



To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation and Team Spirit.

NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114(n)), this directive and all related Handbooks, Attachments, and Appendices establish Transportation Security Administration (TSA) policy and must be applied accordingly.

1. **PURPOSE:** This directive provides policy and procedures concerning the right of bargaining unit employees (BUEs) to personal representation during interviews in connection with examinations or investigations that the BUE reasonably believes may result in disciplinary or adverse action against him or her. This directive cancels and supersedes the Interim Guidance on Employees' Rights to Personal Representation During Examination or Investigation dated October 31, 2011.
2. **SCOPE:** This directive applies to TSA management officials, bargaining unit employees, and bargaining unit employees' personal representatives.
3. **AUTHORITIES:**
 - A. The Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA)
 - B. [Decision Memorandum, Determination on Transportation Security Officers and Collective Bargaining](#), signed and dated February 4, 2011 by TSA's Administrator
4. **DEFINITIONS:**
 - A. Adverse Action: A suspension of more than 14 days, including an indefinite suspension, an involuntary demotion for performance/conduct, or a removal.
 - B. American Federation of Government Employees (AFGE): The union certified on June 29, 2011 by the Federal Labor Relations Authority as the exclusive representative of BUEs.
 - C. Bargaining Unit Employees (BUEs): The following full- and part-time non-supervisory personnel carrying out screening functions under 49 U.S.C. § 44901, as that term is used in the Aviation and Transportation Security Act of 2001, § 111(d). BUEs, as defined in Section II of the Determination, include Transportation Security Officers (TSOs), Lead Transportation Security Officers, and Master and Expert Transportation Security Officers, including Behavior Detection Officers, Security Training Instructors, and Equipment Maintenance Technicians.

NOTE: Coordination Center Officers and Supervisory Transportation Security Officers are not BUEs.

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- D. Determination: The Decision Memorandum, Determination on Transportation Security Officers and Collective Bargaining, signed and dated February 4, 2011 by TSA's Administrator.
- E. Disciplinary Action: Actions consisting of a Letter of Reprimand to a suspension of 14 days.
- F. Interview: For purposes of this directive, an interview means questioning, verbal or written, conducted by TSA management officials, including supervisors, TSA's Office of Inspection, or any other TSA employee or agent authorized by TSA management to conduct an examination or investigation concerning TSA operations and activities or TSA employees' conduct.
- G. Investigation or Examination: Any fact-finding process conducted by TSA management officials, including supervisors, TSA's Office of Inspection, or any other TSA employee or agent authorized by TSA management to conduct an interview concerning TSA operations and activities or TSA employees' conduct.
- H. Personal Representative: For purposes of this directive, an individual designated by a BUE under the Determination and consistent with [TSA MD 1100.63-3, Employee Representation](#), to be present and assist the affected BUE during an interview in connection with an examination or investigation as defined in this directive.
- 5. RESPONSIBILITIES:** TSA employees, including TSA management officials, BUEs, and TSA employees' personal representatives (whether TSA employees or not) are responsible for complying with this directive.
- 6. POLICY:**
- A. Subject to the exclusions listed in Sections 6E and 6F of this directive, a BUE has the right to a personal representative during interviews in connection with examinations or investigations, as set forth in this directive that the BUE reasonably believes may result in disciplinary or adverse action against him or her. This right is separate and apart from the right of all TSA employees to designate a personal representative as provided in TSA MD 1100.63-3.
- B. With respect to BUEs, Section IV.A.4 of the Determination provides that: "Covered employees who request representation will have a right to representation by a personal representative during an examination or investigation by the Agency which the employee reasonably believes may result in discipline provided that: such representatives are not disallowed for any reason set forth in TSA MD 1100.63-3, § C;... no ... union [other than AFGE] may provide this representation; and provided that securing such representation does not unreasonably delay the investigation."

NOTE: The reasonableness of the delay to an investigation will be assessed from the perspective of TSA management based on the individual circumstances of each case.

