

# Administrative Investigations

## 1010.1 PURPOSE AND SCOPE

The Department is committed to high ethical standards. We are an integral part of the community, and the Department exists to serve the needs of citizens. The people entrust us with considerable authority, and we must be responsive to their concerns.

The primary purpose of this policy is to establish the procedures to be used in administrative investigations of Department employees to ensure fair treatment of complaining parties, witnesses, and employees. Another purpose of this Policy is to establish certain guidelines for criminal investigations of Department employees and to delineate the differences between and the separation of administrative and criminal investigations of Department employees. It is not the intent of this policy to discourage legitimate complaints.

This policy applies to all administrative and criminal investigations of alleged misconduct by Department employees or authorized volunteers, whether such investigations are initiated internally or as the result of a citizen complaint.

### 1010.1.1 PROFESSIONAL STANDARDS UNIT

The prompt, unbiased, and correct handling of administrative investigations is a part of the Department's obligation to its community and its employees. To meet this obligation, the Department shall create a Professional Standards Unit that will consist - at a minimum - of one sworn member at or above the rank of sergeant. The Chief of Police shall establish the standards for assignment to this unit.

Members of the Professional Standards Unit will receive training specific to the nature of administrative investigations and modern interview techniques and will maintain a working knowledge of the CSUPD Policy Manual, the CSU HR manual, and any employment law relevant to the investigation and discipline of employees.

Because the Professional Standards Unit (PSU) may have a flexible number of members, this policy refers to it simply as the Professional Standards Unit rather than attempting to predict the specific rank of any member. A directive to communicate with or refer an issue to the Professional Standards Unit should be read as communicating with any available member of the PSU.

## 1010.2 TYPES OF INVESTIGATIONS

Personnel complaints consisting of any allegation of misconduct or improper job performance against any Department employee that, if true, would constitute a violation of Department Policy,

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University Policy, federal, state, or local law. These complaints may be generated internally or by the public.

These administrative investigations shall be classified in one of the following categories:

- (a) Performance Complaint
- (b) Level One Investigation
- (c) Level Two Investigation

### **1010.3 AVAILABILITY OF COMPLAINT FORMS**

Complaint packets will be maintained in the Department's public lobby during business hours and on the Department's website. Forms may also be available in other ways as deemed appropriate. Complaint packets in languages other than English may also be provided as determined necessary or practicable.

If any Department supervisor receives comments or inquiries regarding the personnel complaint process, the supervisor shall forward that information to the Professional Standards Unit for review and to determine if there are any needed improvements or changes.

### **1010.4 SOURCE OF COMPLAINTS**

Any person who believes that a Department employee has been involved in improper conduct has the right to make a complaint. In fact, under some circumstances Department employees may be obligated under the law and under policies of this Department to report improper conduct of other employees, as well as have a professional obligation to report such conduct. It is the policy of this Department to investigate all such complaints expeditiously, effectively, and impartially, and to take appropriate action, all in accordance with this policy and other applicable laws.

Anonymous complaints and third-party complaints should be accepted and investigated to the extent that enough information is provided. All complaints filed against a Department employee will be entered in the IACMS / Professional Standards Case Management System by a CSUPD supervisor.

The IACMS is software provided by CSUPD and maintained by the Professional Standards (IA) Sergeant. Access is limited to certain CSUPD employees and all entries are tracked by name, date, and time. This system is separate from the Department's central records and personnel system.

### **1010.5 ACCEPTANCE OF COMPLAINTS**

All allegations of employee misconduct will be screened by the Professional Standards Unit (PSU) or the employee's supervisor. Even if a complaint involves a citizen's perception about an employee's behavior, a minor violation of procedure or practice, or a concern expressed about the way an incident was handled, the complaint will be entered into the IACMS by the supervisor with

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the investigative summary; including findings and any notes or attachments that explain how the complaint was investigated. However, an inquiry by any person about a Department employee's actions is not considered a complaint unless that person states it as such or is not satisfied with the explanation given by the Department supervisor they speak to and request further action.

All complaint packets will be courteously accepted by any employee and promptly given to the Professional Standards Unit or the subject employee's supervisor. Although written complaints are preferred, a complaint may also be filed verbally either in person or by telephoning the Department and will be accepted by any supervisor. If a supervisor is not immediately available to take a verbal complaint, the receiving employee shall obtain enough contact information for the supervisor to contact the complainant. In the event of a verbal complaint, the receiving supervisor will make every effort to record the complaint by audio or video.

