



# INVESTIGATING EMPLOYEE AND STUDENT MISCONDUCT

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- Presented by:
- *R. Daniel Castille & John F. Kennedy*
- Cuddy & McCarthy, LLP
- **NMSBA 2016 School Law  
Conference**
- **June 3, 2016**



# Why are effective misconduct investigations needed?

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- Due process
  - Basic fairness and integrity of fact-finding
  - Notice of charges
  - Explanation of evidence
  - Opportunity to respond
- Deliberate indifference
  - Avoiding future liability
- State statutes and regulations



# What Should Be Investigated?

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- Alleged criminal violations
- Alleged violations of Board policy, discipline codes, personnel and student conduct regulations
- Sexual harassment reports
- Alleged discrimination
- Miscellaneous (alleged offenses that may result in termination/discharge of employees or suspension or expulsion of students)



# Goals of the Investigation

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- Determine whether undesirable conduct took place
- Determine what occurred, and how
- Identify the person(s) responsible for the undesirable conduct
- Change that conduct
- Support the imposition of consequences (discipline), when appropriate, for undesirable conduct
- Solve this problem before being run over by the next problem



# Who Should Conduct the Investigation? Employee Misconduct

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- Immediate supervisor
- Personnel administrator
- Superintendent
- Board member (never!)
- Outside investigator (?)



# Who Should Conduct the Investigation? Student Discipline

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- Teacher
- Principal
- Other administrator
- Superintendent
- Outside investigator (?)



# Who Should Conduct the Investigation?

## Other Factors to Consider

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- What do your policies say?
- Is there a conflict of interest?
- Can the investigator
  - Keep accurate records?
  - Conduct a thorough witness interview?
  - Maintain confidentiality?
  - Complete and accurate and thorough report?



# The Initial Complaint or Allegation of Misconduct

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- Could be oral or written
- Could come from student, employee, parent, community member, the press, the police, or anonymously
- **GIVE COMPLAINT OR ALLEGATION IMMEDIATE ATTENTION**





# Early Investigation Stages

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- Open a file for the investigation and maintain file at one location.
- Consider whether early indications give rise to reasonable suspicion that a crime has occurred, or child abuse or neglect, that warrant report to police or CYFD— may need to revisit this later.
- Remember--Legal obligation to maintain evidence— good or bad— when litigation may reasonably result.



# Early Investigation Stages

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- Review your applicable policies related to investigations.
- May be specific investigatory steps in certain cases, i.e., bullying or harassment complaints.
- Do you have a collective bargaining agreement with specific investigation requirements?
- If likely to result in claim against the District or employees, notify insurance carrier (may not know until later).



# Considerations for the Investigator

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- Adopt a calm, impartial, fair, and deliberate mindset; do not prejudge the allegations or create that perception
- Be the calm one in the storm; no witch-hunts, reputations are at stake
- Exercise common sense and good judgment
- Remember that your actions will be reviewed, and challenged; the materials you develop and your communications may be subject to later disclosure

# Make Decision Regarding Danger or Potential Harm to Students/Staff



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- Separate alleged victim from alleged violator?
- Immediate removal from school setting?
- Employee: Suspension with pay (administrative leave)?
- Student: Short-term suspension followed by disciplinary hearing (comply with Special Education rules where applicable)



# Handling Witness Interviews

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- Interview the complaining party first
- Interview witnesses (ideally, separately)
- Interview the accused party last

# Handling Witness Interviews

- Interview promptly while events still fresh
- Be discrete about where and how interviews will be conducted to avoid rumors, speculation, embarrassment
- Interview with two individuals present if possible. Most important when interviewing the accused.
- Interview witnesses separately if possible (or with union rep. if applicable)
- Keep interviews confidential and ask witness to do the same



# Handling Witness Interviews

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- Explain to the witness what you are investigating, and that you will be taking notes.
- Ask open-ended questions first, then narrower follow up questions
- Date and time of incident, location, who present, detailed description, reaction to incident, who else has witness spoken to
- Take good notes (include date and time of interview)
- Take your time

# Handling Witness Interviews

- Get written statements
- Take good quality color photos where appropriate (e.g., bruises)
- Record the interview, if necessary or helpful
- Keep a timeline of events that took place before, during, and after incident(s) in question





# Special Considerations for the Accused Employee

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- Request for union representation
- Request for legal representation– no right to have a lawyer present during interview
- Garrity Warning– accused has a right not to incriminate him/herself that applies in criminal setting. No such right in employment setting. Accused may be discipline/fired for not answering employer's questions



# Sample Garrity Warning

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As a condition of your employment, you are being ordered to answer our questions as part of an official investigation of the department. The questions will be specifically directed and narrowly related to the performance of your official duties.

