



Office of Human Resources
3401 CSM Drive, San Mateo, CA 94402
Tel: (650) 574-6555 • Fax: (650) 574-6574

DISTRICT INVESTIGATION OF COMPLAINTS *WHAT TO EXPECT F.A.Q.*

1. **Why does the District conduct investigations?**

The District has a legal obligation under federal and state law, as well as Title 5 (California Code of Regulations pertaining to Community Colleges) and District policy, to investigate complaints of discrimination, harassment and retaliation to determine if a law, policy or procedure has been violated. If the District does not fulfill this obligation to investigate, it could be subject to penalties up to and including the loss of all of its federal funding. Investigations are not about “getting people in trouble,” they are about finding out what happened. If you have been falsely accused of misconduct an investigation will exonerate you.

2. **How does the District decide what complaints to investigate?**

The District investigates all complaints that it receives. It cannot and does not selectively determine which complaints merit investigation. The District administration does not initiate investigations on its own or “observe” people in order to identify misconduct. Since 2014, the investigations of employees have been initiated in response to complaints made by students and complaints made by an individual’s peer, e.g. a faculty member making a complaint against another faculty member. There have been no investigations initiated in response to an administrator complaining about a faculty member or a classified employee.

3. **Do you automatically notify the union about the complaint?**

No. Some of the complaints involve very sensitive subject matter and not everyone wants to share that information with a third person, even if the allegations are untrue. Therefore, out of respect for your privacy, we leave it up to you to decide if you want to involve your union representatives.

4. **What happens if I am accused of doing something?**

After the Office of Human Resources verifies the complaint (rumors are not investigated), then the employee, and the employee’s supervisor(s), are notified in writing (typically via email) about the general nature of the accusations and that an investigation will begin. Depending on the circumstances, an employee might also be placed on non-disciplinary paid administrative leave, during which time the employee would continue to receive full salary and benefits, but not report to his or her regular work assignment.

5. **What is Paid Administrative Leave and how does it work?**

Under federal and state civil rights laws, the District is obligated to take immediate steps to end misconduct if it believes or has reason to believe that it has occurred. Paid administrative leave, which is not considered to be discipline, allows the District to fulfill this obligation by removing an employee from a situation which could potentially result in further accusations against the employee and/or further harm to the person making the complaint. An employee placed on paid administrative leave while an investigation is being conducted will be notified in writing and relieved of all work responsibilities. The employee will continue to receive full pay and benefits during the investigation. At this early stage of the process no determination has been made about liability for misconduct, it is purely a preventative measure. It is not uncommon for someone who has made a complaint of misconduct to subsequently allege retaliation. With this in mind, paid administrative leave helps keep the employee out of

situations where he or she could be accused of retaliation. In addition, in instances of actual misconduct, paid administrative leave can put an immediate end to the misconduct.

6. Who conducts the investigations on behalf of the District?

For complaints against employees, whether they are made by a student or another employee, the Office of Human Resources is responsible for conducting the investigation. Usually a specially-trained employee designated by the Office of Human Resources will conduct the investigation. The Office of Human Resources also has the discretion to contract with an outside investigator and this might occur if District personnel are unavailable due to a conflict or workload issues.

7. Do I get a chance to tell my side of the story?

Yes. Every investigation gives you the opportunity to address the specific allegations, provide evidence and identify other individuals who should also be interviewed as part of the investigation. In cases where the District is not required to maintain the confidentiality of a complainant or witness, you will know who made different statements during the investigation and have the opportunity to provide information about those individuals.

8. How do I know if the investigation is going to be fair?

By law, the investigation must be fair and impartial. Like judges, the individuals conducting the investigation on behalf of the District are obliged to be fair and impartial or recuse themselves if they feel they cannot be. The District's investigations are frequently conducted by licensed attorneys who must comply with a Professional Code of Ethics or risk the loss of their license to practice law.

9. How can someone who works for the District be fair and impartial – aren't they biased by the nature of their employment?

The purpose of an investigation is to gather as many facts about what happened as possible so that responsible supervisors (not the investigators) can make informed decisions about whether or not to pursue discipline. There is no incentive to find facts for or against a particular individual involved in litigation. It is not a question of taking the side of a student or taking the side of an employee. In the investigations that have taken place at the District since 2014, some reports concluded that the complainant was telling the truth and some concluded that the respondent was telling the truth. There is no predetermined outcome or preference for an outcome.

10. How do you determine who is telling the truth during an investigation?

There are certain indicators of truthfulness, such as corroborating testimony or evidence that investigators commonly rely upon to determine if someone is telling the truth.

11. How long does an investigation take?

Most investigations will be completed within 60 - 90 days.

12. What happens after the investigation is over?

A copy of the report is given to the complainant and respondent, as well as the respondent's supervisor(s). If the investigation has found you liable for misconduct, your supervisor(s) will meet with you and they will ultimately decide whether or not to recommend discipline.

13. What happens if I don't agree with the investigation report?

If you are the complainant in connection with a discrimination/harassment/retaliation complaint, you can appeal the report's findings to the District's Board of Trustees.

14. Who makes the decisions about discipline? Can I appeal those?

The Office of Human Resources does not impose discipline or make any decisions related to discipline. The role of the investigation is solely to determine if a violation occurred.

For **classified employees in bargaining units**, recommendations for discipline are made by the employee's supervisor(s). Classified employees who are in a bargaining unit have certain rights with respect to the disciplinary process that are outlined in their collective bargaining agreements. Generally speaking, classified employees can appeal recommendations of discipline to District administration and, if the result is still in dispute, to an independent arbitrator. You should refer to your contract for specific details.

For **tenured faculty**, an oral or written reprimand is legally not considered discipline and therefore a supervisor can issue a reprimand on his or her own. The faculty member does have the right to attach a response to a reprimand before it is placed in the personnel file. If a supervisor wishes to suspend or terminate a faculty member, the process is governed by the California Education Code. In general, a recommendation to suspend or terminate a tenured faculty member must be made in writing by the College President and Chancellor and submitted to the Board of Trustees for consideration. If the Board adopts the recommendation, then the faculty member has the right to a hearing in front of an independent arbitrator or administrative law judge appointed by the State of California.

For all other employees, decisions are made by an employee's supervisor(s) in conjunction with the appropriate College President or other senior administrator.

15. Did the District create the investigation process, or are they bound to do it by a higher authority?

As stated above, the District is required by federal and state law to investigate complaints and this applies equally to all classes of employees. The investigation procedure we follow must be the same for all employees and this is why it is a part of District policy and procedure and not separately negotiated as part of our collective bargaining agreements.

In addition, all of the discrimination/harassment/retaliation complaints and investigations are submitted to the State Chancellor's Office for review under Title 5. On the federal level, the Office of Civil Rights (OCR), which is part of the U.S. Department of Education, has the authority to review the District responses to complaints and investigations to determine if they meet the appropriate legal standards. If they do not meet minimum standards, OCR could terminate federal funding to the District.