who completed the investigation, the name of the
123 individual(s) who filed the complaint, and a summary of
124 findings. Concurrently,

125 42.1.5 ~~Notice of a Administrative eDetermination~~: The District shall
126 provide a unit member/respondent with an administrative
127 determination as outlined in appendix XX notice and a
128 summary of findings, in addition to any administrative
129 determination and/or appeal rights to any and appeal rights,
130 when applicable, to any unit member/complainant as may be
131 required by the type of complaint.
132

133 42.2 Involuntary Paid Administrative Leave: The parties acknowledge that
134 the District may place a unit member on involuntary paid administrative
135 leave consistent with the requirements of Education Code Section 87623.
136

137 Consistent with Education Code Section 87623, placement on involuntary paid
138 administrative leave maintains all compensation and benefits to which the unit
139 member would have been entitled. It is understood that it is within the District's
140 discretion to place a unit member on involuntary paid administrative leave during
141 the pendency of an misconduct investigation, which may include circumstances in
142 which. As such, the leave shall be imposed only where the District concludes that
143 the alleged conduct includes: a) foreseeable acts of retaliation or intimidation; b)
144 acts of serious dishonesty or the destruction of property; c) allegations, which if
145 true, present a reasonably foreseeable concern for the health and safety of others;
146 d) allegations which if true present a reasonable concern that the unit member's
147 students are suffering educational harm; and/or e) allegations the nature of which
148 require the immediate preservation of physical evidence which may be
149 compromised if the unit member is not placed on leave.
150

151 During any involuntary paid administrative leave, a unit full-time faculty
152 member shall be entitled to remain in paid status with all benefits intact. In
153 most circumstances, the District will have 90 working/duty days from the
154 date the unit member is placed on involuntary-paid administrative leave to
155 either initiate disciplinary proceedings or reinstate the member. In most
156 circumstances, the District shall either initiate disciplinary proceedings or
157 reinstate the member before the member has been on involuntary
158 administrative leave for 90 working days. This period shall run
159 concurrently, and may be extended when necessary, as allowed by external
160 law and regulation with the period of time as required to complete the
161 investigation process.
162

163 42.2.1 General Notice of Leave: In most cases, the District shall
164 provide written notice at least two (2) business working days
165 prior to initiating an involuntary paid administrative leave. The
166 notice will include a statement concerning the general nature
167 of the allegation or allegations related to placement on leave.
168 The notice may be combined with, or issued separate from,

169 notice of investigation as provided under Article 42.4-2.1. The
170 notice shall may also include a non-contact directive with an
171 explanation that while paid administrative leave constitutes a
172 directive to stay away from the workplace, it does not apply
173 to the CCFF office or areas and events that are open to the
174 public. The notice may also instruct the member to remain
175 available to the District for questioning during the employee’s
176 regular hours of work.

177
178 **42.3** Notice In Emergent Circumstances: Dependent upon the circumstances, the
179 District may immediately initiate an involuntary-paid administrative leave
180 without providing notice pursuant to Article 42.53.1 if the District determines
181 that serious risk of physical danger or necessity arises from the specific
182 allegation or allegations. In these circumstances, the District shall provide
183 written notice, including a statement concerning the general nature of the
184 allegation or allegations related to placement on leave, within five (5)
185 business days of initiating the involuntary-paid administrative leave. The
186 notice shall may also include a non-contact directive and an explanation
187 that while paid administrative leave constitutes a directive to stay away from
188 the workplace, it does not apply to prevent contact or consultation with
189 CCFFthe CCFF office or areas and events that are open to the public. The
190 notice may also instruct the member to remain available to the District for
191 questioning during the employee’s regular hours of work.

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193
194 **42.4** Representation Rights: At all stages of misconduct investigation, pre-
195 disciplinary processes, the issuance of any corrective notice, or the
196 initiation of statutory disciplinary proceedings, a full-time faculty unit
197 member shall have the right to request representation from the Federation
198 CCFF. The District shall include a “CCFF know your rights” flyer in any
199 Notice(s) sent to a unit member. or their own representation. The District
200 and Federation shall provide notice to the other party if a full-time faculty
201 member notifies either party that the member elects to be represented by
202 themselves during these processes. The District shall inform the unit
203 member of their right to CCFF representation or the unit member’s own
204 representative.

205
206 Nothing in this Article shall waive or supersede the District’s, CCFF’s or a unit
207 member’s right to request and receive information and documents as allowed by
208 the EERA, Education Code or other law.

209 **42.6 Full Time Faculty Corrective Notice Procedures**

210
211
212 42.6.1 When It is acknowledged that problems arise in the performance of assigned
213 duties and responsibilities will sometime arise, the District will attempt to assist the
214 Faculty member in and solving these problems through the evaluation process outlined
215 in Article 16 shall be excluded from these procedures.It is acknowledged that
216 sometimes problems arise in the performance of assigned duties and responsibilities.
217 If a problem can be solved through the evaluation process (Article 16), then that
218 problem shall be excluded from these procedures.