The information or evidence you provide cannot be used against you in any criminal proceeding. However, your statement may be used against you if a subsequent administrative action is commenced.

If you refuse to answer our questions, you will be subject to disciplinary action which could include job termination. Do you understand?



# Other Steps

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- Seize physical evidence
  - Fourth Amendment issues (right to be free from unreasonable searches and seizures)
  - Search is legally permissible when
    - 1) justified at its inception
      - Individualized Reasonable Suspicion that a school rule or law has been violated and that search will produce evidence
    - 2) reasonable in scope.
      - Search tailored to find evidence of wrongdoing.



# Other Steps

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- Report alleged crimes to law enforcement
- Report ethical violations to PED



# Analyze Your Evidence:

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- Is there a pattern of past conduct to support allegation
- Follow up with witnesses if necessary
- Make considered judgments about witness credibility
- Depending on circumstances, review the evidence with your attorney



# Analyze Your Evidence:

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- View evidence from independent observer's perspective
  - How will an arbitrator, judge, or jury view it?
  - Use the "reasonable person" standard
  - Use direct evidence v. "hearsay" evidence
  - Do you have enough evidence (documents and witnesses to testify) to prove a case where you bear the burden of proof.
  - Remember that employee or student will have an opportunity to present evidence to refute charges, present witnesses, cross-examine witnesses, and review all evidence against him/her



# Making the Report

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- Description of allegations
- Response of accused
- Names of witnesses, facts found, summary of witness statements
- Investigator's findings and conclusions
- Meet with complainant and accused (separately) to notify of completion and whether allegations substantiated



# Confidentiality Concerns

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- Do not disclose investigation report to Board as they may need to sit in a future discharge, termination or student discipline hearing
- Do not disclose information about individual students under FERPA, student privacy
- Exercise caution in small communities





# Analyze Facts and Make a Decision (slide 1 of 2)

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- Based on a preponderance of the evidence, evaluating credibility of witnesses
- Employee discipline options
- Student discipline options



# Investigation and Reporting Requirements in 22-10A-5 (slide 1 of 2)

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- Superintendent must investigate all allegations of ethical misconduct about any licensed school employee who resigns, is being discharged or terminated, or otherwise leaves employment after an allegation is made
- If investigation results in finding of wrongdoing, superintendent must report employee's identity and circumstances of the misconduct to PED within 30 days following separation from employment



# Investigation and Reporting Requirements in 22-10A-5 (slide 2 of 2)

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- District cannot enter into any agreement with employee that interferes with this duty to investigate and report
- PED may suspend, revoke, or refuse to renew license of superintendent who fails to make report as required



# Possible Conflicts of Interest With Police Investigations

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- Different timelines– Don't hold off on employee or student discipline until police investigation complete; may exceed time limits for hearings
- Different standards of proof
- Self-incrimination/double jeopardy
- Police and/or school evidence



# Dealing with the Media

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- Press will be interested in the situation
- Limit access of reporters to administration
- Investigation and discipline reports generally not subject to IPRA during investigation
- FERPA affects access to student discipline records even after investigation complete



# Dealing with the Media

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- Work with Superintendent or attorneys on press releases or scope of public comments
- Provide all administration members with appropriate responses
  - During investigation: student & employee confidentiality at issue, investigation underway
  - Avoid revealing information about the matter



# QUESTIONS?

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# Contact Us

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CUDDY & McCARTHY, LLP

R. Daniel Castille

[dcastille@cuddymccarthy.com](mailto:dcastille@cuddymccarthy.com)

John F. Kennedy

[jkennedy@cuddymccarthy.com](mailto:jkennedy@cuddymccarthy.com)

866-679-4476