

**Memorandum of Understanding between  
Portland State University (University)  
and the Portland State University Chapter  
of the American Association of University Professors (Association)  
November 14, 2016**

**Subject:** Procedures for Paid Administrative Leave during an investigation

**Recitals**

The University takes the position that the authority to place AAUP represented employees on paid administrative leave during an investigation is within the reserved rights of the University.

The AAUP takes the position that placing AAUP employees on administrative leave in such cases constitutes "suspension... during the pendency of a proceeding" under Article 27, Section 3(c) of the CBA, and can be imposed "only if immediate harm to the member or other is threatened by the member's continuance."

Without conceding their positions on this issue or waiving any rights under the CBA or law, the parties wish to jointly develop a procedure for consultation and cooperation with AAUP before the University places an AAUP represented employee on paid administrative leave during an investigation.

**Definition**

"Paid administrative leave during an investigation" means the placement of an AAUP represented employee on paid administrative leave when they are the subject of one of the following: (1) an administrative investigation by the University (such as by OGDI, HR, or IAO); (2) an external investigation by regulatory authorities, licensure boards, etc.; or (3) a criminal investigation.

**Procedure**

- A. An employee who is the subject of an investigation should typically remain in regular duty status throughout the course of the investigation. In rare cases, it may be appropriate to remove the employee from the workplace during an investigation. Such cases generally arise when:
1. There is a significant concern that the employee's presence on campus may put at risk the health and safety of students or other members of the university community;
  2. The employee's presence in the workplace poses a risk to the integrity of the investigation; or

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3. There is a reasonable basis to believe that continuation of the employee in regular duty status during an investigation poses an unacceptable level of risk to University resources, exposes the University to liability, or causes substantial disruption in the workplace.
- B. In cases where the University is considering placing an AAUP represented employee on paid administrative leave during an investigation, the University will make every effort to consult with AAUP in accordance with the following guidelines:
1. The University will notify AAUP and request a meeting in person, or by phone, to discuss the University's concerns and possible alternatives to paid administrative leave during an investigation.
  2. The meeting should occur within two business days whenever possible.
  3. At the meeting, the parties will share as much information as reasonably possible in order to have a full and complete discussion. However, the parties acknowledge that in some cases the University may not be able to disclose confidential information about an ongoing investigation.
  4. The parties agree that they will consider the reputational and other damage associated with the measures being considered and shall make reasonable and honest efforts to minimize that damage.
  5. The parties agree that they will consider the workload to cover if the employee is placed on administrative leave during an investigation. If administrative leave is used, the parties will determine how, and whether, the workload will be distributed.
  6. The parties agree to maintain confidentiality with regard to the matters disclosed and discussed during the meeting. Neither party will disclose information obtained in the meeting to any third party or use such information for any purpose other than to seek a mutually acceptable agreement regarding paid administrative leave during an investigation or appropriate alternatives, or as needed to process grievances that arise out of the use of administrative leave, up to and including arbitration.
  7. The parties will discuss the concerns, and consider alternative options to address those concerns with the goal of avoiding paid administrative leave during an investigation whenever possible. Such options may include:
    - a. Requiring the employee to telecommute during the course of the investigation;
    - b. Temporary reassignment to other duties or other work locations;
    - c. Imposing temporary limitations on the employee's duties or authority; and

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- d. Other creative solutions proposed by the parties.
- 8. If the parties agree upon an alternative solution, it will be confirmed in writing.
- 9. If the parties are not able to agree, or no other solution sufficiently addresses the concerns raised by the University, the University may impose Investigatory Administrative Leave. In such cases, the AAUP does not waive its right to file a grievance as provided in the CBA.

**Terms of Administrative Leave during an investigation**

When the University places an AAUP represented employee on paid administrative leave during an investigation, it will comply with the following requirements:

- A. The University will notify the employee in writing that they are being placed on paid administrative leave during an investigation.
- B. The notice to the employee will state the general nature of the investigation and the anticipated duration of the leave.
- C. The notice will inform the employee that paid administrative leave during an investigation is not disciplinary and they will not lose pay or benefits during the period they are on leave.
- D. The employee will be reinstated to regular duty status as soon as reasonably possible.
- E. In cases where the University begins the process of seeking a disciplinary sanction against the employee following an investigation, the University will comply with Article 27 of the CBA and the employee will be returned to regular duty status unless immediate harm to the employee or other is threatened by the employee's continuance.
- F. Upon the request of either party, the parties agree they shall reconvene prior to one year from the date of execution of this agreement to address modifications as needed. If neither party seeks modification, then this MOU shall be added to the CBA in Article 27 Section 3(d) under the current language. If modifications are sought, the parties will determine at that time how it shall be incorporated in the CBA.
- G. PSU-AAUP agrees to withdraw the 2015 Administrative Leave grievance and demand to arbitrate (currently in abeyance), and the 2016 two party Administrative Leave grievance.

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<u>For the University</u>	<u>For the Association</u>
 _____ Shelly Chabon, Vice Provost for Academic Administration & Planning	 _____ David Hansen, Vice President Collective Bargaining
<u>11/23/16</u> _____ Date	<u>11/28/2016</u> _____ Date