

## **Executive Board Governance and Operations**

### **Administrative Procedure - Guidelines for Investigating Complaints Filed Under Policy 2:260, Uniform Grievance Procedure, and Allegations of Misconduct**

All complaints are to be investigated, even when the complainant requests that nothing be done or is anonymous. For complaints of discrimination or harassment based on race, color, or national origin, refer to this procedure and 2:270-AP, *Prevention and Response Program for Complaints of Discrimination and Harassment Based on Race, Color, and National Origin*.

#### **Step 1: Before the Investigation**

- A. School employees must immediately report a suspicion of child abuse or neglect to the Illinois Department of Child and Family Services in compliance with State law and policy 5:90, *Abused and Neglected Child Reporting*. Reporting is required before proceeding further with the investigation.
- B. Consistent with Board policy 2:260, *Uniform Grievance Procedure*, the Superintendent appoints at least one District Complaint Manager to administer the complaint process. If possible, the Superintendent will appoint two Complaint Managers, each of a different gender. A Complaint Manager investigates: (1) complaints filed under Board policy 2:260, *Uniform Grievance Procedure*, and (2) allegations of employee misconduct (for student misconduct allegations, see **Step 1: C.**, below).
- C. The appropriate Building Principal or designee investigates all allegations of student misconduct.
- D. Anyone with a complaint or making an allegation of misconduct should be referred to a Complaint Manager of their choosing or a Building Principal without delay.
- E. A Complaint Manager or Building Principal (hereafter referred to as *investigator*) investigates all complaints or allegations of misconduct, except that, depending on the circumstances, the Superintendent or School Board may appoint a special investigator. Whenever the Superintendent deems necessary, an attorney may serve as a special investigator. See *considerations* under **Step 1: F.**, below. The investigator should not have any involvement with the complainant or the alleged wrongdoer outside of the investigation. The Superintendent ensures that investigators have sufficient authority and resources, including access to the Board Attorney.
- F. The Board Attorney provides information and advice regarding the investigation process, including without limitation:
  1. Whether the investigator's notes and investigation records (including, without limitation, any audio or video recordings, photographs, or electronic images) are education records for purposes of the federal Family Education Rights and Privacy Act (FERPA) and/or school student records as defined in the Ill. School Student Records Act (105 ILCS 10/, implemented by 23 Ill.Admin.Code §375.10)?
  2. Whether the investigator's notes and investigation records (including, without limitation, any audio or video recordings, photographs, or electronic images) are subject to disclosure pursuant to a Freedom of Information Act (FOIA) request? A PAC opinion, binding on the parties, found that a city's investigatory records of an employee were not private or adjudicatory records and must be disclosed pursuant to a FOIA request (PAC Opinion 13-110).
  3. Whether to record conversations, and if so, how to obtain and document consent under the criminal eavesdropping statute? 720 ILCS 5/14-1 et seq. prohibits recording a conversation in which someone has a reasonable expectation of privacy without the consent of all parties.

4. Whether the Board Attorney should participate in or conduct the investigation? Whether an outside attorney should serve as a special investigator? Considerations include:
  - a. The U.S. Supreme Court has held that a private attorney temporarily retained by government to perform an investigation of an employee is entitled to seek qualified immunity from suit under Section 1983. Filarsky v. Delia, 566 U.S. 377 (2012).
  - b. The FOIA exemption for communications between a public body and its attorney is available in only limited situations. See PAC Opinion 14-02 interpreting 5 ILCS 140/7(m).
  - c. Documents prepared by attorneys conducting an investigation under the prospect of litigation will not be subject to discovery during a subsequent lawsuit. Sandra TE v. South Berwyn School Dist., 600 F. 3d 612 (7th Circuit 2010) (when attorneys, as attorneys, perform a factual investigation, their documents are protected by the attorney-client privilege and the work-product doctrine).
- G. The investigator provides a fair opportunity for both sides to be heard.
- H. The investigator begins by carefully reading the complaint, and reviewing applicable Board policies, administrative procedures and manuals, laws, regulations, and collective bargaining agreements.
- I. The investigator develops a plan, including:
  1. Witness list
  2. Order of interviews
  3. Questions for witnesses
  4. Physical evidence needed, e.g., records, documents, reports, photos, and letters
- J. The investigator makes logistical arrangements, e.g., determine interview location and the need for photographs and/or a video or audio recording.
- K. If the investigator encounters an issue with legal ramifications outside of his/her understanding, either before or during the investigation, he/she consults the Board Attorney before proceeding further on that legal issue, as well as any other areas of the investigation it impacts.

**Step 2: Investigator Responsibilities During the Investigation**

- A. Typically, the complainant is interviewed first, then the subject of the investigation, and, finally, all witnesses. The following applies to all interviews:
  1. When possible, ensures that statements are written, dated, and signed by the person being interviewed. Does not audio or video record statements without first obtaining the Board Attorney's advice concerning legal prerequisites and treatment of the recordings.
  2. Asks open-ended questions and does not suggest answers to questions.
  3. Records important details, essentially who, did what, to whom, when, and how done and, if appropriate, why?
  4. Is objective and nonjudgmental; does not prejudge an alleged wrongdoer's guilt. Never show outrage or dismay.
  5. Asks for the names of any other witnesses.
  6. Deals with emotional outbursts and anger by patiently explaining that details are needed for an accurate investigation.
  7. If a witness cannot be interviewed, records the reason.
- B. While confidentiality should be maintained, does not make promises of confidentiality or anonymity. Only the Superintendent may promise confidentiality or anonymity.

- C. Keeps the Superintendent informed, but does not discuss the investigation with Board members in order to avoid the appearance of prejudice or unfairness.
- D. Obtains copies of all relevant written or electronic communications. Originals are not needed, but records how to get them.
- E. Collects physical evidence and photographs. Keeps a record of when, and where, or from whom physical evidence was gathered.
- F. Documents any information about the interview that is relevant, or may become relevant, including the person's demeanor, gestures, accuracy of memory, and overall credibility.
- G. During the investigation, keeps the investigation file separate from personnel or student record files. In a subsequent hearing, the opposing side may be able to view the investigation file. Records relating to a public body's adjudication (hearing) of employee grievances or disciplinary cases are exempt from FOIA public records requests under 5 ILCS 140/7(1)(n). However, the exemption does not extend to the final outcome of cases in which discipline is imposed.

**Step 3: Investigator's Actions Following the Investigation**

- A. Reports to the Superintendent or designee the investigation results, that is, the matters investigated, facts, conclusions, and recommendations. Prepares a written report if appropriate or requested.
  - 1. Answers who, what, when, where, why, and how.
  - 2. Bases factual findings on whether an incident's occurrence is more likely than not. Identifies as many factual findings as possible to support a conclusion. In a "he said, she said" scenario, a decision can be based on the credibility of the parties and witnesses. Includes in the report any findings that are inconclusive.
  - 3. Makes a determination regarding credibility of specific evidence, that is, how believable is it and why by explaining the basis for the determination. Credible evidence is capable of belief by a reasonable person.
- B. Is prepared to testify as to the fairness of the investigation, the authenticity of the evidence, and the contents of the investigation report.

ADMIN PROC.: 2:270-AP (Prevention and Response Program for Complaints of Discrimination and Harassment Based on Race, Color, and National Origin)

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