The following should be considered when taking and handling complaints:

- (a) A difference of opinion between an employee and a citizen concerning the citizen's guilt or innocence for a crime will be decided within the confines of the criminal justice system and will not ordinarily be subject to an administrative investigation. This includes the issuance of a traffic ticket or other citation. Only if the complainant states that the employee violated law or policy will the matter be entered into the IACMS by a supervisor.
- (b) If a complainant is intoxicated to the point where his/her credibility appears to be unreliable, identifying information should be gathered and the person provided with information as to how a complaint packet may be obtained. However, if the intoxicated person insists on filing the complaint, the supervisor handling the complaint shall re-contact the complainant to validate their complaint on the next business day. If the complainant refuses to cooperate or is unable to be reached due to misinformation given when identified, the supervisor shall enter the information provided into the IACMS and forward to the PSU. The complainant can file their complaint in the future regardless of their initial cooperation.
- (c) Depending on the urgency and seriousness of the allegations involved, complaints from juveniles should generally be taken only with a parent or guardian present, and after the parent or guardian has been informed of the circumstances prompting the complaint.
- (d) If serious allegations are made against an employee that are promptly proven (i.e. through video recording) not credible, the employee's immediate supervisor can investigate the allegation as a Performance Complaint regardless of the allegations. The employee's supervisor must adequately document why the allegation was not credible.
- (e) Complainants may rescind their complaint so long as the investigating supervisor or Professional Standards Sergeant believes there is no concern of a violation of Department Policy, University Policy, federal, state, or local law. The investigating supervisor or Professional Standards Sergeant must adequately document the initial

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complaint intake and subsequent rescinding statements. If the investigation was classified as a Level I or Level II complaint, it may be reclassified as a Performance Complaint and a finding of unfounded given.

### **1010.6 COMPLAINING PARTY RIGHTS AND RESPONSIBILITIES IN AN ADMINISTRATIVE INVESTIGATION**

Individuals wishing to file a comment or complaint about the conduct of Department employees will be treated with respect and professionalism.

- (a) The complainant shall have the right to have one representative of his or her choice present while being interviewed during an administrative investigation.
- (b) The representative's role shall be restricted to that of an advisor to the complainant and not as a participant in the questioning and/or investigation.
- (c) Complainant interviews shall be scheduled at the mutual convenience of the Department and the complainant.
- (d) Interviews shall be conducted at a reasonable hour, unless the seriousness of the investigation requires immediate action.
- (e) The duration of an administrative interview of a complainant shall be for a reasonable period and shall allow for reasonable personal necessities and rest breaks.
  - 1. The complainant has the right to a copy of his or her statement.
  - 2. The complainant shall be notified of the findings of an administrative investigation.

### **1010.7 INITIAL SUPERVISOR RESPONSIBILITIES**

A supervisor who becomes aware of alleged misconduct or receives a citizen complaint shall take reasonable steps to prevent aggravation of the situation.

In general, the primary responsibility for the investigation of a performance complaint shall rest with the employee's immediate supervisor. The Chief, or his/her authorized designee may, however, direct that another supervisor investigates it. The supervisor shall be responsible for the following:

- (a) If the complaint involves serious allegations, the supervisor shall notify the employee's chain of command as soon as practical. The Commander of the division or highest-ranking employee notified of possible serious allegations against an employee must notify the Professional Standards Unit as soon as practical.
- (b) During the preliminary investigation of any complaint, the supervisor should make every reasonable effort to obtain names, addresses and telephone numbers of any potential witnesses.
- (c) When appropriate, immediate medical attention should be provided and photographs should be taken of alleged injuries or damage as well as accessible areas of non-injury.
  - 1. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant

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is at issue, a supervisor shall verbally report the matter to the employee's Commander, or the Chief of Police, who will initiate appropriate action.

- (d) A supervisor investigating an allegation of misconduct by an employee shall ensure that the procedural rights of the employee are followed pursuant to Policy, University Human Resources regulations, and state and federal law.
- (e) When the nature of a complaint relates to sexual, racial, ethnic, or other forms of prohibited harassment or discrimination, the supervisor receiving the complaint shall gather basic facts and then promptly notify his or her chain of command and PSU. Professional Standards will consult with the Office of Equal Opportunity (OEO) and the Chief of Police.

### **1010.8 ADMINISTRATIVE VS. CRIMINAL INVESTIGATIONS**

Employees may be subject to an administrative investigation and/or a criminal investigation to determine the factual basis of any complaint. It is the policy of this Department to distinguish between the two types of investigations to protect the rights of employees.

- (a) The purpose of an administrative investigation is to determine whether any University or Department rules, regulations, policies, procedures, or department training directives have been violated.
  - 1. Except as otherwise specifically provided in any other Department policy, all administrative investigations of Department employees shall be conducted pursuant to and in accordance with the provisions of this policy.
- (b) A criminal investigation is conducted to determine if alleged misconduct may be the basis for filing of criminal charges. The Chief, or his/her designee, has the authority to order a criminal investigation of any alleged wrongdoing instead of, or in addition to, an administrative investigation.
  - 1. All criminal investigations of Department employees by this Department shall be conducted in accordance with Colorado law and applicable provisions of this policy. The Chief, however, may direct that the investigation of any alleged criminal wrongdoing by a Department employee be conducted by an outside law enforcement or prosecutorial Department.

### **1010.9 INVESTIGATIVE PROCESS**

The purpose of this section is to outline the process used to investigate the conduct of Department employees. It is intended to provide a guideline for supervisors to follow and give employees an expectation of the investigation process. While an attempt has been made to give examples of situations that could be classified under these levels, it is not intended to define every situation. Supervisors are expected to exercise good judgment in classifying investigations and discuss any uncertain situations with their chain of command.

