

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

4
5 MARCH 20, 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 [Note: This is still not "discipline" in the traditional sense; plus we cannot/should not/do
15 not want to conflate or confuse "discipline" under the Code to "discipline" under the
16 Article, which from the perspective of your typical unit member isn't exactly clear.]
17

18 **42 Application of Article:** The terms of this Article are intended to ensure that the due
19 process rights of full-time faculty personnel are observed during pre-disciplinary
20 processes, including paid administrative leave and investigations. The terms of this
21 Article are also intended to ensure the due process rights of full-time faculty personnel
22 regarding the as well as the issuance of any corrective notice related to a demonstrated
23 failure to meet professional expectations as defined in Article 4: Assignment, that does
24 not involve any suspension/dismissal processes required by the California Education
25 Code. Suspension or dismissal of contract and regular faculty may be issued for any
26 cause enumerated in California Education Code section 87732, and will be conducted
27 in accordance with the procedures provided in the California Education Code section
28 87660 et seq. Nothing in this Agreement shall preclude the District from utilizing those
29 disciplinary procedures as provided in the Education Code.
30

31 **42.1 Misconduct Investigations and Representation for All Unit Members**

32
33 42.1 **42.1.1 Misconduct** Investigations: The parties acknowledge that the
34 District has the authority and/or legal duty to investigate complaints,
35 reports, observations and/or other credible information from an identifiable
36 source that a unit member has allegedly engaged in some form of
37 misconduct, including allegations that a full-time faculty unit member has
38 violated applicable legal standards, board policies, and/or administrative
39 procedures. The District will conduct the investigation in accordance with
40 applicable Board Policy and Administrative Procedures, as well as any
41 mandatory external requirements imposed by law, such as Title IX and/or
42 Title 5 of the California Code of Regulations.

43 [Note: Tentatively rejected, because we need to be clear on "identifiable
44 source" with respect to whether the source is going to be identified
45 before/during/after an investigatory interview.]
46

47 **42.1.1 Notification of Misconduct Investigation:** Prior to conducting
48 any investigatory interview or meeting with a unit member
49 subject to a misconduct investigation, the District must send
50 them an Employee Notification Packet no later than ten (10)
51 notice five (5) business days before the member's
52 appointment for an investigatory interview. The District may
53 amend the Notice prior to the interview, which shall restart the
54 five (5) day period. The Notification Packet shall include two
55 documents: (1) the Employee Notification Form, which
56 provides unit member the ability to opt out from CCFF

57 ~~notification and representation (see Appendix X attached to~~
58 ~~this Agreement), and (2) the Summary of Interview Subject~~
59 ~~Matter, which specifically The Notice will include a general~~
60 ~~statement of the matter to be investigated, and will typically~~
61 ~~include the following information:~~

62 42.1.1.1 ~~The name or description of the complainant(s) or~~
63 ~~individual(s) whose concerns caused the District~~
64 ~~to initiate an investigation~~

65 42.1.1.2 ~~What allegedly occurred. The faculty member~~
66 ~~shall be entitled to a description of the subject~~
67 ~~matter and/or the specific alleged conduct or~~
68 ~~actions at issue in the investigation~~

69 42.1.1.3 ~~When the incident(s) allegedly occurred. This~~
70 ~~notice shall be as specific as possible, based on~~
71 ~~the information available at the time the notice is~~
72 ~~given. If the District utilizes an outside independent~~
73 ~~investigator, the notice shall include the identity~~
74 ~~and/or means of contacting the investigator.~~

75 42.1.1.4 ~~Where possible, the basic details~~
76 ~~(where/when/how) that incident(s) allegedly~~
77 ~~occurred. The notice shall be as specific as~~
78 ~~possible based on the information available,~~
79 ~~including protective measures in place, at the time~~
80 ~~the notice was given. Notice of Investigation:~~
81 ~~The District may initiate an investigation at any~~
82 ~~time, and must provide notice to the full-time~~
83 ~~faculty member prior to any investigatory~~
84 ~~interview. The District provided notice shall~~
85 ~~include a statement concerning the general nature~~
86 ~~of the allegations under investigation, and shall~~
87 ~~allow the member an opportunity to confer with~~
88 ~~their representative (if applicable) prior to the~~
89 ~~interview. If the District utilizes an outside~~
90 ~~independent investigator, the notice shall include~~
91 ~~the identity and/or means of contacting the~~
92 ~~investigator.~~

