

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

4
5 July 19, 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 **known-identifiable by the District from an identifiable source that a unit**
34 **member has allegedly engaged in some form of misconduct, including**
35 **allegations that a full-time faculty unit member has violated applicable legal**
36 **standards, board policies, and/or administrative procedures. The District**
37 **will conduct the investigation in accordance with applicable Board Policy**
38 **and Administrative Procedures, as well as any mandatory external**
39 **requirements imposed by law, such as Title IX and/or Title 5 of the California**
40 **Code of Regulations.**
41

42 **42.1.1 Notification of Misconduct Investigation: Prior to conducting**
43 **any investigatory interview or meeting with a unit member**
44 **subject to a misconduct investigation, the District must send**
45 **them an Employee Notification Packet no later than ten (10)**
46 **notice five (5) business working days before the member's**
47 **appointment for an investigatory interview. The District may**
48 **amend the Notice prior to the interview, which shall restart the**
49 **five (5) business working day period. The Notification Packet**
50 **shall include two documents: (1) the Employee Notification**
51 **Form, which provides unit member the ability to opt out from**
52 **CCFF notification and representation (see Appendix X**
53 **attached to this Agreement), and (2) the Summary of Interview**
54 **Subject Matter, which specifically The Notice will include a**
55 **reasonably specific-general statement of the matter to be**
56 **investigated, and will typically include the following**

information:

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

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

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

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

42.1.1.5 The District shall provide a directive to the faculty member regarding their obligation to preserve information related to the investigation, including any audio/video recording(s) or livestream(s) that may be relevant to the alleged conduct, and will inform the faculty member that such information may be requested and/or accessed during the investigation.

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

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

113
114 **42.1.4 The District shall not review information maintained on**
115 **District assets, including audio/video recordings or**
116 **livestreams, unrelated to the subject matter of the**
117 **investigation. Audio/video recordings or livestreams shall not**
118 **be used to evaluate job performance or make other personnel**
119 **decisions unless there is a substantiated finding after**
120 **conclusion of an investigation. ~~unless necessary to~~**
121 **investigate serious allegations related to student/employee**
122 **safety. In cases of serious allegations related to**
123 **student/employee safety, the Office of Human Resources**
124 **shall access the audio/visual recording(s) or livestream(s).**
125 **The District shall provide notice to the faculty member prior**
126 **to accessing the audio/video recording(s) or livestream(s).**
127

128 **42.1.5 Notice of Findings Conclusion of Investigation: The District**
129 **shall make best efforts to complete the investigation within**
130 **the timeframe required by the type of complaint, subject to**
131 **any extensions/continuances required to ensure the**
132 **investigation is fully and fairly completed. Following**
133 **completion of the investigation the District shall provide a**
134 **unit member/respondent with a conclusion of investigation**
135 **notice which shall include a summary of findings from the**
136 **investigatoralleged policy that was violated, the name of the**
137 **individual(s) who completed the investigation, the name of the**
138 **individual(s) who filed the complaint, and a summary of**
139 **findings. Concurrently,**

140 **42.1.6 Notice of aAdministrative dDetermination: The District shall**
141 **provide a unit member/respondent with an administrative**
142 **determination as outlined in appendix XX notice and a**
143 **summary of findings, in addition to any administrative**
144 **determination and/or appeal rights to any and appeal rights,**
145 **when applicable, to any unit member/complainant as may be**
146 **required by the type of complaint.**
147

148 **42.2 Involuntary Paid Administrative Leave: The parties acknowledge that**
149 **the District may place a unit member on involuntary paid administrative**
150 **leave consistent with the requirements of Education Code Section 87623.**
151

152 **Consistent with Education Code Section 87623, placement on involuntary**
153 **paid administrative leave maintains all compensation and benefits to which**
154 **the unit member would have been entitled. It is understood that it is within**
155 **the District's discretion to place a unit member on involuntary paid**
156 **administrative leave during the pendency of an misconduct investigation,**
157 **which may include circumstances in which. As such, the leave shall be**
158 **imposed only where the District concludes that the alleged conduct**
159 **includes: a) foreseeable acts of retaliation or intimidation; b) acts of serious**
160 **dishonesty or the destruction of property; c) allegations, which if true,**
161 **present a reasonably foreseeable concern for the health and safety of**
162 **others; d) allegations which if true present a reasonable concern that the**
163 **unit member's students are suffering educational harm; and/or e)**
164 **allegations the nature of which require the immediate preservation of**
165 **physical evidence which may be compromised if the unit member is not**
166 **placed on leave.**
167