- (a) The Chief of Police or his/her designee has primary authority to conduct all administrative and criminal investigations of Department employees or cause them to be conducted. In accordance with University policy, CSUPD will refer all allegations

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of sexual harassment, discrimination, or retaliation to the University's Office of Equal Opportunity.

- (b) The Chief may request and authorize the University's Human Resources Department to conduct an administrative investigation.
- (c) While conducting an investigation, Professional Standards is delegated from the Chief's authority for the purpose of directing an administrative investigation. Professional Standards has the authority to require all employees to make a full and complete disclosure pertaining to the commission of, or omission of, any act which might be in conflict with their duties and obligations as an employee of the Department or pertaining to the duties and obligations of any other employee of the Department. The Professional Standards Unit has the authority to report directly to the Chief of Police regarding all information pertinent to an administrative investigation.
- (d) The Chief or any Captain may direct or authorize any supervisor to conduct an administrative investigation. When doing so, they have the same authority as Professional Standards described above.
- (e) The Chief or any Captain may direct or authorize any sworn personnel to conduct a criminal investigation.
- (f) If such a policy is in effect, supervisors shall review the applicability of any Early Intervention System policy concerning complaint initiation, investigation, and tracking.
- (g) Supervisors are expected to exercise good judgment in classifying investigations and to discuss any uncertain situations with their chain of command or Professional Standards if needed.
- (h) Legal advice regarding investigative procedures or corrective action will be provided by the University's Office of General Counsel.
- (i) Supervisors recommending discipline should consult with Professional Standards to review and consider past performance of the subject employee. Supervisors should take into consideration similar disciplinary actions for consistency.

### **1010.10 ASSIGNMENT TO ADMINISTRATIVE LEAVE**

Employees may be required by the University to go on administrative leave at any time at the sole discretion of the University. As soon as possible, notice shall be provided to the employee, and such notice shall be in writing to the affected employee. Circumstances under which such a leave may occur include, but are not limited to, the following

- (a) To make inquiries into or investigate a work-related matter;
- (b) To remove the employee from the workplace pending a pre-decision or pre-deprivation hearing or final decision;
- (c) To protect the employee;
- (d) To protect the public;
- (e) To protect the other employees or property in the workplace; or

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- (f) To further any other work-related or business-related purpose.

### 1010.10.1 ADMINISTRATIVE LEAVE

An employee placed on administrative leave will be subject to the following:

- (a) The determination of paid versus unpaid leave will be made in accordance with University Personnel Policies and Procedures.
- (b) An employee placed on administrative leave may be required by a supervisor to relinquish any Department equipment or vehicle as deemed appropriate by the Chief of Police or other Command Staff.
- (c) An employee placed on administrative leave shall not take any actions as a Department employee or in an official capacity without the prior approval of the Chief or his or her designee. The employee shall be required to continue to comply with all Policies and lawful orders of a supervisor.
- (d) An employee placed on administrative leave may be temporarily reassigned to a different assignment, generally within normal business hours, during the pendency of the investigation. The employee must remain available for contact at all times during the assigned working hours.
- (e) At such time as any employee placed on administrative leave is returned to full and regular duty, the employee shall be returned to his/her regular duty assignment unless otherwise directed by a disciplinary outcome.

### **1010.11 GENERAL CONDUCT OF INVESTIGATIONS**

Administrative and criminal investigations shall be conducted separately and managed by different individuals. The criminal investigator of an employee shall not have access to evidence, results, and other information that came from compelled disclosures made by that employee as part of the administrative investigation or that were obtained from leads furnished by such disclosures. Additionally, information that is regulated by the Colorado Open Records Act, such as the contents of an employee's personnel file, shall only be released in a manner consistent with that Act.

An administrative investigation may parallel a criminal investigation and/or any prosecution.

- (a) The Chief shall be notified as soon as practicable when an employee is formally accused of criminal conduct.
- (b) An employee accused of criminal conduct shall be provided with all rights and privileges afforded to a citizen under the State and Federal Constitutions and the employee may not be administratively ordered to provide any information to a criminal investigator.
- (c) No information or evidence administratively compelled from an employee may be given to any criminal investigator who is investigating the employee who is compelled to provide the information.
- (d) Any law enforcement department is authorized to release limited information concerning the arrest of a peace officer which has not led to a conviction. However, no disciplinary action shall be taken against the accused employee based solely on an

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arrest or crime report. An independent administrative investigation shall be conducted in accordance with Department policy.

### 1010.11.1 INVESTIGATIVE PROCESS

The purpose of this section is to outline the process used to investigate the conduct of Department employees. It is intended to provide a guideline for supervisors to follow and give employees an expectation of the investigation process. While an attempt has been made to give examples of situations that could be classified under these levels, it is not intended to define every situation.

### 1010.11.2 ADMINISTRATIVE INVESTIGATION FORMAT

Complaints about employee performance or conduct shall be investigated uniformly per the guidelines in this Policy and in the Early Intervention System (EIS) Policy.

