

**MEMORANDUM OF UNDERSTANDING
CHABOT-LAS POSITAS FACULTY ASSOCIATION
AND
CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT
ARTICLES 16-1 THROUGH 16-3**

**ARTICLE 16-1
PERSONNEL RECORDS AND FILES**

16-1A Definition Of Personnel Records And Files

Only the District's Office of Human Resource Services shall keep Personnel Folders, as defined by Education Code 87031. A Personnel File shall include these parts:

16-1A.1 *The Confidential Folder*

The Confidential Folder that contains ratings, reports, or records that:

- a. were obtained prior to employment;
- b. were prepared by identifiable committee members before or after employment; and
- c. were obtained in connection with a promotional examination.

A unit member cannot access this portion of the Personnel File.

16-1A.2 *The Employee Folder*

The Employee Folder that contains application papers, transcripts, credentials, contracts with the District, Board of Trustee employment letters, and derogatory information placed in the Folder by the procedure cited under Section 16-1D below. The unit member has access to this portion of the Personnel File

16-1A.3 *Employee Supplementary Folder(s)*

Employee Supplementary Folder(s) that contain records of probationary and tenure evaluations and other evaluative material, which must have the signature of the unit member, indicating that the unit member has seen the evaluative document. The unit member has access to this portion of the Personnel File.

16-1A.4 *Medical Folders*

It is understood that any medical records shall be kept separate from other Personnel Files in a private, separate Folder. The unit member has access to this portion of the Personnel File.

16-1B Access To Personnel Files

Each unit member shall have a right upon presentation of official identification to request from the Office of Human Resource Services to review the contents of one's own Personnel File maintained in the District Office of Human Resource Services, as provided by California Education Code 87031.

16-1B.1 Personnel File Review By The Unit Member Representative

A representative of the unit member's choosing may accompany the unit member in this review. The representative may review the unit member's Personnel File without the presence of the unit member as long as the representative has written authorization from the unit member to review his/her Personnel File and provides official identification.

16-1B.2 Manager Present At The Personnel File Review

Any review of the Personnel File shall be made in the presence of the manager or a designee responsible for the safekeeping of this File.

16-1B.3 Time Of Personnel File Review

This review shall take place at a time when the unit member is not required to render service to the District and during the normal working hours of the Office of Human Resource Services.

16-1B.4 Record Of The Personnel File Review

Each time a Personnel File is reviewed, the date, the identity of the person's Personnel File being reviewed, and the signature of the person opening the File shall be confidentially documented in the Personnel Log Book, with the exception of the staff of the Office of Human Resource Services.

16-1B.5 Positive Materials In Personnel File

Evidence of professional achievement or special service to the college, District, community or profession may be entered in the Personnel File by the faculty member or the District. The materials shall be submitted to the Vice Chancellor of Human Resource Services, who shall place the materials in the unit member's File.

16-1B.6 Request For Corrections To/Deletions From The Personnel File

If a unit member believes that any employment record, or any portion thereof, is not accurate, relevant, timely, complete, or adequately substantiated, he or she may request a correction of the record or deletion of the offending portion, or both. Such request shall be made in writing, and shall include a statement of the corrections and/or deletions that the unit member believes are necessary, and the reasons therefore. The request shall be addressed to the Vice Chancellor of Human Resource Services, via the appropriate College President, and shall become part of the Employee Folder unless the request is granted, in which case it shall become part of the Employee Folder at the unit member's option.

The decision of the District on whether to correct or not correct the Personnel File shall be final and not subject to review. If the District denies the request, it shall provide written reasons for denial, which shall be attached to the original request in the Employee Folder.

16-1B.7 Exclusion Of Grievance Records And Investigation Reports From The Personnel File

- A. The results of any type of grievance to which a unit member is a party shall not be placed into the unit member's Personnel File.
- B. If a member is the subject of a misconduct investigation, and the investigation does not lead to discipline, the investigation file shall be maintained in a secure location, separate and apart from the employee's Personnel File.

