

## **Article 40**

### **INVESTIGATIONS**

#### **Mutual Respect for a Fair Investigative Process**

40.1 The District has the authority and obligation to investigate complaints, reports and/or other credible information that a unit member has engaged in misconduct. Unit members are entitled to be presumed innocent of wrongdoing during the investigation process, are entitled to certain due process protections during the investigation process and shall be treated with the same dignity and respect as alleged victims and complainants.

#### **Definition of Non-investigatory Interviews and Misconduct Investigations**

##### *40.2 Non-Investigatory Interviews*

In the day-to-day operation of the District, administrators and unit members meet regularly to share information. These are not investigatory interviews; however, if an administrator reasonably expects that such a meeting may elicit information that warrants discipline, the administrator shall notify the unit member in advance. The unit member shall then have the right to bring an FA representative to the meeting. In addition, a unit member may independently decide to bring an FA representative to any meeting if the unit member reasonably believes that it could lead to discipline.

##### *40.3 Misconduct Investigations*

A misconduct investigation is a District-initiated investigation of a faculty member alleged to have engaged in misconduct, based on information received from a formal or informal complaint made by an identifiable author, a credible report of misconduct, manager observations, or other credible sources of information. An anonymous accusation shall not form the basis for initiating an investigation unless credible documentation or evidence is provided corroborating the anonymous accusation or claim beforehand, or, if accurate and true, the accusation or claim presents an imminent threat to the health or safety of others. Should the accuser remain anonymous, the faculty member may not be disciplined based on the accuser's accusations or claims unless at the end of an investigation, the faculty member is found responsible for misconduct. Disciplinary decisions shall be supported by just cause.

#### **Notification of Investigation**

40.4 A faculty member who is under investigation shall be notified no later than 10 business days before the faculty member's appointment for the investigatory interview. The notification shall include:

40.4.1 *Notification* that the faculty member has a right to FA representation.

40.4.2 *A form* on which the faculty member acknowledges receipt of this notification of right to representation and indicates whether the faculty member is authorizing disclosure of the investigation to FA. If the faculty member authorizes disclosure, FA shall be copied on all communication to the faculty member regarding the investigation.

40.4.3 *An introductory statement* that:

The District takes a neutral stance when investigating possible misconduct and no findings of wrongdoing have been made;

The District maintains confidentiality of the investigation to the fullest extent possible;

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 faculty member's interview;

The faculty member is advised to refrain from contacting the complainant(s) or witnesses to avoid even the appearance of interference or retaliation. However, the faculty member may contact and discuss the investigation with FA representative(s), or legal counsel, and may confer with their colleagues for their mutual aid and protection. Faculty may also exercise rights as recognized under the Educational Employment Relations Act (EERA);

Every effort will be made to complete the investigation within ninety (90) days of the date when the District first received the complaint or information triggering the investigation. When this is not possible:

The faculty member shall receive a status update on where the District is in its investigation and when it expects to be completed; and

In cases in which FA represents the faculty member, the District and FA shall meet to discuss the progress of the investigation;

Once the investigation is complete, the faculty member shall receive notice of the findings of the investigation, and whether the allegations investigated were sustained;

In the event the investigation leads to disciplinary action, the faculty member shall be afforded all of the pre-discipline due process rights to which they are entitled. This includes providing the faculty member, and

FA with the faculty member's consent, with a copy of the information relied upon to issue the charges, including but not limited to, the Investigation Report or a detailed summary of the Investigation Report; and

District policy and law prohibit retaliation of any kind against anyone involved in the investigations, or against anyone the faculty member believes to have provided information or otherwise cooperated in the investigation. Such conduct constitutes an independent basis for discipline, up to and including termination.

40.4.4 A *Summary* of the interview subject matter including:

The name of the complainant(s) or individual(s) whose concerns caused the District to initiate an investigation, or the credible documentation or evidence that corroborates an anonymous accusation or claim (see B2).

What allegedly occurred. The faculty member shall be entitled to a detailed description of the subject matter and alleged conduct or actions under investigation;

When the incident(s) allegedly occurred. The notice shall be as specific as possible, based on the information available at the time the notice is given;

Where the incident(s) allegedly occurred. The notice shall be as specific as possible, based on the information available at the time the notice is given;

This information shall be current and accurate at the time of the interview. If, after interviewing the faculty member, the District learns of other allegations during the investigation and seeks to interview the faculty member again, the faculty member shall be provided with a second notification, including a new detailed summary of the subject matter of the interview within a reasonable amount of time prior to the interview;

If prior to interviewing the faculty member, the District learns of other allegations it wishes to address during the interview, the faculty member shall receive a revised notification, with an updated detailed summary of the subject matter of the interview, within a reasonable amount of time prior to the interview.