#### (a) Performance Complaints

1. **General:** A Performance Complaint involves an allegation of a performance issue that comes to the attention of the Department by any source. This may involve a citizen's perception about an employee's behavior; a minor violation of Department Policy, procedure or practice; or a concern expressed about the way an incident was handled. Subsequent performance issues involving similar conduct by the same employee within a twelve-month period may result in the elevation of the investigation to Level One. All Performance Complaints are to be entered into the IACMS.
  - (a) Performance issues typically require minimal investigation and usually consist of speaking with the concerned party and the employee(s) involved. The supervisor has broad latitude in resolving the issue.
2. **Investigative Responsibility:** Performance Complaints are generally investigated by the employee's direct supervisor. However, nothing in this policy prohibits the assignment of another supervisor as investigator if the Chief or any Captain believes it will ensure a more effective investigation. The investigator will render findings and will normally recommend any potential discipline.
3. **Documentation:** Will be standardized and articulated per written directives provided by the Professional Standards Unit. All performance investigations will be entered into the IACMS. Written statements from involved parties are preferred unless circumstances make this impossible or unreasonable. Audio or video recorded interviews should be conducted and included in the IACMS. All documents related to the complaint/investigation will be loaded into the IACMS along with any other documents, recordings, or supporting materials.
4. **Finding:** One of the official findings listed in this policy will be utilized.
5. **Disciplinary and/or Corrective Action:**
  - (a) Action taken would generally be, but is not limited to: verbal counseling, verbal reprimand, written reprimand (Letter of Expectations), mandated training (formal or on-shift), modification of job duties, and consideration in the employee's next performance evaluation. More serious violations or repeated violations may merit a letter of Corrective Action.

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- (b) Discipline in the form of a letter of Corrective Action or higher shall have an investigative summary, supervisor review and findings, and Supervisor Disciplinary Review Form completed. Upon review by two levels in a chain of review (preferably the employee's chain of command), the highest-level reviewer must complete a Disciplinary Action Form and provide the subject employee with an outcome of findings memorandum.
- (c) Prior to imposing a suspension, involuntary demotion, or termination of employment, the investigator shall forward the investigation and disciplinary recommendations through the designated chain of review including the Chief of Police for review and comment before the matter is forwarded to Human Resources for their consideration. All efforts shall be made to complete the review in a timely manner and notify the employee of the outcome. If this is not possible within a fourteen-day period from the conclusion of the investigation, the PSU will notify the employee of the status of the review process at least once per week until the final outcome is presented to the employee.

### 6. Review Process:

- (a) The review will typically begin with a supervisor of at least equal rank to the investigator, and all investigations should involve at least two levels of review. Direct supervisors responsible for conducting the investigation may be considered the first level of review and offer not only findings recommendations, but disciplinary recommendations as well. If recommending discipline above a Letter of Expectations, the investigation must be reviewed by the employee's entire chain of command including the Chief of Police. Any review of an investigation may be completed by a supervisory chain outside the involved employee's chain of command if the Chief or other Command Staff believes it will provide a more effective review.
- (b) Each supervisor in the chain of review shall review the investigation and prepare written comments on the findings and recommendations as to the discipline and/or corrective action necessary. If the investigation is forwarded to the Chief for his/her review and consideration, the Chief shall review the completed administrative investigation, the chain of review supervisors' findings and the chain's recommended discipline and/or corrective action and take one of the following actions:
  - 1. Send the case back for additional investigation; or
  - 2. Render findings and authorize and/or impose any appropriate administrative discipline and corrective action. However, prior to the Chief making his or her disciplinary decisions where the chain of review has recommended the imposition of a suspension, involuntary demotion, or termination of a state classified employee, the Chief will refer the investigation to the University's Hiring Authority for a final decision.

### (b) Level One Investigation

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1. General: A Level One investigation involves an allegation that an employee violated clearly established Department Policies, procedures, or practices and may be brought to the attention of the Department by any source. A Level One investigation involves an allegation that if substantiated could result in disciplinary action beyond that usually expected in a Performance Complaint.
  - (a) Some examples of investigations that should be considered Level One include, but are not limited to, allegations that:
    1. The police tactics used were inappropriate or unwarranted, but do not rise to the level of a Use of Force allegation that would be classified as a Level Two investigation.
    2. An employee's behavior presented a significant safety risk to another person or a significant threat of property damage.
    3. An employee's driving presented a significant safety risk to another person or a significant threat of property damage, whether it resulted in a motor vehicle accident or not.
    4. An employee was involved in dishonest, untruthful, or fraudulent conduct.
    5. An employee engaged in conduct that tends to seriously impair the operation or morale of the Department, may cause the public to lose confidence in the police department, violates the public trust, or affects the reputation of the Department or any employee.
    6. An employee's treatment of others was biased, unequal, or discriminatory in nature, but not rising to the level of a civil rights violation that would be classified as a Level Two investigation.
    7. An employee participated in sexual harassment of another employee or citizen.
    8. Subsequent Level One investigations involving similar conduct by the same employee within a twelve-month period may result in the elevation of the investigation to a Level Two Investigation.
2. Investigator: Professional Standards Unit. However, nothing in this policy prohibits the assignment of another supervisor as investigator if the Chief or their designee can articulate a conflict of interest with the investigator who would normally be assigned. The investigator will render findings and forward those findings to the employee's chain of command for review and recommend discipline.
3. Documentation: Will be standardized and articulated in an SOP from the Professional Standards Unit. All Level One investigations will be entered into the IACMS. Written statements from involved parties are preferred unless circumstances make this impossible or unreasonable. Audio or video recorded interviews should be conducted and included in the IACMS.