16-1C Notification Of Residential Address And Telephone Number

Each unit member will inform the Office of Human Resource Services of any change in name or residence address and telephone number. A Post Office Box Number shall not be substituted where there is an existing street address. Each unit member shall have on record in the Office of Human Resource Services a telephone number where the person can be reached in an emergency.

16-1D Derogatory Information

Information of a derogatory nature, except material described in Section 16-1A.1, above, shall not be entered in a member's Personnel File except as follows:

- A. If the derogatory information is in the form of a community complaint, the notice and informal resolution process set forth in Articles 16-1 and 16-3 shall be followed.
- B. If the derogatory information is in the form of a student grievance, the notice and resolution process set forth in Articles 16-1 and 16-3 shall be followed.
- C. Any other derogatory information shall not be placed in a member's Personnel File unless:
 - 1. The member was given notice of the derogatory information within ten business days of the district determining that the information is derogatory; and
 - 2. The member was given notice of the District's intent to place the information in the Personnel File, and informed the member that he or she has thirty (30) days to review and comment thereon. The supervisor placing the derogatory information in the Personnel File will meet with the employee and consider comments made within the thirty (30) days, and if he or she determines to place the information in the File, the faculty' member's comments will be attached. Unverified documents and/or anonymous communication shall not be placed in the unit member's Personnel File. Such documents shall be

retained in a separate and secure file within the Department of Human Resource Services to the extent required by the laws regulating the retention of public records. "Unverified" in this Article means that the District is unable to confirm the document's authenticity. Further, access to these documents shall be on a "needs to know" basis only, as determined by the Vice Chancellor of Human Resource Services.

- D. Nothing in this Article alters the scope of Article 24.

16-1D.2 Documents Not Placed In The Personnel File

Information maintained by a supervisor in an administrative file regarding a unit member may be retained for the duration of the evaluation cycle during which the information was placed in the administrative file, or for six months, whichever is greater. Upon the expiration of the applicable time limit, the information must either be destroyed or placed in the Personnel File in a manner compliant with Article 16-1D.

16-1D.3 Time Limit To Maintain Derogatory Information In The Personnel File

Four (4) Calendar Years after derogatory material has been placed in a unit member's Personnel File in accordance with this provision, the unit member may request it be removed from his or her Personnel File. If approved by the College President (or Chancellor where appropriate) and the Vice Chancellor of Human Resource Services the material will be removed.

- A. If the District denies the request, and if no further administrative action has been taken pursuant to the documents in question, then the unit member shall have the right to have the documents sealed. In this case, the District shall place the documents in a sealed confidential envelope within the Personnel File if after four (4) Calendar Years there have been no instances of similar conduct. The information in the envelope will not be accessible except under direction of the Chancellor or the Vice Chancellor of Human Resource Services, and only when necessary.

ARTICLE 16-2

INVESTIGATIONS OF UNIT MEMBERS

16-2.1 *Mutual Respect For A Fair Investigative Process*

The parties understand and agree that the District has the authority and obligation to investigate complaints, reports and/or other credible information that a member has engaged in misconduct. The parties further understand and agree that members are entitled to be presumed innocent of wrongdoing during the investigation process and are entitled to certain protections during the investigation process. This Article incorporates the mutual agreement of the parties set forth in their Settlement Agreement and Memorandum Of Understanding adopted in PERB Case No SF-CE-2886-E

16-2.2 *Misconduct Investigation Defined*

A misconduct investigation is a District-initiated investigation of a member into allegations that the member has violated district policy and/or law, based on information received from a formal or informal complaint made by an identifiable author; a report of misconduct; manager observations; or other credible sources of information. An investigation is initiated at the point that the District determines to go beyond meeting with the accuser and the accused to interview other potential witnesses. An anonymous accusation shall not form the basis for initiating an investigation.

16-2.3 *Non-Investigatory Interviews*

The parties understand and agree that in the day-to-day operation of the District, managers and members meet regularly to share information. These are not investigatory interviews. However, the parties further understand and agree that, if a manager reasonably expects that such a meeting may elicit information that warrants discipline, the manager shall notify the unit member in advance. The unit member so notified shall have the right to bring the appropriate College Faculty Association Grievance Officer or his/her designee to the meeting. In addition, a unit member may act independently to bring the appropriate Faculty Association Grievance Officer or his/her designee to the meeting if the member reasonably believes that it could lead to discipline.

