

A Workflow for Conducting Employee Investigations

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STRONGER TOGETHER. SMARTER TOGETHER.

Meet the Presenters:



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Presentation Goals

The session is focused on providing you with a variety of tips and tricks to conduct thorough and defensible employee investigations that create a repeatable workflow for you to follow, are supported by your Collective Bargaining Group, and adhere to legal expectations.

DISCLAIMER: A WRITE-UP IS NOT AN INVESTIGATION

Presentation Goals

Our
Procedures

Our Investigation
Tips

Your Best Practice

How can an investigation be triggered?

1. You have first-hand knowledge. You WITNESSED it.
2. You receive a report from...
 - a. Student
 - b. Parent/Community Member
 - c. Teacher
 - d. Other Admin/Employee
 - e. Board of Education
 - f. Outside Agency
 - g. Anonymous
 - h. Other?

Laws that Trigger Investigations

Board Policy 2:260 (PRESS) has a list of laws that trigger investigations

pro tip: this list is not exhaustive

Examples:

Title II of the ADA

Title IX (Title IX coordinator investigates)

Equal Employment Opportunities Act (Title VII of the Civil Rights Act)

Bullying

Section 504 of the Rehabilitation Act of 1973

Data Collection Happens NOW

We have learned multiple times that it's important to trigger data collection even when you presume something is headed nowhere.

Date Alleged Misconduct Occurred:	Time Alleged Misconduct Occurred:	Location Alleged Misconduct Occurred:	To whom reported:
Name of person reporting the accusation:		Date & Time reported:	Affected Student:
Summary statement regarding the accusation:			
Information from Interviews:	NAME - DATE - CONTACT FORMAT - TIME		

Know Your CBA...

1. Review CBA Language

- a. Timeframes?
- b. Who receives notice?
- c. Language specific to anonymous?
- d. When you have the opportunity you should bargain against ambiguity.

2. It's always easier to attack the procedures than it is to attack the content of wrongdoing.

CBA Language in Deerfield...

4.2 Employer Hearing/Employee Rights

Each teacher has a right to have an Association representative present when a teacher is called to appear before the Board or an administrator to discuss matters which may, in the teacher's perception, lead to disciplinary action against the teacher. In those situations where the teacher is called to appear before the Board the teacher shall be given written notification of such meeting at least three (3) workdays in advance along with reasons for the meeting.

CBA Language in Deerfield...

4.3 Discipline

Formal disciplinary actions, such as written reprimands and changes in employment status, shall be subject to the grievance procedures. When requested by the teacher, the specific grounds forming the basis of the disciplinary action will be **made available in writing**. Any disciplinary action taken against a teacher other than dismissal shall be for **just cause**. Any information or incident that the teacher has not been informed of **within twenty (20) work days** of the District having reasonable notice shall not be used for formal disciplinary action, except in those instances where notification to the teacher would disrupt any ongoing efforts of law enforcement or quasi-law enforcement officials.

CBA Language in Deerfield...

4.4 Complaints

The Administration shall inform the teacher of any and all consequential complaints regarding the teacher's conduct made by any person against the teacher as soon as possible, except in those instances where notification to the teacher would disrupt any ongoing efforts of law enforcement or quasi-law enforcement officials. If the existence of a complaint has not been disclosed to a teacher due to ongoing efforts by law enforcement or quasi-law enforcement officials, the District shall not question the teacher unless done in accordance with the immunity safeguards afforded by prevailing law (see *Atwell v. Lisle Park District*). In the event that the District has reasonable cause to suspend a teacher during an ongoing investigation by law enforcement or quasi-law enforcement officials, any such suspension shall be with full pay and benefits, including the accrual of seniority. In processing any complaint, the administrator shall make every effort to assure fairness to the teacher, including investigation of such complaint. The District shall not expand the scope of the investigation beyond the scope of the original complaint unless evidence of misconduct is discovered.

CBA Language in Deerfield...

4.4 Complaints cont.

The teacher shall receive prompt notice of every person who is interviewed and copies of any interview notes or documents collected during the interview to the extent not precluded by law. Disputes regarding disclosure of information under this section shall be resolved pursuant to the IELRA and shall not be subject to the grievance procedure. Anonymous complaints will not be the basis of any disciplinary action against a teacher or the basis for comments on a teacher's evaluation unless independently verified by other witnesses and/or evidence. If requested by the teacher, a teacher/principal conference shall be held, at which time, if requested, the principal will detail the processing and investigation of the complaint. If the District delegates non-employees to investigate any complaint against a teacher, a District administrator shall be present during any interviews with students, parents, District employees or any other person, held during the course of the investigation. If a request is made by a tenured teacher, investigatory meetings with individuals who are not employed by the District will be held away from the employee's school building or work site. In the case of a non-tenured teacher, either the non-tenured teacher or the Association may make such a request.

What About You?

Do you have any interesting CBA language regarding investigations to either share or scare the rest of us?