93
94 42.1.2 ~~If, after interviewing the unit member, the District learns of~~
95 ~~other allegations during the investigation and seeks to re-~~
96 ~~interview the unit member, the unit member shall be provided~~
97 ~~with a new Noticesummary of Interview Subject Matter~~
98 ~~document at least five (5) business days prior to the~~
99 ~~subsequent interview.~~

100
101 42.1.3 ~~If, prior to interviewing the unit member, the District learns of~~
102 ~~other allegations it wishes to cover during the interview, the~~
103 ~~unit member shall receive an updated Summary of Interview~~
104 ~~Subject Matter document at least five (5) business days prior~~
105 ~~to the interview.~~

106
107 42.1.4 ~~Notice of Findings Conclusion of Investigation: The District~~
108 ~~shall make best efforts to complete the investigation within~~
109 ~~the timeframe required by the type of complaint, subject to~~
110 ~~any extensions/continuances required to ensure the~~
111 ~~investigation is fully and fairly completed. Following~~
112 ~~completion of the investigation the District shall provide a~~

113 unit member/respondent with a conclusion of investigation
114 notice which shall include a summary of findings from the
115 investigator/alleged policy that was violated, the name of the
116 individual(s) who completed the investigation, the name of the
117 individual(s) who filed the complaint, and a summary of
118 findings. Concurrently,
119 42.1.5 Notice of administrative determination: the District shall
120 provide a unit member/respondent with an administrative
121 determination as outlined in appendix XX notice and a
122 summary of findings, in addition to any administrative
123 determination and/or appeal rights to any unit
124 member/complainant as may be required by the type of
125 complaint.
126

127 42.2 Involuntary Paid Administrative Leave: The parties acknowledge that
128 the District may place a unit member on involuntary paid administrative
129 leave consistent with the requirements of Education Code Section 87623.
130

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

145 During any involuntary paid administrative leave, a unit full-time faculty
146 member shall be entitled to remain in paid status with all benefits intact. In
147 most circumstances, the District will have 90 working/duty days from the
148 date the unit member is placed on involuntary-paid administrative leave to
149 either initiate disciplinary proceedings or reinstate the member. This period
150 shall run concurrently, and may be extended when necessary, with the
151 period of time required to complete the investigation process.
152

153 42.2.1 General Notice of Leave: In most cases, the District shall
154 provide written notice at least two (2) business days prior to
155 initiating an involuntary paid administrative leave. The notice
156 will include a statement concerning the general nature of the
157 allegation or allegations related to placement on leave. The
158 notice may be combined with, or issued separate from, notice
159 of investigation as provided under Article 42.4-2.1. The notice
160 shall may also include a non-contact directive with an
161 explanation that while paid administrative leave constitutes a
162 directive to stay away from the workplace, it does not apply
163 to the CCFF office or areas and events that are open to the
164 public. The notice may also instruct the member to remain
165 available to the District for questioning during the employee's
166 regular hours of work.
167

168 42.3 Notice In Emergent Circumstances: Dependent upon the circumstances, the

169 District may immediately initiate an involuntary-paid administrative leave
170 without providing notice pursuant to Article 42.53.1 if the District determines
171 that serious risk of physical danger or necessity arises from the specific
172 allegation or allegations. In these circumstances, the District shall provide
173 written notice, including a statement concerning the general nature of the
174 allegation or allegations related to placement on leave, within five (5)
175 business days of initiating the involuntary-paid administrative leave. The
176 notice shall may also include a non-contact directive and an explanation
177 that while paid administrative leave constitutes a directive to stay away from
178 the workplace, it does not apply to prevent contact or consultation with
179 CCFFthe CCFF office or areas and events that are open to the public. The
180 notice may also instruct the member to remain available to the District for
181 questioning during the employee's regular hours of work.

182 [Note: Per prior discussion, a non-contact in emergent circumstances may
183 include exclusion from public events/areas of campus, if (for example)
184 relating to workplace violence, threats, etc.]

185
186 **42.4 Representation Rights:** At all stages of misconduct investigation, pre-
187 disciplinary processes, the issuance of any corrective notice, or the
188 initiation of statutory disciplinary proceedings, a full-time faculty unit
189 member shall have the right to request representation from the Federation
190 CCFF or their own representation. The District and Federation shall provide
191 notice to the other party if a full-time faculty member notifies either party
192 that the member elects to be represented by themselves during these
193 processes. The District shall inform the unit member of their right to CCFF
194 representation or the unit member's own representative.