168 **During any involuntary paid administrative leave, a unit full-time faculty**

169 member shall be entitled to remain in paid status with all benefits intact. In
170 most circumstances, the District will have up to 120 calendar days 90
171 working/duty days from the date the unit member is placed on involuntary
172 paid administrative leave to either initiate disciplinary proceedings or
173 reinstate the member. In most circumstances, the District shall either
174 initiate disciplinary proceedings or reinstate the member before the
175 member has been on involuntary administrative leave for 90 days120
176 calendar 90 working days. This period shall run concurrently, and may be
177 extended when necessary, as allowed by external law and regulation with
178 the period of time as required to complete the investigation process.

179
180 Per Ed Code 87623, within 90 working days of placing an academic
181 employee on involuntary paid administrative leave, the employer should
182 complete its investigation of the accused misconduct and initiate
183 disciplinary proceedings against, or reinstate, the employee, unless the
184 period of paid administrative leave is extended by agreement of the
185 employee and employer. The extension may not exceed 30 calendar days.
186 For purposes of this section, "working days" means Monday through Friday
187 and does not include weekends and state holidays.

188
189 42.2.1 General Notice of Leave: In most cases, the District shall
190 provide written notice at least two (2) business working days
191 prior to initiating an involuntary paid administrative leave. The
192 notice will include a statement concerning the general nature
193 of the allegation or allegations related to placement on leave.
194 The notice may be combined with, or issued separate from,
195 notice of investigation as provided under Article 42.4-2.1. The
196 notice shall may also include a non-contact directive with an
197 explanation that while paid administrative leave constitutes a
198 directive to stay away from the workplace, it does not apply
199 to the CCFF office or areas and events that are open to the
200 public. The notice may also instruct the member to remain
201 available to the District for questioning during the employee's
202 regular hours of work.

203
204 42.3 Notice In Emergent Circumstances: Dependent upon the circumstances, the
205 District may immediately initiate an involuntary paid administrative leave
206 without providing notice pursuant to Article 42.53.1 if the District determines
207 that serious risk of physical danger or necessity arises from the specific
208 allegation or allegations. In these circumstances, the District shall provide
209 written notice, including a statement concerning the general nature of the
210 allegation or allegations related to placement on leave, within five (5)
211 business days of initiating the involuntary paid administrative leave. The
212 notice shall may also include a non-contact directive and an explanation
213 that while paid administrative leave constitutes a directive to stay away from
214 the workplace, it does not apply to prevent contact or consultation with
215 CCFFthe CCFF office or areas and events that are open to the public. The
216 notice may also instruct the member to remain available to the District for
217 questioning during the employee's regular hours of work.

218
219 42.4 Representation Rights: At all stages of misconduct investigation, pre-
220 disciplinary processes, the issuance of any corrective notice, or the
221 initiation of statutory disciplinary proceedings, a full-time faculty unit
222 member shall have the right to request representation from the Federation
223 CCFF. The District shall include a "CCFF know your rights" flyer in any
224 Notice(s) sent to a unit member. or their own representation. The District

225 ~~and Federation shall provide notice to the other party if a full-time faculty~~
226 ~~member notifies either party that the member elects to be represented by~~
227 ~~themselves during these processes. The District shall inform the unit~~
228 ~~member of their right to CCFF representation or the unit member's own~~
229 ~~representative.~~

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

234 42.6 Full Time Faculty Corrective Notice Procedures

235
236
237 ~~42.6.1 When It is acknowledged that problems arise in the performance of assigned~~
238 ~~duties and responsibilities will sometime arise, the District will attempt to assist the~~
239 ~~Faculty member in and solving these problems through the evaluation process outlined~~
240 ~~in Article 16 shall be excluded from these procedures. It is acknowledged that~~
241 ~~sometimes problems arise in the performance of assigned duties and responsibilities.~~
242 ~~If a problem can be solved through the evaluation process (Article 16), then that~~
243 ~~problem shall be excluded from these procedures.~~

