

L.3.0 INVESTIGATIONS, DUE PROCESS, AND DISCIPLINE

L.3.1 General Principles

Any action taken by the district toward a faculty member under this section shall not be arbitrary or capricious, and, in all cases shall be guided by the principles of due process and progressive discipline as appropriate to each circumstance.

It is anticipated and expected that all faculty members and the district, or representatives thereof, will be truthful, cooperative, and forthright during the investigation and discipline process. All parties will adhere to the highest standards of integrity and, to the extent possible, confidentiality throughout the investigation and disciplinary process.

Nothing in this section shall impede the ability of the district to provide direction, feedback, or guidance to a faculty member in the performance of their duties.

Nothing in this section shall waive or supersede the district's, Assembly's or faculty member's right to request and receive information and documents as allowed by the EERA, Education Code, or other law.

Nothing in this section shall reduce a faculty member's right to Assembly representation or any other representation allowed by law.

To the extent there is conflict between this section and a Board Policy or Administrative Procedure, the procedures outlined in this section shall prevail.

L.3.2 Exclusions

The following items shall not be subject to the provisions of this article:

1. Grievances filed under section L.5.0;
2. Tenure process, including the denial of tenure and/or the non-renewal of contracts for tenure candidates [see Article H];
3. Evaluation process for tenured faculty [see Article H];
4. Investigations or inquiries by any law enforcement department or agency in the discharge of their duties;
5. Notice of Unprofessional Conduct and/or Notice of Unsatisfactory Performance, often referred to as a 90-day notice, pursuant to Ed Code section 87734 [see Article K.5.0]; and
6. Compulsory suspensions pursuant to Education Code sections 87735 and 87736 [see Article K.5.0].

To the extent practicable, the district shall provide the Assembly with information related to situations involving numbers 5 and 6 above within 24 hours of providing notice to the affected faculty member.

L.3.3 Definitions

1. **Complaint.** A complaint is a concern, written or oral, brought to the attention of the district. A complaint may be brought forward by a student, other faculty members, classified staff, an administrator, or a third party, including any person who submits a complaint anonymously. However, it is understood a faculty member cannot be disciplined based solely on an unsubstantiated, anonymous complaint.
2. **Complainant.** A complainant is the person making the complaint to the district, including a person who does not disclose their identity. If the complainant later reveals their identity, the identity of the complainant shall be disclosed to the Assembly.
3. **Corrective Action.** The following items are considered corrective actions and not disciplinary actions: verbal counseling or written counseling memo, which may also include reasonable training, professional development, and/or an off-cycle evaluation.
4. **Discipline.** Written reprimands, suspensions or dismissals [see K.5.0] based on a violation of law or District Policy, or pursuant to sections 87732 and 87734 of the Education Code, are considered disciplinary action(s). The district will only discipline faculty by the means listed in this definition.
5. **Investigation.** An investigation is a district-initiated review of a situation involving a faculty member alleged to have engaged in misconduct. Investigations are conducted to determine whether a violation of district policy or procedure, local, state or federal law has occurred. Investigations may be initiated due to any of the following reasons: a complaint made by an identifiable author/person, a credible report of misconduct, manager observations, or other reliable sources of information.
6. **Investigatory interview.** The term “investigatory interview” is defined as a formal noticed face-to-face meeting, or any follow-up formal written communication, between the district’s designated investigator and a respondent in which the respondent is asked questions regarding a complaint against the respondent and for which the district reasonably believes that if substantiated, disciplinary action may later be imposed. An investigatory interview is not a communication between a supervisor, manager or administrator and a faculty member in the normal course of business for the purposes of performance feedback, verbal or written counseling.
7. **Respondent.** A respondent is the person who is the subject of a complaint.

8. **Verbal Counseling.** A verbal counseling is an informal communication alerting a faculty member to a conduct or performance concern.
9. **Written Counseling.** A written counseling is an informal, written communication alerting a faculty member to a conduct or performance concern.
10. **Written Reprimand.** A written reprimand is a formal written communication informing a faculty member of a conduct or performance concern. A written reprimand shall include clear notice that it will be placed in the respondent's personnel file in ten (10) district business days, that the faculty member may submit a written response prior to placement in the personnel file, and any written response received will be attached to the written reprimand when it is entered into the personnel file.