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4. Finding: Level One investigations require an official finding as defined in this Policy.
5. Disciplinary and/or Corrective Action: Action taken would generally be but is not limited to: a verbal or written reprimand, mandated training, suspension, demotion, or termination. Discipline of a verbal or written reprimand (with an accompanying Disciplinary Action Form) may be imposed by the employee's supervisor without further review if the next level of supervision has concurred. Prior to imposing a suspension, involuntary demotion, or termination of employment, the investigator shall forward the investigation and disciplinary recommendations through the designated chain of command for review and comment, and then to the University Hiring Authority for final determinations. The Department may also consider corrective action, modification of job duties, change of assignment, or other methods of correcting the behavior, regardless of the official finding.
6. Review Process:
  - (a) The review will typically begin with a supervisor of at least equal rank to the investigator, should involve at least two levels of review if recommending discipline above a written reprimand, and may be completed by a supervisory chain outside the involved employee's chain of command if the Chief or other Command Staff believes it will provide a more effective review. Direct supervisors responsible for conducting the investigation may be considered the first level of review and offer not only findings recommendations, but disciplinary recommendations as well. In instances when an administrative investigation is completed by an investigator who is not a CSUPD employee, the chain of review will be conducted as determined by the Chief.
  - (b) Each supervisor in the chain of review shall review the investigation and findings and prepare written comments on the findings and will make written recommendations as to the discipline and/or corrective action necessary. If it is requested by the Chief, if involving outside review (i.e. Human Resources or the Office of General Counsel), or the investigation involves a disciplinary recommendation greater than a Letter of Expectations, the investigation shall be forwarded to the Chief for his/her review and consideration. The Chief shall review the completed administrative investigation, the chain of review supervisors' findings, and the chain's recommended discipline and/or corrective action before taking one of the following actions:
    1. Send the case back for additional investigation
    2. Render findings and authorize and/or impose any appropriate administrative discipline and corrective action. However, prior to the Chief making his or her disciplinary decisions where the chain of review has recommended the imposition of a suspension, involuntary demotion, or termination of a state classified employee,

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the Chief will consult with Colorado State University's Human Resources before rendering and delivering a final decision.

(c) Level Two Investigation

1. General: A Level Two investigation involves an allegation that an employee violated clearly established Department Policies, procedures or practices and may be brought to the attention of the Department by any source. A Level Two investigation involves an allegation that if substantiated could result in disciplinary action. It includes allegations that:
  - (a) An employee used force or discharged a firearm in violation of a Department Policy or applicable law;
  - (b) An employee committed a crime;
  - (c) As a result of an employee's act or failure to act, a person sustained severe injury or death or suffered a civil rights violation;
  - (d) An employee used deadly force, whether or not the use of such force results in death; or
  - (e) Any other matter the Chief or the University Manager determines should be a Level Two investigation.
2. Investigator: Professional Standards shall generally have the responsibility of conducting a Level Two investigation. However, nothing in this policy prohibits the assignment of another supervisor as investigator if the Chief or their designee can articulate a conflict of interest with the investigator who would normally be assigned.
3. Documentation: A thorough investigation and documentation using approved Professional Standards forms are required in a Level Two investigation. All Level Two investigations will be entered into the IACMS. Written statements from involved parties are preferred unless circumstances make this impossible or unreasonable. Audio or video recorded interviews should be conducted and included in the IACMS.
4. Finding: Level Two investigations require an official finding as defined in this policy.
5. Disciplinary and/or Corrective Action: A sustained Level Two complaint may result in but is not limited to: a verbal or written reprimand, mandated training, suspension, demotion, or termination. Prior to imposing a suspension, involuntary demotion, or termination of employment, the investigator shall forward the investigation and disciplinary recommendations through the designated chain of review for review and comment. The Department may also consider corrective action, modification of job

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duties, change of assignment, or other methods of correcting the behavior, regardless of the official finding.

