

NEWSLETTER ARTICLE:
STUDENT COMPLAINTS AGAINST TEACHERS –
GUIDELINES TO PROTECT THE DISTRICT

Student or parent complaints regarding misconduct by teachers is always a sensitive matter but one which requires prompt and immediate action by the District. Individuals vested with responsibility for investigating these complaints are called upon to exercise independent judgment in determining the appropriate procedure to follow, within the confines of due process and collective bargaining agreement protections. The following guidelines are intended to assist the investigator in conducting the investigation.

➤ **When a complaint is received, it should be given immediate attention regardless of whether it comes from an alleged victim or witness.**

- The investigation must begin immediately, even if the student has delayed in coming forward.
 - a) Courts scrutinize the time which an employer takes to respond to a complaint.
 - b) It is of utmost importance to be prompt, which means your investigation should begin, if possible, immediately after being apprised of a complaint and never more than a week later.
- All complaints must be investigated.
- The school official receiving the complaint should not discourage or embarrass the student and should not unilaterally decide that the student is unbelievable.
- The student should promptly produce all physical evidence, such as letters, notes, photographs, or tape machine messages.
- The investigator should review the teacher's personnel file, paying attention to performance evaluations, directives, and reprimands.
- Some acts against a student, such as sexual harassment, may constitute child abuse or other specific crimes.
- School officials should ascertain whether the allegations suggest child abuse, and if so, immediately report the allegations to the Superintendent and law enforcement authorities in accordance with state law. (23 Pa.C.S. § 6352).
- School officials also may commence a simultaneous in-school investigation to determine whether any employment action should be taken.

- Depending on District policy, it may be advisable to reassign the teacher to non-classroom duties or place the teacher on suspension with pay pending the outcome of the investigation.
- The State Board of Education regulations allow educators to disclose confidential information to students' parents if the educator believes that the health, safety or welfare of the student or others so requires. The investigator should consult with the Superintendent and/or legal counsel when deciding to inform parents. (22 Pa. Code 12.12).
- Involving the parents is often essential to successfully conclude an investigation and to minimize the risk of a lawsuit by the parents.
- School officials should inform the parents that their cooperation will help the District determine whether employment action is necessary.
- The official taking the complaint should encourage the student/parent to identify themselves and explain that anonymous complaints are more difficult to investigate and that punishment of the offender might not be possible without a witness/complainant.
- The District must decide who will conduct the investigation – usually it is a school administrator or an outside attorney.
- Remember that the investigator may become a witness in subsequent litigation and that the investigation report may be subject to discovery if litigation occurs.

➤ **Investigation Interviews/Statements**

- Not only should the student and the teacher be interviewed, but all others who may have knowledge regarding the teacher's conduct. Written statements should be obtained from all individuals with knowledge of relevant information.
- A school official of the same gender as the child should interview the child.
- Ask the student to identify persons believed to have information pertinent to the allegations; then interview each of them individually and take a signed written statement from each.
- If the teacher is represented by a union, they should have the opportunity to bring a union representative to the interview.
- The teacher should be informed of the specific charges against them and should be allowed to fully explain their version of the incident.

- The teacher might refuse to answer questions by asserting the privilege against self-incrimination; however, the Fifth Amendment does not prevent an employer from requiring employees, subject to dismissal, to answer questions relating to their official duties, as long as the statements are not used in a subsequent criminal proceeding.
 - The District or its counsel should communicate with the prosecutor regarding any pending criminal charges, to ensure that the District's investigation does not adversely affect the criminal trial.
- **After witnesses have been interviewed, compare statements to determine support and inconsistencies, any pattern of conduct by the parties and make any necessary follow-ups.**
 - **Continue to probe until the investigation is complete. Do not expand the scope of the investigation unnecessarily to create problems of defamation.**
 - **Final investigation reports should be completed in coordination with legal counsel, written in anticipation of litigation and limited in circulation.**
 - The written report should be a clear, succinct summary of the information gathered in the investigation and should set forth each allegation, responses of the parties, and the investigator's conclusion about each allegation. The report should also contain a recommendation for corrective action.
 - The need for documentation is true even in inconclusive cases. This semester's inconclusive case might be next semester's guilty as charged. Documentation will be necessary to show that the District did not ignore the earlier complaints.
 - **The report should be acted upon as quickly as possible, so that the investigation does not become stale.**
 - If there was no merit to the complaint, such a conclusion should be shared with the student/parent and the teacher; appropriate counseling may be used; and warnings against retaliation should be given.
 - If the accusations have merit, appropriate action must be taken. The choices include warnings, reprimands, transfers, demotion, suspensions and dismissal, or any combination of these.
 - If the investigator's findings are inconclusive, it nonetheless may be appropriate for the investigator to encourage or direct the teacher to refrain from engaging in conduct that raises an appearance of impropriety.

An allegation of teacher misconduct is a serious and sensitive matter. The District's ability to act promptly upon receiving a complaint and to conduct a thorough and fair investigation is critical to protect both the student's and teacher's rights. Our school law attorneys have the experience to assist your District in investigating complaints of this nature and preparing the investigative report to best protect your District's interests.