L.3.4 Notice of Investigation for Misconduct Investigations

1. Upon receipt of a complaint, the district shall make an initial determination of whether the allegations in the complaint could rise to the level to violate district policy or procedure, local, state or federal law.
2. If the district determines that an investigation of the complaint is required, the respondent and Assembly shall be notified in writing. The written notification shall include:
 - a. A description of the allegations in the complaint sufficient to allow for meaningful representation of the respondent including the name of the complainant(s), if known and as appropriate;
 - b. The name of the person or company responsible for investigating the complaint;
 - c. A statement that the district will maintain the confidentiality of the investigation to the greatest extent possible;
 - d. A statement that no findings will be made prior to completion of the investigation;
 - e. A statement regarding the district's prohibition against retaliation in accordance with Board Policy 3430; and
 - f. A statement that the faculty member has the right to be represented by the Assembly or a representative of their choosing who may be present at all times during the investigatory interview and any follow-up sessions requested.
3. The delivery of the written notification to the faculty member should be in-person whenever possible, and the Assembly shall be notified of the time and place when respondent will be notified. The notification may also be sent via email and/or by registered or certified mail to the home address on file for the respondent, and the Assembly shall be copied on any such communication.

4. If, during the course of the investigation, additional allegations are discovered that substantially change the scope of the allegations under investigation, the respondent and Assembly shall receive a subsequent notification, no later than forty-eight (48) hours before the scheduled interview for the respondent, in accordance with the requirements outlined in paragraph 2 above.
5. Faculty members who are not the subject of the complaint, but are identified as witnesses or individuals having relevant information regarding the complaint, shall also be notified of their right to have Assembly representation. The Assembly shall be provided a general overview as to the role of the faculty member as a witness.
6. Every effort will be made to complete the investigation within ninety (90) days from when the district notified the respondent of the investigation. If the investigation is not completed within the ninety (90) day timeline, the district will provide the respondent and the Assembly with status updates, every ten (10) business days, on the progress of the investigation and the estimated date of completion. These updates may be communicated through email.

L.3.5 Investigation Interview

A respondent requested to be interviewed under this process will be reasonably consulted regarding their availability for the interview date and time as appropriate for the nature of the allegations. The respondent and the Assembly shall cooperate with the district to promptly schedule any such interview.

An investigatory interview shall not be scheduled for a date that is less than five (5) business days from the date on which the district served the faculty member with the notice meeting the criteria listed above. The respondent and the Assembly shall be informed of the scheduled interview date and time at least forty-eight (48) hours in advance. However, in exigent circumstances where the district must address serious allegations or events in order to protect persons from imminent injury or other substantial harm, the investigatory interview may take place at any time appropriate to the circumstances, provided the faculty member and their representative are provided written or oral notice of the allegations against them prior to questioning by the investigator.

If requested by the respondent, the initial investigatory interview shall be postponed for an additional working day to enable the respondent to secure representation, or if their representative is unable to proceed on the scheduled date. This section shall not apply in exigent circumstances where the district must address serious allegations or events in order to protect persons from imminent injury or other substantial harm.

The district must provide the Assembly with any prior statements of the respondent in the possession of or available to the district that relate to the subject matter of the interview.

Prior to the start of the interview, the district shall inform the respondent/faculty witness of their right to request a reasonable break during the interview to consult with their representative and/or obtain legal advice.

Either the faculty member or the person conducting the interview may request to record the interview. If a recording is made by the district or by the person conducting the interview, the faculty member and Assembly shall have the right to have a copy of the recording upon request. Any party making a recording must inform the other party and a record of the agreement will be made on the recording itself.

L.3.6 Notice Requirements for Paid Administrative Leave

The district has the discretion to place a respondent on a non-disciplinary, paid administrative leave during the pendency of an investigation in accordance with Education Code section 87623. This type of leave shall be imposed only where the district concludes that the alleged conduct includes:

- a. acts of retaliation or intimidation;
- b. acts of serious dishonesty or the destruction of property;
- c. allegations which, if true, present a reasonable concern for the health or safety of others;
- d. allegations which, if true, present a reasonable concern that the respondent's students are suffering educational harm;
- e. allegations the nature of which require the immediate preservation of physical evidence which may be compromised if the respondent is not placed on leave; or
- f. other conduct of a serious and substantial nature.

Upon request, the respondent shall be granted access to a copy of all of their emails and voicemails, up to and including the date they were placed on non-disciplinary paid leave. As appropriate to the circumstances, the district and FA will meet and confer on granting limited access to district systems for the duration of the leave.

When a respondent is placed on paid administrative leave, the district shall provide additional notice of leave in one of the following two ways.