6. Review Process: The review will typically begin with a supervisor of at least equal rank to the investigator, should involve at least two levels of review if recommending discipline equal to or less than a written reprimand, and may be reviewed by a supervisory chain outside the involved employee's chain of command if the Chief or other Command Staff believes it will provide a more effective investigation. In instances when an administrative investigation is completed by an investigator who is not a CSUPD employee, the chain of review will be conducted as determined by the Chief.
  - (a) Each supervisor in the chain of command shall review the investigation and findings and prepare written comments on the findings and shall make written recommendations as to discipline and/or corrective action necessary.
  - (b) The entire investigation shall then be forwarded to the Chief for his/her review and consideration. The Chief shall review the completed administrative investigation, the chain of review supervisors' findings, and the chain's recommended discipline and/or corrective action before taking one of the following actions:
    - (a) Send the case back for additional investigation, or
    - (b) Render one of the findings as defined in this policy and authorize and/or impose any appropriate administrative discipline and corrective action. However, prior to the Chief making his/her findings and disciplinary decisions where the chain of review has recommended the imposition of a suspension, involuntary demotion or termination of a state classified employee who has completed the probationary period, the Chief shall forward the investigation to Human Resources for review, comment, and approval of any applicable discipline. After the Chief renders his or her decision and receives HR approval, and it is decided that corrective action should be imposed, the affected employee shall be notified in writing as soon as reasonably possible. The complainant, if any, shall also receive written notification of the findings.

### 1010.12 INVESTIGATIVE FINDINGS

At the conclusion of a Performance Complaint, Level One, or Level Two administrative investigation, one of the following findings shall be used:

- (a) **Not Involved:** The employee was not involved in the incident.
- (b) **Unfounded:** The allegation was false, or not factual.

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- (c) **Exonerated:** The Incident occurred, but the employee's actions/behavior did not violate any University or Department rule, regulation, policy, procedure, or training directive.
- (d) **Not Sustained:** There is insufficient evidence to prove or disprove the allegation.
- (e) **Sustained:** The allegation is supported by enough evidence establishing that the employee violated one or more University or Department rule, regulation, policy, procedure, or training directive.

### **1010.13 SPECIAL EXAMINATIONS**

- (a) Administrative investigators may employ any investigative procedure, method, or tool that is reasonable and appropriate to each specific case, which may include, without limitation:
  - 1. polygraphs
  - 2. intoxilyzers
  - 3. blood tests
  - 4. urine tests
  - 5. fingerprinting
  - 6. photographs
  - 7. audio and video recordings
  - 8. medical examinations
  - 9. psychological examinations
  - 10. laboratory examinations
  - 11. lineups
  - 12. financial disclosures with proper legal order
- (b) An employee under investigation may request such tests and examinations if it is reasonable to believe that such tests or examinations would be beneficial to the employee's defense. The Department shall pay for the costs of such tests and examinations requested by the employee, unless they would be duplicative of tests or examinations already conducted by the Department, in which case the employee shall be responsible for the costs of any such duplicative tests and examinations.
- (c) An employee under investigation may be compelled to submit to such tests and examinations that the investigator has reasonable grounds to believe may yield information or evidence relevant to the investigation. Refusal of an employee to submit to such tests and examinations shall subject the employee to disciplinary action, up to and including termination from employment with the Department.
- (d) Polygraph examinations for supervisory-initiated or complainant-initiated administrative investigations will not be administered without specific prior approval of the Chief of Police. An employee who is the subject of a complainant-initiated administrative investigation shall not be required to take a polygraph examination unless the complainant has first undergone a polygraph examination and been found to have been truthful as to the material allegations, in the opinion of the examiner.

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An employee who is the subject of a supervisory-initiated administrative investigation may be required to take a polygraph examination regardless of whether or not any other person has first undergone a polygraph examination. When polygraph examinations are administered, they will be specifically, directly, and narrowly related to the performance of the employee's official duties, and to the issues raised in a specific investigation.

1. Should an employee refuse to take a polygraph examination after being ordered to do so by the Chief in accordance with the above provision, the employee shall be subject to disciplinary action up to and including termination from employment within the Department for refusal to obey an order.
2. An examiner outside the Department, chosen by the Chief shall administer polygraph examinations required under this policy. The cost of such examinations shall be borne by the Department.
3. Employees, complainants, and witnesses may take another polygraph examination for the purposes of seeking a second opinion. The cost of second-opinion polygraph examinations shall be borne by the party seeking the second examination.
4. All polygraph examinations in administrative investigations shall be recorded by audio and/or video equipment.
5. The results of all polygraph examinations shall be included in the investigator's report.
6. All polygraph examinations shall be specifically directed and narrowly related to the administrative investigation being conducted. All questions used shall be previewed with the person taking the exam. All parties involved in the chain of review may consider the polygraph examiner's report. However, polygraph reports shall be construed only as an opinion to be considered together with all other aspects of the investigation.

### **1010.14 ADMINISTRATIVE SEARCHES**

- (a) Any employee may be compelled to disclose personal financial information pursuant to proper legal process if such information tends to indicate a conflict of interest with official duties, if the employee is assigned to or being considered for a special assignment, or to determine if the employee is engaged in unlawful activity.
- (b) Employees shall have no expectation of privacy when using telephones, computers, radios, or other communications provided by the Department.
- (c) Assigned lockers and storage spaces should only be administratively searched in the employee's presence, or with the employee's consent, or with a valid search warrant, or where the employee has been given reasonable notice that the search will take place.

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- (d) All other Department areas (e.g., desks, office space, and assigned vehicles) may be administratively searched by a supervisor, in the presence of an uninvolved witness, for non-investigative purposes (e.g., obtaining a needed report or radio). An investigative search of such areas shall only be conducted upon a reasonable suspicion that official misconduct is involved.

#### 1010.14.1 ADMINISTRATIVE INVESTIGATIONS PROCEDURES

##### (a) Timeliness

1. Administrative investigations shall be completed in an expeditious manner. Employees who are involved in any level of Investigation shall be kept reasonably apprised about the current status of the investigation.
2. Allegations of past improper conduct by a Department employee may be the subject of an administrative investigation regardless of the amount of time passed since the alleged misconduct.

##### (b) Conduct, Notification and Documentation of Investigation

1. The investigator conducting the administrative investigation shall, as soon as practical, notify the affected employee and the employee's chain of command in writing of the fact that the investigation is being conducted, unless the Chief determines that such notification may compromise the investigation. That written notice may be in the form of an email if the investigation relates to a Performance Complaint, but Professional Standards forms for Level I and Level II notifications will be utilized for those types of investigations. The investigator shall also refer the affected employee to the policies pertaining to the employee's rights and responsibilities relative to the investigation.
2. The Chief shall be promptly advised of any allegation of misconduct serious enough to possibly require immediate action, such as relieving the employee from duty.
3. While conducting an administrative investigation, the role of the investigator is that of a fact-finder. His or her purpose is to establish, as accurately and thoroughly as practical, the facts surrounding the incident which precipitated the administrative investigation and to render his or her findings. An investigator in the chain of review will normally make disciplinary recommendations. Administrative investigations shall be conducted in a fair and impartial manner.

#### **1010.15 EMPLOYEE RIGHTS AND RESPONSIBILITIES IN AN ADMINISTRATIVE INVESTIGATION**

- (a) Every Department employee is required to establish and maintain a working knowledge of all University or Department rules, regulations, policies, procedures, and training directives. In the event of a Performance Complaint or alleged misconduct, it will be presumed that the employee was familiar with the University or Department rules, regulations, policies, procedures, and training directives in question.

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- (b) All Department employees are required to fully and truthfully cooperate in administrative investigations. During an administrative investigation, no employee can be disciplined for refusing to make a statement to a supervisor or answer a supervisor's questions unless he or she was first given an administrative investigation advisement (otherwise known as Garrity advisement) by a supervisor. The advisement shall include, in essence, the following:
1. That the employee is required to answer truthfully all questions specifically directed and narrowly related to the performance of official duties.
  2. Refusing to answer such questions truthfully will subject the employee to discipline up to and including termination.
  3. Any statements the employee makes, including answers to questions, and any evidence which is gained as a result of such statements, cannot be used against the employee in any subsequent criminal proceedings.
- (c) While an administrative investigation is ongoing, no employee against whom a complaint has been filed, nor the employee's representative or attorney, shall contact any complainant or witness concerning the complaint or its investigation unless authorized to do so in writing by the Chief of Police or his/her designee, nor shall any employee interfere with the investigation. However, once an investigation has been completed, if the employee receives notice that a pre-decision hearing is to be held, the employee and/or his or her attorney may then contact the complainant or other witnesses in the investigation for the limited purpose of preparing information to present at the pre-decision hearing. The employee shall respect the right of the complainant or other witnesses to choose not to talk to the employee, or his or her attorney, regarding the investigation or the subject matter thereof. Further, no employee shall intimidate, threaten, or harass any complainant or witness or attempt to persuade such complainant or witness to withhold or falsify any testimony or to absent him or herself from any administrative proceeding.
- (d) Any employee who becomes the subject of an administrative investigation of any level shall be entitled to the following administrative process, which shall generally include the right to:
1. Be informed in writing of the existence of the complaint and/or charge/s which initiated the administrative investigation within 72 hours of its assignment to an investigator, except that such disclosure may be withheld until the investigation is completed if the Chief determines that disclosure might jeopardize the investigation;
  2. An opportunity to respond in writing or in person to the complaint and/or charge;
  3. The Department's consideration of the employee's response;
  4. Receipt of the findings and decision concerning discipline within seven calendar days after the decision has been reached; and
  5. If discipline is imposed, the opportunity to initiate a grievance, appeal, or issue resolution process as provided by applicable University Personnel Policies. The grievance and appeal processes are not applicable to authorized volunteers or state classified employees who have not completed the probationary period.