Running the Investigation - You're the Coordinator

Your **job** is to get your team in the right headspace!

DON'T remove building admin from the process.

An investigation is not a summary of findings.

Presume: to suppose something with some probability and/or evidence

Assume: to suppose without reason or evidence

Scope of the Investigation

Before you start interviewing witnesses, etc., determine whether your investigation is going to be a “**BIG I**” or “**little i**” investigation.

*pro tip: sometimes “**little i**” investigations become “**BIG I**” investigations*

Examples:

“**BIG I**”: an employee complains that her department chair has been misappropriating funds for the last 5 years; a parent complains that a teacher has sexually assaulted a student

“**little i**”: a parent complains that a student has received Bs for the entire semester and is being discriminated against by the teacher because she is smart

The Invite Template:

Dear [NAME],

I am formally investigating your inability to [ISSUE], as was initially discussed on [DATE]. As per Section 4.4 of the Collective Bargaining Agreement between the Board of Education and the Deerfield Education Association, in processing any complaint, the investigator "shall make every effort to assure fairness to the teacher, including the investigation of such complaint."

As part of that investigation, your attendance is required at a meeting with me, on either [OPTION A or OPTION B SCHEDULE 3 DAYS OUT]. Please reply to this email to further coordinate the exact date and time.

The purpose of this meeting is to present the issue to you and to provide you with an opportunity to respond to the allegations. In addition, you may share any additional information including any information which you feel will be pertinent to our investigation. You also have the right to union representation at our meeting as the results of the meeting could lead to disciplinary action.

Please be advised that you are not to discuss the complaint or the District's investigation with any parents or students. While you may talk with co-workers, you may not attempt to influence any statements an employee may be called to make to the investigator(s). If you engage in behavior that interferes with the District's investigation, you may be subject to discipline for such behavior.

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Running the Investigation

Union Relationships

Much of the success you'll have in running the investigation from a procedural perspective is contingent on the relationship you CREATE and FOSTER in advance.

Running the Investigation

If the intent is to **DISCOVER** then craft the right questions to get the information you need. Don't forget open-ended questions.

Crafting original questions is NOT enough.

MURPHY'S LAW

Predict responses and craft follow-up questions

Running the Investigation

Who will attend?

Make sure all **ADULT** parties are aware of attendees.

Administrator/HR/District Lawyer?

Employee/Union Rep/Uniserve Director?

Personal Attorney? NO!

Pre-Meeting Considerations

1. Attempt to determine what policies apply
2. Determine if any laws apply
3. Generate a rough timeline
4. Do you have all applicable documents
 - a. Employee handbook, P&P's, Admin Practice
5. Written information or correspondence already exchanged
6. Security footage
7. **DO YOU NEED TO UTILIZE PAID ADMINISTRATIVE LEAVE**

Conducting the Interview(s)

1. Should be done ASAP
2. Interview each person with knowledge separately
3. Approach each interview individually
 - a. Each witness should recount all relevant events
 - b. Never assume facts will carry over
4. Focus on 1st hand information
5. Do not disclose information from previous interviews

Date Alleged Misconduct Occurred: October 2019	Time Alleged Misconduct Occurred: Multiple	Location Alleged Misconduct Occurred: Multiple	To whom reported: BOE Policy 2:260 Coordinator - Dale Fisher BOE Policy 2:260 Complaint Manager - John Filippi
Name of person reporting the accusation: Princess Fiona Shrek		Date & Time reported: via email 10/31/2019 – 8:36 PM	Affected Student: Fergus Shrek
Summary statement regarding the accusation: Princess Fiona Shrek contacted Dr. Dale Fisher and Dr. John Filippi via email to report a concern that a teacher, Mr. Donkey, called her son, Fergus, an “idiot” during the Halloween parade at school.			
Information Gathered:	<p>Princess Fiona – 10/31/2019 – (Initial Email) – 8:36 PM</p> <p>On Thurs, Oct 31, 2019 at 8:36 PM Princess Fiona <fionafromtheswamp@swampmail.com> wrote:</p> <p>Good Evening:</p> <p>I am extremely upset! My son, Fergus, was upset this evening and refused to go out with his friends to trick or treat. When I asked him why he was so upset, he reported that he was embarrassed by his teacher, Mr. Donkey, at school today. Mr. Donkey shouted at him and called him an idiot during the school Halloween parade. Fergus said that all of the other kids were laughing at him. Fergus began crying, and when Mr. Donkey asked him why he was crying, Fergus told him it was because his friends were laughing at him. Mr. Donkey told Fergus that he deserved to be embarrassed for acting like such an idiot, and told him that had he not acted that way, none of this ever would have happened.</p> <p>To say I am upset at this teacher’s inappropriate conduct is an understatement. I am filing a formal complaint, and would like to know what the procedure is for this process.</p> <p>Sincerely, Princess Fiona</p> <p>Princess Fiona - 11/1/2019 - (By Phone) - 10:09 AM</p> <p>John contacted Princess Fiona by phone to inquire about her concern with Mr. Donkey. Princess Fiona indicated her concerns; she shared her assessment numerous times that Mr. Donkey was not a student focused teacher, and shared that in addition to the alleged incident on Halloween, Mr. Donkey used inappropriate language with students on multiple occasions.</p> <p>Complaint Area #1:</p> <ul style="list-style-type: none"> Princess Fiona reiterated her complaint detailed in her email from October 31, 2019. She alleged that Mr. Donkey called her son an “idiot,” shared students laughed at her son as a result of Mr. Donkey’s comment, and alleged that Mr. Donkey dismissed her son’s feeling of embarrassment as Fergus’s fault. 		