- 1) **Non-emergency Situation:** At least two (2) business days prior to placing the respondent on an involuntary, paid administrative leave, the district shall provide the respondent and Assembly with written notification of the general nature of the allegations of misconduct upon which the decision to place the respondent on leave is based. The notice may also instruct the respondent to remain available to the district for questioning during the respondent's regular hours of work.

- 2) **Emergency Situation:** Where the district concludes that the specific allegations, if true, present a serious risk of physical danger or other necessity, the district may place the respondent on an immediate, non-disciplinary paid leave without prior notice. In such instance, the notice shall be provided to the respondent and Assembly within five (5) business days of the respondent being placed on the leave.

If applicable, the notice shall include an explanation of the circumstances under which the respondent may return to campus and the protocol for notifying the district of the request to enter district property.

As related to Ed Code section 87623, non-disciplinary paid leave includes all compensation and benefits to which the respondent would have received but for placement on paid leave.

L.3.7 Notice of Determination

1. Upon completion of the investigation, the complainant (when a faculty member), respondent (when a faculty member), and Assembly shall be notified of the outcome of the investigation in writing. The delivery of the written notification to the faculty member should be in-person whenever possible. The notification may also be sent via email and/or by registered or certified mail to the home address on file for the respondent.
2. When a complaint is substantiated through the investigation process, either in whole or part, appropriate corrective or disciplinary action may be taken in proportion to the severity of the offense.
3. The complainant (when a faculty member), respondent (when a faculty member), and the Assembly shall receive a written summary of the investigative findings for corrective action.
4. If the district intends to impose discipline on a faculty member, the Assembly and faculty member will be given the full complaint and investigatory report as the basis for discipline. The district may include a non-publication clause limiting the respondent's and Assembly's use of the report and complaint for representational purposes and the respondent's defense.
5. The district may redact portions of the investigation report to protect the identity of witnesses, prevent the disclosure of private information disclosed during the investigation not relevant to the determination, or when there is a specific threat of retaliation. The district must provide notice of the proposed redactions, and meet and confer with the Assembly on requests regarding the applicability of the redactions.
6. Records related to wholly unsubstantiated complaints or complaints not resulting in disciplinary action, including the investigation report, shall be maintained in a separate

investigation file in a secure location by Human Resources. These records shall remain separated from the respondent's personnel file for the period required by law or district policy.

L.3.8 Corrective Action and Discipline

Progressive Discipline: When problems arise in the performance of assigned duties and responsibilities, the district will make reasonable attempts to assist the faculty member in correcting these problems through the application of progressive discipline. Nothing herein shall limit the district's ability to combine or skip initial steps in the progressive discipline process depending on the nature and severity of the offense.

1. **Corrective Action:** Corrective actions include verbal counseling and written counseling memoranda. If a faculty member receives a written counseling memorandum, the document shall remain in the file of the immediate supervisor or maintained in a separate file in a secure location by Human Resources for a period not to exceed two (2) years. A faculty member shall be afforded an opportunity to review the Corrective Action Notice and submit a written response within ten (10) district business days, which will be attached to the Corrective Action Notice. The Corrective Action Notice, and any written response thereto, shall not be placed in the personnel file of the faculty member unless further corrective and/or disciplinary action is required.
2. **Written Reprimand:** When a faculty member's presence is requested in an administrative meeting to receive a written reprimand, the district shall provide to the Assembly and the faculty member in writing, at least forty-eight (48) hours in advance:
 - a. Notice of the date, time, and location of the meeting;
 - b. The persons attending the meeting;
 - c. The subject matter of the meeting;
 - d. That the faculty member has the right of representation.
 - i. If requested by the faculty member, the interview shall be postponed for an additional working day to enable the faculty member to secure representation.
 - ii. This notice may be by email and must include a reference to this section of the Agreement.
3. **Pre-disciplinary Notification and Process:** Suspension and Dismissal for Cause
 - a. Prior to recommending to the Board of Trustees a suspension with or without pay or dismissal for cause, the district will notify the faculty member of the recommendation and their right to request a pre-disciplinary hearing. The faculty member shall have the right at their option to appear before the

superintendent/president or designee to present any information they deem appropriate as to why the recommendation should not proceed to the Board. A copy of the recommendation to suspend or dismiss the faculty member shall be provided to the Assembly.

