

INVESTIGATION ALLEGATIONS OF EMPLOYEE MISCONDUCT

**North Dakota School Boards Association Negotiations
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Investigating Allegations of Employee Misconduct

Three key questions:

1. What did the district know?
2. When did the district know it?
3. How did the district respond?

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First things first...

Once a complaint has been made, an initial screen to assess veracity, risk, the nature of the complaint, and the district's obligations such as further investigation, reporting requirements and other legal necessities is vital.

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Identifying the Nature of the Complaint

- Determine whether the alleged misconduct is school-related.
- If the alleged misconduct does not affect or significantly relate to the school, the district may not want to investigate the matter.

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Identifying the Nature of the Complaint

A staff discipline policy is a crucial component!

Applicable School Board Policies

- Immorality
- Insubordination
- Incompetence
- Misconduct
- Social network
- Retaliation
- Off-campus conduct
- Mistreatment of students/student-relations

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Applicable School Board Policies

- Staff ethics
- Policies that define immorality or insubordination

Identifying the Nature of the Complaint

- The alleged “victim” should be identified. If the alleged victim is a student, that student’s parents/guardian should be notified immediately about the allegations.
- Conversely, there may not be a victim, but rather an allegation that the employee violated a school policy.

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Identifying the Nature of the Complaint

- Does the allegation relate to past conduct or more present conduct?
- Is there is risk that the alleged misconduct might be repeated?

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Identifying the Nature of the Complaint

- If there is a significant threat that the alleged conduct could or will be repeated, the administration may need to take affirmative action to protect others before an investigation can be resolved, such as a temporary suspension with pay or a reassignment.

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Identifying the Nature of the Complaint

- Consult your local collective bargaining agreement prior to taking any of these steps.

Identifying the Nature of the Complaint

- A determination should be made whether illegal or criminal wrongdoing has been alleged.
- The school district may be required to notify local law enforcement officials or state agencies.

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Is an Investigation Warranted?

- If the administration is unsure whether an investigation is necessary, it is recommended that an investigation be conducted.
- School districts may face liability for their failure to properly investigate and rectify allegations of misconduct.

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Is an Investigation Warranted?

- The complainant should put his/her allegations in writing.

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Is an Investigation Warranted?

- If the accuser is a young student and is not capable of drafting a written statement, an oral interview may be justified. If this is necessary, it is recommended that the student's parent/guardian be present during the interview.

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Who Should Investigate?

- Consult your current school board policies to ascertain if a policy already addresses this issue.
- Normally, investigatory duties and responsibilities lie with the superintendent or building principal.

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Who Should Investigate?

- Depending on the allegations, you may want to hire an independent investigator or outside attorney.
- Hiring an independent third party ensures expertise, fairness and objectivity.

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Who Should Investigate?

- New Hampshire School Boards Association strongly recommends that the school board or individual school board members do not conduct the investigation.
- School board members should leave the investigatory process to individuals who have experience conducting prior investigations.

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Who Should Investigate?

- Furthermore, because the school board may eventually sit as “judge and jury” during a dismissal hearing or non-renewal hearing, the potential for bias or due process violations is significant if board members conducted the investigation.

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The Investigation Process

- The accuser should be interviewed first.
- Then, all witnesses should be interviewed and encouraged to provide written statements.

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The Investigation Process

- The accused employee should be interviewed last.
- This way, his/her statements can be compared to information already gathered from the investigation.

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The Investigation Process

- An “investigation file” should be opened and maintained in a safe, confidential place.
- The investigation file should not be part of the employee’s personnel file until any disciplinary action is taken against the employee.

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The Investigation Process

- A strict chain of custody for all physical evidence should be established.
- As few people as possible should have access to physical evidence.

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The Investigation Process

- Evidence should be stored in a secure, discreet location.
- Evidence that is illegal to possess, such as narcotics or firearms, should be immediately turned over to local law enforcement authorities.

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The Investigation Process

- Considerations for administrators: (1) Is the complaint sufficiently credible to warrant an investigation? (2) Is additional information, beyond the written complaint, needed to investigate? (3) Conduct a thorough review of district policies and collective bargaining agreements.

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General Tips for Conducting an Investigation

1. All complaints of bullying, unlawful harassment and/or discrimination should be investigated.
2. Even if there is no complaint, the district must investigate if the conduct is so pervasive that the school district has constructive knowledge of the harassment or discrimination.

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General Tips for Conducting an Investigation

3. Investigations should be conducted promptly (initiated within a day or two of the complaint, if possible.)
4. Take interim measures to prevent any potential further harassment, discrimination, or misconduct, and to prevent retaliation pending investigation. Be careful not to appear to punish the alleged victim by putting him or her on leave or transferring him or her without consent pending investigation.

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General Tips for Conducting an Investigation

5. Review the school district's policies and consult with human resources.
6. Review personnel files or student files of the alleged victim and alleged perpetrator.
7. Identify individuals to be interviewed and prepare an outline of questions.

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General Tips for Conducting an Investigation

8. Consider having a third-party present to take notes during interviews or set up format for investigator's note-taking.

9. For student complainants or alleged perpetrators being interviewed, inform parents that interview is occurring; allow parent to be present if they request.

