

STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD



CHABOT-LAS POSITAS FACULTY  
ASSOCIATION,

Charging Party,

v.

CHABOT-LAS POSITAS COMMUNITY  
COLLEGE DISTRICT,

Respondent.

Case No. SF-CE-2886-E

SETTLEMENT AGREEMENT

In the interest of promoting harmonious labor relations between the parties and to avoid the uncertainty, inconvenience, and expense of litigation, the Chabot-Las Positas Faculty Association (CLPFA or Charging Party) and the Chabot-Las Positas Community College District (District or Respondent), in settlement of the above-captioned unfair practice charge before the Public Employment Relations Board, agree as follows:

1. A dispute has arisen between the parties concerning the District's manner of conducting a misconduct investigation.
2. This Settlement Agreement does not constitute an admission of wrongdoing, contract or statutory violation, or liability on the part of any party to this agreement.
3. The parties AGREE that the following constitutes the official, complete, joint position of the parties regarding this resolution of this matter:

The CLPFA and District endorse the agreement reached in PERB case no, SF-CE-2886-E as adequately addressing each party's concerns. Both made significant compromises, but more importantly, were able to find sufficient common ground to reach resolution. Both parties support an investigation process that is neutral and fair. This Agreement is consistent with this shared value. It creates a defined investigation process that gives faculty notice of the subject of the interview and informs them of their rights during an interview while preserving the independence of the District's investigator. The CLPFA and District see this resolution, and the collaborative manner in which it was reached, as a positive step toward their mutual goal of fostering collegial labor relations.

4. The Parties adopt, as if fully incorporated here in, the attached MOU "Notification Procedure for Employee Investigations" and "Employee Investigation Notification" form.

5. With respect to placing a member who is the subject of a misconduct investigation on paid administrative leave during an investigation, the parties understand and agree as follows:

a. Placement on paid administrative leave while an investigation is pending constitutes a nondisciplinary action;

b. Placement on paid administrative leave shall not be automatic and it is not an action that the District takes lightly. The District will not take this step unless:

i. The allegations, if true, indicate that the employee poses a safety threat to him/herself or others;

ii. The allegations, if true, involve harassment, retaliation and/or dishonesty; and/or

iii. 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 will provide information about the leave, including but not limited to:

i. The basis or bases on which he/she is being placed on paid administrative leave;

ii. That, as this investigation could lead to discipline, the employee is entitled to representation during his/her investigatory interview.

iii. That placement on paid administrative leave 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.

iv. That placement on paid administrative leave does not constitute a directive to stay away from public events or public areas of campus.

6. The undersigned parties represent that they have read and understand the terms of this settlement and that they are authorized to execute this Settlement Agreement on behalf of their principals.

7. This Settlement Agreement represents a full and complete resolution of the claims and disputes between the parties based upon the above-referenced matters. CLPFA agrees to withdraw with prejudice the above-captioned unfair practice charge and requests that PERB dismiss the complaint.


For Charging Party:



Dr. Charlotte Lofft  
President  
CLPFA

March 19, 2012  
Date

For Respondent:



Dr. Mary Anne Gulario  
Vice Chancellor for Human Resource  
Services and Organizational Development

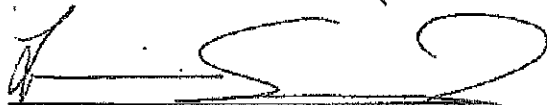
8 March 2012  
Date

Approved as to Form and Content



Patricia Lim  
Law Offices of Robert J. Bezemek  
Attorneys for Charging Party

March 19, 2012  
Date



Laura Schulkind  
Liebert Cassidy Whitmore  
Attorneys for Respondent

March 21, 2012  
Date

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## Memorandum of Understanding

### Notification Procedure for Faculty Investigations

I. This MOU documents the procedure for notifying CLPFA members who are subject to a District investigation into possible misconduct. It is the intent of the District and CLPFA to act in good faith and fairness in implementing this MOU.

II. An employee who is under investigation shall be sent the attached Employee Notification Summary Form no later than five (5) business days before his/her appointment for an investigatory interview. 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 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 CLPFA 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 CLPFA 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 Resources 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 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.

III. 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.

IV. This MOU establishes the complete process that faculty and CLPFA shall use within the context of a pending misconduct investigation. In agreeing to these provisions, neither the employee nor the CLPFA waives any rights they may have in disciplinary or other contexts under the Parties' collective bargaining agreement, the EERA, the Education Code, or other sources of law, to make demands for, and/or receive, information.

### Notification of Investigation

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

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

Please be further advised that:

- The information received in your interview could lead to discipline. Therefore, you are entitled to have representation at the meeting.
- The investigation is confidential. Therefore, you are to 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 by the EERA.)

Every effort will be made to complete the investigation within ninety (90) 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 of the pre-discipline due process rights to which you are entitled. This includes receiving a copy of the written investigation report. If you would also like CLPFA to receive a copy of the written investigation report, please check the box below and the District will automatically forward it to CLPFA.<sup>1</sup>

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.

You will be contacted by \_\_\_\_\_ in the Human Resource Services Department to schedule an appointment for your investigative interview. The interview will not be scheduled any sooner than five (5) days from receipt of this Notice. A summary of the subject matter of your interview is on page 2 of this form.

<sup>1</sup> Where a member does not consent to the release of private personnel information to the CLPFA, it may still demand the information. If this occurs, the District may have a duty to release the information to CLPFA.

If you have questions you may contact \_\_\_\_\_ at: \_\_\_\_\_

- I authorize the Chabot Las Positas Community College District to send to CLPFA copies of any reports or other information related to this investigation to which I am entitled and which the District sends to me personally. This authorization applies unless and until I rescind it in writing.

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Print Signature

Summary of Subject Matter of Interview

1. Names of complainants or reporters, if appropriate:

2. What allegedly occurred:

3. When the alleged misconduct occurred:

4. Where the alleged misconduct occurred: