



EDMONDS SCHOOL DISTRICT NO. 15
Human Resources Division

September 2009	EMPLOYEE MISCONDUCT	VII-A
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MANAGING SUSPECTED OR ALLEGED EMPLOYEE MISCONDUCT

These procedures set forth guidelines to manage **SEVERE** employee misconduct.

PRE-~~INVESTIGATION~~

1. While all employee misconduct is considered serious, there are offenses that must be treated as **severe**. These include: theft; physical or sexual abuse including threats, harassment, intimidation, or excessive use of force; drug/alcohol abuse; inappropriate use or misuse of District equipment, facilities, or resources; insubordination; racial, ethnic, or sexual slurs; chronic attendance problems; improper conduct with students; unacceptable discriminatory behavior; misrepresentation or falsification of employment application or District records; and, repeated violations of a less serious nature of which the employee has been formally warned.
2. **Act promptly.** Upon being presented with reason to believe that **severe** employee misconduct may have occurred, **immediately inform your Superintendent's Staff supervisor and the appropriate Human Resources Director.** When in doubt regarding the degree of "severity," call your supervisor.
 - a. The Superintendent's Staff supervisor's role is to determine with you what your next steps shall be and to establish the support team with whom you will work to manage the case.
 - b. The Human Resources Director serves as a member of the support team and ensures that any subsequent action taken is consistent with District practice, collective bargaining agreements, and statute.
 - c. The support team assists you with investigation, determination of response, imposing discipline, etc. in any severe employee misconduct case. Support team members will always include your Superintendent's Staff supervisor and the appropriate Human Resources Director, and may also include the Executive Director for Human Resources, the affirmative action officer, the risk management officer, and legal advisors.
3. **Provide protection of students, staff or themselves from harm.** In "threat to others or self" situations, you may remove the employee from an area or the premises, as warranted and necessary.

INVESTIGATION *(with the help of the support team)*

1. Objective discovery of all the pertinent **facts** is the primary purpose. Maintain a fair and neutral attitude.
2. Involve the police when/if a determination is made that the concern involves a crime; this does not replace the district's responsibility to investigate independently.

3. Keep accurate, factual, thoroughly-detailed, dated, logically-ordered notes right from the start. Working notes are discoverable by courts.
4. Interview witnesses as soon as possible (often done prior to interviewing the employee suspected of misconduct).
 - a. Obtain fact-laden, signed, dated statements whenever possible.
 - b. It is usually better to question first, then help the witness to distinguish facts from opinion, evaluation, and emotion, and then to help logically organize the written statement.
 - c. If the witness is reluctant to make and sign a written statement, try to get him/her to initial and date your notes of the interview.
 - d. Avoid promising anonymity and confidentiality to witnesses.
5. Generally, interview the employee as soon as possible. Your supervisor and/or support team can help you decide if it is wiser to wait.
 - a. It is wise to give advance notice of reason for interviewing (questioning) the employee.
 - (1) It is sufficient to say, "Mrs. X called and said...(summarize)...; I need to talk to you about this after school."
 - b. If it is likely that the investigation may lead to disciplinary action, so inform the employee **and** remind the employee of the right to union representation.
 - c. The employee has the (Weingarten) right to union representation at an investigatory interview if:
 - (1) the interview is investigatory in nature (i.e., seeks to obtain information from the employee);
 - (2) the employee reasonably believes that discipline or discharge may result; **and**,
 - (3) the employee affirmatively requests representation from a union.
 - d. Include a District witness in all formal investigatory interviews of employees.
 - e. Obtain a signed and dated written statement if at all possible.
6. A predetermined set of questions serves well, but "go with the flow" of the interview. Ask straightforward, forceful questions designed to obtain facts.
7. Exhaust all leads for facts.
8. Consult the applicable CBA for any time line requirements (e.g., regarding the sharing of complaint-related materials with the employee).
9. Keep the investigation strictly confidential; information gathered during the investigation should be shared only with the support team on a "need to know" basis.

10. High quality, formal documentation is essential.
 - a. Distinguish between facts and judgments. Stay with the facts; judgments and conclusions come later and are derived from the facts.
 - b. Write with a third party audience in mind.
 - c. Write clearly with good grammar and correct spelling.
 - d. Use the active voice.
 - e. Sign or initial and date all documents.
 - f. Have the employee sign and date a copy of any document provided to him/her. If s/he refuses, accurately record the date, time, and other pertinent circumstances thereon, and sign your notation.

DETERMINATION OF RESPONSE *(with the help of the support team)*

1. “At the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that (a) child (student) has suffered abuse or neglect” you **MUST** report the incident “to the proper law enforcement agency or the department of social and health services” (RCW 26.44.).
 - a. It is a gross misdemeanor to knowingly fail to make such required reports.
 - b. Only the supervising Superintendent's Staff member has the authority to decide not to report in instances of “reasonable cause.”
2. Afford appropriate due process requirements to the employee.
 - a. The extent of the process which is due is dependent upon the nature of the action likely to be taken and the availability of established statutory or other procedural protection.
 - b. In involuntary termination cases a preliminary (Loudermill) hearing is required which includes:
 - (1) Oral or written notice of the charges;
 - (2) An explanation of the employer's evidence; and,
 - (3) An opportunity to present his/her side of the story.
3. In some instances it may be best that the employee be suspended with pay until the completion of the investigation and determination of the appropriate response. The supervising Superintendent's Staff member must be involved in making this decision.
4. The Superintendent's Staff member and/or the support team will help determine if/when direct legal counsel is advisable.
5. After the investigation is completed thoroughly, prompt, thoughtful, effective action must be taken based upon the discovered, provable facts.
6. With the support team determine the appropriate response.

- a. Determine if the employee is "guilty" of misconduct.
 - b. Consider corrective/progressive discipline requirements.
 - (1) Review for any applicable clause in the CBA.
 - (2) Review employee's personnel file for any record of previous acts of misconduct.
 - (3) Design corrective action to be constructive, primarily corrective, a deterrent to possible repetition, not punitive, and tailored to try to solve a problem.
 - c. Is discipline merited?
 - (1) Appropriate disciplinary consequence: What is enough, yet not too severe?
 - (2) Does the contemplated degree of discipline reflect (or is it reasonably related to) the seriousness of the offense?
 - (3) Does the provable offense constitute "sufficient cause" for the proposed discipline?
 - (4) Is it consistent with other disciplinary actions taken by the district (Human Resources Director)?
 - (5) Consider the threshold question: Is it acceptable to not take more severe action?
7. The appropriate Superintendent's Staff member is ultimately responsible for determining what, if any, disciplinary measures will be taken.
8. If it is found that the misconduct involved violation of the Code of Professional Conduct (per WAC 180-87) this information must be forwarded to the Superintendent's Office so the required report may be made to OSPI.

IMPOSING THE DISCIPLINE

1. In virtually all instances the principal or program manager talks with the employee and officially imposes the disciplinary consequence using as much help as needed/desired from the support team.
2. If discharge (involuntary termination) is recommended, the Superintendent's Staff member assumes primary responsibility for the recommendation. Any notice of discharge must include a notice of the right to appeal and of the appeal process, if the employee has a right to appeal.

CLOSING THE CASE

Copies of all records pertinent to the case are to be forwarded to the appropriated Human Resources Director for proper filing.