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- (e) An employee under administrative investigation shall have the right to be informed of the name and rank of the employee in charge of any interview or procedure required of the employee in the investigation prior to any interview or procedure. The employee shall also have the right to the presence of one representative of his or her choice during any such interview or procedure required of the employee in the investigation. However, the representative of the employee shall not be a witness or the subject or potential subject of the administrative investigation which is being conducted concerning the employee or be involved in either the employee's administrative or criminal investigation or be a supervisor in the chain-of-command/ review of the employee. The employee shall also have the right to be informed prior to the interview or procedure of all other persons to be present during such interview or procedure, as well as which persons will participate in the interview or procedure.
- (f) The representative's role shall be restricted to that of an advisor to the employee, and not as a participant in the questioning or investigation. The employee's representative may not interfere with the questioning or investigation.
- (g) Administrative investigation interviews of the employee shall be conducted at reasonable hours, unless the seriousness of the allegation requires immediate action.
- (h) Administrative investigation interviews shall be at a time convenient to the Department, and not at the convenience of the employee or the employee's representative but should not intentionally or unreasonably interfere with the employee's normal working and/or rest hours.
- (i) The duration of an administrative interview of an employee shall be for a reasonable period and shall allow for reasonable personal necessities and rest breaks.
- (j) An employee being interviewed shall not be subjected to offensive language or threatened with transfer or discipline. The investigator shall make no promise or offer of a reward to the employee as an inducement to answer questions.
- (k) An employee under administrative investigation may not review his or her investigation file until the investigation and chain of review are completed. The employee must make a written request to the Chief of Police.
- (l) The administrative interview of the employee shall be audio or video recorded by the Department. The employee may request that they are provided with a copy of the recording.
- (m) The administrative interview of the employee will take place in a private area within the CSUPD building or at any other location agreed to by both the Department and the employee.
- (n) The Department shall not discriminate against an employee when the conditions of employment and the standards of investigation procedures are utilized on his or her behalf. No employee should be discharged, demoted, disciplined, denied promotion, or be threatened with any such treatment by reason of the lawful exercise of the rights granted herein, or the exercise of any rights under any existing administrative grievance procedure.

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### **1010.16 ADMINISTRATIVE DISCIPLINE AND CORRECTIVE ACTION**

- (a) As a result of corrective action for a performance issue, subject to the grievance and appeal procedures of the University Personnel Policies, any supervisor acting within the scope of his or her supervisory duties may administer verbal counseling, mandated training, or verbal/written reprimand (with at least one level of review and an accompanying Disciplinary Action Form), and/or impose corrective action for a minor violation of any Department rule, regulation, policy, procedure, or training directive.
- (b) Subject to the grievance and appeal procedures of the University Personnel Policies, the Chief is authorized to impose and shall be the final authority as to the imposition of administrative discipline and corrective action within the Department. He or she may follow, but is not bound by, the findings and recommendations of supervisors.
- (c) The imposition of discipline or corrective action as a result of an administrative investigation shall in no way preclude further sanctions imposed in any subsequent civil or criminal proceeding. Conversely, the outcome of any criminal or civil proceeding against an employee of this Department shall not preclude the imposition of administrative discipline or corrective action.
- (d) A finding of "Exonerated" or "Not Sustained" as defined in this policy does not prohibit the Chief or supervisors from recognizing potential employee problems and requiring corrective action.
- (e) Any employee who refuses to submit to the procedures described in this policy after being ordered to do so by the Chief or a supervisor may be subject to disciplinary action up to and including termination of employment from the Department.

### **1010.17 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE**

If an employee tenders a written retirement or resignation prior to the completion of an investigation or imposition of discipline, it shall be noted in the IACMS. The tender of a retirement or resignation by itself shall not serve as grounds for the termination of pending discipline or official finding/s by the Chief.

### **1010.18 ADMINISTRATIVE INVESTIGATION FILES**

- (a) Files relating to administrative investigations are confidential, the property of the Department, and shall be maintained by Professional Standards. Access to such files shall be limited to Professional Standards personnel and those specific persons authorized by the Chief. However, a supervisor conducting an ongoing administrative investigation or performance review of an employee may have access to all administrative investigation files of that employee if the Chief or any Captain first approves such access.
- (b) Except as provided in this policy, records pertaining to administrative investigations shall not be released without the prior approval of the Chief.
- (c) After an administrative investigation has been completed and the chain of review is complete, employees may request, in writing, permission from the Chief to review the contents of an administrative investigation file in which they are accused of

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misconduct. The Chief may deny the employee inspection of all or any part of such an administrative investigation file if the Chief determines such inspection is not in the best interest of the Department or of any complainant/witness involved, or that such inspection would compromise the investigation.

1. Unless otherwise permitted by the Chief, such review by an employee shall be limited to reading and cursory note-taking and shall not include taking photos of, copying, or otherwise recording the contents of the file.
  2. However, upon written request, an employee accused of misconduct shall be provided with a copy of his or her statements.
- (d) Administrative investigation files will be maintained and archived in accordance with the Department's records retention schedule and state law.

### **1010.19 DISCIPLINARY ACTION INFORMATION RELEASE**

On occasion, it is necessary and appropriate to administer corrective action or actual discipline to an employee in order to correct his or her behavior. While supervisors and staff members may be informed of a disciplinary action, discipline is a private matter that should be kept between the employee, his or her supervisors, and other people directly involved in the incident. Therefore, it is Department policy to keep disciplinary matters confidential, and to maintain personnel files in a secure area with controlled access. Exceptions to the policy concerning disciplinary action information release may be made at the discretion of the Chief of Police.