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- C. Nothing in this directive alters the obligation of BUEs to cooperate fully with all TSA examinations and investigations, as required under TSA directives and Handbooks, as well as all applicable laws and regulations.
- D. BUEs may designate a personal representative to assist them during an examination or investigation when all of the following conditions are met:
- (1) The BUE is the subject of an interview in connection with an examination or investigation and that BUE reasonably believes that disciplinary or adverse action directed at him or her may result from the interview, subject to the exclusions listed in Sections 6E and 6F of this directive. In considering the reasonableness of the BUE's belief that discipline or adverse action against him or her might result from the interview, management will consider objective facts relating to the interview;
 - (2) The BUE, orally or in writing, requests personal representation either before or during the interview;
 - (3) The personal representative selected by the BUE is not disallowed for any reason set forth in TSA MD 1100.63-3, Section IV.A.4 of the Determination, this directive or other applicable TSA policy or guidance; and
 - (4) The time it takes for a BUE to secure a personal representative does not unreasonably delay the BUE's interview or the overall examination or investigation. The reasonableness of the delay will be assessed from the perspective of TSA management based on the individual circumstances of each case.
- E. The BUE's right to personal representation described in this directive does not apply to every management request for information or meeting between a BUE and TSA management official(s)/representative(s). All of the conditions of Section 6D of this directive must be met for the BUE to have a right to a personal representative.
- F. Additionally, a BUE does not have a right to a personal representative in circumstances such as:
- (1) The interview relates to a security incident or concern at a screening or other location, the resolution of which is time sensitive and requires immediate action. The determination of whether there is a time-sensitive security incident or concern is within the sole discretion of TSA management. Examples of time-sensitive matters include, but are not limited to, the following:
 - (a) Whether a particular individual will be permitted to enter the sterile area or SIDA or remain in those areas;
 - (b) Whether a particular individual will be permitted to board an aircraft or remain boarded on an aircraft;
 - (c) Whether particular accessible property or checked baggage contains a prohibited

item;

- (d) Whether particular accessible property or checked baggage may be placed on board an aircraft or remain on an aircraft;
 - (e) Whether an individual, property, or checked baggage needs to be located for screening or other security purposes;
 - (f) Whether a terminal or part of a terminal needs to be swept for threats;
 - (g) Whether a terminal or part of a terminal needs to be evacuated;
 - (h) Whether an individual is violating federal or state law in such a manner as to warrant the assistance or intervention of law enforcement authorities;
 - (i) Whether an access control event or a security breach has occurred or may be about to occur; or
 - (j) Whether the safety and security of the traveling public, the airport and/or persons or property located at the airport or other transportation facility (bus, pipeline, train, subway, *etc.*) may be in imminent danger.
- (2) The interview is for purposes other than an examination or investigation and/or the BUE cannot reasonably believe it may result in disciplinary or adverse action against him or her.
 - (3) The interview is exclusively to inform the BUE of a disciplinary or non-disciplinary decision made prior to the meeting/interview.
 - (4) Performance evaluation meetings (even if the performance evaluation is negative).
 - (5) Counseling, corrective actions, or verbal/written warning sessions.

7. PROCEDURES:

A. BUEs interviewed in connection with an examination or investigation as provided in this directive must:

- (1) Comply with a request to be interviewed and fully cooperate with the examination or investigation;
- (2) Provide full and complete responses to questions posed during the interview; and
- (3) Request personal representation orally or in writing either before or during the interview if the BUE wishes to have a personal representative present during the interview.