16-2.4 *Notice Of Investigation*

An employee who is under investigation shall be sent an Employee Notification Summary Form no later than five (5) business days before his/her appointment for an investigatory interview. The negotiated Form is attached to this Agreement. (See Appendix _____). The form is intended to provide employees subject to misconduct investigations with a description of the subject matter of the investigatory interview, and shall include the following:

- A. An introductory statement that:
 - 1. The District takes a neutral stance when investigating possible misconduct and no findings of wrong-doing have been made;

2. The District maintains the confidentiality of the investigation to the fullest extent possible;
3. No findings will be made prior to completion of the investigation, and the investigation will not be closed until after the scheduled date of the employee's interview.
4. The information received could lead to discipline and the employee is entitled to have representation at the meeting;
5. The investigation is confidential and the employee should refrain from discussing it with other members of the campus community while the investigation is pending (except for the purpose of receiving representation during the investigation or exercising other rights as recognized under the Educational Employment Relations Act (EERA)).
6. Every effort will be made to complete the investigation within ninety (90) days of when the District first received the complaint or information triggering the investigation. Where this is not possible two things will occur: the employee will receive a status update on where the District is in its investigation and when it expects to be completed; and the District and the Chabot-Las Positas Faculty Association will have a check-in meeting in person or by telephone.
7. The employee will receive notice of the findings of the investigation, and whether the allegations investigated were or were not sustained;
8. In the event the investigation leads to disciplinary action, the employee will be afforded all of the pre-discipline due process rights to which he/she is entitled. This includes providing the employee, and Chabot-Las Positas Faculty Association with the employee's consent, with a copy of the information relied upon to issue the charges; and
9. District policy and law prohibit retaliation of any kind against anyone the employee believes to have provided information or otherwise cooperated in the investigation, and that such conduct constitutes an independent basis for serious discipline up to and including termination.

B. A summary of the subject matter of the interview including:

1. If appropriate, and at the discretion of the Vice Chancellor of Human Resource Services or his/her designee, the name of the complainant(s), or individual(s) whose concerns caused the District to initiate an investigation. To the extent the Collective Bargaining Agreement (CBA) provides for greater notice, the CBA prevails.

2. What allegedly occurred. The employee shall be entitled to a description of the subject matter or allegations of the investigation.
3. When the incident(s) allegedly occurred. The notice will be as specific as possible, based on the information available at the time the Notice is given.
4. Where the incident(s) allegedly occurred. The notice will be as specific as possible, based on the information available at the time the Notice is given.

16-2.5 *Placement On Paid Administrative Leave Of Absence While An Investigation Is Pending*

Placement of a member on Paid Administrative Leave of Absence while an investigation into alleged misconduct is pending shall conform to the following standards and procedures:

- A. Placement on Paid Administrative Leave of Absence while an investigation is pending constitutes a nondisciplinary action;
- B. Placement on Paid Administrative Leave of Absence shall not be automatic and it is not an action that the District takes lightly. The District will not take this step unless:
 1. The allegations, if true, indicate that the employee poses a safety threat to him/herself or others;
 2. The allegations, if true, involve harassment, retaliation and/or dishonesty; and/or
 3. Other extenuating circumstances with the written approval of the Chancellor, which approval will state the nature of the extenuating circumstance.
- C. The notice placing an employee on Paid Administrative Leave of Absence will provide information about the Leave, including but not limited to:
 1. The basis or bases on which he/she is being placed on Paid Administrative Leave of Absence;
 2. That, as this investigation could lead to discipline, the employee is entitled to representation during his/her investigatory interview.
 3. That placement on Paid Administrative Leave of Absence constitutes a directive not to attend work or perform work duties and that the employee is not to be present at work or in the work area without prior written consent.
 4. That placement on Paid Administrative Leave of Absence does not constitute a directive to stay away from public events or public areas of campus.

16-2.6 *Completion Of Investigation And Notice Of Completion*

Every effort will be made to complete the investigation within ninety (90) days, and where this is not possible, the member under investigation will receive a status update on where the District is in its investigation and when it expects to be completed.