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General Tips for Conducting an Investigation

10. At the beginning of each interview, tell the person being interviewed:

- What is being investigated and why.
- That the district is committed to neutral and impartial investigation.
- Information provided will be shared with others on a need to know basis.

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Questioning Those Involved

1. Ask the person being interviewed to list others who may have knowledge of the events.
2. Use open-ended questions and don't suggest the expected answer by the way the question is asked.
3. Ask the person being interviewed to give as much detail as possible (names, dates, times, locations, witnesses, etc.)

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Questioning Those Involved

4. Ask the alleged victim (and other witnesses) to put their statements in writing, if possible.
5. Ask for notes, emails, and other supporting documents from the time period in question.
6. Don't make any promises, but ask the alleged victim how he or she would like to see the issue resolved.

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Questioning Those Involved

7. At the end of each interview, have the witness review the statements contained in the notes to confirm accuracy and to determine if he or she has anything to add. Consider having the witness sign the notes to confirm accuracy. Focus on the facts or matters which the witness has personal knowledge.

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After the Interview

- Don't store investigator's notes in personnel files or student files; keep in a separate confidential investigation file. Disciplinary measures taken after an investigation can be part of a perpetrator's personnel file.)

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After the Interview

- Review all documents relating to all alleged events, prior investigation files or other documentation of any previous complaints against the alleged.

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After the Interview

- After all interviews are done and documents are reviewed, analyze results to evaluate credibility of each witness.
- Do not reach conclusions until all witnesses have been interviewed and all relevant documents are reviewed.

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After the Interview

- Make a determination as to whether the alleged conduct did occur. Use credibility assessments and any other evidence to make a fair determination even when there is a “he said-she said” situation.

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After the Interview

- Write an investigation report that states the date(s) of complaint, name of complainant and accused, list of all individuals interviewed, documents reviewed, statement of allegations, accused response, policies at issue, factual findings, conclusion and recommendation.

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After the Interview

- If law/policy has been violated, assess the severity of conduct and determine appropriate disciplinary measure designed to punish conduct and prevent such conduct by any student or employee in the future.

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After the Interview

- Avoid making findings of legal violations – make the focus a violation of board policy.

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After the Interview

- If no violation is found, tell the alleged victim and alleged harasser that results of the investigation do not substantiate the complaint, reiterate the district's policies, and remind the parties of the prohibition against retaliation.

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After the Investigation is Complete

- The investigator must make a written report of his/her findings. If the allegations prove false, the written report should state as such.

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After the Investigation is Complete

- Factors the investigator needs to consider before making a final determination include the credibility and objectivity of the accuser and witnesses, the consistency of testimony, and whether there is enough proof to substantiate the allegations of wrongdoing.

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After the Investigation is Complete

- Prior to taking disciplinary action, superintendents should consult their applicable collective bargaining agreement/master agreement to review discipline procedures and requirements.

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After the Investigation is Complete

- Law enforcement authorities should be notified if allegations of illegal conduct seem legitimate.

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After the Investigation is Complete

- Local Department of Education rules may require superintendents and other educators report to the Department all charges of misconduct against a teacher who holds state credentials.

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After the Investigation is Complete

- Additionally, notify your school district's liability insurance carrier. Lack of timely notice may compromise your insurance or liability coverage.

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Documenting the Complaint and Investigation

- The complainant should be encouraged to reduce their complaint to writing. If the complainant is unwilling or unable to reduce their allegations to writing, a district administrator should do so and then have the complainant sign the administrator's document for verification.

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Documenting the Complaint and Investigation

- All documents relating to the investigation should be kept separate from the employee's personnel file. Separate, confidential files should be kept.

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Documenting the Complaint and Investigation

- Only records of actual disciplinary action taken should be placed in an employee's personnel file.

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Pertinent North Dakota Laws

1. N.D.C.C. § 15.1-09-33. School board – Powers. The board of a school district may:
 - 22. Suspend school district personnel.
 - 23. Dismiss school district personnel.
 - 28. Suspend or dismiss a school district business manager for cause without prior notice.
 - 29. Suspend or dismiss a school district business manager without cause with thirty days' written notice.

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Pertinent North Dakota Laws

2. N.D.C.S. § 15.1-15-07. Discharge for cause - Grounds.

- The board of a school district may dismiss an individual employed as a teacher, a principal, or as an assistant or associate superintendent prior to the expiration of the individual's contract for any of the following causes...

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Pertinent North Dakota Laws

- 1. Immoral conduct.
- 2. Insubordination.
- 3. Conviction of a felony.
- 4. Conduct unbecoming the position held by the individual.
- 5. Failure to perform contracted duties without justification.
- 6. Gross inefficiency that the individual has failed to correct after written notice.
- 7. Continuing physical/mental disability that renders the individual unfit or unable to perform the individual's duties.

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Practice Pointer

- Have policies that address, define or relate to the subjects listed on the slide above.
- Such policies should seek to establish parameters of acceptable or unacceptable staff behavior and conduct.

Pertinent North Dakota Laws

3. N.D.C.C. § 15.1-15-08. Discharge for cause -
Hearing.

4. N.D.C.C. § 15.1-15-10. Suspension during
discharge proceeding - Compensation.

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