

A magnifying glass with a black handle and a silver rim is positioned over a thick stack of papers. The papers are slightly blurred, suggesting a large volume of documents. The background is dark, making the papers and the magnifying glass stand out.

From Allegations to Actions: What Board Members Should Know About Employee Conduct Investigations

**Meredith L. Seibert, Esq.
David N. Lyon, Esq.
Duff, Freeman, & Lyon
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Agenda

- Role of the School Board
- Importance of Employee Misconduct Investigations
- Investigation Process
- Case Review
- Common “Defenses”



ROLE OF SCHOOL BOARD

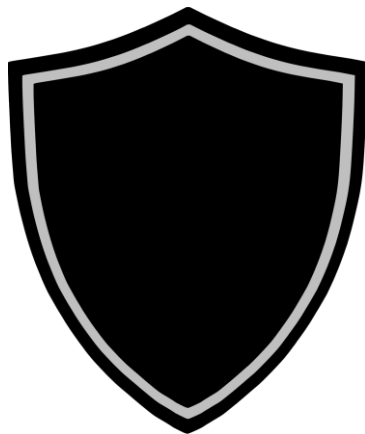
- **Operational/Financial:** governing, financial (budgets, spending), buildings, setting academic goals.
- **Executive:** hiring, evaluating and holding the Superintendent who is responsible for management of the District.
- **Legislative/Policymaking:** Setting policy for the district, the framework and rules by which all things district related is managed.
- **Quasi-judicial:** serving as an appellate tribunal when it reviews matters that were handled at the district office level.

IMPORTANCE OF EFFECTIVE MISCONDUCT INVESTIGATIONS

PROTECTION OF THE
DISTRICT



PROTECTION FOR THE
EMPLOYEE



INSPECTOR GENERAL



DFIL

DUFF FREEMAN LYON

ATTORNEYS AND COUNSELORS AT LAW

Best Practices for HR Investigations



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HR STEPS FOLLOWING RECEIPT OF MISCONDUCT ALLEGATIONS

Interview/Statement from Accuser

- Conduct thorough interview of Accuser or Initial Witness.
- Obtain written statement of allegations from Accuser or Initial Witness

Evaluate Allegations of Misconduct

- Is Investigation Required?
- Informal or Formal Investigation?
- Need for Administrative Leave?
 - Prevent interference
 - Terminable offense?

Notice to Employee

- Due Process - notice and an opportunity to be heard
- Tell employee about allegations and give them a chance to defend themselves
 - Written notice preferred

Other Stabilizing Steps

- Address any other steps that may be necessary to keep circumstances stable

Initial Steps

Assigning Investigator(s)

- Qualified and Impartial
- May be more than one investigator
- Consider district policy on employment decisions - final decision maker should not be investigator

Develop Initial Plan

- Initial - be prepared to adapt
- Who will be interviewed?
- Consider additional documentation and timeframes for recovery (e.g. social media, cell phone video and texts, police reports, school emails, surveillance video, attendance, etc)
- Any direction from supervisors or counsel?

Documentation

- Both at the beginning and throughout investigation, consider what documentation is needed to help determine facts, as well as assist in credibility determinations and assessment of mitigating/aggravating factors.
- Obtain documents (or document efforts to obtain) in a timely manner. Some examples include:
 - Social Media Posts, cell phone videos, texts, audio recordings, police reports, emails, surveillance videos, attendance logs, classroom seating charts, etc.
 - Staff training materials, modules, and acknowledgements and handbook acknowledgments
 - Prior disciplinary action, including school-based and HR files

Interviews and Statements

Any interviews of the accused employee or witnesses should be appropriately documented or recorded, with dates and notes as to who is in attendance

Interviews with Witnesses

- Prepare written questions or outline following review of compiled evidence and existing witness interviews and statements .
- Document questions and witnesses responses
- Flexibility with questions - follow flow. May have to probe and reframe questions to get substantive answers
- Request for documentation maintained by witness
- Same conclusion questions as employee:
 - Is there anything you want me to know that I haven't asked you?
 - Is there anyone else you think I should speak to as I investigate further?

Witness Statements

- Evaluate whether interview notes only or if also need statement
- If statement, advise witness regarding dates, pronouns, and details before they begin stat

Synthesize Evidence and Investigation Materials

Compile Investigatory File

Does the file reflect the investigation to date? Can someone who isn't already involved in the investigation pick up the file and be able to determine who has been interviewed, what information has been compiled/reviewed, and what other documentation exists.

Review File

Consider whether additional interviews or information would be helpful in determining whether the misconduct occurred, mitigating and aggravating factors, and making credibility determinations.

Consider Scope of Investigation

Has the investigation been expanded in scope? Are there additional allegations that may be used to impose disciplinary infractions? If yes, ensure that notice has been provided to employee and that we have brought them back in for an interview on those issues.

Any Red Flags?

Employee mentions or raises medical issues or alleges unequal treatment or discrimination

Summary Report

Investigation Conclusion and Corrective Action Letter

- Initial allegations and relevant dates of notice/admin leave
- A general summary of what investigation included (e.g., “following a review of emails and surveillance videos, interviews with students and staff who were present, and input you provided in our meetings on x date and y date . . .”).
- Sufficient factual determinations/summary
- Where factual determinations require resolution of conflicting facts, include some explanation of how you reached resolution.
- Credibility assessments (who should be believed)
- Conclusion of misconduct and policy or expectation that misconduct violated
- Mitigating or aggravating factors
- Recommended Corrective Action

Case Review

Review of Investigation

- Ensure all legal requirements and protections for employees are addressed
- SHRM and State IG anticipate that there is a review, by supervisors or counsel, before a final course of action is confirmed
 - SIG recommendation to separate investigation and case review out of one department under circumstances
 - What does that look like in school district, particularly a small district?

Determine Corrective Action

- To rebut allegations of unfairness, bias, or discrimination, corrective action should be consistent across similar circumstances and violations
- Mitigating and aggravating factors
- Disciplinary Matrix or Consistent Documentation of Disciplinary Decisions
 - Shouldn't be relying on institutional memory
 - Focus on Infraction vs. Result of Infractions
- Reason for change to past practice should be articulable

The Complete File

- A thorough summary of the allegations.
- Written communication by Administration to the employee informing the employee of all allegations against him/her.
- A description of the evidence collected:
 - Witness statements with names, dates, and details
 - Documents, emails, recordings, surveillance footage, etc.
- Investigator's findings including credibility determinations.
- Administration's decision, including references to board policy violations.
- Written communication to employee of findings and administration's findings and decision.

Common “Defenses”

- **“It’s just not fair!”**
- **“The HR director hates me!”**
- **“I told them it was a hostile environment!”**
- **“It’s the medication!”**
- **“You’re short staffed, are you really going to fire me?”**