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- B. After a BUE requests personal representation, TSA management official(s) or other TSA employee(s) or agent(s) authorized by TSA management conducting an examination or investigation may, as appropriate:
- (1) Grant the BUE's request and delay the interview for a reasonable time period until the personal representative is available;
 - (2) Deny the BUE's request and end the interview;
 - (3) Deny the BUE's request and continue with the interview after making the decision that the matter is not one for which personal representation is authorized as described in Sections 6D, 6E, and 6F of this directive and so inform the employee;
 - (4) Offer the BUE the choice of voluntarily continuing without a personal representative.
- C. If a BUE requests personal representation in a matter for which personal representation is appropriate and the requested personal representative is unavailable or disallowed for the reasons described in Section 6D(3) of this directive, the TSA management official(s) or other TSA employee(s) or agent(s), authorized by TSA management to conduct the examination or investigation, shall inform the BUE that he or she may request an alternative personal representative. In that event:
- (1) If the BUE can obtain an alternative personal representative within a reasonable period of time that will not unduly delay the examination or investigation, the interview shall be delayed for a reasonable period of time and the BUE shall not be required to answer questions during that time. The TSA management official(s) or other TSA employee(s) or agent(s) conducting the examination or investigation will determine what constitutes a reasonable period of time and will so inform the employee.
 - (2) If the BUE cannot obtain an alternative personal representative in a reasonable period of time, as determined by the TSA management official(s) or other TSA employee(s) or agent(s) conducting the examination or investigation, the interview may continue without a personal representative for the BUE.
- D. For the purposes of this directive, a personal representative properly designated by BUE:
- (1) May:
 - (a) Ask questions reasonably related to the issues being discussed.
 - (b) Suggest other employees who may have knowledge of relevant facts.
 - (c) Consult with the BUE prior to the interview.
 - (d) Refuse to disclose to management statements made by the BUE to the personal representative during any private conference, while serving as the employee's

personal representative, regarding the subject of the interview.

(2) May not:

- (a) Contest the scope of the interview.
- (b) Interrupt questioning of the BUE by the TSA management official(s) or other TSA employee(s) or agent(s) authorized by TSA management
- (c) Interfere with the BUE's responses during the interview.
- (d) Answer for the BUE.
- (e) Instruct the BUE to refuse to answer questions or to refuse to answer questions fully.
- (f) Disrupt or try to break up the interview.
- (g) Take a break during the interview to consult with the BUE.

E. If, in the judgment of the TSA management official(s) or other TSA employee(s) or agent(s) conducting the interview, a personal representative engages in one or more of the prohibited actions described in Section 7D(2) of this directive, the TSA management official(s) or other TSA employee(s) or agent(s) conducting the interview should inform the representative of the violation(s) and proceed with, or discontinue, the interview.

- (1) If the TSA management official(s) or other TSA employee(s) or agent(s) decides to discontinue the interview, he or she shall inform the BUE that the interview will be recessed for a reasonable time, as determined by TSA management, to allow the BUE to obtain a replacement personal representative who meets the requirements of MD 1100.63-3.
- (2) If the BUE is able to locate another personal representative during the time period allowed, the interview will continue with the new personal representative representing the BUE.
- (3) If the BUE is not able to locate another personal representative during the time period allowed, the TSA management official(s) or other TSA employee(s) or agent(s) may continue the interview without a personal representative representing the BUE.
- (4) Any prohibited conduct by the BUE's personal representative shall not be attributed to the BUE or negatively affect consideration of whether to propose or impose disciplinary or adverse action against the BUE.

F. If the BUE requested personal representation either before or during the interview but such representation was denied and a disciplinary or adverse action is proposed or imposed against the BUE based on information obtained during the BUE's interview

without a personal representative, the BUE may raise the effect of the absence of a personal representative at the interview during the disciplinary or adverse action process. The TSA management official or other TSA employee or agent authorized by TSA management proposing or imposing disciplinary or adverse action shall consider the BUE's concerns regarding the lack of a personal representative and evaluate those concerns as he or she would evaluate any other factors raised by a BUE during the disciplinary or adverse action process.

G. A BUE may seek review, in an appropriate forum, of any final disciplinary or adverse action against him or her pursuant to [TSA MD 1100.75-3, Addressing Unacceptable Conduct](#), and any other relevant TSA policies and procedures.

8. APPROVAL AND EFFECTIVE DATE: This policy is approved and effective the date of signature unless otherwise specified.

APPROVAL

Signed

December 30, 2013

Karen Shelton Waters
Assistant Administrator for Human Capital

Date

EFFECTIVE

March 21, 2014

Date

Distribution: Administrator, Deputy Administrator, Assistant Administrators, Regional Directors, Federal Security Directors, Supervisory Air Marshals in Charge, Business Management Division Directors, Administrative Officers, and Human Resources Specialists

Point of Contact: HRAccess Helpdesk: HelpDesk@tsa-hraccess.com