16-2.7 *Security Of Investigation Files*

In the event that an investigation does not lead to discipline, the District confirms that it is its practice, and will continue to be its practice to maintain the investigation file in a secure location, separate and apart from the employee's Personnel File. Further, access to these files shall be on a "needs to know" basis only, as determined by the Vice Chancellor of Human Resource Services.

ARTICLE 16-3
DISPOSITION OF COMMUNITY COMPLAINTS
AND STUDENT GRIEVANCES

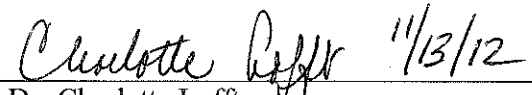
16-3.1 *Community Complaints*

- A. A community complaint is any written complaint by an identifiable author (other than a student) alleging that a unit member has violated District policy to his/her detriment and that seeks a remedy.
- B. If the Office of Human Resource Services determines that the complaint requires an investigation consistent with the standards set forth in Article 16-2, then the notices and procedures set forth in Article 16-2, Investigation of Unit Members, shall apply to the disposition of the complaint.
- C. If an investigation is not initiated, the following timelines and procedures shall apply:
 - 1. The complaint shall be presented to the faculty member by the administrator receiving the complaint as soon as possible but no later than ten (10) instructional days after it was received. If the faculty member is not available within this time frame, the complaint shall be presented upon the faculty member's return to work.
 - 2. The Dean or other immediate supervisor and affected faculty member shall meet to review the complaint. At the request of the faculty member, a Faculty Association officer or member may accompany the faculty member to the meeting. The Dean/immediate supervisor shall also meet with the complainant to clarify the issue. If the Dean/immediate supervisor determines that a meeting among the between the complainant and affected unit member is appropriate, he or she will call the meeting and the affected member shall attend. Further, the affected unit member shall have the right to request a meeting with his or her Dean (or immediate supervisor) and other affected parties, to attempt to settle the allegations informally.
- D. Complaints which are withdrawn, shown to be false, or not sustained, shall not be placed in the faculty member's Personnel File and shall not be utilized in any evaluation or disciplinary action against the faculty member. Such documents shall be retained in a separate and secure file within the Department of Human Resource Services to the extent required by the laws regulating the retention of public records. Further, access to these documents shall be on a "needs to know" basis only, as determined by the Vice Chancellor of Human Resource Services.

- E. Placement of a sustained complaint in a member's Personnel File must comply with the protections and restrictions on placing derogatory information in the Personnel File set forth in Articles 16-1 and 16-2, including the right to notice and the opportunity to attach a response.

16-3.2 Student Grievances

- A. Students are provided with a complaint process pursuant to Board of Trustees Board Policy and District Administrative Rule 5513. These complaints are referred to as student grievances.
- B. If a student files a grievance about a unit member, it shall be provided to the unit member within ten (10) instructional days of when it is received, unless the information pertains to a class that is currently in session, and in which the student grievant is enrolled. If the complaint relates to a class where the grievant is currently enrolled, the affected unit member shall still be informed of the existence of the allegations unless doing so would be likely to reveal the identity of the student complainant. Whether or not general notice of the allegations is provided while class is still in session, the grievance will be provided to the unit member no later than ten (10) week days after the grades for the class are filed at the completion of the Academic Term.
- C. If the grievance pertains to a grade assigned by the unit member, or other matters related to academic freedom or academic fairness, the unit member shall be consulted as part of the effort to resolve the matter, consistent with District Administrative Rule 5513. The unit member shall have the right to review all pertinent document(s).
- D. The unit member shall have the right to provide a written response to the grievance consistent with Administrative Rule 5513. To the extent the member prepares a written response, it shall be attached to the document(s) in any folder such documents are held. Further, the affected unit member shall have the right to request a meeting with his or her Dean (or immediate supervisor) and other affected parties to attempt to settle the allegations informally.
- E. If the grievance leads to a misconduct investigation, the procedures and protections of Articles 16-1 and 16-2 shall apply.


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