219 [Note: We are trying to distinguish between the “problem” and the “process,” and want
220 to be clear that the Art. 16 evaluation process is excluded. CCFF’s proposed exclusion
221 of the “problem” from this Art. 42 process would seemingly prevent remediation after
222 a PIP, which seems contrary to what we’re trying to define.]
223

~~No part of the video or audio recording or livestream of a distance education or HyFlex assignment may be used as evidence in or to initiate any type of disciplinary proceeding against the faculty member, nor shall it be accessed and/or utilized to view or review any part of the assignment for any reason, including a response to a complaint.~~

42-5 ~~42.7~~ Corrective Notices: ~~Any corrective notices shall be related to a demonstrated failure to meet professional standards as outlined in Article 4: Assignment.~~

42-6 ~~42.8~~ Corrective notices shall be based upon credible knowledge of demonstrated failure to meet professional standards as outlined in Article 4: Assignment misconduct and prior to the imposition of disciplinary sanctions, the District may issue a full-time faculty member a corrective notice for the purpose of remediating observed behavior. In no event shall a corrective notice be based upon unsupported complaints and/or hearsay. ~~Corrective notices must be warranted. Such corrective notices shall be administered progressively, where appropriate. District-imposed corrective notices shall be limited to oral warnings, written warnings, and written reprimands, dependent upon the severity of the misconduct, in by the steps set forth below. The following Corrective Notices may be utilized by the District, dependent upon the severity of the misconduct, prior to any statutory processes:~~

42.6.1 ~~42.8.1 Step One: Oral warning: An oral warning is a verbal communication from the immediate manager regarding the performance of the professionals standards outlined in Article 4: Assignment. The oral warning shall be formally communicated to the Full Time Faculty in a private meeting between the Full Time Faculty and the immediate manager; however the Full Time Faculty shall have the right to have a CCFF representative or their own representation attend the meeting. The meeting shall be confidential. During the meeting the Full Time Faculty shall be made aware of the reason for the warning, shall be provided with specific examples of the issue in performance and may be provided a work plan that shall set forth observable and measurable performance goals.~~

42.6.2 ~~Step Two: If an oral warning does not result in corrected performance, a Wwritten Warning may be issued. Counseling Memorandum: The District may issue a counseling memorandum written warning to document the the lack of performance of the professionals standards outlined in Article 4: Assignment misconduct, potentially including the performance of the professionals standards, and memorialize directives- include a work plan intended to assist the full-time faculty member in remediating the conduct and/or in meeting the desired level of performance of the professional standard of assigned duties and responsibilities as outlined in Article 4: Assignment . Counseling memorandum The written warning will not be placed in the member's personnel file, and shall be kept in a separate confidential file maintained and accessed only by the Vice President of Human Resources. Provided there has been no repetition of similar conduct for a period two of onetwo years from the date of occurrence, the written warning counseling memorandum will be destroyed.The written warning must include (a) a summary of any previous oral warnings on this topic, (b) the specific rule, regulation, policy or procedure violated by the Full Time Faculty, (c) specific examples of the violation, (d) the desired level of performance of assigned duties~~

280 ~~and responsibilities required along with a work plan for improvement,~~
281 ~~and (e) the disciplinary consequences that shall result if the Full Time~~
282 ~~Faculty fails to demonstrate improvement. **The written warning shall**~~
283 ~~**include (a) confirmation of whether there was an oral warning and (b)**~~
284 ~~**a description of the basis for the warning, and (c) corrective steps.** Unit~~
285 ~~members may submit a written response to the Office of Human~~
286 ~~Resources no later than ten (10) working days after receipt of the~~
287 ~~written warning.~~

288
289 ~~**Step Three:** Written Reprimand: If a full-time faculty member has~~
290 ~~received a counseling memorandum written warning for issues of~~
291 ~~similar **conduct or the** lack of performance of the professional~~
292 ~~standards outlined in Article 4: Assignment conduct within the~~
293 ~~preceding year two years, the District may issue a written reprimand~~
294 ~~to document the the performance of the professionals standards~~
295 ~~outlined in Article 4: Assignment and memorialize a work plan~~
296 ~~directives intended to assist the full-time faculty member in~~
297 ~~**remediating the conduct and/or** meeting the desired level of~~
298 ~~performance of assigned duties and responsibilities as outlined in~~
299 ~~Article 4: Assignment. **Remediating the conduct.** Such **work plans**~~
300 ~~**directives** may include a requirement that a member shall participate~~
301 ~~in a mandatory training, not to exceed two (2) hours, provided that~~
302 ~~such training must occur during the members assigned time. Any~~
303 ~~assigned training will be offered in a variety of modalities, when~~
304 ~~possible. The Full Time Faculty member will sign the reprimand to~~
305 ~~acknowledge receipt and a copy shall be placed in the member's~~
306 ~~personnel file, with which the member may attach a statement of~~
307 ~~rebuttal which shall be permanently attached to the reprimand. The~~
308 ~~written reprimand shall be removed upon the request of the unit~~
309 ~~member or CCFF the Federation provided there has been no repetition~~
310 ~~of similar conduct or performance concerns of the professional~~
311 ~~standards outlined in Article 4: Assignment conduct for a period of~~
312 ~~three four two years from the occurrence.~~

