

RESPONDING TO PERSONNEL COMPLAINTS

Answers to the Top 12 Frequently Asked Questions by Board Members

- 1. Does the District need to wait for a formal complaint to be filed before investigating an incident related to a school employee?**

No. The District has a duty to ensure that its policies are upheld and to protect the safety and well-being of its students and staff. Once aware of a potential situation related to a school employee, a school official should look into the matter. Once a formal complaint is filed, the District must initiate an investigation.
- 2. Who should conduct the investigation?**

Policy may govern which school official should conduct the investigation. Board members should never be involved in investigations concerning classified employees, teachers, principals, and assistant superintendents. If the matter involves the Superintendent or Business Manager, the Board President should conduct the investigation to preserve the impartiality of the remainder of the Board.
- 3. Should the Board answer questions about the incident at a board meeting or on an individual basis when approached by the public?**

No. Board members should simply state that the matter has been referred to the appropriate school official for investigation, and the investigator will recommend the appropriate course of action upon completion of the investigation. By answering questions at a board meeting or on an individual basis in public, the Board may invite charges of libel and slander or inadvertently disclose information protected by the investigation confidentiality statute (NDCC 15.1-07-25). In addition, board members should avoid gathering and disseminating information about a personnel incident because they may ultimately be required to serve as decision makers in a school district nonrenewal or discharge hearing and they must remain as impartial as possible.
- 4. Can a board go into executive session to discuss a personnel matter or the details of an investigation?**

No. State law contains no provision allowing for this. Again, we recommend that board members avoid gathering and disseminating information related to a personnel incident (see response to question #2 above).
- 5. What is entailed in an investigation?**

It depends on the nature of the incident. In all cases, the school employee involved is questioned and district policies reviewed to determine if a violation occurred. In some cases, witnesses are questioned and evidence is gathered (e.g., school security footage, emails, internet browsing logs, etc.). The investigator gathers enough material, in his/her opinion, to substantiate or refute the accusations.

6. Can an employee be placed on administrative leave during an investigation and should the Board be informed or vote on this?

An employee can be placed on administrative leave with or without pay pending the outcome of an investigation. The Board should not be involved in decisions concerning administrative leave. Instead, the Board should grant authority to school administration to place employees on administrative leave through policy.

Administrative leave is different than suspension. Only the Board can suspend a teacher, or administrator and only in cases where the District is pursuing discharge for cause. The vote to suspend may occur in executive session (NDCC 15.1-15-10), but this executive session should not be used as an opportunity to discuss information related to the charges or investigation since such information should only be presented to the Board at the actual discharge hearing. The executive session to suspend should simply be a time when the Board makes a motion and votes on suspension.

7. How much information should a Superintendent provide to the Board after an investigation?

To protect the impartiality of the Board, the Superintendent may inform the Board that the investigation is complete but nothing more. Board members should not request to see the investigation report in the personnel file.

8. How should the Board respond after an investigation is complete?

The Board should not devote meeting time to the outcome of the investigation. All questions concerning the investigation should be referred to the board designated spokesperson, which should be the Superintendent. When the Superintendent responds to a public inquiry about the outcome of an investigation, they may state that the investigator has completed the inquiry, and placed findings into a report that has been issued to the parties involved. The report will explain any steps the District will be taking and the next step for the complainant to seek recourse if dissatisfied.

9. Is the information gathered during an investigation open record?

Under state law, information gathered in relation to a complaint about a school employee is closed for 60 days or until the investigation is complete, whichever occurs first. NDSBA's investigation confidentiality form reflects this statutory standard (KACB-E2). After this timeframe, the investigation material, including the final investigation report, is open record (NDCC 15.1-07-25).

10. What are the possible outcomes of an investigation?

The investigator may:

- a. Find no wrongdoing;
- b. Recommend that a memo be placed in the personnel file reminding the employee of the district policy and the obligation to comply with it;
- c. Recommend a letter of reprimand;
- d. Recommend a letter of reprimand and a plan of improvement;

- e. Make a recommendation for nonrenewal if the complaint concerns a licensed teacher or administrator, is related to a reason for nonrenewal under state law, and if the recommendation falls within the statutory deadlines for nonrenewal under law. There are several procedural steps that must be followed, including a due process hearing, before a school board can vote on nonrenewing a teacher or administrator;
- f. Make a recommendation to discharge a teacher or administrator if the misconduct meets a statutory reason for discharge under state law. There are several procedural steps, including a due process hearing overseen by an administrative law judge, before a board can vote on discharging a teacher or administrator. Legal counsel should be retained if discharge is recommended; and
- g. Recommend termination of employment in accordance with district policy if the complaint concerns a classified staff member.

11. What type of documentation, if any, should be placed in the personnel file if the investigator finds no wrongdoing?

The District should maintain a record of the investigation. If the employee does not want this placed in their file, the District may place a notation in the personnel file with the date of the investigation, that there was no wrongdoing found, and indicate where the investigation records will be stored. This procedural step ensures that no secret personnel records are maintained (NDCC 15.1-17-05). Regardless of where such records are stored, they are open records.

12. How is an investigation of a superintendent or business manager different than an investigation of a school employee?

The Board President conducts the investigation of the Superintendent and Business Manager, reporting back to the Board. When reporting back to the Board, the Board President should explain whether or not the complaint was substantiated and what action was taken, if any. The Board President should not discuss any further details of the investigation with other board members (prevents premature decision making and potential open meeting violations), especially at board meetings (libel and slander prevention safeguard), but may direct them to the investigation report in the superintendent's or business manager's file. While NDSBA typically does not recommend that board members review the contents of personnel files, because the Board must conduct performance evaluations of the Superintendent and Business Manager, board members may have reason to review investigation reports written about the Superintendent and Business Manager.

End of McClusky School District #19 Exhibit KACB-E3

[08/17]