244
245 ~~No part of the video or audio recording or livestream of a distance education or HyFlex~~
246 ~~assignment may be used as evidence in or to initiate any type of disciplinary proceeding~~
247 ~~against the faculty member, nor shall it be accessed and/or utilized to view or review~~
248 ~~any part of the assignment for any reason, including a response to a complaint.~~
249 ~~Neither video nor audio recording, nor livestream of a distance education or HyFlex~~
250 ~~assignment, will not normally be used as evidence in or to initiate issuing a corrective~~
251 ~~notice any type of disciplinary proceeding, nor shall the District it be accessed and/or~~
252 ~~utilized audio/video recordings to view or review any part of the assignment, unless~~
253 ~~necessary to investigate serious allegations related to student or employee safety some~~
254 ~~form of misconduct, including allegations that a full-time faculty unit member has~~
255 ~~violated applicable legal standards, board policies, and/or administrative procedures.~~

256
257 ~~Unless substantiated by investigative findings, vV~~
258 ~~ideo or audio recording or livestream~~
259 ~~of a distance education or HyFlex assignment will not be used as evidence in or to~~
260 ~~initiate any type of corrective notice.~~

261 42-5 ~~42.7 Corrective Notices: Any corrective notices shall be related to a~~
262 ~~demonstrated failure to meet professional standards or remediate~~
263 ~~conduct as outlined in Article 4: Assignment.~~

264
265 42-6 ~~42.8 Corrective notices shall be b~~
266 ~~demonstrated failure to meet professional standards as outlined in Article~~
267 ~~4: Assignment misconduct~~ and prior to the imposition of disciplinary sanctions,
268 the District may issue a full-time faculty member a corrective notice for the
269 purpose of remediating observed behavior. In no event shall a corrective notice
270 be based upon unsupported complaints and/or hearsay. ~~Corrective notices~~
271 ~~must be warranted. Such corrective notices shall be administered~~
272 ~~progressively, where appropriate. District-imposed corrective notices shall~~
273 ~~be limited to official oral warnings, written warnings, and written~~
274 ~~reprimands, dependent upon the severity of the misconduct, in by the steps~~
275 ~~set forth below. The following Corrective Notices may be utilized by the~~
276 ~~District, dependent upon the severity of the misconduct, prior to any~~
277 ~~statutory processes:~~

278
279 42.6.1 ~~42.8.1 Step One: Official Oral warning: An official oral warning is a~~
280 ~~verbal communication from the immediate manager regarding the~~

281 performance of the professional standards outlined in Article 4:
282 Assignment or remediating conduct, The oral warning which shall be
283 formally communicated to the Full Time Faculty in a private meeting.
284 between the Full Time Faculty and the immediate manager; however
285 †The Full Time Faculty shall have the right to have a CCFF
286 representative present, and †The meeting shall be confidential except
287 to acknowledge that it occurred. During the meeting the Full Time
288 Faculty shall be made aware of the reason for the warning, shall be
289 provided with specific examples of the issue in conduct and/or
290 performance, and may be provided a directives that shall set forth
291 observable and measurable performance improvement goals.

42.6.2

292 Step Two: Written Warning: If an official oral warning does not result
293 in corrected performance or remediated conduct, a Wwritten Warning
294 may be issued. Counseling Memorandum: †The District may issue a
295 counseling memorandum—written warning to document the
296 nonfulfillment of the the lack of performance of the professionals
297 standards outlined in Article 4: Assignment misconduct, potentially
298 including the performance of the professionals standards, and
299 memorialize directives include a work plan intended to assist the full-
300 time faculty member in remediating the conduct and/or in fulfilling the
301 meeting the desired level of performance of the professional standard
302 of assigned duties and responsibilities as outlined in Article 4:
303 Assignment . Counseling memorandum The written warning will not
304 be placed in the member's personnel file, and shall be kept in a
305 separate confidential file maintained and accessed only by the Vice
306 President of Human Resources. Provided there has been no repetition
307 of similar conduct for a period two of onetwo years from the date of
308 occurrence, the written warning counseling memorandum will be
309 destroyed. The written warning must include (a) a summary of any
310 previous oral warnings on this topic, (b) the specific rule, regulation,
311 policy or procedure violated by the Full Time Faculty, (c) specific
312 examples of the violation, (d) the desired level of performance of
313 assigned duties and responsibilities required along with a work plan
314 for improvement, and (e) the disciplinary consequences that shall
315 result if the Full Time Faculty fails to demonstrate improvement. The
316 written warning shall include (a) confirmation of whether there was an
317 official oral warning and (b) a description of the basis for the warning,
318 and (c) corrective steps. Unit members may submit a written response
319 to the Office of Human Resources no later than ten (10) working days
320 after receipt of the written warning.