313
314 **42.6.3** ~~Throughout the progressive discipline process~~
315 ~~Concurrent with any~~
316 ~~corrective notice, and when supporting information indicates that~~
317 ~~improvement is needed, the District may initiate a **workimprovement**~~
318 ~~**corrective action** plan that should set forth observable and measurable~~
319 ~~performance goals to improve documented performance deficiencies.~~
320 ~~Such goals are to be met within a specific, achievable time frame. If~~
321 ~~such a plan is contemplated, CCFF shall be notified. At the full-time~~
322 ~~faculty member's request, CCFF shall participate in developing the~~
323 ~~**corrective action work** plan. Mandatory training shall be included as a~~
324 ~~part of the work plan only in instances of Step Three: written~~
325 ~~reprimand.~~

326 **42.6.4** ~~The District shall not utilize other mechanisms, such as reassignment~~
327 ~~or mandatory training, as corrective measures. The District reserves~~
328 ~~the right to require mandatory trainings when necessary for legal~~
329 ~~compliance, and shall continue to make assignments in accordance~~
330 ~~with Article 4.~~

331
332 **APPENDIX X: EMPLOYEE NOTIFICATION SUMMARY FORM**

333 ~~This Notice is to advise you that the Human Resources Department has initiated an~~
334 ~~investigation into allegations that you may be involved in possible employee misconduct.~~

335 Please read this Notice carefully, as it gives you information about the investigation process
336 and your rights during this process.

337
338 First, please note that the District takes a neutral stance when investigating possible
339 misconduct and maintains the confidentiality of employee investigations to the fullest
340 extent possible. No findings of wrongdoing have been made, and no findings will be made
341 prior to completion of the investigation. Further, the investigation will not be closed until
342 after the scheduled date for your interview.

343
344 An interview shall be scheduled no sooner than ten (10) business days after the receipt of
345 the Employee Notification Form and Summary of Interview Subject Matter. The Respondent
346 shall notify the Office of Human Resources of the date and times which they are available
347 to attend the interview.

348
349 Please be further advised that the information received in your interview could lead to
350 discipline. You are entitled to have union representation at that meeting, and to have the
351 Union copied on communications related to this investigation.

352
353 Every effort will be made to complete the investigation within ninety (90) business days, and
354 where this is not possible; you will receive a status update on where the District is in its
355 investigation and when it expects to be completed. Once the investigation is complete, you
356 will receive notice of the findings of the investigation.

357
358 In the event the investigation leads to disciplinary action, you will be afforded all the
359 prediscipline due process rights to which you are entitled. This includes receiving a copy
360 of the written investigation report. If you do not want CCFE to receive a copy of the written
361 investigation report, please sign below and the District will not forward it to CCFE.

362
363 We also remind you that District policy and law prohibit retaliation of any kind against
364 anyone you believe to have provided information or otherwise cooperated in this
365 investigation, and that such conduct constitutes an independent basis for serious discipline
366 up to and including termination.

367
368
369 If you do not want CCFE to automatically receive communications, information, and/or
370 reports directly related to your misconduct investigation please sign and date below:

371
372 _____
373
374 Name _____ Date

375
376 Summary of Interview Subject Matter

377
378 This letter includes information about the nature of the reported incident including; the
379 name of the complainant(s) or individual(s) whose concerns caused the District to initiate
380 an investigation, what allegedly occurred, when and where the incident(s) allegedly
381 occurred, and other information regarding the investigation process. Please note that you
382 are considered to be the Respondent in this matter.

383
384 The District is committed to a neutral investigation, reports are presumed to have been
385 made in good-faith, and Respondents are presumed not responsible.

386
387 An interview shall be scheduled no sooner than ten (10) business days after the receipt of
388 this Summary of Interview Subject Matter. The Respondent shall notify the Office of Human
389 Resources of the date and times which they are available to attend the interview.

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For the District:

Dr. Mercedes Gutierrez
Vice-President, Human Resources/
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For the Cerritos College Faculty Federation
AFT Local 6215:

Dr. April Bracamontes
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Dr. Lynn Wang
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