- b. The notification shall include the following:
 - i. A statement of the proposed disciplinary action;
 - ii. A statement of the specific charges upon which the proposed disciplinary action is based;
 - iii. All documents or materials upon which the recommendation to impose discipline has been made or a statement of the faculty member's right to review the specified documents;
 - iv. A statement of the faculty member's right to respond orally or in writing, or both;
 - v. A statement of the faculty member's right to have representation at the pre-disciplinary hearing;
 - vi. The identity of the person to whom the faculty member must respond to in writing by a specified date and time to request a pre-disciplinary hearing. The response deadline shall be no less than five (5) business days from the date on which the notification is served on the faculty member; and
 - vii. Notice that the failure to respond at the time specified shall constitute a waiver of the right to respond prior to the Superintendent/President's recommendation to the Board of Trustees that discipline should be imposed.
- c. The notice of intended discipline shall be made in writing and served upon the faculty member in person or by registered or certified mail to their home address on file with the district.
- d. Upon receipt of a request for a pre-disciplinary hearing, the Vice President of Human Resources or designee shall schedule the pre-disciplinary hearing. The pre-disciplinary hearing shall be held within ten (10) days of the request.
- e. At the pre-disciplinary hearing, the faculty member may present in writing or in person any reason as to why the intended disciplinary action should not proceed as recommended.
- f. Any of the pre-disciplinary hearing timelines may be modified by mutual agreement of the parties.
- g. If the superintendent / president recommends dismissal or suspension, the recommendation shall be submitted to the Board of Trustees for consideration

and decision pursuant to Education Code sections 87671 and 87672. The faculty member shall be afforded an opportunity to address the Board prior to any decision being made.

4. **Final Notice of Discipline:** Following the decision made by the Board of Trustees pursuant to Education Code section 87672, a final notice of disciplinary action shall be provided to the faculty member in person or by registered or certified mail at the address on file with the district. A copy of the final notice of disciplinary action shall be provided to the Assembly. This final notice of disciplinary action shall contain the following:
 - a. A statement of the exact discipline to be imposed and the effective date(s);
 - b. A statement of the charges upon which the disciplinary action is based;
 - c. The resolution of the Board of Trustees imposing discipline;
 - d. All documents or materials upon which the district has based its decision to impose discipline or a statement of the faculty member's right to review the specified documents;
 - e. A statement of the unit member's right to appeal the disciplinary action within thirty (30) working days from the date of service of the final notice of disciplinary action; and
 - f. A separate card or paper, the signing and filing of which shall constitute a demand for appeal and a denial of the charges.

5. **Appeals of Discipline:**

Suspension and Dismissal: Faculty members who are dismissed or suspended may appeal the disciplinary decision pursuant to Education Code sections 87673 *et seq.*

L.3.9 Background Checks

Background checks conducted by an outside agency or company at the request of the district may be conducted as part of disciplinary or harassment investigations. (Civil Code section 1786, Ed Code section 87733, *et seq.* Fair Credit Reporting Act). After the district receives the results of the background check, the faculty member shall receive oral, written, or electronic notice of:

- the name, address, and telephone number of the third-party agency that furnished the report;
- the respondent's right to obtain a free copy of the report; and
- the respondent's right to dispute the accuracy or completeness of any of the information in the report.

L.4.0 PERSONNEL FILES

Every full-time faculty member has the right to inspect their own personnel records pursuant to the Labor Code and Education Code. Faculty personnel files shall be available for inspection only to authorized employees (such as supervisors and HR staff) of the district when actually necessary in the proper administration of the district's affairs or the supervision of the faculty member.

Information of a derogatory nature, with the exception of evaluation comments or recommendations provided to the district on a confidential basis by a previous employer or as part of an application for transfer or promotion to another position within the district, shall not be entered or filed unless and until the faculty member is given notice and an opportunity to review and comment thereon. A faculty member shall have the right to enter, and to have attached to any such derogatory statement, their comments thereon.

Before placing any derogatory document in the faculty member's file, related to any disciplinary action or the investigation of a complaint, allegation, or concern, the document shall first be provided to the faculty member who shall have ten (10) business days from receipt of the document to provide a written response. Any written response shall be placed in the personnel file with the document containing the derogatory statement. If no further derogatory action related to the investigation, allegation, or concern occurs for four (4) years, the document shall be sealed in the personnel file at the faculty member's request, to be opened if the faculty member is facing potential discipline or upon court order or subpoena.

L.4.1 Medical records

The district shall not use or disclose medical information pertaining to full-time faculty members without written authorization from the affected faculty member. However, such information may be disclosed in limited circumstances, such as when compelled by a court of law or by a lawsuit filed by a faculty member, when used for administering and maintaining benefit plans, or in relation to a worker's compensation claim or request for medical leave.