195
196 Nothing in this Article shall waive or supersede the District's, CCFF's or a unit
197 member's right to request and receive information and documents as allowed by
198 the EERA, Education Code or other law.

200 42.6 Full Time Faculty Corrective Notice Procedures

201
202 42.6.1 When It is acknowledged that problems arise in the performance of assigned
203 duties and responsibilities will sometime arise, the District will attempt to assist the
204 Faculty member in and solving these problems through the evaluation process outlined
205 in Article 16 shall be excluded from these procedures.

206
207 No part of the video or audio recording or livestream of a distance education or HyFlex
208 assignment may be used as evidence in or to initiate any type of disciplinary proceeding
209 against the faculty member, nor shall it be accessed and/or utilized to view or review
210 any part of the assignment for any reason, including a response to a complaint.

211 [Note: We can discuss procedures, but evidence used in disciplinary proceedings
212 (including under the Code) are not being waived via this Article.]

213
214 42-5 **42.7 Corrective Notices:** Any corrective notices shall be related to a
215 demonstrated failure to meet professional standards as outlined in Article
216 4: Assignment.

217 [Note: Similar to Grievance/Calendar/etc., this may require refinement once
218 CCFF puts Art. 4 on the table.]

219 42-6 **42.8 Corrective notices shall be b**Based upon credible knowledge of
220 demonstrated failure to meet professional standards as outlined in Article
221 4: Assignment misconduct and prior to the imposition of disciplinary sanctions,
222 the District may issue a full-time faculty member a corrective notice for the
223 purpose of remediating observed behavior. In no event shall a corrective notice
224 be based upon unsupported complaints and/or hearsay. Corrective notices

225 ~~must be warranted. Such corrective notices shall be administered~~
226 ~~progressively, where appropriate. District-imposed corrective notices shall~~
227 ~~be limited to oral warnings, written warnings, and written reprimands,~~
228 ~~dependent upon the severity of the misconduct, inby the steps set forth~~
229 ~~below. The following Corrective Notices may be utilized by the District,~~
230 ~~dependent upon the severity of the misconduct, prior to any statutory~~
231 ~~processes:~~

232
233 42.6.1 ~~42.8.1 Step One: Oral warning: An oral warning is a verbal~~
234 ~~communication from the immediate manager regarding the~~
235 ~~performance of the professionals standards outlined in Article 4:~~
236 ~~Assignment. The oral warning shall be formally communicated to the~~
237 ~~Full Time Faculty in a private meeting between the Full Time Faculty~~
238 ~~and the immediate manager; however the Full Time Faculty shall have~~
239 ~~the right to have a CCFF representative or their own representation~~
240 ~~attend the meeting. The meeting shall be confidential. During the~~
241 ~~meeting the Full Time Faculty shall be made aware of the reason for~~
242 ~~the warning, shall be provided with specific examples of the issue in~~
243 ~~performance and may be provided a work plan that shall set forth~~
244 ~~observable and measurable performance goals.~~

245
246 42.6.2 ~~Step Two: If an oral warning does not result in corrected performance,~~
247 ~~a Written Warning may be issued. Counseling Memorandum: The~~
248 ~~District may issue a counseling memorandum-written warning to~~
249 ~~document the the performance of the professionals standards~~
250 ~~outlined in Article 4: Assignment misconduct, potentially including the~~
251 ~~performance of the professionals standards, and memorialize~~
252 ~~directives include a work plan intended to assist the full-time faculty~~
253 ~~member in remediating the conduct and/or meeting the desired level~~
254 ~~of performance of assigned duties and responsibilities as outlined in~~
255 ~~Article 4: Assignment . Counseling memorandum The written warning~~
256 ~~will not be placed in the member's personnel file, and shall be kept in~~
257 ~~a separate confidential file maintained and accessed only by the Vice~~
258 ~~President of Human Resources. Provided there has been no repetition~~
259 ~~of similar conduct for a period ~~two of one~~two years from the date of~~
260 ~~occurrence, the written warning counseling memorandum will be~~
261 ~~destroyed. The written warning must include (a) a summary of any~~
262 ~~previous oral warnings on this topic, (b) the specific rule, regulation,~~
263 ~~policy or procedure violated by the Full Time Faculty, (c) specific~~
264 ~~examples of the violation, (d) the desired level of performance of~~
265 ~~assigned duties and responsibilities required along with a work plan~~
266 ~~for improvement, and (e) the disciplinary consequences that shall~~
267 ~~result if the Full Time Faculty fails to demonstrate improvement.~~

268 [Note: As discussed, CCFF is effectively requesting an informal
269 warning to include a full/formal statement of charges, which is
270 untenable if these procedures are meant to actually divert/correct
271 conduct before the District turns to statutory procedures.]

