A high-profile lawsuit targeting the Los Angeles school district highlights the collision of two little-known, murky areas of teacher policy: the district's process for investigating teachers accused of misconduct, and the state's rules for dismissing a teacher found guilty of it.

The suit, filed this month, charges that the district has unfairly targeted veteran teachers on trumped-up claims of misconduct. It is being brought by the nationally prominent teacher Rafe Esquith, who was recently fired by the school board after a district investigation leveled charges of personal misconduct. The exact charges have not been released, but the investigation had reportedly looked at, among other alleged improprieties, whether Esquith exchanged inappropriate emails with students and kept sexually explicit images on his school computer. He has repeatedly denied the accusations.

The law firm representing Esquith says that some 2,000 teachers said that they, too, have been harmed by district investigations, and could potentially join the suit.

The district ramped up its investigations of misconduct in 2014 after a teacher at Miramonte Elementary School, Mark Berndt, pled no contest on 23 charges of sexual misconduct toward students and was sentenced to 25 years in prison.

For the nation's second-largest school district, with some 643,000 students, the situation amounts to navigating between Scylla and Charybdis. If its investigations are too lax, it risks a repeat of the Miramonte scandal or of falling short in costly teacher due process hearings.

But pressing too aggressively risks raising concerns of profiling or overzealousness. Indeed, the firm representing Esquith, helmed by big-name criminal-defense lawyer Mark Geragos, has called the team that investigated his client "an investigative hit squad."

A New Unit

Until recently, teachers in the Los Angeles Unified School District who were accused of misconduct were reassigned to spartan district offices, colloquially known as "teacher jail"; now they are generally relegated to paid home leave while the district looks into the charges against them.

Following the Miramonte scandal, the district created the Student Safety Investigation Team to coordinate misconduct investigations. The SSIT, staffed mainly by former law-enforcement officials, presents its findings to the school board, which independently decides whether to terminate the teacher's employment or reinstate him or her.

Jose Cantu, the SSIT director and a former principal, said in an interview that the unit has completed some 106 investigations since Jan. 1, 2014, and has 62 cases still open; not all of them involve teachers. Of the completed cases, about half have resulted in the return of an educator to work, and a third have led to dismissal proceedings, though not all of those cases ended in termination.
And although the average case takes more than 80 business days to complete, the unit has reduced the number of teachers under temporary reassignment, Cantu said.

"Most of the employees we investigate are being returned to their worksites, where before they might have sat at home not having done anything," he said.

That 80-workday average (about six months) is down from the 10-month average that investigations took before the creation of the SSIT, according to a state audit last month.

Still, critics maintain that the SSIT's probing of teachers has been overly aggressive, with some cases amounting to "witch hunts" in which even the charges are unclear. The lawsuit brought by Esquith notes that misconduct allegations against him were dismissed by the California Commission on Teacher Credentialing, which oversees teacher certification.

In August, the Los Angeles Times' editorial board questioned the investigative process, citing three different cases of popular teachers who were put on extended leave for seemingly dubious infractions and subsequently cleared.

Under California rules, before being fired, a tenured teacher can request a due process hearing, usually before a three-member Commission on Professional Competence. (Esquith's recent lawsuit seeks only punitive damages; he and his lawyers had already filed a separate defamation suit for reinstatement.)

**Due Process Concerns**

One possible reason for the lengthiness of the investigations: Due process hearings rarely lead to firings unless the district precisely adheres to the timelines and documentation required by state law.

The Los Angeles district learned that lesson the hard way: Partly because it had not fulfilled all the steps required for due process, the district ended up paying Berndt, the Miramonte teacher, $40,000 to retire rather than pursuing his dismissal, an action that later generated outrage from parents and the community.

But Esquith's lead attorney, Ben Meiselas, disputes that the SSIT's investigations protect due process in any meaningful sense of the term.

"They completely and utterly violate due process at every level," he said in an interview, arguing that interrogation tactics used by the investigative team reflect a bias against the accused.

"They've predetermined the outcome," he maintained.

United Teachers Los Angeles, the district union, has not taken a stance on Esquith's case. But it has repeatedly expressed concerns about whether investigators are targeting teachers for minor infractions or reasons other than misconduct.

"Many of them are over 40. Many of them are minorities. Many of them are very active in the schools," UTLA President Alex Caputo-Pearl told the news channel Al Jazeera America in 2014.

Caputo-Pearl did not return inquiries seeking comment by press time.

Cantu said that his unit does not keep analyses of the demographics of the teachers it investigates and could not comment on that matter.

Probably the closest parallel to the Los Angeles conflict is in the New York City district, the
nation's largest. As in Los Angeles, New York has a team of former law-enforcement officials who help investigate teacher misconduct. Teachers who are suspended with pay pending an investigation were at one point put in reassignment centers infamously dubbed "rubber rooms"; now, such teachers are typically employed in clerical duties in district offices.

And in both districts, hotly contested lawsuits at the state level are shining a light on the issue of teacher-dismissal processes. The Vergara v. California ruling, in 2014, declared current rules governing teacher job protections unconstitutional, essentially saying they made it too arduous to dismiss teachers. In the Empire State, the lawsuit Davids v. New York has similar aims.

Only a small fraction of misconduct cases end up leading to criminal charges. In Los Angeles, the results of the SSIT's investigations aren't turned over to police unless mandatory-reporting laws compel it.

But when law enforcement does get involved, that can complicate rather than aid districts' attempts to fire teachers, said Daniel Weisberg, a former lawyer for the New York City education department.

"We could not proceed through the disciplinary process because the district attorney did not want us calling witnesses or presenting witnesses that might complicate the criminal process," he said.

Weisberg, now the CEO of the teacher policy group TNTP, said he is sympathetic to Los Angeles teachers' complaints about a lack of clarity on charges, or the timeline for returning to schools. But his organization also backs revisions to due process laws.

"It is legitimate for teachers to demand that investigations be objective and be done quickly," he said. "On the other hand, we have overly legalistic systems protecting teachers—this is what Vergara is about—that have such an incredibly high burden of proof that it becomes almost impossible to discharge a teacher who really has done something wrong."

**A Changing Landscape?**

Adding to the complexity of the matter, California's rules for teacher due process were already changed after the Vergara ruling.

The state legislature last year created an expedited process for dismissing teachers charged with "egregious misconduct." Those hearings are held by an administrative judge who issues a binding decision, rather than the usual panel.

Has that tweak led to improved outcomes or quicker determinations? Has it changed how misconduct charges are investigated? No one seems to know, not even the California Teachers Association, a proponent of the change.

"Most people faced with dismissal either end up resigning or, in some cases, retiring if they are eligible," CTA spokesman Frank Wells said. "We don't have a mechanism to track those cases."

A representative for the California Commission on Teacher Credentialing said the agency could track only the outcomes of such cases, not the statutory process a district used to begin dismissal proceedings. Districts reported 636 new misconduct cases in 2014-15, down from 731 in 2013-14, he said.
Whether the process has been streamlined or not, Esquith's attorneys contend that it has gone awry for many teachers in Los Angeles.

"I think there's a way to recognize that student safety is paramount, but at the same time you need to protect due process rights as well," Meiselas said.