321
322 Step Three: Written Reprimand: If a full-time faculty member has
323 received a counseling memorandum—written warning for issues of
324 similar conduct or the lack of performance of the professional
325 standards outlined in Article 4: Assignment conduct within the
326 preceding year two years, the District may issue a written reprimand
327 to document the the performance of the professionals standards
328 outlined in Article 4: Assignment and memorialize a work plan
329 directives intended to assist the full-time faculty member in
330 remediating the conduct and/or meeting the desired level of
331 performance of assigned duties and responsibilities as outlined in
332 Article 4: Assignment. Remediating the conduct. Such work plans
333 directives may include a requirement that a member shall participate
334 in a mandatory training, not to exceed two (2) hours, provided that
335 such training must occur during the members assigned time or during
336

337 the members FLEX hours. Faculty may receive FLEX credit for their
338 mandatory training. Any assigned training will be offered in a variety
339 of modalities, when possible. The Full Time Faculty member will sign
340 the reprimand to acknowledge receipt and a copy shall be placed in
341 the member's personnel file, with which the member may attach a
342 statement of rebuttal which shall be permanently attached to the
343 reprimand. The written reprimand shall be removed upon the request
344 of the unit member or CCFF the Federation provided there has been
345 no repetition of similar conduct or performance concerns of the
346 professional standards outlined in Article 4: Assignment conduct for
347 a period of three four two years from the occurrence.

348
349 **42.6.3** Throughout the progressive discipline process Concurrent with any
350 corrective notice, and when supporting information indicates that
351 improvement is needed, the District may initiate a workimprovement
352 corrective action plan that should set forth observable and measurable
353 performance goals to improve documented performance deficiencies.
354 Such goals are to be met within a specific, achievable time frame. If
355 such a plan is contemplated, CCFF shall be notified. At the full-time
356 faculty member's request, CCFF shall participate in developing the
357 corrective action work plan. Mandatory training shall be included as a
358 part of the work plan only in instances of Step Three: written
359 reprimand.

360
361 42.6.4 The District shall not utilize other mechanisms, such as reassignment
362 or mandatory training, as corrective measures. The District reserves
363 the right to require mandatory trainings when necessary for legal
364 compliance, and shall continue to make assignments in accordance
365 with Article 4.

366 APPENDIX X: EMPLOYEE NOTIFICATION SUMMARY FORM

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

371
372
373 First, please note that the District takes a neutral stance when investigating possible
374 misconduct and maintains the confidentiality of employee investigations to the fullest
375 extent possible. No findings of wrongdoing have been made, and no findings will be made
376 prior to completion of the investigation. Further, the investigation will not be closed until
377 after the scheduled date for your interview.

378
379 An interview shall be scheduled no sooner than ten (10) business days after the receipt of
380 the Employee Notification Form and Summary of Interview Subject Matter. The Respondent
381 shall notify the Office of Human Resources of the date and times which they are available
382 to attend the interview.

383
384 Please be further advised that the information received in your interview could lead to
385 discipline. You are entitled to have union representation at that meeting, and to have the
386 Union copied on communications related to this investigation.

387
388 Every effort will be made to complete the investigation within ninety (90) business days, and
389 where this is not possible; you will receive a status update on where the District is in its
390 investigation and when it expects to be completed. Once the investigation is complete, you
391 will receive notice of the findings of the investigation.

392

In the event the investigation leads to disciplinary action, you will be afforded all the prediscipline 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
CCFF President