272
273 42.6.3 ~~Step Three: Written Reprimand: If a full-time faculty member has~~
274 ~~received a counseling memorandum-written warning for issues of~~
275 ~~similar conduct or the lack of performance of the professional~~
276 ~~standards outlined in Article 4: Assignment conduct within the~~
277 ~~preceding year two years, the District may issue a written reprimand~~
278 ~~to document the the performance of the professionals standards~~
279 ~~outlined in Article 4: Assignment and memorialize a work plan~~
280 ~~directives intended to assist the full-time faculty member in~~

281 remediating the conduct and/or meeting the desired level of
282 performance of assigned duties and responsibilities as outlined in
283 Article 4: Assignment. Remediating the conduct. Such work plans
284 directives may include a requirement that a member shall participate
285 in a mandatory training, not to exceed two (2) hours, provided that
286 such training must occur during the members assigned time. Any
287 assigned training will be offered in a variety of modalities, when
288 possible. The Full Time Faculty member will sign the reprimand to
289 acknowledge receipt and a copy shall be placed in the member's
290 personnel file, with which the member may attach a statement of
291 rebuttal which shall be permanently attached to the reprimand. The
292 written reprimand shall be removed upon the request of the unit
293 member or CCFF the Federation provided there has been no repetition
294 of similar conduct or performance concerns of the professional
295 standards outlined in Article 4: Assignment conduct for a period of
296 four two years from the occurrence.

298 42.6.4 Throughout the progressive discipline process Concurrent with any
299 corrective notice, and when supporting information indicates that
300 improvement is needed, the District may initiate a workimprovement
301 plan that should set forth observable and measurable performance
302 goals to improve documented performance deficiencies. Such goals
303 are to be met within a specific, achievable time frame. If such a plan
304 is contemplated, CCFF shall be notified. At the full-time faculty
305 member's request, CCFF shall participate in developing the work plan.
306 Mandatory training shall be included as a part of the work plan only in
307 instances of Step Three: written reprimand.

309 42.6.5 The District shall not utilize other mechanisms, such as reassignment
310 or mandatory training, as corrective measures. The District reserves
311 the right to require mandatory trainings when necessary for legal
312 compliance, and shall continue to make assignments in accordance
313 with Article 4. [Note: This is already included as part of the Calendar
314 and is pending changes to Art. 4/Assignment.]

316 [Note: Per our prior discussion, we are willing to include a flyer/notice from CCFF – in the
317 vein of a “Know Your Rights” flyer or something – when we are providing notices for
318 investigatory processes. But we don't think that a cookie-cutter notice can realistically fit
319 all possible circumstances.]

321 APPENDIX X: EMPLOYEE NOTIFICATION SUMMARY FORM

322 This Notice is to advise you that the Human Resources Department has initiated an
323 investigation into allegations that you may be involved in possible employee misconduct.
324 Please read this Notice carefully, as it gives you information about the investigation process
325 and your rights during this process.

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

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

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

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

~~In the event the investigation leads to disciplinary action, you will be afforded all the pre-discipline due process rights to which you are entitled. This includes receiving a copy of the written investigation report. If you do not want CCFF to receive a copy of the written investigation report, please sign below and the District will not forward it to CCFF.~~

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

~~If you do not want CCFF to automatically receive communications, information, and/or reports directly related to your misconduct investigation please sign and date below.~~

~~Name _____ Date _____~~

~~**Summary of Interview Subject Matter**~~

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

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

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

For the District:

For the Cerritos College Faculty Federation
AFT Local 6215:

Dr. Mercedes Gutierrez
Vice-President, Human Resources/
Assistant Superintendent

Dr. April Bracamontes
CCFF/Lead Negotiator

Dr. Lynn Wang