Complaint Area #2:

- Princess Fiona indicated that Mr. Donkey frequently uses inappropriate language with students in class. She indicated that she has heard from other parents, and also from her son, that Mr. Donkey calls students “stupid,” frequently yells at students, and publicly shames students who do poorly or do not follow the rules. When asked for specifics regarding “public shaming,” Princess Fiona could not provide specific details. However, she indicated that Administration may want to contact parents Mr. Gingerbread Man, and Mrs. Dragon.

John advised Princess Fiona of Board Policy 2:260, and shared that the policy directed the Complaint Manager to “first attempt to resolve complaints without resorting to this procedure.” Princess Fiona indicated she felt the Administration could likely address concerns she raised without the Uniform Grievance Procedure. John thanked her for the information, and indicated the District would begin work to address the issues she raised. He also indicated he would email her a link to Board Policy 2:260 for her review. If she felt her complaint was best addressed by the Uniform Grievance Procedure, he shared that she should clearly state that she felt the procedure applied.

Mr. Donkey – 11/3/2019 - 8am - In Person

- In attendance:
 - John Filippi, Complaint Manager
 - Robin Hood, Principal
 - Mr. Donkey
 - King Harold, Union Representative
- Mr. Donkey indicated he told Fergus to “stop acting like an idiot” in a joking manner to redirect his inappropriate behavior during the Halloween parade.
- Mr. Donkey disputed that students were laughing at Fergus, and indicated he did not tell Fergus being embarrassed was his fault.
- Mr. Donkey indicated he frequently uses sarcastic language as a means to “be lighthearted” when addressing student misbehavior, but would never call students “stupid” or shame students in any way.

Student One - 11/3/2019 - Approximately 1:00 PM - In Person

- Indicated he heard Mr. Donkey call Fergus an “idiot” at the Halloween parade, and said that he and several other students laughed at Fergus because they thought it was funny.

Student Two - 11/3/2019 - Approximately 1:15 PM - In Person

- Indicated she did not hear Mr. Donkey call Fergus an “idiot,” but shared that Mr. Donkey frequently uses language she believes he means to be funny, but that some students believe is a put down. She could not recall any specific comments Mr. Donkey used in class.

Student Three - 11/4/2019 - Approximately 8:00 AM - In Person

- Shared that he heard Mr. Donkey call Fergus an “idiot.” Indicated that he was unaware of students laughing or any other comments by Mr. Donkey.

Student Four - 11/4/2019 - Approximately 8:15 AM - In Person

- Did not hear Mr. Donkey call Fergus an “idiot,” but shared that Mr. Donkey says a lot of funny things to students in class when students do poorly or misbehave.

The Gingerbread Man - 11/4/2019 - Approximately 8:45 AM - By Phone

- Stated that his children have never heard Mr. Donkey make any comments of concern in class.

Mrs. Dragon – 11/4/2019 – 10:00 AM – By Phone

- Shared that her child has frequently shared that Mr. Donkey uses language in the classroom that “crosses the line.” She indicated that she has contacted Mr. Donkey to discuss her concern, and he indicated he was just trying to be “funny” and “lighthearted” in his approach to redirecting students. She could not recall any specific comments Mr. Donkey has made—just that her child told her about language that seemed like “something a teacher shouldn’t say.”

Student Five - 11/4/2019 – 10:30 AM - In Person

- Indicated Mr. Donkey frequently calls out students and uses words like “stop being such a goof,” or “quit being an idiot.” She shared that some students think it is funny, but she feels it is hurtful.

Mr. Donkey – 11/6/2019 - 8 AM - In Person

- In attendance:
 - John Filippi, Complaint Manager
 - Robin Hood, Principal
 - Mr. Donkey
 - King Harold, Union Representative
- Indicated he stands by his initial statement
- Indicated he does not believe anything he has said to students could be construed in an negative way.

ANALYSIS

WHY?

Where does this all lead?

The written narrative...

Now the Judgement Comes...

1. Summary of Findings
2. Written Notification of Verbal Warning - **CAUTION**
3. Written Warning
4. Suspension - **BOARD ACTION**
5. Notice To Remedy - **BOARD ACTION**
6. Termination - **BOARD ACTION**

Questions and Answers

We thank you for your time!

 #iasboAC22



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