## **Additional Information to FA**

40.5 When FA represents the faculty member under investigation, the District shall provide FA with the following information within a reasonable amount of time prior to the investigatory interview:

A copy of the written complaint if there is one; or

In those cases where there is no written complaint, a detailed written summary of the allegations under investigation based on the information available at the time the notice is given.

Additional information requested by FA in its representation of the faculty member under investigation.

## **Placement on Paid Administrative Leave while an Investigation is Pending**

### *40.6 Definition of Paid Administrative Leave*

Paid administrative leave is a non-disciplinary leave that includes all compensation and benefits to which the faculty member would be entitled but for placement on this leave.

### *40.7 Basis for Leave*

A non-disciplinary paid leave can be disruptive and upsetting to a faculty member who is under investigation. Therefore, such leaves shall be imposed only where the District concludes that the alleged misconduct includes:

Acts of retaliation or intimidation;

Acts of serious dishonesty or the destruction of property;

Allegations which, if true, present a reasonable concern for the health and safety of others;

Allegations which, if true, present a reasonable concern that the faculty member's students are suffering educational harm; or

Allegations the nature of which require the immediate preservation of physical evidence which may be compromised if the faculty member is not placed on leave.

### *40.8 Notice of Paid Administrative Leave*

In accordance with Education Code 87623:

Non-Emergency Situation: At least two (2) business days prior to placing a faculty member on involuntary, paid administrative leave, the District shall provide the faculty member with written notification of the allegations of misconduct upon which the decision to place the faculty member on leave is based.

The notice shall also include an explanation that while the administrative leave constitutes a directive to stay away from the workplace, it does not apply to the FA office or areas and events that are open to the public. The notice may also instruct the faculty member to remain available to the District for questioning during the faculty member's regular work hours. This notice is separate from the Employee Notice of Investigation above.

Emergency Situation: Where the District concludes that the specific allegations, if accurate and true, present a serious risk of physical danger or other necessity, the District may place the faculty member on an immediate, paid administrative leave without advance notice. In such instances, the Employee Notice of Investigation as described above shall be provided within five (5) business days of the faculty member being placed on leave.

#### 40.9 *Status Updates*

The District will provide the faculty member with a monthly status report on the progress of the investigation and estimated date of completion.

#### 40.10 *Time of Leave*

The District should complete the investigation within ninety (90) days of placing the faculty member on leave. When this is not possible, the District shall provide the faculty member with a written explanation as to the reason why, and a reasonable estimate of when the investigation will be completed.

### **Investigations Subject to Statutory Deadlines**

40.11 Various laws and regulations create deadlines by which certain investigations must be completed. These include, but are not limited to, the requirement under [Title 5](#) of the California Code of Regulations that investigations into formal discrimination complaints be completed within 90 days; the requirement under Education Code [87623](#) that investigations of faculty members placed on paid administrative leave should be completed within 90 days; and the requirement under Title IX that complaints of sexual misconduct be completed within 60 days.

### **Closure of Investigation**

#### 40.12 *Investigations Where Allegations are Not Sustained:*

The faculty member shall be provided with written notice that the allegations have not been sustained and confirmation that nothing related to the allegations or investigation will be placed in the faculty member's personnel file. The notice will include a summary of the investigation report. Records related to unsustained

allegations, including the investigation report shall be maintained in a separate investigation file in a secure location by the Office of Human Resources and apart from the faculty member's personnel file for the period required by law.

40.13 *Investigations Where Some or All of the Allegations are Sustained:*

The faculty member shall be provided with written notice summarizing the findings as to each allegation and whether it was sustained. The faculty member shall also be provided with a copy of the full investigation report. If the District relies on it for disciplinary action under Articles 8 or 31 of the *Agreement*, it shall also provide the faculty member with a notice of placement of derogatory information in the personnel file and the faculty member may respond to the derogatory information within ten (10) school days, if applicable, with an additional ten (10) school days upon written request to the District Office of Human Resources (Article 8.5). The investigation report shall be maintained in a separate investigation file in a secure location by the Office of Human Resources and apart from the faculty member's personnel file.

### **Statutory Rights to Information and Documents**

40.14 Nothing in this article shall waive or supersede the District's, FA's or a faculty member's right to request and receive information and documents as allowed by the EERA, Education Code or other law.